



## BRIEFING

### COVID-19: Request for exemption to border restrictions for essential workers

<b>Date:</b>	8 May 2020	<b>Priority:</b>	High
<b>Security classification:</b>	Sensitive	<b>Tracking number:</b>	-

Action sought		
	Action sought	Deadline
Hon Phil Twyford <b>Minister for Economic Development</b>	<b>Agree</b> to make an exemption from temporary border restrictions for essential workers for City Rail Link, Rocket Lab, Wisk, Big Shell Productions and Light Storm Entertainment	11 May 2020
Hon Iain Lees-Galloway <b>Minister of Immigration</b>	Copy for information only.	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Karl Woodhead	Director	s 9(2)(a)	

The following departments/agencies have been consulted

**Minister's office to complete:**

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

**Comments**



## Recommendations

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The Ministry of Business, Innovation and Employment (MBIE) request that you:

- a **Note** that on 19 March 2020, Cabinet agreed to border restrictions preventing entry to New Zealand [CAB-20-MIN-0122 refers].
- b **Note** that Cabinet also agreed high level parameters for case-by-case exemptions to COVID-19 border restrictions, including essential workers identified by the group of Ministers with Power to Act on COVID-19 matters.
- c **Note** that on 21 April 2020, the Group of Ministers with Power to Act on COVID-19 matters delegated decision-making on exceptions for individual 'other essential workers' to the Minister for Economic Development and relevant portfolio Ministers, but retained its authority to determine request for exceptions for classes of workers.
- d s 9(2)(h) [REDACTED]
- e **Note** that officials have received requests from Rocket Lab, City Rail Link, Wisk, and two film productions for essential workers to enter New Zealand
- f **Note** that the numbers of individuals that each are wanting to bring in are 26 (Rocket Lab), 50 (City Rail Link), 2 (Wisk), 16 (Big Shell Productions) and 41 (Light Storm Entertainment)
- g **Note** that MBIE considers that 15 of the 50 City Rail Link employees should be approved at this stage, and that we will continue to work with CRL on their other applications
- h **Note** that the requests from Rocket Lab, Wisk, Big Shell Productions and Light Storm Entertainment are supported by MBIE, as the individuals identified are critical to the projects they are involved in.
- i **Note** that, on arrival in New Zealand, all individuals will be required to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days.
- j **Note** that all costs associated with the isolation will be met by the companies.
- k **Agree** to, under the authority delegated to you by the group of Ministers with Power to Act on COVID-19 matters, make an exemption to the COVID-19 border restrictions for individuals associated with the companies as set out in rec e, with the exception being to allow only 15 for City Rail Link at this point in time.

*Agree / Disagree*

- I **Write** to the Chair of Cabinet noting that you have taken these decisions consistent with your understanding of Cabinet's intent around the power for these exemptions.

Karl Woodhead

**Director, Essential Services**

8 May 2020

Hon Phil Twyford

**Minister for Economic Development**

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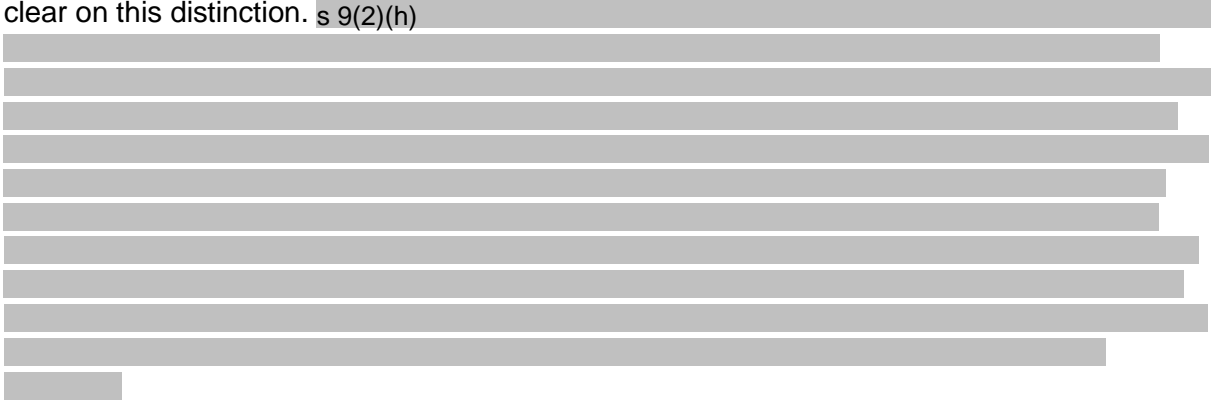
## Background

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1. On 19 March 2020, Cabinet agreed to border restrictions preventing entry to New Zealand to all but New Zealand Citizens, residence class visa holders, and their dependents.
2. Cabinet also agreed high level parameters for case-by-case exemptions to COVID-19 border restrictions, which includes essential workers identified by the group of Ministers with Power to Act.
3. On 21 April 2020, the COVID-19 Ministerial Group agreed to delegate further decision making on exemptions to border restrictions for essential workers to the Minister for Economic Development and the relevant portfolio Minister.

## Decision-making authority

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4. We recently discussed with you potential issues around making decisions on these applications. These issues relate to:
  - Any potential conflict of interest resulting from exercising this joint Ministers' Power To Act from Cabinet for these decisions where you are both the Minister for Economic Development and the relevant portfolio Minister.
  - These companies not being considered essential services under Alert Level 4
5. With regard to the potential for a conflict of interest, we sought advice (through your office) from the Cabinet Office. The Cabinet Office has confirmed that they do not consider you have a conflict of interest in making these decisions.
6. To date we have been using the COVID19 Alert Level 4 essential services list as a proxy to decide 'essential worker' exemptions. The Prime Minister's Office has advised that Cabinet did not explicitly intend to link the two. The essential services list was frequently refined throughout Alert level 4. However the move to Alert Level 3 included a shift away from the concept of essential services which creates limitations around relying solely on this historical list as a proxy for interpreting the term 'essential worker'.
7. We have received legal advice from within MBIE over whether the Cabinet decisions are clear on this distinction. [s 9\(2\)\(h\)](#)  

8. Other factors that officials consider in providing advice currently also include why it is not possible to re-deploy workers already in New Zealand; what is happening to staff currently in the roles; the length of the visa required and the reason for the length of the visa; and the requirement to undergo quarantine or managed isolation.
9. MBIE is undertaking work to propose an expansion of the exemptions criteria in order to support the economic recovery. This work is a couple of weeks away but in the interim we consider these urgent cases need to be dealt with, and we think the time-critical nature of the

needs for these economically significant firms make these workers essential in the cases set out below<sup>1</sup>.

## **Requests for exemptions to travel restrictions for essential workers**

### **CityRail Link Limited**

10. CityRail Link Limited (CRL) are developing critical infrastructure in Auckland, which is vital for the future economic development of Auckland (and New Zealand).
11. CRL wrote to you on 24 April seeking an exemption to allow up to 50 workers to come to New Zealand to work on the project for at least two years.
12. These workers will occupy key engineering roles for at least two years on the project. The reason it has always been planned to bring them to New Zealand is they all hold highly specific skills required for the construction of the CRL. As these skills have been developed by working on international metro rail mega projects, they do not exist, or are extremely rare in New Zealand.
13. CRL have estimated the likely costs and delays of these workers not arriving soon – if they are unable to start bringing in the workers in the next month, the downstream consequences are that three months will have been lost by November with a **s 9(2)** cost.
14. CRL have split the workers into three priority groups. The priority hierarchy for getting key people into New Zealand is: 15 are most urgent (priority 1), 20 are priority 2, and the remaining are priority 3.
15. Based on the criteria that Ministers noted would be used to assess applications for exemptions, **we recommend the 15 Priority One CRL workers be given an exemption to border restrictions**. The workers are needed to ensure the continuity of the service as the project is not able to continue for much longer without them. They have an engineering skillset that is unique and generally not available in New Zealand. There are currently no staff performing the roles – the project is undertaking other work while waiting to get these workers. The length of the visa required is likely to be at least two years. CRL have acknowledged that they will observe any isolation/quarantine protocols that will be required.
16. We will work with CRL on the urgency of the remaining workers, and whether all of them are not able to be replaced by New Zealand workers.

### **Rocket Lab**

17. Rocket Lab undertakes space launches from New Zealand (the Mahia Peninsula) and, in the near future, from the USA. They have been scaling up their operations and are at the forefront of private sector responsive, small launch capability globally. Rocket Lab have approached various ministers seeking permission to bring people in for their upcoming launches.
18. Rocket Lab are gearing up to have a launch from New Zealand every 18 days. For their launches, Rocket Lab bring in people for each launch from overseas. These people will work either for Rocket Lab or for their customers and need to oversee some launches in order to guarantee the safety of highly complex and sensitive payloads. People working for Rocket Lab's customers are likely to arrive on a visitor visa, rather than a workers visa, as they will be carrying out work for a Rocket Lab customer rather than Rocket Lab itself. We consider that they are workers within your delegation as they would be here in a work capacity.
19. The Rocket Lab workers and customer representatives are needed because satellites are complex machines that require a lot of work to make them ready for flight. From transport, they undergo significant testing and check out and in the case of some, assembly. This

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<sup>1</sup> Critical to provision of national infrastructure is an existing criteria in the Immigration Instructions

process can only be done by the experts who built the spacecraft. There is also the final integration of the spacecraft to the rocket. This requires specific people with certification in the separation systems and the customer present. This is a contractual and safety requirement that cannot be waived. In addition for some payloads there are very specific security requirements.

20. Rocket Lab currently has a launch ready that has been delayed since late March. The technology used for the launches means that there is a time sensitivity to launch. In particular, there is an urgency regarding their next launch. Batteries used in the payload expire in early June, meaning that the time needed for people to arrive in New Zealand and undergo quarantine means that Rocket Lab need a decision to allow people to depart the USA by 13 May.
21. Rocket Lab would like to seek an exemption to border restrictions to cover their next three launches. Following this, we would expect them to apply under a new broader framework that Cabinet will consider (see paragraph 47 below). The details of the people needed to come in are:

Launch	Tentative dates	Workers	Visitors
One	Arr: ASAP Dep: late May	0	7
Two	Arr: 30 May Dep: 15 Jun	1	7
Three	Arr: 15 Jun Dep: 15 July	4	7
Total		5	21

22. Based on the criteria that Ministers noted would be used to assess applications for exemptions, **we recommend that Rocket Lab be given an exemption to border restrictions to allow 26 workers and customer representatives to come to oversee their next three launches.** The people are needed to ensure the continuity of the service as the launches cannot occur without them. They have a skillset or have an ability to meet technical requirements that is unique and not available in New Zealand. The length of the visa required is likely to be one to two months. Rocket Lab have acknowledged that they will observe any isolation/quarantine protocols that will be required.
23. If approval is given after 13 May, they will need to bring an extra nine people in for the first launch.

### Wisk

24. Wisk (formerly Zephyr Airways) is at the forefront of the development of a passenger-carrying unpiloted aircraft. Wisk's majority shareholder is the Boeing Company, with other high-profile US-based innovators involved in the company including Google founder Larry Page and Google X founder Sebastian Thrun.
25. Wisk is a flagship company in MBIE's Innovative Partnerships programme. To date, the company has invested around **§ 9(2)** in New Zealand since 2016 and plans to invest around **§ 9(2)(b)(ii)** Wisk have submitted a specific request for two US-based engineers to enter New Zealand to construct a ground radar in Canterbury which would support the ongoing development of their technology programme. The company who manufactured the radar (L3Harris) holds the only technical expertise internationally to install it. The radar has been designed on behalf of Wisk and it is new-to-market technology, specifically designed to support the research work Wisk are undertaking in New Zealand.
26. There is no technical expertise currently in New Zealand to undertake the work and construct the radar to the desired level of specification. However, one additional benefit that this

project will bring is the upskilling of Wisk's' New Zealand based team to undertake projects of this kind in the future.

- 27. The company's representatives have advised MBIE officials that long-term disruption to flows of engineers and other technical staff could result in the cessation of Wisk's Research and Development activities in New Zealand. In their view, should they be unable to operate for a further 4 – 6 weeks, Boeing may view Wisk's New Zealand business as untenable, exacerbated by the larger-scale impacts of COVID-19 on Boeing's global operations.
- 28. Based on the criteria that Ministers noted would be used to assess applications for exceptions, **we recommend that Wisk be given an exception to border restrictions to allow two staff to enter the country.** These people are needed to ensure the continuity of the company's programme, which is contingent on this piece of infrastructure becoming operational. They have a skillset or meet technical requirements that are unique and generally not available in New Zealand. There are currently no staff performing the roles.
- 29. Wisk have committed to observe any isolation/quarantine protocols that will be required and expect to bear the costs of such protocols. I also note that the Minister of Research, Science and Innovation and lead Minister for the Innovative Partnerships programme supports this request.

### Screen industry – two applications

- 30. There are currently two applications to bring screen industry workers into the country to work on major productions.

#### *The Power of The Dog*

- 31. On 21 April Jane Campion DNZM wrote to Hon Robertson seeking an exemption to border restrictions to allow actors to come back to New Zealand for filming. On 23 April Dame Campion provided further detailed information to Paul Stocks (DCE, Labour Science & Enterprise) on the need for the workers, details on who they are and the plans for the workers.
- 32. Filming had begun on "The Power of the Dog" in January 2020. Production was halted two-thirds of the way through due to COVID-19 (with just over three weeks of filming remaining). The budget for the film is s 9(2)(b)(ii) Spending in New Zealand is forecast to be s 9(2)(b)(ii) of which s 9 will be covered by the Screen Production Grant.
- 33. The principal actors left New Zealand and will need to return in order to finish filming. If the actors do not return soon, the film will have to be abandoned due to other commitments that the actors have. There are a number of crew who need to come to finish the production. The number of international workers is fewer than what had been working on the production prior to lockdown – a number of s 9(2)(a) crew are being replaced by New Zealanders.
- 34. All s 9(2)(a) citizens have relevant visas through to September 2020.
- 35. The full range of workers that are wanting to be allowed in are:

Role in Production	Number	Coming from
s 9(2)(a)		

Total	16	
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36. All cast and crew are aware of the need to self-isolate on arrival in New Zealand. They will be tested prior to departure from their home base, then again on arrival in New Zealand and again when the 14 day isolation period has been completed. After the self-isolation period, they will need to stay in New Zealand for between two and six weeks depending on their role and workload.
37. The production has rescheduled to start shooting on 22 June. We understand just over 100 New Zealanders will re-engaged on the production if it can recommence.
38. We consider that the nanny is an essential worker, as she is essential for the care for the dependent of one of the principal actors.
39. **We recommend that Big Shell Productions be given an exemption to border restrictions to allow 16 workers to come in to complete production on “The Power of The Dog”.** The production cannot be completed without the workers coming to New Zealand. The length of their visa stay will be relatively short, being the length of time needed to complete filming. The production is clear on the length of time each person will be needed (between 2 and 6 weeks depending on the role). The production has developed a robust health and safety plan.

#### *Avatar*

40. On 4 May, James Cameron wrote to you seeking an exemption to border restrictions to allow 41 cast and crew to come back to New Zealand to complete filming on the Avatar movies.
41. The Avatar productions were in a similar position to “The Power of the Dog”, in that a significant part of the filming had been undertaken, but there is still more to be done before post-production can commence. When the country moved to Level 4 the production had 96 international crew out of the country. They have reorganised their approach to filming to minimise the number of people required.
42. The completion of filming will employ 400 New Zealand production crew, for six months, with an estimated spend of s 9(2)(b)(i). Following this, post-production will enable Weta Digital to employ 650-1000 people over the next five years, with a spend of s 9(2)(b)(ii) per year.
43. The full list of cast and crew that the production is wanting to be allowed entry to New Zealand was included in the letter from James Cameron to yourself. We have noted this list has been assessed to ensure only those roles that can't be filled by New Zealanders are included in the request.
44. Mr Cameron has acknowledged that all cast and crew will need to self-isolate on arrival in New Zealand. The producers have developed a plan to operate in a safe manner, to minimise any chances of spreading COVID-19.
45. **We recommend that Light Storm Entertainment be given an exemption to border restrictions to allow 41 workers to come in to complete production on the Avatar movies.** The production cannot be completed without the workers coming to New Zealand. The length of the visa required is likely to be six to nine months, i.e. the length of time needed to complete filming.

#### **Links to other work underway**

46. A cross-government paper *Future Border Settings: People Movement and Reconnection with International Markets* is being prepared for consideration by Cabinet this coming week. It will recommend guiding principles for the longer-term management of New Zealand's border



settings for people movement and reconnection into international markets, and will outline the key workstreams in train across government to achieve that.

47. One workstream relates to increasing our capacity for entry on an exceptions-basis. MBIE officials are preparing a paper for you and the Minister of Immigration, which would expand the allowable exemptions for workers, within public health guidelines and managed isolation capacity, in order to support the economic and social recovery. It will also recommend a revised process for considering those exemptions. We aim that this would be considered by DEV on 27 May.

## Risks

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48. There are several presenting risks in approving these applications.
49. All of these establish precedent risks for similar projects. For example, there are a number of screen productions that are ready to begin production in New Zealand, or to resume production. Granting of exemptions to the two outlined in this briefing is likely to lead to more requests. This may be a desired outcome – however, this will start to increase the flow of people across the border, which is a key public health risk with regard to transmission of COVID-19.
50. A challenge will be ensuring that the workers are genuinely highly skilled and their roles can't be sourced in New Zealand. There may be perception risks of whether some of these workers are essential (for example, a nanny).
51. In approving these applications, the definition of essential worker is starting to be widened. This may limit the ability to decline future applications.
52. The key judicial review risk lies not in approved applications, but in declined applications that may appear to be similar to approved ones in terms of economic significance. This will be mitigated through the work described in paragraph 47. Any applications that are declined in the meantime will be open to judicial review.
53. Finally, while there is a risk that decisions under your delegation that extend beyond the essential services (as defined in Alert Level 4) could be ruled ultra-vires, a reasonable argument can be made that these decisions may fall within your delegation. Based on the Cabinet decisions we consider it is not entirely clear. We suggest that a way to mitigate this risk is to write to the Chair of Cabinet noting that you are taking the decisions consistent with your understanding (informed by advice from the Prime Minister's Office) of Cabinet's intent around the powers for these exemptions.
54. s 9(2)(h)

## Next steps

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55. If the requests are approved, in accordance with Immigration Instructions, *H5: COVID-19 Support Restricted Temporary Entry Instructions*, the companies will be invited to have the workers apply for supported temporary visas or variations of conditions as an essential worker.
56. All workers will have visa requirements that they will be required to isolate for fourteen days, with all costs covered by the employer.