



BRIEFING

COVID-19: Request for exemption to temporary border restrictions for critical workers for Fonterra

Date:	6 July 2020	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2021-0076

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister for Economic Development Hon Damien O'Connor Minister of Agriculture	Agree that two engineers in the agricultural sector are "critical workers" for the purpose of an exemption from temporary border restrictions.	7 July 2020
Hon Ian Lees-Galloway Minister of Immigration	Copy for information only.	N/A
Hon Megan Woods Minister of Housing	Copy for information only.	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Ruth Isaac	General Manager, Labour and Immigration Policy	s 9(2)(a)	✓
Cheyne Gillooly	Director – Investment, Skills and Performance, Ministry for Primary Industries		

The following departments/agencies have been consulted
This briefing was developed together with the Ministry for Primary Industries

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



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Purpose

This briefing seeks your agreement that two engineers required to install new machinery at Fonterra's Waitoa site in the Waikato are "critical workers" for the purpose of an exemption from temporary border restrictions.

Recommended action

The Ministry of Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade recommend that you:

- a **Note** that on 19 March 2020, Cabinet agreed to border restrictions preventing entry to New Zealand and high-level parameters for case-by-case exemptions to these restrictions [CAB-20-MIN-0122 refers].
Noted
- b **Note** that on 21 April 2020, the Group of Ministers with Power to Act agreed to delegate decision making on whether a worker is an "other essential worker", for the purpose of exceptions to border restrictions, to the Minister for Economic Development and the relevant portfolio Minister [Unnumbered Cabinet Minute]¹.
Noted
- c **Note** that on 8 June 2020, Cabinet agreed new criteria for exemptions to border restrictions and to delegate decision making on exemptions under those criteria to Immigration New Zealand [CAB-20-MIN-0268 refers].
Noted
- d **Note** that the delegation and new criteria agreed by Cabinet on 8 June 2020 came into effect in immigration instructions on 18 June 2020.
Noted
- e **Note** that on 2 July 2020, we provided advice to the Minister of Economic Development recommending that he delegate authority to decide exemption requests received before 18 June 2020 to Immigration New Zealand [3949 19-20 refers] but in the meantime, he and portfolio Ministers retain authority to decide exemption requests received before 18 June 2020.
Noted

¹ Unnumbered Minute from Meeting of the COVID-19 Ministerial Group, entitled *COVID-19: Request for Exemption to Temporary Border Restrictions for Essential Worker, and Proposal to Delegate Decision Making to Joint Ministers*.


- f **Note** that on 10 June 2020, Fonterra lodged a request with the Ministry for Primary Industries that was transferred to the Ministry of Business, Innovation and Employment on 19 June 2020, to classify two engineers in the agricultural sector as “critical workers” for the purposes of exemptions from COVID-19 temporary border restrictions.
- Noted*
- g **Note** that, as the request was made before 18 June 2020, the criteria that apply to the exemption request are the criteria set out in this briefing developed by the Minister for Economic Development, in force until 18 June 2020.
- Noted*
- h **Note** that this request is supported by the Ministry of Business, Innovation and Employment because the workers are required to commission and warrant equipment which requires specialised skills that are not available in New Zealand.
- Noted*
- i **Agree** that the two engineers are “critical workers” for the purposes of exemptions to the COVID-19 border restrictions.
- Agree / Disagree*
- j **Note** that, on arrival in New Zealand, the workers will be required to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days.
- Noted*
- k **Note** that the date on which the workers can enter New Zealand will be determined by available capacity in managed isolation / quarantine facilities.
- Noted*

- I **Note** that all costs associated with the workers' quarantine or managed isolation will be met by Fonterra.

Noted



Ruth Isaac
General Manager, Labour and Immigration Policy
Labour, Science and Enterprise Group
Ministry of Business, Innovation and Employment
6 / 7 / 2020



Cheyne Gillooly
Director – Investment, Skills and Performance
Ministry for Primary Industries
6 / 7 / 2020

Hon Phil Twyford
Minister for Economic Development
..... / /

Hon Damien O'Connor
Minister of Agriculture
..... / /

Background

1. On 19 March 2020, Cabinet agreed to border restrictions preventing entry to New Zealand and high level parameters for case-by-case exemptions to these COVID-19 border restrictions [CAB-20-MIN-0122 refers].
2. 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 [Unnumbered Cabinet Minute]².
3. On 8 June 2020, Cabinet agreed new criteria for exemptions to border restrictions and to delegate decision making on exemptions under those criteria to Immigration New Zealand [CAB-20-MIN-0268 refers]. The delegation and new criteria came into effect in immigration instructions on 18 June 2020.
4. On 2 July 2020, we advised the Minister of Economic Development that it is MBIE's view that the instructions and criteria in force at the time a request for essential worker status is received are the criteria against which the request must be considered. We recommended he delegate authority to decide exemption requests received before 18 June 2020 to Immigration New Zealand [3949 19-20 refers] as in the meantime he and portfolio Ministers retain authority to decide exemption requests received before 18 June 2020.

The request is for an exemption for two engineers

5. On 10 June 2020, Fonterra lodged a request with the Ministry for Primary Industries that was transferred to the Ministry of Business, Innovation and Employment on 19 June 2020, to classify two engineers in the agricultural sector as "critical workers" for the purposes of exemptions from COVID-19 temporary border restrictions.
6. Fonterra requires two engineers from s 9(2)(a) to enter New Zealand for six weeks to install and commission new machinery, so that the plant complies with new food safety regulations in China, the European Union and Australia. The installation requires direct support from the manufacturers of the machinery, who own the intellectual property of the technology.

The information provided by Fonterra in support of its request is set out below. MBIE supports the request because the workers are required to commission and warrant equipment which requires specialised skills that are not available in New Zealand.

Criteria to be applied to assess whether the workers are critical

7. As Fonterra's request was received prior to 18 June 2020, we have applied the following guidelines to the request to advise you on whether the requested workers are essential.
 - a. *Whether individuals from overseas are critical for delivery of time critical projects or programmes that are of strategic economic importance (such as, providing significant spill-over benefits to the economy or major employment in a region, preserving significant international trade-related business)*
 - b. *Whether international expertise, technical requirements or a unique talent is critical for success*
 - c. *Whether it is possible to redeploy workers already in New Zealand (or fill the position within New Zealand)*
 - d. *Whether there are already people performing these roles*
 - e. *The length of time the workers are likely to be in New Zealand*

² Ibid note 1.

How the workers meet the criteria

8. The relevant information provided by Fonterra, in relation to the criteria that applied at the time it submitted its request, is set out below.

Whether individuals from overseas are critical for delivery of time critical projects or programmes that are of strategic economic importance (such as, providing significant spill over benefits to the economy or major employment in a region, preserving significant international trade-related business)

9. Fonterra's Waitoa site in the Waikato produces infant formula base powder. It is Fonterra's only New Zealand-based manufacturing site capable of producing infant formula base powders.
10. Upcoming food safety regulatory changes in China, the European Union and Australia require many of Fonterra's paediatric products to be reformulated, which requires the company to alter its manufacturing processes and install new machinery.
11. Fonterra has invested **Comme** in a specialist industrial dehumidification system to enable its Waitoa plant to produce infant products to the required specifications. The final stages of the installation and commissioning of the new machinery requires direct support from the manufacturers of the machinery, Munters Engineers. While they are in New Zealand, the engineers will also provide training on the operating and maintenance requirements for the machinery.
12. Failure to comply with the upcoming regulatory requirements for paediatric nutrition powders will result in a significant reduction of Fonterra's milk processing capacity and put at risk **Commercia** of export revenue per annum, and a potential projected incremental growth of **Commerci** per annum over the next 4 years.
13. Fonterra has advised that the installation of the machinery is urgent as it needs to be operational when spring calving commences and the site begins receiving milk.

Where international expertise, technical requirements or a unique talent is critical for success (eg space programme, film projects, scientific research programmes)

14. The machinery is new technology for Fonterra and requires direct support for the final stages of its installation and commissioning from Munters Engineers. The technology is the intellectual property of Munters, so it is not possible to complete the installation and commissioning work with a New Zealand-based firm. Munters Engineers, do not have trained personnel in New Zealand.

Whether it is possible to redeploy workers already in New Zealand

15. As above, Munters Engineers do not have trained personnel in New Zealand.

Whether there are already people performing the roles

16. No workers are performing the roles.

Consultation

17. The Ministry of Primary Industries supports the request because failure to comply with the upcoming regulatory requirements will result in a significant reduction of Fonterra's milk processing capacity, and because the machinery needs to be operational when spring calving commences and the Waitoa site begins receiving milk.

Dates of travel and managed isolation

18. If the request is approved, the workers will be required to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days on arrival in New Zealand. The date on which the workers can enter New Zealand will be determined by available capacity in managed isolation / quarantine facilities.
19. Fonterra has agreed that it will meet all costs associated with the workers' quarantine or managed isolation.

Visa status of the workers

20. If the requests are approved, in accordance with immigration instructions, the workers will be invited to apply for a Critical Purpose Visitor Visa, another visa that suits their circumstances, or a variation of conditions.

Reason for the timing of this advice to Ministers

21. MBIE received Fonterra's request on 19 June. On 24 June 2020 a decision paper was provided to Immigration New Zealand decision makers recommending they approve the request. Decision makers subsequently sought clarification of their decision-making authority, including seeking legal advice. The issue relating to decision making on pre-18 June requests was raised, and notified to you on 2 July (briefing 3949 19-20). A decision on these two Fonterra workers has been delayed by that decision making issue.