



## BRIEFING

### Exceptions to COVID-19 Border Restrictions: essential workers

<b>Date:</b>	2 June 2020	<b>Priority:</b>	High
<b>Security classification:</b>	Sensitive	<b>Tracking number:</b>	3581 19-20

Action sought		
	Action sought	Deadline
Hon Phil Twyford <b>Minister for Economic Development</b>	For noting.	3 June 2020
Hon Iain Lees-Galloway <b>Minister of Immigration</b>	For noting.	3 June 2020

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Siân Roguski	Manager, Immigration Policy Team	s 9(2)(a)	✓
Beth Goodwin	Principal Policy Advisor		

The following departments/agencies have been consulted

**Minister's office to complete:**

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

**Comments**



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Date:	2 June 2020	Priority:	High
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#### Purpose

To outline problems identified with decisions made since 21 April 2020 agreeing that certain workers are essential workers for the purposes of exceptions to border restrictions and to set out how we propose to rectify those problems.

#### Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that the legal basis for decisions on exceptions to border restrictions derives from immigration instructions certified under the Immigration Act.

*Noted*

- b **Note** that immigration instructions were not updated following the decision by the COVID-19 Ministerial Group to delegate decision making on defining “other essential workers” for the purposes of exceptions to border restrictions to the Minister for Economic Development and the relevant portfolio Minister.

*Noted*

- c **Note** that officials recommend this be addressed by the Minister of Immigration amending immigration instructions, and then relevant Ministers re-making decisions made since 21 April to determine workers as ‘essential workers’ for immigration purposes.

*Noted*

- d **Note** that a separate briefing has been provided to the Minister of Immigration, detailing the recommended changes to immigration instructions.

*Noted*

- e **Note** that officials will provide further advice by 5 June 2020 on the wider decision making framework for exceptions under the ‘other essential worker’ exception category, with a view to ensuring that the framework has a more robust legal basis as the regime evolves.

*Noted*

Siân Roguski  
Manager, Immigration Policy Team  
Labour, Science and Enterprise  
Group, MBIE  
02/06/2020

Hon Phil Twyford  
Minister for Economic  
Development

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Hon Iain Lees-Galloway  
Minister of Immigration

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## Background

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1. As part of the response to the outbreak of COVID-19, the New Zealand Government has implemented progressively tighter border restrictions to prevent the travel of almost all travellers to New Zealand. On 19 March, Cabinet agreed to restrict entry to travel from all countries [CAB-20-MIN-0122 refers]. That restriction does not apply to:
  - a. New Zealand citizens and residence class visa holders
  - b. The partner, legal guardian or any dependent children travelling with a New Zealand citizen or residence class visa holder
  - c. Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand
  - d. People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and marine crew
  - e. Diplomats accredited to New Zealand and currently resident in New Zealand.
2. Cabinet also agreed high-level parameters for case-by-case exemptions to COVID-19 border restrictions, which include [CAB-20-MIN-0122 refers]:
  - a. Those who need to travel for humanitarian reasons
  - b. Essential health workers
  - c. Citizens of Samoa and Tonga for essential travel to New Zealand
  - d. Partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand
  - e. Any other essential workers identified by the group of COVID-19 Ministers with Power to Act.
3. To give effect to this decision, the Minister of Immigration agreed to changes to immigration instructions on 19 March 2020 [BR 2766 19-20 refers]. The instructions allowed for persons to be granted entry permission by an immigration officer, including 'other essential workers as defined by the New Zealand Government.'
4. On 30 March 2020 the Minister of Immigration certified further amendments to immigration instructions, which stated that 'essential workers, and their partners and dependent children' were among those considered to have a critical purpose for travelling to New Zealand.
5. The phrase 'essential workers' was defined as follows in the instructions, reflecting the Alert Level 4 settings and decision making structure that were in operation at the time:

### 'H5.25.5 Essential workers

Essential workers are considered by the COVID-19 All of Government Officials group as critical to delivering the response to COVID-19 and/or maintaining critical infrastructure, and agreed to by the Minister of Immigration and either Ministers with Power to Act or by Cabinet.'

6. Subsequently, on 21 April 2020,<sup>1</sup> Ministers with Power to Act on COVID-19 matters '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'.
7. Due to an omission by officials, no relevant changes were made to immigration instructions following that Cabinet decision. MBIE usually maintains good practices of ensuring that Government policy is communicated and immigration instructions are aligned, but due to the fast-moving situation of COVID-19, this did not occur.
8. Since 21 April, the Minister for Economic Development and relevant portfolio Ministers have made decisions agreeing that a number of workers are "essential workers", on advice from officials.

9. The legal basis for decisions on exceptions to border restrictions derives from immigration instructions certified under the Immigration Act. The contents of immigration instructions, and whether they reflect Cabinet or Government intentions, are a matter for the Minister of Immigration (based on the advice of officials). The Minister of Immigration certified rules and criteria by which an exception to border restrictions can be obtained in restricted temporary entry instructions<sup>2</sup>.

### We propose immediate steps to remedy the identified inconsistencies

<sup>1</sup> 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*.

[illegible]

21. Ultimately, as our capacity to allow foreigners to cross the border safely increases and the risk of stranded migrants reduces, we should be able to use our immigration work visa settings to manage entry for most workers to New Zealand. Advice is currently being prepared for the Minister of Immigration on potential policy changes to work visa settings to ensure that immigration policy is fit for the COVID/post-COVID context given both the needs of industry and of unemployed New Zealanders, and in light of the existing pools of migrant workers in New Zealand.