

In confidence

Office of the Minister of Immigration

Chair, Ad Hoc Cabinet Committee on COVID-19 Response

Further immigration regulatory amendments to support COVID-19 response

Proposal

1. In order to support New Zealand's management of the response to COVID-19, I propose:
 - 1.1. two amendments to the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010* (the Visa Regulations) to support the management of cruise passengers and cruise crew who are not New Zealanders (Cabinet is asked to agree to a waiver of the 28-day rule for these regulation changes); and
 - 1.2. that Cabinet extend the sunset date for the already-Gazetted changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* (the Information Regulations) from 30 April 2020 to 30 September 2020, noting that the obligations on carriers which are enabled by these changes can be lifted at any time.

Relation to government priorities

2. This is an operational adjustment that will support New Zealand's management of the response to COVID-19, and the immigration management of cruise travellers more broadly, that requires Cabinet approval.

Executive Summary

3. The Immigration Act 2009 establishes that people who are not New Zealand citizens must hold a visa to travel to and be in New Zealand and must be granted entry permission to enter New Zealand. It includes a range of measures which facilitate travel to New Zealand, including through
 - 3.1. waiving the requirement for certain people travelling to New Zealand to hold a visa; and
 - 3.2. deeming some non-citizens to hold a visa and entry permission before or on arrival in New Zealand. People who are travelling to New Zealand on maritime vessels in particular benefit from this.
4. We cannot easily refuse entry or a visa to most maritime passengers and crew. Non-New Zealand citizen or resident cruise passengers and crew who hold an Electronic Travel Authority (ETA)¹ and meet certain character requirements are deemed to hold a visa and entry permission on arrival. Other maritime travellers (such as cargo vessel crew and passengers) are deemed to hold a visa and entry permission from the point that they leave the previous port. This does not normally present issues, but it means that the government does not have flexibility to, using immigration measures, manage non-New Zealanders in unusual situations, such as when a vessel is under quarantine for an infectious disease.

¹ or are Australian citizens.

5. I propose a change to immigration regulations to enable cruise passengers and cruise crew, who are not New Zealand citizens or residents, to apply for entry permission and a visa.
6. I also propose to amend the Visa Regulations to clarify beyond doubt that suspending a person's visa waiver status before they travel to New Zealand invalidates their ETA. This means that such individuals have no legal basis to travel to New Zealand and that, if they still manage to travel here, they cannot be deemed to hold a visa and entry permission on arrival.
7. Finally, the *Immigration (Carriers' Information Obligations) Amendment Regulations 2020* enable the Chief Executive of the Ministry of Business, Innovation and Employment (the Ministry) to require a carrier, and a person in charge of a commercial craft, to request specified information about places of concern from intending travellers and to advise Immigration New Zealand of certain responses. On that basis, air and cruise carriers are currently asking passengers and crew before boarding whether they have been in or transited mainland China or Iran in the preceding 14 days.
8. This facility is automatically repealed on 30 April 2020. I consider that it would be prudent to extend that date to 30 September 2020 at this stage. The requirement on carriers can be withdrawn at any time prior to the Regulation being repealed, through a notification by the Chief Executive of the Ministry.

Background

The Immigration Act 2009 and Visa Regulations set the rules for travel to New Zealand

9. Under the *Immigration Act 2009* (the Act):
 - 9.1. New Zealand citizens have a right to travel to and enter New Zealand, and
 - 9.2. residence class visa holders may travel to New Zealand and, while they must apply for entry permission at the border, in most cases² it must be granted to them
10. Most other classes of traveller must apply for a visa before travel and then apply for entry permission on arrival at an Immigration Control Area. This includes people intending to work or study long term in New Zealand, and tourists and business visitors from around 135 countries. Applications at Immigration Control Areas are made on arrival cards.

Some classes of air traveller who are not citizens or residents do not need to apply for a visa before they travel

11. The requirement to hold a visa before travel is waived for certain air travellers, whose arrival card is an application for a visa as well as for entry permission.³ They include Australian citizens and permanent residents (granted resident visas on arrival), citizens of around 60 countries who intend a lawful visit⁴ (granted visitor visas on arrival) and air crew (granted temporary visas on arrival).

² Unless their resident visa was granted offshore and this is their first entry to New Zealand.

³ The waived classes of traveller are set out in Schedule 2 of the Visa Regulations.

⁴ Do not intend to work or seek medical consultation or treatment.

12. Since October 2019, most air travellers who are waived the requirement to hold a visa before travel have been required to hold an ETA as a condition of travelling visa-waiver. Passengers can request an ETA on their own or another's behalf, using a web form or downloadable app, while carriers make requests on behalf of their crew.
13. Australian citizens are the major exception to this requirement: they are exempted from the requirement to hold an ETA before travel to New Zealand.⁵
14. The Advance Passenger Processing system verifies intending air travellers at check in against Immigration New Zealand's IT system. It will return a "do not board" message if the person checking in does not hold a visa or ETA and needs one. Someone who has travelled to New Zealand by air and applied for entry permission (and who does not already hold a residence class visa) can be refused entry permission ("turned around"), in which case their carrier must take them back on the first available service.

In contrast to air travellers, most classes of maritime passengers and crew are deemed to hold a visa and entry permission

15. While the Act establishes the framework for visa applications and grant of entry permission, it also establishes mechanisms to facilitate both travel to and lawful presence in New Zealand without such applications. This is where full visa applications, or resource-intensive arrival and departure processing, would be disproportionately expensive or burdensome and where risk can be adequately managed in other ways.
16. The visa waiver mechanism (recently supplemented by ETAs) is one example of this. An extensive system of "deemed" visas and entry permission is another. Such visas can be deemed to be granted for example where people enter New Zealand other than at an Immigration Control Area.⁶ Deemed visas and entry permission are used for passengers and crew on much maritime traffic⁷.
17. It is currently operationally impractical to maintain full Immigration Control Areas at all of the ports where international vessels may initially dock in New Zealand, and most people who are entering on such vessels (such as cargo vessel crew or cruise passengers) intend to leave New Zealand on the same vessel.
18. Cargo vessel crew and passengers, and people travelling on private vessels, are therefore deemed to hold a visa and entry permission from the point that they leave a port to travel to New Zealand. Most of those visas enable a maximum of 28 days of lawful presence in New Zealand (less if the vessel leaves earlier).
19. However, this does not mean that there are no controls on those travellers. Information about the vessel and about crew and passengers (in the form of manifests) must be provided to the New Zealand Customs Service (Customs), the Ministry for Primary Industries and the Harbourmaster before arrival. Customs' systems check the manifests against border alerts.

⁵ Note that Australian citizens' resident visas expire on leaving New Zealand, so they are not residence class visa holders while offshore.

⁶ One example is people who enter the Ross Dependency in Antarctica, where New Zealand maintains a geographic claim.

⁷ Crew who will be spending a long time working in New Zealand waters (in particular fishing crew) must however apply for and be granted a work visa in the normal fashion before travel.

20. People who intend to “permanently” disembark the vessel in New Zealand (that is, not leave New Zealand on that vessel) are granted visas by Customs through the presentation of an arrival card and this information is recorded in Immigration New Zealand’s IT systems. While Immigration New Zealand’s IT systems currently only receive information about the movements and visas of those people who are leaving the vessel to visit New Zealand and fly out, this is planned to change.
21. Further ETA project development underway is aimed at capturing and recording the movements of all cruise travellers and eventually implementing a maritime version of the air Advance Passenger Processing facility, which advises carriers whether an intending traveller may travel to New Zealand or not. Cabinet has previously [DEV-18-MIN-0191] noted the intention to extend the ETA to a wider range of travellers, including cargo vessel crew and cargo vessel passengers.

Problem definition

We cannot easily refuse entry or a visa to maritime passengers and crew

22. New Zealand has more control over cruise passengers and crew than over most maritime travellers. The introduction of the ETA in October shifted the status of cruise passengers and crew from *deemed to hold a visa from leaving the previous port* to *visa waiver for travel to New Zealand*. The ETA is therefore, as for air travellers, a condition on the waiver of the requirement to hold a visa for travel to New Zealand, and carriers must check that passengers and crew hold an ETA before they permit them to embark for New Zealand.
23. However, upon arrival in New Zealand’s internal waters (generally a harbour) travellers who arrive in New Zealand on a cruise vessel, provided they hold an ETA, are then also deemed to hold a visa and entry permission, unless they do not meet certain character requirements. Travellers who arrive on a cargo vessel or other craft have generally been deemed to hold a visa and entry permission from when their vessel left the port immediately prior to their voyage to New Zealand.
24. While deeming avoids the need to physically receive and process up to 5,000 arrival cards per vessel, it also means that there is no possibility of refusing entry to marine passengers who are not cruise ship passengers and crew.
25. In the case of cruise ship passengers and cruise ship crew, their visa waiver status could be suspended en route to New Zealand, and there is the possibility of considering their ETA invalid, and that they are therefore unlawfully in New Zealand. Non cruise passengers and crew cannot legally be refused entry and that there is no ability under immigration legislation to prevent them from disembarking. Once they have disembarked, passengers and crew then cannot be easily removed from New Zealand: they could be made liable for deportation but would have 28 days to appeal.
26. This situation does not normally present issues, but it means that the government does not have flexibility to, using immigration measures, manage non-New Zealanders in unusual situations, such as when a vessel is under quarantine for an infectious disease (as would be the case with COVID-19).

It is not clear that suspending a visa waiver while a cruise vessel is en route means that a deemed visa is not granted

27. Cabinet intended also when it made the ETA decisions to enable Immigration New Zealand to be able to refuse entry to cruise passengers and crew on arrival if the visa waiver had been suspended before arrival and the ETA had therefore been invalidated. Recent legal advice indicates however that the regulatory changes made may not have established this beyond doubt.

Proposal: Cabinet is asked to agree to changes to the Visa Regulations to improve the ability to manage cruise travellers who are not New Zealanders

28. Cabinet agreed on Monday 9 March to make COVID-19 a quarantinable disease [CAB-20-MIN-0088]. This has given health officials stronger tools to reduce the risk of transmission of the disease to the New Zealand community, with Police back up if necessary. It means that all people in a place or on a vessel, such as a cruise ship, can be subject to movement restrictions irrespective of the immigration status of those people, covering them both while on the ship and after disembarkation.
29. I propose a complementary rapid change to immigration regulations to enable cruise passengers and cruise crew, who are not New Zealand citizens or residents, to be appropriately managed in terms of their visa status during and after a quarantine period.
30. This change would enable Immigration New Zealand to, where appropriate, temporarily override the current deemed status of non-New Zealand passengers and crew. It would also mean their presence was captured in immigration IT systems. It would also address the issue that, as the deemed visas expire on the earlier of 28 days or when the ship leaves New Zealand, people who need to remain for longer (for example, because they are being treated in hospital) may inadvertently become overstayers.
31. The proposal would see a change to the Visa Regulations, such that cruise passengers and cruise crew would be required to apply for entry permission and a visa on arrival. Any such requirements would also be temporary, and only used for vessels where management is required, such as where COVID-19 is suspected or confirmed, to minimise the effect on the ongoing commercial operation of the port.
32. Applications for entry permission and visas would likely be made by an arrival card, as they are in the air channel. The logistics of efficiently processing visas for several thousand people are being developed and scenario planning for a cruise vessel is taking the proposed regulation changes into account. (A cargo vessel, which is likely to have a maximum of 30 people aboard, presents fewer logistical issues.) The quarantine period will mean that people will not disembark immediately: it is likely for example that people who are ill and require hospitalisation will be processed initially. A formal refusal of entry could clarify the status of other people who are returned to their home countries quickly (either by air or through the vessel leaving New Zealand waters).
33. I also propose to amend the Visa Regulations to clarify beyond doubt that suspending a person or a class of person's visa waiver status before they travel to New Zealand invalidates their ETA (see paragraph 27). This means both that such individuals have no legal basis to travel to New Zealand and that, if they still manage

to travel here, they cannot be deemed to hold a visa and entry permission on arrival. This would apply whether the person arrived in an Immigration Control Area or not.

Proposal: Cabinet is asked to extend the date of application of a recent change to the Information Regulations

34. The *Immigration (Carriers' Information Obligations) Amendment Regulations 2020* enable the Chief Executive of the Ministry of Business, Innovation and Employment (the Ministry) to require a carrier, and a person in charge of a commercial craft, to request specified information about places of concern from intending travellers and to advise Immigration New Zealand of certain responses. On that basis, air and cruise carriers are currently asking passengers and crew before boarding whether they have been in or transited mainland China or Iran in the preceding 14 days. This facility is automatically repealed on 30 April 2020. I consider that it would be prudent to extend that date to 30 September 2020 at this stage.
35. The requirement on carriers can be withdrawn at any time prior to the Regulation being repealed, through a notification by the Chief Executive of the Ministry.

Implementation

36. If Ministers agree to these proposals, I propose to submit the amendment regulations directly to Cabinet on Monday 16 March, for referral to Executive Council and the Governor-General for assent. I therefore also seek a waiver of the 28-day rule to enable the changes to the Visa Regulations to be brought into effect as soon as practicable.

Further work

37. As noted above, these proposals apply to cruise passengers and cruise crew. They do not apply to certain other deemed arrivals, such as cargo vessels or private aircraft, whose passengers and crew also benefit from deeming provisions, or aircraft crew in the course of a scheduled international service. They do not address issues relating to travellers who are not deemed and arrive without a visa. In the time available my officials have not explored whether it would be possible or appropriate to extend the requirement to formally apply for a visa and entry permission to a wider range of travellers. I have directed my officials to undertake further work and report back to me.
38. I also note that the COVID-19 situation has raised wider questions about whether the Act provides sufficient tools to enable the government to respond appropriately in emergency situations (for example, visas cannot be granted when there is no application). I intend to examine this further in the future.

Financial Implications

39. The proposals in this paper raise no immediate financial implications. I note that the physical processing of large numbers of applications for entry permission and visas impose costs on border agencies (Immigration New Zealand and Customs).
40. Customs' costs are recovered through the Border Clearance Levy, which is based on an operational model of limited physical interaction with maritime passengers and crew. Immigration New Zealand's costs are recovered through fees and levies charged to people seeking visas and ETAs and similarly do not envisage much, if any, intervention at the marine border. Any costs which may arise from interaction

with a vessel suspected of harbouring COVID-19 have not therefore been estimated at this point.

Legislative Implications

41. The proposals in this paper require two amendments to the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010*, to
 - 41.1. make it possible to require cruise passengers and cruise crew to apply for entry permission and a visa on arrival at a port, and
 - 41.2. clarify that an Electronic Travel Authority ceases to be valid where a person has had their waiver status suspended because they are no longer a person to whom a visa waiver to travel to New Zealand applies.
42. An amendment to the *Immigration (Carriers' Information Obligations) Regulations 2010* is also required, to extend the sunset date for the already-Gazetted changes from 30 April 2020 to 30 September 2020.

Impact analysis

43. Given the time available, officials have not been able to complete a full analysis of the impacts of the regulatory proposals. Two of the changes (clarifying that suspending a person's visa waiver status before they travel to New Zealand invalidates their ETA, and extending the expiry date of the carrier information obligation) are minor and machinery in nature.
44. The change which will make it possible to require maritime passengers and ship crew to apply for entry permission and a visa on arrival at a port would impose costs on
 - 44.1. passengers and crew (who would have to fill out arrival cards)
 - 44.2. cruise vessel management (which would likely have to coordinate the distribution of the cards and provide advice to travellers) and
 - 44.3. border agencies (which would need to capture the information on the cards and which would incur costs associated with the physical processing of large numbers of applications for entry permission and visas).
45. However, these costs would only be incurred in the context where the new regulations would be used - the management of a suspected quarantinable disease - and would reduce potential later costs to Immigration New Zealand and wider government agencies (such as Health) related to managing non-New Zealand citizens.

Human Rights

46. The Ministry of Business, Innovation and Employment considers that the proposals appear to be consistent with the rights and freedoms affirmed in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*.
47. The proposed change (to make it possible to require cruise passengers and cruise crew to apply for entry permission and a visa on arrival at a port) is broadly equivalent to the processes used at the air border. While the *Immigration Act 2009* recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, immigration policy development seeks to ensure that any changes are necessary and proportionate.

Consultation

48. The time available to prepare this paper has meant that it was not possible to undertake the usual consultation processes. The Ministries of Health and Transport, the New Zealand Customs Service and the Department of Prime Minister and Cabinet have been informed of the proposals and their views taken into account as practicable.

Communications

49. If approved by Cabinet, these decisions will be announced in the context of broader COVID-19 management messaging. Advice to stakeholders, including port operators and cruise carriers, will be important, especially at the point that a cruise vessel in particular is suspected of having or confirmed to have COVID-19 on board and quarantine requirements are being imposed.

Proactive Release

50. The Ministry of Business, Innovation and Employment will proactively publish this paper. Any redactions made will be consistent with the Official Information Act 1982.

Recommendations

The Minister of Immigration recommends that Cabinet:

1. **note** that maritime passengers and crew who are not New Zealanders are currently deemed to hold a visa and entry permission either
 - 1.1. upon leaving their previous port or
 - 1.2. (cruise vessels) upon their first entry to New Zealand's internal waters
2. **note** that this limits the ability of Immigration New Zealand to manage the entry and stay of non-New Zealanders in the circumstance that COVID-19 is suspected or confirmed on a vessel, including after any quarantine period has ended;
3. **note** that there is some uncertainty as to whether a person whose visa waiver status has been suspended holds a valid Electronic Travel Authority, and this means that people on a cruise vessel whose visa waiver has been suspended could argue that because they held an Electronic Travel Authority they nonetheless held a deemed visa and entry permission once they arrived in a harbour;
4. **agree** to change the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to:
 - 4.1. make it possible to require cruise passengers and cruise ship crew to apply for entry permission and a visa; and
 - 4.2. clarify that an Electronic Travel Authority ceases to be valid where a person has had their visa waiver status suspended because they are no longer a person to whom visa waiver to travel to New Zealand applies;
5. **note** that the proposal in 4.1 above is intended for use in the first instance where COVID-19 is suspected or confirmed on a cruise ship and that standard deeming provisions will continue to be used to facilitate the travel and entry of vessels where this is not the case;

6. **note** that Cabinet agreed on 2 February 2020 to enable the Chief Executive of the Ministry of Business, Innovation and Employment to require a carrier, and a person in charge, of a commercial craft to request specified information about a place of concern from intending travellers and to advise Immigration New Zealand of certain responses, and that this amendment is automatically repealed on 30 April 2020;
7. **agree** to change the *Immigration (Carriers' Information Obligations) Amendment Regulations 2020* to extend the date of revocation for the requirement in paragraph 6 to 30 September 2020;
8. **note** that the Chief Executive of the Ministry may withdraw the requirement in paragraph 6 at an earlier point through a new notification to carriers and will do so at the point that the risk of COVID-19 transmission to the New Zealand community has reduced;
9. **agree** to a waiver of the 28-day rule for the changes in paragraph 4 above;
10. **invite** the Minister of Immigration to provide draft instructions to Parliamentary Counsel Office to give effect to the decisions in paragraphs 4 and 7 above;
11. **note** that the Minister of Immigration has directed his officials to undertake further work on whether it would be possible or appropriate to extend the requirement to formally apply for a visa and entry permission to a wider range of travellers and to report back to him;
12. **note** that the COVID-19 situation has raised wider questions about whether the Immigration Act 2009 provides sufficient tools to enable the government to respond appropriately in emergency situations and that this will be further examined in the future; and

Publicity

13. **note** that these decisions will be announced in the context of broader COVID-19 management messaging.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration