



BRIEFING

Immigration New Zealand Operational Manual: Amendments Requiring Ministerial Certification to implement the New Zealand Government response to the novel coronavirus (COVID-19) outbreak

Date:	2 April 2020	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	BR 2840 19 20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the recommendations	3 April 2020
Hon Poto Williams Associate Minister of Immigration	Copy for your information	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Alejandra Mercado	Manager Operational Policy, Enablement	s 9(2)(a)	s 9(2)(a)	✓
Diane Tashkoff	Senior Business Analyst, Operational Policy, Enablement	s 9(2)(a)	N/A	

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☐ Withdrawn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

BRIEFING

Immigration New Zealand Operational Manual: Amendments Requiring Ministerial Certification to implement the New Zealand Government response to the novel coronavirus (COVID-19) outbreak

Date:	2 April 2020	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	BR 2840 19-20

Purpose

This paper seeks that you agree to and certify proposed changes to immigration instructions. The instructions contribute to the New Zealand Government response to the novel coronavirus (COVID-19) outbreak.

Immigration instructions are the rules and criteria for the grant of visas and entry permission to New Zealand. Section 22 of the Immigration Act 2009 (the Act) authorises the Minister of Immigration to certify changes to immigration instructions.

Recommended action

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

- a **Note** that on 25 March 2020 you agreed to allow student visa holders who are currently employed in a healthcare role, including aged care, to work full time for a time-limited period of three months, in order to ensure that immigration settings are not a barrier to the COVID-19 response [BR 2817 19 20]
- b **Note** that the proposed changes to Temporary Entry instructions attached at Appendix 1 have been reviewed and agreed by the General Manager, Enablement
- c **Agree** to the proposed changes to Temporary Entry instructions by signing the associated Ministerial Certificate attached at the end of Appendix 1

Noted

Noted

Agree / Disagree



Stephen Dunstan
General Manager
Enablement
Ministry of Business, Innovation and Employment

Hon Iain Lees-Galloway
Minister of Immigration

2 April 2020

..... / /

Background

1. On 25 March 2020 you agreed [BR 2817 19-20] to relax visa restrictions for student visa holders currently employed in a healthcare role (including aged care) to work full time for a time-limited period of three months, in order to ensure that immigration settings are not a barrier to the COVID-19 response.
2. It is proposed that the occupations for which this measure applies be aligned with the list of occupations for exceptions to travel restrictions for essential health workers.

Amendments to Temporary Entry instructions

Proposed new immigration instructions

3. The definition of 'work' in the Act (replicated in immigration instructions) is "any activity undertaken for gain or reward." However, section 4 of the Act allows for activities to be excluded from the definition by way of immigration instructions. Currently immigration instructions exclude groups such as those undertaking official business in the service of any government, or studying or training under a scholarship or other award recognised by the Minister.
4. You recently certified instructions which relaxed restrictions on existing employees of supermarkets, excluding from the definition of work any tasks undertaken between 25 March 2020 and 25 April 2020 associated with the supply of goods to, from or within a supermarket by a student or work visa holder who was an employee of a supermarket on 20 March 2020. It is proposed that students currently working in a healthcare role also be included in the group of exclusions.
5. The proposed instruction change specifies that this applies only to those students who are currently working in a job or occupation which aligns to those listed for exceptions to travel restrictions for health workers (as defined under Immigration Instructions H5.25.1). It is proposed that the instructions will apply to student visa holders, as well as those holding an interim visa if they held a student visa immediately prior to the interim visa.
6. A minor change to immigration instructions is also proposed, to reflect that the relaxed restrictions on existing employees of supermarkets should also apply to interim visa holders who held work or student visas immediately prior to their interim visa.
7. Proposed additions to immigration instructions are highlighted for ease of reference. Highlighting will not appear in the published versions of the amended Operational Manual.

Communication

8. Changes will be communicated to all staff, licensed immigration advisers and the general public through the release of an amendment circular as soon as the new immigration instructions are certified.
9. Specific communications will be provided for healthcare employers, including those in aged residential care, and they will be responsible for informing eligible employees.

Appendix 1 - Proposed amendments to Temporary Entry instructions effective on and after date of signature

Proactively Released

W2.2 Definitions

See also *Immigration Act 2009, s4*

W2.2.1 Definition of 'work'

- a. Work means any activity undertaken for gain or reward, but does not include:
- i. visits by persons undertaking business activities detailed in V3.5(b);
 - ii. official business in the service of any government, or of any inter-governmental or international organisation that is entitled to any privileges and immunities under the Diplomatic Privileges and Immunities Act 1968 (see H2);
 - iii. study or training under a scholarship or other award recognised by the Minister;
 - iv. visits by guests of government (guest of government status is granted by the Visits and Ceremonial Office, Department of Internal Affairs);
 - v. visits by persons who meet the special requirements under V3.55, V3.85, V3.130, V3.140 or V3.150;
 - vi. volunteer work for the Department of Conservation;
 - vii. from 25 March 2020 to 25 April 2020 (inclusive), any tasks associated with the supply of goods to, from, or within a supermarket undertaken by a student or work visa holder, or interim visa holder (who held a student or work visa immediately prior to the interim visa), who was an employee of a supermarket on 23 March 2020.
 - viii. from 3 April 2020 to 3 July 2020 (inclusive), any tasks undertaken by a student visa holder, or interim visa holder (who held a student visa immediately prior to the interim visa), as part of their employment as an essential health worker (as that term is defined in H5.25.1), provided that the employment was held on 3 April 2020.
- b. For the purposes of W2.2.1 (vii), a 'supermarket' is a retailer selling food and groceries affiliated with one of the following:
- i. Woolworths New Zealand Limited
 - ii. Foodstuffs North Island Limited
 - iii. Foodstuffs South Island Limited
- c. 'Gain or reward' includes any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food or clothing) and services (e.g. transport).

Note: This definition does not require work as an employee. It also covers self-employment.

W2.2.5 Definition of 'New Zealand' for work purposes

- a. A person is considered to be undertaking work in New Zealand if at any time they are working:
- i. on or in relation to any craft, artificial island, installation, or structure anywhere within the territorial sea of New Zealand; or
 - ii. on or in relation to any artificial island, installation, or structure anywhere within the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand; or
 - iii. on board any craft that is registered in New Zealand and is engaged in activities anywhere:
 - o within the New Zealand exclusive economic zone; or
 - o on or above the New Zealand continental shelf.
- b. A person is considered to be undertaking work in New Zealand whether or not a New Zealand or overseas resident is providing the payment or benefit for the activity.

W2.2.10 Definition of 'full-time employment'

Unless otherwise specified, full-time employment is considered to be at least 30 hours of work per week for the purpose of a work instruction.

W2.2.15 Definition of 'New Zealand market rate'

- a. For the purposes of work instructions (with the exception of WH1 Recognised Seasonal Employer instructions), the New Zealand market rate is the rate of pay which would be required to recruit a New Zealand citizen or residence class visa holder to do equivalent work.
- b. When assessing the New Zealand market rate, factors immigration officers may consider, include, but are not limited to:
- i. the typical rate of pay a New Zealand citizen or residence class visa holder receives for equivalent work;
 - ii. rates of pay provided by collective agreements for the relevant industry;
 - iii. the region of employment;
 - iv. the period of employment;
 - v. the other terms and conditions of employment (such as the hours of work);
 - vi. the level of training and experience required for the position.

**TEMPORARY ENTRY INSTRUCTIONS
MINISTERIAL CERTIFICATE**

I certify, in accordance with section 22 of the Immigration Act 2009, that the amendments contained in Appendix 1 of the submission dated 2 April 2020 are part of Temporary Entry instructions on and after date of signature.

Hon Iain Lees-Galloway
Minister of Immigration

(day) _____
(month) _____
(year)