



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:	25 March 2020	Priority:	Urgent
Security classification:	Sensitive	Tracking number:	BR 2824 19 20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the recommendations	25 March 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)		✓
Mike Harvey	Senior Business Analyst, Operational Policy, Enablement	s 9(2)(a)	N/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 Withdrawn |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

BRIEFING

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

Date:	25 March 2020	Priority:	Urgent
Security classification:	Sensitive	Tracking number:	BR 2824 9-20

Purpose

This paper seeks that you agree to and certify a proposed amendment to a recent change 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 22 March 2020 you certified changes to immigration instructions to relax visa restrictions for two groups of current supermarket employees for a period of 30 days, with the definition of supermarkets being those operated by Woolworths New Zealand, Foodstuffs Limited, and the Warehouse Group [BR 2807 19-20]

Noted

- b **Note** that since you certified those instructions, Cabinet has determined that the Warehouse Group stores do not operate as supermarkets offering an essential service, and must close while the Level 4 response to COVID-19 is in force

Noted

- c **Agree** to amend the new instructions to remove 'the Warehouse Group' from the list of supermarket companies

Agree / Disagree

- d **Agree** to the proposed changes to Temporary Entry instructions by signing the associated Ministerial Certificate attached at the end of Appendix 1

Agree / Disagree



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

Hon Iain Lees-Galloway
Minister of Immigration

25 / March / 2020

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Background

1. On 22 March 2020 you certified immigration instructions that relax visa restrictions for two groups of current supermarket employees for a period of 30 days [BR 2807 19-20]:
 - a. work visa holders to allow them to work in roles other than specified on their visa;
 - b. student visa holders to allow them to work more than 20 hours per week
2. The definition of supermarket in the immigration instructions were those stores affiliated with Woolworths New Zealand, Foodstuffs Limited and The Warehouse Group.
3. On 24 March 2020, Cabinet made decisions on which services are defined as 'essential services' for the purposes of determining which services can and cannot operate while the Level 4 alert with respect to COVID 19 is in force. A decision resulting from this was that The Warehouse Group stores do not operate as supermarkets and must close.
4. Therefore the immigration instructions are now incongruent with Cabinet's decision, and it could cause confusion if the reference to the Warehouse Group is not removed from the instructions.

Amendments to Temporary Entry instructions

Proposed amendments to new immigration instructions

5. Proposed additions to immigration instructions are highlighted for ease of reference. Highlighting will not appear in the published versions of the amended Operational Manual. The effective dates have been changed, and The Warehouse Group, which was listed at W2.2.1(b)(iv), has been deleted.

Communication

6. 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 amended immigration instructions are certified.
7. We will provide supermarkets (i.e. Woolworths New Zealand and Foodstuffs Limited) with specific communications shortly, to advise them of the changes and to provide answers to anticipated questions they may have.
8. The previously drafted amendment circular has not been publicly promulgated, and so the Warehouse Group is not yet aware of the relaxation of visa restrictions.

Appendix 1 - Proposed amendments to Temporary Entry instructions effective on the date of Ministerial certification

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 who was an employee of a supermarket on 23 March 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 all work instructions.

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 25 March 2020 are part of Temporary Entry instructions on and after the date of signature.

Hon Iain Lees-Galloway
Minister of Immigration

(day) _____
(month) _____
(year)