

In confidence

Office of the Minister of Immigration

Chair, Cabinet

Proposal to Change Conditions on Resident Visas to Support the COVID-19 Response

Proposal

1. I propose to add a time-limited condition to resident visas that will require holders to comply with instructions from a Medical Officer of Health, and which means they could be made liable for deportation if they do not comply.

Relation to government priorities

2. This proposal supports New Zealand's management of the response to COVID-19.

Summary

3. On 16 March 2020, Cabinet agreed that a condition be added to temporary entry class visas. All visa holders subject to the condition must comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease [CAB-20-MIN-0112]. If they do not comply they are in breach of a visa condition and may be made liable for deportation. Cabinet agreed that officials report to the Minister of Immigration on the implications of adding a similar condition to resident visas.
4. Cabinet is asked to agree to amending resident visa instructions to add a time-limited condition to new resident visas granted at the border and to applicants for resident visas. This would similarly require visa holders to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease, or be in breach of their visa conditions and similarly able to be made liable for deportation.
5. As residents with conditions on their visas cannot apply for citizenship and may not sponsor some family members, the condition must be time-limited. It is recommended that it be imposed for three months on each new liable residence visa. The two criteria used to assess options for the new resident visa condition were:
 - 5.1. minimise unintended or disproportionate consequences on approved applicants for residence, including Australians who are ordinarily resident in New Zealand, and
 - 5.2. ensure that messaging is clear, including at the border (where Customs officers cannot easily distinguish ordinarily-resident Australians from temporary visitors).
6. The new condition will be implemented as soon as practicable. To minimise any ongoing impact on ordinarily-resident Australians, Cabinet will be asked to remove this condition once the current COVID-19 situation is over.

Background

7. On 16 March 2020, Cabinet agreed that a condition be added to temporary entry class visas. All visa holders subject to the condition must comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease [CAB-20-MIN-0112]. This decision was brought into force on 18 March 2020.
8. This visa condition is now imposed on all new temporary entry class visas granted. That includes people who arrive in New Zealand as visa-waiver travellers, as well as people who apply for and are granted a temporary visa from 18 March 2020.
9. While the new visa condition does not specifically require a person to self-isolate, people arriving in New Zealand are being asked to self-isolate. If they choose to not self-isolate, a Medical Officer of Health may then require the person to isolate or quarantine themselves under the Health Act 1956.
10. Temporary visa holders who are subject to the new condition are in breach of it if they refuse. They may then be made liable for deportation under section 157 of the Immigration Act 2009, if the Minister of Immigration or an immigration officer determines that this breach of conditions gives “sufficient reason” to deport them.
11. Section 157 provides a relatively broad set of circumstances where the Minister or an immigration officer may determine that sufficient reason has been given. Some temporary visa holders who do not have the new visa condition have been advised of liability for deportation where they have indicated intended non-compliance with a self-isolation instruction, with the sufficient reason being “other matters relating to character” (under section 157(5)(c)).
12. Cabinet also directed officials to report to the Minister of Immigration with regard to the implications of adding a similar condition to resident visas [CAB-20-MIN-0112].

Resident visa holders have more rights than temporary visa holders

13. Many resident visas are granted in respect of an application accompanied by a fee and considered by an Immigration Officer against the criteria of one of a range of residence categories. Applicants then granted a residence class visa, whether on or offshore, do not apply for a further visa at the border. They apply for entry permission, as do all other non-citizens, which they must be granted.¹
14. In recognition of the commitment made generally both by a resident to New Zealand and by New Zealand to the resident, deprivation of a resident-class visa and deportation is more serious, and subject to more considerations, than deprivation of a temporary class visa. It is not possible to make a residence-class visa holder liable for deportation for cause: liability for deportation must be related to fraud, criminality, or breach of visa conditions.

Australian citizens and permanent residents are granted resident visas on arrival

15. As an acknowledgement of the special relationship between New Zealand and Australia, most Australian citizens and permanent residents² travel visa waiver³ to New Zealand and apply for and are granted a resident visa on arrival at the border,

¹ Unless they were granted a resident visa offshore and this is their first travel to New Zealand holding that visa.

² Some individuals will not qualify for this, typically because they do not meet New Zealand’s character requirements.

³ Unlike other visa waiver nationals, Australian citizens are not required to hold an Electronic Travel Authority as a condition of their visa waiver.

on presentation of their passport and a completed arrival card. Those visas expire on departure from New Zealand.

16. Many Australian citizens who make their home in New Zealand do so long term on this basis, although they, along with other resident visa holders, may apply for and be granted a permanent resident visa after two years of residence, and citizenship after five years. However, the majority of resident visas granted to Australian citizens are granted to people who are not intending to make their home in New Zealand, but who are here to holiday, visit family and friends, or do business – that is, for reasons relating to visiting rather than to living here.
17. People granted resident visas are not subject to the new visa conditions. Australian citizens and permanent residents of Australia who are not normally resident in New Zealand may have more difficulty in meeting a self-isolation requirement than those who do have a home here, and there has already been an example of an individual stating that he does not intend to comply. As he holds a resident visa, he cannot be made liable for deportation under section 157. The lack of ability to easily make people in that situation liable for deportation could be considered an anomaly.

Replicating the new temporary visa condition could have unintended consequences

18. There could be unintended consequences if a blanket condition requiring compliance with instructions by Medical Officers of Health were added to all new resident visas. In particular residents with conditions on their visas cannot apply for citizenship and may not sponsor some family members. This means that the condition must be time-limited. I have identified two criteria against which I have assessed options for a new resident visa condition. The preferred option should:
 - 18.1. minimise unintended or disproportionate consequences on approved applicants for residence, including Australians who are ordinarily resident in New Zealand, and
 - 18.2. ensure that messaging is clear, including at the border (where Customs officers cannot easily distinguish ordinarily-resident Australians from temporary visitors).

I recommend a three-month resident visa condition

19. On that basis I recommend that resident visa Instructions be amended to add a time-limited (three-month) condition to new resident visas granted at the border and to applicants for resident visas. This would work as follows:
 - 19.1. Australian citizens and residents who did not hold permanent resident visas would hold the conditions for three months immediately post each arrival in New Zealand
 - 19.2. applicants for resident visas who were not Australian citizens and who were offshore when their resident visa was granted would be subject to the condition for the first three months after their first arrival in New Zealand as a resident visa holder
 - 19.3. applicants for resident visas who were not Australian citizens and who were onshore when their resident visa was granted would be subject to the condition for the first three months after their resident visa was granted
20. A breach of the condition would mean that a resident visa holder could be made liable for deportation. They would have period of 28 days during which they could

appeal that liability. As with temporary visa holders, an individual who was liable for deportation, due to a breach of the proposed condition arising from non-compliance with an instruction from a Medical Officer of Health relating to a notifiable or quarantinable disease, could be detained under Health powers or Immigration powers.

21. In terms of timing, the change to conditions would apply to resident visas approved from applications made after the new Instructions came into force. This means that they would impact on applications made at the border immediately. In most cases they would not be likely to apply to resident visa approvals until 2021.
22. I note that this option will mean that Australian citizens who are ordinarily resident in New Zealand will, if they travel offshore, have ongoing intermittent visa conditions. They will therefore be slightly disadvantaged with regard to other resident class visa holders. Residents with conditions on their visas cannot apply for citizenship or sponsor some family members. This could disadvantage some frequently-travelling Australians who live here.
23. While in practice this is unlikely to have a noticeable impact:
 - 23.1. Firstly, as it directly relates to non-compliance with an instruction from a Medical Officer of Health, which I anticipate few people ordinarily resident in New Zealand are likely to do
 - 23.2. Secondly, as it may act as an incentive for some ordinarily-resident Australians to apply for a permanent resident visa (which under the Immigration Act 2009 cannot be subject to conditions) or citizenship (which they would be eligible for after two and five years respectively).
24. However, as this is primarily focused on the border arrivals of non-resident Australians, and to minimise the ongoing impact on ordinarily-resident Australians, I propose to ask Cabinet to remove this resident visa condition once the current COVID-19 situation is over.

Implementation

25. If Cabinet agrees to these proposals, I will certify Immigration Instructions to bring them into effect as soon as practicable.

Financial Implications

26. The proposals in this paper raise no immediate financial implications.

Legislative Implications

27. The proposals in this paper have no legislative or regulatory implications.

Human Rights

28. 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*.

Consultation

29. The time available to prepare this paper has meant that it was not possible to undertake the usual consultation processes. The Ministry of Foreign Affairs and Trade has been consulted and did not raise concerns, but indicated that it would be

useful to be able to brief Australian diplomatic contacts prior to public announcements being made.

Communications

30. If approved by Cabinet, these decisions will be announced in the context of broader COVID-19 management messaging.

Proactive Release

31. 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 on 16 March 2020, Cabinet agreed that [CAB-20-MIN-0112]:
 - 1.1. a condition be added to temporary class visas which requires all visa holders to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease; and
 - 1.2. officials report back to the Minister of Immigration about the implications of adding a condition to resident visas that requires the holder to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease;
2. **note** that adding a condition as set out in paragraph 1.2 would enable resident visa holders who did not comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease to be made liable for deportation;
3. **note** that options have been considered against the following criteria:
 - 3.1. minimise unintended or disproportionate consequences on approved applicants for residence, including Australians who are ordinarily resident in New Zealand, and
 - 3.2. ensure that messaging is clear, including at the border
4. **agree** that resident visa Instructions be amended to add a time-limited condition to new resident visas granted at the border and to applicants for resident visas;
5. **Agree** that the condition last for three months, meaning that
 - 5.1. Australian citizens and residents who did not hold permanent resident visas would hold the conditions for three months immediately post each arrival in New Zealand
 - 5.2. applicants for resident visas who were not Australian citizens and who were offshore when their resident visa was granted would be subject to the condition for the first three months after their first arrival in New Zealand as a resident visa holder
 - 5.3. applicants for resident visas who were not Australian citizens and who were onshore when their resident visa was granted would be subject to the condition for the first three months after their resident visa was granted

6. **Note** that a breach of the condition would mean that a resident visa holder could be made liable for deportation, and that they would have period of 28 days during which they could appeal that liability;
7. **Note** that an individual who was liable for deportation, due to a breach of the proposed condition arising from non-compliance with an instruction from a Medical Officer of Health relating to a notifiable or quarantinable disease, could be detained under Health powers or Immigration powers;
8. **Note** that the change to conditions would apply to resident visas approved from applications made after the new Instructions came into force, meaning they would impact on applications made at the border immediately, but would take some time to flow through into other resident visa approvals;
9. **Agree** that, to minimise the ongoing impact on ordinarily-resident Australians, Cabinet be asked to remove this condition once the current COVID-19 situation is over;
10. **Note** that the Ministry of Foreign Affairs and Trade has indicated that it would be useful to be able to brief Australian diplomatic contacts prior to public announcements being made; and
11. **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



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Proposal to Change Conditions on Resident Visas to Support the COVID-19 Response

Portfolio Immigration

On 23 March 2020, Cabinet:

- 1 **noted** that on 16 March 2020, Cabinet agreed that:
 - 1.1 a condition be added to temporary class visas which requires all visa holders to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease;
 - 1.2 officials report back to the Minister of Immigration about the implications of adding a condition to resident visas that requires the holder to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease;
- [CAB-20-MIN-0112]
- 2 **noted** that adding a condition as set out in paragraph 1.2 would enable resident visa holders who did not comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease to be made liable for deportation;
- 3 **noted** that options have been considered against the following criteria:
 - 3.1 minimise unintended or disproportionate consequences on approved applicants for residence, including Australians who are ordinarily resident in New Zealand;
 - 3.2 ensure that messaging is clear, including at the border;
- 4 **agreed** that resident visa Instructions be amended to add a time-limited condition to new resident visas granted at the border and to applicants for resident visas;
- 5 **agreed** that the condition last for three months, meaning that:
 - 5.1 Australian citizens and residents who did not hold permanent resident visas would hold the conditions for three months immediately post each arrival in New Zealand;
 - 5.2 applicants for resident visas who were not Australian citizens and who were offshore when their resident visa was granted would be subject to the condition for the first three months after their first arrival in New Zealand as a resident visa holder;

- 5.3 applicants for resident visas who were not Australian citizens and who were onshore when their resident visa was granted would be subject to the condition for the first three months after their resident visa was granted;
- 6 **noted** that a breach of the condition would mean that a resident visa holder could be made liable for deportation, and that they would have period of 28 days during which they could appeal that liability;
- 7 **noted** that an individual who was liable for deportation, due to a breach of the proposed condition arising from non-compliance with an instruction from a Medical Officer of Health relating to a notifiable or quarantinable disease, could be detained under Health powers or Immigration powers;
- 8 **noted** that the change to conditions would apply to resident visas approved from applications made after the new Instructions came into force, meaning they would impact on applications made at the border immediately, but would take some time to flow through into other resident visa approvals;
- 9 **agreed** that, to minimise the ongoing impact on ordinarily-resident Australians, Cabinet be asked to remove this condition once the current COVID-19 situation is over;
- 10 **noted** that the Ministry of Foreign Affairs and Trade has indicated that it would be useful to be able to brief Australian diplomatic contacts prior to public announcements being made; and
- 11 **noted** that these decisions will be announced in the context of broader COVID-19 management messaging.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Immigration