



BRIEFING

Electronic Travel Authority: next steps for policy decisions and regulations

Date:	13 December 2018	Priority:	High
Security classification:	In Confidence	Tracking number:	2012 18-19

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the proposed parameters for the ETA Note that a draft Cabinet paper will be provided to your office on 29 January 2019 for ministerial consultation	21 December 2018
Hon Kris Faafoi Associate Minister of Immigration	For information	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Siân Roguski	Manager, Immigration Policy	04 901 3855	✓
Christine Hyndman	Principal Policy Advisor, Immigration Policy, MBIE	04 901 8575	

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 Withdrawn |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



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Electronic Travel Authority: next steps for policy decisions and regulations

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Purpose

To seek your agreement to further details of the Electronic Travel Authority (ETA) proposal, for Cabinet agreement

- to the policy changes in February 2019 and
- to the regulatory changes in April 2019.

Summary

In September 2018 Cabinet agreed to the introduction of the ETA and directed officials to undertake policy work to develop the regulatory changes required to implement it [DEV-18-MIN-0191 – text attached at Annex One]. You are asked to agree to the new policy details (set out below) and to direct officials to prepare a Cabinet paper for consideration by the Cabinet Economic Development Committee (DEV) by the end of February 2019.

Once Cabinet has agreed to the ETA's parameters, some details will be reflected in amendments to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* and some will be expressed through the development of new Immigration Instructions.

This work is closely aligned with, and supports, the Minister of Tourism's development of legislation to implement the International Visitor Conservation and Tourism Levy (IVL). The Minister of Tourism intends the IVL Bill to be considered under urgency on Budget night in May 2019. Officials, including Parliamentary Counsel Office (PCO) will ensure the content and timelines for IVL and ETA are aligned.

The details we are seeking your agreement to are:

definitions: of a cruise vessel, and consequentially of a cargo vessel; of the names of the ETAs (Traveller ETA and Crew ETA) and the wording used to describe ETAs

timing: requests for ETAs will be able to be made from 1 July 2019; holding a Traveller ETA (including for cruise and air passengers) will be mandatory from 1 October 2019; holding a Crew ETA will be mandatory for crew (cruise and air) at a later date

relationships with carriers: Crew ETAs will be applied for by carriers who have agreed Memorandums of Understanding (MoUs) with the Ministry of Business, Innovation and Employment. Those MoUs will set out the responsibilities of both parties

positioning crew: visa-required crew travelling to New Zealand to join their craft will be able to travel on their Crew ETA. (This is a change from current policy settings. The detail is set out in Annex Two)

transit passengers: visa-waiver nationality passengers who hold transit Traveller ETAs (meaning they have not paid the IVL) and who decide that they would like to enter New Zealand as visitors will need to apply for a further Traveller ETA and pay the IVL

transit visa regime: transit visa-waiver nationals will now be Traveller ETA-required. The trans-Tasman route will become transit visa-waiver, and therefore ETA-required, in both directions. (This is a change from current policy settings and follows a review directed by Cabinet. The detail is set out in Annex Three)

visa waiver regime: crew and passengers on cruise vessels are currently deemed to hold a visa to be in New Zealand. They will instead be formally waived the requirement to hold a visa to travel to New Zealand

deemed visa regime:

- air crew will be deemed to hold a temporary visa and to have been granted entry permission on arrival at an Immigration Control Area
- crew on cruise vessels who hold Crew ETAs will be deemed to hold a temporary visa and to have been granted entry permission from the point that the vessel enters the territorial sea, which is 12 nautical miles offshore
- passengers on cruise vessels who hold Traveller ETAs or visas will be deemed to hold a temporary visa and have been granted entry permission upon disembarkation from the cruise vessel. (Passengers who are not leaving on the same craft will continue to be processed manually by Customs)

a person can hold more than one ETA: individuals will be able to: hold more than one ETA at one time (for example, a Crew ETA and a Traveller ETA); and register more than one identity document against an ETA at the point of application (for example, if they are dual nationals)

biometric information: requests for Traveller ETAs will require a biometric photograph if the requestor uses a channel which allows it to be automatically captured (this is a change to the previous decision and is subject to the agreement of the Privacy Commissioner). Officials propose to seek over time a broader ability to make the provision of biometric information mandatory

fee levels: will be differentiated by channel and there will be the ability to charge an urgent fee. (Final levels will be proposed in January 2019).

We are developing a fuller description of the immediate benefits and potential future benefits of the regime changes to marine border security and will also brief you on this in January 2019.

Next steps

If you agree to the details of the proposal, a draft Cabinet paper will be prepared and sent to your office on 29 January 2019, to be consulted with colleagues between 31 January and 5 February 2019. This timing reflects that the proposals, although further developed (as directed by Cabinet), are substantially similar to those already consulted on, both with your colleagues and with the public.

It is proposed that the paper be considered by the Cabinet Economic Development Committee (DEV) on 20 February 2019. We anticipate that a Cabinet paper accompanying the proposed Amendment Regulations will be considered by the Cabinet Legislation Committee (LEG) in April 2019. Officials are working closely with tourism policy officials on the links between the ETA and IVL, and our preference is for LEG to consider the ETA regulation changes and IVL Bill at the same time.

As noted by Cabinet, further regulatory amendment may be required as the project progresses, particularly if the advance passenger information to be provided by cruise lines, or the information channel, differs from the current requirements for airlines.

Finally, we note that the Regulations paper planned for April 2019 will also include a regulatory amendment which was inadvertently omitted when changes to fees were gazetted in September (the exemption of Victims of Domestic Violence from fees).

Recommended action

It is recommended that you:

- a) **Note** that the Cabinet Economic Development Committee (DEV) agreed on 12 September 2018 [DEV-18-MIN-0191] to the introduction of an Electronic Travel Authority (ETA) and to a set of parameters (Noted)
- b) **Note** that DEV directed officials to undertake policy work to develop the regulatory changes required to implement the ETA (Noted)
- c) **Note** that, for the purposes of the policy details in Table One below, “eligible” travellers and crew are people who meet New Zealand’s statutory requirements to travel to New Zealand and be granted a visa on arrival and who are not exempted from the requirement to hold an ETA as a condition on visa-waiver travel (Noted)

Detailed regulatory design – proposals

- d) **Agree** to the new details for regulations and Immigration Instructions set out in the tables and recommendations below, which provide more specificity than the existing Cabinet decisions. Where existing decisions or proposals previously noted have been amended or details have been substantively elaborated, they are marked in **bold**

Table One: Policy details of ETA

(please tick one)

Proposal	Agree	Disagree	Discuss
<u>Definitions</u>			
i. A cruise vessel is a ship primarily carrying passengers (in the ordinary course of business of the ship) between any foreign port and New Zealand	✓		
ii. A cargo vessel is a ship primarily carrying cargo (in the ordinary course of business of the ship) between any foreign port and New Zealand			
iii. The two ETA types are: a) Traveller ETA (up to two year duration) b) Crew ETA (up to five year duration)	✓		
iv. As the ETA is not a visa, but a condition on a visa waiver enabling travel to (or via) New Zealand, people will “request” an ETA; an ETA will be “issued”, or “withdrawn” if necessary, and will be “held” by visa-waiver passengers and crew	✓		
<u>Timing of implementation and ETA requirements</u>			
v. The ETA will come into effect on 1 July 2019 (requests for ETAs will be able to be made, and at that point the IVL will be chargeable)	✓		
vi. Eligible passengers checking in for a flight which terminates in or transits New Zealand will be required to hold a valid Traveller ETA from 1 October 2019	✓		

Proposal	Agree	Disagree	Discuss
vii. Eligible passengers boarding a cruise ship which will travel to New Zealand will be required to hold a valid Traveller ETA from 1 October 2019	✓		
viii. Eligible air crew seeking uplift for a flight which terminates in or transits New Zealand will be required to hold a valid Crew ETA from a later date, to be confirmed in early 2019	✓		
ix. Eligible cruise vessel crew boarding a cruise ship which will travel to New Zealand will be required to hold a valid Crew ETA from a later date, to be confirmed in early 2019	✓		
<u>Carrier relationships</u>			
x. The Ministry of Business, Innovation and Employment may enter into relationships with carriers in order to permit carriers to request Crew ETAs on behalf of crew members	✓		
<u>Positioning crew</u>			
xi. Air crew and cruise vessel crew travelling to New Zealand by air to join a vessel or aircraft that will then depart for another country ("positioning crew") will be able to travel on their Crew ETA as long as they are in New Zealand for no longer than seven days	✓		
<u>Visa waiver regime and transit visa waiver visa regime</u>			
xii. Where eligible, the following classes of people will be waived the requirement to hold a visa to travel to New Zealand and will be required to hold an ETA as a condition of their visa-waiver travel <ul style="list-style-type: none"> a visa-waiver nationality and visa-required nationality air crew travelling to New Zealand by air b visitor visa-waiver nationality passengers travelling to New Zealand by air or transiting New Zealand by air c transit visa-waiver nationality passengers transiting New Zealand by air d visa-waiver nationality and visa-required nationality cruise vessel passengers and crew 	✓		
<u>Deemed visa regime</u>			
xiii. Air crew will be deemed to hold a temporary visa and to have been granted entry permission on arrival at an Immigration Control Area			
xiv. Crew on cruise vessels will be deemed to hold a temporary visa and to have been granted entry permission from the point that the vessel enters the territorial sea, which is 12 nautical miles offshore	✓		
xv. Passengers on cruise vessels will be deemed to hold a temporary visa and to have been granted entry permission from the point that they first disembark the vessel			
<u>Interface between ETA and the IVL</u>			
xvi. The ETA is a mechanism for collecting the IVL			
xvii. Visa-waiver nationality passengers who hold transit Traveller ETAs and who decide that they would like to enter New Zealand as visitors will in the first instance need to apply for a further Traveller ETA and pay the IVL	✓		

Proposal	Agree	Disagree	Discuss
<u>Trans-Tasman Transit</u>			
xviii. Passengers who transit New Zealand by air, to or from Australia, will require an ETA as a condition of travelling transit waiver free, unless they are Australian or New Zealand citizens or hold a New Zealand visa	✓		
<u>More than one ETA can be held at one time</u>			
xix. Individuals will be able to hold more than one ETA at one time (for example, a Crew ETA and a Traveller ETA)	✓		
xx. Individuals will be able to register more than one identity document against an ETA at the point they request an ETA if they hold more than one nationality			
xxi. Individuals will eventually be able to register further identity documents that meet security criteria against an ETA , for example if a passport expires during the term of an ETA, but this functionality will not be available initially	✓		
<u>Information required and fees</u>			
xxii. Requests for Traveller ETAs will require the provision of biometric information if the requestor uses a channel which allows it to be automatically captured and enable the provision of biometric information if the requestor uses a channel which allows it to be manually captured	✓		
xxiii. Cruise passengers arriving at seaports and disembarking the cruise vessel prior to leaving New Zealand on a different craft will not be required to provide photos or other evidence of their eligibility to be granted a visa, or pay a visa fee or immigration levy	✓		
xxiv. Traveller ETAs which are identified by the requestor as urgent will attract an urgent processing fee	✓		

e) **Note** that officials propose to seek to over time make the provision of biometric information mandatory in a wider set of circumstances

Noted

f) **Note** that you will receive advice on recommended fee levels in January 2019

Noted

g) **Note** that you will receive further advice on the immediate benefits and potential future benefits of the regime changes to marine border security in January 2019

Noted

Development of Cabinet paper

h) **Direct** officials to prepare a draft Cabinet paper based on the policy proposals in recommendation d) above

Agree / disagree / discuss

- i) **Direct** officials to provide the draft Cabinet paper to you before the end of January 2019, for consultation with colleagues prior to consideration of the final paper by the Cabinet Economic Development Committee (DEV) before the end of February 2019

Agree / disagree / discuss

- j) **Note** that the timeframes above envisage that

- i. a Cabinet paper accompanying the proposed amendment Regulations will be considered by the Cabinet Legislation Committee (LEG) in April 2019
- ii. LEG will consider the ETA regulation changes and IVL Bill at the same time

Noted

- k) **Note** that the Regulations paper planned for April 2019 will also include a regulatory amendment which was inadvertently omitted when changes to fees were gazetted in September 2018 (the exemption of Victims of Domestic Violence from fees).

Noted



Siân Roguski
**Manager, Immigration Policy,
Labour and Immigration Policy**
Labour, Science and Enterprise, MBIE

13 / 12 / 2018



Hon Iain Lees-Galloway
Minister of Immigration

17 / 12 / 18

Aligned regulatory changes are required to implement the ETA and IVL

1. Following public consultation, Cabinet agreed in September 2018 to the scope and introduction of the ETA and directed officials to undertake policy work to develop the regulatory changes required to implement it [DEV-18-MIN-0191 – text attached at Annex one]. Cabinet separately agreed to progress the IVL, which will be collected on applications for visas and requests for ETAs [DEV-18-MIN-0194].
2. It is currently proposed that the ETA and IVL come into effect on 1 July 2019. The Ministry of Business, Innovation and Employment's (the Ministry's) preference is for the ETA's details to be finalised and agreed by LEG before May 2019, to enable the IVL legislation to pass, and the associated regulations to have received assent, no later than the end of May 2019. The Minister of Tourism currently intends that the House will consider the IVL Bill under urgency on Budget night. Given these close connections, the ETA regulatory changes are being developed alongside the IVL work, to ensure that the contents and timelines complement each other and to minimise the impacts on the Parliamentary Counsel Office (PCO).

We seek your agreement to the elaborated ETA proposals

3. We therefore propose that you agree to the additional detail set out in this paper, and direct officials to prepare a Cabinet paper for consideration by the Cabinet Economic Development Committee (DEV) by the end of February 2019. This will enable around five weeks for PCO's development of the amendments to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*, which is relatively tight.
4. For your reference, the ETA parameters which have already been agreed by Cabinet are set out at paragraphs 5 and 6 of DEV-18-MIN-0191 (see Annex One).

We propose a definition of "cruise vessel" and to formally set out applicable descriptive wording

5. Schedule 3 of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (People deemed to hold visa and have been granted entry permission) does not differentiate between cargo and cruise vessels but describes them both as "a ship carrying passengers, cargo, or both (in the ordinary course of business of the ship) between any foreign port and New Zealand".
6. As the ETA proposal does make a distinction (passengers and crew on cruise vessels will be ETA-required and have a new deemed visa regime), we propose that Cabinet agree that, for the purpose of these proposals:
 - a. a cruise vessel is a ship primarily carrying passengers (in the ordinary course of business of the ship) between any foreign port and New Zealand
 - b. a cargo vessel is a ship primarily carrying cargo (in the ordinary course of business of the ship) between any foreign port and New Zealand. (Cargo crew and passengers are not included in the current ETA proposals but are in scope to be brought in later)
7. We propose that Cabinet formally agree to the terminology applicable to ETAs, to underline the status of the ETA (which is that it is an authority to travel to (or via) New Zealand visa free, but is not a visa entitling a person to enter and stay in New Zealand). We therefore recommend that people will "request" an ETA; an ETA will be "issued" (and "withdrawn" if necessary) and will be "held" by visa-waiver passengers and crew.
8. This contrasts with the wording used in the Immigration Act 2009 with regard to visas and entry permission, where people "apply for" and are "granted" a visa or entry permission, which they then "hold". If necessary, a visa can be "cancelled", while entry permission can be "revoked".
9. As you know, Australian citizens who are otherwise eligible for visa-waiver travel to or via New Zealand, and passengers or crew who already hold a New Zealand visa (such as a residence, work, student or limited visa), are not required to hold an ETA to travel to or via

New Zealand. Similarly, certain other classes of traveller (such as people travelling on military orders) will also be exempted from that requirement.

There will be two major classes of ETA

10. There will be two major classes of ETA, namely Traveller and Crew. The different classes will have different durations. Traveller ETAs will enable different activities, based broadly on whether the holder is visa-waiver and (if visa-waiver) whether the holder intends to enter New Zealand.

Traveller ETAs will be made mandatory before Crew ETAs

11. Cabinet noted that "*the initial phase, which will commence with air passengers ... will enable individuals to apply for the ETA from early 2019/20*". It is now proposed that the ETA will come into effect on 1 July 2019, for both air and cruise passengers. At that point, individuals will be able to request an ETA, and the IVL, if applicable, will be chargeable. The IVL will also be charged on applicable applications for visas from that date.
12. Officials further recommend that Cabinet agree that holding a Traveller ETA be mandatory for applicable passengers from 1 October 2019. For air passengers, this means that the existing Advance Passenger Processing system (APP) will require them to hold an ETA to check in to travel to or transit New Zealand.
13. Cruise passengers will also be required to hold a Traveller ETA before travelling to New Zealand from 1 October 2019. However, as automated systems to check this do not currently exist, checking of passenger status will not be available at that point. The Ministry will monitor (and support) compliance with that obligation.
14. The cruise implementation date is earlier than was indicated to Cabinet in September, when implementation in 2020 was proposed. This is the result of consultation on the global communications strategy, which resulted in the conclusion that different effective dates would create an unacceptable level of confusion in markets.
15. The trade-off for this is that many people who will be required to hold an ETA have already booked their tickets (cruises are booked earlier on average than air travel). We will therefore rely on cruise companies and travel agents using their existing communication channels with intending passengers to advise them of the changes to requirements, and will work with them to support their messaging.
16. Holding a Crew ETA will be mandatory for applicable crew (cruise and air) at a later date (currently tentatively proposed to be 1 November 2019). The actual date will be confirmed early in 2019, in time for consultation with your colleagues at the end of January 2019. Crew ETAs will be applied for by carriers who have agreed Memorandums of Understanding (MoUs) with the Ministry
17. Once the Crew ETA is mandatory, APP will require air crew to hold an ETA in order to board an aeroplane bound for New Zealand. Similarly to cruise passengers, automated systems to check that cruise crew hold a Crew ETA will not be available at that point, but the Ministry will monitor carrier compliance with the obligation.

The tables below set out the proposed ETA classes and characteristics

18. We propose that Cabinet agree to the ETA settings as described in the tables below. Tables one and two set out the characteristics of and requests for Traveller ETAs and Table three summarises Crew ETAs. While more detailed, they are broadly congruent with the decisions made in September, except for the proposals relating to "positioning" crew.

Table one: Characteristics of Traveller ETAs and relationship with IVL

Type of passenger	Traveller Electronic Travel Authority		
	Visitor Visa-waiver Nationals	Transit Visa-waiver Nationals	Visa-required Nationals
Duration: up to	Two years	Two years	Two years
(With IVL) enables holder to:	travel to New Zealand by air and apply for a temporary visa and entry permission on arrival <hr/> travel to New Zealand by cruise vessel and be deemed to hold a temporary visa and entry permission on arrival	Not applicable	travel to New Zealand by cruise vessel and be deemed to hold a temporary visa and entry permission on arrival
(Without IVL) enables holder to:	transit New Zealand by air on any route	transit New Zealand by air on any route	transit New Zealand by air from or to Australia only

Table two: Requests for Traveller ETAs, entry permission and visas

Type of travel Purpose of travel	Traveller Electronic Travel Authority		
	Air		Cruise
	Visit	Transit	Visit
Request mechanism is:	By self or by another individual on behalf, via web or mobile app	By self or by another individual on behalf, via web or mobile app	By self or by another individual on behalf, via web or mobile app
Visa and entry permission on arrival is	applied for through standard processes (via Customs or an eGate)	Not applicable	deemed on initial disembarkation (so no need for photo, form etc) Note that if passenger is disembarking and not re-embarking, the current practice (manually processed by Customs) will apply

Table three: Classes and characteristics of Crew ETAs (visa-waiver and visa-required nationals)

	Crew Electronic Travel Authority	
	Air	Cruise
Duration: up to	Five years	Five years
Can be issued to	employees of carriers who are party to an agreed MoU with the Ministry	employees of carriers who are party to an agreed MoU with the Ministry
Enables holder to	travel to NZ as crew on a scheduled service and be deemed to hold a visa and entry permission on arrival and leave either as crew on another scheduled service or on a commercial service (Note: this reflects existing practice)	travel to New Zealand on cruise vessel and be deemed to hold a temporary visa and entry permission once the ship has entered the territorial sea (Note: this reflects existing practice)
	(as "positioning crew") travel to NZ as a passenger on a commercial service and be deemed to hold a visa and entry permission and leave as crew on a scheduled service (Note: this is a proposed change to existing practice, under which visa-required nationals must apply for a visitor visa)	(as "positioning crew") travel to New Zealand as a passenger on a commercial air service and be deemed to hold a visa and entry permission and leave as crew on a cruise ship (Note: this is a proposed change to existing practice, under which visa-required nationals must apply for a visitor visa)
Application mechanism is	by carrier employer as part of bulk upload mechanism, subject to an agreed MoU	by carrier employer as part of bulk upload mechanism, subject to an agreed MoU
Visa and entry permission on arrival is	deemed on disembarkation	deemed from entry to territorial sea

The ETA decisions mean consequential changes to the current visa waiver and transit visa waiver regimes

19. Air passengers and crew to whom a waiver of the requirement for a visa to permit travel to or via New Zealand applies will now be required to obtain an ETA as a condition of that visa-waiver travel. Transit visa-waiver nationality passengers will be required to obtain an ETA as a condition of their transit visa-waiver air travel.
20. Visa-waiver and visa-required nationality cruise vessel passengers and crew will now also become people to whom a waiver of the requirement for a visa permitting travel to New Zealand is waived. They will therefore be required to obtain an ETA as a condition of that visa-waiver travel.

The ETA decisions mean consequential changes to the current deemed visa regime

21. Immigration regulations and Instructions currently allow for aircraft crew on an aircraft flying between any other country and New Zealand in the course of a scheduled international service to be granted entry permission and deemed to hold a work visa valid for seven days following arrival. Those crew will now be required to hold a Crew ETA in order to travel to New Zealand.

Positioning crew will be able to enter with an ETA

22. At present Immigration regulations and Instructions require visa-required nationality air crew or cruise crew who enter New Zealand on a commercial flight as passengers prior to joining their craft here ("positioning crew") to apply for a visitor visa before travel. They may be granted a visitor visa allowing a maximum stay of 28 days.
23. We propose that Cabinet agree visa-required crew travelling to New Zealand to join their craft will be able to travel on their Crew ETA and be deemed to hold a visitor visa and entry permission on arrival. See Annex Two for more discussion of positioning crew.

Cruise passengers and crew will be deemed to hold visas at different points

24. All cruise vessel passengers and crew, regardless of nationality, are currently deemed to hold a visa in New Zealand from the time the ship arrives at a port of entry in New Zealand. Under the proposals, they will be people for whom the requirement to hold a visa permitting travel to New Zealand is formally waived. They will be required to obtain an ETA as a condition of that visa-waiver travel.
25. This means that eligible crew on cruise vessels will be issued with a Crew ETA, and will be deemed to hold a temporary visa and to have been granted entry permission from the point that the vessel enters the territorial sea, which is 12 nautical miles offshore.
26. Eligible passengers on a cruise vessel will be issued with a Traveller ETA and will be deemed to hold a temporary visa and have been granted entry permission upon disembarkation from the cruise vessel. The duration of the temporary visa will continue to be for a maximum of 28 days, calculated from the day they first disembark in New Zealand on that voyage.
27. Passengers who disembark and do not intend to depart New Zealand on the same vessel will, as per the current process, be processed manually by Customs. The Regulations paper planned for April 2019 will make amendments to the requirements for visa applications to spell out that those cruise passengers arriving at seaports and disembarking the cruise vessel and leaving New Zealand on a different craft are treated the same way in which visa-waiver nationality air passengers are treated at airports. This means they are not required to provide photos or other evidence of their eligibility to be granted a visa, or to pay a visa fee or immigration levy.

The relationship between ETAs and the IVL will be spelt out

28. The ETA is a mechanism for collecting the IVL, which will be payable by certain foreign nationals seeking to enter New Zealand. An ETA will be required as a condition of the waiver to hold a transit visa for those nationalities who are waived the requirement to hold a transit visa but in that case the IVL will not be payable.
29. People who are transiting New Zealand by air (that is, who are staying on the craft or who do not leave the Customs and Immigration Control Areas at the airport) will therefore not be liable to pay the IVL. Visa-waiver nationality passengers who hold Traveller ETAs with the intention of transiting New Zealand and who decide that they would like to enter New Zealand as visitors will in the first instance need to apply for a further Traveller ETA and pay the IVL. In future it may be possible for them to just pay the IVL separately.

We recommend that trans-Tasman travel be made visa-waiver and therefore ETA-required in both directions

30. All people travelling to Australia by air must hold a valid Australia visa. New Zealand exempts everyone in this situation from the requirement to hold a visa to transit New Zealand, as they have already been screened and approved by Australia. This concession does not apply to people travelling from Australia: passengers who belong to one of the approximately 110 transit visa-required nationalities must apply for and be granted a New Zealand transit visa before travel. This requirement exists to manage any risk that the traveller leaving Australia could be, for example, a failed asylum seeker who might make a further non-genuine claim in New Zealand. This difference in treatment however often causes issues and confusion for transit visa-required nationals travelling on a round trip to Australia from the Pacific or the Americas.
31. During consultation on the ETA proposal it was identified that, if no changes were made, transit visa-required people who were transiting New Zealand for Australia and returning by the same route would be required to hold an ETA to travel to Australia and a visa to return from Australia. Cabinet therefore directed officials to examine the transit visa waiver for transit visa-required people who are transiting New Zealand for Australia, with a view to either waiving visa requirements for travel in both directions (thus requiring an ETA for both directions) or requiring a visa for both directions.
32. Following that examination (see Annex Three for detail), we propose that Cabinet agree to change transit settings such that both trans-Tasman legs are made transit visa-waiver, meaning that ETAs can be used for transit travel both to and from Australia.

We have elaborated some characteristics of ETAs and the information to be required of requestors

33. We propose that individuals will be able to hold more than one ETA at one time (for example, a Crew ETA and a Traveller ETA). This is in contrast with the legal status of a visa: under the Immigration Act 2009, only one visa can be held a time. Individuals will also be able to register more than one identity document against an ETA (for example, if they are dual nationals, or if a passport expires during the term of an ETA).
34. We propose that requests for Traveller ETAs will require the provision of biometric information (a photograph) if the requestor uses a channel which allows it to be automatically captured (such as a mobile channel which reads the chip on an ePassport). This is a change from the earlier Cabinet decision, and will require the agreement of the Privacy Commissioner. The application will enable the provision of biometric information if the requestor uses a channel which allows it to be manually captured: we propose to seek over time the ability to make the provision of biometric information mandatory in a wider set of circumstances.
35. Requestors will be able to request an ETA on their own behalf, while people who have permission from the requestor will be able to request an ETA on the requestor's behalf but in that case will have to provide information about themselves.

We will propose a set of fees for agreement in January 2019

36. Work is still underway to establish the final recommendations for fees. At this stage it is likely that we will recommend differentiated fees by channel (requests for ETAs made over the internet are likely to have data quality issues compared with requests made on the Mobile App, where the majority of information is automatically captured) and the ability to charge an urgent fee. Final recommendations will be made in January 2019.

We will provide further advice on the immediate and potential future benefits of the regime changes in January 2019

37. The regime changes as described in this paper will result in immediate benefits. In the air channel, we will now have earlier information about more than 1.4 million travellers per annum, which will enable more comprehensive screening, in addition to the ability to interact with those travellers, and to refuse boarding at the check in stage.
38. In the marine channel, the ETA request process, coupled with better advance information flows from carriers, will immediately improve New Zealand's marine border security with regard to people who are not eligible to be granted a visa under sections 15 and 16 of the Immigration Act 2009 (who have been convicted of a serious offence, been deported from New Zealand, or who may pose a criminality, security or public order risk). We are also much more likely than at present to be aware that non bona fide people are on their way. The ETA request process will provide us with the opportunity to advise people whom we consider to be non-bona fide that they should not seek to travel to New Zealand, and to advise cruise lines not to board those people.
39. If people we consider to be non-bona fide do arrive and disembark, the deemed visa regime established under our current legal and operational settings means that a formal revocation and deportation liability process will continue to apply. We are working through the legal and operational issues around whether we can instruct cruise vessels to not permit passengers to disembark to manage this risk.
40. The development and implementation of the ETA regime for marine travellers will itself also inform the development of broader border settings, and future marine border settings in particular. We will brief you further on the development of the ETA in January 2019, and provide a fuller description of the immediate benefits and potential future benefits of the regime changes.

Other issues and future work

41. We recommend that the Cabinet paper direct other future work, including on:
- a. Marine Advance Passenger Processing information requirements (which will have implications for the *Immigration (Carriers' Information Obligations) Regulations 2010*)
 - b. a review of the carrier infringement regime (which will have implications for the *Immigration (Carriers' Infringement Offences, Fees, and Forms) Regulations 2010*)
 - c. bringing cargo vessels and private craft into the ETA regime
42. Following this project, related further policy work includes:
- a. Border 2030 (a Migration Five and Border Five priority project)
 - b. a review of the overarching structure of the visa regime, including the deemed visa regime (which may have legislative implications).
43. The Regulations paper planned for April 2019 will also include a regulatory amendment which was inadvertently omitted when changes to fees were gazetted in September (the exemption of Victims of Domestic Violence from fees).

Next steps

44. Table Four below sets out the proposed dates for the ETA project:

Table Four: Project dates, actions and deliverables

Date	Deliverable
December 2018	Feedback from Minister's office on proposals
29 January 2019	Draft Cabinet paper provided to Minister's office for ministerial consultation
31 January	Draft Cabinet paper sent out for consultation
5 February	Feedback received from Ministers
11 February	Final Cabinet paper provided to Minister's office
14 February	Cabinet paper submitted to Cabinet Office
20 February	Cabinet paper considered by DEV
25 February	Cabinet confirmation
25 February – mid April	PCO drafts required regulation changes (5 weeks)
22 April	LEG Cabinet paper provided to Minister's office [Note: recess]
24 April	LEG Cabinet paper submitted to Cabinet Office [Note: recess]
30 April	Cabinet paper considered by LEG
6 May	Cabinet and Executive Council confirmation
10 May	Published in Official Gazette
Late May / early June	Change bundle advice provided to Minister for information and certification
1 July 2019	Regulations come into force

Annexes

Annex One: DEV Minute DEV-18-MIN-0191

Annex Two: Positioning Crew: numbers and analysis

Annex Three: Transit visas: numbers and analysis

Electronic Travel Authority: Proposed Introduction

On 12 September 2018, the Cabinet Economic Development Committee:

1. **noted** that on 28 May 2018, the Cabinet Business Committee agreed to the release of a discussion document on the proposal to introduce an Electronic Travel Authority (ETA) [CBC-18-MIN-0057];
2. **noted** that:
 - 2.1. the majority of submitters (14 of 19) were in favour of the proposal to introduce the ETA;
 - 2.2. concerns were expressed about potential negative impacts if the ETA or cumulative costs were perceived to be a barrier to travel;
3. **noted** that:
 - 3.1. the ETA is a platform for the border of the future, which will take advantage of technology advances to set policy aimed at better managing the New Zealand border to:
 - 3.1.1. improve New Zealand's and our international partners' ability to detect and address risks associated with non-bona fide travel;
 - 3.1.2. better manage and facilitate bona fide travel and travellers;
 - 3.2. the immediate purpose of the ETA is to be an enhanced screening device to enable certain excluded foreign nationals to know, in advance, that they are ineligible to be granted a visa at the border and instead need to apply for a visa offshore;
4. **noted** that, under current legislative settings, an ETA is an authority to travel visa free, but is not a visa entitling a person to enter and stay in New Zealand;

Parameters of the ETA

5. **agreed** to the introduction of the ETA, which will be:
 - 5.1. an electronic account; and
 - 5.2. a condition on a visa waiver
6. **agreed** that the ETA will have the following parameters:

The classes of people required and not required to hold an ETA before travel

- 6.1. the classes of people required to hold an ETA before travel to or transit through New Zealand are:
 - 6.1.1. people who are waived the requirement to hold a visa before travelling to New Zealand as visitors, unless separately excluded;
 - 6.1.2. Australian permanent residents with the right to return to Australia;
 - 6.1.3. cruise passengers, cruise crew and commercial aircrew;
 - 6.1.4. people who are otherwise waived the requirement to hold a visa before transiting New Zealand;
- 6.2. the classes of traveller not required to hold an ETA before travel to New Zealand are:
 - 6.2.1. New Zealand citizens travelling on New Zealand passports, or foreign passports with appropriate endorsements;
 - 6.2.2. Australian citizens travelling on Australian passports;
 - 6.2.3. people who hold a valid New Zealand visa permitting travel to New Zealand;

- 6.2.4. certain people currently deemed to hold a visa to travel to New Zealand under Schedule 3 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010), namely:
 - 6.2.4.1. crew and passengers on a ship travelling to New Zealand, which is not a cruise vessel;
 - 6.2.4.2. crew on a foreign ship authorised to carry coastal cargo;
 - 6.2.4.3. crew of private aircraft;
 - 6.2.4.4. members of a visiting force and associated crew members;
 - 6.2.4.5. people travelling under the auspices of the Antarctic Treaty;
 - 6.2.4.6. guests of government;
- 6.3. members of the classes of traveller not required to hold an ETA before travel to New Zealand may however voluntarily choose to do so (except for New Zealand citizens travelling on New Zealand passports);

The duration of an ETA

- 6.4. The duration of an ETA from the date of granting is two years, except in the case of air and marine crew travelling in the course of their employment, who can to apply for and be granted ETAs of five years' validity;

The information to be collected by the ETA

- 6.5. the information to be collected about the intending traveller or their travel is:

(Required)

- 6.5.1. biographic details;
- 6.5.2. travel document details;
- 6.5.3. contact details;
- 6.5.4. information which enables the traveller's statutory eligibility to travel visa waiver to be confirmed (including a declaration about their criminal conviction history);
- 6.5.5. information about the intention of their travel to New Zealand, including relevant declarations about whether they are travelling in order to seek medical treatment;
- 6.5.6. information about the person making the application on behalf of the traveller, if that is a third party;

(Optional)

- 6.5.7. information about the intended date of travel, including booking references;
- 6.5.8. biometric information (the passport photograph);

The use of the information to be collected by the ETA

- 6.6. the information to be collected by the ETA will be:
 - 6.6.1. used to determine the applicant's eligibility to travel to New Zealand;
 - 6.6.2. checked against information held by or accessible to Immigration New Zealand (such as the international Lost and Stolen Passports list);
 - 6.6.3. subject to legal and privacy impact considerations, able to be shared with authorised agencies and firms, such as border agencies and carriers, for improved targeting, risk assessment, maintenance of the law and facilitation purposes, including to provide information;

Information that could be provided to applicants for an ETA

- 6.7. the information that could be provided to applicants:
- 6.7.1. should include targeted information on or links to New Zealand's:
 - 6.7.1.1. immigration requirements;
 - 6.7.1.2. biosecurity requirements;
 - 6.7.1.3. customs requirements;
 - 6.7.2. could include targeted information on, or links to information on:
 - 6.7.2.1. safely driving in New Zealand;
 - 6.7.2.2. events likely to impact on travellers (such as major earthquakes, pandemic information);
 - 6.7.2.3. (opt in) targeted tourism information;

Implementation

7. **noted** that a staged implementation is planned:
- 7.1. the initial phase, which will commence with air passengers, and with biographic capture only, and will be accompanied by a global communications campaign, will enable individuals to apply for the ETA from early 2019/20;
 - 7.2. progressive enhancements, extending the scope of collection and enabling more border security and facilitation features, will be added to the ETA system through to December 2020;
 - 7.3. future developments envisaged, but not within the scope of this project, include exploring future possibilities for better assurance and easier travel;
8. **noted** that, subject to future Cabinet agreement, the requirement to hold an ETA could be extended to some of the classes of traveller referred to at 6.2.4 above, and / or to other classes of traveller;

Further policy work

9. **directed** officials to undertake policy work to develop the required regulatory changes arising from the decisions above;
10. **directed** officials to examine the transit visa settings with regard to travel to and from Australia, with a view to either waiving visa-requirements for travel in both directions (making it ETA-required) or requiring transit visa-required nationals to hold a visa for both directions;

Financial implications

11. **noted** that on 28 May 2018, the Cabinet Business Committee noted that the Minister intended to seek out-of-cycle funding to enable work to begin on the project during 2018 [CBC-18-MIN-0057];
12. **agreed** to increase expenditure to provide for the ETA initiative, with the following impacts on the operating balance and debt:

	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Operating Balance Impact	-	-	-	-	-
Debt Impact	9.800	14.200	5.800	-	-
No Impact	2.015	13.089	13.012	13.232	13.246
Total	11.815	27.289	18.812	13.232	13.246

13. **approved** the following changes to appropriations and departmental capital injections to give effect to the policy decision in paragraph d) above, with a corresponding impact on debt:

	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Vote Labour Market Minister of Immigration	-				
Multi-Category Expenses and Capital Expenditure					
Immigration Services MCA: Assessment and Processing	2.015	13.089	13.012	13.232	13.246
Departmental Capital Injection: Ministry of Business, Innovation and Employment	9.800	10.200	1.800	-	
Total	11.815	23.289	14.812	13.232	13.246

14. **noted** that the operating costs of the ETA can be recovered from applicants and the current estimate of the final cost-recovery fee is between \$9 and \$12.50;
15. **agreed** to the establishment of a new Electronic Travel Authority memorandum account to collect the ETA application fees;
16. **noted** that in advance of collecting the ETA fee, the memorandum account will have a negative balance, and that the required operating expenditure for implementation will be temporarily met from the Ministry of Business, Innovation and Employment's balance sheet;
17. **agreed** that the proposed changes to appropriations and the departmental capital injection for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
18. **agreed** that that the capital costs incurred under paragraph 13 above be a pre-commitment against the Budget 2019 capital allowance;

Legislative and regulatory implications

19. **noted** that the ETA would require changes to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*;
20. **invited** the Minister of Immigration to seek Cabinet agreement to the outcomes of consequential policy development before the end of March 2019, and the subsequent regulations changes in April 2019;
21. **noted** that amendments to the *Immigration (Carriers' Information Obligations) Regulations 2010* may be required if the advance passenger information to be provided by cruise lines differs from the information currently required to be provided by airlines, and that if so Cabinet decisions are likely to be sought in 2020;

Communications

22. **invited** the Minister of Immigration to announce Cabinet's decisions on the ETA, in alignment with the Minister of Tourism's announcement on the IVL;
23. **noted** that the ETA project development will include an extensive communications and engagement strategy.

Annex Two: Positioning Crew: numbers and analysis

Positioning Crew visas are required where air crew or cruise crew enter New Zealand on a commercial flight as passengers prior to joining their craft here, and are from a visa-required nationality so cannot enter visa waiver.

Crew positioning visas are visitor visas, as the work the crew will carry out will not substantively take place in New Zealand. Immigration Instructions currently state:

V3.70 Crew members joining vessels or aircraft

- Crew members from countries that do not have a visa waiver agreement with New Zealand, who enter New Zealand to join a vessel or aircraft that will then depart for another country, must obtain a visitor visa before travelling to New Zealand.
- A visitor visa allowing a maximum stay of 28 days will be granted to such applicants if they provide fully documented evidence of their engagement as a crew member in New Zealand.
- Visas granted to crew members joining vessels or aircraft must state the condition: 'To join the crew of [name of vessel/flight number of aircraft] at [port]'.

Table one: approved crew positioning visas and approval rates by nationality, 2014/15 – 2017/18

	2015/16	2016/17	2017/18	Grand Total	% approved
Philippines	1343	1376	1530	4249	99%
India	487	513	499	1499	98%
Indonesia	350	290	390	1030	100%
Fiji	289	116	253	658	100%
China	181	191	180	552	100%
Russia	52	90	69	211	97%
Ukraine	59	79	53	191	99%
South Africa		34	70	104	97%
Rest of world	160	176	156	492	90%
Grand Total	2921	2865	3200	8986	99%

The high numbers of Filipino crew reflect the numbers of Filipino nationals employed in the cruise industry. South African visa figures (none in 2015/16) reflect the imposition of visa requirements in late 2016.

The standard visitor visa charge¹ (\$211) applies to these visas, along with any applicable Visa Application Centre (VAC)² fee (generally between \$30 and \$60 per application) and courier fees. ETA charges will not be classified as visa charges and therefore bilateral visa waiver agreements will not apply.

Given the high rate of visa approvals and the formal arrangements which the Ministry will enter into with carriers, we propose that, regardless of nationality, air crew and cruise vessel crew travelling to New Zealand by air to join a vessel or aircraft that will then depart for another country will be able to travel on their Crew ETA.

We note that the Memorandums of Understanding which will be negotiated with carriers will require carriers to promptly advise the Ministry when a crew member leaves their employment in order that the ETA can be withdrawn.

¹ New Zealand's bilateral fee waiver commitments mean that Filipino nationals applying for visitor visas of under 59 days' duration and Russian nationals applying for any visitor visas are not charged a visa fee or associated Immigration Levy. They are however liable to pay VAC fees and courier charges.

² Most online applications currently require successful first time applicants' passports to be scanned by a VAC.

Annex Three: Transit visas: numbers and analysis

Cabinet's agreement to the ETA has implications for trans-Tasman transit visa policy settings

Under transit visa policy, most visitor visa-required nationals are also required to apply for and be granted a transit visa if they are travelling through Auckland airport en route to a further destination. (Auckland airport is the only airport in New Zealand which has international transit facilities.) Of the approximately 135 visitor visa-required nationalities, 24, including citizens of most Pacific and many South American countries, are however waived this requirement. This means they can travel to New Zealand visa-free as long as they do not seek to land in New Zealand.

In addition, all people travelling to Australia, and holding a valid visa or ETA to do so, are also exempt from the requirement to hold a transit visa. This is because that person's travel has already been approved by Australia.

However, transit visa-required nationals travelling from Australia must have applied for and been granted a New Zealand transit visa before they check in in Australia. The requirement to be granted a New Zealand visa to transit from Australia exists to manage any risk that the traveller could be, for example, a failed asylum seeker who might make a further non-genuine claim in New Zealand. This difference in treatment between the two legs can be confusing for transit visa-required nationals travelling on a round trip to Australia from the Pacific or the Americas.

Under the ETA decisions already made, transit visa-required people who are transiting New Zealand for Australia and returning by the same route will be required to hold an ETA to travel to Australia and a visa to return from Australia. Cabinet has therefore directed officials to examine the transit visa waiver for transit visa-required people who are transiting New Zealand for Australia, with a view to either waiving visa-requirements for travel in both directions (thus requiring an ETA for both directions) or requiring a visa for both directions.

Transit visas manage a constrained range of risks

The objective of Transit Visa Policy is to ensure that only people with genuine and lawful intentions pass through New Zealand en route to other destinations, by scrutinising the intentions of certain foreign nationals who plan to transit New Zealand. As noted above, in principle all people who are required to apply for a visitor visa before travel to New Zealand are also transit visa-required, unless they are travelling on exemption list travel documents or to Australia. Cabinet last reviewed settings in 2009 [DOM Min (09) 21/4].

Transit visa settings manage a narrower range of risks than visitor visa settings. The immigration risks primarily relate to the non-genuine spontaneous asylum claims and people smuggling. Transit visas also have a role in managing risks associated with goods smuggling (contraband and drugs). Unlike visitor visas, transit visas cannot be applied for online, and Immigration New Zealand has no current plans to enable online applications. Applications cost \$181 (\$20 less than a visitor visa application) plus the applicable VAC fee (generally between \$30 and \$60 per application) and any courier fees. Most applications are completed within around two weeks.

At present transit visas are only available to people transiting Auckland airport (which has international transit facilities) and who will fly out within 24 hours. Anyone else who is entering New Zealand en route to another international destination must land in New Zealand and clear their luggage through Customs.

Table one below shows the top 15 Transit Visa nationalities over the past three years, and that transit visa approval rates vary. One country (Turkey) has an approval rate of only 48 percent, and only one (El Salvador, the 15th) has a 100 percent approval rate. The 122 nationalities included in the "Rest of world" figure (12 percent of all decisions) have an approval rate of only 79 percent.

Table one: Transit visa decisions and approval rates by top 15 nationalities, 2015/16 to 2017/18

	2015/16	2016/17	2017/18	Grand Total	% approved
Fiji	583	677	680	1940	97%
China	423	571	538	1532	95%
India	241	197	212	650	92%
Tonga	36	33	34	103	95%
Pakistan	42	20	23	85	65%
South Africa	1	28	43	72	85%
Vietnam	16	16	39	71	92%
Russia	15	17	30	62	89%
Bangladesh	18	25	16	59	90%
Nepal	13	13	18	44	91%
Turkey	3	20	19	42	48%
Sri Lanka	8	18	14	40	88%
Samoa	8	11	14	33	85%
Cuba	11	10	10	31	97%
El Salvador	12	10	9	31	100%
<i>Rest of world</i>	<i>278</i>	<i>156</i>	<i>207</i>	<i>641</i>	<i>79%</i>
Grand Total	1708	1822	1906	5436	92%

Applications for transit visas require more information (an attached travel itinerary and statement of the purpose of travel) than will be required by requests for ETAs (which are designed and funded to be generally auto-decided and to have low intervention by decision makers). For this reason, it would not be viable to replace all transit visas with ETAs at this point. The future work proposed on overall visa settings will enable further examination of transit visa settings, with a view to identifying whether further facilitation is possible while adequately managing risks.

We propose that Cabinet agree to change transit settings such that ETAs can be used for transit travel from Australia

Following the examination of statistics and internal consultation it is proposed that Cabinet agree to extend transit visa-waiver travel to people who are travelling from Australia, regardless of nationality. This means that they will be required to hold a Traveller ETA.

We have considered the risks on that route which are currently managed by transit visa settings. Officials are comfortable at this stage that the advance notice of intention to travel which is provided through the ETA request process will adequately manage identified risks (which are considered to relate to travel by failed asylum seekers) and that the risks will be outweighed by the facilitation benefits. The proposal is likely to most benefit nationals of Fiji.

Officials will monitor this use of the ETA and may however recommend changes in future if the change leads to unacceptable outcomes. Future options available in that case could include requiring people leaving Australia transit visa-waiver to hold one of a range of valid Australian visas at the time.

An ETA which is requested for transit travel only will not, under the proposed settings for the International Visitor Conservation and Tourism Levy (IVL), be required to pay the IVL. This means that visitor visa-waiver nationals who hold a Traveller ETA which permits transit only will not be able to use that ETA to enter New Zealand as visitors. If they wish to enter New Zealand as visitors they will need to apply for a further Traveller ETA and pay the IVL. It may be possible in the future for people in that situation to just pay the IVL.

It is proposed that Traveller ETAs which only enable transit be valid for two years from the date of issue, on the same basis as standard Traveller ETAs, and be subject to the same charges.

Table two below sets out the proposed regime in detail.

Table two: Proposed air transit travel settings by type of transit traveller (bold type indicates visas)

	To Australia	<i>Route</i> From Australia	Route does not include Australia	Notes
New Zealand or Australian citizen	<i>No ETA or visa</i>	<i>No ETA or visa</i>	<i>No ETA or visa</i>	
Holder of New Zealand visa	Existing visa	Existing visa	Existing visa	
Australian permanent resident	Traveller ETA	Traveller ETA	Traveller ETA	Australian permanent residents may land in New Zealand without paying the IVL (as they are exempt)
Visa-waiver national	Traveller ETA (IVL optional)	Traveller ETA (IVL optional)	Traveller ETA (IVL optional)	Paying the IVL is dependent on whether the user has self-declared as 'transit'. If so, the ETA will enable Transit only
Visa-required national - transit visa-waiver	Traveller ETA – for Transit only	Traveller ETA – for Transit only	Traveller ETA – for Transit only	IVL is not payable on the ETA. They may not land in New Zealand unless they already hold a visa to do so
Visa-required national - not transit visa-waiver	Traveller Transit ETA	Traveller Transit ETA	Transit Visa	IVL is not payable on the ETA or transit visa. They may not land in New Zealand unless they already hold a visa to do so