



BRIEFING

Electronic Travel Authority: minor and technical decisions for first Amendment regulations

Date:	1 May 2019	Priority:	High
Security classification:	In Confidence	Tracking number:	3278 18-19

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the proposed minor and technical changes to the ETA	8 May 2019
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	Section 9(2)(a) ✓
Christine Hyndman	Principal Policy Advisor, Immigration Policy, MBIE	04 901 8575	

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input checked="" 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 Withdrawn |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

Electronic Travel Authority: minor and technical decisions for first Amendment regulations

Date:	1 May 2019	Priority:	High
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Purpose

To:

- seek your agreement to minor and technical regulation changes to implement the Electronic Travel Authority (ETA), prior to the Cabinet Legislation Committee (LEG) considering the *Immigration (Visa, Entry Permission and Related Matters) Amendment Regulations 2019* (the Amendment Regulations)
- seek your agreement to a minor change to the *Immigration Act 2009*, to be effected through the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill 2019* (the Bill)
- update you on the proposed dates and processes for the Cabinet papers to LEG, the Bill, and Immigration New Zealand (INZ) Operational Manual amendments.

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 introduce an ETA and agreed to the first stage of its detailed regulatory design on 20 February 2019 [DEV-19-MIN-0023]

Noted

- b) **Note** that DEV invited you in February 2019 to issue drafting instructions to Parliamentary Counsel to give effect to the proposals and authorised you to approve changes consistent with the policy proposals, including on any issues that arose during the drafting process

Noted

- c) **Note** that the proposals from e) to n) below reflect issues which have arisen as the ETA design and draft Amendment Regulations have been developed, and we recommend that you approve the changes as set out, and advise your colleagues of those decisions in the paper accompanying the Amendment Regulations

Noted

- d) **Note** that we consider that the proposal at q) below (rescinding the decision that Immigration New Zealand (INZ) be able to require an individual to travel on a specific travel document) should be confirmed by Cabinet and we therefore recommend that you seek your colleagues' formal agreement to the proposed change

Noted

Proposed change to decision recorded in DEV-18-MIN-0191

- e) **Note** that DEV agreed in September 2018 to classes of information required to be collected by the ETA and to information that was optional, and that some information

identified at that point as "optional" (booking references and intended dates of travel) should instead be classed as "required, (if applicable / if known)"

Noted

- f) **Agree** to change the status of booking reference and intended dates of travel information from "optional" to "required, (if applicable / if known)"

Agree / disagree / discuss

Proposed changes to decisions or notes recorded in DEV-19-MIN-0023

- g) **Note** that DEV agreed in February 2019 to two ETA types:

- i. Traveller ETA (two year duration), which included Transit ETAs
- ii. Crew ETA (five year duration)

Noted

- h) **Agree** to amend the decision in g), such that there are three ETA types:

- i. Traveller ETA (two year duration)
- ii. Transit ETA (two year duration)
- iii. Crew ETA (five year duration)

Agree / disagree / discuss

- i) **Note** that DEV:

- i. agreed in February 2019 that requests for Traveller ETAs would require the provision of a photograph if the requestor uses a channel that has the technical capacity to enable one to be captured, and
- ii. noted that photographs would be mandatory for requests for ETAs made to the web browser platform when it is technically feasible and will not be a barrier to making an ETA request for bona fide travellers

Noted

- j) **Agree** that the decision at i) be amended to cover requests for all ETAs, meaning that Transit and Crew ETA requests will also require the provision of a photograph if the requestor uses a channel that has the technical capacity to enable one to be captured

Agree / disagree / discuss

- k) **Note** that DEV in February 2019 agreed that positioning crew were air crew and cruise vessel crew travelling to New Zealand by air to join a vessel that will then depart for another country, but that further discussions have identified that some positioning cruise crew also leave New Zealand by air

Noted

- l) **Agree** to expand the definition of positioning cruise crew at k) to include individuals who fly into and out of New Zealand, through stating that it includes cruise crew who enter by air to work in New Zealand waters

Agree / disagree / discuss

- m) **Note** that DEV noted in February 2019 that 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 applicable International Visitor Conservation and Tourism Levy (IVL), but that further legal advice confirms that it is not possible to require a further ETA in this circumstance because

the passenger is already in New Zealand, meaning those passengers can also enter without paying the IVL

Noted

- n) **Agree** to advise your colleagues that the passengers set out at m) will be able to enter New Zealand without paying an IVL, but that the numbers are likely to be low
Agree / disagree / discuss
- o) **Note** that DEV agreed in February 2019 that INZ will be able to require an individual to travel to New Zealand on their primary identity document, but that this would require legislative authority and therefore is not enforceable through Regulations
Noted
- p) **Agree** that the decision at o) be rescinded, noting that INZ must already be satisfied of a traveller's identity
Agree / disagree / discuss
- q) **Agree** to seek formal agreement from Cabinet to the change at p), on the basis that it is more than minor or technical
Agree / disagree / discuss
- r) **Note** that DEV invited you to report back on the case for and level of an urgent fee, and that further consideration has identified that this proposal should not be progressed at this time
Noted
- s) **Agree** to advise your colleagues that you do not propose to progress an urgent fee for ETA requests at this time
Agree / disagree / discuss

Proposed minor amendment to the Immigration Act 2009

- t) **Note** that the *Immigration Act 2009* does not currently technically allow for the automated decision making of ETAs
Noted
- u) **Agree** to an amendment to the *Immigration Act 2009* to explicitly allow for the automated decision making of ETA, to be effected through the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill 2019*
Agree / disagree / discuss

Next steps

- v) **Note** that we are proposing that you and the Minister of Tourism submit two joint papers to the Cabinet Legislation Committee (LEG):
- i. *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill* (to be considered on 21 May)
 - ii. *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019* (to be considered on 28 May)
- Noted
- w) **Note** that the Minister of Tourism's office will manage the process of ministerial consultation on the draft LEG papers accompanying the draft Amendment Bill and draft

Amendment Regulations, and that this consultation will commence by 3 May for the draft Amendment Bill and by 10 May 2019 for the draft Amendment Regulations

Noted

x) **Note** that the LEG paper for the draft Amendment Regulations will seek a waiver of the 28-day rule to enable the IVL and ETA to come into effect on 1 July 2019

Noted

y) **Note** that INZ is proposing to present the related Operational Manual amendments to you for consideration around 10 June 2019

Noted

z) **Note** that a further set of policy decisions is necessary to enable changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* before the ETA becomes obligatory on 1 October 2019, and that we will brief you in more detail in May 2019.

Noted



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

01 / 05 / 2019



Hon Iain Lees-Galloway
Minister of Immigration

06 / 05 / 19

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].
2. Cabinet also agreed to progress the IVL, which will be collected on applications for visas and requests for ETAs [DEV-18-MIN-0194] and which will be implemented through an amendment to the Act, led by the Minister of Tourism. Current timeframes will see the House considering the Bill under urgency on Budget night.
3. You took a paper *Electronic Travel Authority: Further policy decisions 1* to Cabinet in February. Cabinet agreed at that point to the detailed design of the ETA, invited you to issue drafting instructions to Parliamentary Counsel to give effect to the proposals, and authorised you to approve changes consistent with the policy proposals, including on any issues that arose during the drafting process [DEV-19-MIN-0023]. Cabinet also invited you to consider the case for an urgent fee and to report back.

We are seeking your agreement to some minor changes

4. As anticipated, some issues have arisen both as the ETA project has been developed and during the drafting of the Amendment Regulations. We propose that you approve or note, as appropriate, the generally minor and technical changes set out below, and advise Cabinet of these in the upcoming paper to LEG which will accompany the Amendment Regulations. One change, while consistent with the policy proposals, is more substantial and we recommend that you recommend its approval to LEG.
5. The proposed changes for your approval alone are:
 - a. change the status of some information (*booking references and intended dates of travel*) is sought at the point that an ETA is requested, from "optional" to "required, if available and either applicable or requested"

[DEV-18-MIN-0191]
 - b. expand the number of ETA types from two (Traveller and Crew) to three (Traveller, Transit and Crew) (Transit ETAs were previously a subset of Traveller ETAs)
 - c. amend the decision that *requests for Traveller ETAs will require the provision of a photograph if the requestor uses a channel that has the technical capacity to enable one to be captured*, to include requests for Transit and Crew ETAs as well
 - d. amend the definition of "positioning cruise crew" (currently only cruise crew *travelling to New Zealand as a passenger on a commercial aircraft for the purpose of leaving New Zealand as cruise ship crew*) to include cruise crew who work in New Zealand waters and leave New Zealand as a passenger by air. (Discussions with the cruise industry have led to a better understanding of how cruise crew are positioned into and out of the country.)

[DEV-19-MIN-0023]
6. You are asked to bring an issue, which was not the subject of a formal decision, to your colleagues' attention. Cabinet noted in February [DEV-19-MIN-0023] that visa-waiver nationality passengers who hold transit Traveller ETAs and upon arrival decide that they would like to enter New Zealand as visitors would need to request a Traveller ETA and be charged the IVL.
7. However, further legal advice confirms that it is not possible to require a further ETA in this circumstance because the passenger is already in New Zealand. Such passengers will therefore be able to enter New Zealand without requesting a further ETA. Those passengers can also enter without paying the IVL, because the payment of the IVL is tied to the payment

of the ETA. Numbers are not expected to be large and therefore this will not impact on forecast IVL revenues.

We recommend that you seek Cabinet's agreement to one change

8. Cabinet agreed that INZ will be able to require an individual to travel to New Zealand on their primary identity document [DEV-19-MIN-0023]. Legal advice confirms that INZ does not have the legislative authority to require an individual to travel on a specific passport. You are asked to seek your colleagues' agreement to rescinding the decision that INZ be able to require an individual to travel to New Zealand on their primary identity document. We note that INZ must already be satisfied of a traveller's identity in order for that person to travel to New Zealand.

We recommend that you advise Cabinet that you will not progress an urgent fee at this time

9. Cabinet invited you to consider the case for an urgent fee and report back [DEV-19-MIN-0023]. INZ has examined the potential case. An urgent fee in addition to the current fees would need to reflect actual additional costs, and no substantive additional costs have been identified (given that the operating model already allows for staff to support last minute requests). In addition, the existence of an urgent fee could mean that potential travellers delay making ETA requests, and undermine the message that requests should be made at least 72 hours before travel. We therefore recommend that you advise Cabinet that you do not propose to progress an urgent fee for ETA requests at this time.

We recommend that you agree to a minor amendment to the Immigration Act 2009 to enable automated decision making for the ETA

10. As you are aware, current forecasts anticipate 1.5 million ETA requests being made annually. The decision on whether to grant the vast majority of these will be made automatically, with a small subset requiring manual intervention. Section 28 of the Act provides for automated decision making for a range of immigration matters but the scope does not extend to decisions on waivers of the requirement to hold a visa, meaning it does not technically include the ETA.
11. We therefore recommend that you agree that the Bill also amend the Act to allow for automated decision making on the ETA.

Next steps

12. As you were advised on 15 March 2019 [2851 18-19], the decision to enable the International Visitor Conservation and Tourism Levy (IVL) through an amendment to the Act and supporting amendments to the Regulations impacts on the previously-proposed timing and process for these regulation changes.
13. You and the Minister of Tourism will submit two joint papers to LEG to enable the ETA and IVL. It is proposed that the Minister of Tourism's office will manage the ministerial consultation process for both papers. On 21 May 2019 LEG will consider a joint paper seeking approval to introduce the Bill. The Bill will be considered under urgency in the House on Budget night (30 May 2019).
14. On 28 May 2019 LEG will consider a joint paper seeking agreement to the combined Amendment Regulations. LEG will be asked to agree to a waiver of the 28-day rule, in order to ensure that the IVL and ETA can come into effect from 1 July 2019.
15. At this stage INZ is proposing to present the Operational Manual amendments to you for consideration around 10 June 2019. These will set out the ETA requirements and enable the IVL to be charged on a range of visa applications.
16. We will brief you in May 2019 on the further policy decisions needed to enable changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* before the ETA becomes obligatory on 1 October 2019.

17. Table One below sets out the proposed dates for the legislative and regulatory changes. The Minister of Tourism has requested that you be provided with the elaborated version he has recently considered, which is focused on the IVL, and that is set out at Annex one.

Table One: Deliverables and dates (summary)

Task	Regulations - dates	Bill - dates
Cabinet paper to Ministers for consultation	By midday 10 May	By midday 3 May
Comments due back from Ministers	Friday 17 May (1 week)	10 May (1 week)
Final draft from PCO (incorporating any changes from Ministers)	Wednesday 22 May	Wednesday 15 May
Lodge paper	Thursday 23 May	Thursday 16 May
LEG considers	Tuesday 28 May	Tuesday 21 May
Cabinet	Tuesday 4 June	Monday 27 May
House passage	N/A	Thursday 30 May
Exec Council	Tuesday 4 June	Tuesday 4 June
INZ Operational Manual amendments	Wednesday 10 June (TBC)	
Comes into force	1 July	1 July

Annex

Annex one: International Visitor Conservation and Tourism Levy (IVL) legislation process update 30 April 2019

Annex one: International Visitor Conservation and Tourism Levy (IVL) legislation process update 30 April 2019

Steps	IVL (Minister of Tourism)	ETA (Minister of Immigration)
Minor and technical changes	<ul style="list-style-type: none"> - Signed this week (2654 18-19) 	<ul style="list-style-type: none"> - Seeking agreement this week (3278 18-19)
Bill Immigration Act 2009 <ul style="list-style-type: none"> - Draft LEG paper: this week (joint) - LEG 21 May - Cab 27 May - House Passage 30 May - Exec Council 4 June 	<ul style="list-style-type: none"> - Minister can use regulations to collect the IVL from: <ul style="list-style-type: none"> o applicants for a temporary entry class visa and o those seeking to rely on a visa-waiver (ie the ETA) - Funds collected can be spent on conservation, infrastructure used for tourism and initiatives related to tourism - Levy amount reviewed every 5 years (or less), and must consult with appropriate persons/stakeholders - Allows more than one Minister to be responsible for different parts of the Act 	<ul style="list-style-type: none"> - Allow for automated decision making for the ETA
Amendment Regulations <ul style="list-style-type: none"> - Draft LEG paper: next week (joint) - LEG 28 May - Cab 4 June - Exec Council 4 June 	<ul style="list-style-type: none"> - Charge IVL at \$35 to: <ul style="list-style-type: none"> o applicants for temporary entry class visas and o people requesting a Traveller ETA - Exemptions from IVL (as agreed by Cabinet): <ul style="list-style-type: none"> o Australians and Pacific Islanders o Diplomatic, humanitarian, medical, military o Visas that are generally issued for longer than a year - Application for a visa / request for an ETA is not complete until have paid IVL 	<ul style="list-style-type: none"> - Introduced to improve the visibility of people coming to New Zealand before check in - Three types of ETA <ul style="list-style-type: none"> o Traveller o Transit o Crew - Information required to request an ETA - Consequential amendments
Next steps	<ul style="list-style-type: none"> - House process <ul style="list-style-type: none"> o working with legal colleagues to confirm process and supporting material (will be finalised in next few weeks) o your Office is talking to the offices of the Leader of the House and Minister of Immigration - Changes to the Immigration Instructions to the Minister of Immigration (no action required) 	<ul style="list-style-type: none"> - Changes to the Immigration Instructions (ETA and IVL) - Further regulation changes: Carrier Information Obligations - Global marketing campaign to inform travellers of changes