



BRIEFING

Confirming policy decisions to complete drafting of the International Visitor Conservation and Tourism Levy legislation

Date:	10 April 2019	Priority:	High
Security classification:	Sensitive	Tracking number:	2654 18-19

Action sought

	Action sought	Deadline
Hon Kelvin Davis Minister of Tourism	Approve changes to IVL settings that have been identified in the drafting process	19 April 2019

Contact for telephone discussion (if required)

Name	Position	Telephone	Section 9(2)(a)	1st contact
Danielle McKenzie	Acting Manager, Tourism Policy	04 896 5113	Section 9(2)(a)	✓
Charlotte Woolhouse	Senior Policy Advisor, Tourism Policy	04 896 5867		

The following departments/agencies have been consulted

Department of Conservation, Treasury, Ministry of Foreign Affairs and Trade

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 Withdrawn |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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Purpose

This briefing seeks your agreement to final policy decisions, ahead of Cabinet Legislation Committee considering the legislative amendments to enable the International Visitor Conservation and Tourism Levy (IVL) on 21 May 2019.

Recommended action

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

- a **Note** Cabinet gave you authority to approve changes to the IVL consistent with the policy proposals agreed by Cabinet, or on any issues arising during the drafting process

Noted

- b **Note** it is not possible to use a 12 month test in legislation to determine who is liable to pay the IVL, however we have identified an alternative that reflects the policy intent of Cabinet's decisions

Noted

- c **Agree** that the following changes be made:

Cabinet agreed	Proposed change	Minister's decision
The IVL be paid by all people applying for visitor visas or short term entry visas (12 months or less)	The IVL be paid by all people applying for temporary entry class visas other than at an immigration control area	<i>Agree / Disagree</i>
Future regulations will be made on the recommendation of the Minister of Tourism, following public consultation	Future regulations will be made by the Minister of Tourism, following consultation with interested parties	<i>Agree / Disagree</i>
n/a	The requirement to consult before making regulations does not apply to the first set of regulations	<i>Agree / Disagree</i>
Regulations to be made with a five-year review period	Regulations to be made at intervals of no more than five years	<i>Agree / Disagree</i>

Cabinet agreed	Proposed change	Minister's decision
The amount of the levy will be set out in regulation	Regulations made may prescribe the amount or method of calculation of the levy	<i>Agree / Disagree</i>
n/a	Regulations made may prescribe different amounts or methods of calculation in respect of different categories or classes of person	<i>Agree / Disagree</i>
n/a	Regulations made may enable the refund of all or part of a levy paid	<i>Agree / Disagree</i>

Section 9(2)(a)

✓ Danielle McKenzie
Acting Manager, Tourism Policy
 Labour, Science and Enterprise, MBIE

10 / 04 / 2019

Hon Kelvin Davis
Minister of Tourism

..... / /

Background

1. In September 2018 Cabinet agreed to the collection mechanism for the International Visitor Conservation and Tourism Levy (IVL), and invited you to issue drafting instructions to the Parliamentary Counsel Office [DEV-18-MIN-0194 refers]. Cabinet also authorised you as the Minister of Tourism to approve changes consistent with the policy proposals, or on any issues arising during the drafting process.
2. Parliamentary Counsel Office (PCO) has advised that its preferred option for the IVL legislation is an amendment to the Immigration Act 2009 (the Act), rather than a new piece of legislation. The IVL will be collected by Immigration New Zealand (INZ) as part of the immigration system (alongside fees for ETA requests and visa applications), and including it in that same legislation would avoid the need to duplicate provisions of the Immigration Act and therefore reduce the complexity of both the Bill and the ongoing administration of the IVL.

Changes for the IVL Bill and Regulations

3. MBIE has received and commented on several drafts of the Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill, and the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019.
4. We have worked closely with Immigration New Zealand through the drafting process to ensure the implementation of the IVL is as smooth and efficient as possible. Through this process we have identified a number of minor changes to what Cabinet agreed that are necessary to implement the IVL. We have verbally raised some of these with you in officials' meetings, and now seek your formal agreement.
5. PCO has also advised on some additional provisions that should be included in the legislation that were not initially agreed to by Cabinet. These are either standard provisions or recommended by PCO to future proof the legislation.
6. The proposed changes are set out in table below:

Cabinet agreed	Proposed change	Rationale
The IVL be paid by all people applying for visitor visas or short term entry visas (12 months or less)	The IVL be paid by all people applying for temporary entry class visas other than at immigration control area	This is the best way to work within the immigration system and meet the policy intent of Cabinet. See further detail below.
Future regulations will be made on the recommendation of the Minister of Tourism, following public consultation	Future regulations will be made by the Minister of Tourism, following consultation with interested parties	We consider that the public will have limited interest in who pays the levy, while industry groups are likely to have more interest. This change would not prevent public consultation should you wish to do so.
n/a	The requirement to consult before making regulations does not apply to the first set of regulations	The public was consulted on the decisions included in the regulations as part of the IVL consultation in June-July 2018, and there is therefore limited value in doing so again for this first set.
Regulations to be made with a five-year review period	Regulations to be made at intervals of no more than five years	Allows the regulations to be made at intervals of less than five years, if desired by the Minister. Allows for greater flexibility.

Cabinet agreed	Proposed change	Rationale
The amount of the levy will be set out in regulation	Regulations made may prescribe the amount or method of calculation of the levy	This addition is standard for levy powers. It allows, for example, the amount of the IVL to be indexed to inflation.
n/a	Regulations made may prescribe different amounts or methods of calculation in respect of different categories or classes of person	Allows for different amounts to be charged to different people. Recommended by PCO as it gives greater flexibility for the future. We do not propose to use this provision at this time.
n/a	Regulations may enable the refund of all or part of a levy paid	Allows for the IVL to be refunded and is included to align the IVL with other provisions in the Act.

Change to charging applicants for a temporary entry class visa

It is not possible to use the 12 month test to determine IVL liability agreed to by Cabinet...

7. Cabinet has agreed that the IVL will be paid by people applying for an electronic travel authority or a visitor visa or a short-term entry visa (less than 12 months). Cabinet also agreed that the authority to collect the IVL would be set out in legislation and the collection mechanism and exemptions would be set out in regulations.
8. Further work both on how to frame charging some visa applicants within legislation, and on how to implement within the existing INZ visa application system has revealed that it is not possible to use this 12 month test.
9. We cannot include the phrase 'visitor visa or short-term entry visa (less than 12 months)' in the legislation, as neither 'visitor visa' nor 'short-term entry visa' are defined in the Act (and doing so would cause unintended consequences for other parts of the immigration system).

...however we can use wording that reflects the policy intent of Cabinet's decision...

10. The Act defines classes of visas as residence class, temporary entry class and transit visas (section 70). Temporary entry class visas include visas considered to be visitor visas and short-term entry visas. We therefore recommend changing from:

All people applying for **visitor visas or short term entry visas (12 months or less)**

to:

All people applying for **temporary entry class visas other than at immigration control area.**

11. Temporary entry class visas allow a person to enter New Zealand for a specified period of time to undertake activities specified on the visa, including visit, study or work.

... and Immigration New Zealand's visa application system is better suited to this change...

12. When a person makes an application INZ determines how long a visa will be issued for based on the information provided (eg for student visas immigration officers look at the length of the course and for temporary work visas the length of the contract). Some of these visas are available for periods of time ranging from less than 12 months to up to five years. As the length a visa is granted for is determined by INZ after the application is made (and after the application fees have been paid), it is not possible to tell at the time of application whether the person is required to pay the IVL or not.
13. This further supports the change to charging applicants for temporary entry class visas, rather than the previously agreed 12 month test.

...however we will need to be more specific about exemptions in the regulations...

14. There are some temporary entry class visas that Cabinet has agreed not to charge (eg diplomatic visas), and we will exempt these applicants in the regulations.

...so we have developed a methodology to determine which visas are exempt

15. The methodology has been based on the decisions Cabinet made, and uses the following considerations:
- a. the primary purpose of the visa (ie for a holiday or short visit to New Zealand where a person will use tourism infrastructure, or is it another purpose, such as filling a gap in New Zealand's workforce)
 - b. whether the visa is generally issued for more than 12 months and
 - c. whether the visa is to enable a person to join their family in New Zealand (eg visas granted to dependent children/partners of holders of other visas).
16. We have considered each temporary entry class visa using the methodology and concluded that applicants for:
- a. **visitor visas** generally pay the IVL
 - i. exemptions have been made in line with Cabinet decisions (eg medical visas are visitor visas, but Cabinet has agreed to exempt applicants)
 - b. **work visas** are generally exempt from the IVL¹
 - i. exemptions are made in line with Cabinet's decision, ie crew (both travel transport and fishing vessels) are exempt
 - ii. where a visa is generally to enable long-term work or a pathway to residency (eg work to residence) and for essential skills (ie those filling a gap in New Zealand's labour force) applicants are exempt
 - iii. applicants for all working holiday scheme visas are charged, as the scheme enables a small amount of work while travelling in New Zealand but the primary purpose is to holiday
 - iv. where a visa only enables short-term work (ie less than 12 months), the applicant is charged
 - c. **student visas** generally pay the IVL
 - i. the majority of student visas are issued to full fee paying students, which includes people attending secondary schools, tertiary education institutions and English language courses. International education is an export sector (like tourism)
 - d. other visa types
 - i. diplomatic and military personnel are not charged, as per Cabinet's decision. Domestic staff for personnel posted to New Zealand are also not charged
 - ii. general limited visas are granted for the purpose of allowing a person that would perhaps not qualify for a more open-ended visa to enter New Zealand for a specific purpose (eg give evidence before a court, or to attend a family wedding). We propose charging these applicants the IVL

¹ Working holiday visas make up a significant proportion of work visa applications, and if included about 50% of applicants are exempt. Not counting the working holiday visa applicants, about 90% are exempt

- iii. dependent children and partners of New Zealand citizens, visa holders and visa applicants are exempt from the IVL. The majority of dependant or partner visa applicants are people who are dependent on or the partner of a worker (and a significant minority are dependent on a student). In addition, INZ systems do not distinguish between dependant visas based on the type of work or student visa held by the primary visa holder. We therefore propose that all dependant visas are exempted
- iv. for the avoidance of doubt, citizens of countries where New Zealand has a bilateral agreement to waive visa fees for certain types of applications (including visitor visas) will be charged the IVL. These countries are Austria, Finland, Greece, Iceland, Israel, Italy, Japan, Mexico, Philippines, Russia, Turkey, and the USA. This does not breach the agreements with these countries as the IVL is a levy not a fee.

17. These exemptions are reflected in INZ's application system and in the draft IVL regulations.

Next steps

- 18. PCO is drafting a single set of regulations to introduce the ETA and the IVL (the combined regulations). We propose Cabinet should consider the Bill and the combined regulations at the same time. We will provide you with two LEG papers to enable this: one for the IVL Bill, and one (joint with the Minister of Immigration) for the combined IVL and ETA regulations. Our intention is for these to be provided to you as a package, however the regulations are more complex and may need additional time. The Bill will still progress to this timetable, even if the regulations are delayed.
- 19. We anticipate the Bill and combined regulations being submitted to Executive Council on 4 June, following passage of the Bill on 30 May. This means the 28-day rule will need to be waived to allow the regulations to be in force by 1 July (4 June is 27 days before 1 July).

Date	Action
15 April	Cabinet considers the passage of IVL legislation as part of the Budget package
1 May	LEG papers provided to Ministers for Ministerial consultation (<i>subject to PCO completing drafting of the combined regulations</i>)
10 May	Ministerial consultation complete
16 May	Lodge LEG papers
21 May	LEG Committee considers Bill and combined regulations
27 May	Cabinet considers Bill and combined regulations
30 May	IVL Bill passage (to be confirmed on 15 April)
4 June	Governor General signs Bill and combined regulations at Executive Council
1 July	Bill comes into force and collection starts