



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Immigration
Title of Cabinet paper	COVID-19: New exception to border restrictions for some people who normally live and work in New Zealand	Date to be published	5 February 2021

List of documents that have been proactively released					
Date	Title	Author			
August 2020	COVID-19: New exception to border restrictions for some people who normally live and work in New Zealand	Office of the Minister of Immigration			
24 August 2020	COVID-19: New Exception to Border Restrictions CAB-20-MIN-0414	Cabinet Office			
12 June 2020	Briefing: COVID-19: Border restrictions – Exceptions for humanitarian and people ordinarily resident	MBIE			

Information redacted

YES / NO (please select)

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Some information has been withheld for the following reasons:

- Privacy of natural persons
- Confidential advice to Government

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BRIEFING

COVID-19: Border restrictions – Exceptions for humanitarian and people ordinarily resident

Date:	12 J	une 2020	Priority:	Me	Medium		
Security classification:	In C	onfidence	Tracking nu	mber: 354	3540 19-20		
Action sought							
		Action sought			Dea	adline	
Hon lain Lees-Galloway Minister of Immigration		Agree to propose to Cabinet a new exception category to the temporary border restrictions for those people currently offshore who are temporary visa holders, but who ordinarily work and live in New Zealand. Note that the humanitarian border exception category already enables consideration of individuals who ordinarily live and work in New Zealand, but are currently stuck outside their country of citizenship or residence.				June 2020	
Hon Poto Williams Associate Ministe Immigration	r of	Copy for information only			N/A	N/A	
Contact for teleph	-	cussion (if required	Telephone		1	1st contac	
Siân Roguski		nager, Immigration	Privacy of natural persons	Privacy of natural persons		✓	
Fiona Stirling	Prir	ncipal Advisor	Privacy of natural persons	Privacy of natural persons			
The following dep	artment	s/agencies have be	en consulted				
Minister's office to	complete	e: Approve	ed	☐ Dec	lined		
		☐ Noted		☐ Nee	ds cha	nge	
		Seen		Ove	rtaken	by Events	
		☐ See Mir	nister's Notes	☐ With	drawn		
Comments							



BRIEFING

COVID-19: Border restrictions – Exceptions for humanitarian and people ordinarily resident

Date:	12 June 2020	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3540 19-20

Purpose

This briefing proposes some options to address an emerging border restriction issue for temporary visa holders who ordinarily work and live in New Zealand, and are currently stuck offshore (either in their own country or outside their country of citizenship/residence).

Executive summary

- 1. There are an estimated 19,000 people with a current work visa, who have previously lived and worked in New Zealand, but who are currently offshore. Many of these people left New Zealand well before the borders closed, and we estimate that potentially up to 10,000 may wish to return to New Zealand (given they have left since 1 December 2019).
- 2. A proportion of this 10,000 who left New Zealand since late last year may have chosen to depart permanently. Others within this group can use current border exception categories to return to New Zealand, for example they are a partner of a working visa holder who is currently residing in New Zealand, or they are an 'essential' worker with skills and expertise, or they could be considered for humanitarian grounds if they are facing exceptional circumstances.
- 3. The current travel and economic conditions are likely to also impact on the numbers who may seek to return. Many of the temporary visa holders may not have jobs to return to for example, a quarter of the essential skills visa holders work in occupations in sectors such as retail and hospitality, that have been more heavily impacted by Covid-19.
- 4. However, there will still be many thousands of people overseas, who ordinarily work and live in New Zealand, who cannot currently return due to the tight border restrictions that will remain in place for the foreseeable future. We recommend that a new exception category be established to support these people.
- 5. The new exception category would focus on ensuring that workers (and their families) who have established lives in New Zealand, and who have had an expectation of building their future in New Zealand, can return. This category is not intended to address potential skill or labour shortages for businesses, which can be considered via the 'essential workers' category.
- 6. While there are many deserving cases for entry with people at risk of losing jobs if they cannot return, or having rent or other property commitments, the current limits on the quarantine capacity require a phased entry approach that starts with narrow criteria and can expand over time as demand eases or capacity increases. This approach both helps manage demand, but also provides greater certainty for potential applicants.

	avoid creating further migrants stranded in New Zealand without income or welfare. We propose a phased approach that eases criteria over time as public health capacity increases:
nfidentia	al advice to Government
R	ecommendations
Th	e Ministry of Business, Innovation and Employment recommends that you:
а	Note that there are approximately 10,000 temporary visa holders who had been living in New Zealand and hold a current work visa but are currently outside New Zealand, and some of this group still have jobs, family and homes in New Zealand, and are unable to return due to the tight border restrictions

Retaining a current job or operating an existing business will be a minimum requirement to

7.

Noted

b **Note** that the humanitarian exception currently enables consideration of some temporary visa holders who work and ordinarily live in New Zealand but are stuck in third countries (ie not their country of citizenship or residence).

Noted

c **Note** that as New Zealand has moved from Covid-19 response to recovery, the context for humanitarian consideration could be recalibrated by INZ towards a less restrictive approach to reflect the changing circumstances for some ordinarily resident temporary visa holders who are stuck offshore, particularly in third countries.

Noted / Discuss

d **Agree** to seek Cabinet approval to develop a new exception category, covering temporary visa holders who are currently offshore, but who have been living in New Zealand for some time, with an expectation of residing here and who still have a job (or business) and have strong connections to New Zealand.

Agree / Disagree

e **Indicate** your preference for the narrowness of the starting criteria for the proposed new exception category for returning temporary visa holders, given the constraints on isolation/quarantine facilities and the prioritisation for those facilities for returning New Zealanders and permanent residents (and their families) and humanitarian arrivals.

Confidential advice to Government	

Siân Roguski **Manager, Immigration Policy** LSE, MBIE

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Hon lain Lees-Galloway **Minister of Immigration**

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Background

- 1. On 19 March 2020, Cabinet agreed to border restrictions preventing entry to New Zealand [CAB-20-MIN-0122 refers]. The following groups are not subject to the border restrictions:
 - a. New Zealand citizens and residence class visa holders
 - b. The partner, legal guardian or any dependent children travelling with a New Zealand citizen or residence class visa holder
 - c. Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand
 - d. People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and some marine crew
 - e. Diplomats accredited to New Zealand and currently resident in New Zealand.
- 2. Cabinet also agreed high level parameters for case-by-case exemptions to COVID-19 border restrictions, which include [CAB-20-MIN-0122 refers]:
 - a. Those who need to travel for humanitarian reasons
 - b. Essential health workers
 - c. Citizens of Samoa and Tonga for essential travel to New Zealand
 - d. Partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand
 - e. Any other essential workers identified by the group of Ministers with Power to Act.
- 3. Cabinet agreed to modify some of the above exceptions to border restrictions on 8 June 2020 as follows:
 - a. Facilitating the entry of partners, dependent children and guardians of New Zealand citizens and residents who are returning to New Zealand, but who are travelling separately (change to 1(b) above).
 - b. Expanding the diplomatic and consular staff to allow those who are taking up new posts in New Zealand as well as other diplomatic personnel authorised by the Minister of Foreign Affairs (change to 1(e) above).
 - c. Refining the criteria to be considered as an essential worker (change to 2(e) above)
 - d. Introducing a new exception category to enable the entry of marine crew and others arriving at the maritime border when there is compelling need to travel to New Zealand (eq yacht refit or repair, discharge of catch, replacement of crew, etc). [NEW]

Temporary visa holders who normally live and work in NZ

- 4. There are a group of migrants living in New Zealand who were outside the country when New Zealand closed its borders. Partners or dependents of temporary visa holders (on student or work visas living in New Zealand), who normally live in New Zealand and hold a visitor, work or student visa themselves, are able to seek an exemption to the border restrictions (ie para 2(d) above).
- 5. The current exception category for partners/dependents of temporary visa holders was to support the reunification of the families who normally live in New Zealand; where the principal visa holder and their normally resident family (partner or dependent children/young persons) may have been separated from each other and couldn't return before New Zealand closed its borders. As at 11 June, 3,832 individuals have submitted an Expression of Interest to be considered for an exception under this family temporary visa holder category 19 percent of these have been approved.

- 6. However, if an individual temporary visa holder who normally lives in New Zealand (either a student or worker) or the entire family group, was offshore when the borders closed, there are no specific grounds to request an exception to the current tight border restrictions just because they were living in New Zealand¹.
- 7. The only border exception categories temporary visa holders could be considered for at present are as an essential worker or for humanitarian reasons. However these are unlikely to apply in the majority of cases as:
 - As an 'essential worker' the worker will need to be considered, broadly, as critical for the delivery of time critical projects or programmes that are of strategic economic importance or where international expertise, technical requirements or a unique talent is critical for success; and
 - b. To be considered under the humanitarian grounds, the person will need to have an exceptional circumstance of a humanitarian nature (see para 15 below for details).
- 8. While not all temporary visa holders will wish (or are able) to return to New Zealand, there are many who still have family, jobs and homes in New Zealand. The bar is high in demonstrating a critical purpose for an exception to border restrictions under the current criteria across all exception categories.

Numbers of work visa holders currently offshore

- 9. We estimate there are likely to be up to 10,000 people holding current work visas who are outside New Zealand, and who could be considered 'ordinarily resident' in New Zealand and that may wish to return to New Zealand². This indicative 10,000 assumes 'ordinarily resident' are people who hold work visas, and who had been in New Zealand for more than 183 days in the last 12 months. As a proxy to identify which of those people offshore may expect to return, we have excluded people who left New Zealand before 30 November 2019.
- 10. The largest group of those 'ordinarily resident' offshore are people with current essential skills visas, with nearly 3,000 people offshore who may have an intent to return (having left since 1 December 2019). There are a number of other work visa holders who may be ordinarily resident in New Zealand including those on post-study work visas, various work visas, investor migrants, and some who are already able to seek an exception (eg partners of those with work visas). (Refer Annex One for further detail breakdown).
- 11. In total, approximately 5,500 people who have a valid Essential Skills visa are offshore (but only about 3,000 of whom are likely to be 'ordinarily resident'). The largest skill category are 'technicians and trades workers' with 1,914 valid visa holders offshore chefs and cooks comprise 28 percent of this skill category. Another significant skill category group are 'managers', with café and retail managers comprising 39 percent of this category. (Refer Figure 1 below.)
- 12. In total, four occupations make up nearly a quarter of the total offshore essential skill work visa holders 1,300 people are chefs and cooks, café or retail managers, retail supervisors, or dairy cattle farm workers.

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If they have a partner, dependents or parent (in the case of dependent child) still in New Zealand, they would be able to seek an exception.

This figure is a snapshot as at 3 June 2020, and only counts those visa holders who have been in New Zealand more than 183 days in the last 12 months, and left New Zealand since 1 December 2019. It does not include any partners or family that may accompany the visa holder. Approximately a quarter of these people have a visa expiring in 2020, but some may be intending and entitled to renew this visa if they remain in employment.

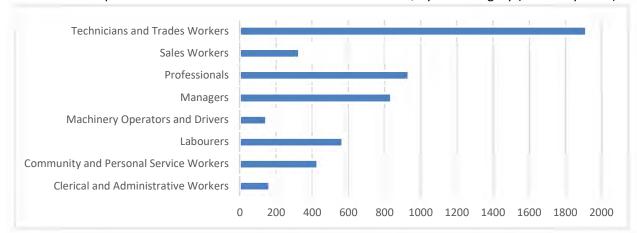


FIGURE 1: People with valid Essential Skills Visas who are offshore, by skill category (as at May 2020)

- 13. Given the changes in the economy, some of these people offshore with essential skills and other work visas may have lost their jobs in New Zealand, and are unlikely to be successful in competing for new jobs in retail or hospitality, given the numbers of migrants onshore and New Zealanders with those skills who are seeking work. We do not have data on actual rates of job loss amongst offshore migrants.
- 14. There are also approximately 1,400 essential skills visa applications submitted from March to May 2020 from people seeking to come to New Zealand who are currently offshore. Some of these may seek to an exception to the border restrictions as an essential worker, but many may not meet the current tight criteria for entry as an 'essential worker'.

Humanitarian reasons for entry are available in 'exceptional circumstances'

- 15. Individuals who seek entry under humanitarian reasons must show 'exceptional circumstances of a humanitarian nature' that make it strongly desirable for the person to return to New Zealand. Relevant factors that immigration officers consider when deciding whether humanitarian reasons justify the grant of a critical purpose visa include:
 - (a) the applicant's connection to New Zealand
 - (b) the applicant's connection to the place they are currently located
 - (c) whether New Zealand is their primary place of residence, and their period of absence from New Zealand
 - (d) whether the applicant has any alternative options
 - (e) the impact of not granting a visa and entry permission to the applicant
 - (f) whether the applicant is likely to require medical treatment and has the support of the Ministry of Health or a District Health Board.

Humanitarian criteria should be retained for people offshore facing exceptional circumstances

- 16. Most temporary visa holders who are currently offshore are unlikely to meet the current criteria for consideration under humanitarian reasons, as many will have a connection to the place they are currently located (ie their home country) and can 'shelter in place'.
- 17. However, there will be a few temporary visa holders who could be considered under the humanitarian criteria, specifically people who are stuck in third countries (ie outside their home country and where they have limited support available to them), and who have jobs and lives in New Zealand (eg humanitarian reasons in para 15 (a), (b) and (c) above).

³ Immigration Instructions, H2.25.10

- 18. The high bar for exceptional circumstance means that only 10 percent of those requesting consideration under humanitarian reasons as at 4 June (3,583 people submitted expressions of interest) have been approved and invited to apply for a visa. Examples of the types of complex humanitarian cases that have been considered by INZ are set out in Annex Two. To date, people who normally live in New Zealand but who are stuck in third countries have tended to be declined when considering their current circumstances or their "alternative option" to return to their country of citizenship.
- 19. As New Zealand has moved from response to recovery from Covid-19, the context for consideration of exceptions under humanitarian grounds can be recalibrated at the margins without changes to instructions. Some of those offshore 'ordinarily resident' visa holders are likely to be able to demonstrate exceptional circumstances that necessitate their return to their homes. For example, those with children attending school as schools have reopened, or because of increasing financial hardship with having to exhaust financial resources to fund accommodation costs in third or home countries as well as meeting the costs of maintaining homes in New Zealand.
- 20. The Ministry recommends retaining the humanitarian exemption as a high bar exemption where there are strong and urgent wellbeing needs for a return to New Zealand. The mere fact of having a job and possessions in New Zealand should not automatically qualify a person without further consideration of their current circumstances and wellbeing, including other support networks where they are located.
- 21. Similarly, being stranded in a country which is not a temporary migrant's "home country" would not automatically qualify a person for an exemption. However, the ability to meet financial costs of accommodation and food in a country where the person has no other support networks should increasingly be a strong consideration for granting an exemption as the duration of their stay increases.
- 22. Keeping this high bar for humanitarian exemptions will support prioritisation of these cases for any quarantine places, after New Zealanders, but likely ahead of essential workers or other 'ordinarily resident' migrants.
- 23. If you consider that the weighting by INZ of the humanitarian exceptions is too restrictive, given the current border settings to support New Zealand's economic and social recovery, we can discuss with you how current decision making could be recalibrated by INZ towards taking a less restrictive approach in considering the humanitarian border exceptions.
- 24. 'Exceptional circumstances' is an aspect with long-standing use across many other immigration decisions where decisions on entry permission and visas are made for urgent humanitarian need and assistance. However, in this case, humanitarian exception relates specifically to the border exemption policy and it would be possible to make instruction changes to shift the threshold for decisions without creating precedent for other uses (eg in deportations) if clearly communicated and other precedent risks are worked through.

Proposed new exception category for temporary visa holders who live and work in New Zealand

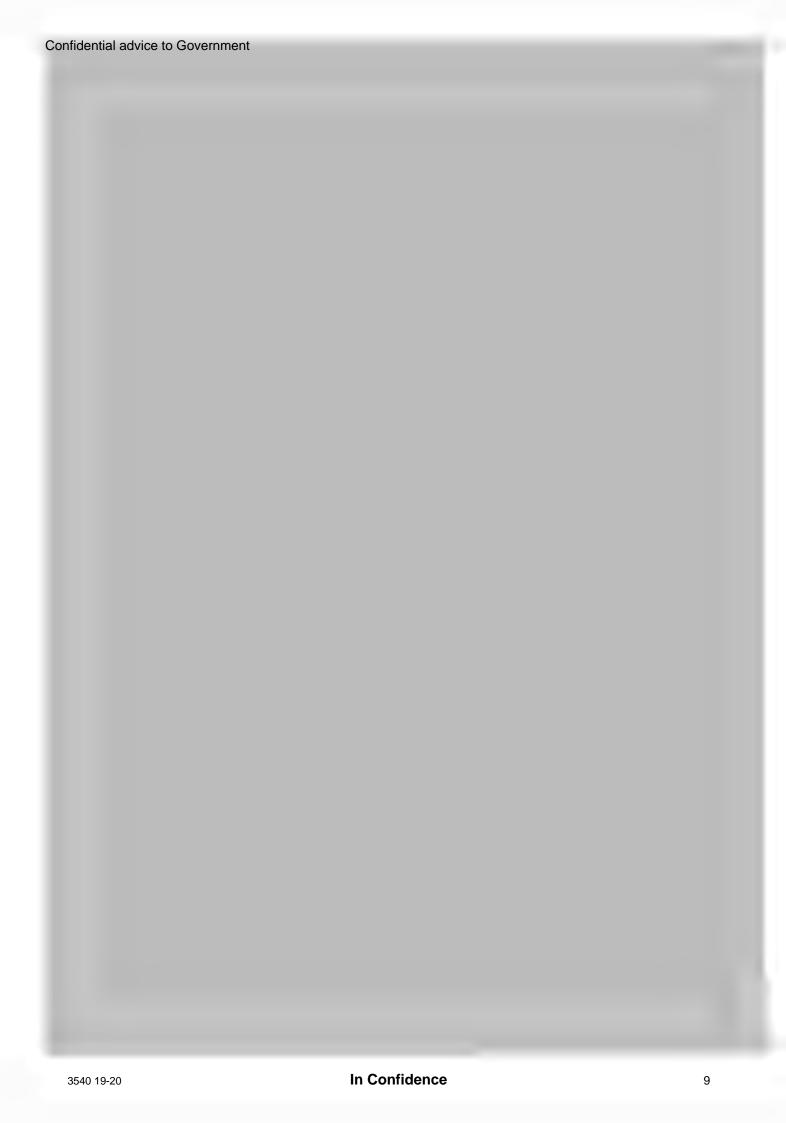
- 25. Given the ongoing hiatus that many offshore temporary work visa holders are in, and the deteriorating work climate both here and overseas, a decision on whether these people can return to New Zealand or not needs to be made relatively soon to end the ongoing uncertainty for these individuals.
- 26. Changes to the humanitarian exception is not a sustainable solution for this cohort of ordinarily resident, temporary work visa holders. Instead, we recommend that this group be

- considered as a **new exception category**, similar to the way that partners and dependents of temporary visa holders have their own exception category.
- 27. This new exception category is not intended to address potential skill or labour shortages for businesses, which is better addressed through the updated 'essential workers' exemption. Instead the exemption will initially target those people who have lived and worked in New Zealand for several years, and have built lives here with the expectation and hope they would be able to stay longer-term in New Zealand.
- 28. People on temporary visas should not have an expectation to permanence as New Zealand residents, however, many of these people have lived and worked and contributed to New Zealand society for many years. While there is no inalienable right for a temporary work visa holder to be in New Zealand, there is an element of fairness that some of those holding temporary work visas be considered for entry back to New Zealand, given their long-standing and ongoing connections.
- 29. The new exception will focus on people who hold a current temporary work visa. Retaining a current job would be a minimum requirement, to avoid a situation where there are further migrants stranded in New Zealand without income or welfare. People on a student visa, working holiday visa, or specific purpose visa would not be able to seek an exemption under this new category (as other options are being considered for students, given the tourist-focussed nature of working holiday visas, and the short-term specific purpose visa holders can seek an exemption as essential workers).
- 30. Those eligible would need to demonstrate an ongoing connection to New Zealand the time previously spent living in New Zealand provides a useful proxy, as well as consideration of factors such as family connections, children enrolled in school or tertiary education, owning a home etc. The time remaining on a visa also provides a further proxy of the expectation that a person had to remain in New Zealand longer-term.
- 31. While there are many deserving cases for entry with people at risk of losing jobs they cannot return to, or having rent to pay or other property commitments, the current limits on the quarantine capacity require a phased entry approach. Currently, managed isolation is prioritised for returning New Zealanders and permanent residents (and their families and partners), followed by humanitarian exceptions, and lastly essential workers and those who might be considered 'ordinarily resident' (both essential workers and the new 'ordinarily resident categories would be expected to meet the costs of managed isolation themselves).

Proposed criteria for ordinarily resident work visa holders would initially be narrow

32. The proposed criteria for the new exception category has been framed so that exemptions can prioritise eligibility, given the need to manage people entering the 14-day, isolation/ quarantine facilities (which are currently facing capacity constraints). A prioritised approach will help manage demand as well as providing greater certainty for potential applicants currently offshore. Over time, as the capacity at government-managed isolation facilities grows, eligibility can be widened to enable more temporary visa holders to return to New Zealand.

Confidential advice to Government



Estimates of numbers likely to seek an exception

- 35. While there are an estimated 10,000 to 11,0000 work visa holders who may be considered 'ordinarily resident', and likely to want to seek to return to New Zealand, the actual numbers of eligible visa holders for the proposed exception category will be lower.
- 36. The estimated numbers in the table above do not count partners or dependants who may be returning with the primary visa holder (although some partners with work rights are included in the 10,000–11,000 estimate). We have also assumed that partners of workers not travelling with the primary visa holder will be able to be considered under the existing border exception category and are not explicated counted in the above totals.
- 37. The estimates of the numbers of visa holders that could be captured by this criteria are illustrative only and are not based on exact details about offshore cohorts. Estimates of time spent in New Zealand as well as skill levels of visa holders are based on proxies from other data, and are highly approximate.
- 38. There also may be some people who left before 1 December 2019 but who maintain a strong connection to, and have a livelihood in New Zealand, who would also be eligible to return (our estimates are based on people leaving after that date, as they are more likely to intend to return).
- 39. The requirement to hold a current job will have a further downward pressure on the numbers of offshore ordinarily residents who will be eligible (particularly as nearly a quarter of essential skill visa holders currently offshore work in roles that are heavily impacted by the economic downturn, such as retail and hospitality).
- 40. The more time passes, the lower the likelihood that a person will be able to return, as most employers are unlikely to hold open a job for extended periods. Given the possible future risk of migrant exploitation or adding to the welfare burden, the criteria for returning to New Zealand should always include the requirement of the person to still have a job.
- 41. For people who have lost their job in New Zealand and were ordinarily resident, there may be an opportunity at a later date to extend this category so that these people could return to wrap-up and settle their affairs. These individuals would only be eligible for a limited visa (ie they would not be able to get another visa while in New Zealand), and they would need to demonstrate sufficient funds to both support themselves while in New Zealand and cover the cost of their managed isolation. Another option is for government to support a service that enables offshore migrants to wrap-up their affairs in New Zealand, while remaining offshore.
- 42. Other factors that will put downward pressure on the numbers of people seeking to return to New Zealand will be a requirement to fund the cost of managed isolation (up to \$7,000 per person) as well as the costs for commercial air travel (and the difficulties for some people to secure flights from their current offshore location).

Prioritisation

- 43. While it may be possible to prioritise requests in this exception category to support consideration of those who have stronger connections to New Zealand or more urgent need to return, prioritisation would unnecessarily complicate an already multi-faceted criteria process. The proposal prioritises access based on connection to New Zealand and if entry to New Zealand is urgently needed, the humanitarian grounds could be considered instead.
- 44. Access to isolation/quarantine facilities is currently on a first-come, first-served basis, and facilities may be under pressure given the possible high demand from offshore visa holders, many who have already been offshore since December (and given the increasing demand for essential workers, partners and family, and returning New Zealanders and resident visa holders to return). A system for booking and pre-paying for access to managed isolation facilities to prioritise access to facilities across different exception categories will be need to

manage demand, which features as part of wider government work on expanding the system for managed isolation/quarantine.

Next steps

- 45. Based on your feedback and preferences we will develop a Cabinet paper to seek approval for a new exception category for temporary work visa holders who ordinarily live and work in New Zealand, with the proposed criteria as set out in Table One.
- 46. The Cabinet Economic Development Committee could consider the proposed exception category on 24 June 2020, though this would require urgent consultation on the proposed criteria. The relevant timetable to achieve this is:

Action	Time
Consultation with government agencies	16-18 June
Ministerial consultation	16-18 June
Cabinet paper lodged	18 June
Cabinet Committee consideration	24 June
Immigration Instructions signed off	8 July

47. Similarly to the essential workers exemption, we recommend decisions are taken by INZ and a fee is charged to cover the costs of processing. Further work on implementation with INZ to determine fees and processing of applications, as well as prioritisation for isolation facilities, needs to be undertaken.

Annex

Annex One: Numbers of current work visa holders who are offshore

Annex Two: Examples of humanitarian cases that have been considered by INZ

Annex One: Current work visas offshore

Work visa type	May be ordinarily resident in NZ*4	Never entered NZ	Left NZ before 30 Nov 2019	Total
Visa Categories most likely to be e	stablished in New Zea	land and have an o	ngoing intent to stay	f
Essential Skills	2,936	324	2,300	5,560
Post Study Work	2,823		1,948	4,771
Work (Crew, Work to residence, Approval in Principal [AIP], Variation of Conditions, Other)	2,461	438	1,226	4,125
Partner of a worker	1,404	549	1,424	3,377
Partnership	304	18	171	493
Partner of temporary visa holder	122	158	111	391
Investment (Entrepreneur, Global Impact Visa)	35	2	68	105
Humanitarian	48	2	12	62
Total	10,133	1,491	7,260	18,884
Visa Categories who are unlikely to	be established in Ne	w Zealand		
Specific Purpose or Event	942	191	360	1,493
Working Holiday	18,373	14,599	4,157	37,129
Total	19,315	14,790	4,517	38,622
Other Visa Categories				
Administrative (Transfer/Replace)	1,152	197	592	1,941
Not specified	35		17	52
Total	1,187	197	609	1,993
Total – All Work Visa Types	30,635	16,478	12,386	59,499

Visa Categories	May be 'ordinarily resident' in NZ	Expiring June- December 2020	Expiring 2021	Expiring 2022
Essential Skills	2,936	1,111	684	850
Post Study Work	2,823	86	917	1,439
Work (Crew, Work to residence, Approval in Principal [AIP], Variation of Conditions, Other)	2,461	1,038	859	481
Partner of a worker	1,404	279	501	503
Partnership	304	36	111	17
Partner of temporary visa holder	122	60	44	15
Investment (Entrepreneur, Global Impact Visa)	35	8	9	8
Humanitarian	48	19	11	15
Total	10,133	2,637 (26%)	3,136 (31%)	3,328 (33%)

⁴ Ordinarily resident is defined as having been lawfully present in New Zealand for more than 183 days in the last 12 months

