



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Immigration
Title of Cabinet paper	Class Exceptions to Border Restrictions: decisions for Cabinet approval	Date to be published	3 May 2021

List of documents that have been proactively released

Date	Title	Author
16 November 2020	Class Exceptions to Border Restrictions: decisions for Cabinet approval	Office of the Minister of Immigration
16 November 2020	CAB-20-MIN-0473	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the following reasons:

- Confidential advice to Government
- Free and frank opinions
- International relations
- Legal professional privilege

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Office of the Minister of Immigration

Chair, Cabinet

Class exceptions to border restrictions considered by Delegated Ministers for Cabinet approval

Proposal

- 1 This paper seeks agreement to decisions made in principle by the Ministerial Group considering class exceptions, on exceptions for Recognised Seasonal Employer (RSE) workers and shearers. It also seeks decisions to a number of sub-issues that Ministers in the designated Ministerial Group would like to put before Cabinet.

Background

- 2 On 21 September Cabinet agreed to establish a Ministerial Group led by the Minister of Immigration to consider proposals for class exceptions to border restrictions, for agreement by the group of Ministers with Power to Act over the general election and government formation period [CAB-20-MIN-0453]. Class exceptions provide a way forward for groups that do not fit within the current border exceptions, but which could have benefit for New Zealand, including economic gain (or avoidance of loss) or cultural or social value.
- 3 On 9 November 2020, Cabinet agreed that decisions made by the Ministerial Group be referred to Cabinet for approval (rather than the group of Ministers with Power to Act over the general election and government formation period) [CAB-20-MIN-0466].
- 4 The Ministerial Group considering class exceptions met for the third time on 11 November 2020 and considered proposals for exceptions for RSE workers, and shearers, and noted an extension to the employment dates for the existing critical health workers exception.
- 5 The proposals for RSE workers and shearers are time-critical and require decisions as soon as possible given the lead-in time required for implementation. This is in order to ensure that RSE workers can potentially arrive in time to meet demand for peak harvests in March/April 2021, and shearers to potentially arrive in time for the main shearing season in the South Island from January (noting that it is already too late for their arrival for the North Island season beginning in November). This sequencing works with maintaining MIQ capacity for New Zealanders alongside a staged approach to MIQ capacity for other arriving groups.
- 6 The paper considered by the Group is attached as Appendix Two to this paper to inform Cabinet's decision-making.

Decisions taken in principle by the Ministerial Group

RSE workers border exception – decisions to confirm

7 Ministers on the Group agreed in principle to approve a critical workforce class exceptions for 2,000 RSE workers to enter from mid-January to mid-March with agreement to a number of conditions on the exception. These include a formal commitment to repatriate workers by Pacific countries wishing to send workers, and commitments required from employers and industry to pay for quarantine, remunerate workers while in quarantine, facilitate workers willing to move between employers to areas of greatest need, and increase efforts to employ New Zealanders. This level balances some support to address workforce pressures and remittance opportunities for Pacific workers, with the need to manage public health risks through limited MIQ capacity and to fully utilise onshore workforces.

Confidential advice to Government

8 The exception will only be available to employers with an Agreement to Recruit (ATR), which already requires employers to demonstrate they have taken all reasonable steps to train and employ New Zealanders before seeking a migrant. MSD is consulted in this process.

9 Ministers directed officials to ensure that these workers are able to enter New Zealand and complete managed isolation before 1 March 2020.

Free and frank opinions

10 Officials note that Australia is in the process of resuming its Pacific labour mobility schemes, and all states and territories have to meet certain requirements in order to participate (including specific health and quarantine management requirements and repatriation of workers currently onshore¹).

Demand for Pacific workers remains very high across Australia, International relations

. This strengthens the case for restarting the RSE scheme in New Zealand to help maintain existing relationships with returning workers.

A number of Pacific Island countries are likely to meet the repatriation criteria

11 The conditions as part of the exception include a formal agreement that any Pacific country wishing to send workers will repatriate RSE workers currently onshore and wishing to return home, already wishing to return home now, and new workers returning home at the end of their contracts.

¹ Seasonal workers entering Australia must undertake 14-days in an 'approved facility', but there are different risk appetites across states and only Queensland has so far approved 'on farm' quarantine for workers from Pacific Island countries that have been determined as having zero COVID-19 cases. The pressure on hotel quarantine remains high and increased volumes of Pacific workers outside of Queensland will be constrained without greater take-up of new quarantine arrangements.

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- 12 Most Pacific countries have confirmed interest and readiness to resuming sending workers to New Zealand. International relations [REDACTED] have demonstrated willingness to repatriate significant cohorts of RSE workers, as well as a commitment to ongoing repatriation, and are therefore are currently in a position to meet New Zealand's conditions of resumption.
- 13 Once a decision is made, a formal invitation will be extended to Pacific RSE sending countries, outlining New Zealand's conditions of resumption for the 2021 season. This is likely to take place via an exchange of letters at the Ministerial level. Formal arrangements will be put in place with countries that agree to conditions, including for the safe and timely repatriation of workers. This will take the form of a commitment to the ongoing repatriation of workers already onshore, as well as the guaranteed repatriation of new workers at the completion of their contracts within a specified time period. Operational processes will support this (e.g. the staggered arrival and departure). MFAT will consider any requests Pacific Island countries (PICs) might have to support repatriation, such as support for pre-departure quarantine and testing, or for MIQ facilities in PICs. International relations [REDACTED]
- 14 Repatriation of RSE workers continues for most countries, with regular scheduled flights to Fiji, Vanuatu, Samoa and Papua New Guinea. While visa changes have enabled many workers to stay on in New Zealand and take up further work opportunities, MFAT understands that there is a significant cohort that wishes to go home immediately while others expect to do so at the end of the season. MFAT continues to work with countries to support repatriation options while managing health priorities, particularly for those yet to see the return of their nationals.
- 15 International relations [REDACTED]

Outstanding decisions for Cabinet

- 16 The Ministerial Group asked that further options be considered by Cabinet as outlined below:
- 16.1 **Option to set the living wage as a minimum remuneration rate** – applying a higher minimum remuneration requirement of the living wage (at \$22.10/hour) to employers that access the border exception would go beyond current RSE instructions requiring employers to pay the market rate to RSE workers. This would help to put upwards pressure on pay and conditions, and would help to ensure RSE workers benefit from their time in New Zealand (including by mitigating the risk that wages will be reduced to cover other extra costs of participation this year). The sector asserts that experienced RSE workers already earn the living wage or higher. There are two options for a higher remuneration threshold:

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- 16.1.1 require employers to pay the living wage to RSE workers under the border exception only
- 16.1.2 require employers to pay the living wage to all employees (including those covered under the border exception, those already onshore, and all New Zealander employees). This option may require altering existing employment agreements with workers already onshore that could create delays in getting workers onshore.
- 16.2 **Whether employers should pay MIQ fees or full costs:** MBIE officials are considering options for how employers of critical workers (including for RSE workers), are charged for the costs of MIQ. Under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020, the prescribed fee is set at \$3,100 and can only be invoiced to individuals (noting if two employees share a room this cost is \$3,100 plus \$950 for the second person). The \$3,100 does not reflect actual costs of MIQ and is subsidised. Actual costs are hard to estimate in advance as they vary greatly between facilities but the weighted average cost across the 32 facilities is \$4,722 per person. The fee for critical workers is being reviewed, and therefore the fee may change over the period of time that RSE workers enter the country creating inequities between employers. I consider it appropriate for Cabinet take this decision now, in order to give industry clarity and certainty about the costs involved in participation. The two main options are:
- 16.2.1 Invoice for the fee amount as stated in the regulations (around \$3,100) but ensure that the employer pays for this cost.
- 16.2.2 Contract with the employer (or industry group) directly for the fee amount as stated in the regulations plus an additional amount to make the sum payable in line with the average full cost. This is currently estimated to be \$4,722 per person.
- 16.3 **Translation and other support services for workers in MIQ** – The Ministerial group queried what targeted and culturally relevant support might be needed for workers in isolation to understand the situation and rules, and provide support. It was recommended that employers pay for any such services. Such support is available to workers onshore through various arrangements, and officials will work with the sector and workers on details of what should be made available during the MIQ period. The conditions include that the sector meet any additional costs of such support.
- Initial advice on conditions for the class exception included a condition that employers will cover extra costs in the event of workers requiring longer stays in MIQ as a result of positive COVID-19 tests. MIQ officials advise that there is no ability in the MIQ Charges Regulations to charge beyond the prescribed fee for extended stays and any

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proposal to charge for extended stay through a contractual mechanism needs to be considered by Ministry of Health officials.

Further information was requested on the following issues

- 17 The Ministerial Group sought further information on some matters, which is provided below.
- 17.1 **Information on monitoring and enforcement for non-compliant employers** - Pre-assessing all conditions before employers recruit RSE workers would likely result in significant delays to implementation, and it would not be feasible to have workers arrive early in the new year in time for the peak of the season. While some conditions will be a precondition for eligibility (such as that the worker be experienced and the Pacific Island country has committed to repatriation), the most practical option within current timeframes for most employer conditions is to monitor compliance through a programme of spot-checks during the 2020/21 season, coupled with assessment of the conditions when the employer' submit subsequent applications. Employers will need to acknowledge that not meeting the conditions will impact their subsequent applications or accreditation, and this is likely to encourage compliance among employers. Any required compliance action will result in employers losing both current RSE workers and their RSE accreditation.
- 17.2 **Information on the strategies that are underway in the sector to engage Māori in jobs that are proposed to be filled by workers from offshore** – The sector workforce plan that industry will need to commit to develop in order to access the border exception will be an opportunity enhance existing strategies to increase uptake of Māori in the horticulture and viticulture industries. MPI and MSD are working with the sector to increase uptake of employment through medium-to-long term strategic initiatives and effective partnerships, for example, through the creation of cadetships. There are also some sector-run, Māori-focused sector initiatives, including (but not limited to):
- 17.2.1 New Zealand Kiwifruit Growers Incorporated has dedicated Māori seat on it, which is held by a current member of the Māori Kiwifruit Growers Inc (MKGI) Executive Committee. They are also working with Whenua Ora to attract young Māori to the kiwifruit industry.
- 17.2.2 Through the HUA initiative, large Hawke's Bay RSE employers have partnered with Ngāti Kahungunu to encourage young Māori into horticulture using the skills and knowledge to train Māori. The HUA initiative aims to fill 2000 Hawke's Bay horticulture jobs with whanau.
- 17.2.3 Apple & Pear corporate growers have invested \$45 million in purpose built accommodation and have worked with local iwi to utilise the property as a stepping stone for individuals, solo

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parents and families that have moved to the Hawke's Bay to transition to full time employment.

Shearer border exception

- 18 The Ministerial Group also agreed in principle to a critical workforce class exception for up to 60 shearers contracted by or through a New Zealand Shearing Contractors Association (NZSCA) approved employer, and with more than two years' shearing experience. NZSCA employers are contractually required to guarantee minimum piece rates and employment conditions, as well as sign the NZSCA Code of Conduct.
- 19 Ministers agreed to the following conditions for the exception:
- 19.1 continued work on a detailed workforce plan addressing the shortage of local shearers; and
- 19.2 evidence of continued commitment to training and upskilling New Zealanders.

Extending the health worker exception

- 20 The Ministerial Group noted that delegated officials were extending the entry by date of the critical health worker exception until 31 March to enable workers to take up employment in the New Year. Health officials are also reviewing the list to confirm it meets critical workforce needs, as part of a broader review undertaken by MBIE officials on the border exceptions regime.

Financial Implications

- 21 There are no direct financial implications to this paper. However, there are indirect costs to the Crown from operating MIQ facilities.

Legislative Implications

- 22 No changes to law or regulations are proposed. The Minister of Immigration will certify changes to immigration instructions in order to implement decisions.

Impact Analysis

- 23 Changes to immigration instructions do not require a Regulatory Impact Statement (RIS).

Population Implications

- 24 There are no direct population implications to this paper.

Human Rights

- 25 The key human right impacted by the border restrictions generally is the right of New Zealand citizens to enter New Zealand (as affirmed in s. 18(2) of the

New Zealand Bill of Rights Act 1990). Legal professional privilege

Consultation

- 26 This paper has been consulted with the Ministry of Foreign Affairs and Trade, the Ministry of Primary Industries, and the Ministry of Social Development.

Communications

- 27 The Minister of Immigration will announce the exceptions for RSE workers and shearers following Cabinet if agreed.

Proactive Release

- 28 This paper will be proactively released following Cabinet consideration.

Recommendations

The Minister for Immigration recommends that Cabinet:

- 1 **note** that the Ministerial Group considering class exceptions has approved in principle critical workforce class exceptions for Cabinet approval, with conditions; for 2,000 Recognised Seasonal Employer (RSE) workers and up to 60 shearers;
- 2 **note** that the Ministerial Group noted the extension of the employment period covered by the critical health worker border exception until 31 March 2021;

Confirming decisions taken by the Ministerial Group

- 3 **agree** to approve a critical workforce class exception for 2,000 Recognised Seasonal Employer (RSE) workers with the following conditions:
 - 3.1 RSE workers will only be allowed to enter from Pacific Island countries that have committed to and have a plan agreed with New Zealand to:
 - 3.1.1 repatriate currently stranded RSE workers who wish to return home; and
 - 3.1.2 repatriate all further workers at the end of their contract
 - 3.2 Only experienced RSE workers (that, is, people who have worked in New Zealand for at least one season as an RSE worker) can enter through this exception, to realise the benefits of an experienced and skilled workforce;
 - 3.3 Workers will be deployed to and moved around regions and employers where there are the most critical workforce needs to meet harvest

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requirements that have not been able to be filled despite industry efforts to attract and utilise the onshore workforce;

- 3.4 Only employers who make the following commitments for the upcoming season will be able to access offshore workers through the border exception:
 - 3.4.1 ensure all RSE workers (currently onshore and those arriving through the exception) will be fully employed until they are repatriated;
 - 3.4.2 make arrangements to share their RSE workers with another RSE employer growing a different crop or in a different region;
 - 3.4.3 cover the cost of managed isolation and quarantine in Government facilities and will not charge this cost to RSE workers, either directly or indirectly;
 - 3.4.4 pay workers for 30 hours per week while they are in MIQ;
 - 3.4.5 not to deduct RSE workers' wages for flights between Pacific countries and New Zealand more than they would in a 'normal' year, or what has already been approved by the Labour Inspectorate as actual, reasonable and verifiable;
 - 3.4.6 not to increase deductions for RSE workers for living costs (e.g. accommodation, transport) beyond last season's deductions or what has already been approved by the Labour Inspectorate as actual, reasonable and verifiable;
- 3.5 Employers who are found not to meet these commitments and/or trigger compliance action will lose access to current workers (who will be supported to other employment arrangements) and their RSE accreditation;
- 3.6 The industry formally commits to produce and report back on, time-lined and action-focused plans to:
 - 3.6.1 Ensure RSE workers (currently onshore and those arriving through the exception) are kept fully employed for the full length of their contracts;
 - 3.6.2 Address known barriers to attracting domestic labour supply, including through partnerships for and with Maori and iwi, with a commitment to make their best endeavours to:
 - 3.6.2.1 increase the proportion of their New Zealand workforce, including increasing the number of longer-term sustainable roles for New Zealand workers;

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- 3.6.2.2 increase the provision of accommodation and transport for New Zealand workers; and
- 3.6.2.3 increase the provision of training to upskill New Zealand workers for horticulture and viticulture work;

4 **agree** to direct officials to ensure that these workers are able to enter New Zealand and complete managed isolation before 1 March 2020;

Free and frank opinions



Confidential advice to Government



International relations



Agree outstanding decisions - additional RSE border exception choices

8 **note** that the Ministerial Group deferred some specific decisions on the RSE border exception to further discussion at Cabinet;

Remuneration requirement

EITHER

9 **agree** to not apply additional pay criteria beyond the existing instructions under RSE policy, which are that RSE workers are paid the market rate;

OR

10 **agree** to require employers to pay the living wage (currently \$22.10/hour) to RSE workers covered by the border exception;

OR

11 **agree** to require employers to pay the living wage (\$22.10/hour) to all employees (including those covered under the border exception, those already onshore, and all New Zealander employees);

Recovering MIQ costs

12 **direct** officials to work with industry to cover the cost of funding for translation services required to support the MIQ process for workers who do not speak or read English proficiently;

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- 13 **note** that there is broader work underway on charging for critical workers that may result in the MIQ fees changing over the period of time that RSE workers enter New Zealand, but that it is important for industry to give clarity upfront about the costs involved in participation;
- 14 **note** that if Cabinet agrees that RSE employers should cover the cost of providing translation services and a higher level of fee for MIQ services then this would set a precedent for other class exception cohorts;

EITHER

- 15 **agree** to recover MIQ fees as stated in regulations (around \$3,100 per person) but ensure that the employer covers this cost;

OR

- 16 **agree** to recovering a higher level of cost for MIQ services based on the average cost across currently estimated to be \$4,722 per person through a contract with the employer or industry group;
- 17 **note** that the Minister of Immigration will be receiving advice on policy or processing changes to address any delays in granting visas for the onshore migrant workforce to work in the horticulture and viticulture industries;

Shearer border exception

- 18 **agree** to approve a critical workforce class exception to up to 60 shearers contracted by or through a NZSCA approved employer, and with more than two years' shearing experience, with the following conditions:
- 18.1 continued work on a detailed workforce plan addressing the shortage of local shearers; and
 - 18.2 evidence of continued commitment to training and upskilling New Zealanders;
- 19 **agree** to direct officials to ensure that these shearers are able to enter New Zealand and complete managed isolation before 1 March 2021;

Critical health workers

- 20 **note** the extension of the employment period covered by the critical health worker border exception category until 31 March 2021.

Authorised for lodgement

Hon Kris Faafoi

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Minister of Immigration

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Appendix One – Data update on approvals for exceptions

Border exceptions data as at 9 November

Expressions of Interest (EOIs) are a measure of demand across exception categories. The numbers of people approved for a border exception include any partners and dependents as well.

Category	People approved Eoi (able to apply for visa to entry to NZ)	Percentage of category approved
Border Exemptions	8,804	
Family of a New Zealand citizen/resident	8,191	40%
Australian citizen or permanent resident that normally resides in NZ	613	20%
Border Exceptions	13,723	
Humanitarian Reasons	1,556	10%
Family of a temporary visa holder	1,285	13%
Critical health worker	2,725	58%
Replacement cargo ship crew	992	93%
People who normally live and work in NZ	1,107	83%
Approved class of individuals (PhD & designated post-graduate students)	0	–
Tongan or Samoan national requiring essential travel	32	13%
Critical Workers (includes 983 dependents, 616 class exceptions, approximately 1100 personnel associated with the Antarctic Programme, and nearly 500 people associated with various sporting events)	5,848	67%
Unknown	178	
Grand Total	22,527	

Class of Workers	Approved to apply for a Visa	Maximum
Agricultural mobile plant operators	132	210
Deepwater fishing crew	472	570
Mixed and large animal veterinarians	12	30
Total	616	810

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Other Critical Worker EOIs by sector

Sector	People approved an Eoi (including partners and dependents)
Advisory/Consulting	38
Construction	336
Education	88
Energy	113
Entertainment/Arts	138
Film/Television	276
Finance	43
Government	104
Healthcare	104
ICT/Digital	128
Import/Export	16
Infrastructure	76
Manufacturing	312
Marine	164
Oil & Gas	7
Primary - Agriculture	313
Primary - Fisheries	825
Primary - Food Processing	80
Primary - Forestry	10
Primary - Horticulture	135
Primary - Mining	10
Primary - Veterinarians	47
Research & Development	1,405
Retail	42
Services	245
Sport/Recreation	568
Tourism/Hospitality	28
Transport	89
Unknown	108
Grand Total	5,740

Appendix Two – Paper considered by Ministerial Group