



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Immigration
Title of Cabinet paper	Immigration (Visa, Entry Permission, And Related Matters) Amendment Regulations 2021	Date to be published	5 August 2021

List of documents that have been proactively released		
Date	Title	Author
June 2021	Immigration (Visa, Entry Permission, And Related Matters) Amendment Regulations 2021	Office of the Minister of Immigration
10 June 2021	Immigration (Visa, Entry Permission, And Related Matters) Amendment Regulations 2021 LEG-21-MIN-0090 Minute	Cabinet Office

Information redacted

NO

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In Confidence

Office of the Minister of Immigration

Chair, Cabinet Legislation Committee

IMMIGRATION (VISA, ENTRY PERMISSION, AND RELATED MATTERS) AMENDMENT REGULATIONS 2021

Proposal

- 1 This paper asks Cabinet to make three machinery decisions to amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*, and to approve the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2021* for submission to Executive Council.

Relation to Government priorities

- 2 The proposed immigration regulation changes relate to the Government's response to COVID-19, both with regard to protecting the New Zealand population from COVID-19, and to accelerating the recovery, including through investing in infrastructure and supporting workers.

Executive Summary

- 3 This paper seeks Cabinet's agreement to changes to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (the Visa Regulations). These changes would:
 - 3.1 implement policy previously approved by Cabinet, relating to Immigration New Zealand's (INZ's) Automated Decision Assist project [GOV-20-MIN-0026]. The specific machinery changes would:
 - 3.1.1 enable reconsideration of declined visa applications to be effected online, and
 - 3.1.2 clarify the process for making online visa applications, and the requirements for such applications
 - 3.2 with regard to persons outside New Zealand, extend for a further six months (to 5 February 2022) the current suspension of their ability to apply for most categories of temporary entry class visa, unless exempted or invited. Cabinet first agreed to this suspension in July 2020 [CBC-20-MIN-0069, LEG-20-MIN-0108] and has subsequently agreed to continue it three times [CAB-20-MIN-0448, CBC-20-MIN-0138, and LEG-21-MIN-0034]
 - 3.3 implement decisions made by Cabinet in 2020, to exempt temporary migrant workers who are exploited, and their families, from paying related immigration fees and levies when exploited migrants apply for the new Migrant Exploitation Protection Visa (MEPV) [DEV-20-MIN-0034], and

- 3.4 amend the name of one visa category, from *Special Category for Victims of Domestic Violence* to *Special Category for Victims of Family Violence*, reflecting the terminology change of the Family Violence Act 2018.
- 4 With regard to the proposals at 3.1 and 3.2, Parliamentary Counsel Office (PCO) has advised that, as these changes are minor and technical, my agreement to the changes being made was sufficient for PCO to draft the required Amendment Regulation. The proposal at 3.4 is a minor referencing change.
- 5 I seek a waiver of the 28-day rule for the implementation from 1 July 2021 of the exemption of immigration charges on the small number of exploited workers, and their families. This will enable that exemption to come into effect at the same time as the programme aimed at identifying and supporting exploited migrant workers, and confers only benefits. As the terminology update is in the same clause, for ease of implementation I also seek a waiver of the 28-day rule for the change of wording which will substitute *Family* for *Domestic*. That change is minor and confers only benefits.

INZ is enhancing its visa application processing platform

- 6 In July 2020, Cabinet considered and approved a business case for investment in Automated Decision Assist (ADA) capability for INZ [GOV-20-MIN-0026]. The business case was developed to enable INZ to upgrade aging systems and efficiently deliver, among other things, agreed reforms to Employer Assisted Work Visa Policy. [GOV-19-MIN-0064, CAB-19-MIN-0439].
- 7 ADA will deliver, among other things:
- 7.1 a new technology platform which will allow the more efficient collection and processing of visa applications (including the capacity for automated approval of certain low risk applications), and
- 7.2 the ability for customers to self-serve and receive visa status updates automatically.
- 8 The combined technology upgrade and visa reform projects are now being developed together under the title Advanced Digital Employer-led Processing and Targeting (ADEPT). The first stage of the ADEPT roll out is scheduled for August 2021. Two technical changes to the main Visa Regulations have been identified as necessary to support the movement of visa applications onto the ADEPT platform. They are set out below.

Regulation 14 - Applications for reconsideration of decision to decline further temporary visa

- 9 Some foreign nationals who are onshore and who have applied for a temporary entry class visa (a visitor, work or student visa), and who have been declined can, under s.185 of the *Immigration Act 2009*, apply to have that decision reconsidered. Regulation 14 of the Visa Regulations sets out the requirements for making an application for reconsideration of a decision to decline a further temporary visa. At present the application process is paper-based, and the regulation specifies, among other things, that the applicant must provide their passport or certificate of identity and must sign the application.
- 10 The ADEPT delivery plan envisages that this process will be brought online, and in particular that applications processed in ADEPT and declined will have to be

reconsidered online, where a reconsideration is sought. This will have a number of benefits for applicants, including that:

- they will not have to provide a passport or certificate of identity, or a signature
- payment of the associated fee will be more secure
- applicants who are not eligible for reconsideration will not be given the option to apply for reconsideration, reducing confusion and disappointment.

11 Timeliness of decision making will also be improved, including through the abolition of postal delays and the automation of business processes (such as the link to the original application).

Regulations 23A and 23AA – Applications that may or must be made online

12 The Visa Regulations have evolved as INZ's online capacity has grown. Regulation 23A (introduced in 2014) enables specified application types to be made online if electronic forms are made available, but allows for those applications to also be made on paper. Regulation 23AA (introduced in 2015) enables the Chief Executive to require certain applications to only be made online. The two regulations vary slightly in their prescribed requirements for applications, reflecting differences between existing online systems.

13 I consider that these regulations should be merged. Where prescribed requirements differ, the amended regulation will (where applicable) specify the fuller requirements. This change will also enable the ADEPT system to automatically assess a submitted visa application to determine whether additional information is required, and to request that information in a specified manner. This functionality will remove the need for such requests to be made manually by an Immigration Officer.

14 PCO has advised that, as these changes are of a machinery nature, my agreement to their being made was sufficient for PCO to draft the required amendments. Cabinet's approval of the Amendment Regulations will bring them into effect.

Applications for most offshore temporary entry visas have been suspended since last August

15 The *Immigration (COVID-19 Response) Amendment Act 2020* established the power, through regulations, to suspend the ability of certain people offshore to apply for a temporary entry class visa for up to three months at a time. Persons offshore who fall within the scope of the suspension can however apply for a visa once they have expressed interest in being invited to apply for a temporary entry class visa on the basis of having a critical purpose to travel to New Zealand (through the border exception process).

16 Cabinet first agreed to this suspension in July 2020 [CBC-20-MIN-0069, LEG-20-MIN-0108] and has subsequently agreed three times to continue it [CAB-20-MIN-0448, CBC-20-MIN-0138, and LEG-21-MIN-0034]. The current suspension will expire on 6 August 2021.

17 Parliament has recently passed the *Immigration (COVID-19 Response) Amendment Act 2021*, which maintains the power to suspend the ability to make

most offshore temporary entry class visa applications, and which extends the maximum suspension period to six months.

The proposed amendment continues the existing settings, except for the duration of the suspension

- 18 The current regulations establish that offshore applications for all temporary entry class visa categories are suspended, apart from:
 - 18.1 applications from persons in a Quarantine Free Travel (QFT) zone who intend to travel to New Zealand directly from that zone
 - 18.2 persons who have been invited to apply for a visa by INZ through the border exception process, and
 - 18.3 applications for the following visa types:
 - 18.3.1 visas for partners and dependent children of a New Zealand citizen or resident, where the visa is based on that relationship
 - 18.3.2 Antarctic Visitor and Work Visas
 - 18.3.3 visas for diplomatic and consular personnel, and recognised family members, and
 - 18.3.4 Recognised Seasonal Employer Limited Visas.
- 19 The *Immigration Act 2009* requires that, in recommending such regulations, I must be satisfied that they are reasonably necessary to manage the effects, or deal with the consequences of:
 - 19.1 the outbreak of COVID-19
 - 19.2 measures taken under the Immigration Act or any other enactment to respond to the outbreak of COVID-19 or its effects, or
 - 19.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- 20 I consider that extending the current suspension will continue to complement the border restrictions currently in place, and to communicate to persons offshore that, unless they are members of an exempted class of people or have special circumstances which qualify for a border exception, they are unable to travel to New Zealand until border restrictions are eased.
- 21 Taking all of this into account, and noting that the current suspension has not generally been controversial, I therefore recommend extending the current regulations for a further six months, to expire on 5 February 2022. The extension of the current suspension will continue to manage the flow of incoming visa applications, and enable INZ to continue to focus on the efficient processing of visas for those people who are not subject to COVID-19 border restrictions or have been granted visas under the exceptions process which allow them to travel to New Zealand.
- 22 Cabinet previously agreed [CBC-20-MIN-0069] that Ministers with Power to Act (at that point the Minister of Immigration, the Minister of Foreign Affairs, the Minister of Housing and the Minister of Health) are authorised to revoke the regulations, in whole or in part, upon my recommendation. I consider that the Minister for

COVID-19 Response should now replace the Minister of Housing within that group.

- 23 This authorisation means that, if changing circumstances warranted it, the suspension could be lifted in full or in part before the end of the six month period. As noted at paragraph 18.2 above, people (including groups of people) who are invited to apply for a visa are not subject to this suspension.
- 24 I also request Cabinet's approval of the Amendment Regulations which will bring the extension into effect. I note that, should it appear that that suspension should be further extended beyond February 2022, I will return to Cabinet to seek agreement before Christmas.

Cabinet has agreed to waive immigration fee and levy charges for victims of exploitation and their families

- 25 In March 2020, Cabinet agreed to a set of decisions intended to reduce the exploitation of temporary migrant workers [DEV-20-MIN-0034]. Cabinet agreed to establish a new visa category for temporary migrant workers who are exploited. It is expected that the new visa (since named the Migrant Exploitation Protection Visa or MEPV) will be implemented on 1 July 2021, at the same time as new migrant exploitation reporting and triage functions come into effect. The MEPV will offer open work conditions and can be granted for up to six months. Partners and children already in New Zealand will be eligible for visas of the same duration.
- 26 The Visa Regulations establish that fees to recover processing costs, and the two levies (the immigration levy and the international visitor (conservation and tourism) levy), are charged to visa applicants unless specifically exempted. Existing exemptions include those for specified humanitarian situations (such as applicants under the Special Category for Victims of People Trafficking visa categories). Asylum seekers and recognised refugees and protected persons are similarly not charged for matters relating to their claims and subsequent visas.
- 27 Cabinet has already agreed that the MEPV visa applications and associated family visa applications will be exempt from immigration fees and levies. The fee and levy waiver will remove a financial barrier for migrant workers to report and leave exploitative situations. In many cases the exploitation may have caused the migrant financial loss, and exploited workers are likely to have limited funds.
- 28 I therefore request Cabinet's approval of the Amendment Regulations which will waive the charges, and also seek a waiver of the 28-day rule, to enable the MEPV to be implemented from 1 July 2021. I note that this regulation change will confer only benefits to the affected migrant workers and their families.

I seek agreement to updating the name of a visa category to reflect legislative change

- 29 The government approved immigration policy settings for migrant victims of domestic violence (where the New Zealand partner is a citizen or resident) in 2002. Parliament has subsequently passed the *Family Violence Act 2018*, and the name of the relevant visa category has been updated in immigration instructions from *Special Category for Victims of Domestic Violence* to *Special Category for Victims of Family Violence*. It is appropriate to also update the name in the Visa Regulations.

- 30 As the reference is in the same clause as the MEPV, in addition to requesting Cabinet's approval of the Amendment Regulations which will make the change, I also seek a waiver of the 28-day rule, to reduce unnecessary work associated with amending the same clause twice. I note that this minor change will confer only benefits.

Financial implications

- 31 The proposals in this paper have no new financial implications.
- 32 Cabinet has approved the business cases for the agreed reforms to Employer Assisted Work Visa Policy [GOV-19-MIN-0064, CAB-19-MIN-0439] and the implementation of the ADA [GOV-20-MIN-0026].
- 33 The continuation of the visa application suspension means that INZ will not collect fee revenue from the offshore temporary entry class visa applications that might otherwise be made while the proposed regulations are in effect. However, I do not consider it appropriate for INZ to accept applications and fees when there is no or a very low likelihood that applicants will be able to travel to New Zealand. In addition, it is likely that a proportion of applicants would request refunds, which carry a relatively high administrative cost.
- 34 I note that Crown funding has been allocated (from the COVID-19 Response and Recovery Fund in Budget 2020) to cover the expected costs of processing the MEPV and associated family visa applications. There is a risk that the number of reports of exploitation and subsequent grants of visas may be larger than originally forecast, which would lead to a shortfall in funding. Officials will monitor the number of applications that are submitted and report to me as appropriate.

Legislative Implications

- 35 I propose that the policy recommendations in this paper are given effect by amending the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010*.

Impact Analysis

Regulatory Impact Statement

- 36 Treasury's Regulatory Impact Analysis Team has determined that the proposals relating to changes in the visa and employer accreditation and processing systems, including the implementation of ADEPT, are exempt from the requirement to provide a Regulatory Impact Statement (RIS), on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 37 A Cost-Recovery Impact Statement is currently under development to accompany further regulatory changes to establish new work visa fees. It is anticipated that Cabinet will consider the policy paper later in June 2021.
- 38 The suspension of the ability to apply offshore for most temporary entry class visas is exempt from providing a RIS, as it is intended to alleviate the short term impacts of the declared emergency event of the COVID-19 outbreak. The proposal is also exempt from the requirement to provide a RIS on the basis that it has minor impacts on individuals, businesses and not-for-profits. At the same time, the extension of the suspension should be included in comprehensive analysis of the

suite of border settings responding to COVID-19 to be developed by Government agencies.

- 39 Treasury's Regulatory Impact Analysis team has determined that the proposal to waive immigration charges on exploited migrants and their family members is exempt from the requirement to provide a RIS, on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 40 The proposals in this paper do not have climate implications.

Population Implications

- 41 The proposals in this paper do not have population implications.

Human Rights

- 42 While the *Immigration Act 2009* recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, immigration policy development seeks to ensure that any changes are necessary and proportionate. The Ministry of Business, Innovation and Employment considers that the proposals in this paper are consistent with the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*.

Timing and 28-day rule

- 43 I seek a waiver of the 28-day rule with regard to the implementation, from 1 July 2021, of the exemption of immigration charges on exploited workers who apply for an MEPV, and their families. This change is minor and confers only benefits to exploited workers and their family members. It will enable the exemption from charging to commence from the date that the Ministry of Business, Innovation and Employment will launch an 0800 number for migrant victims of exploitation, as part of the broader programme of work to address migrant exploitation.
- 44 If it is considered appropriate to continue suspending offshore temporary visa applications after 5 February 2022, and legislative settings allow, I will return to Cabinet in late 2021 to seek further agreement.

Compliance

- 45 The Amendment Regulations comply with each of the following:
- 45.1 the principles of the *Treaty of Waitangi*
 - 45.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*
 - 45.3 relevant international standards and obligations, and
 - 45.4 the Legislation Design Advisory Committee's *Guidelines on Process and Content of Legislation*.
- 46 Specifically, I note that the proposed continuation of the suspension of offshore temporary visa applications does not unlawfully discriminate on the grounds of nationality, as it is based on where individuals are, rather than on their citizenship.

Regulations Review Committee

- 47 I do not anticipate that there will be any grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 315.

Certification by Parliamentary Counsel

- 48 The draft Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Consultation

- 49 This paper was prepared by the Ministry of Business, Innovation and Employment. The Ministries of Education and Foreign Affairs and Trade, Education New Zealand, the Treasury and the Department of Prime Minister and Cabinet have been consulted on the proposal to extend the suspension of certain temporary entry class visa applications, and their views taken into account during the development of this paper.
- 50 The policy proposals which led to the establishment of the MEPV were consulted with the Treasury, the Department of the Prime Minister and Cabinet, Inland Revenue, the Ministries of Foreign Affairs and Trade, Education, Justice, Social Development and Primary Industries, the New Zealand Police, WorkSafe New Zealand, the New Zealand Qualifications Authority, Education New Zealand, the Ministries for Women and Pacific People, and the Office of Ethnic Communities.

Communications

- 51 Communications planning and delivery will be undertaken as appropriate by officials, in consultation with Ministers' offices. The only proposal in this paper which warrants specific messaging is the further extension of the ability to apply for offshore temporary entry class visas. Communications will be appropriately positioned within wider messaging designed to ensure that international markets (including international education markets) understand that New Zealand will welcome travellers once the threat of importing COVID-19 can be appropriately managed.
- 52 With regard to the other two projects, I note that the ADEPT programme has a comprehensive communications strategy aimed at ensuring that stakeholders (including employers, the immigration advice industry, and intending migrants) are aware of upcoming changes and can easily understand and access pertinent information. Communications around the programme of work to address migrant exploitation, which is also led by the Minister of Workplace Relations and Safety, are focused on providing information to exploited workers, their advocates and communities, and the wider public.

Proactive release

- 53 I propose to release this paper proactively. Any redactions made will be consistent with the *Official Information Act 1982*.

Recommendations

- 54 I recommend that Cabinet:

Online visa application processing platform (ADEPT)

1 **note** that:

- 1.1 In 2019, Cabinet agreed to reform Employer Assisted Work Visa Policy and approved the associated business case [GOV-19-MIN-0064, CAB-19-MIN-0439];
- 1.2 In July 2020, Cabinet approved a business case for the implementation of Automated Decision Assist (ADA) capability for Immigration New Zealand [GOV-20-MIN-0026];

2 **note** that

- 2.1 the combined visa reform and technology upgrade projects have been developed together as the Advanced Digital Employer-led Processing and Targeting (ADEPT);
- 2.2 two technical changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 have been identified as necessary to support the movement of visa applications onto the ADEPT platform;

3 **agree** to two technical changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, to:

- 3.1 enable the reconsideration of declined visa applications to be effected online; and
- 3.2 clarify the process for making visa applications online, and the requirements for such applications;

Continued suspension of offshore temporary entry applications

4 **note** that:

- 4.1 in July 2020, the Cabinet Business Committee agreed to suspend, for the maximum period of three months, the ability of people offshore to apply for, or express interest in applying for, most temporary entry class visa types [CBC-20-MIN-0069 and LEG-20-MIN-0108];
- 4.2 the Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020, which came into effect on 10 August 2020, gave effect to that decision;

5 **note** that:

- 5.1 Cabinet has agreed three times to continue that suspension, in October 2020 [CAB-20-MIN-0448], December 2020 [CBC-20-MIN-0138], and April 2021 [LEG-21-MIN-0034];
- 5.2 the Immigration (COVID-19 Response) Amendment Act 2021 has now extended the maximum allowable suspension period to six months;
- 5.3 unless the suspension is extended through a further regulation change before 6 August 2021 the suspension will end, and the suspension regulation will be repealed;

6 **note** that the Minister of Immigration considers that

- 6.1 the current suspension of certain applications should be continued beyond the August expiry date; and

- 6.2 this continues to be reasonably necessary to manage the effects of, or deal with the consequences of, the outbreak of COVID-19, and to manage the impacts of the measures that have been taken to manage COVID-19;
- 7 **agree** to extend the current suspension of applications for most offshore temporary visas for a further six months, to 5 February 2022;
- 8 **note** that Ministers with Power to Act continue to be authorised to revoke the regulations, in whole or in part, should the Minister of Immigration recommend that:
- 8.1 suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa is no longer required; or
- 8.2 applications for certain temporary entry class visas should be reopened before the end of the suspension period; [CBC-20-MIN-0069]
- 9 **agree** that Ministers with Power to Act comprise the Minister of Immigration, the Minister of Foreign Affairs, the Minister for COVID-19 Response and the Minister of Health;

Waiver of immigration fee and levy charges for victims of exploitation and their families

- 10 **note** that, in March 2020, in the context of decisions intended to reduce the exploitation of temporary migrant workers, Cabinet agreed to:
- 10.1 establish a new visa category for temporary migrant workers who are exploited (since named the Migrant Exploitation Protection Visa or MEPV), with a maximum six months' duration;
- 10.2 enable partners and dependent children of exploited migrant workers who are onshore to be granted temporary entry class visas in line with the MEPV duration;
- 10.3 waive immigration fees and levies that would otherwise be chargeable for the visas granted in line with 10.1 and 10.2 above [DEV-20-MIN-0034];
- 11 **note** that the MEPV will be implemented on 1 July 2021, at the same time that changes associated with the programme of work to address migrant exploitation come into effect;

Update name of special visa category for victims of family violence

- 12 **note** that, following the passing of the Family Violence Act 2018, the name of the previous Special Category for Victims of Domestic Violence has been updated to Special Category for Victims of Family Violence in immigration instructions, but the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 still refer to the Victims of Domestic Violence immigration instructions ;
- 13 **agree** to amend the wording in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 from Special Category for Victims of Domestic Violence to Special Category for Victims of Family Violence;

Regulation decisions

- 14 **approve** the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2021, which give effect to the decisions made in paragraphs 3, 7 and 13, and referenced in paragraph 10.3 above;

- 15 **authorise** the Minister of Immigration to make decisions on any minor or technical matters that may arise during the drafting process;
- 16 **authorise** the submission to the Executive Council of the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2021;
- 17 **note** that a waiver of the 28-day rule is sought for the waiver of charges for immigration fee and levy charges for migrant worker victims of exploitation and their families, in order that it can come into effect from 1 July 2021 at the point that the 0800 number to report migrant exploitation is launched, and on the grounds that the changes are of a machinery nature and confer only benefits on temporary migrant workers who are exploited and their families;
- 18 **note** that the change to terminology from Special Category for Victims of Domestic Violence to Special Category for Victims of Family Violence is in the same clause as the reference to the new MEPV, and that it is appropriate from an implementation perspective to make that change, which is minor and confers only benefits, at the same time;
- 19 **agree** to waive the 28-day rule for the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2021 so that the new MEPV and the reference to the Special Category for Victims of Family Violence can come into effect from 1 July 2021; and
- 20 **note** that, if it is considered appropriate to continue suspending offshore temporary visa applications after 5 February 2022, the Minister of Immigration will return to Cabinet to seek further agreement before Christmas.

Authorised for lodgement

Hon Kris Faafoi
Minister of Immigration