



BRIEFING

One-off residence pathway – further policy and design decisions

Date:	19 September 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2122-1051

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Minister of Immigration	Agree recommended additional residence eligibility and conditions options to be included in Cabinet report back Discuss preferences with officials on 20 September	21 September 2021
Hon Phil Twyford Associate Minister of Immigration	Copy for your information	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Andrew Craig	Manager, Immigration (Skills and Residence) Policy	04 897 5275	s 9(2)(a)	✓
Steven Sue	Principal Advisor, Immigration (Skills and Residence) policy	04 831 9658		

The following departments/agencies have been consulted

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 Withdrawn |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



BRIEFING

One-off residence pathway – further policy and design decisions

Date:	19 September 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2122-1051

Purpose

To seek your agreement to further policy and design elements of the one-off residence pathway to be included in your report back to Cabinet [CAB-21-MIN-0359 refers]. On some matters confirmation of the policy intent will help focus further detailed design on the most appropriate mechanism to achieve the objective.

Recommended action

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

- a **Note** that on 6 September 2021, Cabinet:
- i. agreed to introduce a one-off residence pathway for temporary migrant workers in New Zealand who meet the required criteria
 - ii. invited the Minister of Immigration to report back to Cabinet in October 2021 as necessary in relation to any outstanding detailed design elements of the one-off residence pathway, including fees and implementation, and on whether to add or amend conditions for the residence visa or subsequent permanent residence eligibility for this group[CAB-21-MIN-0359 refers].

Noted

Fees and levies

- b **Agree** that fees for the one-off residence pathway will be set at \$1,330, based on cost recovery, and the levy will be set at \$830, which is commensurate with all other skilled/business residence categories

Agree / Disagree

Managing demand for MIQ spaces and maintaining commitment to New Zealand

- c **Agree** that the one-off residence pathway:
- Either
- i. Requires the applicant to have been onshore for 90 percent of the 2 years prior to their subsequent Permanent Residence Visa application AND also make this a requirement for **all** other permanent residence applications from 1 December 2021 (recommended)
- Agree / Disagree*
- OR
- ii. Does not include any additional travel restrictions (Second preference)
- Agree / Disagree*
- OR

- iii. For a period of 12 months the visa holder is limited to travel that does not require the use of MIQ when returning to New Zealand and travel under an existing border exception (eg for a purpose of national significance)

Agree / Disagree

Eligibility of older dependent children

- d **Note** that dependent children up to the age of 24 can be included in a residence application

Noted

- e **Agree** that dependent children that were included in any still unprocessed Expressions of Interest, or skilled residence applications before the date of announcement who have subsequently aged over 24 will be eligible for the COVID residence visa if their parent/guardian is successful

Agree / Disagree

- f **Agree** that this eligibility will not be extended to former dependents who, apart from their age, are no longer dependents because they have become financially independent, are now partnered or have children of their own and that this group would have to apply in their own right through the one-off pathway

Agree / Disagree

- g **Note** that officials are still finalising the best mechanism to allow dependents over 24 to be granted residence under this category, and this may involve amending the eligibility requirements to include them in their own right, changes to dependent children regulations, or operationalising through discretion on an individual basis

Noted

- h **Agree** that any person included on the principal applicant's application for the new residence offer as a dependent child who is 17 years old or older will be offered an interim work visa for part time hours without impacting their dependent child status on the residence application.

Agree / Disagree

Andrew Craig
Manager
Immigration Policy (Skills and Residence)
Labour, Science and Enterprise
...../...../.....

Hon Kris Faafoi
Minister of Immigration
...../...../.....

Background

1. On 6 September 2021, Cabinet agreed to introduce a one-off residence pathway for temporary migrant workers in New Zealand who meet the required criteria [CAB-21-MIN-0359 refers]. Cabinet invited the Minister of Immigration to report back to Cabinet in October 2021 as necessary in relation to any outstanding detailed design elements of the one-off residence pathway, including fees and implementation, and on whether to add or amend conditions for the residence visa or subsequent permanent residence eligibility for this group.
2. This briefing seeks your agreement on the key elements for inclusion in the Cabinet report back on:
 - a. Fees and levies
 - b. Managing demand for MIQ spaces
 - c. Additional requirements for this group when they apply for a Permanent Residence Visa (PRV)
 - d. Provisions to allow dependents over 24 years old to be considered for one-off residence if they are part of an existing skilled residence application or SMC EOI
 - e. Provisions for dependents over 17 years old to have open work rights while the one-off residence application is being processed.
3. The Cabinet report back will also include relevant implementation details you have already agreed [MBIE briefing 2122-0982 refers].

Fees and levies

4. Immigration fees and levies are set out in the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010 (the Regulations). Although refunds or exemptions from fees can be made by Special Direction in individual cases, usually refunds and exemptions for classes of people need also need to be set out in the Regulations¹.
5. The implementation report back to Cabinet will ask for agreement to set the fee, levy and refund regime for the new policy. If agreed to, this will be followed up by a further paper to the Cabinet Legislation Committee to agree the amendments to the Regulations.

Fees

6. The proposed fee for this residence category will be \$1,330, based on full cost recovery. This fee is constant regardless of whether any partners or dependents are included in the application. This is higher than the estimated \$1,000 provided to Cabinet previously, and reflects a more detailed calculation of the processing needs (based on Cabinet's chosen eligibility criteria for this new visa) and associated costs. It also includes GST, which the previous estimate did not.
7. The proposed fee has been calculated to cover the direct and indirect costs of processing the application, in line with section 393 of the Immigration Act 2009. It includes:
 - a. the cost of INZ staffing (Immigration Officers, support staff and managers),

¹ Refunds for applications that are lapsed by immigration instructions are provided for by the Immigration Act 2009 and therefore do not need to be set out in the Regulations.

- b. a proportion of INZ and MBIE overheads²,
 - c. a contribution toward deficit recovery (discussed further in paragraph 8), and
8. The INZ memorandum account is currently carrying a \$56 million deficit, which needs to be recovered from fee payers as Cabinet has not agreed to write this amount off. We have incorporated some recovery into the fee for the one-off residence pathway which will contribute an estimated \$7 million towards the deficit recovery. Given that one of the major sources of the deficit is under-recovery of work visa fees, and this group of applicants are likely to have benefitted from this under-recovery in the past, it is reasonable to ensure that the fee they are paying includes a portion towards deficit recovery.
9. s 9(2)(f)(iv)

Levy

10. The immigration levy covers costs relating to border processing, compliance, minimising migrant exploitation and people trafficking, settlement and integration of refugees and other migrants and marketing/attraction. These are services that are not appropriate to charge on an individual cost recovery basis like fees, but are charged to different cohorts of migrants because as a group, they generate the need for or benefit from the services (eg some visa holders will not abide by their visa conditions and will generate compliance costs).
11. The proposed levy is \$830, which is commensurate with all other skilled/business residence categories. This cohort makes the same use of levy-funded services as Skilled Migrant Category and Residence from Work applicants, therefore using the same levy figure for them is recommended.

Comparison of proposed fee and levy with other visas

12. The proposed fee and levy is proportionate to other residence fees. Like other residence visa fees, it is significantly higher than a work visa fee, but does include family members, whereas family members of work visa holders have to pay for visas in their own right. A comparison of fees and levies under different residence pathways is set out in the table below.

Table One: Comparison of fee and levy amounts for different visas

Visa category	NZ based fee	Levy	Fee and levy total
One-off residence pathway	1,330	830	2,160
Skilled Migrant Category	1,880	830	2,710
Residence from Work Category	970	830	1,800

Fees and levies for people who have previously submitted an SMC or RFW application

13. You have indicated that people who have previously submitted an SMC or RFW application should not have to pay an additional upfront fee if they choose to apply through the one-off pathway. We are developing an operational approach to implement this and how this can be provided for in regulations. We will provide you with further advice on these details shortly.

² Based on the proportion of INZ's total forecasted applications over the expected processing period for these residence applications. The total number of applications forecast has been adjusted to reflect the impact of this policy i.e. that fewer people will need to apply for work visas (and their families will no longer need partnership or student visas).

Managing demand for MIQ spaces and retaining people in New Zealand

14. As signalled in the 6 September Cabinet paper, there is likely to be ongoing pressure on the MIQ system as the one-off residence visas begin to be granted in December 2021 and early 2022. While the plan is for alternative border arrangements to start to be available to some people entering New Zealand from 2022, it is unclear at this stage when this will commence and who it will cover.

15. Most onshore temporary migrants cannot currently re-enter New Zealand if they leave. Many are therefore likely to want to leave and return if they are granted residence, to reconnect with their families and friends in the home countries. Offshore partners and dependents granted residence as part of the application will also be eligible to travel to New Zealand. Together this may add to demand for MIQ spaces alongside New Zealanders and critical workers coming into New Zealand. s 9(2)(f)(iv)

16. MIQ officials are less concerned about the MIQ impacts from this group noting that *“although MIQ faces very significant demand pressures at this time – pressures that are currently expected to continue until at least early 2022 – the anticipated processing timeframes for this group means that a large majority will not receive their residence visa until mid to late 2022. It is difficult to forecast likely MIQ demand and supply pressures beyond that point, in light of both the changing challenges presented by COVID-19 and significant changes to how people enter New Zealand being developed as part of the Reconnecting New Zealand strategy. While the size of the potential group of travellers – 165,000 onshore temporary migrants - appears significant, this cohort would amount to a proportionally small (~3%) addition to the approximately 5 million New Zealand citizens and residents onshore who already have the right to travel.* s 9(2)(f)(iv)

17. s 9(2)(f)(iv)

18. As signalled in the Cabinet paper officials have considered options for various travel deterrents or restrictions for the large group of new residents. Table Two outlines three options to address the issue of MIQ demand.

s 9(2)(g)(i)

severe (such as removing the person's visa and deportation). It would be costly and difficult to detect people travelling in breach of the restrictions. Loose policing of these restrictions would mean that this option would operate largely on a deterrent effect, and there might not be consistent treatment if only the odd person breaching the rules is detected.

24. Bill of Rights issues would have to be worked through to justify this option as it may be perceived as a limit on a person's right to leave New Zealand. This option might also be a significant deterrent for people who already have a skilled migrant application in play.

Requiring for PRV a necessary requirement to have been onshore for the 90 percent of the 2 years prior to the PRV application (recommended)

25. An alternative to placing travel restrictions on new residents is to make it a requirement to have been in the country for a longer period in order to qualify for a PRV. Currently, one way to qualify for a PRV is to have been onshore for at least 50 percent of the 2 years prior to the PRV application. This means that several overseas trips and limited contribution to New Zealand's workforce is consistent with obtaining PRV.
26. This option involves raising the required proportion of the prior years to a PRV application to 90 percent, and for it to be a necessary requirement (currently there are other enabling criteria such as buying a home which is an alternative way of qualifying for a PRV).
27. This option would significantly restrict the amount of travel and demand on MIQ spaces, as a person could only feasibly have one overseas trip for a maximum of around 5 weeks per year (or 10 weeks across two years) in order to continue meeting the 90 percent requirement. While this does not eliminate a person's ability to travel and the accompanying demand for MIQ space, it does allow people who really want to reconnect with overseas family and friends to do so.
28. This option does not carry with it the implementation or Bill of Rights challenges associated with placing direct travel restrictions.
29. An additional benefit of this option is that it would mean that a person would have to remain in New Zealand for a significant portion of their time contributing to the New Zealand economy, which is key objective of the one-off residence pathway.
30. This option appears to be the most feasible approach to the issue of managing MIQ demand, without being overly restrictive.
31. s 9(2)(f)(iv)
[Redacted text]

Additional requirements for this group when they apply for a Permanent Residence Visa (PRV)

32. We do not recommend any further requirements for PRV, apart from the increase in the time spent onshore to 90 percent over each of the 2 years prior to application.
33. We do not propose any additional character or health checks when this group applies for PRV because police and limited health checks will already have occurred as part of the

residence application, and there are already provisions for character and health checks at the PRV stage where there are identified areas of concern.

Provisions affecting dependents

Children of skilled residence applications and SMC EOIs who have “aged out”

34. Because of the suspension of EOI draws and queues for processing SMC applications, there are dependents in the SMC EOI pool and skilled residence queue who are no longer technically dependents due to their age (have turned 25 since the EOI or application was lodged). In your 6 September Cabinet paper, you undertook to look at ways to include them in the parent’s residency application under this new pathway. The rationale for doing so is to allow certain dependents who have aged beyond the ‘dependent’ criteria to be eligible for this visa, so they can remain onshore with their family, despite processing delays.
35. We recommend that eligibility for inclusion in the parent or guardians application should be for those dependents who were under 25 and included in an EOI or a skilled residence application that is still to be finalised before the date of announcement, and who, apart from now being over 25 still meet the regulated definition of being a dependent.
36. We do not recommend extending this eligibility to people who are currently included in a skilled residence application or a SMC EOI as a dependent, but are not longer dependent because they have since become financially independent, entered into a relationship or had a child (as opposed to simply “ageing out” but remaining financially dependent, single and without children). Treating this group as dependents would be significantly stretching the concept so it is proposed that people who have become independent (apart from just ageing out) should have to apply in their own right under an existing residence pathway or through the one-off pathway.
37. This treatment is consistent with what should happen for people in SMC applications where their eligible age is ‘frozen’ at the point of application (so someone who has turned 25 can be approved as a dependent), but their financial or other dependence status is not (eg if they have been granted a work visa they are not eligible). Allowing older dependents to be eligible is an improved outcome for older dependents included in an EOI where anyone who has turned 25 while waiting for EOI draws to resume would not be eligible to be included in the subsequent SMC application.

38. s 9(2)(f)(iv)
[Redacted text]

Provisions for dependents over 17 years old to have open work rights while the one-off residence application is being processed

39. A number of dependent children on current residence applications are close to, or have already reached, the age of 18, have left school, and are unable to access education or work opportunities while listed as dependents on their parent’s application. We have provided advice that this is a long-standing setting and while queues are longer at the moment, residence has never been a certain or immediate outcome and families and individuals should plan accordingly.

40. s 9(2)(f)(iv)
[Redacted text]

41. Any interim work visa would no longer be required once residence is granted.
42. EOIs with dependents over 17 will be eligible for processing in Phase 1 meaning early residence decisions for this group. It is not known how many 17+ year olds will be part of other applications, but INZ can consider prioritising the processing of applications containing older dependents (through general instructions) given the improved options it provides the dependents. This would mean shorter wait times and less need for an interim work visa to enable dependents to work while the application is being considered.

Next steps, communications, and power to act for decisions

43. We will provide you with further advice on other implementation matters including:
 - a. the treatment of fees and levies for applicants who have a current SMC or RFW application in train but choose to apply for the one-off pathway instead, including whether a draw-down of funds tagged for refunds would be required to meet the cost of work already undertaken for partially completed SMC and RFW applications (and any impacts on the visa fee noted in this briefing)
 - b. treatment of people who do not meet the eligibility requirement by a small margin, including that of having been onshore for 75 percent of the 3 years prior to the day before the announcement
 - c. whether to provide an interim work visa for principal applicants to stay in their current role if their current temporary work visa will expire while the application is being processed (reducing other processing pressures on INZ).
44. We will provide you with a draft Cabinet paper by 23 September 2021 reflecting decisions in this briefing for your feedback and Ministerial consultation. The new fees need to be established in regulations, so time is needed for drafting, confirmation at Cabinet Legislative Committee and announcements before the 1 December implementation date. We therefore recommend aiming for a decision with power to act at Cabinet Business Committee on 4 October. The paper will also seek agreement to waive the 28 day rule. This timetable will be as follows:
 - Monday, 20 September – Decisions on issues in this paper
 - Thursday, 23 September – Cabinet paper provided to office for consultation with other Ministers (the Cost Recovery Impact Statement [CRIS] will still be being assessed)
 - Monday 27 September – Minister seeks Cabinet agreement to Power to Act for CBC on 4 October
 - Thursday 30 September – updated Cabinet paper (and finalised CRIS) lodged
 - Monday 4 October – Decision on fees, travel conditions and dependents
 - Mid November (date to be confirmed once drafting timeline agreed with PCO) - Confirmation of fees regulations at Legislative Committee
 - 1 December – Applications open.

45. The announcement of this one-off pathway is likely to occur before final decisions on fee levels and other issues in this paper have been agreed by Cabinet. Dependent on your decisions on this briefing, we consider that on these outstanding matters you will be able to say:

- “Fees and travel conditions are to be determined and information on these will be available in October.
- I am looking at how dependents who are over 24 can be included as part of a parent’s application.
- I am intending to enable dependents who have finished secondary school to have limited work rights while these applications are being processed. This is in addition to prioritising applications with children 17+ in tranche 1.
- Details on these matters are still being finalised and will be available in October.”