



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Immigration
<b>Title of Cabinet paper</b>	Immigration (Visa, Entry Permission, and Related Matters) Amendment (Covid-19—Applications) Regulations (No 2) 2021	<b>Date to be published</b>	28 January 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
September 2021	Immigration (Visa, Entry Permission, and Related Matters) Amendment (Covid-19—Applications) Regulations (No 2) 2021	Office of the Minister of Immigration
15 September 2021	Immigration (Visa, Entry Permission, and Related Matters) Amendment (Covid-19—Applications) Regulations (No 2) 2021 CBC-21-MIN-0103	Cabinet Office

### Information redacted

YES /  NO

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In Confidence

Office of the Minister of Immigration

Chair, Cabinet Business Committee

**IMMIGRATION (VISA, ENTRY PERMISSION, AND RELATED MATTERS)  
AMENDMENT (COVID-19—APPLICATIONS) REGULATIONS (NO 2) 2021**

- 1 This paper asks Cabinet to approve the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations (No 2) 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.

**Executive summary**

- 3 This paper seeks Cabinet's approval of changes to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (the Visa Regulations). At present most people outside New Zealand cannot apply for a temporary entry class visa unless they are invited to apply, but this does not apply to people in places that are or have been quarantine-free zones. On 1 September 2021, Cabinet Business Committee:
  - 3.1 noted that the current setting is not appropriate for one-way quarantine-free travel and is not now appropriate for Australia;
  - 3.2 agreed that that the general requirement to be invited to apply for a temporary entry class visa for a person offshore be reinstated, except for people in, and intending to travel from, the Cook Islands and Niue, until the situation in Australia becomes clearer;
  - 3.3 invited me to issue drafting instructions to the Parliamentary Counsel Office to effect this change; and
  - 3.4 agreed to a waiver of the 28-day rule, to enable the above change to come into effect to forestall people in the Pacific quarantine-free travel countries from being able to apply for temporary entry class visas once quarantine-free travel is in operation. [CBC-21-MIN-0089]
- 4 The *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations (No 2) 2021* (the Amendment Regulations) are attached for approval, and referral to Executive Council.

**Time-limited legislation enables us to prevent people offshore from applying for temporary entry class visas unless invited**

- 5 The *Immigration (COVID-19 Response) Amendment Act 2020* (extended by the *Immigration (COVID-19 Response) Amendment Act 2021*) established a number of time-limited powers to address the impacts of the COVID-19 outbreak. Section 401A enables the making of regulations to suspend the

ability of all persons, or any class of persons, who are outside New Zealand, to apply for a class or type of visa or submit an expression of interest in applying for a visa. The regulations may be extended for up to six months at a time (previously three), as long as each extension is approved before the regulations expire, and currently are due to expire on 5 February 2022 [LEG-21-MIN-0090].

- 6 The Minister of Immigration, in recommending the making of the regulations must be satisfied that doing so is reasonably necessary to manage the effects, or deal with the consequences of the outbreak of COVID-19, or measures (legislative or otherwise) taken here or elsewhere to contain or mitigate the outbreak of COVID-19 or its effects. The regulations currently prevent most foreign nationals overseas from making a temporary entry class visa application, unless invited to apply. This is because, due to the impacts of COVID-19, travel to New Zealand is severely constrained.

*There is a carve out from the suspension for people in a Quarantine-Free Travel Zone*

- 7 Cabinet agreed in October 2020 to carve out from the suspension people “applying for visas from within a Safe Travel Zone that is in effect, where they intend to travel to New Zealand from that Safe Travel Zone” [CAB-20-MIN-0448]. Cabinet Business Committee, with Power to Act, agreed in December 2020 to amend the wording of the carve out so it could not be construed to only apply to people making visa applications at check in [CBC-20-MIN-0138].
- 8 In March 2021, in the context of the implementation of wider quarantine-free travel, Cabinet agreed to amend the Visa Regulations to:
  - 8.1 ensure that once a quarantine-free travel zone is in place, third country nationals in that zone can continue to make applications for temporary entry class visas, regardless of whether quarantine-free travel is in effect or not (this was based on an expectation that pauses rather than suspensions would govern future quarantine-free travel); and
  - 8.2 amend the references to ‘safe travel zone’ to ‘quarantine-free travel zone’ (to reflect that such travel is lower-risk rather than safe). [CAB-21-MIN-0081]
- 9 Cabinet also noted that, in the event that a short ‘pause’ became a formal suspension or termination of quarantine-free travel, Cabinet might be invited to consider the re-suspension of off-shore visa applications.
- 10 The decisions under paragraph 8 above were confirmed by Cabinet Legislation Committee [LEG-21-MIN-0034] (see regulation 9A(1)(aa) of the Visa Regulations).

*Cabinet has recently agreed to a further change to the Quarantine-Free Travel Zone carve out*

- 11 In July 2021 Cabinet suspended quarantine-free travel with all of Australia [CAB-21-MIN-0288]. On 1 September 2021, Cabinet Business Committee made a number of decisions to support the opening of limited one-way quarantine-free travel with three Pacific countries. Cabinet Business Committee agreed:
  - 11.1 that that the general requirement to be invited to apply for a temporary entry class visa for a person offshore be reinstated, except for people in,

and intending to travel from, the Cook Islands and Niue, until the situation in Australia becomes clearer; and

11.2 to a waiver of the 28-day rule, to enable the above change to come into effect to forestall people in Samoa, Tonga and Vanuatu from being able to apply for temporary entry class visas once quarantine-free travel is in operation [CBC-21-MIN-0089].

12 The *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations (No 2) 2021* (the Amendment Regulations) will bring the decision in paragraph 11.1 above into effect.

### **Timing and 28-day rule**

13 I recommend that the Amendment Regulations come into force on 22 September 2021. Cabinet Business Committee has agreed to a waiver of the 28-day rule to forestall people in the Pacific quarantine-free travel countries from being able to apply for temporary entry class visas once quarantine-free travel is in operation. The first quarantine-free flight from the Pacific may take place as early as the beginning of October 2021.

14 This will also enable Immigration New Zealand (INZ) to shut down temporary entry-class visa applications by third country nationals in Australia, which are continuing to trickle in even though travel is not possible. This waiver has only benefits on the people affected. Potential applicants in the Pacific would be likely to have their applications declined on the basis that the applicants would be unlikely to be able to leave New Zealand before the expiry of their visas. Further applicants in Australia would have their applications go into limbo, not able to be approved while travel is impossible, nor declined if the applications meet policy. (This is the case for the applications made since quarantine-free travel was suspended.)

### **Compliance**

15 The Amendment Regulations comply with each of the following:

15.1 the principles of the Treaty of Waitangi;

15.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

15.3 relevant international standards and obligations;

15.4 the Legislation Design Advisory Committee's Guidelines on Process and Content of Legislation.

16 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.

17 I am satisfied that making these regulations is reasonably necessary to manage the effects, or deal with the consequences of the outbreak of COVID-19, or measures (legislative or otherwise) taken here or elsewhere to contain or mitigate the outbreak of COVID-19 or its effects. The regulations respond firstly to restrictions on re-entry to Pacific countries, which relate to quarantine

measures put in place to manage the risk of COVID-19. In the case of Australia, they relate to constraints on Managed Isolation and Quarantine (MIQ) capacity in New Zealand; MIQ has similarly been established to contain or mitigate the risk of COVID-19 here.

### **Regulations Review Committee**

- 18 There are no anticipated 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**

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

### **Impact Analysis**

#### *Regulatory Impact Statement*

- 20 The Treasury has determined that the proposal to remove the definition of quarantine free zone is exempt from providing a Regulatory Impact Statement (RIS) as it is intended to alleviate the short term impacts of the declared emergency event of the COVID-19 outbreak. The proposal would also be exempt from the requirement to provide a RIS on the basis that it has minor impacts on individuals, businesses and not-for-profits.

#### *Climate Implications of Policy Assessment*

- 21 The proposal does not have climate implications.

#### *Population Implications*

- 22 The proposal does not have population implications.

### **Communications**

- 23 The change will be communicated on Immigration New Zealand's website, with targeted communications sent to key stakeholders, such as Licensed Immigration Advisers. 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.

### **Proactive release**

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

### **Consultation**

- 25 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 and their views taken into account during the development of this paper.

## Recommendations

26 I recommend that Cabinet:

1 **note** that:

- 1.1 as part of the Government's response to the impacts of the COVID-19 pandemic, Regulation 9A of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* establishes that most foreign nationals who are offshore cannot apply for a temporary entry class visa to travel to New Zealand, unless invited to apply;
- 1.2 in October 2020 Cabinet agreed to carve out from the suspension people "applying for visas from within a Safe Travel Zone that is in effect, where they intend to travel to New Zealand from that Safe Travel Zone" [CAB-20-MIN-0448];
- 1.3 in December 2020 Cabinet Business Committee, with Power to Act, agreed to amend the wording of the carve out so it could not be construed to only apply to people making visa applications at check in [CBC-20-MIN-0138];
- 1.4 in March 2021, in the context of the implementation of wider quarantine-free travel, Cabinet:
  - 1.4.1 agreed to amend regulations to:
    - 1.4.1.1 ensure that once a quarantine-free travel zone is in place, third country nationals in that zone can continue to make applications for temporary entry class visas, regardless of whether quarantine-free travel is in effect or not; and
    - 1.4.1.2 amend the references to 'safe travel zone' to 'quarantine-free travel zone' (to reflect that such travel is lower-risk rather than safe);
  - 1.4.2 noted that, in the event that a short 'pause' became a formal suspension or termination of quarantine-free travel, Cabinet might be invited to consider the re-suspension of off-shore visa applications [CAB-21-MIN-0081 and LEG-21-MIN-0034]
- 1.5 in July 2021, Cabinet suspended quarantine-free travel with all of Australia [CAB-21-MIN-0288];

2 **note** that on 1 September 2021 Cabinet Business Committee in the context of decisions to support the opening of limited one-way quarantine-free travel with three Pacific countries, agreed:

- 2.1 that that the general requirement to be invited to apply for a temporary entry class visa for a person offshore be reinstated, except for people in, and intending to travel from, the Cook Islands and Niue, until the situation in Australia becomes clearer; and

- 2.2 to a waiver of the 28-day rule, to enable the above change to come into effect to forestall people in the Pacific quarantine-free travel countries from being able to apply for temporary entry class visas once quarantine-free travel is in operation [CBC-21-MIN-0089].
- 3 **approve** the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations (No 2) 2021* (the Amendment Regulations), which will give effect to the decision in paragraph 2 above;
- 4 **authorise** the submission of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations (No 2) 2021* to the Executive Council;
- 5 **agree** to a waiver of the 28-day rule, in order that the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations (No 2) 2021* can come into effect on 22 September 2021;
- 6 **note** that the waiver in paragraph 5 will confer only benefits on the people affected, as:
- 6.1 potential applicants for temporary entry class visa in the Pacific would be likely to have their applications declined on the basis that the applicants would be unlikely to be able to leave New Zealand before the expiry of their visas; and
- 6.2 applicants in Australia would have their applications go into limbo, not able to either be approved while travel is impossible, or declined if the applications meet policy; and
- 7 **note** that the Minister of Immigration is satisfied that making these regulations is reasonably necessary to manage the effects, or deal with the consequences of the outbreak of COVID-19, or measures (legislative or otherwise), taken in New Zealand or elsewhere, to contain or mitigate the outbreak of COVID-19 or its effects.

Authorised for lodgement

Hon Kris Faafoi

**Minister of Immigration**