



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Immigration
Title of Cabinet paper	Border exceptions considered by Delegated Ministers for Cabinet decisions	Date to be published	7 March 2022

List of documents that have been proactively released

Date	Title	Author
December 2020	Border exceptions considered by Delegated Ministers for Cabinet decisions	Office of the Minister of Immigration
16 December 2020	Class Exceptions to Border Restrictions: Decisions for Cabinet Approval CBC-20-MIN-0141	Cabinet Office

Information redacted

YES / **NO** [select one]

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Information has been withheld under the following grounds:

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

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Office of the Minister of Immigration

Cabinet Business Committee

Border exceptions considered by Delegated Ministers for Cabinet decisions

Proposal

- 1 This paper seeks agreement to decisions made in principle by the Ministerial Group considering border exceptions.

Background

- 2 On 21 September 2020, Cabinet agreed that proposals for class exceptions would be assessed by the Ministerial Group considering class exceptions before being put forward for Cabinet approval. Cabinet also agreed that decisions on changes to lists (for major infrastructure projects, Government-approved events, Government-approved programmes, and Government-to-Government agreements) are to be made by the Ministerial Group [CAB-20-MIN-0453].
- 3 The Ministerial Group considering class exceptions met for the fourth time on 9 December 2020 and considered proposals for exceptions and additions to the lists. The Ministerial Group sought further information on a number of proposals, and agreed to a number in principle, subject to timing, which has now been confirmed by officials.

Decisions taken in principle by the Ministerial Group

- 4 Ministers agreed to the following additions to lists, subject to advice on timing in order to manage demands on MIQ capacity, which has now been confirmed:
 - 4.1 **Kāinga Ora build and urban development programme:** addition to major infrastructure project list, subject to timing of arrivals – now proposed to begin from March
 - 4.2 **Cargo crew servicing the Pacific** – agreement to an amendment to immigration instructions to allow replacement cargo crew servicing the Pacific to complete 14 days in MIQ in New Zealand, for up to 200 workers over 12 months from February 2021
 - 4.3 **Replacement international fishing crew** – agreement to add these crew for foreign-flagged fishing vessels operating in international waters (as identified by MFAT) to the government-approved programmes list for up to 50 persons every six months.
- 5 Ministers also **agreed in principle to a class exception for 1,000 priority returning degree and post-graduate international students** (including

family members where eligible), based on booking into MIAS as places are available from April next year. Ministers also agreed to a higher living costs requirement for the cohort to reflect the increasing cost of living and employment risks for returning students. Further advice was sought on likely arrival dates and flow of students into MIQ.

- 6 The Ministry of Education has confirmed that cohorts of eligible students will be identified, with the intent that there would be 300 students able to enter April-May, 300 students able to enter May-June, and 400 students able to enter June-July next year. This can be accommodated in MIQ, but places will not be set aside and therefore actual entry dates will depend on when students book places.
- 7 Ministers also considered a number of proposals that are time critical and have limited flexibility, require MIQ spaces in February which is already at near full capacity, and which require both planning time and some bespoke MIQ arrangements. Further advice is being sought on these so that decisions can be confirmed prior to Christmas on which of the following can be accommodated and when:
 - 7.1 **“Summer of cricket”**: addition to list of Government-approved Major Events (four teams – the English and Australian women’s teams and the Australian and Bangladeshi men’s teams), subject to flexibility on timing
 - 7.2 **Constellation Cup**: addition to list of Government-approved Major Events, subject to flexibility on timing
 - 7.3 **Visitors for commemorative events** (Christchurch earthquakes and mosque attacks) – class exception proposal, subject in particular to advice on likely numbers given the limited MIQ capacity.
- 8 CBC is asked to agree to delegate to the Ministerial Group final decisions on border exceptions and timing for the proposals listed in paragraph 22.
- 9 Ministers also sought further advice on timing for the **Toyota racing series proposal** due to the lack of MIQ availability in January. The event organisers have advised that a later travel date is not possible, and will be cancelling the international component of the event.
- 10 The Ministerial Group deferred decisions on a number of other proposals: superyachts (owners of yachts being refitted/refurbished, and other visiting cruising yachts); Confidential advice to Government [REDACTED]. The deferral of the visiting cruising yachts proposal means that the America’s Cup events will be missed.
- 11 The Ministerial Group also:

- 11.1 noted that air positioning crew are to be exempt from border restrictions, as is currently the case for air crew, and that the Minister of Immigration would give effect to this through certifying Immigration Instructions;
- 11.2 agreed that applications for the normally resident border exception category (currently projected to eventually exceed 850 principal applicants by a small margin) will continue to be processed, noting that total numbers are not projected to exceed the forecast maximum of 1,000 principal applicants; and
- 11.3 agreed that the owners of America's Cup syndicates could be included as part of the existing border exception, subject to their arrival being by the maritime border should they wish to isolate on board their yachts.

Current pressure on the MIQ system

12 Demand for places in managed isolation facilities early next year exceeds supply, with travellers now unable to secure a managed isolation voucher (in most cases) until early March. This means on average New Zealanders are having to wait three months to secure a place in managed isolation.

13 **Legal professional privilege** [Redacted]

14 Demand for MIQ also continues to grow from critical workers that are eligible to enter under present border settings. MBIE has fielded a large number of emergency allocation requests and complaints from employers concerned about timeframes for entry into New Zealand and the negative impacts of such delays for delivering projects which are reliant on overseas workers. If critical workers cannot enter New Zealand in a timely manner under current settings, this undermines the case for a further broadening of border exception categories.

High-needs groups place a considerable strain on the MIQ system

15 Our ability to accommodate groups is not just limited by available rooms, but also by the ability to plan for and provide the more resource-intensive services (e.g. increased testing, translators and additional welfare) that these groups often required.

16 There are operational limits on how many groups with bespoke needs MIQ can safely manage at one time without unacceptably increasing the public health risk and strain on our MIQ workforce. Typically, per fortnight, the limit is two or three groups with bespoke requirements – split between Christchurch

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and Auckland – as these centres are better resourced to provide any wraparound support services.

- 17 When MIQ is operating at, or near, full capacity (as will be the case early next year), there is little extra resource left in the system for MIQ Operations to be able to support groups that require complex or bespoke arrangements.
- 18 Between January and March the spare capacity that is available will be supporting arriving groups of Recognised Seasonal Employer (RSE) workers, deep sea fishing crew and refugees. As RSE workers and refugees will be accommodated in Auckland that only leaves Christchurch as an option for hosting groups during this period. Other regions cannot accommodate bespoke arrangements due to staffing and resourcing limitations.
- 19 High-needs groups (such as sports teams) with bespoke requirements also tend to have greater MIQ system impacts than other types of travellers. This is because they typically require a whole facility or an entire wing of a facility to be ring-fenced for their exclusive use in order to be able to accommodate their needs safely.

MIQ cannot accommodate all bespoke proposals at their preferred arrivals times due to capacity and resourcing constraints

- 20 A number of the proposed new class exceptions (and additions to lists) seek entry into MIQ in February and bespoke arrangements when the system is already running at capacity and accommodating other large groups, such as RSE workers.
- 21 Accommodating all of the proposed new class exceptions at their preferred time would result in MIQ exceeding its safe operating capacity. The arrival of sports teams, in particular, need to be staggered as facilitating bespoke training arrangements requires considerable effort and planning to ensure this is done safely and in line with Infection Prevention and Control standards.
- 22 We cannot use the rooms that are set aside for contingency purposes to cover this excess demand. The contingency is needed to ensure MBIE is able to respond in the event that an earthquake or fire takes one of the facilities offline.

Expanding the emergency allocation process

- 23 Officials had set aside 500 rooms as an interim measure to enable Ministerial decision making on group arrivals into MIQ.
- 24 Ministers sought further advice on whether some rooms that had been provisionally set aside for groups in early 2021 could be made available online through the MIAS or for emergency allocations
- 25 The package of new class exceptions proposed in this paper will use approximately 400 of these rooms per fortnight. The Minister for COVID-19 Response has agreed that the remaining 100 rooms be reallocated to the

emergency allocation process in order to facilitate time critical travel for New Zealanders and critical workers.

- 26 These additional rooms will become available for emergency allocations in late January upon the exit of the deep sea fishing crew from MIQ. This will mean that the total number of rooms for emergency allocation purposes will increase from 150 per fortnight to 250 per fortnight. Officials will provide the Minister for COVID-19 Response advice in early 2021 on how the emergency criteria could be broadened to use these additional rooms.

Financial Implications

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

Legislative Implications

- 28 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

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

Population Implications

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

Human Rights

- 31 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). Free and frank opinions

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Consultation

- 32 This paper has not been consulted with other agencies.

Communications

- 33 Relevant portfolio Ministers will announce the exceptions following Cabinet Business Committee if agreed.

Proactive Release

34 This paper will be proactively released following Cabinet consideration.

Recommendations

The Minister for Immigration recommends that the Committee:

- 1 **Note** officials have provisionally set aside 500 rooms per fortnight for group arrivals to enable Ministers to make decisions on new class exceptions in early 2021
- 2 **Note** this proposed package of class exceptions uses 400 of these rooms in early 2021
- 3 **Direct** officials to reallocate the remaining 100 rooms a fortnight into emergency allocations

Additions to lists

- 4 **note** that on 9 December 2020, the Border Ministers Group agreed to the following additions or expansions to events and government-approved programmes, subject to timing, which have been confirmed as follows:

Proposal	Details	Decision
Kāinga Ora build and urban development programme (addition to government-approved programmes list)	Approximately 20 workers; from March 2021; workers will book places in the Managed Isolation Allocation (MIAS) system	Agreed
Cargo crew servicing the Pacific	Amendment to immigration instructions to allow replacement cargo crew to undergo 14 days in MIQ before transferring to ships; up to 200 people from February 2021; workers will book places in MIAS	Agreed
Replacement international fishing crew for foreign-flagged fishing vessels operating in international waters (addition to government-approved programmes list)	Up to 50 persons every six months, for crew identified by the Ministry of Foreign Affairs and Trade – no MIQ stay required	Agreed

5 **agree** to the following class exception agreed in principle by the Ministerial Group

Proposal	Details	Recommendation from Border Ministers Group
Priority returning degree and post-graduate international students (including family members where eligible)	Up to 1,000 students for entry from April 2021; students will book places in MIAS as they are available (up to 300 in April-May; 300 in May-June; 400 in June-July)	Agree

6 **note** that the Ministerial Group deferred decisions to next year on a number of other proposals which are not time-critical as follows:

- 6.1 superyachts (owners of yachts being refitted/refurbished and other visiting cruising yachts)
- 6.2 Confidential advice to Government
- 6.3 Confidential advice to Government

7 **note** that there are number of further groups requiring a decision before Christmas as they:

- 7.1 are time-critical with limited flexibility as to entry dates
- 7.2 cannot be accommodated in MIQ concurrently
- 7.3 require decisions now to enable planning
- 7.4 involve manual allocation of MIQ and bespoke MIQ arrangements

8 **agree** to delegate to the Ministerial Group final decisions on:

- 8.1 the Constellation Cup
- 8.2 “summer of cricket” series
- 8.3 commemorative events for Christchurch earthquakes and mosque attacks

9 **note** that the Ministerial Group agreed to offer options for later travel dates for a number of proposals, including the Toyota motor racing series, as the groups could not be accommodated in MIQ within the timeframes requested

- 10 **note** that the organisers of the Toyota racing series have advised that a later entry date is not possible for the event.

Authorised for lodgement

Hon Kris Faafoi

Minister of Immigration