



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Immigration
<b>Title of Cabinet paper</b>	<i>Decisions on border class exceptions and border entry settings</i>	<b>Date to be published</b>	18 August 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
26 November 2021	<i>2122-1754 Border Exception Ministers – Meeting 9</i>	<i>MBIE</i>
December 2021	<i>Decisions on border class exceptions and border entry settings</i>	<i>Office of the Minister of Immigration</i>
6 December 2021	<i>CAB-21-MIN-0517 Minute</i>	<i>Cabinet Office</i>

### Information redacted

**YES / NO**

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 reasons of international relations, privacy of natural persons, constitutional conventions, commercial information, and free and frank opinions



# BRIEFING

## Border Exception Ministers – Meeting 9

<b>Date:</b>	26 November 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1754

Action sought		
	Action sought	Deadline
Hon Kris Faafoi <b>Minister of Immigration</b>	<p><b>Indicate</b> which class exception proposals you wish to refer to Cabinet for approval.</p> <p><b>Note</b> that further advice will be provided to the Minister for COVID-19 Response on self-isolation requirements for large groups eligible for the medium risk pathway from January 2022</p> <p><b>Refer</b> this briefing to the Minister of Foreign Affairs, Minister of Education, Minister for Oceans and Fisheries, Minister of Agriculture, Biosecurity, and Rural Communities, Minister for Defence, Minister of Commerce and Consumer Affairs, Minister for the Digital Economy and Communications, and Minister for Sports and Recreation.</p>	30 November 2021
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>		
Hon Dr Megan Woods <b>Minister of Research, Science and Innovation</b>		
Hon Carmel Sepuloni <b>Minister for Social Development and Employment</b>		
Hon Stuart Nash <b>Minister for Economic and Regional Development</b>		
Hon Willie Jackson <b>Minister for Māori Development</b>		

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Ruth Isaac	General Manager, Employment, Skills & Immigration Policy	Privacy of	✓
Kara Isaac	General Manager, MIQ Policy	Privacy of	✓

The following departments/agencies have been consulted
MPI, MSD, Treasury, DPMC, MFAT, MBIE (ED, MIQ, INZ), MoH, MoE

- 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

## Border Exception Ministers – Meeting 9

<b>Date:</b>	26 November 2021	<b>Priority:</b>	High
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### Purpose

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This briefing provides advice and supporting documentation for the next meeting of Border Exception Ministers, scheduled for 8:30am, 30 November 2021. An agenda is attached at Annex One.

### Recommended action

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The Border Exception Senior Officials Group recommends that Border Exception Ministers:

#### Reconnecting New Zealanders to the World Strategy: implications for border exceptions

- a **Note** that the government's *Reconnecting New Zealanders to the World* strategy will enable foreign nationals to travel to New Zealand and self-isolate instead of undertaking managed isolation and quarantine (MIQ) in the following staged way:
- i. Step 1: under current restricted immigration settings from Australia, from 17 January 2022
  - ii. Step 2: under current restricted immigration settings from the rest of the world, from 14 February 2022
  - iii. Step 3: all foreign nationals, under staged and phased reopening of visa categories, from 30 April 2022 [SWC-21-MIN-0200 and CAB-21-MIN-0498 refers]
- Noted*
- b **Note** that following the implementation of Step two of the *Reconnecting New Zealanders* medium-risk pathway at 11.59pm 13 February 2022, all travellers who are eligible to enter New Zealand under current border settings (including those with border exceptions) will be permitted to self-isolate rather than entering MIQ, if they meet certain criteria and can comply with self-isolation requirements
- Noted*
- c **Note** that this changes the context for consideration border class exception requests (current criteria require the impacts on MIQ to be manageable and the number approved to be as "low as possible"), and that class exception and border exception settings will need to change as borders re-open
- Noted*
- d **Note** that advice is being prepared for the Minister of Immigration on the staging and phasing of visa category reopening under step three and 'interim' policy settings to ensure that phased reopening to workers is consistent with the direction of the Immigration Rebalance, and this will be reported back to Cabinet in December
- Noted*

- e **Note** that, in light of recommendation b and ahead of the further advice referred to in recommendation d above and while acknowledging that this is an ‘interregnum period’, we recommend you:
- i. implement border exceptions that have been approved but are not yet in effect, and
  - ii. consider new requests for class exceptions, which will enable the continued flow of high priority workers ahead of step three or the full opening of work visas

*Noted*

## **Implementing approved changes to border exceptions**

### *Offshore first-time resident-class visa holders*

- f **Note** that on 12 July, Cabinet agreed to establish a border exception for approximately 5,000 first time resident visa holders who have not been able to travel to New Zealand due to the border restrictions [CAB-21-MIN-0278], but that this has not yet been implemented due to high demand for MIQ

*Noted*

- g **Note** that on 22 November, Justice Cooke ruled that aspects of the border immigration instructions preventing entry to the group in recommendation ‘f’ above were deemed to be ultra vires, and that the Minister of Immigration will shortly be provided with amended border entry instructions for certification in order to enable this group of people to enter New Zealand

*Noted*

### *Global Impact Visa class exception*

- h **Note** that on 11 August 2021, Cabinet agreed to a class exception for up to 50 Global Impact Visa (GIV) holders [DEV-21-MIN-0162]

*Noted*

- i **Note** that the Edmund Hilary Fellowship (EHF) has requested permission to notify the shortlisted EHF fellows of the Global Impact Visa class exception so they can make arrangements to travel in 2022

*Noted*

- j **Agree** that the EHF can notify fellows that they will be eligible for the Global Impact Visa class exception to begin implementing the GIV class exception

*Agree / Disagree*

### *‘Other critical worker’ salary threshold*

- k **Note** that on 12 July, Cabinet agreed to lower the salary threshold for ‘other critical workers’ in roles longer than 6 months, to 1.5 times the median wage (\$84,240) and retain the narrow criteria requiring “unique experience and technical or specialist skills not readily obtainable in New Zealand” in order to limit the impact of increased volumes on MIQ [CAB-21-MIN-0278]

*Noted*

- l **Note** that in October the Minister of Immigration and Minister for COVID-19 Response agreed to implement this change to the salary threshold for the ‘other critical worker’ border exception from December 2021 [briefing 2122-0969 refers]

*Noted*

m **Indicate** if you wish to:

**EITHER**

- i. proceed with the other critical worker salary change from December 2021

*Agree / Disagree*

**OR (recommended)**

- ii. decide the settings for workers entering New Zealand as part of the *Reconnecting New Zealanders* step three advice

*Agree / Disagree*

*International student class exception*

n **Note** that on 12 July 2021, Cabinet agreed to a third class exception for up to 1,000 international students, which is due to be implemented from early-2022, but did not confirm expectations around the living costs requirements for these students [CAB-21-MIN-0278]

*Noted*

o **Agree** that students entering New Zealand under this class exception are required to:

- a. have NZD\$20,000.00 per year (or \$1,667.00 per month) available to maintain themselves during their stay in New Zealand (less prepaid living expenses); and
- b. have sufficient funds available to pay for the costs of their stay in MIQ, if subject to pay for these costs.

*Agree / Disagree*

p **Note** that further international student class exceptions for step two can be considered as part of the report back on *Reconnecting New Zealanders*, although lead times for new exceptions and visas before the beginning of the 2022 academic year have now passed

*Noted*

**New border class exceptions for referral to Cabinet**

*Tech sector workers*

q **Note** that employers in the tech sector have had limited success bringing migrant workers to New Zealand via the 'other critical worker' pathway due to difficulties meeting the requirement to have skills that are "not readily obtainable" in New Zealand, and that there are significant workforce shortages for highly skilled tech sector workers

*Noted*

r **Agree** to recommend Cabinet approves a class exception for up to 600 specialist tech sector workers over 12 months who meet the following criteria:

- i. the worker is coming to New Zealand for a role in one of the following occupations:
- i. Software and Application Programmers (ANZSCO 2613 and related synonyms), or
- ii. ICT Managers (ANZSCO 1351 and related synonyms), or
- iii. ICT Security Specialist (ANZSCO 2621 and related synonyms), or
- iv. Multimedia Specialists (ANZSCO 2612 and related synonyms), **AND**

- ii. Salary must be over a particular threshold
  - i. NZ\$120,000 per annum for ANZSCO 2613, 1351 and 2621, or
  - ii. NZ\$95,000 per annum for ANZSCO 2612

*Agree / Disagree*

*External auditors*

- s **Note** that there are ongoing workforce shortages in the auditing industry that impact the ability to complete external audits within statutory deadlines

*Noted*

- t **Note** that the Senior Officials Group acknowledges the workforce challenges in the sector, but consider that more can be done to improve pay and conditions to support retention of the existing workforce and encourage New Zealanders to take up these roles

*Noted*

- u **Agree** to recommend Cabinet approves a class exception for up to 180 external auditors (plus partners and dependent children), over 12 months, who are:

**EITHER (Senior Officials Group preferred)**

- i. earning at least 1.5 times the median wage (\$84,240 per annum) and have at least two years' relevant experience

*Agree / Disagree*

**OR (MBIE Corporate Governance and Intellectual Property preferred)**

- ii. earning at least:
  - i. \$70,000 per annum for auditors with two to three years' relevant experience; and
  - ii. \$85,000 per annum for auditors with at least four years' relevant experience

*Agree / Disagree*

*Halal slaughterers*

- v **Note** that MPI propose a class exception for up to 15 halal slaughterers (plus partners and dependent children) who earn at least 1.5 times the median wage (\$40.50 per hour) to enter from early 2022 until December 2022

*Noted*

- w **Note** that in October, the Senior Officials Group approved the proposal in principle on the basis that there does seem to be a critical workforce gap that the sector has found difficult to fill domestically

*Noted*

- x **Note** that the MBIE has concerns about the sector's progress on improving pay and conditions across its workforce

*Noted*

- y **Note** that, if granted a class exception, halal slaughterers would be entering New Zealand on Critical Purpose Visitor visas with 12 months duration and will therefore be eligible to apply for residence under the 2021 Residence Visa settings

*Noted*

- z **Agree** to recommend Cabinet approve in principle a class exception for up to 15 halal slaughterers (plus partners and dependent children) and seek delegated authority for the Ministers of Immigration and Agriculture to take final decisions subject to being confident that the wage guarantee will be enforced

*Agree / Disagree*

*Dairy farm workers*

- aa **Note** that MPI propose removing the split in the dairy worker class exception for 150 dairy farm managers and 50 herd assistants due to very low uptake of the class exception for managerial roles and the over-subscription of herd assistant roles

*Noted*

- bb **Note** that the Senior Officials Group did not previously support a border exception for the lower-skilled herd assistant roles, as it reduces pressure on the sector to improve pay, workforce planning and conditions for New Zealanders in this sector

*Noted*

- cc **Note** that the Senior Officials Group recommends that, if Ministers wish to remove the split, the current wage requirement (\$27 per hour) be increased to \$28 per hour to place increased pressure on the sector to make roles more attractive to New Zealanders

*Noted*

- dd **Agree** to recommend Cabinet removes the split in the dairy worker class exception and increase the wage requirement from the median wage (\$27) to the median wage plus \$1 (\$28)

*Agree / Disagree*

*Rural contractors*

- ee **Note** that there have been two previous class exceptions for rural contractors, which have been well subscribed, however critical workforce shortages remain for the current season

*Noted*

- ff **Agree** to recommend Cabinet approves a class exception for up to 200 rural contractors provided the sector guarantees the class exception workers and New Zealanders of similar skill and experience a wage rate of at least the median wage (\$27 per hour, which is an increase from the previous guarantee of \$25.50 per hour)

*Agree / Disagree*

*Wool harvesters*

- gg **Note** that there have been two border class exceptions for shearers since the borders closed and the most recent border class exception for 40 shearers to enter from June 2021 was fully subscribed

*Noted*

- hh **Note** that shortages in wool handlers over the past two years have meant that some shearers have been unable to carry out their job

*Noted*

- ii **Agree** to recommend Cabinet approves a class exception for:

- i. Up to 40 shearers with entry in time for the 2022/23 peak shearing season

*Agree / Disagree*

- ii. Up to 50 wool handlers, with at least one season's experience in a similar jurisdiction and paid at least \$30 per hour, with entry in time for the 2022/23 peak shearing season

*Deep-sea fishing crew*

jj **Note** that MPI proposes two border class exceptions for deep-sea fishing crew:

- i. 450 BATM-class crew to arrive between April and May 2022, and
- ii. 615 BATM and non-BATM-class crew to arrive between September and October 2022

*Noted*

kk **Note** that the proposal for the 450 BATM-class crew to arrive in April and May 2022 is not necessary to maintain fishing operations, but rather has been requested for crew welfare reasons

*Noted*

ll **Note** that as this is a complex group, suitable MIQ or self-isolation arrangements will need to be organised

*Noted*

mm **Note** that the proposed group allocation package does not currently include deep-sea fishing crew, however we will have better insight into MIQ availability and alternative isolation arrangements in early-2022

*Noted*

nn **Agree** to recommend Cabinet approves a class exception for up to 450 BATM-class deep-sea fishing crew to enter in April and May 2022, and seek delegated authority for the Ministers for COVID-19 Response, Immigration and Oceans and Fisheries to finalise a MIQ group allocation or alternative isolation arrangements

*Agree / Disagree*

oo **Agree** to recommend Cabinet approves a class exception for up to 615 BATM and non-BATM-class deep-sea fishing crew to enter in September and October 2022

*Agree / Disagree*

*Transiting Australians*

pp **Agree** to recommend Cabinet approves a 12-month extension to the existing border exception to allow for up to 30 travellers per month nominated by Australian Department of Foreign Affairs and Trade (DFAT) to enter New Zealand and complete MIQ here, <sup>international relations</sup> from 1 January 2022

*Agree / Disagree*

*Cargo crew servicing the Pacific*

qq **Agree** to recommend Cabinet approves a 12-month extension to the existing border exception to enable up to 550 cargo crew servicing the Pacific to undertake managed isolation in New Zealand, from 1 February 2022

*Agree / Disagree*

*Widening the Replacement Crew border exception*

rr **Agree** to recommend Cabinet approves a widening of the existing border exception for replacement cargo crew, to cover all commercial ships, but excluding crew who intend on working in New Zealand rather than immediately departing (e.g., fishers)

*Agree / Disagree*



*Implementing new and extended class exceptions*

ss **Agree** that, unless otherwise specified, any new class exceptions referred to Cabinet for approval will be implemented in early-2022

*Agree / Disagree*

**Additions to Government-approved events list**

tt **Agree** to add the following events to the government-approved events list:

i. FIFA Women's World Cup and any lead-in events and critical delegations from FIFA officials (October 2022) – [in confidence]

*Agree / Disagree*

i. The World Rugby PAC4 tournament (May 2022)

*Agree / Disagree*

ii. The Women's Rugby World Cup and any lead-in events and critical delegations from World Rugby (February 2022)

*Agree / Disagree*

**MIQ group allocation package March 2022 to May 2022**

uu **Note** that MBIE and the Ministry of Health will provide the Minister for COVID-19 Response further detailed advice in December on self-isolation for large groups of travellers (including, where appropriate, leave the premises to train)

*Noted*

vv **Note** that it is anticipated that most people currently entering New Zealand via the group allocation process will be eligible to self-isolate rather than enter MIQ from this time

*Noted*

ww **Note** that the majority of travellers covered by the proposed package of group allocations for March 2022, are now not expected to require MIQ to enter New Zealand at their proposed travel dates

*Noted*

xx **Note** that MIQ will continue to work with large and/or complex groups who have been allocated space in January and February who may be eligible for the medium-risk pathway as to whether they will utilise their MIQ allocated space or self-isolate

*Noted*

yy **Agree** to continue group allocations for refugees on an ongoing basis as they are unlikely to be vaccinated for COVID-19 and have limited resources and ability to self-isolate in New Zealand

*Agree / Disagree*

zz **Agree** that MBIE will not run any further EOI rounds for future MIQ group allocations at this time

*Agree / Disagree*

aaa **Note** that MBIE will provide further advice to the Minister for COVID-19 Response on the future approach to group allocations, including both future process for group allocations and any other groups from the March to May package which may still need to enter MIQ, once final self-isolation settings are known

*Noted*

### *Out of cycle allocations - exporters*

bbb **Note** the NZTE exporters allocation has been fully utilised for November and December 2021, and that NZTE has requested an increase to the size of the allocation from January 2022.

*Noted*

ccc **Note** that while the start of self-isolation will relieve significant pressure on this allocation, an expansion for January and February will provide certainty in the interim

*Noted*

ddd **Agree** to increase the size of the exporters allocation to 30 in January, 90 in February and 150 in March 2022.

*Agree / Disagree*

### *Cricket World Cup*

eee **Note** two additional cricket teams and other officials, broadcasters, and participants (around 600 people total) require MIQ space in February 2022 to ensure the success of the Cricket World Cup (CWC)

*Noted*

fff **Note** that while some of these travellers may be eligible to self-isolate, given the timing of travel they require immediate certainty, ahead of the finalisation of self-isolation requirements and guidance

*Agree / Disagree*

### **Next steps**

ggg **Note** that Border Exception Ministers' decisions will be taken to Cabinet on 6 December for approval, where required

*Noted*

hhh **Note** that the border exceptions require implementation by the Minister of Immigration through certifying changes to Immigration Instructions, which may require further work on detailed eligibility requirements for applying the exception and changes to online forms, ICT systems and business processes.

*Noted*

Privacy of natural persons

Ruth Isaac  
**General Manager, Employment, Skills and  
Immigration Policy**  
Labour, Science and Enterprise, MBIE  
26/11/2021

Privacy of natural persons

Kara Isaac  
**General Manager, Managed Isolation and  
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26/11/2021

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

Hon Chris Hipkins  
**Minister for COVID-19 Response**  
..... / ..... / .....

Hon Dr Megan Woods  
**Minister of Research, Science and Innovation**  
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Hon Carmel Sepuloni  
**Minister for Social Development and  
Employment**  
..... / ..... / .....

Hon Willie Jackson  
**Minister for Māori Development**  
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Hon Stuart Nash  
**Minister for Economic and Regional  
Development**  
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## Context: *Reconnecting New Zealanders to the World*

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2. Over the past 20 months, New Zealand's border settings have been tightly constrained to prioritise the return of New Zealanders from offshore and to limit entry of other travellers to those most critical to New Zealand's economic recovery and social and humanitarian objectives. This system has required Ministers to make difficult choices and trade-offs.
3. New Zealand is now moving to a new phase in its COVID-19 response, including a key focus on high vaccination coverage as the first line of defence from COVID-19 in the community. High vaccination rates, along with other public health measures, will enable a staged easing of border restrictions over the first part of 2022 so New Zealand can reconnect with the world.
4. On 22 November, Cabinet agreed to move to a staged reopening of the borders for travellers on the medium-risk pathway as part the *Reconnecting New Zealanders to the World Strategy (Reconnecting New Zealanders)*. The first two steps of this strategy will enable New Zealand citizens and residents, as well as foreign nationals eligible under current immigration settings (e.g., those with border exceptions), to travel to New Zealand and self-isolate instead of undertaking time in managed isolation and quarantine (MIQ), starting with travellers from Australia from 11.59pm on 16 January 2022, then expanding to travellers from all other countries (except those categorised as very high risk) from 11.59pm on 13 February 2022. The third step will expand this to all other foreign nationals, possibly staged by visa category, from 30 April.
5. Demand for MIQ is expected to significantly reduce as a result of these changes. For example, returnees from Australia were around 30% of MIQ's capacity usage prior to quarantine-free travel (QFT) with Australia, and the introduction of QFT resulted in a period of low MIQ utilisation. The impact of the first step in *Reconnecting New Zealanders* is likely to be similar, and steps two and three will result in much larger reductions in people using MIQ.
6. This change to isolation requirements shifts the context for decisions on class exceptions, which currently require consideration of impacts on MIQ capacity [CAB-20-MIN-0453]. This is likely to lead to an increase in the number and size of workforce requests for border exceptions ahead of broader border opening under step three. It also changes the context for considering how we move to more open borders ahead of decisions on the Immigration Rebalance (the Rebalance).
7. The Rebalance aims to support a future economy that is less reliant on lower-paid temporary workers, better addresses productivity, skills, and infrastructure challenges, and increases the skill levels of migrants. As part of work on the Rebalance and *Reconnecting New Zealanders* step three border opening, interim settings are being developed that would bridge the gap between current tight border restrictions and future settings, while managing and phasing the skill mix of workers entering the country. These include enabling entry of temporary migrants who earn 1.5 times the median wage without other tests.
8. MBIE will provide further advice to the Minister of Immigration in December on the staging of step three of *Reconnecting New Zealanders* and interim options to manage demand for workers and class exceptions in the period between the full roll-out of *Reconnecting New Zealanders* and the Rebalance.
9. Further advice to the Minister for COVID-19 Response will also be provided in December on how large groups of travellers will be able to self-isolate. This will include public health guidance on how large groups are accommodated, and how those who need to access external facilities to train during their self-isolation can do so. It is anticipated that following this advice, a large majority of those previously entering New Zealand via group allocation will from 14 February be both eligible to and able to self-isolate instead of entering MIQ.

10. In light of self-isolation becoming the main pathway for travellers to enter New Zealand during Q1 2022, we recommend Ministers:
  - implement border exceptions that are approved but not yet in effect
  - consider new class exception proposals.
11. These decisions are required to enable the continued flow of priority workers until we open visas more fully.

## **There are a number of agreed border exceptions that have not yet been implemented**

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### *Offshore first-time resident-class visa holder border exception*

12. On 12 July, Cabinet agreed to establish a border exception for approximately 5,000 first time resident visa holders who not been able to travel to New Zealand due to the border restrictions [CAB-21-MIN-0278]. This hasn't been implemented due to significant pressure on MIQ capacity.
13. On 22 November, the High Court ruled that the border entry immigration instructions (Y3.5.1) that prevent first time resident visa holders from travelling to New Zealand are ultra vires.<sup>1</sup> MBIE will be providing the Minister of Immigration with amended immigration instructions for certification to reflect that first time residents whose applications were made before March 2020 can travel to and enter New Zealand.

### *Family reunification border exception*

14. On 12 July, Cabinet also agreed in principle to widen family reunification settings to all onshore temporary visa holders, subject to a report back to Cabinet on timing and phasing [CAB-21-MIN-0278]. However, in light of the decisions on one-off residence agreed by Cabinet on 6 September [CAB-21-MIN-0359], the Minister of Immigration and Minister for COVID-19 Response agreed that this was no longer needed as many workers would be able to bring their eligible partners and dependents to New Zealand as part of their residence application [briefing 2122-0969 refers].

### *Global Impact Visa class exception*

15. On 11 August, Cabinet agreed to a class exception for up to 50 Global Impact Visa holders [DEV-21-MIN-0162]. We recommend you agree to implement the class exception for up to 50 Global Impact Visa holders, along with any other approved class exception proposals in early-2022.
16. The Edmund Hilary Fellowship (EHF) have requested permission to notify fellows that have been shortlisted for this border exception so that they can start to make arrangements. We recommend you agree that the EHF can notify successful fellows.

### *Lowering the 'other critical worker' criteria*

17. On 12 July, Cabinet agreed to lower the salary threshold for 'other critical workers' in roles longer than 6 months, to 1.5 times the median wage (\$84,240) but retained the criteria requiring "unique experience and technical or specialist skills that are not readily obtainable in New Zealand" [CAB-21-MIN-0278]. This change has not yet been implemented due to pressure on MIQ capacity. The Minister of Immigration and Minister for COVID-19 Response agreed to implement this change from December 2021 [briefing 2122-0969 refers].

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<sup>1</sup> *Afghan Nationals v The Minister of Immigration* [2021] NZHC 3154.

18. The requirements relating to “unique experience and technical or specialist skills that are not readily obtainable in New Zealand” are subjective and very targeted. This has ensured a high bar is met while there have been uncertainties around the impact of COVID-19 on the labour market and in a constrained MIQ environment. We expect that even with a reduction of the salary threshold to 1.5 times the median wage, the additional criteria will maintain a high bar for entry and there is unlikely to be a significant increase in the number of workers coming to New Zealand.
19. There is further advice being prepared on the implementation of *Reconnecting New Zealanders*, including options for managing the skill mix of workers coming to New Zealand to ensure that phased reopening to workers is consistent with the direction of policy change under the Immigration Rebalance. The change to the ‘other critical worker’ salary requirement criteria could be implemented from December. However, we recommend that you take decisions as part of the ‘interim’ options as part of advice on step three of *Reconnecting New Zealanders*.
20. Critical workers who arrive in New Zealand up until 31 July 2022 under a border exception for a role over six months are eligible for residence under the government’s 2021 Resident Visa settings (excluding seasonal workers). Lowering the salary requirement as part of the long-term ‘other critical worker’ criteria in December could expand the group of workers who would be eligible for residence. However, due to the high bar that must be met relating to skills and experience, officials do not consider that an adjustment to the 2021 Resident Visa settings is necessary if Ministers wish to proceed with implementing the change to salary requirements whilst keeping the “skills not readily obtainable” requirement from December .
21. We do, however, consider that any broader widening could result in an unintended pathway to residence that would not be consistent with Cabinet’s policy intent on the 2021 Resident Visa settings. Advice will be provided as part of the ‘interim’ options and roll-out of step three in December.

#### *Implementing the third cohort of international students*

22. On 12 July, Cabinet agreed to a third class exception for up to 1,000 international students, and delegated authority to the Minister of Education to determine the allocation of students between sub-sectors [CAB-21-MIN-0278].
23. The third cohort was announced on 22 October and work is underway to implement the class exception and enable students to arrive from early 2022. The second cohort of international students were required to have \$20,000.00 per year (or \$1,667.00 per month) available to maintain themselves during their stay, which is higher than the current requirement of \$15,000.00 per year [CBC-20-MIN-0141]. This reflected the increasing cost of living and labour market uncertainty for international students due to COVID-19, alongside recognition that the current amount is out of date.
24. There is work currently underway to increase the living cost requirements for international students to better reflect the real cost of living and ensure international students can enjoy their educational experience in New Zealand. The sector is aware that there is a living cost requirement change coming and communications material on the third class exception for international students already indicates that the third cohort of international students will be required to have \$20,000.00 per year to maintain themselves.
25. Officials recommend that, for the avoidance of doubt, Ministers agree that students entering New Zealand are required to:
  - a. have NZD\$20,000.00 per year (or \$1,667.00 per month) available to maintain themselves during their stay in New Zealand (less prepaid living expenses); and

- b. have sufficient funds available to pay for the costs of their stay in MIQ, if subject to pay for these costs.

## **New proposals for border class exceptions for referral to Cabinet**

26. The Senior Officials Group met on 18 November and considered the following proposals for class exceptions:
  - Up to 600 tech sector workers in software development roles, plus partners and dependent children
  - Up to 180 external auditors, plus partners and dependent children
  - Up to 15 halal slaughterers
  - Up to 200 rural contractors
  - Up to 90 wool harvesters
  - Amendment to existing dairy farm worker class exception
  - Up to 450 BATM-class crew in April-May 2022 and up to 615 BATM and non-BATM-class crew in September and October 2022
  - Extension to existing class exceptions for Australians transiting New Zealand and cargo crew servicing the Pacific.
27. Given *Reconnecting New Zealanders* will reduce demand for MIQ from most travellers from Q1 2022, officials have taken a more facilitative approach to consideration of class exceptions in terms of assessing the impact on MIQ. However, new proposals have been assessed against the criteria established by Cabinet in September 2020:
  - a critical workforce gap is identified that cannot be filled in total domestically
  - labour market risks for New Zealanders are minimal or conditions can be put in place as part of a class exception that will support improvements to the industry's working conditions and employment of New Zealanders over the short-medium term
  - the proposal does not undermine the longer-term immigration system objective of reducing reliance on low skilled migrants and improving quality of jobs in a sector [CAB-20-MIN-0453].

### **Specialist tech sector workforce**

28. MBIE's Digital Policy team proposes a class exception for up to 600 tech sector workers (plus partners and dependent children) in specified experienced senior technical positions, including software engineer, ICT management, ICT security specialist and multimedia specialist roles.
29. While skilled tech sector workers are eligible for entry to New Zealand under the 'other critical worker' pathway, employers have had limited success bringing workers into New Zealand under the exception. This is due to difficulty demonstrating that skills are "not readily obtainable in New Zealand". For example, some of the roles in the sector have generic job titles which do not accurately reflect the highly specialised nature of the role.
30. Given the strategic priority of the sector, the risk that firms move offshore, and the limited displacement of domestic workers, the Senior Officials Group considers this to be a 'no regrets' proposal, which would enable entry to New Zealand for highly skilled workers who

are able to support further growth in the sector. A summary of the Senior Officials Group's assessment of the proposal is provided in the table below.

31. The Senior Officials Group recommends establishing a class exception for up to 600 specialist tech sector workers who meet the following criteria:
- a. Software and Application Programmers (ANZSCO 2613 and related synonyms), or
  - b. ICT Managers (ANZSCO 1351 and related synonyms), or
  - c. ICT Security Specialist (ANZSCO 2621 and related synonyms), or
  - d. Multimedia Specialists (ANZSCO 2612 and related synonyms), **AND**
  - e. Salary must be over a particular threshold:
    - i. NZ\$120,000 per annum for ANZSCO 2613, 1351 and 2621, or
    - ii. NZ\$95,000 per annum for ANZSCO 2612.

**Table 1 Overview of tech sector class exception proposal**

Proposal: Tech sector workers		SOG recommendation: approve
Numbers	Timing considerations	Any other relevant information
Up to 600 (plus partners and dependent children)	Over 2022	There has been limited success bringing workers in under the 'other critical worker' pathway. Proposal is for workers specified experienced senior technical roles, including software engineer, ICT management, ICT security specialist and multimedia specialist roles.
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	Yes.  This is a growth sector and domestic training capacity is currently unable to meet demand for workers. According to Stats NZ data, from 2015-2019 over 4,000 new ICT jobs were created on average each year, with around half being new software engineer jobs. Over the same period, around 1,700 domestic students graduated each year with qualifications for software engineering and computer science.  A July 2021 sector survey found there were 2,156 open roles in in the tech sector, the majority of which are covered by the proposed class exception. The sector note that the survey understates unmet demand, as it did not include responses from government agencies or large corporates.
	Minimal labour market displacement	Yes.  Jobs that are currently open in the local tech sector cannot be readily filled by New Zealand-based skills due to: <ul style="list-style-type: none"> <li>• Rapid growth in the demand for such skills, both globally and in New Zealand</li> <li>• The lag time in upskilling and training a greater number of New Zealanders into these roles.</li> </ul>
	Doesn't undermine workforce improvement	Yes, however some room for improvement has been identified.  The digital technologies Industry Transformation Plan ITP identified that some graduates and mid-level workers in New Zealand are unable to find work in a fast-changing sector. A workforce plan is being developed as part of the joint industry-government response to the Digital Skills and Talent Plan, which also includes improving diversity and inclusiveness.  Experienced migrant workers are needed to assist in upskilling and reskilling local talent and mentoring junior staff. Those firms bringing in workers under the proposed exception

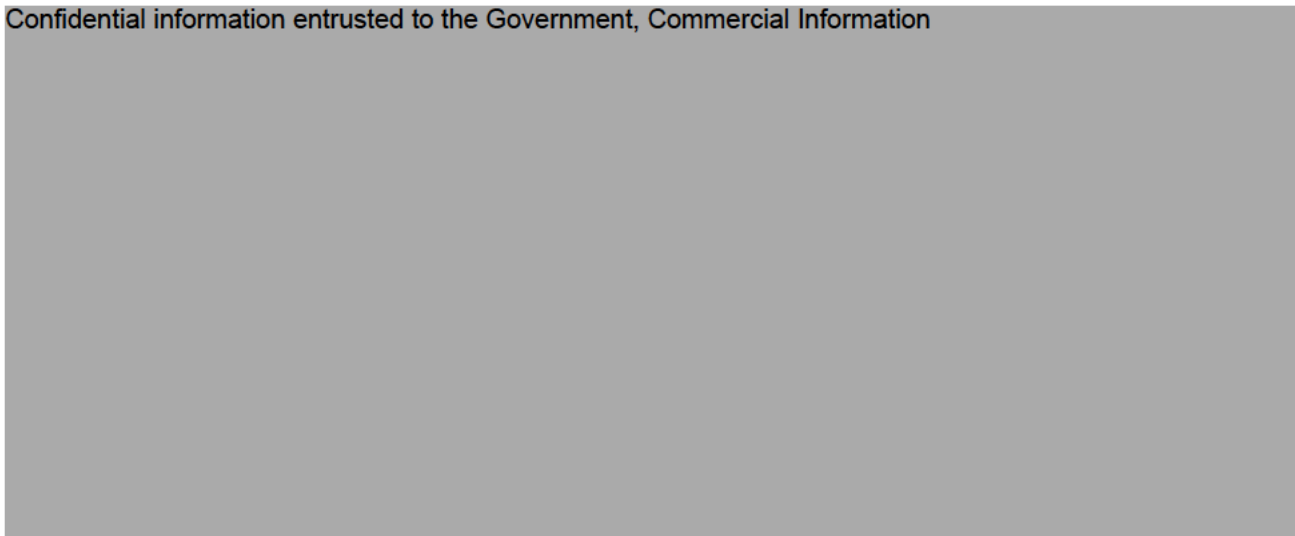


		will be asked to demonstrate participation in a programme that supports domestic skills growth.
	MIQ manageable	Yes. With the staged introduction of <i>Reconnecting New Zealanders</i> , border class exception holders will be able to self-isolate upon entry.
<b>Further strength of case</b>	State which factors: - <i>Key growth sector</i> - <i>Skills we wish to attract to New Zealand</i>	The tech sector is a priority sector for growth, as indicated in the Digital Strategy for Aotearoa and the digital technologies Industry Transition Plan (ITP). There are risks of firms relocating offshore if they cannot recruit workers.  These are highly skilled workers.
<b>Other</b>	Legal risks	None identified
	Precedent risk or comparison issue	There is economy wide labour pressure for occupations that do not meet the 2 times median wage 'other critical worker' threshold.

## External Auditors

32. MBIE's Corporate Governance and Intellectual Property Policy team proposes a class exception for up to 180 early-career external auditors. An initial proposal for up to 250 external auditors was not referred to Cabinet for approval by Border Exception Ministers in July. At the time, Ministers were considering advice to replace the 'other critical worker' criteria with a bright line test of a job offer at 1.5 times the median wage, which would have ameliorated the workforce pressures in the auditing industry, along with those of a range of sectors.
33. However, as pressure on MIQ spaces has not enabled a shift to a bright line test for the 'other critical worker' border exception, the workforce gap in the auditing profession remains acute. For example, a sector survey undertaken in October 2021 identified over 260 vacancies, placing considerable pressure on audit deadlines. Confidential information entrusted to the Government
34. Employers have endeavoured to bring experienced and highly paid workers to New Zealand under the 'other critical worker' border exception. However, they have had very limited success due to difficulty demonstrating that the auditors have "skills that are not readily obtainable in New Zealand". The \$106,080 salary requirement is also too high for early career external auditors, which is the focus of this request.
35. In considering the updated proposal, the Senior Officials Group acknowledged the ongoing labour market pressure facing employers and the impact of this on timeframes for external audits and wellbeing of staff. Officials also acknowledged that while there is some evidence of wage growth in the updated proposal, Commercial Information, Confidential advice to Government and more could be done to improve retention and the attractiveness of the role for New Zealanders.
36. The sponsoring agency propose a border class exception for up to 180 external auditors (plus partners and dependent children), earning:
- at least \$70,000 per annum for auditors with 2-3 years' relevant experience; and
  - at least \$85,000 per annum for auditors with at least 4 years' relevant experience

Confidential information entrusted to the Government, Commercial Information



38. Commercial Information

The sponsoring agency considers that a higher minimum salary could have the effect of skewing the experience level of those recruited and might mean that not all vacancies are filled.

39. The Senior Officials Group considers that the sector could do more to improve pay and conditions. Based on this, the Senior Officials Group recommends Ministers agree to a border class exception for up to 180 external auditors (plus partners and dependent children) with at least 2 years' relevant experience, earning at least 1.5 times the median wage (\$84,240). This would align with the approach to improve workforce conditions for other sectors seeking class exceptions.

**Table 2 Overview of auditor class exception proposal**

Proposal: Accountants – External Auditors		SOG recommendation: approve
Numbers	Timing considerations	Any other relevant information
Up to 180 external auditors plus their partners and dependents children.	Over 12 months	
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	Yes. According to a survey conducted by CA ANZ, prior to the border closure around 230 auditors were recruited from overseas each year. In October 2021, the 13 largest audit providers reported over 260 audit vacancies. Audit providers have filled some vacancies with New Zealanders returning from overseas. Despite this, over 260 vacancies remain.  Confidential information entrusted to the Government
	Minimal labour market displacement	Yes. As this is a highly skilled profession, it's not possible to train New Zealanders into the roles in the short-term to address the urgent workforce pressures. Expect minimal displacement.
	Doesn't undermine workforce improvement	There is some room for improvement. Anecdote suggests external auditors are attracted to Australia due to higher pay, indicating there is room to improve pay and conditions to attract and retain early-career New Zealand workers. There is a risk that

		<p>once <i>Reconnecting New Zealanders</i> is in place, New Zealand workers will relocate to Australia.</p> <p>CA ANZ is leading the development of a profession wide initiative focused on addressing talent attraction and retention across the audit profession, including a focus on wellbeing. As part of this, CA ANZ recently expanded the entry criteria to their postgraduate qualification program to encourage graduates from non-commerce degrees to apply for graduate positions with audit providers and enter the programme.</p> <p>Confidential information entrusted to the Government, Commercial Information</p>
	MIQ manageable	With the staged introduction of <i>Reconnecting New Zealanders</i> , border class exception holders will be able to self-isolate upon entry.
<b>Further strength of case</b>	<p>State which factors:</p> <p>- <i>Supply industry critical services</i></p>	<p>There is a risk that entities will fail to meet statutory reporting deadlines and a risk to audit quality. This will affect levels of trust and confidence across every sector of the economy including capital markets, the charitable sector, and the public sector.</p> <p>The Financial Markets Authority (FMA) has provided a degree of flexibility in relation to upcoming statutory financial reporting deadlines for 2021 financial year-ends. Parliament also passed urgent legislation in July to extend deadlines for public organisations. These measures provide some temporary relief but do not address the underlying issue that there are not enough experienced auditors in New Zealand.</p>
<b>Other</b>	Legal risks	N/A
	Precedent risk or comparison issue	There is economy wide labour pressure for occupations that do not meet the 2 times median wage 'other critical worker' threshold.

## Halal slaughterers

40. MPI proposes a border class exception for up to 15 halal slaughterers to enter over the course of 2022 (noting that peak processing season is between December and March).
41. The proposed requirements include that the worker:
  - must be a practicing Muslim with an affiliation to a New Zealand or overseas mosque
  - will be paid at least 1.5 times the median wage (\$40.50 per hour).
42. In October, the Senior Officials Group approved the proposal in principle on the basis that there does seem to be a critical workforce gap that the sector has found difficult to fill domestically, particularly given the demanding nature of the role, religious affiliation requirement and location in remote areas. SOG also considered the sector's commitment to pay those entering via the class exception at least 1.5 times the median wage a promising move towards improving pay across the sector.
43. MBIE, however, has concerns with the sector's commitment to pay 1.5 times the median wage, due to the way the sector structures pay. Halal slaughterers are paid on a piece rate basis. Base rate pay is employer dependent and could be as low as minimum wage. Piece rate incentives are paid on a per carcass basis on top of this. MPI believes that halal slaughterers are likely paid above the median hourly wage once piece rates are factored in and taken over the course of a shift.
44. For the purposes of this border exception, the sector is willing to write a letter to Immigration New Zealand (INZ) guaranteeing that workers will be paid, on average, at least \$40.50 per hour once piece rates are factored into their final pay. The industry is reluctant to consider



changing employment contracts to provide for higher guaranteed rates of pay given the large size and unionisation of the meat processing workforce.

45. A guarantee letter to INZ that pay will be on average \$40.50 per hour for new migrants with no experience is more than the sector has offered before. However, it does not provide the same assurances as a provision in an employment agreement. As the letter to INZ would not be part of the employment agreement, it would not give rise to a legal obligation on the employer. The nature of a piece rate is that it is a commission based on performance, and therefore circumstances may arise where the employee is not entitled to be paid the piece rate for a period of work. If an employer failed to pay a halal slaughterer in this situation \$40.50 per hour on average, the worker would not have grounds for a personal grievance on the basis of not being paid in accordance with their employment agreement.
46. An alternative approach is for MPI to require, as a criterion at the point of application, for employers to provide a letter to MPI guaranteeing that they will pay workers at least \$40.50 per hour over the course of a shift. This could be counter-signed by the employee, if needed. Under this approach, however, it is unclear what recourse a worker would have if they were not being paid on average \$40.50 per hour. It is also not an enduring solution to the wider issue with pay for halal slaughterers, which is that employment contracts only guarantee low rates of pay.
47. The Senior Officials Group recommends that you approve in principle a border class exception for up to 15 halal slaughterers, subject to further advice on the operational feasibility and ability to verify a \$40.50 per hour average wage guarantee. This advice will take into account appropriate monitoring processes and whether workers will have recourse to seek payment from their employer if they are not being paid on average \$40.50 per hour. We note that regardless of whether the border class exception is approved, a letter of guarantee is unlikely to be an enduring mechanism to ensure halal slaughterers can meet wage thresholds for immigration purposes.
48. If granted a class exception, halal slaughterers would be entering New Zealand on Critical Purpose Visitor visas with 12 months duration and will therefore be eligible to apply for residence under the 2021 Residence Visa settings.

**Table 3 Overview of halal slaughterers class exception proposal**

Proposal: Halal slaughterers		SOG recommendation: approve in principle, subject to further advice on a guaranteed wage
Numbers	Timing considerations	Any other relevant information
15	Entry from anytime through to December 2022	The proposed requirements include: <ul style="list-style-type: none"> <li>• Must be a practicing Muslim with an affiliation to a New Zealand or overseas mosque</li> <li>• Workers will be paid at least 1.5 times the median wage (\$40.50 per hour).</li> </ul>
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	There is an estimated current shortage of 11 halal slaughterers. The sector has found it difficult to fill these roles domestically, particularly given its demanding nature, religious affiliation requirement and location of in remote areas. Halal slaughterers do not meet the 'other critical worker' criteria, as they are unlikely to be recognised as having unique skills that are not readily obtainable in New Zealand nor do they earn a guaranteed income of twice the median wage.
	Minimal labour market displacement	The sector has found it difficult to attract New Zealanders to the role from the limited pool of available workers who are Muslim and open to working in slaughterhouses in remote locations. There may be issues, however, with pay and conditions.

	Doesn't undermine workforce improvement	<p>The meat processing industry notes that it has undertaken a number of initiatives to improve workplace conditions, including for halal slaughterers. The bulk of these are related to workplace health and safety.</p> <p>The Meat Industry Association is drafting a meat processing workforce development plan, which is due to be finalised by the end of the year. This plan aims to provide a comprehensive understanding of the existing workforce, and focuses on initiatives to attract, train, and retain New Zealanders into these roles (including halal slaughtering).</p> <p>There may, however, be more the sector can do to guarantee higher rates of pay and improved conditions that are more attractive to New Zealanders. It is unclear whether a class exception would improve pay and conditions across the sector, as the sector seems reluctant to negotiate improved pay and conditions in its collective bargaining agreements.</p>
	MIQ manageable	With the staged introduction of <i>Reconnecting New Zealanders</i> , border class exception holders will be able to self-isolate upon entry.
<b>Further strength of case</b>	State which factors:	<p>Halal slaughterers have skills that are needed at the very start of the meat processing chain when the animal is slaughtered. Processing roles further down the chain, the majority of which are filled by New Zealanders, rely on the presence of skilled slaughterers.</p> <p>These services are also critical to ensuring the on-farm workforce. If animals cannot proceed to the meat works in a timely manner, farmers may derive less value from their products and employ fewer New Zealanders, including those in specialist roles, such as shearers. Less meat also means less export potential and higher costs for domestic consumers.</p>
<b>Other</b>	Legal risks	A letter of guarantee is unlikely to carry much legal protection for workers. There is therefore a risk that workers are unable to challenge their employer for not paying them according to the letter of guarantee.
	Precedent risk or comparison issue	A number of other sectors also have demand for workers who can trained on the job and who earn less than twice the median wage.

## Dairy farm workers

49. MPI propose removing the split in the dairy worker class exception for 150 dairy managers and 50 herd assistants. As at 3 November, only nine dairy managers have been invited to apply under the class exception, which indicates that the 150 spaces will not be utilised, whereas 46 herd assistants have been invited to apply out of the 50 spaces allocated. This proposal would very likely tilt the balance towards herd assistants.
50. The Senior Officials Group previously did not support a border exception for the lower skilled herd assistant roles, as it reduces pressure on the sector to improve pay, workforce planning and conditions for New Zealanders in this sector.
51. Senior Officials' advice remains the same. If, however, Ministers wish to remove the split, the Senior Officials Group recommends that the wage requirement (the median wage) is increased to the median wage plus \$1 per hour (\$28) to place increased pressure on the sector to make roles more attractive to New Zealanders.

**Table 4 Overview of dairy class exception amendment proposal**

Proposal: Amendment to existing class exception for dairy farm workers		SOG recommendation: approve
Numbers	Timing considerations	Any other relevant information
Amendment to 200 dairy farm workers, plus partners and dependent children.	Until April 2022.	The current class exception allocates 150 places for Assistant Dairy Farm Managers and 2ICs, and Herd Managers with 2-4 years' experience and expertise, who are essential to farming operations and management.  The remaining 50 places are for lower-skilled Dairy Farm Assistants, who would be used as emergency relief for the most in-need employers that have not been able to recruit New Zealanders into these roles.
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	Gap in skilled farm management roles that require several years' experience. Dairy farm assistant roles are more able to be filled by New Zealanders with limited experience. These roles do not meet the 'other critical worker' salary threshold. This is an area where there is a recognised labour shortage.
	Minimal labour market displacement	There are ongoing issues filling these roles with New Zealand workers due to a variety of factors, including supply of labour, but also issues related to working conditions.
	Doesn't undermine workforce improvement	Since the 2020 COVID-19 lockdown, the dairy sector has initiated a variety of attempts to retain staff and attract New Zealanders into roles on-farm (e.g., 'Go Dairy' campaign, 'Good Boss' programme, and Rural Employee Support Hub). All willing graduates and participants from training and upskilling programmes have been placed into jobs.  In a DairyNZ and Federated Farmers survey, 65% of respondents said they had increased worker salaries and wages to better attract and retain staff. This survey indicated there was room for a greater proportion of the sector to make employment conditions more attractive. There is more to do here.
	MIQ manageable	With the staged introduction of <i>Reconnecting New Zealanders</i> , border class exception holders will be able to self-isolate upon entry.
<b>Further strength of case</b>	State which factors: - <i>Support significant jobs</i> - <i>Supply industry critical services</i>	Dairy farm workers manage a range of risks, including those relating to animal welfare and food safety, and play a key role in safeguarding New Zealand's international reputation as a producer of safe and sustainable food.  Needed for milk production (critical to NZ economy).  The dairy sector employs over 49,000 staff (total) on and off-farm. This includes 33,000 people working on-farm and around 16,000 processing and commercialisation roles downstream of dairy farms.
<b>Other</b>	Legal risks	None identified
	Precedent risk or comparison issue	A number of other sectors also have demand for workers who earn less than twice the median wage.

## Rural contractors

52. There have previously been two border class exceptions for rural contractors (agricultural and horticultural mobile plant machinery operators). Under the first class exception, which operated from November 2020 until April 2021, 157 out of 210 workers were invited to apply for visas. Under the second class exception, which has operated from June 2021, 123 workers out of 125 have been invited to apply for visas so far.



53. Rural Contractors New Zealand estimates that more than 450 onshore workers have entered the industry over the last year. Critical shortages, however, remain for the current season. Senior Officials and Ministers have considered rural contractors to have made a good case for a border exception in the past, and the sector continues to make progress in improving its domestic recruitment.
54. The Senior Officials Group recommends you create a border exception for up to 200 rural contractors provided the sector guarantees the class exception workers and New Zealanders of similar skill and experience a wage rate of at least \$27 per hour (up from the previous guarantee of \$25.50 per hour).
55. Rural contractors would seek to arrive in New Zealand from early-2022 onwards, with the majority arriving in September 2022 to cover the peak season which runs from September to April.

**Table 5 Overview of rural contractor class exception proposal**

Proposal: Rural contractors		SOG recommendation: approve
Numbers	Timing considerations	Any other relevant information
200	January 2022 onwards	Low qualifications but 2-3 years' experience demanded by sector. Pay is typically more than \$25 per hour.
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	For skilled and experienced workers who can manage complex geography and weather conditions.
	Minimal labour market displacement	Agricultural machine operators are currently on the MSD streamlined skills match report framework list (limited domestic supply). New workers recruited domestically during 2020 and 2021 are competent to perform simple driving tasks, however, there is still a strong need for experienced rural contractors who can manage complex geography and weather conditions.
	Doesn't undermine workforce improvement	Generally not an issue identified across this workforce. MPI expects rural contractors to develop a workforce plan in 2022.
	MIQ manageable	With the staged introduction of <i>Reconnecting New Zealanders</i> , border class exception holders will be able to self-isolate upon entry.
<b>Further strength of case</b>	State which factors: - <i>Supply industry critical services</i> - <i>Global talent pool for seasonal, highly skilled work</i> - <i>Significant risk of economic losses immediate and outyears</i>	Strong case <ul style="list-style-type: none"> <li>• Direct economic losses and indirect impacts on dairy herd production</li> <li>• Seasonal workforce</li> </ul>
<b>Other</b>	Legal risks	None identified
	Precedent risk or comparison issue	<ul style="list-style-type: none"> <li>• Will not meet the long-term critical worker criteria individually</li> <li>• Other technical specialists for other industries may mount similar case</li> <li>• Similar global workforces (e.g., ski field operators, shearers)</li> </ul>

## Wool harvesters

56. MPI proposes a border class exception for up to 90 wool harvesters, which comprises:
- 40 shearers, and
  - 50 wool handlers.
57. There have previously been two class exceptions for shearers, the most recent of which (for 40 shearers to enter from June 2021) was fully utilised.
58. This proposal includes 50 wool handlers. Shortages in wool handlers over the past two years have meant that some shearers have been required to stand down. A class exception for wool harvesters may present a risk of labour market displacement, as skills can be gained relatively quickly. However, requirements that wool handlers must have one season's experience in a similar jurisdiction and be paid at least \$30 per hour ensure that incoming workers are skilled and are paid at a sufficiently high level to encourage improvements in wages across the sector.
59. The Senior Officials Group recommends that Border Exception Ministers approve a class exception for:
- a. Up to 40 shearers
  - b. Up to 50 wool handlers, with at least one season's experience in a similar jurisdiction and paid at least \$30 per hour.
60. Wool harvesters would seek entry in time for the 2022/2023 peak season which begins in October and runs to February

**Table 6 Overview of wool harvester class exception proposal**

Proposal: Wool harvesters (shearers and wool handlers)		SOG recommendation: approve
Numbers	Timing considerations	Any other relevant information
90	February for South Island employers	40 migrant shearers required for peak shearing season (Nov 2021-April 2022) to supplement local shearers.  Lower-skilled (ANZSCO Level 5) but 2 – 3 years' experience required to develop skills.  60 were approved in September 2020 and 27 entered.
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	For shearers during peak season with sufficient skills to prevent risks to animal welfare.  For wool handlers with at least one season's experience, which addresses shortages that have meant some shearers have been required to stand down.
	Minimal labour market displacement	Global talent pool; relatively small group of workers. The shearing workforce is largely made up of skilled New Zealanders throughout the year. The sector tends to supplement its workforce with migrant workers in peak season.
	Doesn't undermine workforce improvement	This small group of skilled workers are just needed for the short term. The sector has begun its Provincial Growth Fund sponsored WOMOLife training programme. To date, more than 160 shearers have completed upskilling courses, with a further 100 expected to complete training over the next six months.
	MIQ manageable	With the staged introduction of <i>Reconnecting New Zealanders</i> , border class exception holders will be able to self-isolate upon entry.



<b>Further strength of case</b>	State which factors: - <i>Supply industry critical services</i> - <i>Seasonal global talent pool</i>	Moderate case: <ul style="list-style-type: none"> <li>• Direct economic losses to farmers</li> <li>• Deterioration of animal health and wellbeing (e.g., fly strike, heatstroke).</li> </ul>
<b>Other</b>	Legal risks	None identified
	Precedent risk or comparison issue	Lower-skilled roles – some precedent risk

## Deep-sea fishing crew

61. MPI proposes two class exceptions for deep-sea fishing crew:

- a. 450 BATM-class crew to arrive between April and May 2022, and
- b. 615 BATM and non-BATM-class crew to arrive between September and October 2022.

### *450 BATM-class crew for April and May 2022*

62. Throughout COVID-19, some deep-sea fishing companies have conducted crew changes on a 12-month basis, during which time the vessels would usually be at sea for three to four weeks, and then turnaround in port for 36 hours before heading back out. Prior to COVID-19, these crew would have worked six-month rotations, and companies are seeking to return to this model for the wellbeing of their crew.
63. The rationale for this border class exception is on a humanitarian basis, due to concerns about crew burnout and extended length of time away from their families back home. There is less of a concern about meeting minimum crew requirements; however, the sector is also concerned that burnout may result in crew leaving New Zealand after six months. If this were to happen, the vessels may struggle to meet minimum crewing requirements and maritime legislative obligations.
64. If the 6-month rotation class exception is not granted, this would mean that the current cohort continues to work a 12-month rotation. Although there are wellbeing concerns with operating a further 12-month rotation, this was the expectation set out from the beginning of the class exception.
65. This is a complex group and their isolation arrangements, whether MIQ or otherwise, will need to be thoroughly planned. The Senior Officials Group sees a case for a border class exception, due to the length of time crew are currently spending at sea. We recommend you approve in principle a border class exception for up to 450 BATM-class fishing crew to enter in April and May 2022, subject to further advice on isolation arrangements.

### *615 BATM and non-BATM-class crew for September and October 2022*

66. The second border class exception proposal for deep-sea fishing crew is a roll-over of the most recent class exception. Depending on your decision on the 6-month crew rotation, this could be either a replacement of the crew that arrive in April and May 2022 (plus non-BATM-class crew), or the crew that arrived in 2021.
67. MPI asks that a border class exception is approved in advance of any decision on MIQ or alternative arrangements to provide certainty to the sector and to ensure that planning can begin as soon as possible. The short turnaround on the most recent exception resulted in unnecessary pressure on INZ while processing visas. The Senior Officials Group considers

this a fair request and recommend a border class exception for 615 BATM and non-BATM-class crew to enter in September and October 2022.

Table 7 Overview of deep-sea fishing crew class exception proposal

<b>Proposal: deep-sea fishing crew</b>		<b>Overall recommendation: approve border class exceptions and seek delegated authority for joint Ministers to confirm self-isolation requirements</b>
<b>Numbers</b>	<b>Timing considerations</b>	<b>Any other relevant information</b>
MPI recommendation: <ul style="list-style-type: none"> <li>450 BATM-class crew in April-May 2022</li> <li>615 BATM and non-BATM-class crew in September and October 2022</li> </ul>		In addition to fishing crew entering under the border class exception, some highly skilled fishing crew (such as skippers, first mates and chief engineers) will enter under the 'other critical worker' border exception.
<b>Assessment</b>		
<b>Mandatory criteria</b>	Critical workforce gap	Historically high levels of offshore recruitment. A number of roles require experience and specialised skills. Difficult to train and recruit for locally because entire crews are needed for replacements, not individual workers.
	Minimal labour market displacement	There are ongoing issues in undersupply and a shortage of New Zealanders to fill these roles.
	Doesn't undermine workforce improvement	Longstanding issues with attractiveness of roles – some of which is inherent, some can be addressed. Sector has delivered on commitments relating to training and has made some improvements to benefit packages. The sector has committed to doing more through a revised workforce transition plan that takes a longer-term view to reducing reliance on migrant labour.
	MIQ manageable	The group will be eligible for self-isolation. However, further work will be required to ensure the practicality of self-isolation given the complex needs of this group.
<b>Further strength of case</b>	State which factors: <ul style="list-style-type: none"> <li>- Support significant jobs</li> <li>- Supply industry critical services</li> </ul>	<p>There are crew wellbeing implications if the 450 crew are not able to enter in April and May 2022, facilitating a return to 6-month rotations.</p> <p>MPI advise there are significant implications if a number of the vessel crew are unable to arrive in September and October 2022. These include:</p> <ul style="list-style-type: none"> <li>vessels having insufficient crew to meet manning and experience requirements under Maritime Law;</li> <li>the vessels would be uninsured as they must comply with Maritime Law to qualify for insurance;</li> <li>vessels would be unmanned creating a significant health and safety, as well as environmental, hazard; and</li> <li>maintenance would not be able to be carried out, creating further health and safety risks, compounding maintenance needs deferred from last year and creating the need for more significant maintenance in future.</li> </ul> <p>Limited prospect of alternative crews being found and limited ability to reallocate catch to other boats crewed by New Zealanders. Work involves hard physical labour, long periods at sea in cold, wet conditions. Due to close confines and complex operating environment, high crew morale,</p>

		competency and trust is important. Some crews have been working together for up to 10 years. Switching workers in and out of these established would create health and safety risks.
Other	Legal risks	Under Maritime Law, the vessels are required to have a minimum number of crew on board. If there are inadequate numbers of crew or experienced crew on board, this would be an offence under the Maritime Transport Act. The vessels are also not covered by insurance if they do not meet these requirements  Legal professional privilege [REDACTED]
	Precedent risk or comparison issue	Judgement required on level of commitment industry has demonstrated to improve conditions and attractiveness of roles to increase employment of New Zealanders.

### Australians transiting New Zealand

68. On 8 June 2021, Cabinet agreed to a border exception for up to 30 Australians transiting New Zealand per month in order to return to Australia from the Pacific [CAB-21-MIN-0212] refers]. This coincided with the start of quarantine-free travel with Australia, which meant that there were no “red” connecting flights available between New Zealand and Australia. [REDACTED] International relations [REDACTED] the same arrangement afforded to New Zealanders who were stranded in countries, such as Papua New Guinea and the Solomon Islands, from where the only viable or feasible route home to New Zealand passed through Australia. This exception is due to expire 31 December.
69. The Senior Officials Group recommends Border Exception Ministers agree to extend the border exception to allow for up to 30 travellers per month over 12 months (from 1 January 2022) nominated by Australian DFAT to enter New Zealand and isolate here, on the basis of ongoing reciprocity on the Australian side for New Zealand travellers.

### Cargo crew servicing the Pacific

70. In setting New Zealand’s border strategy, Cabinet agreed that the strategy must mitigate the risk of COVID-19 transmission into the Pacific [CAB-MIN-20-0821 refers]. Shipping accounts for most freight in and around the Pacific. Supporting the safe flow of goods on cargo vessels is essential to support Pacific Island economies already under severe pressure due to COVID-19.
71. On 9 December 2020, Border Exception Ministers approved the creation of the border exception category to enable replacement cargo crew to undergo managed isolation in a New Zealand MIQ facility, before joining a ship that operates exclusively in the Pacific region [briefing 2021-1626 refers]. This category commenced on 1 February 2021 and was initially capped at 200 persons over a 12-month period. On 8 June 2021, Cabinet approved an increase to the cap to 550 persons over a 12-month period up until 1 February 2022 [CAB-21-MIN-0212 refers]
72. Officials recommend approving a 12-month extension to this exception, with the existing cap. This will enable crew to isolate in New Zealand, whether in MIQ or through self-isolation arrangements ahead of travelling to the Pacific. This will continue to support Pacific supply chains while minimising the risk of COVID-19 transmission to the Pacific.

### Widening the replacement crew exception to cover all commercial ships

73. Alongside the border exception for cargo crew servicing the Pacific sits a general border exception for replacement cargo crew (the ‘replacement crew exception’). It was created in its current form in June 2020 and was limited to crew of cargo ships to control volumes of arrivals to New Zealand whilst keeping supply chains running [CAB-20-MIN-0281].
74. Crew entering under the replacement crew exception are not required to book a space in MIQ. The majority of crew arriving via air to transfer onto a ship (or vice versa) are same-day transfers, and therefore do not require time in a managed isolation facility. However, when a same day transfer is not possible, or when there is an extended period before the flight departs on the same day of leaving the ship, crew enter a MIQ facility and are managed within a small maritime allocation (currently 52 spots monthly).
75. Specifying that only replacement cargo crew can use the replacement crew exception has resulted in two categories of ships being unable to have crew fly into New Zealand:
- i. ships built or repaired in New Zealand for an overseas party that require crew for departure
  - ii. commercial ships that do not carry cargo, e.g., survey vessels, research vessels, super-yachts for charter, and fishing vessels.<sup>2</sup>
76. Maritime New Zealand (MNZ) continue to raise crew welfare concerns about the lack of facilitation of crew change for non-cargo vessels. MNZ is the agency responsible for monitoring New Zealand’s commitments under the Maritime Labour Convention 2006 (MLC).
77. Standard A2.5.1.7 of the MLC states that “each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board” (emphasis added). The MLC specifically covers all open-water ships other than fishing and navy vessels (i.e., not just cargo ships). The MIQ maritime allocation was created to address New Zealand’s the above obligation.
78. The ability to change crew is an essential part of the maritime industry and is important for preventing fatigue and protecting seafarers’ health, safety, and wellbeing. Beyond the paramount concern of crew welfare, not facilitating crew change for a wider range of vessels is detrimental to New Zealand’s maritime industry, an important part of the economy in some regions.
79. Officials recommend a widening of the replacement crew exception, to cover crew of ‘commercial ships’. This would cover ships listed in paragraph 73, but excludes pleasure craft and ships solely powered manually or by sail.<sup>3</sup> This change would not widen the classes of ships eligible to cross New Zealand’s maritime border (e.g., cruise ships), as a vessel exemption from the Ministry of Health under the MBO will still be required. Officials propose that crew intending on working in New Zealand (rather than immediately departing), such as fishers who intend on fishing in New Zealand, are specifically excluded from this widening.
80. A widening from ‘cargo’ to ‘commercial’ is not expected to have a significant impact on volumes of seafarers seeking border exceptions. From July 2020 to September 2021, 47 commercial vessels were declined replacement crew exceptions on the basis of not being cargo ships. Of these, 27 were fishing vessels. In addition, 43 commercial vessels with foreign crew have been permitted to enter New Zealand since July 2020, but without facilitation of international crew change.

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<sup>2</sup> Officials propose that fishers coming for the purpose of fishing in New Zealand waters are excluded from the widening of the exception.

<sup>3</sup> As defined in section 2 of the Maritime Transport Act 1994.

## **Additions to Government-approved event list**

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81. Border Exception Ministers have authority to make changes to the lists or criteria used to create the lists of major infrastructure projects, events, government approved programmes and government-to-government agreements [CAB-20-MIN-0453].
82. Major Events have proposed adding the FIFA Women's World Cup 2023 draw (up to 800 people entering in October 2022) and qualifying tournament (up to 1,000 people entering in February 2023) **[in confidence]**. Both events are critical milestones and planning points for the FIFA World Cup. MIQ needs have not yet been arranged for either event, as both events fall outside the March-May 2022 window for this group allocation round. Key FIFA officials, sponsors and suppliers will also need access to New Zealand throughout 2022 for critical planning to progress.
83. As SWC decided on 24 November, self-isolation is likely to be extended to all foreign nationals by the time the draw is scheduled to take place, however organisers may wish to secure MIQ spaces for coordination and planning purposes.
84. As the World Cup itself is on the Government-approved events list and considered a priority event, The Senior Officials Group recommends these lead-in events and critical delegations from FIFA officials are also included to provide certainty to organisers that New Zealand is committed to its role as co-host.
85. To ensure alignment, we propose the same approach to the Rugby World Cup (capturing lead-in events and critical delegations from World Rugby officials). We consider this approach unnecessary for the Cricket World Cup, as there are no further lead-in events or official delegations planned prior to the event proper.
86. Sport New Zealand has also proposed adding the following events to the Government-approved events list:
  - The World Rugby PAC4 tournament (108 people arriving in May 2022)
  - International Working on Women in Sport (21 people arriving in April 2022).
87. PAC4 Rugby is included in the proposed group allocation package. We therefore recommend adding them to the Government-approved events list.
88. We also recommend adding the International Working Group on Women and Sport Conference to the Government-approved events list, noting that event organisers will apply for MIQ through the time sensitive allocation pathway if required.

## **MIQ group allocation package options March 2022 to May 2022**

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### **EOIs received March-May 2022**

89. MIQ received 32 Expressions of Interest (EOIs) for the March-May period, including allocations previously agreed for March. These EOIs represent a wide range of sectors.

### **Need for a group allocation from March 2022 onwards**

90. Cabinet has agreed for step one of *Reconnecting New Zealanders* (allowing self-isolation for individuals travelling from Australia) to commence from 17 January, and step two to commence from 14 February.
91. Further advice is currently being prepared on how large groups of travellers will be able to self-isolate, to be provided to the Minister for COVID-19 Response in December. This will

include public health guidance on how large groups are accommodated, and how those who need to access external facilities to train during their self-isolation can do so.

92. It is anticipated that following this advice a large majority of those previously entering New Zealand via group allocation will, from 14 February, be eligible to self-isolate instead of entering MIQ.
93. Due to these system changes, the need for MIQ group allocations will be greatly reduced, and likely will no longer be required in its current form. Officials anticipate that a small number of groups will continue to need to use MIQ where it is not appropriate for them to self-isolate (e.g., unvaccinated travellers who are ineligible for self-isolation) who will continue to require group allocations, but that it will be possible to address these groups through either ad hoc requests or a streamlined groups process.
94. Officials therefore recommend that, with the exception of refugees who will not be eligible to self-isolate as they are likely to be unvaccinated, it is not necessary to make decisions on group allocations for travel during March to May 2022 at this time. Instead, officials recommend that Ministers agree that MBIE will not seek further expressions of interest for future group allocations at this time.
95. Following the confirmation of detailed advice on how large groups will self-isolate under the medium-risk pathway, MBIE will provide the Minister for COVID-19 Response with advice on the future of the group allocation process, any necessary changes to the process and the types of groups it would be expected to support.
96. This further advice will include advice on whether it is appropriate to consider some or all of the package of group allocations for the March to May 2022 round at that time, should it become clear that other groups will still need to enter MIQ.

## **Out of cycle allocation requests – January and February 2022**

### *NZTE Exporters*

97. NZTE is requesting an increase of their exporter allocation to 30 in January, 90 in February, 150 in March and 100 per month thereafter. The current allocation of 25 has been fully allocated for both November and December.
98. NZTE has requested the size of their allocation be increased from January given the demand they have seen from the sector.
99. While the confirmed start of self-isolation from 17 January and 14 February 2022 will significantly relieve pressure on this allocation, given that MIQ will continue to be the primary way people enter New Zealand until that time, and the need for certainty for the export section in January and February, there is merit to this request. It can be accommodated as MIQ's capacity has increased with the move to the 7 day stay model.

### *Cricket World Cup*

100. Cricket World Cup (CWC) has requested an additional two cricket teams to enter in late January/early February. These teams had previously intended to enter New Zealand via quarantine-free travel with Australia.
101. In addition, there are a number of officials, broadcasters and other key CWC participants needed to ensure the success of the tournament, bringing to total commitment for the CWC to around 600 people now seeking entry, including around 100 who will be travelling from Australia.
102. It is likely that those travelling from Australia will be eligible to self-isolate when stage 1 of self-isolation is implemented from 17 January 2022. However, final settings for self-isolation, as well as public health advice how large groups can meet the self-isolation requirements

and how sports teams can train while self-isolation MIQ is still under development, any is unlikely to be available in time to ensure that all the teams and other participants can make arrangements and travel in time.

103. The move to 7-day MIQ stays will allow us to accommodate these travellers when there was not previously room to do so. In recognition of the priority the Government has placed on the Cricket World Cup, and to provide teams with certainty that they will be able to enter New Zealand and train while in isolation, we recommend all necessary individuals are provided with MIQ places

## **Proactive release**

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104. This paper will be proactively released following Cabinet consideration and once the proposed border exceptions and MIQ group allocation arrangements are in place.

## **Next steps**

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105. If Border Exception Ministers agree to the proposed group allocation package, officials will work with agencies to finalise group allocation EOIs for approval within the parameters of the package.
106. A Cabinet paper will be prepared to take forward Border Exception Ministers decisions on broadening border settings and border class exceptions.
107. Other agreed changes for border exceptions that do not require a Cabinet decision will be implemented by the Minister of Immigration via certifying changes to Immigration Instructions.

## **Annexes**

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Annex One: Meeting agenda

Annex Two: Pipeline of border class exception requests

## Annex One: Meeting agenda

Date: 30 November, 8:30am

### Members:

- Hon Kris Faafoi (Chair)
- Hon Megan Woods
- Hon Chris Hipkins
- Hon Carmel Sepuloni
- Hon Stuart Nash
- Hon Willie Jackson

### Portfolio Ministers:

- Hon Grant Robertson
- Hon David Parker
- Hon Nanaia Mahuta
- Hon O'Connor
- Hon Clark

Agenda item		Lead	Timing
1	<p><b>Context</b></p> <ul style="list-style-type: none"> <li>• Reconnecting New Zealanders means that migrants with border exceptions will be able to enter under steps one and two</li> </ul>	Hon Faafoi	5 mins
2	<p><b>Implementing approved border exceptions</b></p> <ul style="list-style-type: none"> <li>• Class exception for up to 50 Global Impact Visa holders</li> <li>• Change to 'other critical worker criteria': <ul style="list-style-type: none"> <li><b>Either</b> <ul style="list-style-type: none"> <li>○ Implement from December 2021</li> </ul> </li> <li><b>OR (recommended)</b> <ul style="list-style-type: none"> <li>○ decide the settings for workers entering New Zealand as part of the <i>Reconnecting New Zealanders</i> step three advice</li> </ul> </li> </ul> </li> <li>• Confirm living cost requirements for third international student cohort</li> </ul>	Hon Faafoi	10 mins
3	<p><b>Class exceptions for decision</b></p> <ul style="list-style-type: none"> <li>• Tech sector workers (Hon Clark)</li> <li>• External auditors (Hon Clark)</li> <li>• Halal slaughterers (Hon O'Connor)</li> <li>• Dairy farm workers (Hon O'Connor)</li> <li>• Wool Harvesters (Hon O'Connor)</li> <li>• Rural Contractors (Hon O'Connor)</li> <li>• Deep-sea fishing crew (Hon Parker)</li> <li>• Transiting Australians (Hon Mahuta)</li> <li>• Cargo crew servicing the Pacific (Hon Mahuta)</li> </ul>	Hon Faafoi and portfolio ministers	20 mins
4	<p><b>MIQ group allocation</b></p> <ul style="list-style-type: none"> <li>• Approach to package for March 2022 in light of the new self-isolation pathway.</li> </ul>	Hon Hipkins and portfolio ministers	20 mins
5	Other Business	Hon Faafoi	5 mins



**Annex Two: Pipeline of border class exception requests**

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# Pipeline of Requests for Border Class Exceptions and Additions to Lists

26-Nov-21	Agency	Group	Nov	Dec '21	Jan '22	Feb	Mar	April	May	June	July	Total
Fof implementation	MBIE	Global Impact Visa Programme	Up to 50 people									50
	MoE	International students	Up to 1,000 students from February 2022									1000
For decision	MBIE	External auditors	Up to 180 workers over 2022									180
		Tech sector workforce	Up to 600 workers over 2022									600
	MPI	Halal slaughterers	Up to 15 workers, timing flexible									15
		Rural contractors	Up to 200 workers from January 2022									200
		Dairy farm workers	Amendment to existing class exception to remove cap on dairy farm assistants (currently set at 50 out of total 200 workers)									200 (cap already in place)
		Deep-sea fishers	Up to 450 BATM crew and up to 615 to replace those who entered from September 2021									1065
		Wool harvesters	Up to 90 from November 2021									90
	MFAT	Cargo crew servicing the Pacific	Extension of existing exception to enable up to 550 cargo crew servicing Pacific to undertake MIQ in New Zealand over 12 months, from February 2022									550
Transiting Australians		Extension of existing exception to enable up to 30 nominated Australians to transit New Zealand to return to Australia									30	
In development	MPI	Seafood processors	Indicative - under development									TBC