



COVERSHEET

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

List of documents that have been proactively released

Date	Title	Author
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

In Confidence

Office of the Minister of Immigration

Cabinet

Decisions on border class exceptions and border entry settings

Proposal

- 1 This paper seeks Cabinet's approval to:
 - 1.1 implement new class exceptions and amendments to existing border exceptions;
 - 1.2 remove the current restriction that prevents first time resident visa holders who have been granted a resident visa offshore but not yet activated it from travelling to New Zealand; and
 - 1.3 Constitutional conventions [REDACTED]
- 2 It also provides a short summary of the recent Judicial Review relating to Afghan nationals and the implications for border restrictions.

Background

- 3 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.
- 4 Exceptions to border restrictions are assessed by the Ministerial Group for Border Exceptions (Border Exception Ministers), led by the Minister of Immigration, before being put forward for Cabinet approval [CAB-20-MIN-0466].
- 5 On 30 November, Border Exception Ministers met and took in principle decisions on proposals for new border class exceptions. Ministers also agreed to add three events to the government-approved events lists, consistent with their authority under [CAB-20-MIN-0453].
- 6 Ministers considered advice on group allocations in Managed Isolation and Quarantine (MIQ) and agreed to:
 - 6.1 continue group allocations for refugees (as they are unlikely to be vaccinated against COVID-19 and have limited ability to self-isolate);
 - 6.2 increase the size of the exporters allocation over January to March 2022; and

- 6.3 increase the allocation for the Cricket World Cup in January and February 2022.
- 7 They also noted that MBIE will provide further advice to the Minister for COVID-19 Response on the future approach to MIQ group allocations in the context of self-isolation options being available.
- 8 The minute from the Border Exception Ministers' meeting on 30 November 2021 is attached at Appendix A.

Reconnecting New Zealanders to the World will enable a phased reopening of the border

- 9 New Zealand is now moving to a new phase of 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.
- 10 On 22 November, Cabinet agreed to move to a staged reopening of the borders for travellers on the medium-risk pathway. The *Reconnecting New Zealanders to the World* strategy will enable New Zealand citizens and residents and foreign nationals eligible under current border restrictions¹ to enter New Zealand and self-isolate instead of undertaking MIQ, in the following staged way:
- 10.1 Step 1 – from Australia, from 17 January 2022;
- 10.2 Step 2 – from the rest of the world, from 14 February 2022;
- 10.3 Step 3 – all foreign nationals, under a staged and phased reopening of visa categories, from 30 April 2022 [SWC-21-MIN-0200 and CAB-21-MIN-0498 refers].

Additional class exceptions will enable entry to priority temporary migrants ahead of a phased reopening of the border

- 11 The changes to isolation requirements from the first quarter of 2022 (Q1) shift 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 3. It also changes the context for considering how we move to more open borders ahead of decisions on the Immigration Rebalance (the Rebalance).
- 12 Cabinet will shortly be considering a paper on “Reconnecting New Zealanders: reopening the medium risk pathway”. This will propose options on the staging and phasing of Step 3, including options to manage the skill mix of workers coming to New Zealand in the period between the commencement of the Reconnecting strategy and implementation of the Rebalance.

¹ This includes temporary migrants who have been granted a visa under a border exception

- 13 Ahead of this advice, and in light of self-isolation becoming the main pathway for travellers to enter New Zealand during Q1 2022, I seek Cabinet's approval to the decisions on class exceptions taken by Border Exception Ministers on 30 November 2021. These are necessary to enable the continued flow of priority workers and individuals until we reopen visas more fully.

Decisions on border exceptions for approval

- 14 On 30 November 2021, Border Exception Ministers agreed to:
- 14.1 a class exception for up to 600 specialist tech sector workers (plus partners and dependent children) over 12 months, who meet specified criteria;
 - 14.2 a class exception for up to 180 external auditors (plus partners and dependent children), over 12 months, who meet specified criteria;
 - 14.3 a class exception for up to 15 halal slaughterers (plus partners and dependent children), subject to the Ministers of Immigration and Agriculture, Biosecurity and Rural Communities being confident that a wage guarantee of 1.5 times the median wage (\$40.50 per hour) will be enforced;
 - 14.4 remove the current split in the dairy worker class exception and increase the wage requirement for dairy farm assistants from the median wage (\$27 per hour) to the median wage plus \$1 (\$28 per hour);
 - 14.5 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);
 - 14.6 a class exception for up to:
 - 14.6.1 40 shearers, with entry in time for the 2022/23 peak shearing season; and
 - 14.6.2 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;
 - 14.7 a class exception for up to 450 BATM-class deep-sea fishing crew to enter in April and May 2022, subject to the Ministers for COVID-19 Response, Immigration and Oceans and Fisheries finalising an MIQ group allocation or alternative isolation arrangements;
 - 14.8 a class exception for up to 615 BATM and non-BATM-class deep-sea fishing crew to enter in September and October 2022;

- 14.9 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, International relations [redacted] from 1 January 2022;
- 14.10 a 12-month extension to the existing border exception to enable up to 550 cargo crew servicing the Pacific to undertake isolation in New Zealand, from 1 February 2022; and
- 14.11 widening 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).
- 14.12 require international students coming to New Zealand under the third class exception for international students to 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 sufficient funds available to pay for the costs of MIQ, if subject to pay for these costs.

Changes to border entry settings for residence-class visa holders and Afghan judicial review

- 15 The recent judgment of the High Court in the case "*Afghan Nationals v The Minister for Immigration [2021]*" made findings about the existing border entry instructions based on interpretations of sections of the Immigration Act 2009 (the Act) and immigration instructions. The findings, some of which may yet be appealed, have wider implications than the Afghan cases at hand.
- 16 As you are aware, the policy regime put in place as part of the COVID-19 border restrictions was intended to restrict entry of all offshore visa holders except those explicitly agreed by Ministers through Cabinet decisions to be exempted or excepted. Border entry instructions were amended to support the implementation of these restrictions including restricting entry to New Zealand of any resident visa holder who was granted residence offshore and had not travelled to New Zealand on that visa. At the time the policy regime was put in place it was understood that the instructions aligned with the Act. However, the High Court has found that aspects of the regime are ultra vires.
- 17 The High Court's ruling means that applicants for residence class visas should be able to travel to New Zealand based on the border entry instructions in force at the date of application, rather than those in force at the time of border entry (mirroring the requirement that residence applications are assessed against the residence instructions in force at the date of application). Had this been our interpretation in early 2020, it is likely that we would have sought to make legislative changes to achieve the desired closure of the border. However, as we move to open our borders as part of the Reconnecting strategy, I do not consider it necessary to make any urgent legislative change.

18 There are three groups who are prima facie affected by this aspect of the judgement, as outlined in the following table:


GROUP	IMPACT	ACTION
1. People who were granted resident visas prior to the March 2020 border closures but who had not yet travelled to New Zealand to activate their visas (the judicial review proceedings focused on members of this group)	Approx. 5,000 visa holders Border exception for this group already agreed, but yet to be implemented due to earlier concerns about MIQ availability	Border exception for this group implemented from 1 Dec (required by Court ruling) Travel can then begin for this group (but likely to wait till Steps one and two of Reconnecting for MIQ-free travel)
2. People who applied for resident visas prior to the March 2020 border closures, but have not yet been granted visas due to the border closure	Approx. 2,300 applications on hand Main impact is on Skilled Migrant Category, Refugee Family Support Category, Samoan Quota, Pacific Access Category and investor visas (family-related residence visas already being granted where exceptions in place)	Visas can now be processed and granted And as above for group 1
3. People who applied for a resident visa after the border restrictions came into force who will now not be able to enter New Zealand on that visa, since their application has been made while the borders have been closed	Approx 3,000 applications on hand, plus any new applications For this group, the ruling means that they can never enter NZ unless we provide for border entry for all residence visa holders Constitutional conventions [Redacted] Once decisions are taken in this paper, offshore residence processing will resume for most remaining categories	Border exception put in place Wed 1 Dec for 2021 Residence Visa Border exception for future groups proposed in this paper so that problem does not grow Constitutional conventions [Redacted]

19 In light of the High Court’s ruling, and concern about the impact on large numbers of residence visa applicants with our new 2021 Resident Visa, I directed INZ to amend the border entry instructions for people applying for the 2021 Resident Visa from 1 December 2021 so that they are not inadvertently affected by the border restrictions.

20 I am seeking Cabinet’s approval to extend this change to all other residence categories so that we prevent further applicants falling into the space where they can never enter New Zealand because the border was closed when they applied for a visa. Constitutional conventions
[Redacted]

- 21 A further element of the High Court’s ruling related to the interpretation of the humanitarian category for border exceptions. The Court’s interpretation in the case of the applicants widened the purpose of the category beyond its intent to potentially encompass international humanitarian crises. I have made changes to Immigration Instructions to implement the narrower intent – that it is to support travel to New Zealand in individual cases of extreme family trauma or medical emergencies. It was not intended to provide a pathway into New Zealand for categories of migrants needing to flee their home countries nor to other groups for whom the border remains explicitly closed.
- 22 INZ is also working on implementation of the Court’s requirements in respect of the applicants to the case.

Constitutional conventions



Implementation

- 26 Changes to border exceptions are implemented by the Minister of Immigration through certifying changes to Immigration Instructions. Class exceptions approved by Cabinet will be implemented in early-2022.

Financial Implications

- 27 There are no direct financial implications of this paper.

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 We know that some communities, particularly the elderly, Māori and Pasifika are more at risk of severe illness from COVID-19 due to age or underlying health conditions. The ongoing border restrictions (and associated managed isolation requirements) support the ability of our healthcare system to meet the ongoing health needs of priority communities, especially Māori and rural communities.

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). From Step 2 (and less so from Step 1) of the Reconnecting strategy, MIQ capacity will no longer be a constraint on the ability of New Zealand citizens to return home on the medium-risk pathway. This means decisions on class exceptions for migrants entering from Step 2 no longer have implications for New Zealand citizens returning home.

Consultation

- 32 This paper was prepared by the Ministry of Business, Innovation and Employment. MIQ was consulted.
- 33 Proposals relating to border exceptions were discussed by the Border Exception Ministers at our 30 November meeting.

Communications

- 34 I intend to make a public statement announcing the new border exceptions, which will be managed by my office.
- 35 The full criteria for all border exceptions will be published online by INZ and communicated to immigration stakeholders.

Proactive Release

- 36 This paper will be proactively released following Cabinet consideration and once the proposed border exceptions are in place.


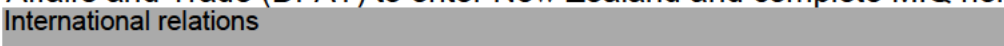

Recommendations

The Minister of Immigration recommends that Cabinet:


Border exception proposals for approval

I N C O N F I D E N C E


- 1 **Agree** to a class exception for up to 600 specialist tech sector workers (plus partners and dependent children) over 12 months, who meet the following criteria:
 - 1.1 the worker is coming to New Zealand for a role in one of the following occupations:
 - 1.1.1 Software and Application Programmers (ANZSCO 2613 and related synonyms), or
 - 1.1.2 ICT Managers (ANZSCO 1351 and related synonyms), or
 - 1.1.3 ICT Security Specialist (ANZSCO 2621 and related synonyms), or
 - 1.1.4 Multimedia Specialists (ANZSCO 2612 and related synonyms), AND
 - 1.2 Salary must be over a particular threshold
 - 1.2.1 NZ\$120,000 per annum for ANZSCO 2613, 1351 and 2621, or
 - 1.2.2 NZ\$95,000 per annum for ANZSCO 2612
- 2 **Agree** to a class exception for up to 180 external auditors (plus partners and dependent children), over 12 months, who are earning at least:
 - 2.1 \$70,000 per annum for auditors with two to three years' relevant experience; and
 - 2.2 \$85,000 per annum for auditors with at least four years' relevant experience
- 3 **Agree** to a class exception for up to 15 halal slaughterers (plus partners and dependent children), who are earning at least 1.5 times the median wage (\$40.50 per hour)
- 4 **Authorise** the Minister of Immigration and Minister of Agriculture, Biosecurity and Rural Communities to take final decisions on the class exception for halal slaughterers, subject to being confident that the wage guarantee of 1.5 times the median wage (\$40.50 per hour) will be enforced
- 5 **Agree** to remove the split in the dairy worker class exception and increase the wage requirement from the median wage (\$27 per hour) to the median wage plus \$1 (\$28 per hour) for dairy farm assistants
- 6 **Agree** to 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)

- 7 **Agree** to a class exception for up to:
- 7.1 40 shearers with entry in time for the 2022/23 peak shearing season; and
 - 7.2 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
- 8 **Agree** to a class exception for up to 450 BATM-class deep-sea fishing crew to enter in April and May 2022
- 9 **Authorise** the Ministers for COVID-19 Response, Immigration and Oceans and Fisheries to finalise a MIQ group allocation or alternative isolation arrangements for the class exception for up to 450 BATM-class deep-sea fishing crew to enter in April and May 2022
- 10 **Agree** to a class exception for up to 615 BATM and non-BATM-class deep-sea fishing crew to enter in September and October 2022
- 11 **Agree** to 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, 
International relations 
 from 1 January 2022
- 12 **Agree** to a 12-month extension to the existing border exception to enable up to 550 cargo crew servicing the Pacific to undertake isolation in New Zealand, from 1 February 2022
- 13 **Agree** to widen 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)
- 14 **Agree** that students entering New Zealand under the third class exception for up to 1,000 international students are required to 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 sufficient funds available to pay for the costs of MIQ, if subject to pay for these costs.
- 15 **Agree** that, unless otherwise specified, any class exceptions approved by Cabinet will be implemented in early-2022

Changes to border entry settings for residence-class visa holders

- 16 **Agree** to remove the current restriction that prevents first time resident visa holders who have been granted a resident visa offshore but not yet activated it, from travelling to New Zealand, noting that this means residence processing will recommence for all offshore applicants
- 17 Constitutional conventions 

Constitutional conventions



Authorised for lodgement

Hon Kris Faafoi

Minister of Immigration

Appendices

Appendix A: Minute of Ministerial Group for Border Exceptions Meeting on 30 November 2021

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At the 30 November 2021 meeting, Border Exception Ministers:

Global Impact Visa class exception

- a **Noted** that on 11 August 2021, Cabinet agreed to a class exception for up to 50 Global Impact Visa (GIV) holders [DEV-21-MIN-0162]
- b **Agreed** that the Edmund Hilary Fellowship can notify shortlisted candidates that they will be eligible for the Global Impact Visa class exception to begin implementing the GIV class exception

'Other critical worker' salary threshold

- c **Noted** 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]
- d **Agreed** to decide the settings for workers entering New Zealand as part of December advice on step three of *Reconnecting New Zealanders*

International student class exception

- e **Noted** 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]
- f **Agreed** 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.

New border class exceptions for referral to Cabinet

Tech sector workers

- g **Agreed** to recommend Cabinet approves a class exception for up to 600 specialist tech sector workers (plus partners and dependent children) over 12 months who meet the following criteria:
 - a 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**
 - b 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

External auditors

- h Agreed** to recommend Cabinet approves a class exception for up to 180 external auditors (plus partners and dependent children), over 12 months, who are earning at least:
 - a** \$70,000 per annum for auditors with two to three years' relevant experience; and
 - b** \$85,000 per annum for auditors with at least four years' relevant experience

Halal slaughterers

- i Agreed** 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 of 1.5 times the median wage (\$40.50 per hour) will be enforced

Dairy farm workers

- j Agreed** 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) for dairy farm assistants

Rural contractors

- k Agreed** 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)

Wool harvesters

- l Agreed** to recommend Cabinet approves a class exception for:
 - a** Up to 40 shearers with entry in time for the 2022/23 peak shearing season
 - b** 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

- m Agreed** 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
- n 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

Transiting Australians

- o **Agreed** 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, [redacted] International relations [redacted] from 1 January 2022

Cargo crew servicing the Pacific

- p **Agreed** 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

Widening the Replacement Crew border exception

- q **Agreed** 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)

Implementing new and extended class exceptions

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

Additions to Government-approved events list

- s **Agreed** to add the following events to the government-approved events list:
 - a FIFA Women's World Cup and any lead-in events and critical delegations from FIFA officials (October 2022) – [in confidence]
 - i. The World Rugby PAC4 tournament (May 2022)
 - ii. The Women's Rugby World Cup and any lead-in events and critical delegations from World Rugby (February 2022)

MIQ group allocation package March 2022 to May 2022

- t **Agreed** 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
- u **Noted** 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

Out of cycle allocations - exporters

- v **Agreed** to increase the size of the exporters allocation to 30 in January, 90 in February and 150 in March 2022.

Cricket World Cup

- w **Agreed** to provide two additional Cricket World Cup teams and other officials, broadcasters and participants (around 600 people total) MIQ space in January and February in the group allocation.