



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Immigration
<b>Title of Cabinet paper</b>	<i>Border Settings and Border exceptions referred to Cabinet</i>	<b>Date to be published</b>	19 August 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
July 2021	<i>Border Settings and Border exceptions referred to Cabinet</i>	<i>Office of the Minister of Immigration</i>
12 July 2021	<i>CAB-21-MIN-0278 Minute</i>	<i>Cabinet Office</i>
2 August 2021	<i>2122-0198 Further advice on phasing and timing to broaden border settings</i>	<i>MBIE</i>
<i>30 September 2021</i>	<i>2122-0969 Implementing Broader Border Settings</i>	<i>MBIE</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 privacy of natural persons and free and frank opinions.

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Cabinet

Note: several of the border exception proposals set out in this paper were not implemented due to capacity constraints in MIQ and the implementation of the 2021 Resident Visa. The phased reopening of the border, which was fully implemented on 31 July 2022, means that people who need a visa to travel to New Zealand no longer need a border exception to apply for a visa.

**Border Settings and Border exceptions referred to Cabinet**

**Proposal**

- 1 I propose to broaden border settings for people with flexible travel dates, including families who are separated by the border closure, critical workers and offshore residence visa holders.
- 2 I also seek agreement to decisions made in principle by the Ministerial Group for Border Exceptions (Border Ministers) last week. Border Ministers met on Monday 5 July 2021, took initial decisions and requested further advice on family reunification numbers and group allocation packages.

**Background**

- 3 I presented options for broadening border settings to Border Ministers at our 5 July meeting. Further advice was requested on family reunification numbers which was provided subsequently.
- 4 Border Ministers agreed the group allocation package for November 2021 to March 2022 allocating managed isolation space for groups with complex and bespoke needs in line with government priorities. The initial package was revised based on the RSE group allocation ceasing by 1 September.
- 5 Exceptions to border restrictions are assessed by Border Ministers, led by the Minister of Immigration, before being put forward for Cabinet approval [CAB-20-MIN-0466].
- 6 Border Ministers put forward to Cabinet class exceptions for the following groups:
  - 6.1 Deep sea fishing crew;
  - 6.2 Port crane operators;
  - 6.3 International students.
- 7 Border Ministers agreed to add to the government-approved events list the Summer of Cricket 2021/2022, Bledisloe Cup 2021 and Rugby Championships 2021, consistent with their authority under CAB MIN 2020-0453.

## Broadening Border Settings

- 8 There is demand for less restrictive border settings from businesses and employers facing shortages of skilled workers and from families still separated by border closure. There are also people granted residence to New Zealand who have been unable to enter with the border closure.
- 9 I am proposing broadening border settings to enable:
- 9.1 entry of skilled and well-paid workers to support our economic recovery;
  - 9.2 families who have been separated by border closure to be reunited;
  - 9.3 entry of offshore residence visa holders.
- 10 To support New Zealand's health and economic response to COVID-19 and to manage demand for MIQ space, we have been using highly-targeted exceptions to allow certain groups of travellers, including critical workers, into New Zealand.
- 11 Targeted exceptions can lead to inconsistent treatment between groups of travellers and can have rules that are complex and costly to administer.
- 12 We expect to see periods of variable demand for MIQ in the next 12 months. , MIQ is currently experiencing a period of high demand and this is expected to continue until the end of the year. The MIQ system now has better tools to operate in periods of high demand, providing an opportunity to expand border settings for those with flexibility around travel dates. Clear communications will be critical to manage expectations as to the demands on MIQ space and the wait that people may have before they are able to access space.
- 13 Wider border settings will improve MIQ utilisation, but will likely result in longer waiting times for those seeking to book space in MIQ using the managed isolation allocation system (MIAS) in periods of high demand. The Minister for COVID-19 Response has the ability to ring-fence rooms on MIAS for New Zealanders to prevent them from facing excessive delays.
- 14 There is lead-in time required to implement changes to border settings as Ministers take decisions which then need to be reflected in Immigration Instructions. This is also true for travellers wishing to come to New Zealand as they are likely to have to make arrangements to leave their current homes and countries.
- 15 I propose we stagger the implementation start dates for these broadening proposals to manage the increased demand on MIQ. I will work with the Minister for COVID-19 Response on the implementation including the timing and phasing of these proposals in order to manage the impact on MIQ.

*Entry of skilled and well-paid workers*

- 16 I propose to amend the 'other critical worker' criteria to a bright line test of a job and 1.5 times the median wage (\$84,240) per annum. This setting will reduce requests for class exceptions by occupations earning above this amount but less than the current threshold (2 times the median wage).
- 17 The other critical worker criteria border exception enables offshore skilled labour into New Zealand while the borders are closed. It is designed as the primary pathway for employers and agencies to bring in skilled labour in all sectors except for the health sector which has the critical health worker border exception.
- 18 Border exceptions for approved 'classes of workers' have been used to bring in groups of workers who are critical for a sector and where the impact on the sector would have national significance, such as the RSE workers and deep sea fishing crew. Generally these workers would not meet the other critical worker criteria, particularly the earnings threshold.
- 19 New Zealand has a shortage of qualified and experienced professionals and higher skilled trade people who will be able to enter with the proposed change to the other critical worker criteria. These workers will benefit the economic recovery and are unlikely to displace New Zealanders from the labour market.
- 20 A bright line test (rules based criterion) will be a simple test to enable entry of highly skilled workers for roles that are longer than six months and pay over 1.5 times the median wage. Currently for these roles, the employer must pay over 2 times the median wage **and** demonstrate that the work involves technical or specialist skills "not readily obtainable" in New Zealand or that there are significant national or regional economic benefits. With the bright line test, an employer will know whether the skilled worker they want to bring in will meet the criteria.
- 21 It is not possible to estimate the number who will enter with the proposed change. The requirement for a per annum salary 1.5 times the median wage is higher than most work visa holders who earn less than the median wage and is consistent with tilting the immigration system to provide access to higher skilled workers.
- 22 People who can enter under this bright line test will bring skills needed in the economy. For example, Border Ministers received a request for a border class exception for accountants with external audit skills who earn less than 2 times the median wage. Our recent border exception for veterinarians would not have been required if this bright line test was in place.
- 23 Those eligible for entry will need to book MIQ through MIAS.

*Families separated by border closure*

- 24 We have previously agreed to options to enable a select group of temporary work visa holders to bring their families (partners and dependent children) to

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New Zealand. However, families of other temporary work visa holders, who are contributing to our economy, remain separated by the border closure. Allowing family reunification will assist in the retention of these workers.

- 25 It is difficult to estimate the numbers of families that have been separated by border closure. There are around 117,000 temporary work visa holders that would normally be eligible to bring in partners and dependent children. Of this group, around 30,000 have supported a partner and / or dependent children and around 2,000 have partners and children that are offshore. Around 900 of this 2,000 had visas when the border closed and these visas have since expired, so they are not eligible to enter under current border exceptions.
- 26 The Ministry of Business, Innovation and Employment (MBIE) have estimated, based on the proportion of employer-assisted work visa holders who brought in family members with them pre-COVID, that around 3,500 onshore temporary visa holders who have not supported a partner or dependent children to date, may wish to bring in offshore family. It is possible that a higher number will be seeking to bring families given the current inability to travel easily and the extensions that have been granted for temporary work visa holders.
- 27 Applying the same approach to post study work visa holders, suggests around 5,000 onshore post study work visa holders who have not supported a partner or dependent children to date, may wish to bring in offshore family. This is likely to overestimate the number as post study work visa holders usually support fewer partners and dependent children than employer-assisted work visa holders.

Table 1: Onshore temporary work visa holders who may be eligible to support family

Visa type	All onshore visa holders	Who <b>have supported</b> a family	Who <b>have not supported</b> a family
Essential Skills work visa	50,000	14,000	36,000
Other employer assisted work visas	36,000	11,000	26,000
<b>Total employer assisted visas</b>	<b>86,000</b>	<b>25,000</b>	<b>62,000 (estimate 3,500 may have family offshore)</b>
Post study work visa	31,000	5,000	26,000 (estimate 5,000 may have family offshore)
<b>Totals</b>	<b>117,000</b>	<b>30,000 (2,000 are offshore)</b>	<b>88,000 (estimate 8,500 may have family offshore)</b>

**Note:** numbers in this table have been rounded to the nearest thousand and family refers to partners and dependent children

- 28 Essential skills work visa holders need to earn over \$43,322 per annum to be eligible to support dependent children. There are also some employer assisted work visa categories that cannot bring family to New Zealand because of the specific conditions of their visa such as those on Supplementary Seasonal Employment (SSE) visas.
- 29 I propose to introduce a border exception to enable partners and dependents of all eligible onshore temporary work visa holders to enter New Zealand. While this is a potentially large group, this approach will enable those who have been caught by the border closure, the comfort of knowing that they can be reunited. People will be able to enter New Zealand as visas are approved and as they book places in MIQ through MIAS.
- 30 Anyone seeking to bring family to New Zealand will need to meet the relationship based visa criteria. For partnership visas this requires demonstration of a genuine and stable relationship, along with a requirement to have been living together.

*Off shore residence visa holders*

- 31 I propose a border exemption to enable off shore residence visa holders (approx. 5000 people) to enter New Zealand. These are people who have a legitimate expectation of coming to New Zealand and have passed all our tests for becoming a New Zealand resident.
- 32 It is likely to take some time for these people to implement their plans to move to New Zealand. These people will book MIQ through MIAS as space is available.

**Group Allocations**

- 33 Border Ministers have approved a group allocation package that includes all Government priority groups (refer Annex One).
- 34 Work has begun on agreeing quarantine-free travel from some Pacific Islands to New Zealand. One way Quarantine-free travel will mean that RSE workers from those countries will no longer need to enter MIQ.
- 35 The group allocation package is based on the RSE group allocation (150 places every 16 days) ceasing by 1 September which facilitates the entry of other groups, in particular deep sea fishers.
- 36 The level of rooms allocated to 'groups' (400-500 rooms per fortnight) is intended to act as an 'upper ceiling' for the number of large and complex groups that can enter MIQ at any point in time. This helps ensure MIQ remains within safe operating limits and recognises the demand that large and / or complex groups places on finite staffing resources. This includes the national planning required to ensure these groups enter an appropriate managed isolation facility, and that their needs can be accommodated.

## **Border exceptions referred to Cabinet for approval**

### *Workforce class exception for Deep-sea fishers*

- 37 There are two types of vessels that require crew – the BATM freezer factory ships and non-BATM-class vessels. MIQ regards deep-sea fishers as a complex group due to their high level of smoking, translation and health needs and very high COVID-19 risk profile. For these reasons, deep-sea fishers for BATM-class vessels enter MIQ through the group allocation, not MIAS.
- 38 Border Ministers agreed to a group allocation for BATM class deep sea fishing crew.
- 39 Border Ministers also agreed to refer to Cabinet a class exception for 615 deep sea fishing crew (no partners or dependents) from July 2021 to September 2022 with a pay rate of at least minimum wage plus \$4 per hour (\$2 more per hour than currently required) for a 12 month visa.
- 40 The entry of these deep sea fishers support export earnings estimated to be around \$380 million per annum. There are also a number of New Zealand jobs supported by the migrant crew, for example, onshore processing jobs.
- 41 In addition, vessels need to have a minimum number of experienced crew on board in order to meet requirements under Maritime Law. The visas of current BATM crew are due to expire from September onwards and the Ministry of Primary Industries understands that the majority of the current crew would not be willing to extend their visas even if this option were available to them.
- 42 Non-BATM crew are replaced in small numbers on a rolling basis and will book MIQ through MIAS. BATM crew, as discussed above except , are only able to be accommodated in MIQ as a group allocation due to their complex needs.

### *Workforce class exception for port crane operators*

- 43 Border Ministers agreed to refer to Cabinet a border class exception for up to 5 port crane operators with at least 2 years crane operating experience (plus partners and dependent children) earning at or above 1.5 times the median wage per annum for a 12 month visa.
- 44 There is an urgent need for the entry of the port crane operators and this border class exception can be implemented very quickly. If the need was less urgent, a border class exception would not be required if the salary threshold for other critical worker is reduced to 1.5 times the median wage.
- 45 There has been a step change in the number of port crane operators required at Port of Auckland with an increase in the number of cranes operating and a reduction in the maximum weekly hours for health and safety reasons. Crane operators have been recruited domestically and further recruitment would involve 'poaching' from other ports leaving those ports short staffed. Training

programmes are in place, however it takes approximately 12-18 months for a crane operator trainee to be proficient.

- 46 New Zealand's economy is dependent on imports and exports moving through our ports. There are currently severe disruptions in global sea freight which has badly affected a wide range of New Zealand's sectors, from primary industries to retail and manufacturing. The current critical shortage of experienced port crane operators hampers New Zealand's response to these disruptions, amplifies port congestion and imposes costs on the economy.
- 47 The port crane operators and any accompanying family will book MIQ through MIAS.

*Border class exception for international students*

- 48 Cabinet has so far approved two cohorts of international students for entry to New Zealand while border restrictions remain in place. These cohorts were to enable students who had begun their studies at the time the border closed to enter.
- 49 The proposed border class exception for 1000 students is to enable students who have not studied in New Zealand previously to apply for entry and to bring partners if eligible under Immigration Instructions. This will build a pipeline of international students, signal to global markets that New Zealand values international education and help to sustain the demand for study in New Zealand while border restrictions are in place.
- 50 The Minister of Education will decide the allocation of students across the sub-sectors (degree, sub-degree and pilot trainees) consistent with the International Education Strategic Recovery Plan agreed by Cabinet in June 2020.
- 51 International students' will book managed isolation through MIAS. While many students may wish to enter the country just prior to the beginning of a semester, it is highly unlikely that booking through MIAS will enable this. To help to manage demand on MIQ in December and January, when there is likely to be high demand from New Zealanders, this cohort of students will not be allowed space in MIQ during these months.

**Border exceptions approved by Border Ministers**

*Additions to government-approved event list*

- 52 Border 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 [refer CAB-20-MIN-0453].
- 53 Border Ministers agreed to add the following to the Government-approved event list:
- 53.1 Summer of Cricket 2021/22;



53.2 Bledisloe Cup 2021;

53.3 Rugby Championships 2021.

54 Border Ministers also received requests to add the Sail GP and Motorsport's Castrol Toyota Racing Series to the government-approved events list. These events had also requested space in the group allocation which was heavily oversubscribed. They were considered a lower priority relative to other requests and were not added to the government-approved event list.

### **Implementing the border exceptions**

55 Changes to border exceptions are implemented by the Minister of Immigration through certifying changes to Immigration Instructions.

### **Financial Implications**

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

### **Legislative Implications**

57 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**

58 Changes to Immigration Instructions do not require a Regulatory Impact Statement (RIS).

### **Population Implications**

59 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**

60 The key human right impacted by the border restrictions generally is the right of New Zealand citizens to enter New Zealand (as affirmed in s.18 (2) of the New Zealand Bill of Rights Act 1990). Free and frank opinions

[Redacted text block]

## Consultation

- 61 This paper was prepared by the Ministry of Business, Innovation and Employment. The following agencies were consulted: Ministry of Foreign Affairs and Trade, the Ministry of Education, the Ministry of Primary Industries, the Ministry of Social Development.
- 62 These proposals were discussed by the Border Ministers at our 5 July meeting.

## Communications

- 63 I intend to make a public statement announcing the broadening of the border settings which will be managed by my office. I will work with the portfolio Ministers on the announcement of the border exceptions.
- 64 The full criteria for all border exceptions will be published online by Immigration New Zealand and communicated to immigration stakeholders.

## Proactive Release

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

## Recommendations

- 66 The Minister of Immigration recommends that Cabinet:
- 1 Note that New Zealand's border closure remains a central part of our COVID-19 strategy and that restrictive immigration settings are a key part of this border closure.

### *Broadening Border Settings*

- 2 Note that demand for MIQ is currently managed through highly targeted border exceptions that are complex and costly to administer, create inconsistencies between groups and are not effective at addressing periods of underutilisation of MIQ given the long lead times to adjust immigration settings.
- 3 Note that MIQ now has better tools to manage periods of high demand which creates an opportunity to broaden our border settings for key groups (such as split families and critical workers) that have some flexibility around their travel.
- 4 Agree to introduce to the other critical worker border exception criteria for roles longer than 6 months a bright line test of a job and a salary of 1.5 times median wage per annum.
- 5 Note that of the onshore temporary work visa holders who have supported partners and / or dependent children there are around 2,000 with families offshore who are unable to enter with the current border exceptions.

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- 6 Note MBIE has estimated, based on previous ratios, that there may be 8,500 onshore temporary work visa holders who have not supported a partner or dependent children to date, who may bring their family to New Zealand if you open family reunification to all onshore temporary visa holders.
- 7 Note that those who do have family offshore will need to meet the relationship based visa criteria which requires demonstration of a genuine and stable relationship.
- 8 Agree to establish a border class exception for partners and dependents of all onshore temporary work visa holders.
- 9 Note that there are approximately 5,000 off shore residence visa holders who are unable to enter New Zealand with the border closure.
- 10 Agree to establish a border exemption to allow all offshore residence visa holders to enter New Zealand.
- 11 Agree to delegate authority to the Minister for COVID-19 Response and the Minister of Immigration to take implementation decisions on the broadening border setting proposals including timing and phasing.

*Group allocation in MIQ*

- 12 Note that Border Ministers have approved a group allocation package that includes all Government priority groups.
- 13 Note the approved group allocation package is based on the RSE group allocation ceasing by 1 September to facilitate the entry of other groups, in particular deep sea fishers.

*Deep-sea fishing crew*

- 14 Agree to establish a border class exception for 615 deep sea fishing crew (no partners or dependents) from July 2021 to September 2022 with a pay rate of at least minimum wage plus \$4 per hour (\$2 more per hour than currently required) for a 12 month visa.
- 15 Agree that non-BATM-class vessel crew can enter MIQ through MIAS and that three or more BATM-class crew members must enter MIQ through the group allocation.

*Port crane operators*

- 16 Agree to establish a border class exception for up to 5 port crane operators with at least 2 years crane operating experience (plus partners and dependent children) earning at or above 1.5 times the median wage per annum for a 12 month visa.
- 17 Note the port crane operators, partners and dependent children will be required to book space in MIQ through MIAS.

*International students*

- 18 Agree to establish a border class exception for up to 1000 international students (plus partners and dependent children if they are eligible under current Immigration Instructions) on the basis that these students will enter MIQ through MIAS with no entry during December 2021 and January 2022.
- 19 Agree that the Minister of Education will decide the allocation of students between the sub-sectors.

*Border Ministers additions to Government-approved event list*

- 20 Note Border Ministers agreed to add the following to the Government-approved event list:
  - 20.1 Summer of Cricket 2021/22;
  - 20.2 Bledisloe Cup 2021;
  - 20.3 Rugby Championships 2021.

*Implementing the border exceptions*

- 21 Note that the border exceptions and exemptions 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.
- 22 Note this paper will be proactively released following Cabinet consideration, with appropriate redactions, once the proposed border exceptions are announced.

Authorised for lodgement

Hon Kris Faafoi

Minister of Immigration

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**Appendices**

Appendix A: Group allocation November 2021 to March 2022

<b>Approx. date</b>	<b>Groups</b>	<b>Total numbers</b>
Early November	39 Antarctic programme 30 Rugby league disability team 40 fishers 60 Construction Sector Accord	169
Late November	189 Antarctic programme 80 Expo 65 All Blacks 65 Black Ferns 20 Black Caps	<b>419</b>
Early December	76 NZDF 78 Rugby league 68 Cricket (Black Caps and Bangladesh) 60 Construction Sector Accord	282
Late December	65 Antarctic programme 108 refugees	173
Early January	170 Antarctic programme 60 Construction Sector Accord 35 Netherlands cricket	265
Late January	36 Antarctic programme 60 Expo 62 Cricket World Cup* 60 NZDF 24 Silver Ferns	242
Early February	115 refugees 120 Expo 31 Cricket World Cup* 50 Antarctic programme 35 South Africa cricket	351
Late February	60 Construction Sector Accord 90 Cricket World Cup* 44 Expo 53 Winter Olympics 80 NZDF	327
Early March	60 Construction Sector Accord 25 Expo	85
Late March	112 refugees 11 Winter Paralympics	123

**Note** that CWC numbers and sequencing may vary if needed to accommodate the South African Men's Cricket team and further advice will be provided.

**Note:** Exporters have been allocated 25 places in November and December as a trial, with potential for 25 places in the following months where there is space.