



COVERSHEET

Proactive release of Cabinet paper: Strengthening immigration health screening for dependent children of temporary visa holders

Minister	Hon Erica Stanford	Portfolio	Immigration
Cabinet paper	Strengthening immigration health screening for dependent children of temporary visa holders	Date to be published	17 March 2025

List of documents that have been proactively released

Date	Title	Author
November 2024	Strengthening immigration health screening for dependent children of temporary visa holders	Office of the Minister of Immigration
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Information redacted

YES / NO [select one]

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Information has been redacted on the following grounds:

- Maintenance of the law
- Confidential advice to Government
- Legal professional privilege

In Confidence

Office of the Minister of Immigration

Cabinet Economic Policy Committee

Strengthening immigration health screening for dependent children of temporary visa holders

Proposal

- 1 This paper seeks agreement to strengthen immigration health screening for student and visitor visa applicants who are applying on the basis of being the dependent children of other temporary visa holders. The proposed changes would align the health screening for this group with the existing settings for resident visas applicants.

Relation to government priorities

- 2 This paper relates to the Government's priority to deliver effective and fiscally sustainable public services.

Executive Summary

- 3 I seek Cabinet's agreement to make changes to immigration settings set out in immigration instructions relating to temporary entry visas. The proposed changes would raise the threshold to meet the acceptable standard of health requirements for some visitor and student visa applicants who are the dependent children of other temporary visa holders. It would not apply to full fee-paying international student visa applicants or general visitors.
- 4 Schools, principals' groups, teachers, and parents have raised significant concerns with me about the number of dependent children of migrants enrolling in schools who have significant learning needs, in addition to English language learning requirements. Such enrolments have significant resourcing implications and often disrupt already resource-stretched schools.
- 5 Currently, immigration instructions provide that student visa applicants under 21 years of age are deemed not to be of an acceptable standard of health if they have a medical condition likely to impose significant costs or demands on health services during their intended period of stay; or if the Ministry of Education (MoE) determines that there is a relatively high probability that their physical, intellectual, or sensory condition or their use of language and social communication would entitle them to Ongoing Resourcing Scheme (ORS) funding. ORS is our highest support category and a very small proportion of students in New Zealand are currently entitled to ORS funding (1-2%).
- 6 As a result, the current threshold is inadequate to screen out dependent children of temporary migrants who would be likely to impose significant costs and resource demands on schools, but not to the level of requiring ORS funding. In some instances, MoE has determined (based on the information available) that they do not believe a

student would be eligible for ORS but when that student arrives in country and enrolls at a school, it becomes apparent that they have very high needs that are unable to be managed by the school.

- 7 I propose, in the short-term, to apply the threshold that currently applies to residence class visa applicants. Under this threshold, a student visa applicant would not be of an acceptable standard of health if they had a severe cognitive and development disability. This would be a higher bar for entry than the current ORS standard. By also applying this new standard to dependent children applying for long-term visitor visas it will ensure that pre-school and school-aged children with high-needs do not become well-settled here on visitor visas and then get declined when they come to apply for a student visa to attend school. These changes will help address some of the demand for learning support from temporary entrants and can be implemented quickly, without creating significant adverse implications.
- 8 However, this will not wholly address the pressures that such students place on schools, nor will it address existing issues and incentives for parents to avoid screening, **Maintenance of the law**. I have asked my officials to continue to explore longer-term options to address these issues.

Background

- 9 The immigration health settings need to balance the need to attract skilled migrant workers and facilitate their relocation to New Zealand, while mitigating the risk of significant cost or demand on the health and education systems.
- 10 In light of the historic high volume of migrant arrivals, over the last year I have received ongoing and significant concerns from principals, teachers, and parents about the numbers of dependent children of migrants who have significant learning needs enrolling in schools. This is particularly concerning as our support services are not able to meet the need that already exists with extended waiting times and an insufficient specialist workforce to meet demand. Such enrolments have significant resourcing implications and often disrupt already resource-stretched schools that are not able to meet the educational, behavioural or other needs of these children.
- 11 Currently, immigration instructions provide that student visa applicants under 21 years of age are deemed not to be of an acceptable standard of health if they have a medical condition likely to impose significant costs or demands on health services; or if MoE determines that there is a relatively high probability that their physical, intellectual, or sensory condition or their use of language and social communication would entitle them to Ongoing Resourcing Scheme (ORS) funding. A very small proportion of students in New Zealand are currently entitled to ORS funding (approximately 1-2%).
- 12 Learning support functions across early learning and schooling pathways are not consistently supporting all children and young people with learning support needs to be present, participating, progressing, and experiencing success, safety, and wellbeing at each stage of their learning alongside their peers. As at 31 October, the average wait times for additional learning support were 11 days for ORS, 51 days for behaviour services, 83 days for communication services, and 115 days for early

intervention.¹ Multiple factors contribute to this problem, and I, as the Minister of Education, have a suite of changes under consideration to achieve better outcomes within budgetary and resourcing constraints. There are no simple fixes.

- 13 The devolved nature of the education system means we do not know about all learning support needs, including the size of localised challenges related to the dependents of temporary visa holders. While medical diagnoses can indicate possible learning support needs, it is only part of the picture as learning support needs arise from the interaction between learners' characteristics, circumstances and their learning environment.
- 14 The Ministry of Business, Innovation and Employment (MBIE) and MoE hold limited data on the scale of the issue. There were approximately 140 visa applicants referred for an ORS assessment in the year to date (January to September 2024) based on the information provided in medical certificates received by Immigration New Zealand (INZ). In the 23/24 financial year there were about 235,000 medical certificates submitted from resident and temporary entry visa applicants.
- 15 However, we know that the scale of those who require additional learning support in schools will be significantly larger than those who have specifically been referred for ORS assessment. There will be many more medical certificates that reflected additional learning or medical needs but did not meet the threshold to be referred for an ORS assessment. There are also incentives in the system for a family to withhold information in a medical examination/visa application, the child may be too young to be properly diagnosed, or the child's visa application was reliant on a medical certificate up to 36 months old which has not captured changes in health or education needs.
- 16 As a result, the current threshold is inadequate in screening out dependents of temporary migrants who would likely to impose costs on schools or our already stretched health services.
- 17 I have also identified a potential screening gap for pre-school and school-aged children applying for longer-term visitor visas as the dependents of other work or student visa holders. Currently there is no ORS assessment for a child applying for a visitor visa even if in the future they might qualify for ORS funding if they apply to attend school here. This means that some children who might in future meet ORS or the new 'severe developmental disorder' standard proposed in this paper could become well-settled here but be declined when they apply for their first student visa.

Analysis

- 18 To address this disproportionate impact on schools, I instructed officials to identify options to assist with the screening of such applicants. The simplest option available is to apply one aspect of the standards currently applied to residence class visa applicants to applicants of student and visitor visa applying on the basis of being the dependent children of other temporary visa holders. Temporary visa applicants are

¹ Note that national and regional wait times fluctuate over time. Provision of timely support is influenced by several factors including increased demand, complexity of needs and staff recruitment and retention.

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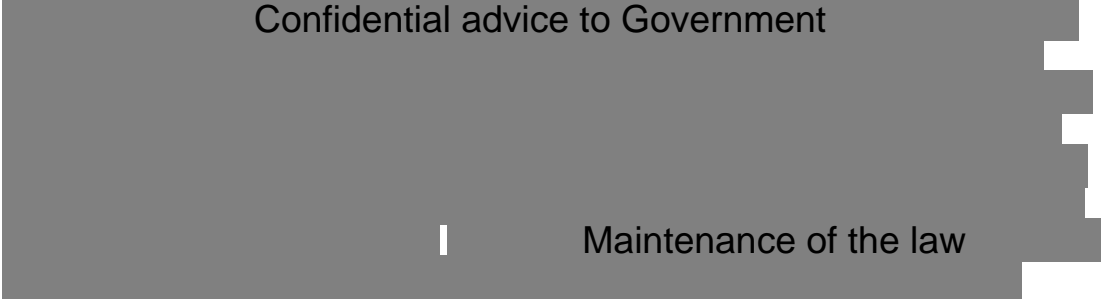
required to supply a medical certificate if they are intending a stay of more than 12 months.

- 19 Currently, the requirements for residence class visas list a number of conditions which do not meet an acceptable standard of health. This includes any “severe developmental disorders or severe cognitive impairments where significant support is required, including but not exclusive to:
- 19.1 physical disability
 - 19.2 intellectual disability
 - 19.3 autistic spectrum disorders
 - 19.4 brain injury.”
- 20 I propose to apply this standard to all student and visitor visa applications made as dependents of temporary visa holders. It would apply to applications made onshore or offshore. The effect of this is that where any severe developmental disorder or cognitive impairment that requires significant support is disclosed, the applicant will automatically fail to meet the requisite acceptable standard of health requirement.
- 21 The threshold of severity proposed in this standard will not be defined and will require MBIE and it’s medical assessors to exercise judgment about the severity of the condition. To enable ease of implementation, and to maximise the impact of the proposal, I expect that such an assessment will consider the lifetime costs of the condition (as is currently done with residence), irrespective of the duration of the specific visa the applicant has applied for.
- 22 Compared to the status quo, this may disincentivise some people from accepting jobs in New Zealand on a temporary basis. However, it would not change the incentive for those who do have pathways to residence (as under current settings they would have to meet this standard for any subsequent residence application anyway).
- 23 This proposal encourages applicants with long-term intentions to reside in New Zealand to meet a critical part of the health requirements upfront when they apply for their temporary visa, rather than applicants being unable to meet the residence requirements further down the track. I believe this proposal provides more transparency and fairness for temporary visa applicants who may want to stay here long-term, as it means they are less likely to come here, settle in, make a life, and then find their residence is declined because there is a higher bar for residency than for temporary work visas. My view is that the risk of some applicants not being eligible for a student or visitor visa vastly outweighs the benefits of the proposal.
- 24 However, to manage any unintended consequences I propose to include an ability for an immigration officer to consider a waiver to the acceptable standard of health requirement for dependents of temporary visa holders who fail this new requirement. A medical waiver process assesses whether the applicant’s (or their family’s) potential contribution to New Zealand is likely to outweigh the costs and demands they might impose. A medical waiver process is currently in place for residence applications but is only available for a limited number of temporary applications.

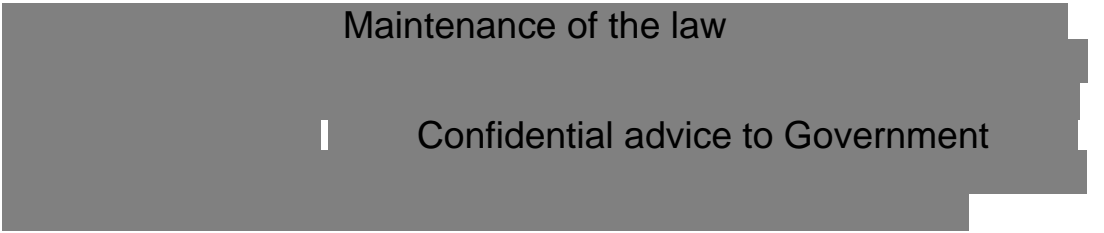
Given the potential impacts, I consider that a waiver would give the system more flexibility to respond appropriately.

- 25 Potential factors to be considered as part of a waiver would be largely the same as the residence requirement and would likely focus on the parents' potential contribution to New Zealand.

Further work

- 26  Confidential advice to Government
Maintenance of the law

- 27 I have asked my officials to continue to explore options that would better address the breadth of the issue (including for example, by identifying alternative thresholds or tests). This could also include collecting more data on the number of migrant children who need additional support in schools to better understand the scale of the problem.

- 28  Maintenance of the law
Confidential advice to Government

Risks

- 29  Legal professional privilege

- 30 A decision to certify changes to immigration instructions involves the exercise of discretion. Accordingly, by law, as Minister of Immigration I must consider New Zealand's international obligations and whether any limitations to rights recognised in NZBORA that might right result from changes can be demonstrably justified in a free and democratic society.

- 31 Section 19(1) of the NZBORA states that “Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993”. Discrimination on the basis of “disability” is a prohibited ground of discrimination under section 19 of the human Rights Act. I note that section 392(3) of the Immigration Act 2009 “recognises that immigration matters inherently involve different treatment on the basis of personal characteristics”. This section expressly recognises that discrimination on prohibited grounds may be justified in the immigration context.
- 32 I consider that in this instance I have considered all relevant factors relating to the potential NZBORA implications, and New Zealand’s adherence to our international obligations. Given the costs to the schooling system and the impact that has, I consider any limitations on the right to freedom from discrimination arising as a result of this proposal are demonstrably justified.

Implementation

- 33 While the proposal will have limited implementation impacts (as it applies an existing standard), immigration officials note that the proposal would require manual handling of an estimated 5,000 non-automated medicals related to student visa applications every year. Their initial estimate is that this process would add an additional two minutes per application or overall, an estimated 166 hours of additional processing time per annum. Given existing resourcing pressures in the visa system this will impact student visa processing times for impacted applications.
- 34 My assessment is that the processing impacts in this case are outweighed by the benefits to the schooling system. I expect that the changes will be implemented in in the first half of 2025.

Cost-of-living Implications

- 35 There are no cost-of-living implications associated with the proposals.

Financial Implications

- 36 There are no financial implications arising from this proposal.

Legislative Implications

- 37 There are no legislative implications arising from these proposals. I will give effect to the proposal by amending immigration instructions.

Impact Analysis

Regulatory Impact Statement

- 38 As the paper proposes changes that can be given effect by way of a change to the immigration instructions, the Impact Analysis requirements do not apply.

Climate Implications of Policy Assessment

- 39 A Climate Implications of Policy Assessment (CIPA) is not required for the proposal.

Population Implications

- 40 The proposal will have a marginal impact on migrant populations and limit some dependents of temporary workers from securing a student visa.

Human Rights

- 41 As noted above, there may be some human rights implications arising from the proposal.

Use of external Resources

- 42 No external resources have been used.

Consultation

- 43 The following agencies were consulted on this paper and their views taken into account during its development: the Ministry of Health, the Ministry of Education, the Ministry of Foreign Affairs and Trade, the Treasury, the Ministry for Pacific Peoples, the Ministry for Ethnic Communities, Whaikaha-Ministry of Disabled People, the Department of Prime Minister and Cabinet, and Oranga Tamariki-Ministry for Children.

Communications

- 44 The proposed changes will be notified to key stakeholders following Cabinet's decision.

Proactive Release

- 45 This paper and its corresponding Cabinet minute will be proactively released subject to redactions as appropriate under the Official Information Act 1982 after Cabinet consideration.

Recommendations

- 46 The Minister of Immigration recommends that the Committee:
- 1 **note** that a number of schools have reported concerns about the number of dependent children of migrants enrolling in schools who have significant learning needs;
 - 2 **note** that the requirements for residence class visas provide that a number of conditions are expressly deemed not to meet the acceptable standard of health standard, including any "severe developmental disorders or severe cognitive impairments where significant support is required, including but not exclusive to:
 - 2.1 physical disability
 - 2.2 intellectual disability
 - 2.3 autistic spectrum disorders

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- 2.4 brain injury;
- 3 **agree** that the acceptable standard of health standard set out in recommendation 2 for residence applications, apply to any application for a visitor or student visa as a dependent of a temporary visa holder (it would not apply to foreign full fee-paying students, general visitors, or other visa applicants who do not need to meet health requirements under current immigration instructions);
 - 4 **agree** that an immigration officer be enabled to waive those requirements set out in recommendation 3 for visitor and student visas as a dependent of a temporary work visa holder who have failed the new acceptable standard of health requirement;
 - 5 **agree** that the medical waiver process be applied in line with the ability to waive ASH requirements for residence applications with the potential contribution of the visa applicant's family being able to be taken into account;
 - 6 **authorise** the Minister to certify immigration instructions giving effect to the decisions above, including by making any minor and technical changes.

Authorised for lodgement

Hon Erica Stanford

Minister of Immigration