



BRIEFING

Final Cabinet paper: Immigration (Visas, Entry Permission, and Related Matters) Amendment Regulations 2019

Date:	5 June 2019	Priority:	High
Security classification:	In Confidence	Tracking number:	3780 18-19

Action sought		
	Action sought	Deadline
Hon Kelvin Davis Minister of Tourism	Agree to lodge the Immigration (Visa, Entry Permission and Related Matters) Amendment Regulations 2019 paper	7 June 2019
Hon Iain Lees-Galloway Minister of Immigration	Agree to lodge the Immigration (Visa, Entry Permission and Related Matters) Amendment Regulations 2019 paper	7 June 2019

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Richard Davies	Manager, Tourism System and Insights	04 901 2059	✓ Tourism
Andrew Craig	Team Leader, Immigration Policy	04 901 1245	✓ Immigration
Charlotte Woolhouse	Senior Policy Advisor, Tourism Policy	04 896 5867	
Christine Hyndman	Principal Policy Advisor, Immigration Policy	04 901 8575	

Section 9(2)(a)

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



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Purpose

This paper provides you with information to support you taking the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019 (the Amendment Regulations)* to Cabinet Legislation Committee on Tuesday 11 June. The Amendment Regulations provide for both the International Visitor Conservation and Tourism Levy (IVL) and the Electronic Travel Authority (ETA).

Recommended action


The Ministry of Business, Innovation and Employment (MBIE) recommends that you:


- a **Note** that MBIE previously provided you with a draft Cabinet paper and draft Amendment Regulations for ministerial consultation [2518 18-19]
- Noted* *Noted*
- b **Note** that there have been some changes since that previous version, and in particular
- a. the Minister of Immigration has agreed to two additional questions for people requesting ETAs (checking whether they have previously travelled to New Zealand, or have previously applied for a New Zealand visa) to assist with traveller identity resolution
 - b. Cabinet is asked to cancel a report back which would have sought changes to the *Immigration (Carriers' Information Obligations) Regulations 2010*, as no changes are needed to implement the ETA
- Noted* *Noted*
- c **Agree** to lodge the *Immigration (Visa, Entry Permission and Related Matters) Amendment Regulations 2019* paper with Cabinet Office on 6 June 2019 in order that it can be considered by the Cabinet Legislation Committee on 11 June 2019
- Agree / Disagree* *Agree / Disagree*

- d **Agree** that, following Cabinet discussion of the attached Cabinet paper, MBIE will proactively release this paper and all associated briefings (including the Cabinet paper recommending Cabinet approve the introduction of the Bill) prior to 1 July, noting that any redactions made will be consistent with the Official Information Act 1982.

Agree / Disagree

Agree / Disagree


Richard Davies
Manager, Tourism System and Insights
Labour, Science and Enterprise, MBIE
5.6.19


Andrew Craig
Team Leader, Immigration Policy
Labour, Science and Enterprise, MBIE
5.6.19

Hon Kelvin Davis
Minister of Tourism

..... / /

Hon Iain Lees-Galloway
Minister of Immigration

..... / /

Background

1. On 30 May 2019 the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Act 2019* passed through all stages of the House. Subject to Royal Assent, the amended Immigration Act 2009 (**the Act**) will come into force on 1 July 2019.
2. The Act provides for regulations to be established under new s.400A, in addition to the existing regulation making powers under s.400, and the attached Cabinet paper seeks agreement from the Cabinet Legislation Committee to new regulations.
3. You have already consulted with ministerial colleagues on a previous version of the Cabinet paper [2518 28-19]. No comments were raised concerning that draft. The current paper differs slightly from that version and the differences are set out below, and in the talking points at Annex One.

About the Amendment Regulations

4. The *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019* (**the Amendment Regulations**) provide for both the International Visitor Conservation and Tourism Levy (IVL) and the Electronic Travel Authority (ETA).

International Visitor Levy

5. The draft Amendment Regulations impose an IVL of \$35 on people who apply for a temporary entry class visa to travel to New Zealand, or who request a traveller ETA. The Amendment Regulations specify the IVL is payable at the same time as a visa fee or ETA fee.
6. When Cabinet agreed to the introduction of the IVL it also agreed to exempt certain people from the requirement to pay the IVL. These exemptions are provided for in the draft Amendment Regulations. We have grouped where possible, but sometimes need to list individual visa names.
7. To avoid duplication within the principal Regulations we have cross-referenced to existing provisions as much as possible. While this is best practice it has meant the Amendment Regulations are detailed and complex. The draft LEG paper includes an annexed table that explains how each exemption Cabinet agreed to is reflected in the draft Amendment Regulations.
8. No significant changes have been made to the IVL sections of the Amendment Regulations compared to the draft provided for Ministerial consultation.

Electronic Travel Authority

9. The ETA will be a condition of the visa waiver programme (and some deemed visas). The ETA is being introduced to enable:
 - a. faster and better facilitation for an increasing number of travellers:
 - i. a better experience (including reducing the chance of being prevented from boarding at check-in or turned around at the border); and
 - ii. an increasing ability to interact with authorities digitally and receive personalised and modern services

- b. more secure borders to:
 - i. provide assurance to New Zealand about the purposes and characteristics of intending foreign travellers; and
 - ii. close gaps in New Zealand border settings relating to the marine cruise pathway.
- 10. People who are required to hold an ETA before travel will be able to request an ETA through a website or an application on a mobile device.
- 11. The Amendment Regulations give effect to the ETA by imposing a condition on a waiver of the requirement to hold a visa permitting travel to New Zealand (ie to hold an ETA before travel). The Amendment Regulations insert a new Part (Part 4A Electronic Travel Authorities (ETA)) into the principal Regulations. This new Part sets out the requirements to hold an ETA, ETA requests, issuance or refusal of ETA, and validity of ETAs.
- 12. The other amendments related to the ETA are:
 - a. that additional persons are categorised as people to whom a visa waiver to travel to New Zealand applies
 - b. amendments to the categories of persons who are deemed to hold a temporary entry class visa and who are deemed to have been granted entry permission
 - c. that certain requirements in relation to an application for a temporary entry class visa do not apply to cruise passengers
 - d. that a citizen or permanent resident of Australia may apply for a residence class visa at a port (in addition to at an immigration control area).

Changes to previous version

Two new questions for ETA requestors

- 13. On 20 February 2019, the Cabinet Economic Development Committee (DEV) authorised the Minister of Immigration [DEV-19-MIN-0023] to approve changes consistent with the policy proposals in the paper under consideration and the previous policy paper DEV-18-SUB-0191] and on any issues that arose during the drafting process.
- 14. On 31 May 2019, the Minister of Immigration agreed that the draft Amendment Regulations be augmented by the addition of questions asking whether people requesting an ETA have previously either travelled to New Zealand or applied for a New Zealand visa. These questions will identify up front whether Immigration New Zealand (INZ) is likely to already hold a client record for an individual, and therefore improve identity resolution.

Cancel a further report back to Cabinet

- 15. On 20 February 2019, DEV directed officials to:
 - a. develop the details of marine advance passenger information and processing, including the timing and content of information about passengers and crew to New Zealand border agencies, and
 - b. establish transitional provisions to support the operation of the ETA where electronic systems or agreements with carriers are not in place.
- 16. DEV also invited the Minister of Immigration to seek Cabinet agreement to the outcomes of this policy development and to seek amendments to the *Immigration (Carriers' Information Obligations) Regulations 2010* in mid-2019 [DEV-19-MIN-0023].

- 31 Subsequent policy development has identified that no changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* are necessary to implement the ETA from 1 October 2019, and officials are confident that similarly transitional provisions will not be required. The Minister of Immigration has agreed that Cabinet's agreement be therefore sought to the cancellation of that reportback.

Additional amendments to implement previous immigration policy decisions

17. In addition to enabling the IVL and ETA, the Amendment Regulations also give effect to previous Cabinet decisions, specifically:
- a. a change to a regulation governing the handling of cash by Immigration New Zealand
 - b. a decision arising from the 2018 Immigration Fee and Levy Review, which was inadvertently omitted from a previous amendment to the principal Regulations.

Next steps

18. The table below sets out the next steps to ensure all necessary changes to enable the ETA and IVL are in place by 1 July:

Date	Action
7 June	Amendment Regulations and LEG paper lodged with Cabinet office <i>Note: the Parliamentary Counsel Office is responsible for lodging the regulations. It liaises with the Cabinet Office directly about the exact lodgement date. We anticipate that it will lodge the regulations on 6 June 2019, but it may do that later if necessary (subject to the Cabinet Office's agreement).</i>
11 June	Cabinet LEG committee considers Amendment Regulations
17 June	Cabinet considers Amendment Regulations
17 June	Governor General signs Amendment Regulations at Executive Council
1 July	Amendments to the Immigration Act 2019 and the regulations come into force and collection of the IVL starts
1 October	ETA required for visa-waiver travel

Proactive release

19. Officials plan to proactively release this paper and all associated briefings (including the Cabinet paper recommending Cabinet approve the introduction of the Bill) prior to 1 July. Any redactions made will be consistent with the Official Information Act 1982.

Annexes

Annex One: Cabinet paper: *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019*

Annex Two: Talking points to support discussion at Cabinet Legislation Committee

Annex One: Cabinet paper: Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019

In Confidence

Office of the Minister of Tourism
Office of the Minister of Immigration
Chair, Cabinet Legislation Committee

IMMIGRATION (VISA, ENTRY PERMISSION, AND RELATED MATTERS) AMENDMENT REGULATIONS 2019

Proposal

- 1 We propose that Cabinet authorise the submission of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019* to the Executive Council. These **Amendment Regulations** will enable the collection of the International Visitor Conservation and Tourism Levy (IVL) and introduce the Electronic Travel Authority (ETA) for visa-waiver travel to New Zealand.
- 2 The Amendment Regulations are in part enabled by legislation (the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Act 2019*), which passed under urgency on 30 May 2019 and received Royal Assent on 4 June 2019.

Policy

- 3 The Amendment Regulations give effect to Cabinet policy decisions to introduce the IVL [DEV-18-Min-0194] and the ETA [DEV-18-MIN-0191 and DEV-19-MIN-0023], subject to two proposed changes discussed below. They will amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (**the principal Regulations**).
- 4 We recommend Cabinet waive the 28-day rule for the Amendment Regulations, to enable some parts of the regulations to come into force on 1 July 2019. 1 July 2019 has been widely communicated as the commencement date for the IVL in particular, and delaying, even if only by one day, would cause confusion.

The Amendment Regulations enable collection of the IVL

- 5 The IVL will ensure international visitors to New Zealand contribute to the infrastructure they use and the environment they enjoy. Recent growth in visitors has put pressure on visitor infrastructure, including on facilities and public conservation lands and waters managed by the Department of Conservation. This visitor infrastructure is necessary to support the tourism experience in New Zealand.
- 6 The Amendment Act adds a new section to the Immigration Act 2009 (**the Act**) that allows for regulations to be made to charge the IVL. It provides that these regulations may specify who is required to pay the IVL, and who is exempt, set the levy amount, and provide for the manner of collection of the levy.
- 7 The Amendment Regulations impose an IVL of \$35 on people who apply for a temporary entry class visa to travel to New Zealand, or who request a traveller ETA.

The Amendment Regulations specify the IVL is payable at the same time as a visa fee or ETA fee.

- 8 When Cabinet agreed to the introduction of the IVL it also agreed to exempt certain people from the requirement to pay the IVL. These exemptions are provided for in the Amendment Regulations.
- 9 To avoid duplication within the principal Regulations, the Amendment Regulations cross-reference existing provisions as much as possible. A table explaining how each exemption has been provided for in the Amendment Regulations is attached as **Annex One**.
- 10 The Minister of Tourism approved some minor and technical changes that have arisen during drafting. Of those, Cabinet should be aware that the original proposal to charge visitors to New Zealand staying for 12 months or less cannot be operationalised. Instead, the Minister has agreed that all applicants for a temporary entry class visa are liable, with some visas exempted where they are either generally granted for more than 12 months, and/or are for work purposes (such as the essential skills visa).
- 11 Cabinet should also note that the Ministry of Business, Innovation and Employment's (MBIE's) online application systems will automatically assess whether the applicant is required to pay the IVL, and charge or not charge accordingly. Where an applicant is exempt from paying the IVL, either on the basis of the type of visa they are applying for or on the basis of their nationality, the IVL will appear as a zero charge on their invoice.
- 12 Payment of the IVL is required for each liable visa application and ETA request, meaning that the IVL does not have an independent period of validity. As a result, some people may pay once and travel to New Zealand multiple times, while there are some scenarios where travellers may pay the IVL more than once over a relatively brief period of time. For example:
 - 12.1 a traveller may have a visitor visa or Traveller ETA which is valid for travel for two years, and visit New Zealand twice before the visa or ETA expires;
 - 12.2 a traveller may have requested and been declined a traveller ETA, and subsequently apply for a visitor visa. Both applications will be IVL liable;
 - 12.3 some travellers are generally visa-required, but if they enter New Zealand on a cruise ship they are only required to hold a traveller ETA (which will include paying the IVL). If they subsequently decide to travel to New Zealand by air, they will need to apply for a visitor visa, which will also include the IVL.
- 13 This automated system may also mean that a person with dual nationalities, where one is a nationality that is not required to pay the IVL (Australians and most Pacific Islanders) and who requests an ETA or applies for a visa using a passport from their other nationality, will pay the IVL even though they are not required to. This is a function of the automated system, and to change it would be an expensive software build that would only benefit a small number of people. Officials do not consider that it would be worth pursuing.

The Amendment Regulations implement the ETA

- 14 From 1 October 2019 most visa-waiver travellers will have to hold an ETA in order to travel to New Zealand in reliance of that visa waiver.
- 15 The ETA will enable:
 - 15.1 *Faster and better facilitation for an increasing number of travellers* over time to meet travellers' and carriers' expectations of:
 - 15.1.1 a better experience (including reducing the chance of being prevented from boarding at check-in or turned around at the border); and
 - 15.1.2 an increasing ability to interact with authorities digitally and receive personalised and modern services.
 - 15.2 *More secure borders* to:
 - 15.2.1 provide assurance to New Zealand about the purposes and characteristics of intending foreign travellers; and
 - 15.2.2 close gaps in New Zealand border settings relating to the marine (cruise) pathway.
- 16 From early July 2019 intending travellers will be able to request an ETA, and an ETA will be required from 1 October 2019. Travellers will be able to request an ETA through a website (at a cost of \$12) or an app on a mobile device (at a cost of \$9).
- 17 We note that New Zealand citizens and people who hold a New Zealand visa are outside of the visa waiver and ETA regimes, while Australian citizens will be exempt from the requirement to hold an ETA.
- 18 On 20 September 2018 Cabinet agreed to introduce an ETA [DEV-18-MIN-0191], and agreed:
 - 18.1 the classes of traveller required to hold an ETA before travel;
 - 18.2 the duration of an ETA;
 - 18.3 the information to be collected by an ETA; and
 - 18.4 the information which could be provided to travellers.
- 19 Cabinet also agreed to implementation funding, including a capital injection of \$21.8 million, and consequential changes to operational baselines. Ongoing management of the ETA system will be cost-recovered through the ETA fee.
- 20 The Minister of Immigration approved some changes to the ETA design arising both from the software build and as identified during drafting. These decisions are all consistent with the original policy proposals. Those changes are to:
 - 20.1 require all requestors to provide details of their booking references (if applicable) and intended dates of travel (if known), instead of classifying this information as optional;

- 20.2 expand the number of ETA types from two (Traveller and Crew) to three (Traveller, Transit and Crew), noting that Transit ETAs were previously a subset of Traveller ETAs;
 - 20.3 expand the decision that requests for Traveller ETAs must be accompanied by a photograph if the requestor uses a channel that has the technical capacity to enable one to be captured, to cover requests for all ETA types;
 - 20.4 expand the definition of positioning crew to include individuals who fly into and out of New Zealand and work on cruise ships within New Zealand waters (previously it only included those who flew into New Zealand and left via a cruise ship); and
 - 20.5 add two questions to the ETA form, namely whether the requestor has previously travelled to New Zealand or applied for a visa, to assist in resolution of identity.
- 21 Cabinet noted that visa-waiver nationality passengers who intended to transit New Zealand and who, upon arrival in the transit area, decide they would like to visit New Zealand, would be required to get a Traveller ETA and pay the IVL.
 - 22 However, as the ETA is required as a condition of a visa waiver *to travel to* New Zealand, and these people have already arrived, it is not possible require them to apply for a traveller ETA. These passengers will therefore be able to enter New Zealand without requesting a further ETA. They will also be able to visit without paying the IVL because the payment of the IVL is tied to the application for the traveller ETA. Cabinet is asked to note this change. Officials advise that the numbers are likely to be low.
 - 23 There is one additional change that requires Cabinet approval, as it falls outside of the Minister of Immigration's authority to make changes. We recommend that Cabinet agree to rescind the decision that Immigration New Zealand (INZ) will be able to require an individual to travel to New Zealand on their primary identity document, but note that INZ must already be satisfied of the requestor's identity in order for the requestor to travel on a document (including in reliance on an ETA).
 - 24 This change reflects the legal status quo, as MBIE does not have legal authority to require a person to not travel to New Zealand on a lawfully issued and valid passport. The formal rescinding is therefore not a policy decision but a confirmation of the legal status quo.
 - 25 Cabinet also invited the Minister of Immigration to report back on the case for, and level of, an urgent fee. Following consideration of the adequacy of the resourcing model for ETA delivery and operation and the incentive to apply immediately before travel which could be generated by an urgent fee, this option will not be progressed at this time.
 - 26 The Amendment Regulations give effect to the decisions made to date, as modified by the changes recommended above.

Implement a change to a Regulation governing the handling of cash by Immigration New Zealand

- 27 Regulation 26AAC of the principal Regulations requires cash payments of prescribed fees in certain offices. In February 2019 Cabinet agreed to remove that requirement, but to retain the ability to accept cash in exceptional circumstances by way of special direction by the Minister of Immigration [DEV-19-MIN-0023].

Implement a decision arising from the 2018 Immigration Fee and Levy Review

- 28 The Amendment Regulations also give effect to a prior decision (5 September 2018) by Cabinet to formally exempt applicants for visas under the Victims of Domestic Violence policies from liability to pay the Immigration Levy [DEV-18-MIN-0178]. This change was inadvertently omitted from prior amendment regulations, but is proposed to be included in this change (these people will also be exempt from the IVL).
- 29 We note that in the meantime exemptions have been made for these visa applicants using the ministerial power of special direction by appropriately delegated Immigration Officers.

Cancel a further report back to Cabinet

- 30 On 20 February 2019, the Cabinet Economic Development Committee directed officials to:
- 30.1 develop the details of marine advance passenger information and processing, including the timing and content of information about passengers and crew to New Zealand border agencies, and
 - 30.2 establish transitional provisions to support the operation of the ETA where electronic systems or agreements with carriers are not in place.
- 31 The Cabinet Economic Development Committee also invited the Minister of Immigration to seek Cabinet agreement to the outcomes of this policy development and to seek amendments to the *Immigration (Carriers' Information Obligations) Regulations 2010* in mid-2019 [DEV-19-MIN-0023].
- 32 Subsequent policy development has identified that no changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* are necessary to implement the ETA from 1 October 2019, and transitional provisions will not be required. We therefore seek Cabinet's agreement to the cancellation of that report back.

Timing and 28-day rule

- 33 We recommend that most parts of the Amendment Regulations come into force on 1 July 2019. A waiver of the 28-day rule is therefore sought. This is necessary as the Amendment Regulations cannot be considered by the Executive Council until 17 June, which is 13 days before 1 July.
- 34 1 July 2019 has been widely communicated as the commencement date for the IVL in particular, and delaying, even if only by one day, would cause confusion. Officials have consulted widely throughout the development of the ETA and IVL. This has included a period for public comment on the proposals, and liaison with key stakeholders throughout the process. MBIE officials have also worked closely with

carriers on implementation. We consider the objectives of the 28-day rule have been met through this consultation.

- 35 It will not be mandatory for visa-waiver travellers to hold an ETA to travel to New Zealand until 1 October 2019, and for technical reasons relating to this, some parts of the Amendment Regulations will not come into effect until 1 October 2019.

Compliance

- 36 The Amendment Regulations comply with each of the following:
- 36.1 the principles of the Treaty of Waitangi;
 - 36.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 36.3 relevant international standards and obligations. The Ministry of Foreign Affairs and Trade and border agencies were consulted during the policy development, and on the draft Bill and Amendment Regulations;
 - 36.4 the Legislation Design Advisory Committee's Guidelines on Process and Content of Legislation.
- 37 The Amendment Regulations comply with the principles and guidelines set out in the Privacy Act 1993. A Privacy Impact Analysis was completed and noted the ETA project will result in more personal information being collected from, or on behalf of, many travellers to New Zealand. The collection of personal information for the ETA has a lawful foundation and the impacts on personal privacy are justifiable given the MBIE's role in delivering the Immigration Act 2009 and immigration system for New Zealand. MBIE, through INZ, is also the responsible agency for verifying the identity of non-citizens in New Zealand.

Regulations Review Committee

- 38 There are no anticipated grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 315.

Certification by Parliamentary Counsel

- 39 The draft Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 40 A Regulatory Impact Assessment was prepared to support Cabinet's policy decisions on the IVL in September 2018.
- 41 A Regulatory Impact Assessment was developed to support the initial policy decision to introduce the ETA. A Cost Recovery Impact Statement was developed to support the fees proposed for the ETA.

Publicity

- 42 MBIE has developed a global marketing and communications strategy to ensure that future visitors to New Zealand understand there has been a change in the compliance regime for New Zealand's border. The strategy targets three audiences:
- 42.1 the travel sector: MBIE is engaging with airlines, cruise operators and tourism bodies (both overseas and in New Zealand), to ensure they have the information and support they need about the ETA to support their business needs and communicate this change to their customers;
 - 42.2 travellers from the 60 impacted countries: the 20 countries that account for 93 percent of visitors will be targeted with paid marketing activity and unpaid activity (including search engine optimisation, and communication from airlines cruise operators and travel providers). The remaining 7 percent will be reached via unpaid activity;
 - 42.3 New Zealanders: targeting friends and relatives of travellers impacted by the change.
- 43 An IVL communications strategy is being developed. It will focus on how the revenue raised by the IVL is being spent, and targets both those who have paid the IVL and New Zealanders.
- 44 In addition to this, we intend to publish a joint press release informing the New Zealand public that the Amendment Regulations are now in place.

Proactive release

- 45 We intend to release this Cabinet paper and all associated briefings following the passage of legislation and the consideration of the Amendment Regulations by Cabinet (alongside the Cabinet paper recommending that Cabinet approve the introduction of the Bill). Any redactions made will be consistent with the Official Information Act 1982.

Consultation

- 46 MBIE consulted the following agencies during the development of the initial policy recommendation and this paper: the New Zealand Customs Service, Treasury, Department of the Prime Minister and Cabinet, Department of Conservation, Inland Revenue, Ministry of Transport, Department of Internal Affairs, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, New Zealand Defence Force, Ministry for Pacific Peoples, and the Office of the Privacy Commissioner.
- 47 Public consultation on the IVL and the ETA and on immigration fee and levy changes was held from 15 June to 22 July 2018. 107 submissions were received on the IVL and 19 on the ETA. The majority of the submissions were supportive of the proposal to introduce the IVL and ETA. Further targeted engagement with the travel sector has also been undertaken.

Recommendations

48 We recommend that the Cabinet Legislation Committee:

- 1 **note** that on 12 September 2018 Cabinet agreed to introduce an electronic travel authority (ETA), and on 20 February 2019 agreed to further detailed policy proposals [DEV-18-MIN-0191 and DEV-19-MIN-0023]
- 2 **note** that on 12 September 2018 Cabinet also agreed to introduce an international visitor conservation and tourism levy (IVL) [DEV-18-MIN-0194];
- 3 **note** that on 20 February 2019 Cabinet also agreed to remove the requirement for cash payments of prescribed fees in certain offices, but to retain the ability to accept cash in exceptional circumstances by way of special direction by the Minister of Immigration [DEV-19-MIN-0023];
- 4 **note** that on 5 September 2018 Cabinet agreed to exempt applicants for visas under the Victims of Domestic Violence policies from liability to pay the Immigration Levy, but that this was inadvertently omitted from prior amendments to regulations [DEV-18-MIN-0178];
- 5 **note** the Minister of Tourism has approved some minor policy decisions in relation to the IVL, and now all applicants for temporary entry class visas will be liable to pay the IVL (a change from visitor visas or short term entry visas);
- 6 **note** the Minister of Immigration has taken a number of minor policy decisions in relation to the ETA arising out of the software build and drafting process, namely to:
 - 6.1 require all requestors to provide details of their booking references (if applicable) and intended dates of travel (if known);
 - 6.2 expand the number of ETA types from two (Traveller and Crew) to three (Traveller, Transit and Crew);
 - 6.3 expand the decision that requests for Traveller ETAs must be accompanied by a photograph if the requestor uses a channel that has the technical capacity to enable one to be captured, to cover requests for all ETA types;
 - 6.4 expand the definition of positioning cruise crew to include individuals who fly into and out of New Zealand and work on cruise ships within New Zealand waters; and
 - 6.5 add two questions to the ETA form, namely whether the requestor has previously travelled to New Zealand or applied for a visa, to assist in resolution of identity;
- 7 **note** that the ETA fees will apply to requests made in advance of 1 October 2019, when it becomes mandatory to hold an ETA to travel visa waiver;

- 8 **note** that the people who intend to transit New Zealand and who, upon arrival in the transit area decide they would like to visit New Zealand will be able to enter New Zealand without requesting a Traveller ETA or paying the IVL;
- 9 **agree** to rescind the decision that Immigration New Zealand (INZ) will be able to require an individual to travel to New Zealand on their primary identity document noting that INZ must be satisfied of the requestor's identity in order for the requestor to travel on a document (including in reliance on an ETA);
- 10 **note** that, following consideration of both the adequacy of the resourcing model for ETA delivery and operation, and the incentive to apply immediately before travel which could be generated by an urgent fee, an urgent fee will not be progressed at this time;
- 11 **note** that on 20 February 2019 Cabinet:
 - 11.1 directed officials to
 - 11.1.1 develop the details of marine advance passenger information and processing, including the timing and content of information about passengers and crew to New Zealand border agencies; and
 - 11.1.2 establish transitional provisions to support the operation of the ETA where electronic systems or agreements with carriers are not in place; and
 - 11.2 invited the Minister of Immigration to seek Cabinet agreement to the outcomes of this policy development and to seek amendments to the *Immigration (Carriers' Information Obligations) Regulations 2010* in mid-2019 [DEV-19-MIN-0023];
- 12 **note** that further work has identified that changes are not required
- 13 **agree** to cancel the further report to Cabinet set out in paragraph 11.2 above;
- 14 **note** that the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019* will give effect to the decisions referred to in recommendations 1, 2, 3 and 4;
- 15 **authorise** the submission to the Executive Council of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019*;
- 16 **agree** to waive the 28-day rule so that the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019* can come into force on 1 July 2019 on the grounds that:
 - 16.1 1 July has been widely communicated as the commencement date for the IVL, and delaying, even if only by one day, would cause confusion;
 - 16.2 we consider the objectives of the 28-day rule have been met by that communication; and

[In Confidence]

16.3 it will not be mandatory for certain visa-waiver travellers to hold an ETA to travel to New Zealand until 1 October 2019.

Authorised for lodgement

Hon Kelvin Davis
Minister of Tourism

Hon Iain Lees-Galloway
Minister of Immigration

ANNEX ONE: IVL EXEMPTIONS

To avoid duplication within the Immigration Regulations, the proposed IVL regulations are heavily cross-referenced. To assist with understanding the regulations, the following table sets out:

- the specifications of the IVL, as agreed by Cabinet (DEV-18-MIN-0194 refers)
- where required, an explanation of how the IVL regulations give effect to that and/or any subsequent minor or technical changes agreed by the Minister during drafting, and
- the clause of the proposed regulations that gives effect to the specification

Ref.	Cabinet-approved specifications	Explanation and minor or technical amendments during drafting	Clause
1	The IVL to be collected alongside visa and electronic travel authority application fees by Immigration New Zealand	Requirement to pay the IVL is set out in the first of the new regulations, it has also been added to other parts of the existing regulations (these consequential amendments are listed in Subpart 2)	26AAD Part 3 Subpart 2
2	The IVL is to be paid by: all people requesting an electronic travel authority (visa waiver travellers)	Applications at an immigration control area or a port (as defined in immigration regulations) have been exempted as other immigration fees are specifically waived in these instances	26AAD(1)(b)
3	The IVL is to be paid by: all people applying for visitor visas or short term entry visas (12 months or less)	The INZ system does not know the intended length of stay for all applicants at the point of application. We have therefore used temporary entry class visas and exemptions to give effect to this specification.	26AAD(1)(a)
		Specific exemptions for visa which are generally issued for longer than 12 months, including: <ul style="list-style-type: none"> • Pathways Student Visas Pilot • Work to residence • Religious Worker • Silver Fern Practical Experience • Post Study • Essential Skills 	20AAE(5)(d) 26AAE(5)(e) (as listed)
		Skilled Migrant Category Job Search (existing 26AAB(3) in the principle Regulations	26AAE(1)(b)(iii)

Ref.	Cabinet-approved specifications	Explanation and minor or technical amendments during drafting	Clause
4	Agree the IVL is to be charged at a rate of \$35 per person	-	26AAD(1)
5	Subject to the legislative process, the IVL should come into effect as soon as possible in the 2019/20 fiscal year, and no later than 1 October 2019	Confirmed for 1 July	Clause 2 Commencement
Exemptions for:			
6	Exemptions will be set in order to align the IVL with New Zealand's international interests and obligations, and/or where the Minister is satisfied that the group does not substantially add cost to tourism infrastructure	Dependent partner or child visas have been added, as most of these rely on work visas, (the remainder rely on student visas). As well as supporting families of work visa holders, this exemption works with the INZ system, which does not distinguish between dependent visas based on the parent visa at point of application.	26AAE(3) and 26AAE(4)
		Children travelling for the purpose of being adopted are exempted	26AAE(3)
		A number of visas created to ensure New Zealand's trade commitments are met are exempted. These visas are generally issues for longer than 12 months	26AAE(5)(d)
7	Diplomatic visas	Diplomats and their families, as listed in existing Schedule 5	26AAE(1)(b)(iii)
		Guests of Government are also exempted, as they are deemed to hold a visa under Schedule 4 of the immigration regulations, and will not be required to hold an ETA. They are therefore out of scope of the IVL	26AAD(1)
		Those travelling on a laissez-passer issued by the United Nations	26AAE(2)(c)
		Domestic staff of diplomats	26AAE(2)(d)
8	Military visas	Most military personnel are deemed to hold a visa under Schedule 4 of the immigration regulations, and will not be required to hold an ETA. They are therefore out of scope of the IVL	26AAD(1)
		We have added additional clauses to cover those not entering on a military craft	26AAE(2)(f) 26AAE(2)(g)

Ref.	Cabinet-approved specifications	Explanation and minor or technical amendments during drafting	Clause
9	Medical visas	Also an exemption for a person who is escorting the patient	26AAE(5)
10	Humanitarian visas	Persons entering on humanitarian grounds are listed in Schedule 5	26AAE(1)(b)(iii)
11	Transit passengers	Transit visas and Transit ETA are out of scope of the IVL as they are neither a temporary entry class visa, nor a traveller ETA	26AAD(1)
12	Antarctic Traveller Transit Visa	Members of, or persons associated with, contracting parties under the Antarctic Treaty are deemed to hold a visa under Schedule 4 of the Immigration Regulations, and will not be required to hold an ETA. They are therefore out of scope of the IVL. However, there are some circumstances where such persons may not enter New Zealand with a deemed visa, and they have therefore been explicitly exempted	26AAD(1) 26AAE(2)(e)
13	Australian citizens and permanent residents	Australian citizens and permanent residents entering NZ receive a residence visa, and these are outside the scope of the IVL However, there are limited circumstances where an Australian permanent resident may apply for a temporary entry class visa, and they have therefore been explicitly exempted	26AAD(1) 26AAE(2)(b)

Ref.	Cabinet-approved specifications	Explanation and minor or technical amendments during drafting	Clause
14	<p>The following Pacific Island countries:</p> <ul style="list-style-type: none"> • American Samoa • Cook Islands • Fiji • Kiribati • Republic of Marshall Islands • Federated States of Micronesia • Nauru • Niue • Palau • Papua New Guinea • Pitcairn Islands • Samoa • Solomon Islands • Tonga • Tuvalu • Vanuatu 	<p>This list of countries is set out in regulation 4A(3)(b), which sets out countries eligible for the Pacific Fee Band</p> <p>For the avoidance of doubt, 4A(3)(b) also includes citizens of Cook Islands or Niue who are not travelling on a New Zealand passport. Citizens of Tokelau are exempt as they are New Zealand citizens who travel on New Zealand passports</p>	26AAE(2)(a)
15	Recognised Seasonal Employer workers	Added Supplementary Seasonal Employer	26AAE(5)(d)(x) 26AAE(5)(d)(xi)
14	Business Visitor Visas (including APEC business travel cards)	Business visas are specifically exempted, in addition, the IVL is only triggered by an application for a visa or ETA, which is not required for APEC business travel cards.	26AAE(5)(b)
15	Ship and airline crew	Crew ETA (airlines and cruise ships) are out of scope of the IVL as they do not apply for a temporary entry class visa, or a traveller ETA	26AAD(1)
		Specific exemption included for fishing crew that do apply for a visa	26AAE(5)(d)(xiv)
		Specific exemption included for positioning crew (that is a person entering New Zealand as a passenger in order to crew an outgoing flight/cruise)	26AAE(2)(h)

Ref.	Cabinet-approved specifications	Explanation and minor or technical amendments during drafting	Clause
		Crew on certain ships (including international cargo and coastal shipping) are deemed to hold visas under Schedule 4 of the immigration regulations, and will not be required to hold an ETA. They are therefore out of scope of the IVL	26AAD(1)
16	Travellers whose visa or ETA requirements have been waived by Immigration New Zealand	All fee waivers applied by INZ are replicated for the IVL in 26AAE (1) b, except for bilateral fee waiver agreements (referred to in 26AAB(1)(a) of the Immigration Regulations)	26AAE(1)(b)(i) 26AAE(1)(b)(ii) 26AAE(1)(b)(iii)

Annex Two: Talking points to support discussion at Cabinet Legislation Committee

Background

- In September 2018 Cabinet agreed to the introduction of the IVL and the ETA
- These Amendment Regulations make the necessary changes to enable both
- On 4 June the Immigration (International Visitor Conservation and Tourism Levy) Amendment Act 2019 received Royal Assent. This Act amends the Immigration Act 2009 and provides for regulations to be set to impose an IVL. This amendment comes into force on 1 July 2019

International Visitor Conservation and Tourism Levy (Minister of Tourism)

About the Amendment Regulations

- The Amendment Regulations impose a levy of \$35 on people who apply for a temporary entry class visa, or request a traveller ETA
- The Amendment Regulations will require the IVL to be paid at the same time as a visa fee or ETA fee, and an application is not complete until the person has paid the IVL
- Cabinet agreed to a number of exemptions from the requirement to pay the IVL – for example citizens of most Pacific Island nations, and Australians. These exemptions are provided for in the Amendment Regulations
- The table annexed to the Cabinet paper explains how each of the exemptions Cabinet agreed to is reflected in the draft Amendment Regulations

Changes to Cabinet's decisions to enable collection of the IVL

- In April I agreed to a number of minor and technical changes to enable the drafting of the IVL regulations
- This includes a change to the original proposal to charge visitors to New Zealand staying for 12 months or less, as this wording could not be operationalised or legislated for. Instead all applicants for a temporary entry class visa are liable, and exemptions are managed through regulation
- These changes have not changed the estimated revenue forecast for the IVL.

Electronic Travel Authority (Minister of Immigration)

- I have agreed to a number of minor and technical changes to enable the drafting of the ETA regulations. Most of those were reflected in the version of the paper circulated for ministerial feedback. They include:
 - requiring all ETA requests, including those for Transit and Crew ETAs to also require the provision of a photograph if the requestor uses a channel that has the technical capacity to enable one to be captured
 - expanding the definition of positioning crew to include cruise crew who leave New Zealand by air
 - noting that visa waiver nationality transit passengers who arrive in New Zealand and seek to land in New Zealand may do so without paying the IVL (the numbers are expected to be low)

- agreeing that Immigration New Zealand (INZ) cannot require an individual to travel to New Zealand on a specific identity document (this point requires a formal decision by Cabinet, which is essentially confirming the legal status quo)
- DEV invited me in February to report back on the case for an urgent fee for the ETA. Following further investigation, I do not propose to progress an urgent fee at this time
- I would draw your attention to two further questions for ETA requestors which I have subsequently agreed to and which therefore were not in the paper circulated for ministerial consultation
- The questions are intended to assist in identifying travellers, through establishing whether INZ is likely to already hold a client record. They will ask whether individuals have previously:
 - travelled to New Zealand, or
 - applied for a New Zealand visa

Cancelling report back

- In February 2019, DEV invited me to seek Cabinet agreement to policy to support amendments to the *Immigration (Carriers' Information Obligations) Regulations 2010* in mid-2019, to enable the ETA to be implemented from 1 October 2019 and to establish supporting transitional provisions [DEV-19-MIN-0023]
- Subsequent policy development has identified that no changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* are necessary to implement the ETA from 1 October 2019, and officials are confident that similarly transitional provisions will not be required
- I therefore seek Cabinet's agreement to the cancellation of this report back

Additional amendments

In addition to enabling the IVL and ETA, the Amendment Regulations also give effect to previous Cabinet decisions, specifically:

- a change to a regulation governing the handling of cash by Immigration New Zealand, and
- a decision arising from the 2018 Immigration Fee and Levy Review, which was inadvertently omitted from a previous amendment to the principal Regulations.