



## BRIEFING

### Imposing conditions on resident visas – COVID-19

Date:	19 March 2020	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2763 19-20

	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	<b>Note</b> that Cabinet has directed officials to report to you with regard to adding conditions to resident visas to support the COVID-19 response  <b>Discuss</b> this briefing and annexed draft Cabinet paper with officials	23 March 2020
Hon Poto Williams Associate Minister of Immigration	<b>For information</b>	

#### Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Siân Roguski	Manager, Immigration Policy	04 901 3855	Privacy of natural persons ✓
Christine Hyndman	Principal Policy Advisor	04 901 8575	

#### The following departments/agencies have been consulted or advised

Ministry of Foreign Affairs and Trade, Ministry of Health

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



## BRIEFING

### Imposing conditions on resident visas – COVID-19

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#### Purpose

On Monday 16 March 2020, Cabinet agreed that

- a condition be added to temporary class visas which requires all visa holders to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease
- officials report to you with regard to the implications of adding a condition to resident visas that requires the holder to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease. [CAB-20-MIN-0112]

This note provides advice on a proposed mechanism for resident visa applicants. A draft Cabinet paper is attached for your consideration. It could be considered by Cabinet on Monday 23 March 2020.

#### Recommended action

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

- Note** that Cabinet agreed on 16 March 2020 to add a condition to temporary class visas which requires holders to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease [CAB-20-MIN-0112]  
*Noted*
- Note** that new Instructions which came into effect on 18 March 2020 mean that visa waiver visitors who apply for a temporary visa at the border are being made aware of their liability for deportation if they do not comply, as are temporary visa applicants who make an application outside an Immigration Control Area  
*Noted*
- Note** that officials have considered the implications of adding a condition to resident visas that similarly requires the holder to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease, against the following criteria:
  - a. minimise unintended or disproportionate consequences on approved applicants for residence, including Australians who are ordinarily resident in New Zealand, and
  - b. ensure that messaging is clear, including at the border*Noted*
- Agree** to recommend to Cabinet that resident visa Instructions be amended to add a time-limited condition to new resident visas granted at the border and to applicants for resident visas

*Agree / disagree / discuss*

e **Agree** that the condition last for three months, meaning that

- a. Australian citizens and residents who did not hold permanent resident visas would hold the conditions for three months immediately post each arrival in New Zealand
- b. applicants for resident visas who were not Australian citizens and who were offshore when their resident visa was granted would be subject to the condition for the first three months after their first arrival in New Zealand as a resident visa holder
- c. applicants for resident visas who were not Australian citizens and who were onshore when their resident visa was granted would be subject to the condition for the first three months after their resident visa was granted

*Agree / disagree / discuss*

f **Note** that a breach of the condition would mean that a resident visa holder could be made liable for deportation, and that they would have period of 28 days during which they could appeal that liability

*Noted*

g **Note** that an individual who was liable for deportation, due to a breach of the proposed condition arising from non-compliance with an instruction from a Medical Officer of Health relating to a notifiable or quarantinable disease, could be detained under Health powers or Immigration powers

*Agree / disagree / discuss*

h **Note** that the change to conditions would apply to resident visas approved from applications made after the new Instructions came into force, meaning they would impact on applications made at the border immediately, but would take some time to flow through into other resident visa approvals

*Noted*

i **Agree** that, to minimise the ongoing impact on ordinarily-resident Australians, Cabinet be asked to remove this condition once the current COVID-19 situation is over

*Agree / disagree / discuss*

j **Direct** officials to progress a Cabinet paper seeking agreement to the proposals in d and e above

*Agree / disagree / discuss*

k **Note** that the Ministry of Foreign Affairs and Trade has indicated that it would be useful to be able to brief Australian diplomatic contacts prior to public announcements being made

*Noted*

l **Discuss** the timing of that paper with officials.

*Agree / disagree*

  
Siân Roguski  
Manager, Immigration Policy  
Labour, Science and Enterprise, MBIE

Hon Iain Lees-Galloway  
Minister of Immigration

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19 / 03 / 2020



## **Cabinet has agreed to a new condition on temporary visas**

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1. On 16 March 2020, Cabinet agreed that a condition be added to temporary entry class visas. All visa holders subject to the condition must comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease [CAB-20-MIN-0112]. Your subsequent certification of Immigration Instructions [2750 19-20] brought Cabinet's decision into force on 18 March 2020.
2. While the new visa condition does not specifically require a person to self-isolate, people arriving in New Zealand are being asked to self-isolate. If they choose to not self-isolate, a Medical Officer of Health may then require the person to isolate or quarantine themselves under the Health Act 1956. Temporary visa holders who are subject to the new condition are in breach of it if they refuse.
3. The new visa condition is now being imposed on all new temporary entry class visas. That includes people who arrive in New Zealand as visa-waiver travellers, as well as people who apply for and are granted a temporary visa from 18 March 2020.

## **Visa holders may be made liable for deportation but it is easier to deport temporary visa holders than residents**

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4. Both temporary and resident visa holders can be made liable for deportation if they commit crimes, have procured their visas by fraud, or breach visa conditions. Temporary visa holders in New Zealand can be made liable for deportation "for cause", under section 157 of the Immigration Act 2009. In this case, the Minister of Immigration or an immigration officer may determine that there is "sufficient reason" to deport them.
5. A sufficient reason can include a breach of the person's visa conditions. Where temporary visa holders who are subject to the new conditions have not complied with an instruction from a Medical Officer of Health, they would be in breach of their visa conditions.
6. There are a range of other grounds under which temporary visa holders can be made liable for deportation. In addition to the "standard" character obligations (to not commit a crime or be a risk to public order for example), temporary visa holders can be determined to not meet their existing visa conditions for other matters relating to character. This could, for example, relate to the case of a temporary visa holder who arrives at the New Zealand border or who is in New Zealand, who, although not subject to the new condition, refuses to comply with the instruction of a Medical Officer of Health made pursuant to section 70 of the Health Act 1956.
7. A person who is made liable for deportation under section 157 has 14 days from the date of the service of a deportation liability notice to give good reason why any deportation should not proceed. They also have the right to appeal within 28 days of the service of a deportation liability notice, on humanitarian grounds only, to the Immigration and Protection Tribunal against deportation.

## **Some border arrivals are granted resident visas**

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8. Cabinet also directed officials to report to you with regard to the implications of adding a similar condition to resident visas [CAB-20-MIN-0112]. As you are aware, there could be unintended consequences if a blanket condition were added to all new resident visas. In particular, residents with conditions on their visas cannot apply for citizenship and may

not sponsor some family members. In addition, the Immigration Act 2009 does not allow a condition to be added to a permanent resident visa.

9. Many resident visas are granted in respect of an application accompanied by a fee and considered by an Immigration Officer against the criteria of one of a range of residence categories. Applicants then granted a residence class visa, whether on or offshore, do not apply for a further visa at the border. They apply for entry permission, as do all other non-citizens, which they must be granted.<sup>1</sup>
10. However, as an acknowledgement of the special relationship between New Zealand and Australia, most Australian citizens and permanent residents<sup>2</sup> travel visa waiver<sup>3</sup> to New Zealand and apply for and are granted a resident visa on arrival. Those visas expire on departure from New Zealand.
11. Many Australian citizens who make their home in New Zealand do so long term on this basis, although they, along with other resident visa holders, may apply for and be granted a permanent resident visa after two years of residence, and citizenship after five years. However, the majority of resident visas granted to Australian citizens are granted to people who are not intending to make their home in New Zealand, but who are here to holiday, visit family and friends, or do business – that is, for visitor reasons.
12. People granted resident visas are not subject to the new visa conditions. Australian citizens and permanent residents of Australia who are not normally resident in New Zealand may have more difficulty in meeting a self-isolation requirement than those who do have a home here, and there has already been an example of an individual stating that he does not intend to comply. As he holds a resident visa, he cannot be made liable for deportation under section 157.
13. In general it is more difficult to make a resident visa holder liable for deportation than a temporary visa holder. This makes sense, as in most cases both New Zealand and the resident have established commitments to each other. However, it introduces an anomaly in the treatment of Australians who do not actually live here.

## **Cabinet could add a condition to resident visas**

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14. We have considered the implications of adding a condition to resident visas that similarly requires the holder to comply with instructions from a Medical Officer of Health which relate to a notifiable or quarantinable disease. Officials identified two major criteria against which options were assessed:
  - a. minimise unintended or disproportionate consequences on approved applicants for residence, including Australians who are ordinarily resident in New Zealand
  - b. ensure that messaging is clear, including at the border
15. On this basis, you could recommend to Cabinet that resident visa Instructions be amended to add a time-limited (three-month) condition to new resident visas granted at the border and to applicants for resident visas. This would work as follows:

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<sup>1</sup> Unless they were granted a resident visa offshore and this is their first travel to New Zealand holding that visa.

<sup>2</sup> Some individuals will not qualify for this, typically because they do not meet New Zealand's character requirements.

<sup>3</sup> Unlike other visa waiver nationals, Australian citizens are not required to hold an Electronic Travel Authority as a condition of their visa waiver.

- a. Australian citizens and residents who did not hold permanent resident visas would hold the conditions for three months immediately post each arrival in New Zealand
  - b. applicants for resident visas who were not Australian citizens and who were offshore when their resident visa was granted would be subject to the condition for the first three months after their first arrival in New Zealand as a resident visa holder
  - c. applicants for resident visas who were not Australian citizens and who were onshore when their resident visa was granted would be subject to the condition for the first three months after their resident visa was granted
16. A breach of the condition would mean that a resident visa holder could be made liable for deportation. They would have period of 28 days during which they could appeal that liability. As with temporary visa holders, an individual who was liable for deportation, due to a breach of the proposed condition arising from non-compliance with an instruction from a Medical Officer of Health relating to a notifiable or quarantinable disease, could be detained under Health powers or Immigration powers
17. In terms of timing, the change to conditions would apply to resident visas approved from applications made after the new Instructions came into force. This means that they would impact on applications made at the border immediately. In most cases they are not likely to apply to resident visa approvals until 2021.
18. As this is primarily focused on border arrivals of non-resident Australians, and to minimise the ongoing impact on ordinarily-resident Australians, we recommend that you agree that Cabinet will be asked to remove this resident visa condition once the current COVID-19 situation is over.

## **Next steps**

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19. This work may be overtaken by events. If you wish to progress it, you could direct officials to upload the attached paper, with any amendments as directed, for consideration by Cabinet on Monday 23 March 2020.
20. In that case, the changes could come into effect next week. The current border messaging is generic, but changes would need to be made to Customs' scripts.
21. The Ministry of Foreign Affairs and Trade has indicated that support for the proposals, but noted that it would be useful to be able to brief Australian diplomatic contacts prior to public announcements being made.

## **Annex**

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Annex one: Draft Cabinet paper