



BRIEFING

Facilitation of work visa settings for the healthcare sector's response to COVID-19

Date:	18 March 2020	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2716 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to carry out a targeted suspension of the stand-down period for workers in the healthcare sector for whom the stand-down period will apply between September-December 2020. Note that officials will provide you with further advice on a range of labour market immigration issues.	23 March 2020
Hon Poto Williams Associate Minister of Immigration	For your information.	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Siân Roguski	Manager, Immigration Policy	04 901 3855	Privacy of natural persons	✓
Elizabeth Hocking	Graduate Policy Advisor	Privacy of natural persons	N/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☐ Withdrawn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

To seek your agreement to more facilitative immigration settings in the short-term for health sector workers (including in the aged care sector), given their key role in supporting the response to COVID-19.

Executive summary

A number of employer and industry groups have raised questions in relation to temporary work visa settings in terms of both the response to COVID-19 and the flow on business impacts of the evolving COVID-19 situation. We recommend that any consideration of options for changes to temporary work visa settings in the medium and longer term need to be made with a deeper understanding of how and what labour market impacts will emerge, and under the general labour market principle of 'New Zealanders first'. Officials will provide you with further advice on these matters as we develop a better understanding of the labour market situation, which will take account not only options within the immigration system, but also the skills/employment and welfare systems and the impacts of the Government's recently announced Business Support Package.

In the short term, however, we consider that there is a case for some changes to temporary work visa settings to ensure that they are not a barrier to achieving the government's goals of preparing the health sector to respond to COVID-19. Work visa settings have a role to play in maintaining the existing workforce, as well as facilitating access to a global workforce (should health sector employers decide that is in the best interests for the response).

Maintaining onshore health workforce

The stand-down period, due to kick-in from 28 August 2020, is aimed at preventing a pool of lower-skilled, lower-paid foreign workers building up in New Zealand, who are well-settled but have no pathway to residence. As part of the reforms to employer-assisted temporary work visas, Cabinet has agreed to use the national median wage (currently \$25.50) to distinguish between those who are subject to the stand-down and those who are not. This change is planned to be implemented from July 2020. Approximately 1,241 workers in total are subject to the stand down from September 2020 to February 2021 – however a number of these people may be paid over the median wage and therefore eligible to apply for a new visa that enables them to stay.

The Ministry of Health has provided the Ministry of Business, Innovation and Employment (MBIE) with list of occupations relevant to the response (see Annex One), which include both higher-paid workers (who will generally be able to remain onshore, if they wish) and lower-paid workers (who will be subject to the stand down policy). The latter category includes caregivers in the health and aged care workforce.

We consider that there is a case for a limited suspension of the stand-down period for healthcare workers, including caregivers, in the interests of minimising disruption to the public health response to COVID-19. A limited suspension would give the industry time respond to COVID-19 and plan

their workforce needs, while ensuring the longer-term objectives of the stand-down period are maintained.

We recommend a three-month extension of stay in New Zealand for all healthcare workers (including caregivers) for whom the stand-down period applies from 1 September to 31 December 2020. The process would involve each applicant submitting a new visa application and being granted a subsequent visa up to the end of December 2020. We recommend that the extension also applies to the partners and dependents of these workers.

The main occupations under the “caregiver” description are Aged or Disabled Carers and Personal Care Assistants, a small number of whom will be subject to the stand-down period between September and December 2020. MBIE’s estimated figures are much lower than industry’s own estimate of around 1,700 affected workers in total this year. We understand that this is because the industry’s figures include those who were on an Essential Skills (ES) visa prior to August 2017 (and so may over-count the number of workers impacted). MBIE estimates do not include roles that are filled by partners of workers who are subject to the stand-down policy.

If you agree, officials could prepare a Cabinet paper seeking decisions.

Note that if an Epidemic Management Notice (EMN) were declared, this would supersede the need to delay the stand-down period as it would allow the relaxation of some statutory requirements, including automatically extending the expiry date of expiring visas for three months from when the EMN expires.

Facilitating an offshore health workforce

You may also wish to explore other facilitative visa settings for healthcare workers offshore and initial advice is outlined in this paper on what this might look like.

Recommended action

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

- a **Note** that a range of employer and industry groups, including the New Zealand Aged Care Association (NZACA), has requested changes to temporary work immigration settings to support the response to and business impacts arising from COVID-19

Noted

- b **Note** that this briefing is relevant to your meeting with Mr. Simon Wallace, the CEO of NZACA, on 19 March 2020, and that a separate briefing has been provided to you for this meeting

Noted

- c **Note** that the Ministry of Health has identified a number of healthcare sector roles, including care and support workers, that will play a key role in a public health response to COVID-19 over the short term

Noted

- d **Agree** to enable health care sector workers, including aged residential care and support workers, who are subject to the stand-down period from August 2020, to apply for a further Essential Skills visa lasting up to the end of December 2020

Agree/Disagree/Discuss

- e **Direct** officials to prepare a Cabinet paper to authorise the delay of the stand-down period for this subset of workers

Agree/Disagree/Discuss

- f **Note** that if an Epidemic Management Notice (EMN) were declared, this would supersede the need to delay the stand-down period, as this would invoke the extension of expiring visas for three months from when the notice expires.

Noted

- g **Note** that officials will provide you with further advice on facilitative options for other healthcare workers, including priority processing

Noted

- h **Note** that officials will provide you with further advice on whether to consider any changes to temporary work visa settings for other industries (including Recognised Seasonal Employer (RSE) workers) as more is understood about the labour market implications of COVID-19 and the wider Government response across the skills/employment and welfare systems.

Noted



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

18 / 03 / 2020

Hon Iain Lees-Galloway
Minister of Immigration

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A range of industry and employer stakeholders are calling for more facilitative immigration settings in light of COVID-19

1. A number of industries, including aged care and tourism, have raised concerns about the impact of COVID-19 on their migrant workers and have asked for specific changes to policy and operational settings to support affected employers and workers.
2. Given that the impacts of COVID-19 are likely to include a softening of the labour market (and hence greater domestic labour supply), when considering any changes to work visa settings, our starting principle is to ensure a 'New Zealanders first' approach and to ensure that the immigration system works in concert with the skills/employment and welfare systems. For example, work is underway across government to look at options for matching workers who may lose their job in one sector to opportunities that may be available in other sectors. We need to ensure that any changes to immigration settings in the short term do not undermine the objectives sought by such work.
3. However, there may be some industries and occupations that have a key role to play in the COVID-19 response (e.g. healthcare and medical staff) where maintaining existing domestic workforces and enhanced facilitation for offshore workforces would be of benefit.
4. We will consider the case for more facilitative settings over the short-term – as the response plays out - based on the following criteria:
 - Extent to which the occupation is necessary for the public health response or continuation of vital infrastructure services (and in light of the scale of affected workers)
 - Extent to which the industry is experiencing significant business impacts as a result of COVID-19, and what else the government is doing for these sectors which would also mitigate impacts
 - Impacts on New Zealanders - for example, whether the role be filled by a displaced New Zealander in the context of softening labour market conditions.
5. Initial analysis indicates that more facilitative settings for temporary workers could include the following:

To maintain existing workforces

- Delaying the stand-down period, which is due to commence for some visa holders from August 2020
- Exploring open work visas options to allow varied visa conditions such as: deployment to other sites, multiple employers, secondary employment and/or more variety of duties

Facilitating offshore workforces

- Prioritising applications (for both residence and temporary) for key roles necessary to health response (both onshore and offshore).

6. We recommend taking an industry-by-industry basis approach to considering these issues and will provide you with further advice on this.

Immigration settings should not be a barrier to the healthcare response to COVID-19

7. The Ministry of Health has provided MBIE with a list of occupations relevant to the response which could be considered for other facilitative work visa settings (see Annex One), noting that it may be more practical to prioritise visa processing for the entire health workforce, given that shortages in any areas would put pressure on the system as a whole.

8. In addition, the New Zealand Aged Care Association (NZACA) wrote to the Prime Minister on 10 March asking that the Government “suspend the three-year stand down policy immediately” as part of a broader request for Government support of the Aged Residential Care (ARC) sector to respond to COVID-19. You are meeting with the CEO of NZACA, Mr Simon Wallace, on 19 March 2020 and he is likely to discuss this topic.

Who is affected by the stand-down period?

9. MBIE estimates that the total number of individuals, across all occupations on Essential Skills visas affected by the stand-down from September 2020 to February 2021 is approximately 1,241.
10. Of this, MBIE data suggests that only a small number of caregivers, 37 Aged or Disabled Carers and 38 Personal Care Assistants (the main roles under the “caregiver” job description), are estimated to be affected by the stand-down period from September 2020 to February 2021. The stand-down period will start to affect larger numbers of workers in the sector from March 2021¹.
11. Note that this data is approximate – given the difficulty in tracking workers’ visas across a three-year period there is a risk that there is an element of under-estimation. The data also does not take into account the partners of Essential Skills visas holders in other sectors who, if they are lower-paid, will have to leave New Zealand when the stand-down period applies taking their partner, who has been working in the aged care sector, with them. We know that roughly 5.4% of the entire aged care workforce (including domestic workers) are on Essential Skills visas, with 6.6% on “other” work visas (likely partnership)².
12. From July 2020, the first set of changes under the reforms to the employer-assisted temporary work visa system will be implemented. This includes moving to using the national median wage (currently \$25.50) to determine those who are subject to the stand down period and those who are not. It is uncertain how many employers will agree to lift their wages in order to be eligible to apply for a visa that is not subject to the stand down policy. Given that the government is the primary funder to aged care services, it may not be possible for all aged residential care providers to increase their wages without seeking additional funding from government. However, we understand that a number of other industries are actively looking at making changes to enable this (prior to the impacts of COVID-19 being felt across the domestic economy).
13. The NZACA’s own estimates as to numbers of workers affected by the stand-down are much higher - they estimate (based on surveys) that approximately 1,700 workers will be liable to the stand-down period this year. We have reviewed the material made available by the NZACA and have identified several reasons why this number may be overstated:
- a. This industry’s figures are, in part, based on the number of temporary workers starting **in or before August 2017**, however the stand-down period only applies to temporary workers whose visa was applied for and decided **after 28 August 2017** – it is the first visa after this point which begins the three-year count. It is likely that industry’s figures are over-counting as they include those workers who were already on a visa in August 2017.
 - b. It is possible that the industry’s data is based on the entire migrant workforce, but the stand-down period only applies to those on Essential Skills visas.

¹ The data only reflects Essential Skills visa holders, where skill band is recorded and is low-skilled. The data also assumes that where a person’s visa expires before they have stayed in New Zealand for three years, they will apply for another lower-skilled ES visa, and does provide their stand-down date were this the case.

² In addition, 1.8% are on student visas and 0.15% on Working Holiday visas.

- c. It is likely the industry's data does not take into account the fact that some workers would have left New Zealand, transitioned to another visa, or had a break between lower-skilled visas, long enough to have pushed their stand-down period past 2021. Initial analysis indicates that around 68% of workers who were granted a lower-skilled Essential Skills visa between 28 August 2017 and 28 August 2018 would fall in this category.
14. MBIE will continue discussions with the industry on respective estimates so that the industry and government have a common picture of the impacts.

A short-term delay of the stand-down period for workers in the healthcare sector would support the health response to COVID-19

15. The stand-down period is aimed at preventing a pool of lower-skilled, lower-paid foreign workers building up in New Zealand that are well-settled but have no pathway to residence.
16. The stand-down period is not a popular policy with employers. However, employers have been aware of the August 2020 kick-in date from the policy's implementation in 2017, and should have been conducting their workforce planning based on the policy.
17. Constitutional conventions
18. However, given the current context, there may be uncertainty about whether new workers will be able to be recruited, especially from overseas. For example, in addition to self-isolation requirements for all arrivals in New Zealand, international commercial aviation capacity is reducing significantly, making it less likely that new healthcare workers could travel to New Zealand.
19. Given that the Ministry of Health has identified aged care workers as important in the COVID-19 response, we consider that there is a case to delay the stand-down period for these workers in order to maintain existing health workforces and minimise disruption to the public health response.
20. Any decision to delay the stand-down period would need to be tightly managed and apply to a specific subset of workers to avoid, as far as possible, setting a precedent and raising expectations that this will become the status quo. It is likely that the sector would resist the re-imposition of the stand-down at a point when the risk of COVID-19 is sufficiently low.
21. However, the trajectory of COVID-19 is unclear and in six months' time conditions may need to be re-assessed as to whether stand-down delays are still necessary, especially given that from March 2020, the stand-down period will begin to apply to larger numbers of workers in the sector.
22. Clear messaging will be required that this exception is a one-off response in the interests of public health, rather than business continuity, as government is providing other support packages for this purpose.

What could this look like?

23. We recommend the delay only applies to a limited group of visa holders: those for whom the stand-down period applies from September 2020 to December 2020, and who are employed in the health care sector, including the aged care sector.

24. Delaying the stand-down period until the end of 2020 gives employers time to maintain their workforces while the COVID-19 response rolls out. This lead time needs to take into account the time taken to find and recruit a worker, as well as processing times for Essential Skills visas.
25. Affected visa holders would then need to apply for a new temporary visa, which would be valid for the period following the expiry of the original visa, until 31 December 2020. This could not be operationalised through the roll-over of current visa status; the applicant would need to apply for a new visa and would be assessed on a case-by-case basis. This also ensures the applicant is able to return home if desired.
26. To facilitate this process as far as possible, we propose that most visa requirements be waived: for example, the requirement for a labour market test (including a skills match report with the Ministry of Social Development) and possibly health and character checks.
27. If you agree, a Cabinet decision would be required.
28. Implications for the partners of these workers will also need to be thought through. While lower-skilled Essential Skills visa holders are not currently able to support partners or dependents, some will be currently supporting partners/dependents if they were already in New Zealand as at August 2017 due to transitional instructions which were put in place at that time.
29. From July 2020, a further change under the reforms to the employer-assisted temporary work visa will be implemented that will allow any lower-skilled Essential Skills work visa holder to support a partner for a visitor visa, and a dependent child for a student or visitor visa. If you agree to delay the stand-down for affected workers, consideration will need to be given to whether their partners and dependents are also eligible to come to New Zealand for the period.

If an Epidemic Management Notice is declared, the need to delay the stand-down period will be superseded

30. When an Epidemic Notice is in force, the use of special powers by government agencies are enabled through an Epidemic Management Notice (EMN). With agreement from the Minister of Immigration, the Prime Minister may issue an EMN through the *Gazette* stating the relevant powers in the Immigration Act 2009 have been invoked to deal with the practical effects of the outbreak. The powers enable the relaxation of some statutory requirements, including automatically extending the expiry date of expiring visas until after three months from when the EMN expires for visas expiring before and for 14 days after the issuing of the EMN.
31. If this is the case, the stand-down period will be superseded and affected migrant workers will be able to remain in New Zealand.
32. Officials are preparing advice on the costs and benefits of issuing an EMN and invoking the relevant immigration powers, should an Epidemic Notice be put into force.

Immigration settings could also be facilitative for offshore workers necessary for the health response to COVID-19

33. The Ministry of Health has advised us that seeking health professionals from overseas is not the preferred option for addressing current workforce pressures. This is due to the global nature of COVID-19 and the need for healthcare workforces worldwide, as well as due to the self-isolation requirements for those coming to New Zealand. However, fast-tracking visa processing for applications which are already in train for medical workers could be an option worth pursuing.

34. A list of professions needed to supplement the healthcare workforce for the response is provided at Annex One, noting that the entirety of the health sector could come under pressure as practitioners self-isolate or become sick – that is, there could be shortage in other areas such as Midwives, Surgeons and Mental Health Workforces. These roles are needed to ensure there is not additional pressure put on already stretched hospitals. Because of this, it may be most practical to fast-track visa processing for the entire health workforce. Most of these roles are higher-skilled and higher-paid and so would not be subject to the stand-down period.
35. In terms of priority processing for residents, residence applications are already prioritised for people with a job offer and paid above \$104,000, so doctors and nurses and other medical professions which have occupational registration are already covered by the prioritisation criteria.
36. Temporary work applications for highly-paid roles and occupations requiring registration are also prioritised, which covers most key healthcare roles. However, it could be made explicit that certain occupations will be prioritised.

Next steps

37. If you agree, and subject to further work on implementation, officials will prepare a Cabinet paper on the stand-down period for the CVD committee on Wednesday 25 March.
38. Officials will undertake further work to develop processes around other issues that are being raised, such as workers who may become stranded here due to travel restrictions in home countries, or sector-specific requests.
39. Immigration New Zealand will prepare proactive messaging for employers based your decisions.

Annexes

Annex One: Key occupations required for the health response

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The following professions are needed to supplement the health workforce for the COVID-19 response:

- Nurses: Nurse Practitioners, Registered Nurses and Enrolled Nurses
- Doctors: General Practitioners, Emergency Medicine, Intensive Care Medicine Practitioner, Internal Medicine (general internal medicine, respiratory specialists, infectious medicine specialists), Pathologists
- Allied Health: Anaesthetic Technicians, Medical Laboratory Scientists and Technicians, Respiratory Physiotherapists, Pharmacists, Medical imaging/radiation technologists
- Kaiāwhina: Care and support workers, including for Aged Care
- Physician Assistants (this is a large workforce overseas that do not require a registration to work here)

Note that the entirety of the health sector could come under pressure as practitioners self-isolate or become sick, so there could be a shortage in areas such as Midwives, Surgeons and Mental Health workforces, which are needed to ensure there is not additional pressure put on already stretched hospitals. It may be more practical to prioritise visa processing for the entire health workforce.