



BRIEFING

Immigration New Zealand Operational Manual: Amendments Requiring Ministerial Certification to implement the New Zealand Government response to the novel coronavirus (COVID-19) outbreak

Date:	22 March 2020	Priority:	Urgent
Security classification:	Sensitive	Tracking number:	BR 2807 19 20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the recommendations	23 March 2020
Hon Poto Williams Associate Minister of Immigration	Copy for your information	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Kathy Tait	Team Leader, Operational Policy, Enablement	s 9(2)(a)	s 9(2)(a)	✓
Mike Harvey	Senior Business Analyst, Operational Policy, Enablement	s 9(2)(a)	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☐ Withdrawn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

This paper seeks that you agree to and certify proposed changes to immigration instructions. The instructions contribute to the New Zealand Government response to the novel coronavirus (COVID-19) outbreak.

Immigration instructions are the rules and criteria for the grant of visas and entry permission to New Zealand. Section 22 of the Immigration Act 2009 (the Act) authorises the Minister of Immigration to certify changes to immigration instructions.

Recommended action

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

- a **Note** that supermarket chains have requested the relaxation of visa restrictions for migrant workers they currently employ while they look to recruit more staff in the medium-to-long term.
Noted
- b **Note** that on 20 March 2020 you agreed to relax visa restrictions for two groups of current supermarket employees for a period of 30 days: 1) work visa holders to allow them to work in roles other than specified on their visa; 2) student visa holders to allow them to work more than 20 hours per week [BR 2781 19-20].
Noted

- c **Agree** to the proposed changes to Temporary Entry instructions by signing the associated Ministerial Certificate attached at the end of Appendix 1

Agree / Disagree



Stephen Dunstan
General Manager
Enablement
Ministry of Business, Innovation and Employment

Hon Iain Lees-Galloway
Minister of Immigration

22 / March / 2020

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Proactively Released

Background

1. On 20 March 2020 you agreed [BR 2781 19-20] to relax visa restrictions for two groups of current supermarket employees for a period of 30 days:
 - a. work visa holders to allow them to work in roles other than specified on their visa;
 - b. student visa holders to allow them to work more than 20 hours per week
2. This was in response to supermarkets experiencing immediate labour supply issues, particularly to meet the increased demand for shelf re-stocking, and their subsequent request to relax visa restrictions for migrant workers.
3. MBIE recommended a time-limited measure of 30 days, at which point the situation can be re-assessed.

Amendments to Temporary Entry instructions

Proposed new immigration instructions

4. The definition of 'work' in the Act (replicated in immigration instructions) is "any activity undertaken for gain or reward." However, section 4 of the Act allows for activities to be excluded from the definition by way of immigration instruction. Currently immigration instructions exclude groups such as those undertaking official business in the service of any government, or studying or training under a scholarship or other award recognised by the Minister, and so on. It is proposed that the groups described in paragraph 1 above also be included in the group of exclusions.
5. You were advised that 'supermarket' would need to be tightly defined, for example, limited to retailers selling primarily food and groceries, who were affiliated with Woolworths New Zealand or Foodstuffs Limited. Officials now advise that this proposal would also be extended to The Warehouse Group.
6. Proposed additions to immigration instructions are highlighted for ease of reference. Deletions have not been highlighted. Highlighting will not appear in the published versions of the amended Operational Manual.

Communication

7. Changes will be communicated to all staff, licensed immigration advisers and the general public through the release of an amendment circular as soon as the new immigration instructions are certified.
8. Specific communications will be provided for supermarkets to advise them of the changes and to provide answers to anticipated questions they may have.

Appendix 1 - Proposed amendments to Temporary Entry instructions effective on the date of Ministerial certification

Proactively Released

W2.2 Definitions

See also *Immigration Act 2009, s4*

W2.2.1 Definition of 'work'

- a. Work means any activity undertaken for gain or reward, but does not include:
- i. visits by persons undertaking business activities detailed in V3.5(b);
 - ii. official business in the service of any government, or of any inter-governmental or international organisation that is entitled to any privileges and immunities under the Diplomatic Privileges and Immunities Act 1968 (see H2);
 - iii. study or training under a scholarship or other award recognised by the Minister;
 - iv. visits by guests of government (guest of government status is granted by the Visits and Ceremonial Office, Department of Internal Affairs);
 - v. visits by persons who meet the special requirements under V3.55, V3.85, V3.130, V3.140 or V3.150;
 - vi. volunteer work for the Department of Conservation;
 - vii. from 23 March 2020 to 21 April 2020 (inclusive), any tasks associated with the supply of goods to, from, or within a supermarket undertaken by a student or work visa holder who was an employee of a supermarket on 23 March 2020.
- b. For the purposes of W2.2.1 (vii), a 'supermarket' is a retailer selling food and groceries affiliated with one of the following:
- i. Woolworths New Zealand Limited
 - ii. Foodstuffs North Island Limited
 - iii. Foodstuffs South Island Limited
 - iv. The Warehouse Group.
- c. 'Gain or reward' includes any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food or clothing) and services (e.g. transport).

Note: This definition does not require work as an 'employee'. It also covers self-employment.

W2.2.5 Definition of 'New Zealand' for work purposes

- a. A person is considered to be undertaking work in New Zealand if at any time they are working:
- i. on or in relation to any craft, artificial island, installation, or structure anywhere within the territorial sea of New Zealand; or
 - ii. on or in relation to any artificial island, installation, or structure anywhere within the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand; or
 - iii. on board any craft that is registered in New Zealand and is engaged in activities anywhere:
 - o within the New Zealand exclusive economic zone; or
 - o on or above the New Zealand continental shelf.
- b. A person is considered to be undertaking work in New Zealand whether or not a New Zealand or overseas resident is providing the payment or benefit for the activity.

W2.2.10 Definition of 'full time employment'

Unless otherwise specified, full-time employment is considered to be at least 30 hours of work per week for the purpose of all work instructions.

W2.2.15 Definition of 'New Zealand market rate'

- a. For the purposes of work instructions (with the exception of WH1 Recognised Seasonal Employer instructions), the New Zealand market rate is the rate of pay which would be required to recruit a New Zealand citizen or residence class visa holder to do equivalent work.
- b. When assessing the New Zealand market rate, factors immigration officers may consider, include, but are not limited to:
- i. the typical rate of pay a New Zealand citizen or residence class visa holder receives for equivalent work;
 - ii. rates of pay provided by collective agreements for the relevant industry;
 - iii. the region of employment;
 - iv. the period of employment;
 - v. the other terms and conditions of employment (such as the hours of work);
 - vi. the level of training and experience required for the position.

**TEMPORARY ENTRY INSTRUCTIONS
MINISTERIAL CERTIFICATE**

I certify, in accordance with section 22 of the Immigration Act 2009, that the amendments contained in Appendix 1 of the submission dated 22 March 2020 are part of Temporary Entry instructions on and after the date of signature.

Hon Iain Lees-Galloway
Minister of Immigration

(day) _____
(month) _____
(year)