



## AIDE MEMOIRE

### Cabinet discussion of potential student exemptions from COVID-19 travel restrictions

Date:	23 February 2020	Priority:	Urgent
Security classification:	Sensitive	Tracking number:	19-20

Action sought	Action sought	Deadline
Hon Iain Lees-Galloway <b>Minister of Immigration</b>	<b>Discuss</b> the potential exemption for students from the current travel restrictions from mainland China with Ministers at Cabinet on Monday 24 February 2020	24 February 2020

Contact for telephone discussion (if required)				
Name	Position	Telephone	Privacy of natural persons	1st contact
Ruth Isaac	General Manager, Labour and Immigration Policy	04 901 3883		✓
Katherine MacNeill	Policy Director, Labour and Immigration Policy	04 896 5810		

The following departments/agencies have been consulted
N/A

#### 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 See Minister's Notes       Withdrawn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

1. The following oral items have been requested for Cabinet on Monday 24 February:
  - Joint advice from the Ministers of Education, Health and Immigration on possible student exemptions, with decision recommendations; and
  - An update and overview from the Minister of Immigration on the processing of exemptions to the border restrictions.
2. This note provides you with background material alongside the joint briefing from the Ministries of Education and Health and MBIE, along with a draft set of talking points for your oral item.
3. You may also wish to raise at Cabinet that:
  - no decision appears to have been taken on whether to restrict travel from cruise ships of concern, and in particular, the Diamond Princess and
  - Cabinet is being asked to roll-over the wider border restrictions and a decision is required on the cruise ships as well, if Instructions changes on 24 February are to include both.
4. MBIE is available to discuss this with you at your convenience prior to the Cabinet meeting on Monday.

Ruth Isaac

General Manager, Labour & Immigration Policy

Labour, Science and Enterprise, MBIE

23/2/20,

## **Background**

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5. Yesterday, on 22 February 2020, the Australian Government announced limited senior secondary school student exemptions from their border restrictions to be managed on a case by case basis. It is expected that the numbers involved will be less than 1000 students. In the announcement, the Government indicated that:
  - In affording such a limited pathway, the Australian medical authorities are confident that the low numbers will not materially affect the public health risk in Australia.
  - This is based in part on the signs of a stabilising picture across China, albeit that Australia is potentially concerned about the potentially worsening situation in other (unnamed) regions/countries.
  - The rationale for the decision to allow some senior school students to enter Australia is to avoid disruption to graduation for students who have completed substantial schooling in Australia already. Students studying at earlier year levels are less likely to be so immediately impacted and minors are seen to pose more challenges.
  - Officials will continue to look at the evolving medical picture in the coming days with a view to considering whether a wider exemption could be considered for some tertiary students.
  - All further work and decisions will be guided by expert medical advice under the leadership of Australia's Chief Medical Officer.
6. Attached at Annex A is a summary of the recent decision by the Australian Government.
7. Confidential information entrusted to the Government

## **Joint briefing and oral item at Cabinet – potential student exemption**

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8. The joint briefing paper "Additional information to support Ministers' decision" provides advice in respect of options for Cabinet to discuss tomorrow.
9. Officials have previously advised that we continue to recommend taking a precautionary approach, but that as soon as the overall threat to public health is considered manageable and restrictions can be lifted, they should be. Further work has been underway on these matters since the Cabinet Economic Development Committee (DEV) meeting on Wednesday.
10. As discussed with you, MBIE has been working on changes to our systems to enable us to distinguish temporary visa holders by visa category in order to facilitate an automated approach where possible – an exemption for whole visa categories (eg student). This function is likely to be in place in early March.
11. Our advice to date has been that large scale manual exemptions (involving case by case consideration after check-in) are not practicable - ie 10,000 visa holders in a short time period - and there would be a high risk of either stranded passengers or turnarounds on arrival (ie errors either before or after boarding).
12. If Government considers that exemptions for students are now warranted, it is now absolutely clear that any approach that is practicable and feasible for the education sector and that meets public health requirements, will involve the provision of a list of students that

could be allowed to enter New Zealand. Even if the exemption at a policy level is for "all student visa holders" in theory, the approach being contemplated will be limited to those providers who sign up to the requirements and can meet them, and some providers or schools may not wish to do so or be able to do so.

13. MBIE has been anticipating this outcome, and has been working at pace to ensure that this can be implemented as smartly and quickly as possible, and with least disruption to other visa processing or flight screening, if the Government wishes to pursue this option.
14. We are still working through the details, and in particular how we will resource this work, but with a number of conditions put in place, we consider that a case by case approach can be operationalised at the likely scale and pace of incoming students from China.
15. This is based on the following assumptions and conditions relevant to immigration:
  - Flights from China will limit and stagger the flow of students under any scenario. While more flights may come on stream over coming weeks, there is a limit to how fast returning and new students can get tickets even once providers are approved to take them.
  - Some providers are not likely to meet eligibility requirements to receive students from China or be willing to do so.
  - International relations
16. In summary, officials are recommending that Cabinet could **EITHER:**
  - **Direct** officials to report back with more detailed options before a go/no-go decision is made, and announce that work is underway and will be reported back to Cabinet for a decision by, say, Monday 2 March;

**OR** if Ministers wish to go further tomorrow:

  - **Agree** that the travel restrictions will be lifted for some students as soon as possible, and that detailed requirements to support this are being worked through with decisions expected on Monday 2 March.

17. On whether these decisions are *advisable* at this point, MBIE has taken the view that the risk to public health is the key consideration, alongside effective border management (avoiding chaos) and as long as negative policy implications from resource reprioritisation can be minimised. Visa processing and other immigration activities are already under pressure due to the loss of the Beijing office, but we are working on putting in place a team of immigration officers that can process the exemptions drawing from other parts of the business where possible in order to minimise further disruption to visa processing in particular. Putting this team together will mean diverting staff from other core work, eg could be taken from compliance.
18. Ministers will also want to consider any exemptions in light of the Ministry of Health's view on risks, but also wider public perceptions, international developments, and economic benefits. In particular, any exemptions also pose risks to the Pacific if they are not well managed.
19. Equally, any decisions on exemptions will need to be carefully managed with Australia, given the nature of our largely common border and trans-Tasman travel. This may militate against a broader exemptions approach that proceeds at a much faster pace than Australia. Australia's recent change is very narrow and only applies to some school students in Years 11 and 12. Although the Ministry of Education favours a whole of sector option, Ministers could agree to a more limited exemption than that. This could be operationalised as above.
20. Further issues to work through over coming days include:
  - How we manage students who are offshore with expiring visas before an exemption can be implemented (see joint briefing);
  - Changes to immigration instructions required to enable any exemptions and provide for a special visa;
  - Priorities for visa processing; and
  - How further locations of concern might be managed in respect of both restrictions and student exemptions (ie precedent risk).
21. As previously advised, in respect of other visa holders, such as workers and families, there may also be a case for an exemption. However, our advice at this point is:
  - The short term priority should be students, especially returning students, given that enrolment is time-sensitive.
  - There is limited pressure or evidence of demand for these exemptions at scale, and at the margins humanitarian cases can be considered already (ie where the breadwinner is caught offshore and their family is in New Zealand).
  - Government could move to widen the exemptions after students have been implemented if conditions warrant doing so.

## **Oral item on immigration processes around the restrictions and any exemptions**

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22. Talking points are provided at Annex Three for Cabinet on Monday reflecting the general process and the new processes we are proposing above, if Cabinet approves an exemptions policy.
23. In short, the proposed process at the border is as follows:
  - List from education providers of named students is checked for validity of visas
  - Eligible students informed by education provider they are exempt (subject to conditions on visa still being met)

- Expiring visa students are asked by INZ if they wish to seek a short term visa enabling them to travel to New Zealand and reapply onshore (and informed when/if granted)
- INZ stand up an exemption team of immigration officers, with required and relevant authorisations
- INZ team would be available to confirm exemptions and approve a manual override of the border closure on a 1:1 basis with check-in staff in China either over the phone or through SITATEX
- In addition, we may be able to do bulk pre-approvals when we obtain manifests for flights from airlines or through Passenger Name Record data (up to 72 hours ahead of boarding) and pre-approve manual overrides of restrictions for exempted passengers to streamline the process for when the check-in staff contact INZ
- We may also be able to notify airlines before check-in of exempted passengers and confirm manual override of restrictions in advance; however, experience shows that check-in staff are likely to still call for a 1:1 confirmation, and we will need to work with airlines on their approach to implementation into check-in systems.

**Immigration processes around exemptions for returning students whose visas are due to expire by 31 March 2020**

24. You will also need to make decisions around how we facilitate students to come back to New Zealand if their visa has expired while the ban is in place. Our advice on this follows:
  - Returning students and those who are first-time applicants will have different processes around an exemption to the travel restrictions.
  - There are approximately 4,500<sup>1</sup> students who have travelled back to China after their course finished in 2019 and are likely to have intended to return to New Zealand in 2020 to continue their studies, whose visas expire in February or March 2020. The large majority of these have a visa expiry date of 31 March.
  - This expiry date ordinarily allows students to return to NZ in early 2020, before their course starts, to apply for another student visa. The border restrictions have prevented this process.
  - If the visas of this cohort expire whilst they are still offshore, they will have to submit a new visa application, which is more time-intensive for the student and INZ than an onshore re-application. There are also logistical difficulties given the situation in China and the closure of INZ's Beijing Office (eg access to approved panel physicians and translators).
25. For those eligible for the exemption, we recommend an approach could be to facilitate this cohort of students to apply for a short-term visa to allow them to travel to New Zealand and apply onshore for their substantive student visa (eg 2-months). This is essentially achieving the same outcome as a visa extension (shifting the 31 March expiry date to 31 May), a process INZ cannot carry out under current legislation.
26. This is not an approach we would recommend using broadly, but may be in light of the current situation and the unique combination of factors in this situation, such as public health, economic considerations and the situation of the visa holders themselves. Consideration will also need to be given whether or not to charge a fee for such a process.

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<sup>1</sup> This is a subset of the approximate 6000 visa holders with Feb or March expiry dates who are out of New Zealand, and is based on the number of students with March 2019 expiry dates who applied onshore for another student visa which was granted.

27. For students with visas expiring on or before 31 March, the Minister of Immigration would give a Special Direction that would waive most of the requirements in an application for a visa. Short-term visas could be granted to eg 31 May to allow them to come to New Zealand and make their substantive student visa application here, as they would have been able to do if the travel restrictions were not in place. Further details on this process are included in Annex Two.
28. An unknown proportion of this cohort would ordinarily need to undergo a chest x-ray for TB screening as part of their visa application. While there is additional risk in removing health requirements, this would be only for a short period, and the situation would have been the same if the students had come to New Zealand before their visa expiry. If required, the chest x-ray would be done in New Zealand.

## Next steps

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29. Depending on Cabinet's decisions tomorrow, MBIE will prepare more detailed advice for you as soon as possible around changes to Immigration Instructions and other decisions required, as well as for finalisation by Cabinet. This will include advice on the likely operational costs of an exemption process that would fall on the Crown.
30. We will also work with the Ministry of Education, TEC and the Ministry of Health to ensure that the specific required conditions on providers for an exemptions process to work are understood and integrated into their plan, including how sponsorship by providers might work for students on the special short term visas.
31. We will continue to work on a resourcing plan for the work that will be involved, and to finalise advice on the shortest timeframes required to get this in place. We do not anticipate this will be more than a few days following final Cabinet decisions (which could be on 2 March).
32. There will be additional border costs in INZ relating to the management of the COVID-19 global health emergency, and we will provide further advice in due course of the financial impacts on the Crown-funded memorandum account balance.

## Annexes

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Annex One: Australian Government decisions

Annex Two: Process for exemptions

Annex Three: Talking Points for Cabinet

## **Annex One: Australian Government decisions**

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1. On 22 February the Australian government announced a limited exemption “pathway” from their border restrictions for eligible Year 11 and Year 12 students who remain in China, to be managed on a case-by-case basis.
2. These student cohorts were chosen on the grounds of avoiding disruption to graduation for students who have completed substantial schooling in Australia already. Students studying at earlier year levels are less likely to be so immediately impacted and minors are seen to pose more challenges.
3. There are approximately 360 Year 11 and 400 Year 12 students who might be eligible to apply for the exemption.
4. The following criteria apply to determine eligibility for the exemption. Students must:
  - a. Not be from Hubei province (or have visited the province since the outbreak of COVID-19)
  - b. Be already enrolled in school with a valid visa and security checks completed
  - c. Have a credible 14-day self-isolation plan on arrival to the standard required by State/Territory health authorities.
  - d. The Australian Border Force (ABF) considers that they meet the criteria for exemption (and will provide uplift authority for exempt travellers).
5. The exemption will also apply to any guardians of the students, on the same conditions.
6. Exemptions will be reviewed and approved by the Australian Border Force (ABF) commissioner and staff on a case-by-case basis, as part of which process the ABF will need to get the approval of the State/Territory Authorities (where the prospective student intends to study), confirming they are comfortable with the proposed self-isolation plan for the student once in Australia. State/Territory authorities will then continue to monitor the students during self-isolation.
7. This decision is driven by evolving medical advice. The situation in Australia remained stable with no new cases or person-to-person transmission in the last week amongst the general population (excluding cruise ships). International relations
8. In affording a “limited pathway”, the Australian medical authorities are confident that letting in a small number of Chinese students will not materially affect the public health risk in Australia.
9. Australian Health Minister Hunt signalled that officials would continue to look at the evolving medical picture in the coming days, with a view to considering whether the situation would merit looking at a potentially wider exemption to include some tertiary students, with this work being guided by expert medical advice.

## **Annex Two: Process for exemptions in INZ and at border**

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### **Immigration processes to board and process an incoming traveller to New Zealand**

1. The current restrictions mean that those who are subject to the ban are not able to travel to New Zealand if they have been present in China or transited through China in the 14 days prior to travel. If people subject to the ban are boarding from a mainland China airport, the check in agent receives an automatic "Border Closed" response when attempting to check in.
2. If people are boarding from another port outside of mainland China, the check in agent must ask if they have been in China within the previous 14 Days. If they respond "yes", the agent must contact the Immigration Border Office (IBO) by telephone and, under current instructions, an immigration officer at IBO will deny uplift and that person cannot be checked in and boarded.
3. The international system which generates automatic board/do not board directives to check in agents is not currently functionally capable of distinguishing by visa category or other characteristics (such as having been previously living in New Zealand prior to the restrictions being put in place). The current functionality is set to only distinguish between New Zealand citizens and residents, and all other visa holders. Individual, case-by-case, manual exceptions are able to be implemented now, but this is happening in only small numbers (e.g. the immediate family of NZ citizens and residents and Australians who are ordinarily resident in New Zealand and government-to-government requests for individuals such as diplomatic staff).
4. Only a person with delegated authority from the Chief Executive of MBIE may issue a board/do not board directive.

### **Immigration requirements to board and process incoming travellers if large scale exemptions are in place**

5. The only way to exempt large groups is to take the manual process to a much larger scale. The high level requirements and process would be as follows:
  - A list of eligible travellers would need to be generated and provided to INZ. Before providing to INZ, this list would have been authorised by relevant authorities, such as the Ministry of Health and in the case of students, the Ministry of Education in the case of students.
  - The traveller would be contacted and informed that they are eligible to travel.
  - The traveller would arrive at check in and agent would receive a "Border Closed" message upon check in. The traveller would provide their confirmation of their ability to travel and advising the agent to contact the IBO by telephone.
  - The IBO will check that the traveller is on the list that has been provided to INZ and either advise the agent to check in and board the traveller or not. The agent will generate a manual boarding pass to enable boarding.
6. Our current thinking is that this could be operationalised as follows:
  - List from education providers is checked for validity of visas
  - Eligible students informed by INZ or education provider they are exempt (subject to conditions on visa still being met)
  - Expiring visa students are asked by INZ if they wish to seek a short term visa enabling them to travel and reapply onshore for a substantive new student visa (and informed when/if granted)
  - INZ stand up exemption team
  - Team available to confirm exemption/override at check-in on 1:1 basis with check-in staff over the phone or by SITATEX

- In addition, we may be able to do bulk pre-approvals when we obtain manifests for flights from airlines and pre-approve manual overrides of restrictions for exempted passengers to streamline the process for when the check-in staff contact INZ
- We may also be able to notify airline before check-in of exempted passengers and confirm manual override of restrictions in advance; however, experience shows that check-in staff are likely to still call for a 1:1 confirmation, and we will need to work with airlines on their approach to implementation into check-in systems.

#### **Immigration processes for returning students granted a short-term visa to allow them to apply for their substantive student visa onshore**

7. If exempt, students with visas expiring on or before 31 March could be granted a short-term visa to allow them to come onshore to apply for their substantive student visa. The Minister of Immigration would give a Special Direction waiving most of the application requirements for this special cohort.
8. The high-level process to facilitate these visas would be as follows:
  - The Minister of Immigration would give a Special Direction to waive most prescribed student visa application requirements, including fees.
  - An instructions change is required to set out criteria for the grant of a short-term visa, to students who meet high level criteria for this short term bridging visa.
  - Education providers would supply INZ with a list of names of students to be considered. Only education providers who have an approved plan (health and education) in place for self-isolation processes would be able to support returning students on facilitated applications.
  - Students will need to engage with INZ to indicate their desire to “apply” to continue their studies in NZ, and provide or confirm existing service address and contact details. This interaction likely to be via email.
  - Short-term visas may then be granted to those students who meet the new criteria in immigration instructions. While INZ is working through how this process could be automated, initially decision-making would be manual.
  - Once the students are granted the short-term visa and are onshore, they can apply for their substantive student visa as normal. Providers may need to facilitate the translation of documentation that is not in English.

## **Annex Three: Talking points for Cabinet**

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### **Decision to continue our current border restrictions on travel from mainland China**

- The current restrictions on travel from mainland China to New Zealand expire tonight at 23:59.
- I fully support the Ministers of Health's proposal to renew these for a further 8 days.
- I note that officials also recommended last week that we extend the travel ban to the Diamond Princess cruise ship. No decision has yet been taken by Ministers with Power to Act.
- I need to give effect to the rollover of the wider restrictions through Immigration Instructions this afternoon. Ideally, I would implement the cruise ship restrictions at the same time, if we wish to make them.

### **Potential exemption from restrictions for students**

- Last week DEV considered options for exemptions from the travel restrictions.
- While potentially feasible for some groups, further work was needed on how to operationalise exemptions. We need confidence the threat to public health can be managed in practice and in operational readiness to get it right.
- Since then, Australia has announced a very limited exemption - in principle - for some school students in Years 11 and 12. This is subject to specific conditions being met and applies to fewer than 1000 students. Their rationale was to limit the disruption to students graduating. This is less necessary for New Zealand, given Te Kura is operating in China.
- Officials have provided updated advice to joint Ministers over the weekend. This advised that an exemption for a subset of students would be viable if certain conditions can be met.
- The main rationale for any New Zealand exemption for students over any other visa category (except visitors, for whom an exemption will not ever be feasible) is the time-sensitivity of start dates for courses.
- A decision is needed on what student cohorts, if any, we should exempt. This could now be quite a narrow exemption if we wished, although I note the education sector would like to keep this open to all providers.

### **Ability to implement exemptions at the border**

- INZ are already implementing exceptions to the restrictions on a manual, case by case basis. This is taking place at a very small scale.
- A whole of visa class (ie all students) exemption could be operationalised very quickly if public health conditions were met. My officials have work underway to upgrade the international border system to automate this. The upgrade should come online in early March.
- However it is now clear that any approach to operationalising exemptions for students will need to be for subsets of that visa class.
- This is the only approach that is practicable and feasible for the education sector and that meets public health requirements.
- Even if the exemption is for "all student visa holders" at a policy level, in practice the approach will be limited to those providers who sign up to the requirements and can meet them. Some providers or schools may not wish to do so or be able to do so. This means a manual process.
- Last week, we advised a manual process at large scale was not likely practicable at pace. My officials have worked to find ways that can manage this; given their work, I believe a manual process can be implemented so long as the pace and scale are staggered. The approach proposed provides the conditions to make that work. We are also working to minimise the

impacts on wider visa processing and other immigration core services, such as security screening of flights.

- What this process will require is:
  - A list of named students that can be allowed to enter New Zealand, at least 72 hours ahead of individuals boarding flights
  - The student would be contacted and informed that they are eligible to travel.
  - This remains subject to their visa conditions continuing to be met, including having health insurance and ability to pay fees and living costs
  - Immigration officers will need to approve a manual override of the border closure for each individual visa holder who is exempted, prior to them boarding
  - This will require a 1:1 phone call with check-in staff in China in most cases, but we are looking to pre-screen flights as far as possible to streamline this process.

#### **Students with expiring visas before 31 March 2020**

- Of the 10,000 Chinese nationals with student visas who are currently offshore, over 6,000 have visas expiring before 31 March 2020.
- My officials estimate three quarters of these would have expected to enter New Zealand and apply for a new student visa while studying.
- There is no ability to extend visa durations for these circumstances under the Immigration Act. A workaround is needed, or those students whose visas expire will have to apply for a new visa offshore. This is logistically difficult given the closure of the Beijing office and difficulties in China accessing doctors for medical screening (eg TB) and interpreters.
- It may be possible to manage this through a short term visa being issued under Special Direction. This would have the effect of extending their visa duration, and enable them to enter New Zealand, undertake their studies, and reapply for a substantive student visa onshore.
- I am willing to put this in place, if Cabinet wishes to implement an exemption.

#### **Operational impacts from implementing an exemption**

- Officials have been working to ensure that this can be implemented as smartly and quickly as possible, and with least disruption to other visa processing or flight screening.
- The scale and pace of incoming students from China will also be limited by external factors – availability of flights, how long it takes providers to be ready to meet the health requirements.
- But there will be impacts from diverting immigration officers from other service areas. This is on top of the pressure on the system from the loss of 130 immigration officers while the Beijing office remains closed.
- Trade-offs can of course be made, but an exemption is not cost free.
- With a number of conditions put in place, and limiting any exemptions to cohorts with a realistic prospect of meeting those conditions, I consider that a case by case approach can be operationalised at the likely scale and pace of incoming students from China.