

In Confidence

Office of the Minister for Economic Development

Office of the Minister of Immigration

Cabinet

COVID-19 Border Restrictions Exceptions for Essential Workers and others

Proposal

- 1 On 21 April 2020 the Ad-hoc Cabinet Committee on the COVID-19 Response delegated to the Minister of Economic Development and the relevant portfolio Minister consideration of who qualifies as an 'essential worker' as part of exceptions from the temporary border restrictions.
- 2 This paper reports back to the Cabinet on the agreements that workers are "essential workers" for the purposes of exceptions granted so far under this exception category. It also seeks agreement for some modifications to the current exception categories within the context of retaining the existing tight border restrictions and rigorous isolation and quarantine, both of which are vital components in our ongoing vigilance to prevent further COVID-19 cases.

Executive Summary

- 3 Currently New Zealand's borders are tightly restricted to almost all persons from other countries (including people transiting New Zealand). The only people able to enter are New Zealand citizens, permanent residents and the majority of resident visa holders, air crew and some marine travellers, as well as case-by-case exceptions considered under specific categories.
- 4 The specific categories include: essential health workers; other essential workers; the families of temporary visa holders residing in New Zealand; and for people in exceptional humanitarian circumstances. Immigration New Zealand considers cases under all of the exemption categories, except for determinations that a person may be an 'other essential worker', which is considered by the Minister of Economic Development in consultation with the relevant portfolio Minister. An immigration officer is still responsible for determining whether essential workers should be granted an exception to border restrictions through the granting of a visa or a variation of condition (if the person already holds a visa).
- 5 Managing the border is critical throughout all COVID-19 alert levels. Strict border restrictions, combined with continued stringent isolation and quarantine management of all arrivals for 14 days in government-controlled facilities, remain key to minimising the risk of introducing new cases of COVID-19 to New Zealand. As we have made good progress and now have low case numbers, our reliance on strict and effective border measures are a key part of protecting New Zealanders from COVID-19.
- 6 Under the lower alert levels, however, we need to ensure that our border restrictions are responsive to the needs of businesses. We need to ensure access for essential workers required for significant economic activities, without whom key projects will be delayed or the economy affected. The types of essential workers for which essential

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worker status is being sought is evolving, and it is timely to agree the criteria that the Minister for Economic Development and portfolio Ministers are using to consider who is an essential worker which includes considering who has the skills and expertise needed to support significant economic activities. We will continue to review this criteria as New Zealand's recovery and rebuild commences.

- 7 The current exceptions system, with case-by-case Ministerial consideration for determining that a person is an essential worker, was established quickly to respond to the need to close New Zealand's borders. This process provides an interim solution to ensuring that highly skilled people can enter New Zealand, until immigration and border settings can be recalibrated to ensure health risks are effectively managed while supporting the economic and social goals in the post-COVID environment.
- 8 Given the emerging labour market with expected high unemployment, we propose that different factors now be considered, depending on whether a worker is coming to New Zealand for a short-term role or is looking to take up a longer term, permanent employment position. We propose that the definition of an essential worker be someone who an employer can demonstrate meets the following criteria:
 - 8.1 For a short-term role (less than six months):
 - 8.1.1 The worker must have unique experience and technical or specialist skills that are not obtainable in New Zealand, or
 - 8.1.2 The work must be significant in terms of a major infrastructure project, or event of national or regional importance, or government-approved programme, or in support of a government-to-government agreement, or have significant benefit to the national or regional economy, AND
 - 8.1.3 The role must be time critical (eg if the person does not come to New Zealand, the project, work or event will cease or be severely compromised, or significant costs will be incurred),
 - 8.2 For a longer-term role (more than six months), the worker must:
 - 8.2.1 meet one of the short-term criteria (8.11 or 8.12 and 8.13) AND
 - 8.2.2 earn twice the median salary (as an indicator of high skills), or
 - 8.2.3 have a role that is essential for the completion or continuation of science programmes under a government funded or partially government-funded contract, including research and development exchanges and partnerships.
 - 8.2.4 have a role that is essential for the delivery or execution of a government approved event, or programme that is of major significance to New Zealand.
- 9 An application to be determined as an 'essential worker' may also request approval for the worker's partner and dependent children. Anyone approved under the 'essential worker category must secure a place in managed isolation or quarantine for 14 days, and the costs of that managed isolation or quarantine are to be met by the employer or sponsoring agency, or the individual.

- 10 We propose that Cabinet agree Immigration New Zealand (INZ) will process exceptions under the 'other essential worker' category according to the criteria proposed in this paper. This will strengthen the decision making framework for the border exceptions and provide more transparency in process for employers seeking to bring their workers to New Zealand. The Minister of Immigration will still retain discretion to grant exceptions that do not meet the strict criteria above on a case-by-case basis in accordance with his powers under the Immigration Act.
- 11 There are also some other amendments to the border restrictions we propose to facilitate the entry of people into New Zealand. These include:
- 11.1 Facilitating the entry of **partners, dependent children and guardians** of New Zealand citizens and residents who are returning to New Zealand. The current requirement for family members to be travelling together to New Zealand has created some logistical difficulties for separated families, and a minor modification is proposed that allows for families not to be travelling together.
 - 11.2 Expanding the exception for **diplomatic and consular staff** entering New Zealand to cover those who are taking up new posts in New Zealand¹, and other diplomatic personnel authorised by the Minister of Foreign Affairs (or his delegate).
 - 11.3 Enabling the **entry of marine crew and others** arriving at the maritime border, subject to satisfactory isolation and quarantine, when there is a compelling need for the vessel to travel to New Zealand, namely, delivery of vessel to a business (including superyachts and other vessels for refit and repair), emergency and humanitarian situations, crew changes, discharge of catch or resupply.

12 s 9(2)(f)(iv)

Background

Cabinet has agreed high-level parameters for exemptions to the COVID-19 border restrictions

- 13 Our border is a key avenue for new cases of COVID-19 and the temporary border restrictions have played, and will continue to play, a critical role in minimising the risk of introducing new cases of COVID-19 to New Zealand.
- 14 Strict border restrictions, combined with stringent isolation and quarantine management of all arrivals for 14-days² in government-controlled facilities, remains the only way to currently manage the ongoing risk of COVID-19 re-entering New

¹ Border restrictions do not apply to diplomats accredited to New Zealand, who are currently resident in New Zealand. Diplomats and consular staff are also exempt from entering into managed isolation or quarantine, and may self-isolate at their homes.

² On 9 April 2020, the Director-General of Health issued a Notice under section 70 of the Health Act 1956 requiring that all people entering New Zealand on flights that have departed from 11:59pm on 9 April 2020 be required to spend their 14-day isolation period in either quarantine or a managed-isolation facility. This order removed the ability of arrivals to complete self-isolation at home. Air and some marine crew, as well as diplomats, are excluded from these requirements.

Zealand.

- 15 From 2 February 2020, increasingly restrictive border restrictions have been applied, and the current state, reached on 19 March, is that New Zealand's border is closed to travel from all countries. Cabinet agreed that the only people who can enter are New Zealand citizens or resident visa holders (and their families), along with some other very limited groups [CAB 20 MIN 0122 refers]. In summary Cabinet agreed that the following groups are not subject to the restrictions:
- 15.1 New Zealand citizens and residence class visa holders
 - 15.2 The partner, legal guardian or any dependent children travelling with a New Zealand citizen or residence class visa holder
 - 15.3 Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand
 - 15.4 People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and marine crew
 - 15.5 Diplomats accredited to New Zealand and currently resident in New Zealand.
- 16 Cabinet also agreed high-level parameters for case-by-case exemptions to COVID-19 border restrictions, which include [CAB-20-MIN-0122 refers]:
- 16.1 Those who need to travel for humanitarian reasons
 - 16.2 Essential health workers
 - 16.3 Citizens of Samoa and Tonga for essential travel to New Zealand
 - 16.4 Partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand
 - 16.5 Any other essential workers identified by the group of COVID-19 Ministers with Power to Act.
- 17 The current bar for granting an exception to the border restrictions has been set very high, with nearly 80 percent of all requests made to Immigration New Zealand (INZ) across the five categories being declined³. As at 2 June, there have been 1,972 requests under the 'other essential worker' exemption category. In March and April 2020, the COVID-19 Group of Ministers with Power to Act approved 25 workers and 2 dependents as "other essential workers", meaning they could access exemptions from border restrictions. Since 21 April, when 'other essential worker' decisions were delegated to the Minister for Economic Development and the relevant portfolio

³ As at 28 May 2020 a total of 11,842 Expressions of Interest (EOIs) had been received by INZ from people seeking an exception to border closure restrictions across the five categories (para 16.1 to 16.5) and people seeking clarification they fall within two groups not subject to the restrictions (para 15.2 and 15.3). EOIs for temporary visa holders was the largest group (3,099), followed by humanitarian grounds (2,888), other essential workers (1,972), essential health workers (1,057) and Samoan and Tongan citizens (77). A further 3,842 Eois were received from those seeking confirmation they are not subject to the restriction as they are family of a New Zealand citizen or resident; and 769 from those seeking confirmation they are not subject to it because they are Australian citizens ordinarily resident in New Zealand. As at 28 May, 2,354 (across all categories) met the criteria and had been invited to apply for a visa.

Minister, 201 workers and 10 family members have been exempted from border restrictions.

- 18 They have been granted exceptions to work in areas such as critical infrastructure, space, technology, primary production or film projects. (Details of these exceptions granted are outlined in Appendix 1). The low approval rate relates to the fact that many individuals have applied directly to INZ as 'other essential workers' without having gone through the process with portfolio agencies to be granted an exception.
- 19 The current volume of requests for an exception are high, particularly when the numbers under the other exemption categories are factored in (eg families of New Zealanders and resident visa holders, Australian citizens who ordinarily live here). To date, 11,842 people have applied to INZ for exceptions from the border restrictions (that is, people specified in paras 15.2, 15.3 and 16 above). This does include at least 5000 duplicates, where people have submitted repeated Eols.
- 20 The current exceptions system for 'other essential workers', with case-by-case consideration, has been stood-up quickly to respond to the need to close New Zealand's borders very quickly. The current system for considering and processing exceptions, particularly the need to advise Ministers on a case-by-case basis, has not been designed to manage high volumes (unlike the usual immigration visa processing system). Consequently, exception criteria need to be relatively tight and clearly articulated so that applications from employers and migrants do not overload processing capability. The introduction of a fee may also help discourage requests that do not meet the criteria.
- 21 Applications for exceptions under the 'essential health worker' exemption are approved by immigration officers based on having a job with an agreed health sector employer and being one of a listed numbers of health occupations (agreed jointly by Ministry of Health and INZ). Immigration officials also approve requests for exceptions under the other exemption categories, except for the 'other essential worker' category.
- 22 On 21 April 2020 the Ad-hoc Cabinet Committee on the COVID-19 Response delegated consideration of requests for 'other essential worker' status to the Minister of Economic Development and the relevant portfolio Minister. Cabinet retained the authority to determine a request for a 'class of workers' (eg either a specific occupation type, or a group carrying out a common activity with multiple occupations).

Enabling entry to New Zealand of highly skilled workers that are essential to significant economic activities ...

- 23 The response to COVID-19 has generated significant impacts for New Zealand businesses and workers as well as impacting social wellbeing. As we move out of a response-focussed footing of fighting COVID-19, we will need to ensure that our border restrictions allow the entry of people who are essential to significant economic activity, without whom key projects will be delayed or the economy affected.
- 24 The exemption category for 'other essential workers' prioritises the small number of skilled and talented individuals that are able to enter New Zealand while tight border restrictions remain in place.
- 25 In the post-COVID labour market environment, Government will want to encourage businesses to employ and upskill New Zealand workers for all types of roles. Work is

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underway on how to achieve this, including through the development of active labour market policies to support both employers and workers.

... providing public health risks can be adequately managed

- 26 Since 9 April all arrivals⁴ to New Zealand are required to undertake managed isolation or quarantine for 14 days, in secure Crown-provided and funded facilities. The current quarantine and managed isolation for all arrivals has been primarily utilised by returning New Zealanders and resident visa holders (and their families). The accommodation and food costs for isolation/quarantine for any person entering under an essential workers exception would be the responsibility of the employer or sponsoring agency.
- 27 Auckland is currently the main port of entry and has nearly all of the managed isolation facilities (14 in total). There is also one facility currently in operation in Wellington. Christchurch was utilised, but is currently shut down as all guests have departed. Capacity was estimated to be an average of 250 per day, but in reality is approximately 228 arrivals per day.⁵ At any one time there is capacity for about 3,200 people to be in quarantine or managed isolation.
- 28 At present, the accommodation supply is largely dictated by the current Ministry of Health requirements for a Managed Isolation or Quarantine Facility, and the support required to manage them. Further growth in isolation capacity may also be possible in the short-term by re-opening facilities in Christchurch and/or by contracting with more hotels and expanding the wraparound support services in Auckland, but this will come at a cost. The wraparound support services are provided by government agencies (for example, the New Zealand Defence Force, Aviation Security, Customs) and there is currently no mechanism for these to be charged back to foreign nationals.
- 29 It is difficult to predict how many New Zealanders will return to New Zealand, but the number of arrivals has begun to increase and forecasts indicate that this will continue to increase, putting significant pressure on accommodation supply. Christchurch is currently in the process of being reactivated to support this forecast increase.
- 30 Work is underway exploring how to expand to a system allowing alternative non-government funded isolation facilities, but there would need to be a mechanism to ensure compliance. Capacity could also increase if the introduction of a Trans-Tasman bubble leads to a decline in the number of places required by New Zealanders returning from Australia.
- 31 Work is also underway to develop a more financially sustainable managed isolation system that could support further opening of New Zealand's borders to temporary visa holders, students and other visitors, while continuing to effectively manage health risks from overseas arrivals. s 9(2)(f)(iv)
[REDACTED]
[REDACTED]
- 32 Increased capacity can also be generated by employers or sponsors working with the Ministry of Health to develop alternative isolation plans for larger, one-off groups (eg for major events or the Antarctic research programme). To date, for example, the

4 Air and some marine crew, as well as diplomats, are excluded from these isolation requirements.

5 This actual capacity has emerged from recent experience where the upper limits of capacity has been tested – the actual number is lower because of the downtime while facilities are thoroughly cleaned and reset between occupants.

Ministry of Health has established isolation procedures for maritime crews flying in to relieve existing fishing crews, allowing them to immediately transfer to their vessel and to isolate on board for 14 days.

- 33 Alternative isolation protocols and plans can ensure that the current limited state-funded isolation capacity is not overwhelmed by a large group of people who have to deliver a major event or work on a significant infrastructure or industry project. Any costs for any alternative accommodation and security plans should be met by the relevant group or their sponsor/employer (not the Crown).
- 34 While longer-term solutions are worked through, essential workers will need to be facilitated through the existing managed isolation system. It is anticipated that this is likely to be a short to medium-term solution.
- 35 The effective management of public health risks continue to remain the primary consideration for any border exceptions process. Public health will retain overall responsibility for approving all plans that are alternatives to Crown-provided isolation and quarantine facilities. This oversight will ensure all COVID risks originating from outside of New Zealand continue to be effectively managed,
- 36 This paper reports back to the Economic Development Committee on the exceptions granted so far under the 'other essential worker' exemption category and seeks agreement to clarify this category in light of the changing needs for skilled and talented workers that are needed to support significant economic activity, and without whom key projects would be delayed or the economy affected.

Exceptions for essential workers granted so far

- 37 The Ad-hoc Cabinet Committee on the COVID-19 Response requested that the Minister for Economic Development report back to Cabinet on a three-monthly basis on the cases where 'essential worker' status has been granted.
- 38 It is also useful to clarify the future direction for the 'other essential worker' exemption category, given the emerging demand from employers and business for overseas workers in the context of both the constraints on isolation/quarantine capacity and the desire to ensure that New Zealanders are prioritised for any work opportunities.
- 39 Previous Cabinet decisions have not defined the phrase 'other essential worker' with specificity or criteria. Ministers have considered the following factors when deciding each case:
 - Why the workers are needed to ensure the continuity of an essential service.
 - Why it is not possible to re-deploy workers already in New Zealand (this could include time constraints or the specific nature of the work being done).
 - What is happening to any staff currently performing the role(s)?
 - The length of the visa required and the reason for that length of visa.

- 40 Decision makers will continue to consider these factors, as well as the exit plan for the workers.
- 41 As at 2 June, there have been 1,972 requests made to INZ under the 'other essential worker' category, with 91 percent of all requests being declined. The workers who have been approved are varied and include critical infrastructure, space, technology, primary production, and film project workers. Details of the exceptions made to date are set out in Appendix 1.

Identifying essential workers

- 42 The New Zealand labour market cannot supply all the skills or the volume of skilled workers needed to support business growth and productivity. Migrants fulfil a vital role in providing the expertise and skills needed to support our economy. Migrants have also provided lower skilled labour in a tight labour market.
- 43 The criteria for determining who can be considered under the 'other essential worker' category needs to provide certainty. Clear criteria and targeting of exceptions at the high-end of the skill spectrum will create clarity for businesses (and migrants), and support a robust management of the exceptions process until a form of normal immigration processing can recommence.
- 44 We propose to clarify the meaning of the phrase 'essential worker'. We propose is a person with high skills, expertise or talents, and given the current labour market, propose that different considerations apply depending on whether the essential worker is coming to New Zealand for a short-term role or is looking to take up a longer term, permanent employment position. An employer must make the case that the 'essential worker' satisfies one of the following:
 - 44.1 If the application is for a **short-term worker** (less than 6 months), the employer/sponsor must make the case that the worker satisfies one or more of the following:
 - 44.1.1 Person must have unique experience and technical or specialist skills (eg actor in key film role, a yacht designer for an America's Cup team, an Antarctic specialist), or undertake work that requires expertise that is not obtainable in New Zealand (eg a Boeing-authorized aircraft safety assessor, a specialist veterinarian, vendor appointed engineers to install equipment); OR
 - 44.1.2 The work must be significant in terms of a major infrastructure project (eg \$100m or more), or event of national or regional importance (eg Rocket Lab launch), or government-approved programme (eg science partnership), or in support of a government-to-government agreement (eg with National Antarctic Programmes⁶), or have significant wider benefit to the national or regional economy, AND
 - 44.1.3 The role must be time critical (eg if the person does not come to New Zealand, the project, work or event will cease or be severely compromised, or significant costs will be incurred), OR

⁶ Cabinet noted (3 April 2020 Cabinet CAB-20-MIN-0130) that: 'as an Antarctic 'gateway' country, New Zealand has an essential role in supporting Antarctic stations in the Ross Sea region' and 'provision for essential and emergency support to Antarctic stations through New Zealand is required as part of New Zealand's Antarctic responsibilities, as well as to keep New Zealanders in Antarctica safe'.

- 44.2 If the application is for a **long term worker** (longer than 6 months), the employer/sponsor must show that the worker meets one of the criteria in 44.1 above AND either:
 - 44.2.1 earns at least twice the median wage (i.e. at least \$106,000), or
 - 44.2.2 has a role that is essential for the completion or continuation of science programmes under a government funded or partially government-funded contract, including research and development exchanges and partnerships, or
 - 44.2.3 has a role that is essential for the delivery or execution of a government-approved major event, or recognised and approved government-to-government science partnership or other programmes of major significance to New Zealand (eg support of the National Antarctic Programmes).

- 45 In a number of cases, the decision maker will rely on the development of lists (for example, of government-approved major events, major infrastructure projects and events in support of government-to-government agreements). In other cases the decision maker will need to have the ability to seek guidance and specialist knowledge from relevant portfolio agencies to assist them in making decisions.

- 46 A request for 'essential worker' status may also request approval for that worker's partner and dependent children. Anyone approved under the 'essential worker' category must secure a place in managed isolation or quarantine for 14 days, and the costs of that managed isolation or quarantine are to be met by the employer or sponsoring agency, or the individual.

- 47 People granted a visa (or variation of conditions) under the exception category for essential workers will need to secure a place in managed isolation and be responsible for self-funding their managed isolation. Some larger groups or individuals entering for specific projects/programmes may need to develop an alternative managed isolation plan (to be agreed by the Ministry of Health).

- 48 Cabinet retains the authority to amend the exceptions categories or to determine a request for exceptions for a 'class of workers' (eg a specific occupation type, or a group carrying out a common activity with multiple occupations). This authority is important to enable Ministers to consider applications that may not neatly fit the proposed criteria. s9(2)(f)(iv)


Ongoing review of criteria for essential workers and others

- 49 We will also continue to review the criteria we have proposed in this paper on an ongoing basis, to ensure that our border settings are not excluding high-value workers needed to support New Zealand's economic and social recovery, or including workers that do not meet the intended high bar. As part of this review, we will also consider how border exceptions could apply to high-value investors and our trade obligations related to the entry of business people into New Zealand.

- 50 This ongoing monitoring and review will provide valuable information to inform decisions about when it may be appropriate to ease border restrictions further, for example, to prioritise opening some existing visa categories. Any easing would be contingent on an expansion of managed isolation and quarantine capacity.

Longer term border strategy work is underway

- 51 Work is currently underway on the development of a border strategy focused on the longer-term management of New Zealand's people movement border settings, alongside a phased approach for re-opening as health conditions allow. The strategy will be calibrated alongside New Zealand's overall response to COVID-19, and will integrate policies relating to the movement of people, goods and craft across the border at various alerts levels, quarantine requirements and procedures, and COVID-19 testing parameters.

Other minor amendments to the border restrictions

Minor change to family entry for New Zealanders and residents

- 52 There is a minor change proposed in relation to the entry of partners and dependants of New Zealand citizens and resident class visa holders. At present current exemptions to the tight border restrictions do not apply when partners and dependent children are not travelling with the New Zealand citizen or resident. This has created some issues at the border when partners or dependent children are travelling separately from the citizen or permanent resident, or when the citizen is in New Zealand and their family wishes to travel to join them.
- 53 Therefore, we recommend that the current exemption be reworded to allow separated families who normally live in New Zealand to travel separately as well as those separated families whose partnership and family relationships have already be assessed by INZ⁷. The exemption will enable the entry to New Zealand of partners, dependent children and legal guardians of New Zealand citizens and residents who:
- 53.1 Are travelling with their partner, parent or guardian; or
 - 53.2 Are ordinarily resident in New Zealand; or
 - 53.3 Have a visa based on their relationship to their New Zealand citizen or resident partner or parent.

Exemption for diplomatic personnel to be widened

- 54 A properly functioning global diplomatic network will be critical to New Zealand's economic recovery, support for New Zealanders overseas, and our COVID-19 vaccine strategy. In order to enable diplomatic networks to operate, we need to expand the existing border restriction for foreign diplomats and consular staff.
- 55 The current exemption, agreed by Cabinet on 19 March, only permits entry by diplomats and family members who currently hold a New Zealand diplomatic visa and are ordinarily resident in New Zealand. This means that new diplomatic and consular personnel arriving to take up positions, non-resident accredited diplomats, and diplomats on temporary assignments, are unable to enter.
- 56 As a consequence, a number of foreign missions are currently carrying vacant positions (including at Ambassadorial level) and have staff unable to rotate because

⁷ The current exemptions process does not allow Immigration New Zealand to make a full assessment of partnerships, and new partnerships where a couple or family are separated are difficult to assess.

their replacements cannot enter New Zealand. This in turn impacts on their effectiveness, including their ability to extend assistance to foreign nationals stranded in New Zealand. s 6(a)

[Redacted]

57 We recommend that the exemption for diplomatic and consular personnel be expanded to include:

57.1 new diplomatic and consular personnel filling established positions, at a foreign mission or consular post in New Zealand; and

57.2 such other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate on a case-by-case basis, s 6(a)

[Redacted]

58 As a signatory to the Vienna Conventions on Diplomatic and Consular Relations, which are relevantly incorporated into New Zealand legislation, New Zealand is unable to require diplomatic personnel to enter quarantine or managed isolation. s

s 6(a)

59 To maintain the integrity of New Zealand’s public health measures, we propose that officials submit to the Ministers of Foreign Affairs and Health (or their delegates), for their approval by 12 June 2020, in consultation with the Prime Minister, the isolation and any other COVID-19 health requirements that diplomatic and consular personnel allowed to enter New Zealand will be asked to fulfil. These requirements are consistent with New Zealand’s public health settings, international obligations and have regard to the reciprocal treatment of New Zealand diplomats overseas.

Arrivals at the maritime border to be considered separately

60 s 9(2)(f)(iv)

61 s 9(2)(f)(iv)

62 There is a range of exceptions that individuals arriving at the maritime border can be considered under, sometimes on the same vessel (eg under humanitarian, other essential worker, crew, partners or dependents categories). We propose that maritime arrivals be a separate exception “class” to enable immigration officials to work in conjunction relevant maritime border agencies (eg New Zealand Customs, Maritime New Zealand and Ministry of Health) in evaluating the entry of both vessel and people.

63 s 9(2)(f)(iv)

64 We recommend that people arriving via the maritime border be eligible for the grant of a visa and allowed entry if there is a compelling need for the vessel to travel to New Zealand. The compelling reasons cover: delivery of vessels including for repair, refit and refurbishment (as described below); discharge of catch; supply and support of ongoing operations; replacement of crew; seafarer welfare, emergency or humanitarian reasons; or resupply associated with any of these activities. In the main, this exception is to enable marine crew to bring work to New Zealand (in the form of fish for onshore processing, yachts for repair, resupply), not to enable the entry of workers.

65 The New Zealand marine industry generates both employment and economic benefits, and the proposed exception will enable the entry of people delivering yachts, superyachts and other vessels for refit and repair. Vessel owners would need to provide evidence of scheduling of the work with a New Zealand marine company, and entry to the border would align to that window for work (taking into account the nature of maritime travel, weather windows etc).

66 The crew who reposition the vessel would generally exit New Zealand after delivery or after repairs are completed (and would need to have sufficient resources to support themselves during the stay). This proposed exception would not apply to vessels bringing passengers to New Zealand, except in some marginal cases on yachts being delivered for refit or repair where there can be a blurring of roles between owners, crew, and passengers.

67 The entry of a vessel and crew to New Zealand for refit and repair does not specify the size of a vessel or the value on the level of work to be undertaken, but a 'compelling need' would not cover a small repair (eg retouching of chrome or small paint job).

68 The new maritime exception category would not support the eligibility for granting of visas and entry to foreign nationals on yachts who were seeking to travel to winter over in New Zealand or travelling primarily for pleasure.

69 Existing exception processes under the 'other essential worker' exemption category would continue to apply for marine crew entering via the air border.

Ongoing implementation of the exceptions process

Decision makers

s 9(2)(f)(iv)

- 70 The current process for deciding requests for essential worker status requires a joint decision by the Minister for Economic Development and the Minister under whose portfolio the workers to be excepted fall.
- 71 Immigration New Zealand (INZ) has stood up robust processes to consider exceptions under all other exception categories (for example, humanitarian). As outlined in this paper, we can now define more clearly the parameters for 'essential workers', and therefore this could be operationalised by Immigration New Zealand. INZ operationalising this exception category would result in an approach which is more feasible to administer.
- 72 Taking this approach would strengthen the decision making framework for border exceptions. Clearer rules can and should be paired with more standard decision makers and systems. While we consider the process we put in place is defensible for the emergency situation we were in during earlier phases of the COVID-19 crisis and the lockdown, it would be preferable to regularise this as we move closer towards 'business as usual' territory.
- 73 Ultimately, as our capacity to allow foreigners to cross the border safely increases, and the risk of stranded migrants reduces, we should be able to use our immigration work visa settings to manage entry for most workers to New Zealand. Now is an appropriate time to take the first step towards that more standardised process.
- 74 We therefore propose that Cabinet agree INZ will determine exceptions under the 'other essential worker' category according to the criteria proposed in this paper.
- 75 To ensure transparency in how the criteria are operationalised the Minister of Immigration will certify restricted temporary entry Instructions that put rules around each of the criteria outlined in paragraph 44. This will help ensure consistent decision making by senior immigration officials and provide clarity to decision makers and applicants on who can be allowed into New Zealand for each purpose.
- 76 In a number of cases, decision making by senior immigration officials will rely on the development of lists (for example, of government-approved major events, major infrastructure projects and events in support of government-to-government agreements). In other cases senior immigration officials will need to have the ability to seek guidance and specialist knowledge from relevant portfolio agencies to assist them in making decisions.
- 77 The criteria and lists will need to be subject to regular reviews as border settings evolve, balancing the need to tightly manage the border, the availability of quarantine places, and economic activity. As an additional check, regular calibration sessions of applications will be held with the Minister of Immigration, to update the Immigration Instructions.

System requirements

- 78 As a result of the landscape in which this process was created, the Expression of Interest (EOI) process currently involves manual processing without a robust or automated ICT solution for recording requests. This unfunded process is not sustainable in its current form, as it requires significant resource to be allocated. Officials have started working on a potential ICT solution that would allow for an online form for EOIs which syncs with INZ's systems, enables the reliable recording of EOI details and decisions, and enables the collection of a fee.

- 79 Initial estimates are that an ICT solution, including charging a fee, could be ready four to six weeks after a decision is made by Cabinet. Small changes to the exceptions criteria, including clarifying family entry and diplomatic exemptions can be implemented earlier by way of an amendment to immigration instructions.

Cost recovery for Expression of Interest and Invitation to Apply processes

Unfunded costs are being incurred through the exceptions process

- 80 Requests for exceptions to border restrictions are initiated through an EOI process that, if successful, leads to an Invitation to Apply (ITA) for either a visa or variation of visa conditions (VoC). INZ has already dedicated significant resource to this processing, which is currently not costed and is undertaken free of charge.
- 81 These costs cannot be absorbed as more employers seek to recruit workers from offshore with specialist skills and expertise. We also expect that they will continue to be incurred for several months.
- 82 There is currently no fee set in regulations for the EOI process, and fees for the processing of visas or VoCs are not currently being charged due to a Special Direction waiving those fees signed by the Minister of Immigration on 3 April 2020.

The costs of the ongoing exceptions process should be recovered

- 83 We now recommend establishing a new fee for the EOI stage of processing an exception request. We propose that a fee is charged to employers who request exceptions under the 'essential worker' category (or organisations or agencies that sponsor requests), and to individual applicants under all other established exemption categories, including the humanitarian category, families of New Zealand citizens and resident visa holders, and Australians who live in New Zealand.
- 84 The Ministry of Business, Innovation and Employment and INZ are currently undertaking work to set fee levels. We estimate the EOI fee to be in the range of \$250 to \$440 for an employer who requests exceptions for essential workers (or organisations or agencies that sponsor requests) and \$30 to \$50 for individual applicants under all other established and future critical purpose categories. These amounts reflect the costs of processing applications. Consistent with our international obligations and established practice, this fee would not apply in the case of diplomats and consular personnel, or of members of groups entering New Zealand pursuant to bilateral agreements obliging us to facilitate their entry (e.g. personnel of National Antarctic Programmes).
- 85 Establishing EOI fees will require an amendment to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*. We recommend that you invite the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office to establish EOI fees, and to confirm the exact amount to Cabinet when seeking to introduce the amendment.
- 86 We also propose that, if a request proceeds to an ITA, a fee for processing any subsequent visa or VoC is charged, as would ordinarily be the case if a person applied for a visa or VoC outside of the exceptions process. These fees are already set in regulations. To achieve this the Minister of Immigration will revoke the current Special Direction waiving visa and VoC fees.
- 87 The 28-day rule will apply to the application of the new EOI fee, meaning that fees will be able to be charged from that date.

Financial implications

88 The costs of administering these applications will be covered by third party fees.

Legislative implications

89 This paper has no legislative implications.

Impact analysis

90 The impact analysis requirements do not apply to this paper.

Implications for priority communities

91 The health impact of COVID-19 on priority groups such as the elderly, Māori, Pacifica, and ethnic communities is clear. We know that some groups are more at risk of severe illness from COVID-19 due to age or underlying health conditions.

92 A decision to maintain the border restrictions, with only a marginal change in the exceptions criteria will ensure that the risk of transmission of COVID-19 to these communities is effectively managed. The ongoing border restrictions (and associated isolation/quarantine) will also support the ability of our healthcare systems to meet the ongoing health and disability needs of priority communities, especially in Māori and rural communities.

93 The narrowly defined proposed exceptions will minimise any risk that future employment opportunities for Māori and other priority groups would be displaced in core industries/sectors, as the process is targeted at individuals who have the skills, expertise or talents that are critically needed short term.

Human Rights

94 The most significant human rights limitations will continue to be on the rights of persons arriving into New Zealand to freedom from unreasonable searches and of movement (through mandatory health screening and requirements for managed isolation or quarantine).

95 These limitations may be considered justified given the seriousness of the health risks posed by people arriving in New Zealand in light of the ongoing global transmission of COVID-19 in most countries.

Consultation

96 The following agencies were consulted and their views have been reflected in the paper: Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Social Development, The Treasury, Ministry of Cultural and Heritage, Department of Corrections, Ministry of Education, Te Arawhiti (Office for Māori Crown Relations), Ministry for Primary Industries, Ministry of Transport, Customs New Zealand, Department of Internal Affairs, Financial Markets Authority, and Department of Prime Minister and Cabinet.

Communications

- 97 Information on the INZ website will be updated on any changes in the exemptions regimes for the temporary border restrictions. Lead government agencies will be updated on the process for managing requests for an exception under the revised 'other essential worker' category.

Proactive Release

- 98 This paper will be proactively released following Cabinet consideration.

Recommendations

The Minister for Economic Development and the Minister of Immigration recommend that Cabinet:

- 1 **Note** the current categorisations for travel restrictions as agreed on 19 March 2020 that effectively close New Zealand's borders to all countries and requires all arrivals to isolate or quarantine for 14 days:

Category	Coming from, or have been through, in 14 days prior to travel to New Zealand
Category 1A: Cannot travel to New Zealand	All countries
Category 1B: Can travel to New Zealand but must isolate for 14 days	People to whom Category 1A does not apply, except air and marine crew.
Category 2: Can travel to New Zealand and must isolate for 14 days if unwell	None.

- 2 **Note** that Category 1A restrictions will continue not to apply as follows [CAB-20-MIN-0130 refers]:
- 2.1 New Zealand citizens and residence class visa holders⁹ (including the Realm)
 - 2.2 The partner, legal guardian or any dependent children travelling with a New Zealand citizen or residence class visa holder
 - 2.3 Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand
 - 2.4 People subject to regulation 25 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and some marine crew.

⁹ This exemption from these restrictions will not apply to a person whose residence class visa was granted off shore and the person is arriving in New Zealand for the first time.

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- 3 **Agree** that the current requirement relating to family members travelling together to New Zealand (2.2 above) has created some logistical difficulties for separated families, and that the restriction be modified to cover the partners, dependent children and legal guardians of New Zealand citizens and residents who:
- 3.1 Are travelling with their partner, parent or guardian; or
 - 3.2 Are ordinarily resident in New Zealand; or
 - 3.3 Have a visa based on their relationship to their New Zealand citizen or resident partner or parent.
- 4 **Note** that exceptions under the following exemption categories, which can be sought in relation to Category 1A on a case-by-case basis, will continue unchanged [CAB-20-MIN-0122 refers]:
- 4.1 Humanitarian reasons
 - 4.2 Essential health workers
 - 4.3 Citizens of Samoa and Tonga for essential travel to New Zealand
 - 4.4 Partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand
 - 4.5 Any other essential workers identified by the group of Ministers with Power to Act
- 5 **Note** that on 21 April Cabinet agreed to delegate further decision making on exceptions to border restrictions for essential workers to the Minister for Economic Development and the relevant portfolio Minister, but that requests for exceptions for classes of workers continue to be considered by the COVID-19 Ministerial Group
- 6 **Agree** that an 'other essential worker' is someone who:
- 6.1 If the employer needs them short-term (less than six months):
 - 6.1.1 has unique experience and technical or specialist skills that are not obtainable in New Zealand, or
 - 6.1.2 the work must be significant in terms of a major infrastructure project, or event of national or regional importance, or government-approved programme, or in support of a government-to-government agreement, or have significant wider benefit to the national or regional economy, AND
 - 6.1.3 The role must be time critical (eg if the person does not come to New Zealand, the project, work or event will cease or be severely compromised, or significant costs will be incurred),
 - 6.2 If the employer needs them long-term (more than six months), as well as meeting one of the criteria in 6.1:
 - 6.2.1 earns twice the median salary (as indicator of high skills), or
 - 6.2.2 has a role that is essential for the completion or continuation of science programmes under a government funded or partially government-funded contract, including research and development exchanges and partnerships, or
 - 6.2.3 is undertaking a role that is essential for the delivery or execution of a government approved event, or programme that is of major

significance to New Zealand.

- 7 **Agree** that an application for an 'other essential worker' may also request approval for the worker's partner and dependent children.
- 8 **Agree** that Immigration New Zealand, instead of Ministers, will decide exceptions under the 'other essential worker' category according to the criteria proposed in recommendations 6 and 7.
- 9 **Note** that immigration instructions will provide that senior immigration officials will be guided by approved lists (for example, of programmes or events), and may rely on guidance from relevant portfolio agencies for other cases.
- 10 **Agree** that the costs of managed isolation or quarantine for exceptions under the 'other essential worker' category are to be met by the employer or sponsoring agency, or the individual.
- 11 **Note** the Ministers of Immigration and primary industry Ministers are considering how best to manage a range of issues relating to requests for border exceptions for primary industries which would may not meet the proposed criteria, and will report back to Cabinet if they consider it necessary.

Diplomatic and consular staff

- 12 **Agree** that Category 1A restrictions will continue not to apply to diplomats accredited to New Zealand and currently resident in New Zealand, and be extended to also include:
 - 12.1 new diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand
 - 12.2 such other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate on a case by case basis, s 6(c) [REDACTED]
- 13 **Direct** officials to submit to the Ministers of Foreign Affairs and Health (or their delegates), for their approval by 12 June 2020, in consultation with the Prime Minister, the isolation and any other COVID-19 health requirements that diplomatic and consular personnel allowed to enter New Zealand will be asked to fulfil; and to ensure that these requirements are consistent with New Zealand's international obligations and s 6(c) [REDACTED] s 6(c) [REDACTED].
- 14 **Note** that for the purpose of these recommendations, diplomatic and consular personnel are defined as persons eligible to hold a New Zealand diplomatic, consular or official visa, including recognised family members.

Arrivals at the maritime border

- 15 **Agree** to expand the exception categories that can be sought in relation to Category 1A, on a case-by-case basis, to cover people arriving via the maritime border, where there is a compelling need for the vessel to travel to New Zealand, namely, delivery of vessel to a business (including yachts and other vessels for refit and repair) emergency and humanitarian situations, crew changes, discharge of

catch, or supply and support of ongoing operations, or resupply associated with any of those activities.

16 s 9(2)(f)(iv)

Implementation

- 17 **Note** that the current Expression of Interest (EOI) process involves manual processing without a robust automated ICT solution for recording requests that is not sustainable in its current form.
- 18 **Note** that officials have started working on a potential ICT solution that would allow for online EOIs which sync to Immigration New Zealand's systems, reliable recording of details and decisions, and the collection of a fee and this could be implemented four to six weeks after a decision is made by Cabinet on this paper.
- 19 **Note** that small changes to the exceptions criteria, including clarifying family entry and diplomatic exemptions can be implemented earlier by way of an amendment to Immigration Instructions.

Cost recovery from businesses and sponsoring organisations

- 20 **Note** that the costs incurred by Immigration New Zealand for processing exceptions to border restrictions are currently unfunded.
- 21 **Agree** to establish a fee for the Expression of Interest stage of processing an exception request, in the range of \$250 to \$440 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests) and \$30 to \$50 for individual applicants under all other established and future critical purpose categories.
- 22 **Direct** the Minister of Immigration to confirm the exact amount of the fees within the indicated ranges when seeking Cabinet approval to introduce regulations to give effect to the fees.
- 23 **Note** that consistent with our international obligations and established practice this fee would not apply in the case of diplomats and consular personnel, or of members of groups entering New Zealand pursuant to bilateral agreements obliging us to facilitate their entry (e.g. personnel of National Antarctic Programmes)
- 24 **Note** that subject to Cabinet agreement to the proposals in this paper, the Minister of Immigration will revoke the Special Direction currently in place waiving visa and variation of conditions fees.
- 25 **Note** that the Minister of Immigration through the certification of immigration instructions will provide further detail and definitions as required to operationalise these changes.

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- 26 **Invite** the Minister of Immigration to give effect to these decisions through certifying Immigration Instructions and issuing drafting instructions to the Parliamentary Counsel Office to establish the Expression of Interest fee.

Authorised for lodgement

Hon Phil Twyford
Minister for Economic Development

Hon Iain Lees-Galloway
Minister of Immigration

Appendix 1: Details of Other Essential Workers Approved by Minister (as at 3 June 2020)

Date	Employer	Exempted Essential Workers	Work Activity	Portfolio Minister
7 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Megan Woods Minister of Energy and Resources
7 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Megan Woods Minister of Energy and Resources
7 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Dr Megan Woods Minister of Energy and Resources
9 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Andrew Little Minister Responsible for the Government Communications Security Bureau
9 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Dr Megan Woods Minister of Housing
11 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Phil Twyford Minister for Economic Development

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Date	Employer	Exempted Essential Workers	Work Activity	Portfolio Minister
11 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Phil Twyford Minister for Economic Development
11 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Phil Twyford Minister for Economic Development
11 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Phil Twyford Minister for Economic Development
11 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Phil Twyford Minister for Economic Development
11 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Damien O'Connor Minister of Agriculture
18 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Phil Twyford Minister for Economic Development
18 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Damien O'Connor Minister of Agriculture
19 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Nanaia Mahuta

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Date	Employer	Exempted Essential Workers	Work Activity	Portfolio Minister
		s 9(2)(a)	s 9(2)(a)	Minister of Local Government
19 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Stuart Nash Minister of Fisheries
20 May 20	s 9(2)	s 9(2)(a)	s 9(2)(a)	Hon Damien O'Connor Minister for Food Safety
22 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Nanaia Mahuta Minister of Local Government
24 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Dr Megan Woods Minister of Energy and Resources
24 May 20	s	s 9(2)(a)	s 9(2)(a)	Hon Dr Megan Woods Minister of Energy and Resources
24 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Dr Megan Woods Minister of Energy and Resources

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Date	Employer	Exempted Essential Workers	Work Activity	Portfolio Minister
			s 9(2)(a) [Redacted]	
24 May 20	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	Hon Dr Megan Woods Minister of Energy and Resources
24 May 20	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	Hon Dr Megan Woods Minister of Energy and Resources
24 May 20	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	Hon Kelvin Davis Minister of Tourism
28 May 20	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	Hon Damien O'Connor Minister of Agriculture
28 May 20	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	Hon Damien O'Connor Minister of Agriculture

IN CONFIDENCE

Date	Employer	Exempted Essential Workers	Work Activity	Portfolio Minister
28 May 20	s 9(2)(a)	s 9(2)(a)	s 9(2)(a)	Hon Ron Mark Minister of Defence
28 May 20	s 9(2)	s 9(2)(a)	s 9(2)(a)	Hon Stuart Nash Minister of Fisheries
28 May 20	s	s 9(2)(a)	s 9(2)(a)	Hon Damien O'Connor Minister of Agriculture

IN CONFIDENCE

Date	Employer	Exempted Essential Workers	Work Activity	Portfolio Minister
28 May 20	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	s 9(2)(a) [Redacted]	Hon Damien O'Connor Minister of Agriculture and Food Safety