

Comment and submission on Immigration Legislation changes

To: BusinessNZ Network Members, Epidemic Response Select Committee

From: Rachel Simpson, Manager – education, skills and immigration; BusinessNZ

Date: 6 May 2020

Subject: Immigration response to Covid-19

Action Required: Note and provide feedback by 12.30pm, 7 May 2020

Immigration (Covid-19 Response) Amendment Bill, introduced to Parliament on 5 May 2020.

BusinessNZ appreciates the urgency with which Government needs to move given the unprecedented circumstances caused by a global pandemic. Our understanding is that the intention of the Bill is to enable Government to address a variety of challenges in the immigration system, with a particular focus on the welfare and wellbeing of those from overseas currently in New Zealand, and enabling channels for people overseas to come to New Zealand, within the parameters of the necessary health response.

BusinessNZ wishes to raise the following points for the current Bill, and implications for the longer-term immigration settings for New Zealand.

Extension of Ministerial power in the Bill – higher levels of transparency and effective communication will be necessary to ensure the social licence to operate under the new legislative settings;

It is notable that the Bill represents a high trust model of Ministerial autonomy, integrity and discretion in extending far-reaching powers to the Minister that will impact not just those migrants in New Zealand, but also has the potential to have a significant impact on the economic recovery phase for industries like tourism and international education.

While there is a sunset clause of expiration 12 months from the date of enactment, it is notable that other executive and regulatory safeguards are absent, such as Cabinet approval or agency dispute mechanisms. The publishing of decisions by Gazette notice and Order in Council to the House of Representatives satisfies machinery of Government requirements, but leaves open questions regarding accessibility of Ministerial decisions to those impacted by the decisions, including businesses that currently employ migrant workers, or may seek to employ migrant workers to meet evolving business skill needs.

At an operational level, there will also need to be a means of anticipating, filtering and responding to issues given that potentially tens of thousands of individuals will seek access to the ministerial discretion over individual cases in the absence of a formal dispute channel.

Communication has been an existing operational challenge for ImmigrationNZ, both prior to the global pandemic, and highlighted during the existing Covid-19 response by delays in notifying the public of visa delays and processing issues, lack of response to enquiries from businesses, and a lack of clarity of information and data.

BusinessNZ recommends that ImmigrationNZ are held accountable by the Minister for:

- Maintaining high trust relationships with key stakeholders to undertake rapid testing of advice to ensure a robust understanding of possible unintended consequences before Ministerial decisions are taken;
- Urgent communication plans are put in place to ensure timely, accurate and relevant information is available and the operational capacity of the INZ call centre is improved;
- Information and data are shared to ensure the scale of impacts of immigration decisions are well understood.

Unintended consequences of decisions by visa class

The Bill's enabling powers may provide for swift decision-making, however confidence is needed that the current complexity of immigration settings and the various work-arounds in place will be factored in to the advice provided.

For example, the tourism visa is currently utilized as a mechanism to enable short-term English language students to study in New Zealand, or as a method for health professionals to come to New Zealand and undertake competency and registration examinations given they can't be employed without professional credentials being verified. It is unclear that ImmigrationNZ understand the flow-on effects of the current work-arounds that have been put in place to navigate the existing overly complex policy settings, and how this would be managed with key stakeholders. The intent of the legislation to enable simpler, swifter immigration direction will be undermined if massive amounts of exceptions and complexity are required to mitigate negative impacts that arise during the economic recovery phase and once decisions are made.

It is also critically important that the ongoing effects of Covid-19, notably the anticipated rise in unemployment, are responded to with a co-ordinated workforce and skills response. It will be critical that businesses are able to retain skilled workers, or attract skilled workers, to assist in economic recovery. Existing labour market tests on immigration are not sufficient to respond to business needs for skills and productivity. Effectiveness of Active Labour Market Policies and clarity of the approach to working with business to enact these is urgently required to ensure that skills needed by firms are able to be secured. Retraining options have a lag time of supply to the labour market, and failure to secure the appropriate skill base for economic recovery, whether that is from migrant or New Zealand workers, has the potential to make the economic impacts of Covid-19 more severe.

Expectation of ongoing policy development during the next 12 months

While the Bill enables swift decisions to be made to deal with Covid-19 issues that arise, there is an expectation that ongoing policy work will be undertaken to inform the longer term outlook for New Zealand's immigration settings. The aim is to achieve closer integration and

responsiveness to business and New Zealand's economic recovery with areas like foreign affairs and trade, foreign investment, international education and tourism and to ensure that immigration processing and operational policy are fit-for-purpose and in line with the signalled direction of 'the world's smartest border'.

Comment on specific provisions of the Immigration (Covid-19 Response) Amendment Bill

Provision	Comment	Mitigation
61 A – Grant of visas by special direction	61 A 3 allows for override of all other immigration instructions.	Enable a dispute resolution mechanism if this provision is used to mitigate issues of improper exercise of Ministerial powers.
	61 A 5 allows for immigration direction by nationality	Clarify if this applies to country of birth or country of citizenship and how this is relevant to the Covid-19 response
78 A – Extension of temporary entry class visa by special direction	78 A 2 enables special direction requirements to be satisfied by mitigating the effects of Covid-19	Clarify how 'effects' is interpreted (e.g increased unemployment or other social impacts).
113 A – Revocation of deemed entry permission	113 A 1 allows for entry to be revoked before somebody leaves an immigration control area	Understand why border controls at transit points (i.e preventing departure to NZ) is not the preferred option.
	113 A 5 allows for entry to be revoked within 72 hours	Clarify why revoking entry permission is more effective than enforcing quarantine requirements through Police as is the process for travellers on commercial flights.
401 A Regulations relating to suspending ability to make applications for visas and expressions of interest	401 A 3 A allows for suspensions applied to visa classes	Clarify whether this will be used in tandem with other provisions (e.g intent is to suspend visa applications where extensions have been applied under 78 A)
		Clarify how this will be managed through time sensitive immigration needs (e.g compassionate grounds or to meet seasonal labour market needs that can't be sourced from the NZ labour market).
		Clarify that this provision has been tested in the context of international obligations or agreements like FTAs.