



Presented to the House in accordance with Standing Order 272

J.17

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Legislative Statement: Immigration (COVID-19 Response) Bill

This legislative statement supports the **first reading** of the Immigration (COVID-19 Response) Bill

Overview

In May 2020, Parliament unanimously supported the passage of the Immigration (COVID-19 Response) Amendment Act 2020 (the 2020 Amendment Act). That legislation amended the Immigration Act 2009 by establishing eight administrative powers to allow the government to respond in an effective and efficient way to issues arising due to the COVID-19 global pandemic. The powers are automatically repealed at the close of 15 May 2021.

The purpose of the Immigration (COVID-19 Response) Bill (the Bill) is to extend the period during which those powers can be exercised, by two years, to 16 May 2023. It also proposes to extend the maximum duration of the regulations which can be made under one of the powers, from the existing three months to six months. The Bill does not propose to amend the scope of any of the powers.

The timeframe for the passing of the Bill reflects the imminent expiry of the eight powers, while enabling the Select Committee to consider their extension and any submissions.

The proposed extension reflects the uncertain global climate

The 2020 Amendment Act responded to the fact that the Immigration Act previously had very limited ability to deal with applicants as a class or group of individuals. This created challenges when the government wished to respond to suddenly-changing situations which affected large numbers of visa holders. While the Immigration Act enabled the waiving of requirements and varying of conditions of visas on an individual basis, this power was not practicable when large numbers of people were involved, especially when many Immigration New Zealand offices were closed.

While New Zealand's domestic situation has improved since the introduction of the powers, much of the global circumstances under which the powers were initially passed still stand, and the pandemic continues to impact on visa holders and people who would like to apply for visas. New Zealand's borders are still effectively closed, reflecting the fact that the pandemic is still infecting and killing large numbers of people. There remains a risk that future variants of the virus could impact on visa operations again. The arguments for continuing to maintain flexibility with regard to control over applications for temporary entry class visas, and to maintain an ability to amend visa settings for whole classes of visa holders, will remain until border restrictions are lifted.

The 2020 Amendment Act created eight time-limited powers

In the order they appear in the Immigration Act 2009, these are the powers to:

1. vary or cancel conditions for classes of resident visa holders
2. impose, vary or cancel conditions for classes of temporary entry class visa holders
3. waive any regulatory requirements for certain classes of application (that is, waive any prescribed requirements to make an application)
4. grant visas to individuals and classes of people in the absence of an application
5. extend the expiry dates of visas for classes of people

6. waive the requirement to obtain a transit visa in an individual case or suspend a transit visa waiver provided by regulations in any individual case
7. certify immigration instructions under which an immigration officer may revoke the entry permission of a person who has been deemed under regulations made under the Act to have been granted entry permission, and
8. through regulations, suspend the ability to make applications for visas or submit expressions of interest in applying for visas by classes of people.

They currently enable the government to amend visa conditions for large groups of people, extend visas of large groups of people for varying periods of time (enabling processing of further visa applications from those needing to remain in New Zealand to be staggered), stop people overseas from making applications while it is not possible to travel to New Zealand due to border restrictions, and enable the revocation of entry permission of people with deemed entry permission while border restrictions are in place.

The powers are subject to a range of safeguards

The majority of the powers (relating to classes of person) can only be exercised by special directions which are disallowable instruments made by the Minister of Immigration, and must be tabled with the House of Representatives. One of the powers (the ability to suspend applications) requires an Order in Council and therefore must be made by regulations. Powers which may affect classes of persons can therefore only be exercised by the Minister of Immigration and cannot be delegated to immigration officers.

Secondly, the decision maker must be satisfied in most cases that the exercise of the power (such as the making of the special direction) is reasonably necessary to manage the effects, or deal with the consequences, of: the outbreak of COVID-19, or measures under enactments to contain or mitigate the outbreak of COVID-19 or its effects, or other measures (in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.

Finally, six of the eight powers can only be exercised to benefit (or at minimum not disadvantage) visa holders. The major exception to this, the power to suspend the ability of certain offshore persons from making temporary entry class visa applications, has the further safeguard noted above, in that the power must be exercised through regulations. The other exception is the ability to revoke the entry permission of a person who has been deemed under regulations made under the Act to have been granted entry permission.

The change proposed under this Bill to the regulation-making power, extending the maximum duration of the regulations from three to six months, is also subject to a policy safeguard. Should circumstances change and the border reopen, the regulations (which suspend the ability of most people offshore to apply for a temporary entry class visa) can be revoked, in whole or in part, by Ministers with Power to Act.

Most of the powers have been exercised during the last year

Over the last year, Ministers of Immigration have exercised the special direction powers 18 times. One of these uses benefitted around 20,000 people, by extending temporary entry class visas held by certain employer-assisted workers and their family members. In February 2021, the Minister of Immigration extended the temporary visitor visas of around 9,500 people for two months so they could remain lawfully in New Zealand while organising travel home or applying for further visas.

The regulations which prevent most people offshore from applying for a temporary entry class visa unless invited to apply have been renewed every three months since they first came into effect in August 2020. The introduction of the suspension of applications effectively stopped the inflow of applications which cannot be processed.

The ability to revoke the entry permission of a person deemed to hold entry permission has not been exercised.

