

Regulatory Impact Statement: facilitative powers to benefit groups or individual migrants

Coversheet

Purpose of Document	
Decision sought:	This analysis has been produced to inform Cabinet decisions
Proposal	Amend the Immigration Act 2009 to enable the Minister of Immigration to exercise flexible powers, with appropriate safeguards (including that they may only benefit the people affected), in response to circumstances that are unusual, or outside the agency's control, and that pose operational challenges to the immigration system
Advising agency:	Ministry of Business, Innovation and Employment (MBIE)
Proposing Minister:	Minister of Immigration
Date finalised:	4 September 2024
Problem Definition	
<p>The Immigration Act 2009 (the Act) does not provide adequate powers to efficiently manage large numbers of visa applicants and visa-holders, where this is necessary to respond to circumstances that are unusual, or are outside the agency's control, and that pose challenges to the immigration system.</p>	
Executive Summary	
Background <p>New Zealand's immigration system is based on an individual submitting an application either for a visa, or to vary the conditions of an existing visa, and an authorised decision-maker then determining the outcome of that application. While that process generally works well, in exceptional circumstances the legislated obligations to make and determine individual applications, and to waive requirements (such as paying fees or submitting passports for applications), on an individual basis can be impractical, can place huge pressures on migrants and Immigration New Zealand (INZ) staff, and may result in migrants becoming unlawfully in New Zealand through no fault of their own.</p> <p>Our experience with such situations informs this proposal. The COVID-19 pandemic that began in 2020, which led to border closures in New Zealand and overseas and a series of domestic lockdowns, significantly impacted the ability of non-New Zealanders to enter or leave New Zealand (and the New Zealand labour market), and meant many foreign nationals in New Zealand were unable to fulfill the conditions of their visas (such as to study, or to work in a specified job). Thousands of people were facing illegality. In addition, some industries (such as supermarkets) badly needed workers, but few migrants were lawfully able to work there. INZ offices were closed, and even online applications could not be processed.</p>	

In May 2020, in response to these challenges to the immigration system, Parliament unanimously passed the Immigration (COVID-19 Response) Amendment Act 2020 (the 2020 Amendment Act). It introduced eight powers, to enable the Government to respond appropriately and efficiently to the COVID-19 outbreak by providing additional flexibility in the immigration system to manage the visa assessment and decision-making process.

The powers were created subject to a number of safeguards, including that they could only benefit (or, at a minimum, not disadvantage) the people they applied to, they were explicitly linked to issues arising in relation to COVID-19, they were transparently published and were disallowable, and they expired after a year. In 2021, Parliament extended the powers by a further two years, and they finally expired on 15 May 2023. A list of the class Special Directions used over the period they were in force is set out in **Annex One**, from page 22. (These are summaries of the actual Special Directions: the second column has hyperlinks to the full texts published on the Gazette site, which include the Minister's declarations.)

The explicit enabling of those powers in the Act clarified what could or could not be done to manage operational immigration responses to exceptional circumstances. As a result, the immigration system is arguably less responsive than it was in 2019, as it is now very clear what the current legislation does not allow.

However, pressure continues to be placed on migrants and the New Zealand government's immigration system, randomly, by domestic or international issues. These include wars, natural disasters, large-scale IT outages, airline failures, public health emergencies, and significant weather events. There have therefore been a number of situations since the powers expired where it is clear that they could have benefited individuals and saved the New Zealand government cost and time.

Specific situations where flexible powers would have been useful include: Confidential advice to Government, where New Zealand citizens wished to bring their families home rapidly but their spouses did not hold appropriate visas; the collapse of Air Vanuatu, which stranded hundreds of Recognised Seasonal Employer scheme (RSE) workers in New Zealand at the imminent risk of becoming overstayers; and the Hunga Tonga-Hunga Ha'apai volcanic explosion, which closed Tonga's airspace and similarly meant many visiting Tongan citizens were stuck in New Zealand.

It is therefore proposed to reinstate five positive powers, to enable the Minister of Immigration to exercise flexible, appropriate, and human rights-supporting responses to unusual circumstances (or circumstances outside INZ's control) that pose operational challenges to the immigration system.

Of the three powers that are **not** proposed for reinstatement, two removed rights – the ability to close the border to non-citizens, and the ability to prevent applications being made offshore for temporary entry-class visas. The third applied to transit travel and applied only to situations involving border closures.

Proposals

The proposals aim to enable the immigration system to maintain its integrity in a wider range of challenging situations, by enabling positive (only) immigration decisions to be made for groups of people, including maintaining the lawful status of people onshore. The

Minister of Immigration would be able to exercise any of the powers for a group of migrants, on or offshore, if that Minister:

- considered that there was a circumstance that was unusual, or outside the agency's control, and that posed challenges to the immigration system,
- considered that it was reasonably necessary to invoke the specified provisions, and
- had undertaken consultations they considered appropriate prior to that certification.

The specified "flexible powers" would therefore be made permanently available, with appropriate safeguards, including that:

- their use with regard to classes of visa-holders or applicants is done through non-delegable Special Directions which are secondary legislation (requiring notification in the Gazette, being disallowable by the House of Representatives, and published on the www.immigration.govt.nz website), and
- they must benefit, or at least not disadvantage, the people to whom they apply.

One of the powers (to grant a visa to an individual in the absence of an application) would be able to be delegated by the Minister to appropriately designated officials and could be exercised in a wider range of circumstances. It would parallel the long-standing ability to grant visas as exceptions to policy to people unlawfully in New Zealand (under section 61 of the Act). This means that its exercise would not require any of the explicit considerations or publication obligations that would apply to the class powers exercised by the Minister, noting that its use can only benefit the individual concerned.

As a further safeguard, the use of the powers will be formally reviewed three years after they come into effect.

Requirement for Government intervention

The Government is the only body able to determine and administer the policy and legislative framework governing border entry and immigration settings. The proposed changes are a sensible and proportionate response to known risks, including of future significant earthquakes, and take into account lessons from the response to public health issues, outbreaks of war overseas, natural disasters and significant weather events, and large-scale IT problems. They would also insure Parliament from having to pass such legislation in a timely manner in a future emergency (such as a large earthquake affecting Wellington).

Options considered

Two main options have been considered:

- **Option 1:** Status quo: no legislative amendment. This would maintain the current settings. In the event of a future emergency, Parliament could potentially pass bespoke legislation (if that was practical) and Cabinet would otherwise decide policies with regard to visa applications. The Minister of Immigration would continue to have certain Special Direction powers with regard to "associated" groups of foreign visa applicants (much less flexible than the full powers proposed, and without any of the safeguards).
- **Option 2:** Amend the Act to provide for enduring and transparent flexible powers, with safeguards, at an appropriate constitutional level (*preferred*).

Identified impacts

As these class powers would be used relatively rarely, they would in general have low to no impacts on the immigration system or New Zealand community. If used, they would benefit classes of visa-holders and applicants (and potentially also their families and employers) efficiently, transparently, and with parliamentary oversight. The flexible power that could be employed to grant a visa to an individual in the absence of an application would also only benefit those individuals (and potentially also their families and employers). INZ would have marginal but real improvements to its efficiency. In the case of an emergency, air carrier collapse, or other circumstance, New Zealand would be able to manage the immigration status of potentially large numbers of foreign nationals compassionately and relatively quickly.

Stakeholders' views

The Minister of Immigration's expectation is that the Amendment Bill is in place by October 2025. These timeframes mean that external stakeholder consultation before Cabinet decisions has been limited to informing the key stakeholders of the proposals, rather than significant engagement. This has constrained our understanding of how the proposals will be more widely received, although there have been no 'show-stoppers'. We informed the following stakeholders of the proposals between 29 July and 9 August 2024:

- BusinessNZ
- the Employers and Manufacturers Association
- the Council of Trade Unions
- the Casey Review Focus Group
- the New Zealand Law Society
- the Office of the Ombudsman
- INZ's Immigration Focus Group.

While stakeholders appreciated the assistance these powers would have provided during recent situations, one stakeholder expressed concern that the powers could be used, for example, in the case of future border closures, to prioritise the access to New Zealand of classes of non-citizens. We advised that the powers were not employed for that purpose during the COVID-19 period (Ministers used standard Cabinet policy processes to make border exceptions decisions). Other than that, there was general support for the proposals.

We also note that the proposals have been informed by feedback provided during previous consultation processes:

- The following agencies were consulted during the development of the original (2020) policy proposals and their feedback was incorporated into its development: the Ministries of Foreign Affairs and Trade and Justice, the Department of the Prime Minister and Cabinet (Policy Advisory Group, COVID-19 Response), the New Zealand Customs Service, the National Emergency Management Agency, the New Zealand Police, the Treasury, and the Crown Law Office. The Ministries of Education and Social Development were informed.
- Limited consultation was undertaken with stakeholder groups (representing sectoral employers, the immigration advice industry, and migrants) in the context of the initial (2020) Amendment Bill that created the COVID-19 powers. Specific

feedback received during the Select Committee process for the 2020 Amendment Bill was incorporated into the Amendment Act (by adding an additional safeguard with regard to the class Special Direction Power, that its exercise must explicitly benefit, or at least not disadvantage, the migrants affected).

Slightly wider consultation was able to be undertaken in the context of the second (2021) Amendment Bill that then extended the 2020 powers (noting that this continued to relate to the use of the powers in a pandemic situation rather than in the enduring and broader range of situations currently proposed). There were 165 written submissions received during the Select Committee process for the 2021 Amendment Bill, and the Committee heard over 35 individual oral submissions.

- Submitters generally supported the Bill, though some proposed a 12-month sunset clause for the powers, as opposed to two years (this was focused however on proposals which were privative and are not included here, specifically the powers to close the border and to suspend offshore applications for temporary entry class visas). Most individual submissions, and a number of submissions from organisations, related to areas of immigration policy or practice which were not the subject of the either Bill or these proposals (in particular, they focused on: the border exceptions policies which were managing entry to New Zealand, family reunification issues, residence visa categories and decision-making, and immigration policy settings concerning partnership).
- Some submissions which did relate to the Bill's powers (such as those relating to amendments to the visa expiry dates of classes of temporary visa-holders) sought specific uses of the powers (which implicitly indicated support for the retention of the powers).

Limitations and Constraints on Analysis

Time pressure on this work has impacted on the development of these proposals and, in particular, the ability to undertake wide-ranging consultation external to government ahead of Cabinet policy decisions, although some targeted consultation has been carried out and feedback has informed additional safeguards.

However, MBIE considers that this is balanced by the three years' worth of experience in administering the COVID-19 powers (including equivalent comprehensive safeguards). The full six-month Select Committee process will enable community and industry voices to be incorporated into the final version as appropriate.

As noted above, the previous Amendment Bills which addressed the COVID-19 powers also mean that feedback has been received on them (including feedback received following a year of operation) from interested employer, union, immigration advice community, and migrant voices.

Responsible Manager(s) (completed by relevant manager)

Stacey O'Dowd

Manager, Immigration (Border and Funding) Policy, Labour, Science and Enterprise, MBIE



4 September 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	MBIE
Panel Assessment & Comment:	A Quality Assurance panel with representatives from MBIE has reviewed the RIS <i>Immigration Amendment Bill (System Integrity proposals)</i> . The panel has determined that each RIS provided meets the quality assurance criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The Immigration Act 2009 (the Act) is the fundamental source of New Zealand immigration law. Among other things, it establishes that only New Zealand citizens have the right to enter and be in New Zealand; it requires all non-citizens to hold a valid visa to be lawfully in New Zealand; it sets out who needs a visa to travel to New Zealand and how the conditions¹ on stay in New Zealand are established; and it provides for the certification of immigration instructions (expressions of government policy), and the rules and criteria for the grant of visas.
2. The Act is predicated upon individual persons making individual applications for visas (or for variations of conditions (VoC) on their existing visas), which are considered and decided by an individual immigration officer. However, the limitations of this approach became apparent from early 2020, when lockdowns in New Zealand and overseas significantly reduced visa applicants' ability to make applications and Immigration New Zealand's (INZ's) ability to decide them.

Gaps in Act's structure were exposed by the COVID-19 pandemic in 2020

3. The COVID-19 lockdowns impacted both New Zealand's labour market (such as with the need for supermarket workers in 2020 and for seasonal workers over the entire period) and on visa-holders' ability to undertake the activities for which their visas were granted (such as to study, or to work for a specific employer), at the same point that INZ office closures meant it was almost impossible to amend the conditions on visas or to grant new visas, especially at scale. This significantly impacted aspects of the labour market (food workers were in short supply) and meant many foreign nationals in New Zealand were unable to fulfill the conditions of their visas (such as to study, or to work in a specified job), meaning they were technically in breach of those visas.
4. Border closures in New Zealand and overseas made it difficult for people to leave New Zealand as well as to enter. This meant that people in New Zealand were at risk of becoming overstayers, while people outside New Zealand who had been granted visas could not use them to travel here before their ability to travel expired. (Unused visas generally expire within a year.)

Time-limited emergency immigration powers were created and then extended

5. In response, Parliament agreed that changes needed to be made to the Act to address these issues, and unanimously passed the Immigration (COVID-19 Response) Amendment Act 2020 (the 2020 Amendment Act) on 15 May 2020. The 2020 Amendment Act gave the Minister eight time-limited and heavily safeguarded powers (the COVID-19 powers) to address the direct and indirect impacts of the COVID-19 pandemic, many of which enabled the Minister to make Special Directions for classes of visa-holders or applicants.

¹ For example, whether the visa-holder can work or study, and when they must leave by, if they have not been granted a further visa in the interim.

6. While most of the powers could only be used to benefit individual and classes of migrant, the 2020 Amendment Act also enabled the suspension of the ability to apply offshore for classes of temporary entry class visas, tweaks to transit visa requirements (needed while people were seeking to get home via New Zealand, especially from the Pacific), and the denial of entry permission to certain persons otherwise deemed to hold it.
7. The COVID-19 powers were initially set to expire on 15 May 2021, but COVID-19 did not lessen as rapidly as had been hoped. The Immigration (COVID-19 Response) Amendment Act 2021 (the 2021 Amendment Act) extended powers a further two years, to 15 May 2023. By then the borders were reopening and normal visa processing had resumed.

The immigration system continued to benefit from the powers while they were available

8. The Minister of Immigration continued to make COVID-19-related Special Directions for classes of migrants up to April 2023, in each case subject to the legislated safeguards (i.e. that making the Special Direction was reasonably necessary to respond to the impacts of COVID-19 or measures taken in response to COVID-19, and was likely to benefit, or at least not disadvantage, the migrants concerned).
 - 8.1. For example, a Special Direction of late 30 May 2022 benefited almost 10,000 Critical Purpose Visitor Visa-holders, by amending their visas from single entry to multiple entry; this reflected the removal of border restrictions and Managed Isolation and Quarantine requirements and meant that people who wished to leave and re-enter New Zealand did not need to individually apply for a VoC of their travel conditions, pay the associated fee, and wait for the application to be decided by INZ. The last class Special Directions made granted new Working Holiday Visas to thousands of young people overseas whose visas had lapsed during the border closures, so that those who still wished to have a working holiday in New Zealand could do so.
9. The delegated power to grant visas to individuals in the absence of an application was used up to the date that the legislation expired in May 2023, and towards the end of that time to facilitate the evacuation from Afghanistan of numerous people who had worked with the New Zealand Defence Force and whom the government had agreed to resettle here for their protection.

What is the policy problem or opportunity?

New Zealand should take the opportunity to strengthen its immigration framework to be more resilient and able to manage challenges efficiently

10. There is an opportunity to re-establish some of those powers in the Act, to support an ongoing, clear, humane, robust, and consistent approach to situations which could challenge or place strain upon New Zealand's immigration system.

11. At the more serious end, this could be another global pandemic, a local or national civil (or other) emergency, a situation akin to the 2024 CrowdStrike event which impacted air travel globally, or a cyberattack which took down INZ's IT systems. However, even below an emergency state, flexible powers are useful. For example:

11.1. In the absence of the ability to grant visas without an application, **Free and frank opinions**

[REDACTED]

11.2. Processing issues have arisen when managing the immigration statuses of **Confidential advice to Government**, the many Tongan citizens who could not leave New Zealand when the Hunga Tonga-Hunga Ha'apai volcano closed their airspace and, most recently, the hundreds of RSE workers suddenly trapped in New Zealand when Air Vanuatu collapsed. Even a severe storm in Auckland, shutting down the airport for several days, can inadvertently turn hundreds or thousands of foreign nationals into overstayers, with potential negative implications on their future ability to travel.

11.3. The ability to waive any regulatory requirements (such as fees or photos) for certain classes of application would have been periodically useful at points where cyclones in the Pacific have closed Visa Acceptance Centres.

The previous powers worked well and should be available with safeguards in the future

12. Unusually, there is already three years' experience with the exercise of very similar powers, established in response to the challenges imposed by the pandemic. **Annex One**, from page 22 below, has a comprehensive list of the class Special Directions made at that time and (for each) the estimated number of people who were affected or benefited. (Note that they did not require the "unusual circumstances" now proposed, just a connection to COVID-19; note also that no Special Direction invoked more than two powers at one time.)
13. By the time the powers expired, various Ministers of Immigration had between them gazetted 43 "beneficial" Special Directions and one (no. 10) "non-beneficial" Special Direction (it established a new condition on existing temporary entry class visas, namely to obey the direction of a Medical Officer of Health).
14. Many of the Special Directions contributed positively to New Zealand's foreign relationships: for example, it was important to the US that New Zealand was able to facilitate the arrival of people under the Antarctic Treaty while our borders were closed, and many Pacific nations in particular appreciated that New Zealand enabled people to live and work here while travel to their home countries was not possible.
15. The last few Special Directions, while still maintaining a connection to COVID-19 (required by the legislation), mopped up after borders re-opened, and were used as part of a range of mechanisms to address the then- challenging workforce shortages. One extended the expiry dates of the approximately 7,500 working holiday visas of holders onshore, and others reinstated the visas of people offshore whose Working Holiday Visas or Post Study Work Visas had expired while borders were closed. Doing this through the standard mechanisms would not have been worthwhile. It would have involved establishing a policy, which would have required a new visa type, ICT changes,

and people who qualified then making individual applications (either with a fee – dissuading to applicants – or without – expensive for INZ or the Crown), followed by individual decisions. As the reinstatement of those visas was largely a goodwill gesture, it would have been difficult to justify prioritising at that point, especially as it was not clear how many of the approximately 20,000 people eligible would have been interested in taking up the offer.

16. Therefore, while there has not been a formal evaluation, our experience of use means that we have considerable confidence about both their usefulness (from a client and a system efficiency perspective), and the design of the safeguards. The powers that are proposed to be reestablished are set out in **Table One** below.

Table One: Time-limited immigration powers that are proposed to be made permanent

	Immigration Act 2009 section/s	Description
1	s52(4A) (temporary entry class visas)	The power to impose, vary, or cancel conditions for classes of temporary entry class visa-holders, by Special Direction
2	s50(4A)	The power to vary or cancel conditions for classes of resident visa-holders, by Special Direction
3	s78A(1) (temporary entry class visas)	The power to extend the expiry dates of visas for classes of people, by Special Direction
4	s61A(1) and s61A(2)	The power to grant visas to individuals and classes of people in the absence of an application, by Special Direction (Note: 61A(1), which relates to individuals, did not have to address COVID-19 impacts, unlike s61A(2) Special Directions, which applied to classes of person)
5	s57(3) and s57(5)	The power to waive any regulatory requirements for certain classes of application, by Special Direction

17. For completeness, **Table Two** below shows the powers not proposed to be extended – they were border measures that related directly to the pandemic, and are not considered necessary at this time.

Table Two: Time-limited immigration powers that are not proposed to be recreated

	Immigration Act 2009 section/s	Description
6	s86(4A) and s86(4B)	The power to: <ul style="list-style-type: none"> waive the requirement to obtain a transit visa in individual cases, by Special Direction suspend a transit visa waiver made by Regulations, for an individual
7	s401A and s401B	The power to suspend the ability to make applications for visas or submit Expressions of Interest in applying for visas by classes of people, by Order in Council (Note: will not benefit the visa applicants)
8	s113A	The power to revoke the entry permission of a person who has been deemed by Regulations to hold a visa and have been granted entry permission. (Note: not required to be related to COVID-19, and will not benefit the person)

18. The changes that were made in 2020 worked well, and were able to be put in place quickly. However, the Law Commission has in the past identified that there are risks associated with making rapid changes in response to emergencies: useful changes may not be identified in time, while legislation enacted at pace in an emergency is likely to include wider powers than are necessary and to omit necessary safeguards. It may also not be the best use of official or parliamentary resource to enact just-in-time legislation at a time of national emergency.²
19. Finally, as previously noted, some of the powers have been or would be useful in light of situations overseas which have not directly impacted New Zealand. For example, the volcano in Tonga and the Confidential advice to Government both led to decisions that their citizens in New Zealand could remain here even if their temporary entry-class visas were about to expire: class Special Directions were a transparent mechanism for providing certainty in this situation without requiring formal visa applications.

What objectives are sought in relation to the policy problem?

20. The overarching objective across the suite of proposals is to enhance the integrity of the immigration system. This proposal specifically aims to enable the immigration system to respond efficiently, for the benefit of migrants, where there are circumstances that pose operational challenges outside MBIE's control.
21. These objectives align with the Government's commitment to ensuring that regulatory systems remain fit for purpose and work well.

² Law Commission, *Final Report on Emergencies* (NZLC R22, 1991).

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo and what scope will options be considered within?

22. The objectives for the change package underpin the criteria we have used to consider the options against the status quo. Broadly: would a proposal support the objective of:
 - enabling the immigration system to respond in a resilient and efficient fashion,
 - when there are circumstances that are unusual, or outside the agency's control, and that pose challenges to the immigration system.
23. At a secondary level, would a proposal be:
 - Effective (enable the immigration system to respond in a resilient and efficient fashion to circumstances that are unusual or outside INZ's control and that pose challenges),
 - adequate (proportionate and administratively workable),
 - transparent,
 - benefit migrants.
24. The scope of the consideration of options is "possible change to the Immigration Act 2009" (and any subordinate Regulations or immigration instructions).

What options are being considered?

25. Two major options are considered for each proposal. They are the status quo (no powers), and the proposed legislative changes. Some of outcomes sought by the proposals could be addressed in other ways and where appropriate these are also discussed below.

Option 1: (Status quo) use existing mechanisms

26. INZ has managed difficult and challenging situations without the powers, both before they existed and since they expired. Over time, INZ's investments into technology have enhanced its ability to respond to some of the situations that posed issues at the point that the borders were closed in 2020. At that point many visa applications could only be made on paper (an online option did not exist), and therefore could not be received or processed if offices were closed. In addition, INZ staff could not or could only minimally work from home: the technology used at the time did not support the transition to the remote provision of many services, remote access to servers was rationed, and it was not possible to undertake banking functions outside the office.
27. INZ is now better placed to deliver a range of services and functions remotely, providing greater resilience to disruptions. It has moved most application types online. Windows 10 and changes to processes mean that staff can work from home. In a future major emergency, Cabinet can decide policies with regard to rules and criteria for the grant of applications for visas.

28. The Minister of Immigration continues to have certain Special Direction powers with regard to “associated” groups of foreign visa applicants under s378 of the Act, for a limited range of issues already contemplated by the Act (such as exempting identified people who are associated together from certain visa application requirements), although without the safeguards³ of the COVID-19 powers. We have demonstrated that we can, if necessary, pass tailored emergency legislation quickly.
29. However, the status quo is not ideal from a number of perspectives. At one end, if an emergency arose, it might not be practicable to pass legislation quickly. In that case, as the Minister would not be able to make flexible Special Directions, most Cabinet policy decisions addressing the emergency would have to be reflected through new visa policies. These would require individual applications to be made and assessed when INZ might have very limited capacity, for example because of staff illness or because offices or IT systems had been impacted by an earthquake or major cyberattack.
30. From a more mundane perspective, the existence and then removal of the previous powers has made it clear that the Act has a gap with regard to efficiently managing groups of non-citizens in circumstances that challenge the immigration system but are out of INZ’s control. For example, where classes of temporary entry class visa-holders are suddenly unable to easily return home due to offshore emergencies (such as the Tongan volcano or the Confidential advice to Government), it is not possible to extend their visa expiry dates as a class. In equivalent situations, Immigration Officers are often encouraged to exercise discretion (under [section 11](#) of the Act) to individuals in a compassionate fashion. This is arguably contrary to the intended use of discretion, and the outcomes are not transparent.
31. Otherwise, staff must deal with individuals one-by-one, making individual Special Directions to, for example, waive fees and the requirement to provide a photograph for a visa application. This is inefficient, non-transparent, and frustrating for all parties concerned.

Option 2: Amend the Act to re-establish “flexible powers”, a subset of the previous powers, with appropriate safeguards

32. The proposed legislative package is set out in the tables below. **Table Three** elaborates Table One above), while **Table Four** scores the two options (status quo and flexible powers).
33. For further information, **Annex One** summarises the 44 Class Special Directions made by the Minister of Immigration to date under the two Immigration (COVID-19 Response) Amendment Acts. **Annex Two** sets out the powers proposed to be re-established, with a summary of their safeguards.

³ That is, that the decisions are transparent (because they are published) and disallowable, are considered to be reasonably necessary, and may not disadvantage the migrant(s) concerned.

Table Three: Proposed powers, how they are exercised, and existing options where available

	Description	Instrument	Section	Options
1	To impose, vary or cancel conditions for classes of temporary entry class visa-holders	Special Direction	s52(4A) (temporary)	<p>The status quo has two options:</p> <ul style="list-style-type: none"> • Temporary visa-holders could be advised to apply for a VoC on their existing visa (costing \$325), which would be granted under s52(2). Cabinet could decide to waive the fees (likely requiring regulatory amendment). Processing the applications for VoCs would be time consuming and inefficient, and expensive for the Crown if fees were waived. • For a class of persons, Cabinet could agree a new visa policy, and could agree to waive the application processing fees. This would be even more time consuming and inefficient, and more expensive for the Crown.
2	To vary or cancel conditions for classes of resident class visa-holders	Special Direction	s50(4A)	<p>As above with regard to individuals applying for VoCs (s50(2), s51(3))</p> <p>No real policy option, as a resident visa is effectively permanent (i.e. it does not make sense to apply for a replacement resident visa with different conditions).</p>
3	To extend the expiry dates of visas for classes of people, for up to nine months	Special Direction	s78A(1) (temporary)	<p>No other option apart from applying for a new visa and meeting the policy requirements as set out in 1 above (existing individual Special Direction powers do not include expiry date changes)</p>
4a	To grant visas to individuals in the absence of an application	Special Direction	s61A(1)	No other option
4b	To grant visas to classes of people in the absence of an application	Special Direction	s61A(2)	No other option
5	To waive any regulatory requirements for certain classes of application	Special Direction	s57(3) and s57(5)	<p>Very limited option for a Special Direction under s57(1) waiving requirements for an individual or linked individuals through regulations⁴; individuals need to be known and identified so inefficient and time-consuming.</p>

34. The major risk identified with this option is that the relative ease of use of these powers to address issues may lead to the lobbying of future Ministers (especially once “moral precedents” are set) and may slightly lower the pressure on officials to quickly address problems in policy settings or IT systems. These will be managed through the certification

⁴ Regulation [34\(2\)](#) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.

and consultation processes required of a Minister before a group power is exercised, and clear messaging about the Minister's intentions.

How do the options compare to the status quo?

35. **Table Four** below sets out the two options against the criteria established under paragraph 22 above, which are:

- A Effective (enable the immigration system to respond in a resilient and efficient fashion to circumstances that are unusual or outside INZ's control and that pose challenges)
- B Adequate (proportionate and administratively workable)
- C Transparent (to stakeholders and the public)
- D Benefit migrants

36. The scoring schema is:

- 0 Not at all or not applicable
- 1 Marginal
- 2 Partially meets or addresses
- 3 Meets or addresses well

Table Four: Scoring the two options for the proposals

Description		Status quo				Avg	Act change					Avg
		A	B	C	D		A	B	C	D		
POWERS												
1	To impose, vary or cancel conditions for classes of temporary entry class visa-holders	1.5	2	2	1	2.0	3	3	2.5	2.5	3.5	
2	To vary or cancel conditions for classes of resident class visa-holders	1	1	2	1	1.5	3	3	2.5	2.5	3.5	
3	To extend the expiry dates of visas for classes of people for up to six months	1	1	2	2	1.8	3	3	3	3	3.8	
4a	To grant visas to individuals in the absence of an application	0	0	0	0	0.0	3	3	3	3	3.8	
4b	To grant visas to classes of people in the absence of an application	0	0	0	0	0.0	3	3	3	2	3.5	
5	To waive any regulatory requirements for certain classes of application	1	1	0	2	1.3	3	3	3	2.5	3.4	
Average scores						1.1						3.6

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

37. The status quo option (Option 1) does not meet the broad aim of enhancing the immigration system's integrity, by enabling it to respond in a resilient and efficient fashion to circumstances that are unusual or outside INZ's control and that pose challenges. From a day-to-day perspective, INZ and migrants sometimes face issues and circumstances which are not easily addressed using the current settings. With regard to future extreme emergencies, there are no guarantees that it would be feasible to quickly pass bespoke legislation again (for example, in the case of a large earthquake in Wellington) and in any case it would not be a good use of Parliament's or officials' time to focus on making rapid legislative change when the powers could be in reserve. A broader discussion of its disadvantages is set out from paragraph **Error! Reference source not found.**
38. Option 2 (establishing enduring and transparent flexible powers) better meets the criteria set out from paragraph 22 above. These powers would enable the Minister to respond appropriately and efficiently to exceptional or unusual circumstances by providing additional flexibility in the immigration system, with appropriate safeguards.

What are the marginal costs and benefits of the option?

39. Given the nature of the proposed changes, it is not feasible to identify monetised costs and benefits of their existence. In particular, with regard to a possible future major event or emergency, it is not in general possible to accurately estimate costs or benefits, as they would be specific to the particular situation (and even then would be difficult to quantify – emergencies generate a lot of costs).
40. With regard to the more day-to-day use of the powers, their impact would mean greater efficiency in the face of unusual circumstances, but again this would be difficult to quantify.
41. Broad stakeholder/impact groups have been identified below, noting that this is indicative, and not exhaustive (again, different situations will involve different groups; airlines and maritime carriers may have a strong interest in people being able to travel to New Zealand or not, the international education industry will focus on foreign students, the immigration advice industry maintains a close interest in immigration settings generally, and other governments may have an interest in how their citizens are treated in challenging situations).
- Parliament
 - The New Zealand government (Cabinet)
 - INZ
 - Onshore temporary visa-holders
 - Onshore visa applicants
 - Onshore families of migrants
 - Onshore employers
 - Offshore visa-holders and applicants
 - Other governments (to the extent that their citizens are advantaged).

42. **Table Five** below sets out the identified stakeholder groups and a description of how the proposed changes from the preferred option might impose costs or generate benefits with regard to the package as a whole. Officials note that the evidence cited relates to experience over the three years that the COVID-19 emergency powers were in force.

Table Five: Description of costs and benefits for stakeholder groups

Affected groups	Comment	Impact.	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Parliament	There is a cost to considering this legislation against other legislative programme priorities; if there are no emergencies in the next several decades, MPs' time might have been better spent on other Bills.	Medium (Bills are resource intensive)	This is one part of a broad amendment Bill so its marginal costs are not high, given that the rest of the Bill is progressing. With regard to future emergency situations, this is essentially insurance.
Government (Cabinet)	As above, with regard to policy proposals.	Low	As above.
INZ	Implementation costs to MBIE to support the legislation then create processes for use if the legislative powers are introduced.	Low	The costs are relatively small (design of templates and processes rather than IT changes). As above, they are insurance against having to do the same things in very tight timeframes, or having to operate processes which are not fit for purpose. They are more than balanced by the efficiency gains of having the flexible powers available. Evidence certainty is high given actual experience.
Onshore temporary visa-holders	No cost associated with making the legislative change. No cost if an exceptional/unusual circumstance does not transpire. The proposals, where they impact on the group, in the case of an exceptional circumstance would strongly reduce potential costs of e.g. having to apply for further visas or VoCs.	Low / none	In the event of an emergency or unusual circumstance, numbers of onshore temporary visa-holders could see their purpose for being in New Zealand (to work or study) not being able to be fulfilled, or could face their visa being about to expire, potentially when it was difficult to leave. The package would enable (free) changes to be made to benefit them (such as the extension of their visas or changes to their visa conditions).
Onshore temporary visa applicants	No cost associated with making the legislative change. No cost if an exceptional circumstance does not transpire. The proposals, where they impact on the group, could compensate for offices being closed, IT systems being down, etc.	Low / none	As above, plus the changes could, in the event of a situation where it might be difficult to make applications, allow for application requirements to be waived.
New Zealand family members of people offshore	(On the assumption that family in New Zealand would like their foreign family members to be able to remain or come here.) Where this benefits their offshore or temporarily onshore family members it will remove/ reduce costs.	Low	
Onshore employers	No cost associated with making the legislative change. No cost if an exceptional/unusual circumstance does not transpire. The proposals would enable employees to remain lawfully in New Zealand, have relaxed work conditions, etc., if necessary	Low / none	Class Special Directions are made at no cost to the people they benefit.
Offshore visa applicants/ holders	No cost associated with making the legislative change. No cost if an exceptional/unusual circumstance does not transpire. Benefits if it is difficult to make applications, as could allow for application requirements to be waived.	Low	
Additional benefits of the preferred option compared to taking no action			
Parliament	The converse of the cost analysis above: the benefit to the preferred option is that, in the event of an emergency, Parliament would be able to focus on more pressing matters.	Zero (no emergency) or very high (emergency)	
Government (Cabinet)	As above: in the event of an emergency, Cabinet would be able to make decisions and have them implemented relatively easily, and would not have to wait for enabling legislation.	Low (no emergency) or very high (emergency)	The proposals overall will improve efficiency.
INZ	Major benefits to INZ/the immigration system in the event of an emergency or exceptional/ unusual circumstances with significant impacts on the immigration system; plus ongoing benefits to respond to general non-emergencies that nonetheless pose challenges.	INZ: Low (no emergency) or high to very high (emergency/ exceptional circumstances)	The experience of the three years that the powers existed provides high certainty.

Affected groups	Comment	Impact.	Evidence Certainty
Onshore temporary visa-holders	Benefits to people onshore who cannot easily return to their homes, for example visas will be able to be extended as a class at no charge. The proposals, where they impact on the group, in the case of an emergency or exceptional/unusual circumstances, would remove the costs of, for example, having to apply for further visas or VoC and would improve certainty.	Low (no emergency) or high/very high (emergency/ exceptional circumstances)	Note the numerous Special Directions that were made removing requirements or extending visa expiry dates etc for classes of person onshore.
Onshore temporary visa applicants	The proposals, where they impact on the group, in the case of an emergency or exceptional/unusual circumstances would compensate for offices being closed etc., and would provide more options and more certainty.	Low (no emergency) or high (emergency/ exceptional circumstances)	As above.
New Zealand family members of people offshore	(On the assumption that family in New Zealand would like their foreign family members to be able to remain or come here.) Where this benefits their offshore or temporarily onshore family members it will remove/ reduce costs and uncertainty.	Low to medium	The ability to grant visas to people offshore whose visas have expired, or to extend their validity until it is possible to travel again, will benefit some New Zealand families.
Onshore employers	In the case of an emergency or exceptional/unusual circumstances, the proposals could enable employees to remain lawfully in New Zealand, have relaxed work conditions, etc., if necessary.	Zero (no emergency) or high (emergency/ exceptional circumstances)	For example, enabling students to work in supermarkets with no requirement to apply for and be granted a VoC to do so (actual need from early days of pandemic).
Offshore visa applicants/ holders	No cost associated with making the legislative change. No cost if an emergency or exceptional / unusual circumstances does not transpire.	Low	High where eg visa application requirements waived The changes could, in the event of an emergency where it was difficult to make applications, allow for application requirements (such as x-rays) to be waived.

Section 3: Delivering an option

How will the new arrangements be implemented?

43. If Cabinet agrees to proceed with the proposed package and Parliament then passes the legislative changes, officials will implement them as set out below.

Amendments to powers

44. **Table Six** below sets out how the flexible powers would be exercised. Implementation will in the first instance involve the development of documentation (templates/processes), and appropriate messaging for reference in the case that the powers are exercised.

Table Six: Scope and safeguards, and relationship to powers

Process step	Comment
Circumstances	<ul style="list-style-type: none">For groups: A case would be made that there were circumstances that were unusual, or outside the agency's control, and that posed challenges to the immigration system, and that it was reasonably necessary for the Minister of Immigration to make a Special Direction in respect of a specified group in order that they could benefit from it. The Minister would need to agree.For Individuals (s61A only) A DDM would become aware of an individual whose circumstances indicated that they should be granted a visa, but who could not apply or for whom it would be impractical for them to apply.
Person / body invoking the powers	<ul style="list-style-type: none">For Groups: The Minister of Immigration would make one or more Special Directions that were Gazetted.For Individuals: A Minister or DDM could make the decision.
Procedures to be followed	<p>As set out under Circumstances and Person/body invoking the powers; noting that:</p> <ul style="list-style-type: none">For Groups: The Minister would undertake any consultations that they considered appropriate (this could include seeking Cabinet's formal noting or agreement to the proposed course of action), and would certify that they considered that the other conditions were met. Officials would organise the formal Gazetting of the Special Direction, and the publication on MBIE's INZ website. If changes to Immigration Instructions were required, standard processes would be followed for preparation, certification, and publication (see paragraph 46 below).For Individuals: The Minister or DDM would make the decision. They would not be required to consider any request, or to provide reasons for their decision (including any decline decision) or refusal to consider.
Scope of the powers	<p>The flexible powers are set out below:</p> <ul style="list-style-type: none">The power to impose, vary or cancel conditions for classes of temporary entry-class visa-holders, by Special Direction.The power to vary or cancel conditions for classes of residence class visa-holders, by Special Direction.The power to extend the expiry dates of visas for classes of people, by Special Direction [for a maximum of nine months].The power to grant visas to individuals and classes of people in the absence of an application, by Special Direction [note that the power relating to individuals would not be required to respond to exceptional or unusual circumstances].The power to waive any regulatory requirements to make an application for certain classes of people, by Special Direction.

Process step	Comment
Controls / Safeguards	<ul style="list-style-type: none"> Each instrument that gave effect to the exercise of the powers would be secondary legislation that would be notified in the Official Gazette, would be disallowable, and would be subject to judicial review (by leave). In making any Special Direction, the Minister of Immigration would be required to declare that: <ul style="list-style-type: none"> making the Special Direction was reasonably necessary to manage the effects, or deal with the consequences, of the specified situation, whether in New Zealand or overseas, as existing measures were not sufficiently responsive; and they considered that the exercise of the power or powers would benefit, or at least not disadvantage, the people to whom it applies; and they had undertaken any consultation that they considered to be appropriate prior to that certification. (As above, this could include formal consultation with Cabinet.) The Special Directions and Orders/Notices would have a maximum life of six months and would have to be renewed for their effect to be continued. As above, it is proposed that the duration of the temporary visas granted or extended or extended by Special Direction would be limited to nine months' duration at one time (to reduce uncertainty for holders as the expiry date of the Special Directions approached).

Implementation will include planning for use and publication of information

45. A process map and indicative templates will be drawn up. A description of the impacts of the new legislation will be published on the INZ website, alongside existing descriptions of the Act and the Amendment Acts which have been passed since it was enacted.
46. With regard to the exercise of any of the class flexible powers, their use will be published (as below). If any changes to Immigration Instructions are required through policy decisions that also invoke the use of a class Special Direction power, the amended Instructions will be certified by the Minister of Immigration and published on MBIE's INZ website.

How will the new arrangements be monitored, evaluated, and reviewed?

47. The flexible powers have a number of monitoring and review points built in. The class Special Directions are notified in the Gazette with an explanation, and presented to the House of Representatives, and also published on MBIE's INZ website. They are "disallowable instruments" in terms of the Legislation Act 2019.
48. MBIE's Annual report will also report on the number of times that class Special Directions have been used in the relevant year, and for the previous three years (if relevant) with a summary of the reasons. This will support transparency, and any future reviews.
49. Finally, a review of the use of the powers will be carried out three years after they come into effect. Current planning for a broader review of the Act means that any recommended adjustments to legislation are likely to be able to be made in a timely manner.

Annex One: COVID-19 Class Special Directions made by a Minister of Immigration June 2020 – April 2023

	Date signed by Minister of Immigration	Date published in gazette	Section/s of the Act	Gazette reference and effect	Impacts (including numbers of visa-holders impacted)
1	19-Jun-20	1-Jul-20	57(3)	2020-go2869 Reduce application requirements for transit visa applicants (including remove requirement for forms and fees)	Not fixed but approximately 2,200 applications had been made as at February 2021 (final number of applicants will be higher)
2	6-Jul-20	10-Jul-20	78A	2020-go3070 Extend temporary work visas to enable people whose visas would other expire to remain and work lawfully in New Zealand	Approximately 19,500
3	7-Jul-20	10-Jul-20	61A(2)(b) and 61A(5)	2020-go3037 Grant new limited visas to onshore RSE workers	Approximately 1,000 visas
4	17-Aug-20	23-Sep-20	78A	2020-go4469 Extend duration of visas held by certain partners and dependants (children) of employer-assisted workers	Approximately 3,000 partners and dependents
5	2-Sep-20	11-Sep-20	78A	2020-go4233 Extend temporary visitor visas to enable people whose visas would otherwise expire to remain lawfully in New Zealand	Approximately 16,600
6	3-Sep-20	21-Sep-20	57(3)	2020-go4242 Waive prescribed fees and levy charges to persons associated with Antarctic Treaty programme	Not fixed. As at December 2020, approximately 1100 personnel had been approved an EOI (able to apply for visa to enter New Zealand)
7	11-Sep-20	22-Sep-20	50(4A) and 50(4C)	2020-go4425 Vary travel conditions on resident visas to extend the time available for offshore resident visa holders with expired travel conditions to travel to New Zealand	5,600 offshore resident visa holders had travel conditions extended OR were granted new resident visas
8	11-Sep-20	22-Sep-20	61A(2)	2020-go4426 Grant resident visas to offshore persons whose resident visas are no longer valid to extend the time available for their travel to New Zealand	
9	11-Sep-20	25-Sep-20	52(4A)(b) and 53(4A)b)	2020-go4483 Vary the conditions of visitor visa holders in New Zealand to allow the holders to study or to attend school for up to six months in a year	Approximately 13,200 individuals had their study condition amended
10	11-Sep-20	25-Sep-20	52(4A)(a)	2020-go448 Impose a condition on temporary entry class visa holders to comply with COVID-19 health regulatory requirements (note: this is the only non-beneficial Special Direction, and relates to s52(4B(b)(ii)))	184,881 temporary visas had this condition added
11	11-Sep-20	25-Sep-20	78A	2020-go4485 Extend visas held by certain employer-assisted workers (Religious Workers and Foreign Fishing Crew), and by the partners and dependants of work visa holders, to enable them to remain lawfully in New Zealand (and to work, study, or visit as appropriate)	Foreign fishing crew - 650 . Religious workers - 160 . Religious workers partners and dependents - 58 .

	Date signed by Minister of Immigration	Date published in gazette	Section/s of the Act	Gazette reference and effect	Impacts (including numbers of visa-holders impacted)
12	1-Oct-20	12-Oct-20	61A(2) and 61(A)(5)	2020-4727 Grant supplementary seasonal employment visas to onshore working holiday visa holders whose visas are expiring to enable them to remain lawfully in New Zealand and work in seasonal industries	Estimated to be around 3,000 visas
13	1-Oct-20	9-Oct-20	61A(2) and 61(A)(5)	2020-go4728 Grant new RSE limited visas to persons who were previously granted limited visas as stranded RSE workers	Estimated to be up to approximately 990 people
14	17-Dec-20	12-Jan-21	78A	2021-go58 Extend working holiday visas, and ease work restrictions, to persons in New Zealand on working holiday visas which are expiring	Total eligible estimated to be 7,800 .
15	17-Dec-20	19-Jan-21	78A	2021-go153 Extend the visas of some employer-assisted work visa holders and of their partners and dependants to enable them to remain lawfully in New Zealand (and work, study, or visit as appropriate).	Estimated to be around 13,300 EAWV holders and 7,000 partners and dependents - currently underway
16	17-Dec-20	2-Feb-21	57(3) and 57(5)	2021-go359 Waive the requirement to provide a Chest X-Ray Certificate for certain RSE Limited Visa Applications, to streamline the process for applicants travelling from Samoa, Tonga or Vanuatu who are arriving before 30 March 2021	Around 1930 RSE workers likely to be impacted.
17	17-Dec-20	3-Feb-21	57(3)	2021-go358 Waive the requirement to pay the prescribed fee and any levy for certain Recognised Seasonal Employer Limited Visa Applications during COVID-19 Travel Restrictions, to remove a barrier to the movement of RSE workers to where the greatest workforce need is and remove a cost normally borne by the RSE worker; noting this also benefits RSE workers who are already onshore and continue to be affected by COVID-19 measures offshore, primarily affecting their repatriation.	Around 1,650 (as at 16/2/2021)
18	18-Feb-21	22-Feb-21	78A	2021-go605 Extend the temporary visitor visas of holders who are in New Zealand on 19 February 2020, and whose visitor visas expire before 31 March 2021, for two months; to reflect that many visitor visa holders who were onshore before the border closures have been unable to return home due to travel restrictions imposed globally. This decision reflects previous action undertaken to enable people to remain lawfully in New Zealand while border closures have been ongoing to mitigate the spread of COVID-19.	Around 9,500
19	26-Apr-21	3-May-21	57(3)	2021-go1659 Waiver of Requirement to Provide a Chest X-Ray Certificate for Certain Onshore RSE Limited Visa Applications in Order to Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak or Effects of COVID-19.	Around 5,500
20	13-May-21	14-May-21	57(3)	2021-go1846 Waive the requirement to sign the application, provide a passport or certificate of identity, provide two photographs, and pay the prescribed fee for persons in Tonga or Samoa who are required to apply for and obtain a transit visa to travel to and be in New Zealand as a transit passenger and who can provide copies of their passport or COI with their	

	Date signed by Minister of Immigration	Date published in gazette	Section/s of the Act	Gazette reference and effect	Impacts (including numbers of visa-holders impacted)
				application. This will simplify the transit visa application process, which is currently impracticable due to COVID-19, as the relevant INZ offices are closed.	
21	9-Jun-21	22-Jun-21	57(3)	2021-go2459 Waiver of Certain Requirements for the Making of a Transit Visa Application From Tonga and Samoa During Covid-19 Travel Restrictions	
22	9-Jun-21	22-Jun-21	78A	2021-go2458 Extension of Visas Held by a Class of Onshore Persons Whose Visas are Expiring to Manage Effects and Deal With Consequences of Measures Taken To Contain or Mitigate the Outbreak of COVID-19 or its Effects - extends visas of Working Holidaymakers by 6 months	Around 6,000 - 7,500
23	24-Jun-21	29-Jun-21	52(4A)	2021-go2611 Variation of Conditions of Visas Held by a Class of Onshore Persons to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or Its Effects - Working Holidaymakers who hold visas extended by 6 months under go-2458 (on 9 June) are able to work in any employment except permanent employment	Around 900
24	22-Aug-21	1-Sep-21	50(4A) and 50(4C)	2021-go3695 Vary the Travel Conditions for a Class of Offshore Resident Visa Holders to Manage the Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak or Effects of COVID-19 - relates to 7 & 8 above	Approximately 8,000
25	27-Sep-21	29-Sep-21	61A(2)(a) and 61A(5)	2021-go4207 Grant of Limited Visas With Critical Purpose Conditions to Certain Persons who are Former Holders of Recently Expired RSE Limited Visas to Manage the Effects and Deal With Consequences of Measures Taken to Contain or Mitigate COVID-19 Outbreaks - grants new visas to enable workers on flights that were cancelled to travel to New Zealand on future flights	Potentially 2,013
26	28-Sep-21	1-Oct-21	61A(2)(a) and 61A(5)	2021-go4227 Grant of Limited Visa to Stranded RSE Workers to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or its Effects - grants new visas to RSE workers stuck onshore: expires 31 August 2022	Potentially 2,013
27	28-Sep-21	1-Oct-21	57(3) and 57(5)	2021-go4228 Waiver of the Requirement to Provide Passport Photographs for Certain Recognised Seasonal Employer Limited Visa Applications During COVID-19 Travel Restrictions - for RSE workers onshore applying for further RSE visas	n/a
28	28-Sep-21	13-Oct-21	57(3) and 57(5)	2021-go4255 Waiver of Requirement to Provide a Chest X-Ray Certificate for Certain Onshore RSE Limited Visa Applications in Order to Deal with Consequences of Measures Taken to Contain or Mitigate the Outbreak or	Samoa - max 1,200 RSE workers ; Tonga - max 1,300 RSE workers ; Vanuatu - max 4,400 RSE workers

	Date signed by Minister of Immigration	Date published in gazette	Section/s of the Act	Gazette reference and effect	Impacts (including numbers of visa-holders impacted)
				Effects of COVID-19 - for RSE workers onshore applying for further RSE visas: expires 31 August 2022	
29	11-Oct-21	14-Oct-21	78(A)	2021-4469 Extension of Visas Held by a Class of Onshore Persons Whose Visas are Expiring to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or its Effects - extends visas of WHMs: expires 30 June 2022	Around 3,100
30	11-Oct-21	14-Oct-21	78(A)	2021-4470 Extension of Visas Held by a Class of Onshore Persons Whose Visas are Expiring to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or its Effects - extends SSE visas: expires on 30 June 2022	Around 3,100
31	21-Oct-21	3-Nov-21	378(6)	2021-go4663 Replacement Special Direction—Extension of Visas Held by a Class of Onshore Persons Whose Visas are Expiring to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or its Effects - applies to SSE visa holders; revokes and replaces 2021-go4470 - same extension to 30 June 2022 but excludes people holding visas expiring in accordance with s63(2) of the Act (ie who are outside New Zealand)	n/a
32	3-Mar-22	4-Apr-22	61A(2)	2022-go1276 Special Direction – Grant Work Visas to a Class of Offshore Persons Whose Working Holiday Scheme Visas Have Expired, to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or its Effects - This Special Direction grants new working holiday visas to persons who are not in New Zealand and who recently held working holiday scheme visas but were unable to enter New Zealand before their first entry travel date due to the border closure and as a result no longer hold working holiday scheme visas. These persons will have until 13 September 2022 to travel to New Zealand.	Around 19,500
33	3-Mar-22	4-Apr-22	52(4A)	2022-go1277 Special Direction – Vary the Travel Conditions for a Class of Offshore Working Holiday Scheme Visa Holders to Manage the Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of COVID-19 or its Effects - this Special Direction varies the travel conditions for a class of offshore working holiday scheme visa holders, as classified in this direction, by extending the “First Entry Before” date to 13 September 2022. This means those persons will have a further 6 months past the date on which border restrictions are lifted for Working Holiday Scheme visa holders (13 March 2022), to travel to New Zealand on their work visas.	Approximately 80
34	7-Apr-22	19-Apr-22	61A(2)	2022-go1492 Special Direction - Grant a resident visa to the class of persons who are currently outside of New Zealand and are of a nationality other than Australian; and made a resident visa application between March 2020 and December 2021 (or February 2020 if they were applying from	122

	Date signed by Minister of Immigration	Date published in gazette	Section/s of the Act	Gazette reference and effect	Impacts (including numbers of visa-holders impacted)
				China or Iran) and as a result, the border entry instructions that were in force now prevent them from entering New Zealand as a first-time resident; and have been determined by an immigration officer to meet requirements for that resident visa, with the exception of being eligible for entry permission. To facilitate the resumption of processing residence class visa applications that were submitted during the period that border instructions in force at the time would prevent them from entering New Zealand on that visa, if approved.	
35	7-Apr-22	19-Apr-22	61A(2) and 378(6)	2022-go1493 Special Direction - Grant a resident visa to the class of persons who are currently outside of New Zealand and are of a nationality other than Australian, and made a resident visa application between March 2020 and December 2021 (or February 2020 if they were applying from China or Iran). This is to address the fact that the border entry instructions that were in force now prevent them from entering New Zealand as a first-time resident. They must have been determined by an immigration officer to meet the requirements for that resident visa, with the exception of being eligible for entry permission.	3,600
36	7-Apr-22	19-Apr-22	57(3) and 57(5)	2022-go1495 Special Direction – Waiver of the Requirement to Give an Application Form and Physical Documents to an Immigration Officer for Persons Who are in Nauru, Kiribati or Tuvalu and are Applying for a Visa to Work for Recognised Seasonal Employers - Allows applicants located in Nauru, Kiribati and Tuvalu to apply for RSE limited visas by emailing their application and copies of their passport or certificate of identity to Immigration New Zealand rather than having to deliver them to an immigration officer in person or by registered post or courier. This is in response to the closure of the Visa Application Centres in Nauru and Kiribati due to falling visa applications due to COVID-19, and the lack of flights between the Pacific Islands, resulting in the applicants otherwise having to courier their applications and documents to a Visa Application Centre located in another country.	(Open to Nauru, Kiribati and Tuvalu population)
37	6-May-22	16-May-22	78(A)	2022-go1862 Special Direction – Every person who is in New Zealand on 9 May 2022 and who holds a temporary work to residence visa with a recorded expiry date of between 9 May and 31 December 2022, where the visa was granted under a specified category of immigration instructions, has their visas extended by six months; and secondary applicants associated with people who qualify.	3,233 (2,021 principal work visa holders, 1,212 partners and dependent children)
38	6-May-22	16-May-22	61A	2022-go1863 Special Direction – grant a new visa that will expire two years after the date of expiry of the person's current visa, to onshore persons who currently hold a qualifying visa (including Ukrainians), where their current visa either expires between 9 May and 31 December 2022, or they hold a visa that was granted by the Minister's Special Direction of 10 March 2022	16,283 (13,397 principal work visa holders, 2,866 partners and dependent children). This includes 130 Ukraine Nationals.

	Date signed by Minister of Immigration	Date published in gazette	Section/s of the Act	Gazette reference and effect	Impacts (including numbers of visa-holders impacted)
				and previous held a qualifying visa with an expiry date between 9 May and 31 December 2022 (including secondary applicants).	
39	30-May-22	22-Jun-22	53(4A)	2022-go2515 Special Direction – Variation of travel conditions of Critical Purpose Visitor Visas (CPVVs) – conditions are varied for the visas held by firstly every person who holds a CPVV on the date of the Special Direction, and secondly every person who applied for a CPVV before 12 May 2022 and is subsequently granted that visa, to enable multiple journeys to New Zealand; it expires on 31 December 2022 unless revoked	About 8,789 CPVV holders and 1,000 CPVV applicants (applications submitted before 12 May 2022), including partners and dependent children. From these numbers 5,098 are onshore and 3,691 are offshore.
40	11-Jun-2022	27-Jun-2022	61A	2022-go2931 Special Direction – Grant of limited visas to onshore RSE workers while they await repatriation to enable them to remain lawful and work while awaiting a flight	Between 500 and 1,000 individuals (estimated)
41	26-Aug-22	7-Sep-2022	78A and 52	2022-go3835 Special Direction – Extension of Visas Held by Class of Onshore Persons Whose Working Holiday Scheme Visas are Expiring to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of Covid-19 or its Effects	?
42	20-Oct-2022	27-Oct-2022	61A(2)	2022-go4616 Special Direction – Grant Work Visas to a Class of Offshore Persons Whose Working Holiday Temporary Visas Have Expired	?
43	3-Feb-2023	14-Mar-2023	61A(2)	2023-go756 Special Direction – Grant of Work Visas to a Class of Offshore Persons Whose Post-Study Work Visas have Expired	Estimated 1,800 eligible
44	2-Apr-2023	16-May-2023	78A and 52	2023-go2020 Special Direction – Extension of Visas Held by Class of Onshore Persons Whose Working Holiday Scheme Visas are Expiring to Manage Effects and Deal With Consequences of Measures Taken to Contain or Mitigate the Outbreak of Covid-19 or its Effects	?

Annex Two: Summary of proposed changes

#	Power	Exercisable by	Relevant section/s	Safeguards and limits				Examples of how the power may be used
				Exercisable only where responding unusual circumstances that pose a challenge to the immigration systems ⁵	Publication requirement, disallowance, presented to the House ⁶	Only where it benefits or does not disadvantage affected migrants	Other	
1	To impose, vary or cancel conditions for classes of temporary entry class visa-holders	Special direction	s52(4A) (temporary)	✓	✓	✓	Maximum currency of 6 months	To grant work conditions, e.g. to allow visitors onshore who cannot leave to work lawfully
2	To vary or cancel conditions for classes of resident class visa-holders	Special direction	s50(4A)	✓	✓	✓	Maximum currency of 6 months	To allow offshore resident visa-holders more time to enter New Zealand
3	To extend the expiry dates of visas for classes of people for up to nine months	Special direction	s78A(1) (temporary)	✓	✓	✓	Maximum currency of 6 months	To extend visa expiry dates for classes of persons offshore who may not be able to travel to New Zealand within the validity of their visa; or persons onshore who cannot leave due to an emergency offshore
4a	To grant visas to individuals in the absence of an application	Special direction	s61A(1)	✗	✗	✓	Delegable to an immigration officer	To grant visas to individuals who are unable to submit an application, e.g. they are in New Zealand and hold a limited visa
4b	To grant visas to classes of people in the absence of an application	Special direction	s61A(2)	✓	✓	✓	Maximum currency of 6 months	To grant visas to classes of people who are unable, to submit an application, e.g. they are in a country that is undergoing an invasion
5	To waive any regulatory requirements to make an application for certain classes of people	Special direction	s57(3) and s57(5)	✗	✓	✓	Maximum currency of 6 months	To waive fees or other application requirements which may be currently impractical to meet, e.g. a cyclone in the Pacific has wiped out a Visa Application Centre

⁵ Specifically, where the Minister considers that the exercise of the power or powers is reasonably necessary to manage the effects, or deal with the consequences, of the specified situation, whether in New Zealand or overseas.

⁶ Special directions affecting a class of visa-holders or people are “disallowable instruments” in terms of the Legislation Act 2019; and will, with an explanation, be notified in the Gazette, published on MBIE’s website; and presented to the House of Representatives.