

Community Law Immigration Update (current as of 1/06/20)

By Megan Williams (Wellington)

1. The Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020 activates dormant provisions in the Immigration Act 2009, effectively amending various parts of immigration law from **2 April 2020**. A full list of the legislative powers activated with the notice can be found in the [Gazette \(gazette.govt.nz/notice/id/2020-go1369\)](https://www.gazette.govt.nz/notice/id/2020-go1369).

2. **Work, Student or Visitor visa** holders with an expiry date of **1 April 2020** or earlier and who were unable to leave New Zealand were required to apply online for a new visa.

Migrants who no longer hold a valid visa to remain in New Zealand (visa has already expired) should send an email outlining their circumstances to s61@mbie.govt.nz. They need to include:

- their personal details — full name, date of birth - and Immigration New Zealand (INZ) client number if known
- a copy of the personal details page in passport
- contact details — email address, phone number and postal address
- an explanation of their circumstances
- what type of visa they would like — for example a visitor visa — and how long they believe they might be required to extend their stay in NZ.

3. **Work, Student, Visitor, Limited or Interim visa** holders with an expiry date of **2 April 2020 to 9 July 2020** inclusive who are in New Zealand on **2 April 2020** will have their visas automatically extended to **25 September 2020**. An email was to be sent to all visa holders in early April.

4. There is still a lot of traffic in trying to contact Immigration New Zealand. At Level 2, 97% of onshore officers are working, onshore offices are open and processing visa applications but there is a large backlog due to the impact of office closures at Level 4.

5. Variation of visa conditions

Many temporary visa holders will no longer be able to fulfil the conditions of their current (or extended) visa. [Immigration's website simply says](#): "You will continue to have exactly the same visa conditions. It may be difficult for you to make an application to vary the conditions of your current visa; we will provide more information once it is available." Information sent to visa holders on 26 March stated:

'We are aware that some individuals may wish to apply for a change of visa conditions. We are currently working through the options for this. Please keep an eye on the website for information about this.'

- Essential health care

An initial policy change effective 3 April allowed for the relaxation of visa restrictions for students already employed (as at 3 April) in essential health care roles (including aged care). This change enables those students to work for more than 20 hours per week for a

limited period of time (from 3 April 2020 to 3 July 2020 inclusive). The change applies to both student visa holders and interim visa holders (who held a student visa immediately prior to their interim visa).

Please note that the relaxation of visa conditions for supermarket workers ended on 25 April.

- **Essential workers**

A further policy change [*operation manual E3.26.15.1*] became effective on 16 April allowing *employers* in essential businesses only to request a variation of visa conditions for their staff. There has been some confusion around how an essential business is to be defined – INZ refers to the definitions on www.covid19.govt.nz and requires that the business must have been operating at Alert Level 4. The policy allows for the following variations:

- Staff holding student visas may work full-time for the same employer in the same region
- Staff holding employer, occupation and region-specific visas may:
 - work in any occupation for that employer in the same region
 - change employers provided their occupation and region remains the same

The process for requesting a variation is here:

<https://www.immigration.govt.nz/formshelp/request-to-vary-visa-conditions-of-workers-in-essential-services>

This request must be submitted by the employer. This temporary variation will only last for **6 weeks following a shift to level 2** (from either alert level 3 or 4). Any visa holder who received a short term variation will revert back to their original visa conditions at 11.59pm on Wednesday 24 June 2020.

- **'Non-essential' workers**

The changes to date do not address the difficulties or delays for work visas holders in non-essential businesses who may have already been in the process of changing jobs or who have lost their job and have been offered a new role. The labour market test will be strictly applied to all new applications. INZ may require new evidence that the labour market test can still be met for any applications that were submitted (and yet to be processed) before Alert Level 4. INZ is issuing very strong statements on prioritising employment for NZ citizens and residents.

Further information on varying conditions of work visas [here](http://immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/general-information/variation-of-conditions-temporary-visas/varying-a-work-visa) (immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/general-information/variation-of-conditions-temporary-visas/varying-a-work-visa).

- **Labour market tests in Queenstown Lakes District**

For roles with an [ANZSCO](http://www.nzsc.govt.nz) skill level of 4 to 5, employers need to contact Work and Income to ensure there are no suitable New Zealanders available for the role. For Queenstown there are some roles that have been exempt from this process. But with effect from 26 May 2020 the exemptions will no longer apply and employers will need to follow the labour market test process used throughout the rest of the country.

6. Family Violence visas

There is still a considerable processing backlog and Family Violence visas have been given priority processing. Anyone who needs to apply for a Family Violence temporary visa should contact the Immigration Contact Centre (ICC) in the first instance.

www.immigration.govt.nz/contact.

The ICC will take some basic details and refer the information on to a priority visa team. They will then get in touch with the person (or their social worker or other authorised support person) and obtain the detail they need to process the visa.

INZ have informed us that Immigration Officers are encouraged to use their discretion in waiving requirements if applicants cannot gather all the evidence required. While we have not found that to be the case yet you can request that an Immigration Officer use their discretion to waive evidential requirements. They may grant an Essential Skills visa as an exception to instructions instead of the family violence visa. This will mean that the applicant is not entitled to the WINZ support that they would get under a Family Violence visa.

7. Prioritisation of visas

Visa applications related to the response to COVID-19 and exceptions to the border closure take first priority. Effective from 16 April the following visas have been prioritised:

- Visa variations for essential workers (both onshore and offshore)
- Visa applications for Victims of Domestic Violence (first priority)
- Partnership category temporary visas (including reassessments) (second priority)
- Full Fee Paying student visas (second priority)
- Post Study work visas (second priority)

Essential skills work visas and variations for 'non-essential' workers are third priority as are work visas for asylum seekers. Prior to the lockdown work visas for asylum seekers had been first priority.

8. Immigration (COVID19 response) Amendment Act 2020

These temporary immigration legislation amendments are intended to support the quick and efficient management of visa changes during COVID-19. The Bill introduces eight time-limited powers:

- to impose, vary or cancel conditions for classes of temporary entry class visa holders
- vary or cancel conditions for classes of resident class visa holders
- extend the expiry dates of visas for classes of people
- grant visas to individuals or classes of people in the absence of an application
- waive any regulatory requirements for certain classes of application (that is, waive any prescribed requirements that people need to fulfil to have their application accepted by INZ for assessment).
- waive the requirement to obtain a transit visa
- suspend the ability to make applications for visas or submit Expressions of Interest in applying for visas by classes of people who are offshore

- revoke the entry permission of people who are deemed to have been granted entry permission.

As of 1 June these powers had not yet been used.

9. Extension of application deadlines

Application deadlines have been extended for Skilled Migrant or Investor 2 categories.

Normally, applicants have four months from when they are invited to apply to submit their application with all the required documents. Individuals who were issued an Invitation to Apply between 1 November 2019 and 15 April 2020 will now have an additional six months to submit their application.

Note this does not apply to RFSC applications.

10. Deferral of Eoi selections

- Expressions of Interest for Skilled Migrant and Parent Category are deferred until further notice.

11. Social Welfare/Financial support

- There is no WINZ/MSD support for temporary migrants who have lost their jobs and are in financial difficulty. INZ's position is that they are expected to leave the country and should seek assistance from their embassy/consulate.
- A paper from MSD on providing support to migrant workers on temporary visas went to Cabinet before Easter but a decision has not yet been made.
- Many councils are providing support (accommodation, food parcels and some expenses) through their civil defence funding.

12. Humanitarian exceptions to the border closure

On 31 March 2020 INZ updated its advice in relation to the border closure and outlined the process for applying for an exception on humanitarian grounds:

www.immigration.govt.nz/about-us/covid-19/border-closures-and-exceptions

www.immigration.govt.nz/formshelp/request-for-travel-to-new-zealand

Non-resident partners and other family members overseas: We've had a few queries from NZ residents/citizens and NZ based temporary visa holders with family members (mainly partners) on temporary visas stuck overseas. E.g. a query from a NZ citizen with a partner based overseas who was granted a temporary partnership visa in March and was due to travel to NZ in April.

While people in such situations previously were not able to apply for an exception to the border closure the **31 March 2020** INZ update (see above) now allows for partners and dependent children in such situations to travel to NZ.

- Partners and dependent children holding temporary visas travelling *with* their NZ citizen or resident partner/parent can request permission to travel together before they travel. This means they don't face the risk of being declined boarding at the airport.



- Non-resident partners/dependent of children of NZ-based temporary workers or residents/citizens can request an exception to the border restrictions. These applicants must normally reside in NZ with their partner/parent.

Despite being able to apply for the exception it is still very difficult for partners on temporary visas to get an exception to the border closure unless they are travelling with their NZ resident or citizen partner.