



Immigration (COVID-19 Response) Amendment Bill

243—1

Report of the Epidemic Response Committee

May 2020

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Hon Michael Woodhouse
Deputy Chairperson

Immigration (COVID-19 Response) Amendment Bill

Recommendation

The Epidemic Response Committee has examined the Immigration (COVID-19 Response) Amendment Bill. We recommend that the bill be passed, and that the House take note of our recommended amendments discussed in this report and set out in the attached draft Supplementary Order Paper.

About the bill as introduced

The Immigration (COVID-19 Response) Amendment Bill would amend the Immigration Act 2009 to enable the Government to respond appropriately and efficiently to the COVID-19 outbreak. The Act is based on individual immigration applications being managed individually, with limited ability for the Government to deal with applicants as a class or group of individuals. This makes it difficult for the Government to respond flexibly in emergency situations where large numbers of visa holders may be affected.

The bill seeks to provide additional flexibility in the immigration system by introducing eight powers, which would automatically be repealed 12 months after the legislation came into force. The powers would enable the Government to:

- vary or cancel conditions for classes¹ of resident visa holders (clause 5)
- impose, vary, or, cancel conditions for classes of temporary entry class visa holders (clauses 6 and 7)
- waive any regulatory requirements for certain classes of applications² (clause 8)
- grant visas to individuals and classes of people in the absence of an application (clause 9)
- extend the expiry dates of visas for classes of people (clause 11)
- waive the requirement to obtain a transit visa in an individual case (clause 12)
- revoke the entry permission of a person who has been deemed by regulations to hold a visa and to have been granted entry permission (clause 13)
- suspend the ability of classes of people to make applications for visas or submit expressions of interest in applying for visas (clause 16).

Safeguards in the bill

The bill contains a range of safeguards to recognise that its powers could affect large numbers of people. Most of the powers could only be exercised where it is necessary or desirable to respond to COVID-19 or its effects. However, the power under clause 9 to grant

¹ Criteria that could be used to define a class include nationality, immigration documentation, and types of visa.

² Examples of regulatory requirements include the provision of fees, passport photographs, and travel documents.

visas to individuals in the absence of an application would not be limited to responding to COVID-19. This is to retain the Government's ability to respond to other emergency situations that may occur during the COVID-19 outbreak. These could result in an individual being hospitalised and unable to apply for a visa.

Additionally, the majority of powers contained in the bill could only be exercised by the special direction of the Minister of Immigration. As set out in section 378 of the Act, a special direction is a matter of absolute discretion for the Minister, and has a number of statutory protections around it as set out in section 11. An Order in Council would be required to exercise the power under clause 16 to suspend the ability of classes of people to apply for visas or submit expressions of interest to apply for them. This reflects that it is a broad power that affects how the Immigration Act and its regulations operate and may have significant impacts on a large number of people.

Suggested amendments to the bill

This commentary covers the main amendments that we recommend to the bill. It does not discuss minor, technical, or consequential amendments.

Safeguards for migrants

Before exercising the powers of special direction contained in the bill, the Minister of Immigration would need to consider several matters. They would need to be satisfied that exercising the power was necessary or desirable to manage the effects or consequences of:

- measures taken under the Immigration Act or any other legislation to contain or mitigate the outbreak of COVID-19 or its effects, or
- any other measures to contain or mitigate the outbreak of COVID-19 or its effects.

The bill does not explicitly state that the powers could only be used in a way that does not disadvantage the people who were affected. A number of submitters expressed concerns that the legislation is broad enough to enable the Minister to remove work rights on visas or to cancel visas. Submitters were particularly concerned about protecting the rights and welfare of migrants.

Requiring special direction powers to not be disadvantageous

We consider that the bill would be strengthened by requiring the Minister to exercise the special direction powers in a way that did not disadvantage the related visa holders. Therefore, we recommend amending the following clauses in the bill:

- Clause 5, which would amend section 50 by inserting a proposed subsection (4B) and relates to varying or cancelling conditions on resident visas.
- Clause 6, which would amend proposed section 52(4B) and relates to imposing, varying, or cancelling conditions on temporary entry class visas. It excludes those who are subject to restricted temporary entry instructions.
- Clause 7, which would amend section 53 by inserting a proposed subsection (4B) and relates to imposing, varying, or cancelling conditions on temporary entry class visas subject to restricted temporary entry instructions.

Our proposed amendments provide that the Minister would need to be satisfied that a special direction did not materially disadvantage the class or classes of people to which the direction applied.

Clause 9 of the bill, which would insert section 61A, would empower the Minister to grant visas to individuals and classes of people in the absence of an application. We recommend amending this clause to specify when the Minister could exercise this power. The Minister would need to be satisfied that granting the visa did not materially disadvantage the individual or class of people to whom it was granted, as the grant of a visa has the legal effect of cancelling any visa held by the person. This would prevent the Minister from using this power to grant new visas with more restrictive conditions in the absence of an application.

We discuss material disadvantage further in our section on powers that the bill would confer on the Minister.

Complying with public health measures

We note that requirements for temporary entry class visa holders to comply with health measures taken to contain COVID-19 could be considered to disadvantage the people concerned. For example, a person who did not comply with the requirement to self-isolate could be made liable for deportation. However, given that these measures contribute to public health outcomes that benefit New Zealand, we recommend amending clauses 6 and 7. This would authorise the Minister to impose disadvantageous conditions by special direction on these visa holders only if they related to complying with public health measures.

Tightening the connection required to respond to COVID-19

Under the bill as introduced, the Minister would need to be satisfied that the powers were necessary or desirable to respond to the effects of COVID-19 before exercising them. Several submitters considered that “desirable” is too low a threshold and that the powers should be limited to being “necessary” to respond to COVID-19.

We discussed alternative tests, such as requiring the powers to be “reasonably necessary” or “necessary”. We were advised that the term “necessary” is a high threshold, which may not be appropriate, and that the term “reasonably necessary” is a common test in legislation.

We recommend that the bill be amended to require the Minister to be satisfied that the powers were “reasonably necessary” to manage the effects, or deal with the consequences, of the COVID-19 outbreak. We received advice that this would set a higher threshold than the bill as introduced, while retaining flexibility to respond to the changing nature of the COVID-19 outbreak. However, we note some members’ concerns that this term is still very broad, particularly given that the bill would give the Minister enormous powers.

Our proposed amendments would apply to:

- clause 5, which would amend proposed section 50(4B)
- clause 6, which would amend proposed section 52(4B)
- clause 7, which would amend proposed section 53(4B)

- clause 8, which would amend proposed section 57(4)
- clause 9, which would amend proposed section 61A(4)
- clause 11, which would amend proposed section 78A(2)
- clause 12, which would amend proposed section 86(4B)
- clause 16, which would amend proposed section 401A(4).

We note that the power under clause 9 to grant visas to individuals without an application would not require a connection to COVID-19 before it could be exercised. Therefore, our proposed amendment to clause 9 would only apply when granting visas to classes of people in the absence of an application.

Suspending the ability to apply for visas and to submit expressions of interest

Clause 16 of the bill as introduced would allow the Minister to recommend that regulations be made. The regulations would suspend the ability for all people, or a class of people, to:

- apply for a particular class or type of visa, or
- submit an expression of interest to obtain an invitation to apply for a particular class or type of visa.

We understand that this provision is intended to prevent people offshore from applying for visas when it is not possible to travel to New Zealand due to border closures. Consequently, we recommend amending clause 16 to make it clear that the regulations could only suspend the ability of people who were outside New Zealand from making an application or submitting an expression of interest.

Restricting powers to respond to the effects of COVID-19

As previously mentioned, the Minister would need to be satisfied that exercising the powers under the legislation was necessary or desirable to manage the effects or consequences of:

- measures taken under the Immigration Act or any other legislation to contain or mitigate the outbreak of COVID-19 or its effects, or
- any other measures to contain or mitigate the outbreak of COVID-19 or its effects.

On 7 May 2020, the Regulations Review Committee wrote to us about this wording. It noted that the bill would enable the Minister to exercise powers only when measures had been taken, under legislation or otherwise, to respond to COVID-19. The Minister would be unable to exercise powers in situations resulting from the outbreak itself.

We recommend amending clauses 5 to 9, 11, 12, and 16 to clarify that the powers would be available to respond to the outbreak itself. As with our recommendations related to tightening the connection required to respond to COVID-19, the amendments to clause 9 only apply to granting visas to classes of people.

Powers that the bill would confer on the Minister

A number of submitters expressed concern that most of the powers in the bill would need to be exercised by special direction. They consider that special directions are not an appropriate mechanism for making decisions about large groups of people.

Under sections 11 and 378 of the Immigration Act, special directions are made at the absolute discretion of the Minister. They cannot be applied for and the Minister does not have to give a reason for any decisions. We agree that it is appropriate that the Minister does not have to give a reason in existing situations where a person is seeking a right that they do not have. However, under the bill, we note that the Minister could cause harm by removing rights that are already permitted. Under the absolute discretion provisions, they would not have to disclose a reason for the decision.

We are concerned that the convergence of several factors in the bill potentially gives the Minister an enormous amount of power. These relate to the following provisions:

- The powers would only be required to be “reasonably necessary” (as contained in our proposed amendments). Some of us consider that this term is too broad.
- The powers could not materially disadvantage a class or classes of people (as contained in our proposed amendments). We consider that this term is quite subjective. It could also mean that changes that result in only minor harm to a person would be permitted.
- Under absolute discretion, the Minister would not be required to give reasons for any decision, including those that could cause minor harm to a person.

We consider that the bill may not contain sufficient protections to alleviate our concerns that the powers have the potential to cause significant harm. We discussed whether this could be addressed by requiring that the Minister be satisfied that a special direction did not disadvantage a class or classes of people.

We were advised that our proposed amendment of “material disadvantage” would considerably shift the potential for harm. A class of person could challenge the Minister on the basis that a decision had harmed them. Further, the term “material disadvantage” would prevent challenges from people claiming that they were disadvantaged for minor reasons, such as needing a new passport.

We were also advised that whether the threshold tests for the exercise of the power were met could be judicially reviewed. That is, was the exercise of the power “reasonably necessary” to respond to the outbreak of COVID-19 or any measures taken in response to COVID-19. The Minister’s decision could be overturned if he or she were unable to establish that the exercise of powers was “reasonably necessary”. It could also be overturned if the courts found that there was a material disadvantage to any class of visa holder.

We note that the Immigration Act does not require the Minister’s reasons for their decisions to be made available before or after exercising their powers. However, the Minister would ordinarily seek information and guidance from officials. Any material provided by officials to help the Minister with their decision-making would be generally releasable under the Official Information Act 1982—only the Minister’s reasoning and weighting given to particular factors leading to the decision itself need not be released, which is in accordance with section 11 of

the Immigration Act. Further, the bill requires an explanation of the power to be published and gazetted, and a copy of the special direction tabled in the House as a disallowable instrument.

Appendix A

Committee procedure

The Immigration (COVID-19 Response) Amendment Bill was referred to the committee on 5 May 2020. We received and considered 12 submissions, most of which we invited from targeted organisations. We heard oral evidence from eight submitters via video link.

We received advice from the Ministry of Business, Innovation and Employment.

Committee members

Hon Simon Bridges (Chairperson)
Hon Michael Woodhouse (Deputy Chairperson)
Kiritapu Allan
Hon Paula Bennett
Marama Davidson
Hon Ruth Dyson
Hon Paul Goldsmith
Dr Shane Reti
David Seymour
Fletcher Tabuteau
Michael Wood

Hon Michael Woodhouse chaired this item of business.

Hon Jacqui Dean, Kieran McNulty, Priyanca Radhakrishnan, and Stuart Smith took part in this item of business.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.

Appendix B

Draft Supplementary Order Paper

A draft Supplementary Order Paper (PCO 22892-1/7.0) containing our recommended amendments to the bill is attached.

IN CONFIDENCE

House of Representatives

Supplementary Order Paper

Tuesday, 12 May 2020

Immigration (COVID-19 Response) Amendment Bill

*Proposed amendments for the consideration of the Committee of the
whole House*

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT** have official status in terms of unamended text
- **NOT** have the status of an as-reported version of the Bill.

Explanatory note

This Supplementary Order Paper makes the following amendments to the Immigration (COVID-19 Response) Amendment Bill.

Clause 5, new section 50(4B) is amended to adjust the precondition for the making of a special direction under *new section 50(4A)* (relating to varying or cancelling certain conditions on resident visas). In particular,—

- the Minister must be satisfied that the direction does not materially disadvantage the class or classes of persons to which it relates;
- the Minister must be satisfied that the making of the special direction is reasonably necessary. This replaces the previous wording “necessary or desirable”;
- a further possible ground on which a special direction may be justified is added. That is if the Minister is satisfied that the direction is reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Clause 6, new section 52(4B) is amended to adjust the precondition for the making of a special direction under *new section 52(4A)* (imposing new conditions, or varying or cancelling conditions, on temporary entry class visas). In particular,—

- the Minister must be satisfied that the direction—
 - does not materially disadvantage the class or classes of persons to which it relates; or
 - relates to compliance with directions, orders, or requirements of the Minister of Health, the Director-General of Health, any medical officer of health, or a District Court Judge in response to COVID-19 given or imposed under the Health Act 1956 or any other Act:
- the Minister must be satisfied that the making of the special direction is reasonably necessary. This replaces the previous wording “necessary or desirable”;
- a further possible ground on which a special direction may be justified is added. That is if the Minister is satisfied that the direction is reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Clause 7, new section 53(4B) is amended to adjust the precondition for the making of a special direction under *new section 53(4A)* (imposing new conditions, or varying or cancelling conditions, on temporary entry class visas subject to restricted temporary entry instructions). The amendments are the same as those made in relation to *new section 52(4B)* as set out above.

Clause 8, new section 57(4) is amended to adjust the precondition for the making of a special direction under *new section 57(3)* (waiving prescribed requirements for applying for a visa). In particular,—

- the Minister must be satisfied that the making of the special direction is reasonably necessary. This replaces the previous wording “necessary or desirable”;

- a further possible ground on which a special direction may be justified is added. That is if the Minister is satisfied that the direction is reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Clause 9, new section 61A(4) is amended to insert a precondition for the making of a special direction under *new section 61A(1)* (granting of visa to a person by special direction). *New section 61A(4)(a)* provides that before making the special direction the Minister must be satisfied that the grant of the visa does not materially disadvantage the person to whom it is granted.

Clause 9, new section 61A(4) is also amended to adjust the precondition for the making of a special direction under *new section 61A(2)* (granting of visa to a class or classes of persons by special direction). In particular,—

- the Minister must be satisfied that the grant of the visa does not materially disadvantage the class or classes of persons to whom they are granted;
- the Minister must be satisfied that the making of the special direction is reasonably necessary. This replaces the previous wording “necessary or desirable”;
- a further possible ground on which a special direction may be justified is added. That is if the Minister is satisfied that the direction is reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Clause 11 is amended to adjust the precondition for the making of a special direction under *new section 78A(1)* (extending temporary entry class visas). In particular,—

- the Minister must be satisfied that the making of the special direction is reasonably necessary. This replaces the previous wording “necessary or desirable”;
- a further possible ground on which a special direction may be justified is added. That is if the Minister is satisfied that the direction is reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Clause 12, new section 86(4B) is amended to adjust the precondition for the making of a special direction under *new section 86(4A)* (waiving the requirement to hold a transit visa or suspending an existing transit visa waiver). In particular,—

- the Minister must be satisfied that the making of the special direction is reasonably necessary. This replaces the previous wording “necessary or desirable”;
- a further possible ground on which a special direction may be justified is added. That is if the Minister is satisfied that the direction is reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Clause 16 is amended to provide that the regulation-making power for the purpose in *new section 401A(1)* to suspend the making of applications for visas and expressions of interest may be used only in respect of persons outside New Zealand. In addition,

new section 401A(4) is amended to adjust the precondition for the making of the regulations. In particular,—

- the Minister must be satisfied that the making of the regulations is reasonably necessary. This replaces the previous wording “necessary or desirable”;
- a further possible ground on which the Minister may recommend the making of the regulations is added. This is that the Minister is satisfied that the regulations are reasonably necessary to manage the effects, or deal with the consequences, of the outbreak of COVID-19.

Schedules 1 and 2 are amended to make minor corrections and clarifications.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2020&no=0> (if it has been provided for publication)

The Honourable Iain Lees-Galloway, in Committee, to propose the amendments shown in the following document.

Hon Iain Lees-Galloway

Immigration (COVID-19 Response) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Immigration (COVID-19 Response) Amendment Act **2020**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the Immigration Act 2009 (the **principal Act**).

**Part 1
Amendments to principal Act**

- 4 New section 11A inserted (Transitional, savings, and related provisions)**
After section 11, insert:

11A Transitional, savings, and related provisions
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

5 Section 50 amended (Conditions on resident visas)

After section 50(4), insert:

- (4A) The Minister may, by special direction in relation to a class or classes of persons holding resident visas,—
- (a) vary conditions that would otherwise apply to visas of the relevant types, or that were imposed under this section, that relate to travel to New Zealand;
 - (b) vary or cancel conditions that would otherwise apply to visas of the relevant types, or that were imposed under this section, that relate to employment in New Zealand.
- ~~(4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that doing so is necessary or desirable to manage the effects, or deal with the consequences, of—~~
- ~~(a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or~~
 - ~~(b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.~~
- (4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that—
- (a) doing so is reasonably necessary to manage the effects, or deal with the consequences, of—
 - (i) the outbreak of COVID-19; or
 - (ii) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (iii) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects; and
 - (b) the direction does not materially disadvantage the class or classes of persons to which it relates.
- (4C) A special direction under **subsection (4A)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a variation or cancellation of a visa condition applies by reference to all or any of the following:
- (a) their nationality;
 - (b) the country or place from which they are travelling (whether it be their original or an intermediate point of departure);
 - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
 - (d) the type of visa concerned;
 - (e) any other type of visa that they have applied for.

- (4D) A special direction under **subsection (4A)**—
- (a) must, along with an explanation of the effect of the special direction, be notified in the *Gazette* and published on an Internet site maintained by or on behalf of the Department; and
 - (b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4E) This subsection and **subsections (4A) to (4D)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

6 Section 52 amended (Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions))

After section 52(4), insert:

- (4A) The Minister may, by special direction in relation to a class or classes of persons holding temporary entry class visas,—
- (a) impose further conditions on the visas, whether or not the conditions are specified in the temporary entry instructions in relation to visas of the relevant types;
 - (b) vary or cancel conditions that would otherwise apply to visas of the relevant types or that were imposed under this section.
- ~~(4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that doing so is necessary or desirable to manage the effects, or deal with the consequences, of—~~
- ~~(a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or~~
 - ~~(b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.~~
- (4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that—
- (a) doing so is reasonably necessary to manage the effects, or deal with the consequences, of—
 - (i) the outbreak of COVID-19; or
 - (ii) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (iii) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects; and
 - (b) the direction—
 - (i) does not materially disadvantage the class or classes of persons to which it relates; or

- (ii) relates to compliance with directions, orders, or requirements of the Minister of Health, the Director-General of Health, any medical officer of health, or a District Court Judge given or imposed—
 - (A) under the Health Act 1956 or any other Act (whether enacted before or after the Immigration (COVID-19 Response) Amendment Act 2020); and
 - (B) in response to COVID-19.
- (4C) A special direction under **subsection (4A)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a further visa condition, or a variation or cancellation of a visa condition, applies by reference to all or any of the following:
 - (a) their nationality;
 - (b) the country or place from which they are travelling or have travelled (whether it be their original or an intermediate point of departure);
 - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
 - (d) the type of visa concerned;
 - (e) any other type of visa that they have applied for.
- (4D) A special direction under **subsection (4A)**—
 - (a) must, along with an explanation of the effect of the special direction, be notified in the *Gazette* and published on an Internet site maintained by or on behalf of the Department; and
 - (b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4E) This subsection and **subsections (4A) to (4D)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force.

7 Section 53 amended (Conditions on temporary entry class visas subject to restricted temporary entry instructions)

After section 53(4), insert:

- (4A) The Minister may, by special direction in relation to a class or classes of persons holding temporary entry class visas subject to restricted temporary entry instructions,—
 - (a) impose further conditions on the visas, whether or not the conditions are specified in the restricted temporary entry instructions in relation to visas of the relevant types:

- (b) vary or cancel conditions that would otherwise apply to visas of the relevant types or that were imposed under this section.
- (4B) ~~However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that doing so is necessary or desirable to manage the effects, or deal with the consequences, of—~~
 - ~~(a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or~~
 - ~~(b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.~~
- (4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that—
 - (a) doing so is reasonably necessary to manage the effects, or deal with the consequences, of—
 - (i) the outbreak of COVID-19; or
 - (ii) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (iii) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects; and
 - (b) the direction—
 - (i) does not materially disadvantage the class or classes of persons to which it relates; or
 - (ii) relates to compliance with directions, orders, or requirements of the Minister of Health, the Director-General of Health, any medical officer of health, or a District Court Judge given or imposed—
 - (A) under the Health Act 1956 or any other Act (whether enacted before or after the Immigration (COVID-19 Response) Amendment Act 2020); and
 - (B) in response to COVID-19.
- (4C) A special direction under **subsection (4A)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a further visa condition, or a variation or cancellation of a visa condition, applies by reference to all or any of the following:
 - (a) their nationality:
 - (b) the country or place from which they are travelling or have travelled (whether it be their original or an intermediate point of departure):
 - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued:
 - (d) the type of visa concerned:

- (e) any other type of visa that they have applied for.
- (4D) A special direction under **subsection (4A)**—
 - (a) must, along with an explanation of the effect of the special direction, be notified in the *Gazette* and published on an Internet site maintained by or on behalf of the Department; and
 - (b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4E) This subsection and **subsections (4A) to (4D)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

8 Section 57 amended (Applications for visas)

After section 57(2), insert:

- (3) The Minister may by special direction waive 1 or more of the prescribed requirements for applying for a visa (whether at an immigration control area or otherwise) in respect of a class or classes of persons.
- (4) However, the Minister may not make a special direction under **subsection (3)** unless satisfied that doing so is reasonably necessary ~~or desirable~~ to manage the effects, or deal with the consequences, of—
 - (aa) the outbreak of COVID-19; or
 - (a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- (5) A waiver made in accordance with **subsection (3)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom the waiver applies by reference to all or any of the following:
 - (a) their nationality;
 - (b) the country or place from which they are travelling or have travelled (whether it be their original or an intermediate point of departure);
 - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
 - (d) the type of visa concerned;
 - (e) any other type of visa that they hold or have applied for.
- (6) A special direction under **subsection (3)**—
 - (a) must, along with an explanation of the effect of the special direction, be notified in the *Gazette* and published on an Internet site maintained by or on behalf of the Department; and

- (b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (7) This subsection and **subsections (3) to (6)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

9 New section 61A inserted (Grant of visas by special direction)

After section 61, insert:

61A Grant of visas by special direction

- (1) The Minister may at any time of the Minister's own volition, by special direction, grant a visa of any type to a person who—
 - (a) is outside New Zealand; or
 - (b) is in New Zealand and holds a temporary entry class visa.
- (2) The Minister may at any time of the Minister's own volition, by special direction, grant visas of any type to a class or classes of persons who—
 - (a) are outside New Zealand; or
 - (b) are in New Zealand and hold temporary entry class visas.
- (3) A visa may be granted under **subsection (1) or (2)** even if the grant is contrary to immigration instructions.
- (4) ~~However, the Minister may not make a special direction under **subsection (2)** unless satisfied that doing so is necessary or desirable to manage the effects, or deal with the consequences, of—~~
 - ~~(a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or~~
 - ~~(b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.~~
- (4) However, the Minister—
 - (a) may not make a special direction under **subsection (1)** unless satisfied that the grant of the visa does not materially disadvantage the person to whom it is granted:
 - (b) may not make a special direction under **subsection (2)** unless satisfied that—
 - (i) doing so is reasonably necessary to manage the effects, or deal with the consequences, of—
 - (A) the outbreak of COVID-19; or
 - (B) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects;
 - or

- (C) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects; and
 - (ii) the grant of the visas does not materially disadvantage the class or classes of persons to whom they are granted.
- (5) A special direction under **subsection (2)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a visa is granted by reference to all or any of the following:
 - (a) their nationality;
 - (b) the country or place from which they are travelling or have travelled (whether it be their original or an intermediate point of departure);
 - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
 - (d) any type of visa that they hold or have applied for.
- (6) A special direction under **subsection (2)**—
 - (a) must, along with an explanation of the effect of the special direction, be notified in the *Gazette* and published on an Internet site maintained by or on behalf of the Department; and
 - (b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (7) This section is repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

10 Section 78 amended (Deemed extension of temporary entry class visa expiring during epidemic)

After section 78(2), insert:

- (2A) Subsection (2) is subject to any extension of the visa by special direction under **section 78A**.
- (2B) This subsection and **subsection (2A)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

11 New section 78A inserted (Extension of temporary entry class visa by special direction)

After section 78, insert:

78A Extension of temporary entry class visa by special direction

- (1) The Minister may, by special direction in relation to a class or classes of persons holding temporary entry class visas, extend the visas by a period of up to 6 months from the date on which they would otherwise expire.
- (2) However, the Minister may not make a special direction under **subsection (1)** unless satisfied that doing so is reasonably necessary ~~or desirable~~ to manage the effects, or deal with the consequences, of—
 - (aa) the outbreak of COVID-19; or
 - (a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- (3) A visa extended under **subsection (1)** must, for all purposes, be treated as if it continues to be a current visa allowing a person to travel to New Zealand, apply for entry permission, and stay in New Zealand, until the earlier of the following events:
 - (a) the visa's cancellation;
 - (b) the expiration of the period of the extension.
- (4) **Subsection (1)** does not require—
 - (a) the endorsement or modification of the visa; or
 - (b) the issue of a document extending the visa; or
 - (c) the grant of a new visa.
- (5) A visa extension under **subsection (1)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom the extension applies by reference to all or any of the following:
 - (a) their nationality;
 - (b) the country or place from which they are travelling or have travelled (whether it be their original or an intermediate point of departure);
 - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
 - (d) the type of visa concerned.
- (6) A special direction under **subsection (1)**—
 - (a) must, along with an explanation of the effect of the special direction, be notified in the *Gazette* and published on an Internet site maintained by or on behalf of the Department; and
 - (b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

- (7) This section is repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

12 Section 86 amended (Who must obtain transit visa)

After section 86(4), insert:

- (4A) The Minister may, by special direction,—
- (a) waive, in any individual case, the requirement to hold a transit visa;
 - (b) suspend, in any individual case, a transit visa waiver made by regulations referred to in subsection (2)(a).
- (4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that doing so is reasonably necessary ~~or desirable~~ to manage the effects, or deal with the consequences, of—
- (aa) the outbreak of COVID-19; or
 - (a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- (4C) This subsection and **subsections (4A) and (4B)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

13 New section 113A inserted (Revocation of deemed entry permission)

After section 113, insert:

113A Revocation of deemed entry permission

- (1) This section applies if a person's entry permission is deemed to have been granted under regulations made under this Act.
- (2) An immigration officer may revoke the entry permission if permitted or required by, and only in accordance with, immigration instructions certified under section 22(1)(b).
- (3) **Subsection (2)** applies despite anything in the regulations under which entry permission is deemed to have been granted or in any other provision of this Act.
- (4) If the person arrives at an immigration control area, entry permission may be revoked at any time before the person leaves the immigration control area.
- (5) If the person arrives in New Zealand other than at an immigration control area, entry permission may be revoked within 72 hours of the person first arriving in New Zealand.
- (6) A revocation under this section is made by entry on the records of the Department and takes effect immediately.

- (7) Without limiting the generality of section 22, immigration instructions certified under section 22(1)(b) may provide for the revocation of entry permission that is deemed to have been granted under regulations made under this Act.
- (8) This section is repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

14 Section 378 amended (Special directions)

- (1) Before section 378(2)(a), insert:
 - (aaa) varying or cancelling conditions of resident visas in relation to any class of persons, in accordance with **section 50(4A)**;
 - (aab) imposing, varying, or cancelling conditions of temporary entry class visas in relation to any class of persons, in accordance with **section 52(4A) or 53(4A)**;
 - (aac) waiving 1 or more prescribed requirements for applying for a visa in relation to any class of persons, in accordance with **section 57(3)**;
 - (aad) granting, at any time and of the Minister's own volition, visas of any type to any class of persons, in accordance with **section 61A(2)**;
- (2) After section 378(2)(b), insert:
 - (ba) extending temporary entry class visas in relation to any class of persons, in accordance with **section 78A(1)**;
- (3) After section 378(2), insert:
- (2A) This subsection and **subsection (2)(aaa) to (aad) and (ba)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

15 Section 380 amended (Delegation of Minister's powers)

- (1) After section 380(1)(c), insert:
 - (ca) the power to make a special direction under **section 50(4A)** (relating to varying or cancelling resident visa conditions in relation to any class of persons); and
 - (cb) the power to make a special direction under **section 52(4A) or 53(4A)** (relating to imposing, varying, or cancelling temporary entry class visa conditions in relation to any class of persons); and
 - (cc) the power to make a special direction under **section 57(3)** (which relates to waiving 1 or more prescribed requirements for applying for a visa in relation to any class of persons); and
 - (cd) the power to make a special direction under **section 61A(2)** (which relates to granting visas of the Minister's own volition to any class of

persons who are outside New Zealand or who are in New Zealand with temporary entry class visas); and

- (2) After section 380(1)(d), insert:
- (da) the power to make a special direction under **section 78A(1)** (which relates to extending temporary entry class visas in relation to any class of persons); and
- (3) After section 380(1), insert:
- (1A) This subsection and **subsection (1)(ca) to (cd) and (da)** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

16 New sections 401A and 401B inserted

After section 401, insert:

401A Regulations relating to suspending ability to make applications for visas and expressions of interest

- (1) Without limiting the generality of section 400, regulations made under that section may suspend the ability of ~~all persons or of any class of persons~~ all persons, or of any class of persons, who are outside New Zealand to—
- (a) apply for a particular class or type of visa; or
- (b) submit an expression of interest in obtaining an invitation to apply for a particular class or type of visa.
- (2) **Subsections (3) to (7)** apply to regulations made for the purposes of **subsection (1)**.
- (3) The regulations may—
- (a) provide for different periods of suspension for different classes of people and different classes and types of visa; and
- (b) without limiting the generality of the manner in which persons may be classified, classify persons by reference to all or any of the following:
- (i) the country or place from which they are travelling or have travelled (whether it be their original or an intermediate point of departure);
- (ii) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
- (iii) any other type of visa that they hold or have applied for;
- (iv) ~~whether the person is outside or in New Zealand;~~
- (v) any other factor that is relevant to containing or mitigating the outbreak of COVID-19 or its effects; and

- (c) without limiting the generality of the manner in which classes or types of visa may be classified, classify classes or types of visa by reference to all or any of the following:
 - (i) in the case of a temporary visa, the name and description of the visa as provided in the immigration instructions;
 - (ii) whether an application for the visa is required by or under the regulations to be made online;
 - (iii) any specific information or evidence that is required by the regulations or the immigration instructions to be provided in order for an application for the visa to be made.
- (4) The Minister must not recommend the making of the regulations unless satisfied that doing so is reasonably necessary ~~or desirable~~ to manage the effects, or deal with the consequences, of—
 - (aa) the outbreak of COVID-19; or
 - (a) measures taken under this Act or any other enactment to contain or mitigate the outbreak of COVID-19 or its effects; or
 - (b) any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- (5) A suspension may be for a period not exceeding 3 months specified in the regulations.
- (6) If the requirements of **subsection (4)** continue to be met, regulations may from time to time be made under section 400 that extend the period of a suspension already in force for a further period not exceeding 3 months.
- (7) An extension referred to in **subsection (6)** may only be made before the end of the period to be extended.
- (8) This section is repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

401B Provisions relating to regulations made for purposes of section 401A

- (1) If the making of an application for a class or type of visa by all persons or by any class of persons is suspended by regulations made for the purposes of **section 401A**, then, despite any other provision of this Act (or any immigration instruction),—
 - (a) no person or, as the case may be, no person in the relevant class of persons may apply for a visa of that class or type; and
 - (b) if a person purports to apply for a visa contrary to **paragraph (a)**, the application is deemed not to have been made.
- (2) If the ability of all persons or of any class of persons to submit an expression of interest in relation to a class or type of visa is suspended by regulations made

for the purposes of **section 401A**, then, despite any other provision of this Act (or any immigration instruction),—

- (a) no person or, as the case may be, no person in the relevant class of persons may submit an expression of interest in obtaining an invitation to apply for a visa of that class or type; and
 - (b) if a person purports to submit an expression of interest in obtaining an invitation to apply for a visa contrary to **paragraph (a)**, the expression of interest is deemed not to have been submitted.
- (3) To avoid doubt, no suspension provided for by regulations made for the purposes of **section 401A** affects the ability of any person to claim refugee or protected person status.
 - (4) This section is repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

17 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Provisions of principal Act to be read as modified

18 New section 403B and cross-heading inserted

After section 403A, insert:

Modifications of Act relating to COVID-19 outbreak

403B Modifications of Act relating to COVID-19 outbreak)

- (1) The provisions of this Act identified in **Schedule 6** apply as modified in that schedule.
- (2) This section and **Schedule 6** are repealed immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act **2020** comes into force.

19 New Schedule 6 inserted

After Schedule 5, insert the **Schedule 6** set out in **Schedule 2** of this Act.

Schedule 1
New Schedule 1AA inserted

s 17

Schedule 1AA
Transitional, savings, and related provisions

s 11A

Part 1
Provisions relating to Immigration (COVID-19 Response)
Amendment Act 2020

1 Special directions

- (1) Any special direction that is made under a provision of this Act inserted by the Immigration (COVID-19 Response) Amendment Act **2020** and that is in force on the date when that provision is repealed (the **repeal date**) is revoked on that date.
- (2) However, the repeal of the provisions of this Act that were inserted by the Immigration (COVID-19 Response) Amendment Act **2020** and any revocation under **subclause (1)** do not affect—
 - (a) any visa condition imposed, varied, or cancelled under **section 50(4A), 52(4A) or 53(4A)** before the repeal date;
 - (b) any visa application made before the repeal date in accordance with a waiver of a prescribed requirement under **section 57(3)**;
 - (c) any visa granted under **section 61A** before the repeal date;
 - (d) any extension of a visa under **section 78A(1) or (2)** by special direction made before the repeal date.

2 Transitional provision relating to revocation of deemed entry permission

A person's entry permission may be revoked in accordance with section **113A(5)** within 72 hours of the person first arriving in New Zealand even if the person arrived in New Zealand before the date on which the Immigration (COVID-19 Response) Amendment Act **2020** came into force.

3 Suspension of ability to apply for visa or submit expression of interest does not affect existing applications or expressions of interest

Nothing in regulations made under section 400 for the purpose in **section 401A(1)** applies to any application for a visa made, or an expression of interest submitted, before the regulations come into force.

Schedule 2
New Schedule 6 inserted

s 19

Schedule 6
Modifications of Act relating to COVID-19 outbreak

s 403B

1AA Modification to section 4 (Interpretation)

Section 4 must be read as if in the appropriate place there were inserted:
“**medical officer of health** has the meaning given to it by section 2(1) of the Health Act 1956”.

1 Modifications to section 50 (Conditions on resident visas)

- (1) In section 50(2)(b), the reference to “subsection (1)” must be read as a reference to “this section”.
- (2) In section 50(4), the reference to “this section” must be read as a reference to “any of subsections (1) to (3)”.
- (3) Section 50 must be read as if subsection (5) were replaced with:
“(5) To avoid doubt,—
 - (a) subsection (2) applies whether the resident visa was granted as an exception to residence instructions or otherwise:
 - (b) **subsection (4A)** applies whether the resident visas, or any of them, were granted as an exception to residence instructions or otherwise:
 - (c) nothing in this section allows the Minister to impose conditions on a permanent resident visa, whether at the time of or subsequent to granting the visa.”

2 Modifications to section 52 (Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions))

- (1) In section 52(2)(b), the reference to “subsection (1)” must be read as a reference to “this section”.
- (2) In section 52(4), the reference to “this section” must be read as a reference to “any of subsections (1) to (3)”.

3 Modifications to section 53 (Conditions on temporary entry class visas subject to restricted temporary entry instructions)

- (1) In section 53(2)(b), the reference to “subsection (1)” must be read as a reference to “this section”.

- (2) In section 53(4), the reference to “this section” must be read as a reference to “any of subsections (1) to (3)”.
- (3) Section 53 must be read as if subsection (5) were replaced with:
 - “(5) To avoid doubt,—
 - (a) subsection (2) applies whether the temporary entry class visa was granted as an exception to temporary entry instructions or otherwise:
 - (b) **subsection (4A)** applies whether the temporary entry class visas, or any of them, were granted as an exception to temporary entry instructions or otherwise.”
- 4 Modification to section 56 (Visa holder must comply with conditions)**
 Section 56(4) must be read as if after “section 386A” the words “or if the special direction making them was notified in the *Gazette* in accordance with **section 50(4D)(a), 52(4D)(a) or 53(4D)(a)**” were inserted.
- 5 Modification to section 63 (Expiry of visa)**
 Section 63 must be read as if after subsection (2) the following subsection were inserted:
 - “(3) Subsections (1) and (2) are subject to any extension of the visa under **section 78A**.”
- 6 Modification to section 66 (Cancellation of temporary entry class or transit visa by Minister or immigration officer)**
 In section 66(1)(b), the reference to “section 78” must be read as a reference to “section 78 or **78A**”.
- 7 Modification to section 86 (Who must obtain transit visa)**
 Section 86 must be read as if subsection (2) were replaced with:
 - “(2) Subsection (1) applies to the person unless—
 - (a) he or she is classified, by regulations made under section 400 or special direction of the Minister under subsection (4), as a person to whom a transit visa waiver applies; or
 - (b) an individual waiver under **subsection (4A)** applies.”
- 8 Modification to section 400 (Regulations generally)**
 In section 400(b), the reference to “section 401” must be read as a reference to “section 401 or **401A**”.