



COVERSHEET

Minister	Hon Kelvin Davis Hon Iain Lees-Galloway	Portfolio	Tourism Immigration
Title of Cabinet paper	Suite of papers pertaining to the legislation and regulations required to implement the Electronic Travel Authority and the International Visitor Conservation and Tourism Levy	Date to be published	9 July 2019

List of documents that have been proactively released

Date	Title	Author
21 May 2019	Cabinet paper: Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill – approval to introduce	<i>Offices of the Minister of Tourism and the Minister of Immigration</i>
21 May 2019	Cabinet minute – Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill – approval to introduce LEG-19-MIN-0067	<i>Cabinet Office</i>
29 May 2019	Cabinet paper: 2519 18-19– Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019 (and annex)	<i>Offices of the Minister of Tourism and the Minister of Immigration</i>
10 June 2019	Cabinet minute: Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019 LEG-19-MIN-0079	<i>Cabinet Office</i>

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister of Tourism
Office of the Minister of Immigration
Chair, Cabinet Legislation Committee

Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill: Approval for Introduction

Proposal

1. We propose that the Cabinet Legislation Committee authorise the introduction of the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill* (the Bill), to provide for the collection of the International Visitor Conservation and Tourism Levy (IVL), and to enable automatic decision making for the electronic travel authority (ETA).
2. This is paper 1 of 2 to be considered by Cabinet to enable the introduction of the ETA and the collection of the IVL. The second paper will be considered by Cabinet in June and will provide for the regulation changes necessary for both the ETA and IVL. It will recommend Cabinet authorise the submission of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2019* to Executive Council, subject to the passage of this Bill.

Policy

The IVL is a tool to improve the tourism system

3. Recent growth in visitors has put pressure on visitor infrastructure, including on facilities and public conservation lands and waters managed by the Department of Conservation. This visitor infrastructure is necessary to maintain and enhance the tourism experience in New Zealand.
4. In some instances, the organisations providing the infrastructure and/or managing public lands and waters have limited mechanisms to directly charge visitors for services or access, resulting in under-investment or cross-subsidy from other groups.
5. A suite of funding mechanisms is required to support investment and maintenance of the infrastructure that visitors use and to protect the natural environment they enjoy. The IVL is one tool in this suite – a revenue stream directly from international visitors that can be used to contribute to the funding of conservation, infrastructure used for tourism and other initiatives relating to tourism.

Government consultation showed broad support for the IVL

6. In May 2018 Cabinet agreed to consult on the introduction of an IVL, including on the collection mechanism, levy rate and how the levy should be spent [CBC-18-MIN-

0054]. Consultation was held in June and July 2018, and informed Cabinet's policy decision in September 2018 on the nature and amount of the IVL [DEV-18-MIN-0194].

Proposed legislation will enable collection of the IVL

7. In September 2018 Cabinet agreed to use the immigration system as a collection mechanism for the IVL. The Bill modifies the *Immigration Act 2009* to allow for regulations to be set to require persons to pay the IVL alongside fees for temporary entry class visa applications and ETA requests. The Bill also allows for the regulations to determine who is required to pay, the amount they are required to pay, and any exemptions from the requirement to pay.
8. Regulations for the IVL have been developed in conjunction with the Bill and will form part of the regulations that enable collection of the ETA. They were presented to Cabinet in June 2019.

The Minister of Tourism has agreed to some minor changes to enable collection of the IVL

9. Drafting of the Bill and associated regulations has identified some necessary changes to the decisions previously agreed by Cabinet.
10. Cabinet agreed that the IVL will be paid by people applying for an electronic travel authority or visitor visa or a short term entry visa (less than 12 months). During the drafting process it became clear that it was not possible to use the phrase 'visitor visa or short-term entry visa', as these terms are not defined in the *Immigration Act 2009* and doing so would cause unintended consequences for other parts of the immigration system.
11. The *Immigration Act 2009* defines classes of visa as residence class, temporary entry class, and transit visas (section 70). Temporary entry class visas allow a person to enter New Zealand for a specified period of time to undertake activities specified on the visa, including visit, study or work. This includes the visitor visas and short-term entry visas (less than 12 months) that Cabinet agreed would be liable for the IVL.
12. I, as Minister of Tourism have agreed that all applicants for temporary entry class visas will be liable for the IVL, and that any exemptions (such as visas that are typically granted for longer than 12 months) will be managed through regulation. This meets the policy intent of Cabinet's decision, and does not change the revenue forecast. There are likely to be a number of people who have changed from paying to not paying and vice versa, but we do not anticipate a decrease in revenue as a result of this change.

An additional amendment is also necessary to enable automated decision making for the ETA

13. We expect Immigration New Zealand will receive 1.5 million ETA requests annually. A decision on whether to grant the vast majority of these will be made automatically, with a small subset requiring manual intervention.
14. The *Immigration Act 2009* currently provides for automated decision making for a range of immigration matters but the scope does not extend to decisions on waivers

of the requirement to hold a visa, meaning an amendment is required to do so for the ETA.

15. In May 2019 I, as Minister of Immigration, agreed to make a minor amendment to the Immigration Act to allow for automated decision making in respect of the ETA. Cabinet is asked to note this decision.

Impact analysis

16. Cabinet considered regulatory impact analyses by the Ministry of Business, Innovation and Employment as part of its policy decision on the proposed collection mechanism for the IVL [DEV-18-MIN-0194], and the decision to introduce the ETA. A Cost Recovery Impact Statement was subsequently developed to support the fees proposed for the ETA and it was annexed to the relevant policy paper

Compliance

17. The Bill complies with each of the following:
 - 17.1. the principles of the Treaty of Waitangi;
 - 17.2. the disclosure statement requirements - a departmental disclosure statement has been prepared by the Ministry of Business, Innovation and Employment;
 - 17.3. relevant international standards and obligations - to ensure this all relevant departments were consulted during the policy development, and on the draft Bill and associated regulations, including the Ministry for Foreign Affairs and Trade, and Inland Revenue;
 - 17.4. the Legislation Guidelines maintained by the Legislation Design and Advisory Committee (LDAC). On the basis of the legislation bid, LDAC advised that the Bill did not meet the level of priority to justify formal engagement with LDAC pre-introduction.
18. We consider that this Bill is consistent with the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*, and with New Zealand's international commitments to enabling movement of people. The *Immigration Act 2009* recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, but immigration policy development seeks to ensure that any changes are necessary and proportionate.
19. This Bill complies with the principles and guidelines set out in the *Privacy Act 1993*. Implementation of the Bill will use existing systems by Immigration New Zealand for managing personal information, and the IVL does not require the collection of any additional personal information.

Consultation

International Visitor Conservation and Tourism Levy

20. Policy development was informed by consultation with ten government departments and two Crown entities (Tourism New Zealand and the New Zealand Transport

Agency). Early engagement with the tourism sector (including carriers) also informed the proposal to collect the levy via the immigration system.

21. Public consultation on the proposal to introduce the IVL occurred in June and July 2018. MBIE received 107 submissions, including 37 from the tourism industry, 25 from local government and 45 from private individuals. Over 90 submitters supported the IVL, though some only if certain conditions were met. These conditions include that the government ring-fence / hypothecate the IVL revenue, sector representatives are included in decision-making, and the IVL is managed transparently. All of these have been taken into account by Ministers when setting the process for determining how the IVL funds will be spent.
22. In addition to public consultation, the Ministry met with several stakeholders from the tourism industry on request to discuss the proposals. Feedback from the public and industry stakeholders was used to inform Cabinet's September 2018 decisions on how the IVL would be collected and the exemptions from the IVL [DEV-18-MIN-0194].

Electronic Travel Authority

23. In June and July 2018, in conjunction with consultation on the IVL, MBIE also consulted on the introduction of the ETA as a measure to enhance New Zealand's border security. 19 external submissions were received; a majority of these from industry stakeholders. 14 of the 19 submissions supported the ETA proposal, and concerns raised have been incorporated into the process, system and implementation design [MBIE briefing 3440 17-18 refers].

Development of the Bill

24. The following agencies were consulted on the draft Bill and this paper: the New Zealand Customs Service, Treasury, Department of Conservation, Inland Revenue, Ministry of Transport, Department of Internal Affairs, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, New Zealand Defence Force, and Ministry for Pacific Peoples. The Department of the Prime Minister and Cabinet was informed.
25. We consulted on this paper and its contents with our Ministerial colleagues in May 2019.

Binding on the Crown

26. Section 12 of the *Immigration Act 2009* binds the Crown and therefore the provisions in this Bill will bind the Crown.

Allocation of decision making powers

27. The Bill does not involve the allocation of decision making powers between the executive, the courts or tribunals.

Associated regulations

28. The Bill provides for regulations to be set to:
 - 28.1. Specify the categories or classes of person who are liable to pay the levy
 - 28.2. Prescribe the amount or method of calculation of the levy
 - 28.3. Prescribe different amounts of calculation of the levy in respect of different categories or classes of person
 - 28.4. Provide for exemptions from, or refunds of, all or part of the levy in any class of case, and
 - 28.5. Provide for the manner of collection of the levy, including provision for the relevant amount of the levy to be deposited with the Chief Executive.

Consideration of the regulations by Cabinet

29. The *Immigration (Visa, Entry Permission, and Related Matter) Amendment Regulations 2019* have been developed alongside the Bill and operational policy (including the ETA IT build), and will enable implementation of the ETA and collection of the IVL. It is anticipated the regulations will be considered by Cabinet LEG committee in June.

Other instruments

30. The Bill does not contain any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister

31. The Bill modifies the existing definition of Minister in the *Immigration Act 2009* to allow for more than one Minister to exercise powers under the Act. It is anticipated that the Minister of Tourism will be given responsibility for exercising powers necessary to implement the IVL, while the Minister of Immigration would retain responsibility for all other aspects of the Act. This is subject to the allocation of ministerial responsibilities by the Prime Minister.

Commencement of legislation

32. We intend for the Bill to come into force on 1 July 2019. This aligns with the start of the financial year.
33. We also intend for the regulation changes necessary to introduce the ETA and IVL to come into force on 1 July 2019 (subject to Cabinet's agreement). 1 July 2019 has been widely communicated as the commencement date for the ETA and the IVL, and delaying, even if only by one day, would cause confusion for travellers and the travel sector; and could also have operational implications for carriers who are gearing up for 1 July implementation. This will be further discussed in the Cabinet paper that considers these regulations.

Parliamentary stages

34. On 15 April 2019 Cabinet agreed to pass the Bill through all stages under urgency on 30 May, following the delivery of the Budget statement in the House [CAB-19-Min-0174].

Proactive release

35. We intend to release this Cabinet paper, the Cabinet paper that considers the regulations, and all associated briefings as a package following the passage of legislation and the consideration of the regulations by Cabinet. Any redactions made will be consistent with the *Official Information Act 1982*.

Recommendations

The Minister of Tourism and the Minister of Immigration recommend that the Committee:

1. note that the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill* holds a category 2 priority on the Immigration Programme (must be passed in 2019);
2. note that in September 2018 Cabinet agreed to introduce the International Visitor Conservation and Tourism Levy [DEV-18-MIN-0194];
3. note the Minister of Tourism has agreed that all people applying for temporary entry class visas other than at an immigration control area will be liable for the International Visitor Conservation and Tourism Levy (a change from all people applying for visitor visas or short-term entry visas (12 months or less));
4. note the Minister of Immigration has agreed to include a clause within the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill* to provide for automated decision making for the electronic travel authority;
5. note that the Bill amends the *Immigration Act 2009* to provide for the collection of the International Visitor Conservation and Tourism Levy and to enable automatic decision making for the electronic travel authority;
6. approve the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill* for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

7. note that on 15 April 2019 Cabinet agreed the *Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill* would be introduced on 30 May 2019 and pass through all stages in the House under urgency on 30 May 2019 [CAB-19-Min-0174].

Authorised for lodgement

Hon Kelvin Davis
Minister of Tourism

Hon Iain Lees-Galloway
Minister of Immigration

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