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| List of documents that have been proactively released | | | |
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| August 2020 | COVID-19: New exception to border restrictions for some people who normally live and work in New Zealand | Office of the Minister of Immigration | |
| 24 August 2020 | COVID-19: New Exception to Border Restrictions CAB-20-MIN-0414 | Cabinet Office | |
| 12 June 2020 | Briefing: COVID-19: Border restrictions – Exceptions for humanitarian and people ordinarily resident | MBIE | |

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In Confidence

Office of the Minister of Immigration

Cabinet

COVID-19: New exception to border restrictions for some people who normally live and work in New Zealand

Proposal

1 This paper seeks agreement to create a new exception category to New Zealand's tight border restrictions to enable the entry of a small proportion of the temporary work visa holders currently offshore, who have a strong ongoing connection to New Zealand.

Executive Summary

- 2 Strict border restrictions, combined with ongoing stringent isolation and quarantine management of all arrivals, remains the key to minimising the risk of introducing new cases of COVID-19 to New Zealand. Currently the only people able to enter are New Zealand citizens and permanent residents, air and marine crew, as well as case-bycase exceptions for specific categories (including critical health and other, humanitarian grounds, and family members of people normally living in New Zealand).
- 3 The current capacity of the 14-day isolation facilities necessitates a continued tight approach to entry to New Zealand, with prioritisation of places for returning New Zealanders and resident visa holders, and their families, followed by humanitarian exceptions and critical workers. Applications for border exceptions have to meet high thresholds, limiting the numbers of people eligible to enter New Zealand.
- 4 Work is urgently underway to develop a more nuanced approach to managing allocation of places in isolation facilities, as access is currently on a current 'firstcome, first-in' basis. A prioritised approach is part of the current work to develop a sustainable and scalable quarantine and managed isolation model [CAB-20-MIN-0284 refers].
- 5 Pressure on isolation facilities for non-New Zealanders must continue to be managed through the judicial use of border exceptions, and there are many sectors and industry groups who are seeking to establish new exceptions to the current tight border controls. Given the competing demands, Cabinet has choices about the next high threshold border exception that can be considered.
- 6 As noted by Cabinet on 15 June 2020, in the paper *Future Border Settings: People Movement and Reconnection with International Market* [CAB-20-SUB-0281 refers], there are a group of temporary workers who normally live in New Zealand, but who are stranded offshore and who are not eligible to re-enter New Zealand under any of the current border exception categories.
- 7 Many of these temporary work visa holders have built lives in New Zealand and wish to return. I propose an 'in principle agreement' to establishing a new border exception category to allow only a small proportion of these people to return as isolation/quarantine capacity permits and when they will not displace New Zealand citizens and residents who have a right to return to New Zealand.

- 8 The current limits on the quarantine capacity necessitates a narrow criteria that will only enable the return to New Zealand of temporary visa holders who have the strongest connection. The proposed new exception will focus on people who have built lives in New Zealand, as indicated by:
 - 8.1 Living in New Zealand for at least two years (or one year, with specific factors that indicate a strong connection such as family living here or submitted an application for residence); and
 - 8.2 Still having a job in New Zealand; and
 - 8.3 Temporary work visa enabling them to have a good prospect of remaining in New Zealand long term (eg higher-skilled visa).
- 9 It is difficult to estimate the numbers that might be covered by this proposed criteria for an exception and who may wish to return to New Zealand, particularly given the requirement to still have job. The narrow criteria is estimated to enable less than ten percent (or 1,000) offshore temporary work visa holders to be eligible to return (along with their family members). However, given possible variables in accurately estimating the people eligible under this border exception, the category will be initially limited to 850 principal applicants (and if monitoring indicates that this limit will be exceeded, I will seek further agreement from Cabinet on options to suspend or alter this exception category).
- 10 Capacity at managed isolation/quarantine facilities (MIQ) is currently struggling to meet demand from returning New Zealanders and their families as well as emerging demand from critical workers and some humanitarian exceptions.
- 11 Any expansion of border exceptions will place additional pressure on the current managed isolation and quarantine facilities (MIQ), and accordingly this new border exception will not be 'opened' to receive applications until capacity is available. The proposed MIQ allocation system will help, in the future, to smooth flows from non-New Zealanders so MIQ places can be managed effectively.
- 12 Given this ongoing pressure on MIQ, I propose that this new border exception category only be activated when the Minister responsible for managed isolation and quarantine facilities advises that the capacity at the facilities can accommodate this group of offshore returnees and that this group's placement will not displace returning New Zealand citizens and residents. I propose the Minister of Housing and I are authorised to determine when this new border exception category can 'go live' and begin accepting applications.
- 13 The requirement for returning temporary workers to demonstrate continued employment will avoid the situation of people returning to New Zealand without ongoing income and work, who would be competing with New Zealanders for jobs or adding to the welfare burden of stranded temporary migrant workers.

Background

Cabinet has established border restrictions with high-level exceptions

14 On 19 March 2020, Cabinet agreed to strengthen New Zealand's border measures by moving 'all of the world' into Category 1A (cannot travel to New Zealand) to reduce the risk of importing cases of COVID-19, with some groups that would not be subject to the restrictions [CAB-20-MIN-0122 refers]. On 8 June 2020, Cabinet made some changes to the groups that would not be subject to the restrictions [CAB-20-MIN-0268 refers]. The current border restrictions do not apply to:

- 14.1 New Zealand citizens and residence class visa holders
- 14.2 The partner, legal guardian or any dependent children who are travelling with a New Zealand citizen or residence class visa holder, or who are ordinarily resident in New Zealand, or have a visa based on their relationship with their New Zealand citizen or resident partner or parent
- 14.3 Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand
- 14.4 People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and some marine crew
- 14.5 Diplomatic and consular personnel filling established positions (and others as authorised by the Minister of Foreign Affairs).
- 15 Cabinet also agreed high-level parameters for case-by-case exceptions to the border restrictions [CAB-20-MIN-0122, CAB-20-MIN-0268 and CAB-20-MIN-0281 refers], which include:
 - 15.1 Those who need to travel for humanitarian reasons
 - 15.2 Essential health workers¹
 - 15.3 Citizens of Samoa and Tonga for essential travel to New Zealand
 - 15.4 Partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand
 - 15.5 Other essential workers¹
 - 15.6 Maritime crew, including people arriving at the maritime border where there is a compelling need for the vessel to travel to New Zealand, and replacement cargo crew.

Work underway to expand the capacity of isolation facilities

- 16 A major constraint on the re-entry of people who have lived and worked in New Zealand, as well as critical workers, is the constrained supply of approved (safe and secure) managed accommodation for people arriving in New Zealand. The best lines of defence against further outbreaks of COVID-19 in New Zealand are robust and sustainable quarantine and managed isolation arrangements. The MIQ system was quickly established to help stop COVID-19 coming through the border and to respond to the high demand for MIQ facilities.
- 17 Cabinet has agreed to provide additional funding as well as a leadership and coordination to support the development of a sustainable, scalable and user-pays model for the isolation of arrivals to New Zealand [CAB-20-MIN-0284 refers].
- 18 Currently access to the 14-day managed isolation facilities is prioritised for returning New Zealanders and permanent residents (and their families and partners), with the remaining capacity having to cover humanitarian exceptions and critical workers. Work is underway to introduce an MIQ allocation system that will better forecast and smooth demand for MIQ facilities [SWC-20-MIN-0094].

These exception categories is now referred to as *critical* health workers and other *critical* workers.

Our border settings strategy identified further work on border entry for some groups not covered by the current travel exemptions

- 19 A comprehensive work programme is underway to facilitate increased people movement across New Zealand's border, to ensure New Zealand is well positioned to preserve, protect and rebuild international connections as soon as it is safe to do so, and to allow New Zealanders to return home, while not undoing the gains made in working to eliminate Covid-19 [CAB-20-SUB-0281, considered by Cabinet on 15 June 2020].
- 20 A key workstream of this programme is increasing our capacity for entry to New Zealand on an exceptions basis, and allowing a phased and safe way to increase people movement over time (as long as health conditions remain favourable), in support of our economic and social recovery, and to maintain our international connections (such as our humanitarian commitments).
- 21 Cabinet noted that further advice would be provided on extending the exception categories to include additional groups as needed, including supporting the return of those people who normally live in New Zealand but do not meet the narrow terms of the current exceptions categories. One such group identified are temporary visa holders who have homes, jobs and lives to come back to in New Zealand, but may have had to temporarily 'shelter in place' in third countries or remain in their home country when borders closed around the world.
- 22 There are also increasing numbers of requests from various industry groups and sectors to seek specific border exceptions as they cannot meet the tight eligibility criteria for entry to New Zealand. For example, international students, groups participating in sports and other events, and industry groups who require a specific range of skills such as deepwater fishing crews, construction workers, members for film crews and workers for the primary industry sectors.
- 23 It is difficult to compare the priority of border exceptions for groups and individuals across different population groups, events, industries or infrastructure projects. Cabinet retains the ability to weight these different priority groups based on economic, social and humanitarian considerations in determining whether to establish a new border exception category. These issues are expected to be considered by Cabinet in the near future (proposed 7 September 2020).
- 24 This paper proposes a new narrow border exception category for a small proportion of temporary work visa holders, which would only commence when there is sufficient capacity in our managed isolation and quarantine facilities.

New exception category for some temporary visa holders who normally live and work in New Zealand, when managed isolation capacity permits

- 25 People on temporary visas do not necessarily expect to remain in New Zealand permanently, however, many of these people have lived, worked and contributed to New Zealand society for many years.
- 26 There is no inalienable right for a temporary work visa holder to be able to return to New Zealand, but it is fair to consider some people holding temporary work visas be considered for entry, given their long-standing and ongoing connections to this country and that circumstance may have simply resulted in them being 'on the wrong side' of the border when it closed.

- 27 Given the ongoing hiatus that many offshore temporary work visa holders are in, a decision on which people can return to New Zealand needs to be made relatively soon, so that migrants can be provided with greater certainty about their future options, and there is greater certainty for employers who are holding open jobs for these people.
- 28 The current pressure on the managed isolation facilities, and the work currently underway to develop a sustainable quarantine/isolation system (including how places could be prioritised), necessitates that any border exception criteria for this group of visa holders is tightly focussed.

Highly targeted criteria will allow a small proportion of "normally resident" to return, but only when managed isolation capacity permits

- 29 The Ministry of Business, Innovation and Employment (MBIE) estimates there are likely to be up to 10,000 people holding current temporary work visas who are outside New Zealand, who may be 'normally resident' in New Zealand² (that is, they lived in New Zealand for six months or more in the last year and left after 1 December 2019).
- 30 The current pressure on the managed isolation facilities, necessitates a very narrowly focussed eligibility criteria for any border exception. In keeping with the high thresholds for other border exceptions, I propose a narrow subset (less than 1,000 visa holders or ten percent), with the strongest connection, become eligible for entry back to New Zealand.
- 31 The new exception category will target those people who have lived and worked in New Zealand for several years, and have built lives here with the expectation and hope they would be able to stay longer-term in New Zealand.
- 32 A key criteria proposed is that temporary work visa holders³ must have retained their job (or business) in New Zealand. This requirement will avoid a situation where there are further migrants stranded in New Zealand without income or welfare.
- 33 As part of the application process, applicants and their employer will have to provide a statutory declaration or equivalent guarantee that the job continues to exist and that was held previously by the applicant. It will be clear that providing false or misleading information is a serious offence that can lead to civil or criminal proceedings.
- 34 The type of temporary work visa eligible under this exception will also enable them to have had a realistic expectation of remaining longer term in New Zealand (that is, people who are not subject to a 'stand down' requiring them to leave New Zealand after up to three years on low skilled work visas).
- 35 This new border exception category will not 'go live' until there is sufficient capacity at government-managed isolation facilities, and it is clear that the placement of temporary work visa holders will not displace returning New Zealand citizens and residents.

² This figure is a snapshot as at 3 June 2020 and does not include any partners or family that may accompany the visa holder. Approximately a quarter of these people have a visa expiring in 2020, but some may be intending and entitled to renew this visa if they remain in employment.

³ People must have held a valid visa at the time they departed New Zealand that did not expire before the end of 2020. If their visa has expired during the time they have been stranded offshore (or will do so before the end of the year), they must have lodged an application for a further visa by 31 July 2020 (or date to be determined by the Minister of Immigration).

In addition, a few people who held a valid temporary work visa when they departed may have been granted residence while offshore. They will also be considered under this exception category (as they currently cannot enter New Zealand on their new residence visa).

36 The new category will be initially limited to 850 principal applicants, and if monitoring indicates that this limit will be exceeded, I will seek further agreement from Cabinet on options to suspend or alter this exception category. Over time, as the capacity at government-managed isolation facilities grows (or demand for places reduces), Cabinet could also consider widening eligibility to enable the return of more people who are normally resident and holding temporary work visas.

Proposed criteria for this new exception category will be narrow

- 37 Offshore temporary visa holders will need to demonstrate an ongoing connection to New Zealand to be eligible for consideration under this new exception category. The time previously spent living in New Zealand provides a useful proxy, as well as consideration of factors such as family connections and if children have lived with them in New Zealand. In all cases, the individual will need to have a job they can return to.
- 38 The time remaining on a visa also provides a further proxy of the expectation a person was planning to remain in New Zealand long term. For example, a person who departed New Zealand in February 2020 with one or two months of the temporary visa remaining is likely to have been leaving permanently, compared to someone heading overseas with more than a year remaining on their visa.
- 39 The requirement that a person would have the ability to remain in New Zealand longer term is also a key factor in prioritising eligibility under this new category. Residency is not an automatic right, and the criteria must be met at the time of application, however, higher-skilled and highly-paid migrants, those currently on a work to residence visa pathway, or those with skills that are in shortage, are more likely to meet skilled migrant or other residence criteria in the future.
- 40 In contrast, many lower-skilled, lower-paid temporary migrants have a maximum time they can stay in New Zealand before they must leave for 12 months (a stand-down period), to reduce the risk of people becoming settled in New Zealand without a realistic pathway to residence. These people may still have lives in New Zealand for two to three years, but would be mindful that their connection was time limited.
- 41 People will need to demonstrate a strong and ongoing connection to New Zealand to be considered under the new border exception category, and I propose they be required to meet <u>all</u> of the following criteria:
 - 41.1 *Work:* Person holds a current job (and this was held before departing New Zealand), or operates a business in New Zealand (pre-Covid) as part of an entrepreneur visa.
 - 41.2 **Expectation of longer-term settlement in New Zealand**: Person has the potential to remain in New Zealand longer term, holding either a work-to-residence visa, resident visa, entrepreneur visa, or an essential skills visa that is not subject to a stand-down period (ie <u>not</u> a visa for lower-paid and lower-skilled employment)⁴.
 - 41.3 **Strong connection to New Zealand:** Person has lived in New Zealand for at least two years immediately prior to departing, or if living in New Zealand for at least one year, must meet one of the following criteria:
 - 41.3.1 has an entrepreneur visa and operates a business in New Zealand (pre-Covid)

⁴ This category covers essential skills work visas that allow for mid- or higher-skilled work, or for lowerskilled work that was granted on the basis of employment paid at 1.5 times the median wage (approximately \$76,000 – the salary for mid-skilled applicants).

- 41.3.2 had their dependent children with them in New Zealand (for at least six months)
- 41.3.3 parents or adult siblings ordinarily resident in New Zealand
- 41.3.4 has applied for residence by July 2020⁵.
- 41.4 **Intention to return prior to heading overseas**: Held a valid visa at the time of departing from New Zealand that did not expire before the end of 2020, or if the visa expired before that date, the person holds a new visa or had applied for a visa by July 2020⁶, allowing them to remain New Zealand for 12 months or more.
- 42 It is estimated that less than 1,000 principal visa holders could be eligible under the above criteria, plus their dependants and partners. This estimate does not reflect that some people may no longer have their job and would therefore be ineligible. People currently offshore do not have to advise whether they still retain their job, so there is no data on actual rates of job loss amongst offshore migrants. Approximately 20 percent of offshore essential skills visa holders work in three occupation groups which have been economically impacted by COVID-19 (namely, chefs and cooks; café or retail managers; and retail supervisors).
- 43 The narrow criteria for the new border exception means that the vast majority of the temporary work visa holders currently offshore, who may have had jobs and lives here, will not be eligible for consideration. Specifically, the new category will not be available to a person on a:
 - essential skills visa for lower-skilled employment or recognised seasonal work visa (given they have lower likelihood of becoming a resident)
 - post-study work visa or student visa (other options are being considered to return current or new international students currently offshore)
 - working holiday visa (given the tourist-focussed nature of these visas)
 - specific purpose visa (who can seek a short-term border exception as a critical worker).
- 44 On 11 August 2020, the regulations prescribing charges to cost-recover some people's MIQ costs came into force [*COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020*)]. Under these regulations, many people who hold a temporary entry class visa, and who return to New Zealand under this proposed border exception, will not be required to pay the regulated MIQ charge as they have been explicitly exempted⁷.

⁵ The covers people who have lodged an application after an invitation to apply. It does not cover "expressions of interest".

⁶ The specific date by which an application for further visa has to be lodged will be determined by the Minister of Immigration to reflect the timing public announcement of this policy as well as the date offshore temporary visa application processing was suspended (mid-August).

⁷ Temporary visa holders who had been ordinarily resident in New Zealand in the prior 12 months and who departed on or before 19 March 2020 are exempt from MIQ fees [s.6(2)(c) refers]. However any temporary visa holder who left after the 19 March will be liable for the regulated charges (currently, \$3,100 for first person and \$950 for additional adult, and \$475 for child 3 years and older).

Implementation of the new border exception category

- 45 Requests for exceptions to border restrictions are initiated through an expression of interest (EOI) process that, if successful, leads to an invitation to apply (ITA). Current fees will apply to any applications for a border exception for this new exception category. Further resources will be required to manage and assess applications under the proposed new border exception category.
- 46 Where an applicant has met other criteria (including having a job or business to return to), but their current visa has expired while they were offshore and an application for a new visa has been lodged, INZ will assess the new visa application before an exception to travel to New Zealand is granted.

Financial implications

47 This paper has no direct financial implications for the Crown. The costs of administering applications for a border exception under this new category will be covered by third party fees.

Legislative implications

48 This paper has no legislative implications.

Impact analysis

49 The impact analysis requirements do not apply to this paper.

Implications for priority communities

- 50 The decisions to maintain tight border restrictions (and associated managed isolation/quarantine), with only a narrow criteria proposed for this new exception criteria, ensures that the risks of transmission of COVID-19 to vulnerable population groups is effectively managed. Vulnerable populations include the elderly, Māori, Pasifika, and ethnic communities as well as groups who are more at risk of severe illness from COVID-19 due to age or underlying health conditions.
- 51 The criteria requiring a returning migrant to hold a current job or operate a business will minimise any risk that future employment opportunities for Māori and other priority groups could be displaced through competition by new entrants to the job market.

Human Rights

- 52 The most significant human rights limitations will continue to be on the rights of persons arriving into New Zealand to freedom from unreasonable searches and movement (through mandatory health screening and requirements for managed isolation or quarantine).
- 53 These limitations may be considered justified given the seriousness of the health risks posed by people arriving in New Zealand in light of the ongoing global transmission of COVID-19 in most countries.
- 54 Many immigration matters inherently involve different treatment on the basis of personal characteristics, such as employment or age in terms of recognising children as dependent. The development of immigration policy (including border exceptions) emphasises that any potentially discriminatory settings must be justifiable. The importance of holding a current job to be eligible under this proposed new border exception is justified, as it ensures returning temporary visa holders do not become stranded in New Zealand without a means of support.

Consultation

55 The following agencies were consulted: Ministry of Foreign Affairs and Trade, Ministry of Social Development, Te Puni Kōkiri, Department of Prime Minister and Cabinet, The Treasury, Ministry of Education, Te Arawhiti (Office for Māori Crown Relations), Ministry for Primary Industries, Ministry of Transport, Customs New Zealand, Department of Internal Affairs and the Ministry of Health.

Communications

56 Communications on the proposed new border exception will be managed and coordinated by the Minister of Immigration in conjunction with the Minister of Housing (responsible for managed isolation and quarantine facilities), particularly any announcement on when the new exception will be activated. INZ will engage with relevant stakeholders once Ministers have publicly announced the new category 'goes live'. The INZ COVID-19 border exception web pages and forms will provide details on the eligibility criteria for the new border exception category.

Proactive Release

57 This paper will be proactively released following Cabinet consideration.

Recommendations

The Minister of Immigration recommends that Cabinet:

- 1 **Note** that travel restrictions effectively closing New Zealand's borders to all countries and requiring 14-day managed isolation for all arrivals will continue, but that particular groups (including New Zealand citizens and resident class visa holders, and their families, diplomats, air and some marine crew) can continue to enter the country.
- 2 **Note** that exceptions to the border restrictions have been agreed by Cabinet for people meeting specific criteria, including essential health workers and other essential workers, humanitarian reasons, partners and dependants of a temporary work or student visa holder normally living in New Zealand, people arriving at the maritime border on an approved vessel, replacement marine cargo crew and essential travel to New Zealand by citizens of Tonga and Samoa [CAB-20-MIN-0122, CAB-20-MIN-0268 and CAB-20-MIN-0281 refers].
- 3 **Note** that work to consider further exceptions to border restrictions to support social recovery (eg return of temporary work visa holders) was identified as part of the cross-agency work programme to support the border and global markets reconnection [CAB-20-MIN-0281 refers].
- 4 **Note** that there are approximately 10,000 temporary visa holders who had been living in New Zealand and hold a current work visa but are currently outside New Zealand, and some of this group still have jobs, family and homes in New Zealand, and are unable to return due to the tight border restrictions.
- 5 **Agree** to establish a new exception category that is narrowly targeted on a small proportion of these temporary visa holders currently offshore (less than ten percent or 1,000) those who have strong connections to New Zealand, who have been living in New Zealand for some time, with an expectation of residing here long term, and who still have a job (or business) in New Zealand.

- 6 **Note** that there is currently limited capacity at managed isolation facilities but work is ongoing to ensure a more sustainable, scalable model for isolation of arrivals, including an allocation system that will help smooth demand to ensure places in isolation facilities can be managed effectively.
- 7 **Agree** that this new border exception category will remain 'closed' to applications until the Minister of Immigration and the Minister of Housing (responsible for managed isolation and quarantine facilities) are confident that there are sufficient places available in managed isolation facilities for these arrivals (and their placement will not displace those of New Zealand citizens and residents).
- 8 **Agree** the following criteria for the new border exception category for temporary visa holders, who normally live and work in New Zealand, that the person:
 - 8.1 holds a current job (and this was held before departing New Zealand) or operates a business in New Zealand (and operated prior to departing) as part of entrepreneur work visa; and
 - 8.2 at the time of departing New Zealand held either a work to residence visa, or an essential skills visa that is not subject to the stand-down period; and
 - 8.3 departed New Zealand since 1 December 2019; and
 - 8.4 has lived in New Zealand for at least two years, or if living in New Zealand for at least one year, must have one of the following:
 - 8.4.1 has an entrepreneur work visa and operates a business in New Zealand (and operated it before departing New Zealand)
 - 8.4.2 had their dependent children with them in New Zealand (for at least six months)
 - 8.4.3 has parents or adult siblings who are ordinarily resident in New Zealand
 - 8.4.4 has submitted an application for residence by July 2020; and
 - 8.5 held a visa at the time of departing that does not expire before the end-2020, or if expiring before that date, has applied for a further visa by 31 July 2020 (or date to be determined by Minister of Immigration) allowing them to remain for 12 months or more, and this visa is approved before an exception is granted.
- 9 **Agree** that an application for the 'normally resident' exception can also cover the person's partner and dependent children (under 20 years of age).
- 10 **Agree** that the number of successful border exceptions approved under this category will be closely monitored and if numbers look likely to exceed 850 principal applicants, I will report back to Cabinet on options to suspend or alter this exception category.
- 11 **Authorise** the Minister of Immigration and the Minister of Housing (responsible for managed isolation and quarantine facilities) to determine when this new exception category commences based on the availability of managed isolation capacity.
- 12 **Note** that the Minister of Immigration, through the certification of Immigration Instructions, will provide further detail and definitions to the criteria as required to operationalise these decisions.

13 **Invite** the Minister of Immigration to give effect to these decisions through certifying Immigration Instructions.

Authorised for lodgement

Hon Kris Faafoi Minister of Immigration