



BRIEFING

One-off residence pathway – payment approach for people with existing skilled residence applications and SMC EOs in progress

Date:	21 September 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2122-1067

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Minister of Immigration	Note payment approach for people with existing applications in progress to be included in Cabinet report back	22 September 2021
Hon Phil Twyford Associate Minister of Immigration	Copy for your information	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Andrew Craig	Manager, Immigration (Skills and Residence) Policy	04 897 5275	s 9(2)(a)	✓
Steven Sue	Principal Advisor, Immigration (Skills and Residence) Policy	04 831 9658		

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

One-off residence pathway – payment approach for people with existing skilled residence applications and SMC EOIs in progress

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Purpose

1. To provide you with further advice on implementation matters around the agreed one-off residence pathway:
 - a. the treatment of fees and levies for applicants who have a current SMC or RFW application in train but choose to apply for the one-off pathway instead, including whether a draw-down of funds tagged for refunds would be required to meet the cost of work already undertaken for partially completed SMC and RFW applications
 - b. treatment of people who do not meet the eligibility requirement by a small margin, including that of having been onshore for 75 percent of the 3 years prior to the day before the announcement.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that on 6 September 2021, Cabinet agreed to introduce a one-off residence pathway for temporary migrant workers in New Zealand who meet the required criteria
Noted
- b **Note** that on 20 September 2021, you agreed that fees for the one-off residence pathway will be set at \$1,330, based on cost recovery, and the levy will be set at \$830, which is commensurate with all other skilled/business residence categories [MBIE briefing 2122-1051 refers].
Noted
- c **Note** that for people who have already paid a fee for an SMC or RFW application or SMC EOI:
 - it is possible to charge them for the one-off pathway after their application has been assessed (payment in arrears), so that they do not have to pay upfront for two live processes at the same time, and
 - the value of their original SMC or RFW application or SMC EOI fee can be used to offset the fee for their one-off residence application, once the outcome of their one-off residence application is determined.*Noted*
- d **Note** that Cabinet authorised the Minister of Finance, Minister of Economic and Regional Development and Minister of Immigration jointly to make final decisions on draw downs from and approval of expenditure against, a tagged contingency [CAB-20-MIN-0328.03 refers].
Noted

- e **Agree** to seek Cabinet agreement for MBIE to draw down \$26 million of the tagged contingency to cover costs already incurred with previous skilled residence applications that subsequently move to the one-off pathway.

Agree/Disagree



Andrew Craig
Manager
Immigration (Skills and Residence) Policy
Labour, Science and Enterprise

Hon Kris Faafoi
Minister of Immigration

Background

2. On 6 September 2021, Cabinet agreed to introduce a one-off residence pathway for temporary migrant workers in New Zealand who meet the required criteria [CAB-21-MIN-0359 refers].
3. The agreed one-off pathway will be open to people with existing skilled residence applications in progress (including Skilled Migrant Category [SMC] and Residence from Work [RFW] applications), people with existing SMC Expressions of Interests [EOI] lodged with Immigration New Zealand (INZ), and others who have not previously submitted a skilled residence application or SMC EOI but hold or have applied for an eligible visa.
4. Cabinet also agreed that:
 - a. applications will be open from 1 December 2021 to 31 July 2022, and available to eligible applicants in two waves:
 - i. From 1 December 2021, applicants with a skilled migrant application (SMC and RFW) lodged, and applicants with dependent children aged 17 years or older who currently have an Expression of Interest (EOI) submitted
 - ii. From 1 March 2022, accepting applications from all other eligible applicants, including remaining applicants in the EOI pool
 - b. selections from the SMC EOI pool will continue to be paused but people who have submitted an EOI can instead apply for residence through the one-off pathway (if they meet the criteria).
5. You have indicated that people who have previously submitted an SMC or RFW application should not have to pay an additional upfront fee if they choose to apply through the one-off pathway. The operational approach for this is set out in this paper and will be put into regulations after you seek agreement from Cabinet.
6. You agreed that fees for the one-off residence pathway will be set at \$1,330, based on cost recovery, and the levy will be set at \$830, subject to Cabinet agreement. These are compared to the fees and levies for SMC and RFW applications in Table One [MBIE briefing 2122-1051 refers].

Table One: Comparison of fee and levy amounts for different visas

Visa category	NZ based fee	Levy	Fee and levy total
One-off residence pathway	1,330	830	2,160
Skilled Migrant Category	1,880	830	2,710
Residence from Work Category	970	830	1,800

7. The fee to lodge an SMC EOI is \$530 or \$680, depending on whether the EOI was lodged online or on paper.

Proposed approach

8. It is possible to implement your preferred approach for people who have previously submitted an SMC or RFW application, both in terms of operationalising it and providing for it in regulations:
 - a. Applicants who have with a skilled migrant application (SMC and RFW) lodged, or currently an SMC EOI submitted, will be contacted directly and provided guidance to apply and *their payment will not be due until their one-off residence application has been assessed and approved in principal.*
 - b. All remaining applicants would have to make an *upfront payment when they apply.*
9. The net fees paid will be the same for both groups but the timing of the payment will be different.
10. This approach deviates from current practice of requiring payment of a fee for the one-off pathway upon application for people who have already submitted a skilled residence application or SMC EOI, by seeking payment once the one-off residence application has been processed.
11. We do not want to put people off applying under the one-off residence pathway to ensure that those who qualify, get the residence more quickly, rather than having to go through a much more burdensome assessment process. It is also for this reason why we will refund people with an existing skilled residence application if they meet the eligibility criteria for the one-off pathway, and withdraw their SMC or RFW application, even though we will already have incurred some cost administering their SMC or RFW application. The amount of effort already expended on existing SMC and RFW applications will vary depending on how far through the process they are.
12. The case for refunding SMC EOI fees for those who withdraw their SMC EOI is even clearer, given that INZ has not actually done anything with their EOIs yet.
13. However, there is a need to charge the vast majority of applicants for the one-off pathway when they lodge their application. Without such a requirement, we will end up having to do a lot of back-end rework to collect fees (which ultimately incurs resource) and likely process more applications that do not have much chance of meeting the eligibility criteria (because there would be no cost in “trying your luck”).

Process for people who already have a skilled residence application in progress or who have lodged an SMC EOI

14. This group has already paid a fee of some sort for an existing skilled residence process. We will depart from the usual requirement for an upfront payment, and instead require payment once their application has been processed, but before their residence visa is granted. Payment will still be required if the application is declined.
15. In order to ensure fees are charged in arrears only to this group, we will contact this group directly to notify them of the application process, and their application will only be processed if it includes a valid application or EOI reference number.
16. The majority of this group is expected to meet the eligibility criteria for the one-off residence pathway. For those who are successful, we will seek payment when we approve their application in principle, at which point:
 - a. If they choose to withdraw their SMC or RFW application or SMC EOI and use the money paid for SMC RFW application to cover or contribute to the fee for the one-off residence application:

- i. People who have an SMC application in place will have their new fee covered plus receive an additional \$550 refunded to them
 - ii. People who have an RFW application in place will need to pay a further \$360
 - iii. People who have lodged an SMC EOI will need to pay a further \$1,480 or \$1,630, depending on whether they paid an EOI fee for an online or paper application).
 - b. If they choose not to withdraw their SMC or RFW application or SMC EOI, they would have to pay the full fee for the one-off residence pathway of \$1,330 before their resident visa is granted. s 9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Failure to pay the prescribed fee for the one-off residence application at all would result in the application being declined.
17. There would be no need for people in this group to pay the levy again, if they have already paid the levy as part of their original SMC or RFW application. A Cabinet decision for an exemption for people to pay the levy again will be required for this.
 18. For any who are unsuccessful, we would seek payment for the \$1,330 for the one-off residence application, and they would have a number of options:
 - a. Withdraw their SMC or RFW application and get a refund which could contribute to the fee for the one-off residence application
 - b. Not withdraw their SMC or RFW application and pay the \$1,330 or be liable for a debt to INZ.
 19. Not charging unsuccessful applications who do not withdraw would be giving them a free processing of a visa, which has the effect of transferring costs to other visa applicants or taxpayers.

Process for all other applicants

20. The process for remaining applicants will be in line with usual requirements for payment upfront. This group will not have paid a residence application fee or levy yet for a skilled residence application or an SMC EOI.
21. Upfront payment for this group (which makes up the vast majority of the potentially eligible applicants) will save significant processing resource compared to seeking payment once applications have been processed by making use of existing processes and deterring people from “trying their luck”. It would also be difficult to recover fees from those of this group whose applications are unsuccessful.

Funding of refunds

22. Providing refunds to former SMC and RFW applicants as well as to people who have previously made an EOI they are likely to withdraw will cost about \$26.3 million. This is to cover costs already incurred with previous skilled residence applications that subsequently move to the one-off pathway.
23. We recommend this approach rather than charging people for their original SMC or RFW application. To charge them for both applications could disincentivise them from applying for the one-off residence pathway. It would also be difficult to differentiate the amount of resource expended on withdrawn applications at different stages in the process.

24. There is \$26 million in 2020/21 remaining in tagged contingency held for the purpose of the refunding visa application fees in relation to COVID-19 impacts, to be rolled over to 2021/22. Drawdown on this funding requires the agreement of joint Ministers (which could be sought via the upcoming implementation Cabinet paper).
25. A partial draw-down of \$14 million was previously approved from the original \$40 million fund, to refund the application fee and levy for lapsed applications due to COVID-19.
26. As there are currently no other plans for refunds of fees or levies we propose seeking approval to draw down this tagged contingency for these refunds. This means there is no need to ask for a further capital injection from the Crown. s 9(2)(f)(iv)
[REDACTED]
[REDACTED]
[REDACTED]
27. Treasury agrees to this proposed draw down.

Treatment of people who do not meet the eligibility requirement by a small margin

28. We do not recommend introducing any flexibility around the eligibility criteria. It is incumbent on INZ to administer the eligibility criteria as set.
29. For example, we do not propose any flexibility for people who do not quite meet the rule that you have to have been onshore for at least 75 percent of the 3 years leading up to the day before the announcement.
30. This is because any rule, or flexibility, leaves margin cases. If the intent is for people who don't quite meet the 75 percent rule to be included, policy could instead be set to be slightly more generous, by say setting the rule at 73 or 74 percent. However, at 73, or 74 percent, it might again be argued that there are margin cases to be accommodated still.
31. 75 percent is already generous in view of the inability of people to have travelled for more than half of the 3 year period given COVID, ie only half of the first 18 months had to be in the country. The 75 percent rule also already allows for different circumstances to be taken into account (such as lots of short trips vs one long trip).
32. There is always the ability for someone to appeal INZ's decision to the Immigration Protection Tribunal if they do not believe their application was accurately assessed against the eligibility criteria or to request Ministerial intervention.
33. A potential recourse is for the Minister (subject to issuing a special direction to refer the application) to assess the application in the first instance (under section 72 of the Immigration Act) or for the applicant to ask the Minister to consider them under the new section 61A(1) of the Act, and grant a visa irrespective of not meeting the instructions. However, exercising those powers is usually reserved for very unusual circumstances, not when people do not quite meet eligibility criteria such as the time onshore requirement. As the policy in this case is clear, INZ would not typically refer these sorts of cases to the Minister. We strongly recommend not communicating this option to applicants given that it is very unlikely to succeed.
34. Keeping this as simple as possible is important for potential applicants to understand the eligibility rules and to manage the greater processing time and resources associated with unclear rules. It is intended that this pathway is quick and smooth to administer.

Next steps

35. We will provide you with a draft Cabinet paper by 23 September 2021 reflecting decisions in this briefing for your feedback and Ministerial consultation. From there, the timetable will be as follows:

- a. Monday 27 September – Minister seeks Cabinet agreement to Power to Act for CBC on 4 October
- b. Thursday 30 September – updated Cabinet paper (and finalised CRIS) lodged
- c. Monday 4 October – Decision on fees, travel conditions and dependents

s 9(2)(f)(iv)

- e. 1 December – Applications open.