



24 JUN 2021

Tēnā koe

On 26 May 2021, the Ministry of Social Development received a partial transfer of your request, under the Official Information Act 1982 (the Act), to the Ministry of Business, Innovation and Employment, for the following information:

- A copy of the paper *Changes to Emergency Benefits for temporary visa holders in the context of Trans-Tasman quarantine-free travel*.

At the beginning of the COVID-19 outbreak in New Zealand, there were some 381,000 temporary work, student and visitor visa holders in New Zealand (referred to as Temporary Visa Holders). Due to the impacts of COVID-19, some Temporary Visa Holders (TVH) became stranded in New Zealand and were experiencing hardship.

Emergency Benefits (EB) were made available to TVH to provide support to those experiencing hardship as a result of the COVID-19 pandemic and could not return home, were making arrangements to return home and had taken all reasonable steps to find alternative means of support.

EBs for TVHs were initially available from 1 December 2020 to 28 February 2021, however, the Minister for Social Development and Employment agreed to extend this support from 1 March 2021 to 31 August 2021.

More information relating to the wider policy proposal of EBs for TVHs can be found in the following proactively released Cabinet papers, which are available via the below links:

- *Support for Foreign Nationals in Hardship from 1 December 2020:*
www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/support-for-foreign-nationals.html
- *Extending Support for Temporary Visa Holders in New Zealand:*
www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/extending-support-for-temporary-visa-holders.html

On 6 April 2021, the Prime Minister announced the Trans-Tasman quarantine-free travel between Australia and New Zealand, beginning 19 April 2021. This meant that there would be an increase in TVHs entering New Zealand from Australia who would be eligible for EB.

The requested paper sought to limit the availability of EBs for TVHs to people whose latest arrival date in New Zealand was prior to 19 April 2021 and who travelled to New Zealand under quarantine-free travel.

Please find enclosed a copy of the requested paper, *Changes to Emergency Benefits for temporary visa holders in the context of Trans-Tasman quarantine-free travel*, dated 15 April 2021.

Some information is withheld under section 6(a) of the Act, as to release this information would likely prejudice the security or defence of New Zealand or the international relations of the New Zealand Government.

In order to maintain legal professional privilege, some information is withheld under section 9(2)(h) of the Act. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

Additionally, some information is withheld under 9(2)(f)(iv) of the Act as it is under active consideration. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Please note, the names of some Ministry staff are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter available to the wider public. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz. If you are not satisfied with this response to your request for information regarding New Zealanders stranded overseas due to COVID-19, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui



Bede Hogan
Policy Manager
Welfare and Income Support Policy



Report

Date: 15 April 2021

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development and Employment

This report contains legal advice and is legally privileged. It should not be disclosed on an information request without further legal advice.

Changes to Emergency Benefits for temporary visa holders in the context of Trans-Tasman quarantine-free travel

Purpose of the report

- 1 In light of the recent announcement regarding Trans-Tasman quarantine-free travel, this report seeks your agreement and approval to limit the support provided through Emergency Benefits to specified temporary visa holders whose latest arrival date in New Zealand was prior to 19 April 2021. Your written approval is needed to give effect to this decision.

Executive summary

- 2 Since the COVID-19 pandemic began in March 2020, there has been a group of temporary visa holders (TVHs) stranded in New Zealand that have experienced hardship due to a range of situations and circumstances. TVHs are generally not eligible for financial support from the Ministry of Social Development (MSD), but section 64 of the Social Security Act 2018 allows MSD to pay the Emergency Benefits (EB) to any person, regardless of residency status, if there is an epidemic management notice in effect and you provide written approval for this.
- 3 You initially gave written approval for MSD to provide EB to specified TVHs from 1 December 2020 to 28 February 2021 and then agreed to extend this support from 1 March 2021 to 31 August 2021 [REP/20/11/1104, REP/21/2/116 refer].
- 4 The intent of EB for TVHs is to provide support to TVHs who are experiencing hardship as a result of the unexpected impacts of the COVID-19 pandemic in New Zealand and cannot return home, are making arrangements to return home and have taken all reasonable steps to find an alternative means of support. From 1 December 2020 to 31 March 2021, around 342 EB grants have been made to TVHs in hardship.
- 5 The recent announcement of Trans-Tasman quarantine-free travel (TTQFT) between Australia and New Zealand means that there will be an increase in TVHs entering New Zealand from 19 April 2021. Under current settings, TVHs who travel to New Zealand from Australia could become eligible for EB.
- 6 Providing EB to TVHs who newly enter New Zealand through TTQFT does not meet the policy intent of EB for TVHs, which is to support those who became stranded in New Zealand following the March 2020 lockdown and remained stranded in New Zealand due to issues related to flights, border closures and quarantine capacity in their home countries. People who travel through TTQFT are doing so with more knowledge and understanding of the risks of this travel than those who were initially stranded in New Zealand at the beginning of the COVID-19 pandemic.

- 7 As a result of this and equity issues related to financial support provided to different groups of people (eg New Zealanders who travel to Australia via TTQFT and enter hardship will generally not be eligible for financial support from New Zealand or Australian federal governments), we recommend limiting the provision of EB to the intended cohort of TVHs. This would limit the cohort of TVHs eligible to EB to those whose latest arrival date in New Zealand was prior to 19 April 2021 (the date TTQFT begins).
- 8 We seek your agreement to this change, which requires you to rescind your previous written approval in place of a new written approval, as provided in this report. MSD needs your agreement and written approval to make the necessary amendment before 19 April 2021. This is so that the legislative authority for this limitation is in place prior to the start of TTQFT on 19 April 2021.
- 9 Following your agreement and approval, MSD will begin to operationalise this change from 19 April 2021.

Recommended actions

It is recommended that you:

- 1 **note** the recent announcement of Trans-Tasman quarantine-free travel between Australia and New Zealand means that there will be an increase in temporary visa holders entering New Zealand from 19 April 2021 and that these temporary visa holders could become eligible for Emergency Benefits under current settings
- 2 **note** that providing Emergency Benefits to temporary visa holders who travel to New Zealand as part of the Trans-Tasman quarantine-free travel arrangement does not meet the initial policy intent of supporting temporary visa holders who became stranded in New Zealand due to the initial impacts of COVID-19, and doing so may exacerbate equity issues
- 3 **agree** to limit the provision of Emergency Benefits through section 64 of the Social Security Act 2018 to specified temporary visa holders whose latest arrival date in New Zealand was prior to 19 April 2021 (the date Trans-Tasman quarantine-free travel begins)
- 4 **note** if you agree to recommendation 3, you need to rescind your previous written approval, as provided in recommendation 5, to ensure that the Ministry of Social Development can only grant Emergency Benefits to temporary visa holders in circumstances provided in recommendation 6

AGREE / DISAGREE

5 **agree** to rescind the written approval given on 17 February 2021 [REP/21/2/116 refers], which approved "the Ministry of Social Development to grant Emergency Benefits under section 64 of the Social Security Act 2018, from 1 March 2021 until the close of 31 August 2021, to the following two groups of people in hardship who would not otherwise be entitled to be granted Emergency Benefits under the Social Security Act 2018:

- 5.1 holders of temporary entry class visas which do not include a sponsorship provision imposed under section 48 of the Immigration Act 2009; and
- 5.2 for the avoidance of doubt, holders of valid Recognised Seasonal Employer limited visas, including those visas granted by a special direction under section 61A of the Immigration Act 2009"

AGREE / **DISAGREE**

6 **approve** the Ministry of Social Development to grant Emergency Benefits under section 64 of the Social Security Act 2018, from 1 March 2021 until the close of 31 August 2021, to the following people in hardship who would not otherwise be entitled to be granted Emergency Benefits under the Social Security Act 2018, and:

- 6.1 have a latest arrival date in New Zealand before 19 April 2021; and
- 6.2 are holders of valid temporary entry class visas which do not include a sponsorship provision imposed under section 48 of the Immigration Act 2009; or
- 6.3 are holders of valid Recognised Seasonal Employer limited visas, including those visas granted by special direction under section 61A of the Immigration Act 2009.

YES / **NO**


7 **agree** to forward this report to the Prime Minister and the Ministers of Foreign Affairs and Trade and Immigration.

AGREE / **DISAGREE**



Bede Hogan
Policy Manager
Income Support Policy

15-4-2021
Date



Hon Carmel Sepuloni
Minister for Social Development and Employment

18/4/21
Date

MSD has been providing Emergency Benefits for temporary visa holders in hardship since 1 December 2020

- 10 Temporary visa holders (TVHs) are generally not eligible for financial assistance under the Social Security Act 2018 (the Act) as section 19 of the Act states that a person is not entitled to receive a benefit if they are lawfully resident or present in New Zealand only by virtue of holding a temporary entry class visa. However, section 64 of the Act allows the Ministry of Social Development (MSD) to pay Emergency Benefits (EB) to any person, regardless of residency status, if there is an epidemic management notice in effect and you provide written approval for this.
- 11 Following Cabinet agreement and your written approval, MSD has been providing EB to TVHs in hardship since 1 December 2020. The intent of EB for TVHs is to provide support to those TVHs who are experiencing hardship as a result of the unexpected impacts of the COVID-19 pandemic in New Zealand and cannot return home, are making arrangements to return home and have taken all reasonable steps to find an alternative means of support.
- 12 EB for TVHs was originally intended to be in place from 1 December 2020 to 28 February 2021 [REP/20/11/1104 refers]. This was extended to be in place from 1 March 2021 to 31 August 2021 following Cabinet agreement and your written approval [REP/21/2/116 refers].
- 13 Over the period 1 December to 31 March 2021, 588 applications for EB for TVHs have been received. Of these:
 - 342 EB grants have been made
 - 246 EB applications have been declined.
- 14 The home countries of the majority of TVHs that are granted EB remain the same as previous reporting; with people from Tonga, India and China making up over one third of grants.

Some people who travel quarantine-free from Australia may be eligible for support from MSD


- 15 The Government's recent announcement of Trans-Tasman quarantine-free travel (TTQFT) between Australia and New Zealand means that people who meet the conditions of travel will be able to enter New Zealand from 19 April 2021 without the need for quarantine in a managed isolation facility. Along with Australian and New Zealand residents and citizens, TTQFT will allow for people who have been in Australia on temporary visas to enter New Zealand on temporary visas (if they hold valid New Zealand visas).

Australian permanent residents and citizens can already receive financial assistance from MSD

- 16 Australian permanent residents and citizens are likely to be the largest group of incoming people to New Zealand under TTQFT arrangements. In general, Australians do not need to be granted a visa prior to travelling to New Zealand and are considered residence class visa holders in New Zealand.
- 17 As Australians are considered residence class visa holders, they may be eligible to receive assistance from MSD in certain circumstances. Under current settings and legislation, Australians may be eligible for Jobseeker Support on the grounds of hardship or Emergency Benefit and may also be eligible for supplementary assistance

and hardship assistance.¹ This is a business-as-usual setting within the New Zealand income support system.

People who travel quarantine-free to New Zealand on temporary visas may be eligible for EB for TVHs under current settings

- 18 People who are residents or citizens of other countries who have been in Australia on temporary visas will also be able to travel to New Zealand if they meet the travel conditions. It is difficult to predict how many people in this situation may choose to travel to New Zealand through TTQFT arrangements, but the Ministry of Business, Innovation and Employment is predicting that:
 - 18.1 the largest group of incoming TVHs will be those who are eligible for a visa waiver (this is essentially a visitor visa). These are people who do not need to be granted a visa prior to travelling to New Zealand and includes travellers from countries such as the United Kingdom, France, Germany and Japan
 - 18.2 there will also be a group of people who are currently in Australia and are residents and citizens from other countries who will newly apply for visas to come to New Zealand. This group is expected to be smaller than those travelling on visa waivers.
- 19 General conditions on temporary visas include the provision that a person must be able to support themselves in New Zealand (eg through savings, employment, sponsorship).^(a)

- 20 Government messaging of the TTQFT announcement has been that, in general, no financial support will be available for people if they face financial issues as a result of travelling between Australia and New Zealand via TTQFT, such as a lockdown or other event. This includes New Zealanders who may travel to Australia.
- 21 The current settings of EB support for TVHs means that TVHs that newly enter New Zealand from 19 April 2021, could be provided financial support from MSD if they were to find themselves in hardship in New Zealand.
- 22 Future quarantine-free arrangements with other countries may have similar implications. For example, a quarantine-free arrangement between New Zealand and the Cook Islands may mean people who have been stranded in the Cook Islands on temporary visas may choose to travel to New Zealand, and under current settings, may be eligible for EB.

Under current settings, TVHs who newly enter New Zealand as part of the TTQFT arrangement, could be eligible for EB

- 23 Currently, there is no date limitation related to when a person must have arrived in New Zealand to be eligible to EB for TVHs. Arrival date limitations were not needed at the time of this initial approval as borders have been closed to incoming TVHs in most circumstances since March 2020.
- 24 In cases where TVHs have been able to enter New Zealand through border exceptions, there have been policies in place to ensure that these people are able to support themselves for the duration of their stay in New Zealand.² These conditions

¹ Australian permanent residents and citizens are not eligible for EB for TVHs.

² For example, international students are required to have \$20,000 in funds to support themselves (and are therefore ineligible for EB due to cash assets), up from the \$15,000 that is usually

meant that it was not expected that TVHs entering New Zealand through border exceptions would require EB and therefore no changes were made to the eligible group.³

- 25 With the opening of TTQFT between Australia and New Zealand, and with the current EB settings as they are, TVHs who enter New Zealand from Australia may be eligible for EB. Eligibility to EB is a discretionary and hardship-based benefit that is assessed on a person's individual circumstances, meaning that there could be a range of situations that TVHs could face after arriving in New Zealand that may make them eligible. Some examples include:
 - 25.1 a TVH visiting New Zealand for a short holiday becomes stranded due to a state lockdown in Australia (which they intended to return to) and enters financial hardship
 - 25.2 a TVH travels from Australia to New Zealand on a work visa but their job falls through and they enter financial hardship
 - 25.3 a TVH travels to New Zealand to stay with family until they are able to return to their home country from New Zealand but is unable to work, uses the remaining resources available to them and then enters financial hardship
 - 25.4 a TVH travels from Australia to New Zealand for a holiday (ie has no work rights) but then decides to apply for a new visa or visa condition change so that they can work in New Zealand. Their visa takes two months to process and, in the meantime, they cannot work and subsequently enter financial hardship
 - 25.5 a TVH travels to New Zealand for a holiday before their flight is scheduled to depart from New Zealand to their home country. Their home country enters a lockdown, stops accepting flights, or they cannot get a quarantine placement. The TVH is stranded in New Zealand until there are flights or they can get a quarantine placement and they subsequently enter financial hardship.
- 26 Some TVHs who have entered from Australia may also be in the position of being unable to return to Australia, due to not having a valid visa to re-enter, or they may have used up the duration of their Australian visa.
- 27 These situations may also exist in any future quarantine-free travel arrangements with other countries, such as with Pacific Island nations.
- 28 Take-up of EB to date has been lower than anticipated and it is not expected that the opening of TTQFT would significantly increase applications and grants. However, this could change quickly if there was a change in status of the TTQFT and TVHs became stranded in New Zealand and required financial support.

Due to the original intent of the support, we recommend that you limit EB for TVHs to ensure it remains targeted to the intended cohort

- 29 The purpose of EB for TVHs is to support those who are experiencing hardship as a result of the unexpected impacts of the COVID-19 pandemic in New Zealand while they try to return home or otherwise support themselves. EB is targeted towards

required. For seasonal workers arriving under border exceptions, their countries must agree to have plans in place to take back their workers as well as other Recognised Seasonal Employer (RSE) workers already here when the 2020/21 season ends.

³ MSD does not use or verify arrival date information of applicants currently as it is not part of the eligibility criteria to EB for TVHs. From available data about clients' visa information, MSD considers it unlikely that a TVH who arrived in New Zealand through a border exception since March 2020 has previously, or is currently, receiving EB.

TVHs who became stranded in New Zealand following the March 2020 lockdown and remain stranded in New Zealand due to issues related to flights, border closures and quarantine capacity in their home countries. Support is also provided on a discretionary basis in a range of other situations and circumstances (eg employment and medical reasons).

- 30 The global and Trans-Tasman situation regarding COVID-19 has changed since the initial lockdown period of March 2020 and continues to evolve. While TTQFT between Australia and New Zealand is beginning, lockdowns and major flight disruptions are no longer unexpected events (as they were back in March 2020). Those travelling via TTQFT between Australia and New Zealand are doing so with more knowledge and understanding of the risks of this travel than those who were initially stranded at the beginning of the COVID-19 pandemic.
- 31 Government messaging has been clear that travel between Australia and New Zealand as part of TTQFT is at the flyer's risk – people must be prepared to support themselves if there is a change in the status of TTQFT that impacts their return travel, onward travel or their financial situation.

We recommend limiting EB for TVHs to align with the policy intent of the payment and ensure that equity issues are limited

- 32 Providing EB to TVHs who newly travel to New Zealand after the establishment of TTQFT on 19 April 2021 does not meet the original intent of this support. Diverting from this intent and providing support may have a range of implications, including: misalignment from government messaging around "flyer-beware", incentives for people to enter or remain in New Zealand,⁴ and exacerbate existing equity risks around support for New Zealanders in Australia (ie there would be support available to some TVHs who faced hardship in New Zealand, but there would generally not be similar support available to New Zealanders who faced hardship in Australia).
- 33 MSD therefore recommends that you limit EB for TVHs to ensure it remains targeted to the intended cohort (those whose latest arrival date in New Zealand was prior to the beginning of TTQFT on 19 April 2021). Additionally, limiting support to the intended cohort means there will be alignment with the:
- 33.1 government messaging around "flyer-beware" and preparing people to support themselves if there is a change in status of the TTQFT that impacts them
- 33.2 approach to New Zealanders who travel to Australia, who will generally be ineligible for financial support (from either New Zealand or Australian federal governments)
- 33.3 'business-as-usual' model of support for foreign nationals who face financial and other hardship in New Zealand (or any other country), which is generally to be provided by the foreign consulate or mission.
- 34 There are some disadvantages to limiting support to those TVHs who arrived in New Zealand prior to the establishment of TTQFT on 19 April 2021. Disadvantages include:
- 34.1 There may be some groups of TVHs that would be ineligible for support that the government may have an interest in supporting. For example, some people may travel from Australia to New Zealand to undertake work where there is a labour

⁴ There is currently no equivalent support to EB offered to TVHs in Australia. ^{6(a)}

shortage (such as the horticulture, viticulture or ski industries). If these people lose their employment or are impacted by a lockdown, they will not be eligible for EB. These people may then face hardship and additional barriers to re-entering work in key industries.

- 34.2 If no support is provided to TVHs who arrive in New Zealand following 19 April 2021, and they find themselves in hardship (eg through job loss, impacts of a lockdown), there are no alternative mechanisms of support provided by government. This could have flow-on impacts to non-government organisations, friends and family and other sectors, particularly in a significant event such as a lockdown in New Zealand.
- 35 In both of these circumstances, the settings represent the approach to TVHs in hardship prior to the beginning of the COVID-19 pandemic. TVHs are generally not eligible for financial support in New Zealand and EB for TVHs is only temporarily in place due to the impacts of COVID-19. Support for TVHs in these situations is generally through their foreign mission in New Zealand (High Commission, Embassy or Consulate). Some TVHs newly entering New Zealand (through border exceptions or TTQFT) may also have additional conditions on their visa (such as some seasonal workers who have conditions on their visa that their government will repatriate them and that their employers will support their wellbeing).

Legal advice

9(2)(n)

Your written approval is needed to limit access to EB to those who were in New Zealand prior to the establishment of TTQFT

- 39 Your written approval was previously sought to approve MSD to grant EB to TVHs from 1 December 2020 to 28 February 2021 and then again from 1 March 2021 to 31 August 2021. If you agree to limit eligibility to EB to the intended cohort, you will need to rescind your previous written approval in place of a new written approval which includes the date limitation change. The date limitation includes people who have a "latest arrival date in New Zealand before 19 April 2021" to ensure that the eligible cohort is limited to only those who arrived prior to 19 April 2021 and have not left and re-entered at a later date (a person could have various arrival dates into New Zealand over time).
- 40 Section 64 of the Act is a broad provision that allows the granting of EB to people who would not otherwise be entitled, meaning further detail is required to specify who can receive this particular form of EB. Your previous written approval specified two groups of TVHs that are eligible for EB under section 64 of the Act (holders of valid temporary entry class visas that do not include a sponsorship provision and holders of valid Recognised Seasonal Employer limited visas).

- 41 Recommendation 6 in this report specifies the same two groups of TVHs that will be eligible for EB under section 64 of the Social Security Act 2018 and inserts a provision specifying that these groups of TVHs must have a latest arrival date in New Zealand prior to 19 April 2021. No other changes to the eligible groups are recommended at this stage.

9(2)(b)

- 43 Amending the written approval to insert the arrival date limitation will not impact the people for whom this support was originally intended for. If a TVHs latest arrival date in New Zealand was prior to 19 April 2021 and they meet the other eligibility criteria, they will remain eligible for EB. This will be the case even if the event that causes their hardship occurs after 19 April 2021.

MSD will begin to operationalise your decision from 19 April 2021

- 44 Following your written approval to limit EB to TVHs whose latest arrival date in New Zealand was prior to 19 April 2021, MSD will begin to operationalise this amendment. The proposed date limitation will be a new part of assessing eligibility to EB for TVHs and MSD will need to determine an applicant's latest arrival date in New Zealand, in addition to their visa status, to assess their eligibility to EB.
- 45 MSD is currently working through how this date limitation will be operationalised. Applicants are currently asked their latest arrival date in New Zealand as part of their application for EB, however MSD currently has no way to verify this information. This is because there is no legal authority to share arrival date (or other) information with INZ or Customs New Zealand, and alternative approaches are thus being explored.
- 46 MSD is exploring how to use an existing consent form for people who newly apply for EB for TVHs from 19 April 2021, to establish their latest arrival date in New Zealand. This consent form allows for information related to benefit eligibility (such as visa and arrival date information) to be shared between MSD and INZ despite there being no official information sharing agreement for this purpose. MSD will keep you updated on this approach as it develops, through the Social Development and Employment Update.

Next steps

- 47 If you agree to limit EB to TVHs whose latest arrival date in New Zealand was before 19 April 2021 (the date TTQFT begins), we need your written approval before 19 April 2021. This is so that the legislative authority for this limitation is in place prior to the start of TTQFT on 19 April 2021.
- 48 MSD is currently working through how this date limitation will be operationalised, particularly around verifying an applicant's latest arrival date in New Zealand. Following your agreement and approval, MSD will update business processes and communications to staff and relevant stakeholders.

9(2)(b)

File ref: REP/21/4/369

Author:

9(2)(a)

Responsible Manager: Bede Hogan, Policy Manager, Income Support Policy