

This presentation...

This presentation includes:

- background to the immigration act review
- information on the process for putting the new legislation and regulations in place
- information on the proposed structure of the new immigration legislation and regulations
- information on ***how to have your say and provide feedback***
- a short summary of key changes
- an invitation for you to provide us feedback on issues of interest or concern to you

Background to the immigration act and regulations review

Background to the immigration act review

The Cook Islands *Entry, Residence and Departure Act 1971-72* (the ERD Act) is not fit for purpose:

- tourist numbers jumped from approximately 73,000 visitors in 2000 to approximately 160,000 visitors in 2016
- in 1971, the number of air travellers was 332 million, in 2000 it was 1.7 billion, in 2016 it was 3.8 billion

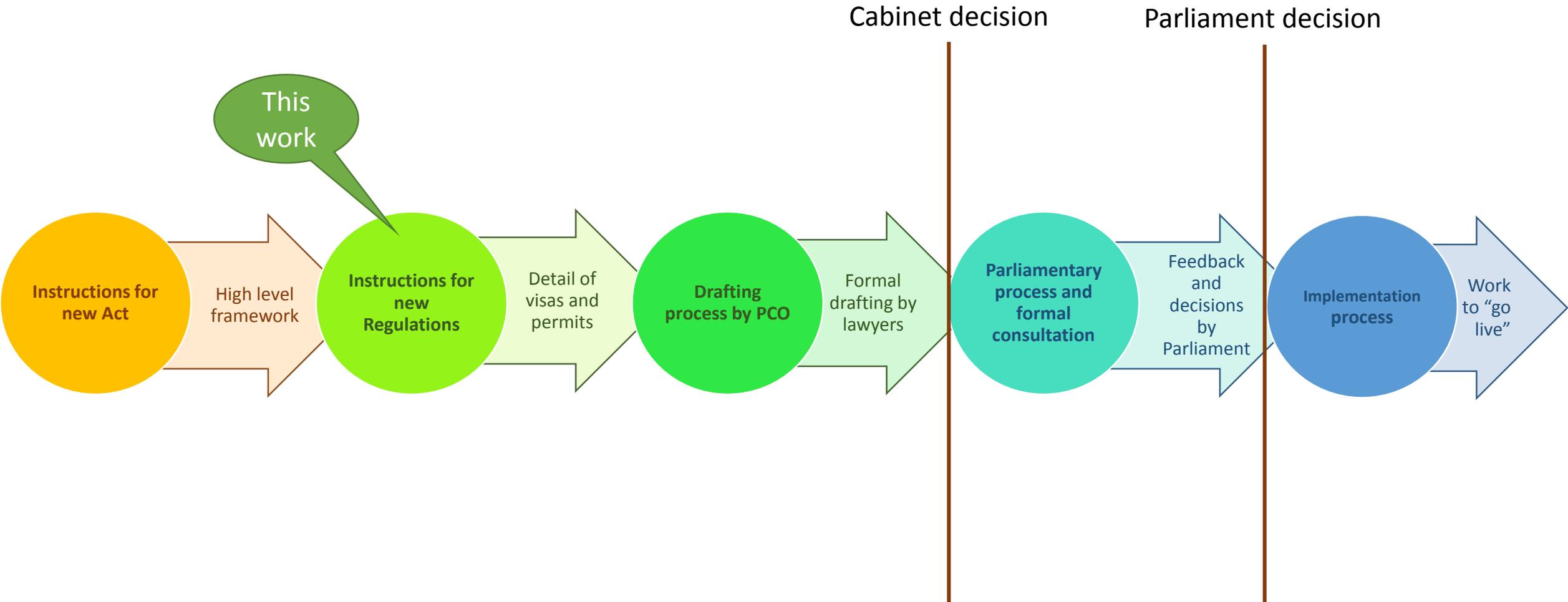
Background to the immigration act review

New legislation and regulations are needed to support:

- **success** of the Cook Islands, as immigration supports investment and business development, and appropriate access to skilled and needed workers. Immigration helps facilitate the tourism industry
- **safety** of the Cook Islands, as immigration legislation should help prevent the travel, entry and stay of non-Cook Islanders with criminal convictions or who are not of an acceptable standard of health
- **security** of the Cook Islands, by ensuring that there are provisions to remove or deport non-Cook Islanders who do not abide by Cook Islands law, or who are considered a threat or risk to security

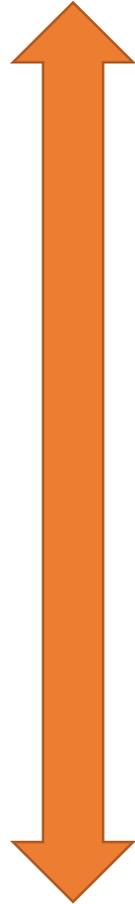
Process and structure for the new legislation and regulations

Steps in the process for putting the new immigration legislation and regulations in place

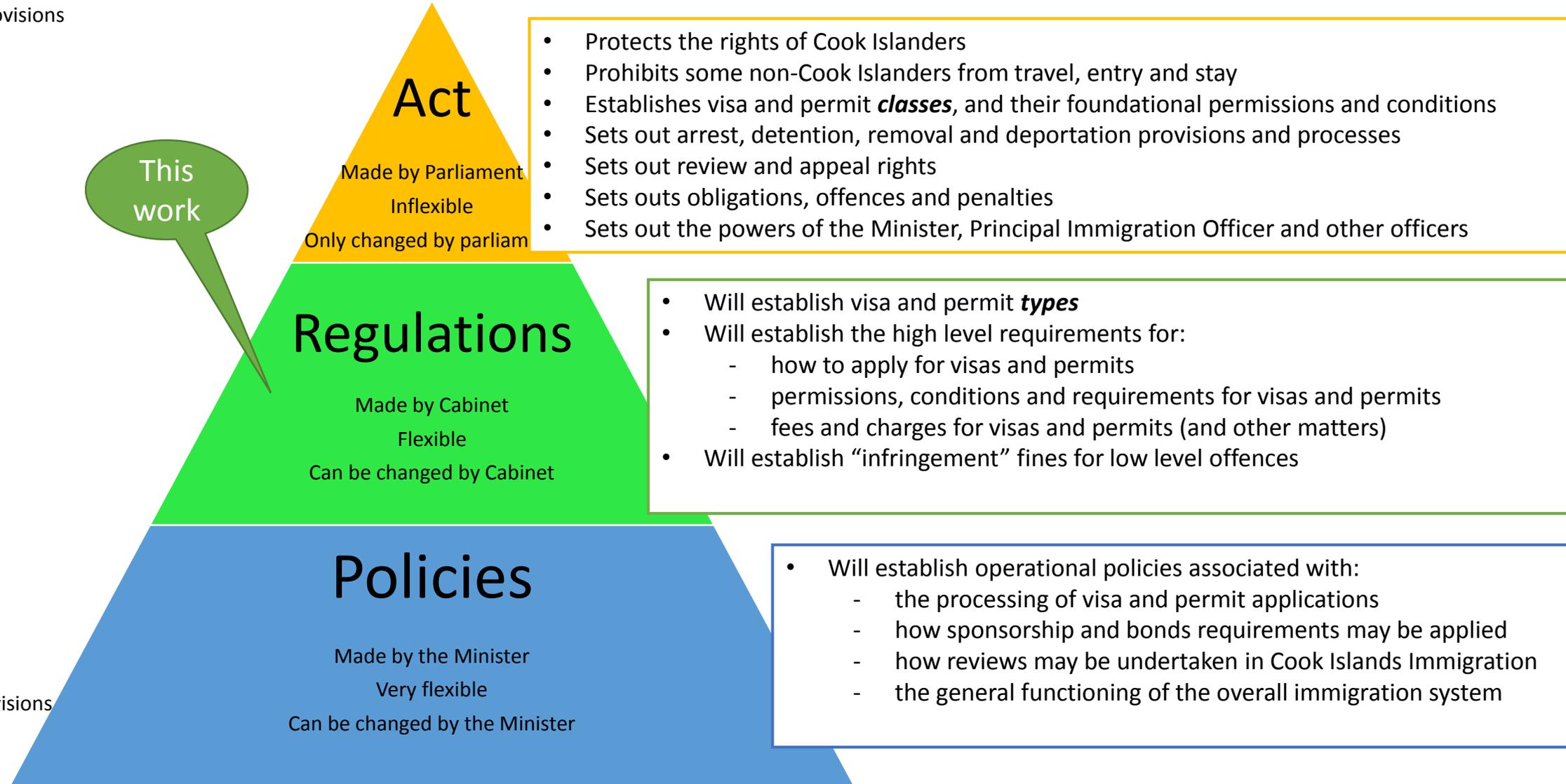


The structure of the new legislation and regulations - “framework” immigration legislation

Most significant provisions



More flexible provisions



NOT GOVERNMENT POLICY

How to have your say on the proposals

Tell us the issues of interest or concern to you today

Write a submission and send it to kairangi.samuela@cookislands.gov.ck and stephanie.coutts3@mbie.govt.nz

Please tell us your views no later than 5:00pm on 7 December 2018

The proposals ARE NOT GOVERNMENT POLICY

- The proposals in this presentation and the accompanying documents are not Government policy
- The proposals have not yet been reviewed and agreed by the Minister or Cabinet
- Cabinet review, feedback and agreement will occur after stakeholder feedback has been received and considered
- Feedback is being sought before Cabinet decisions are sought
- Seeking Cabinet decisions is one of the next steps for the immigration act review

The purpose of the new legislation and regulations

An Act to manage the travel, entry, stay and departure of non-Cook Islanders to support the success, safety and security of the Cook Islands

- No one will agree with **ALL** the proposals – they must balance lots of views
- But, the proposals will enable a better immigration system and service than there is now
- There will also be more ability to change immigration settings to meet the needs of the Cook Islands

Key proposals for the new legislation and regulations

Who is a Cook Islander?

Who is a “Cook Islander” for immigration purposes?

“Cook Islander” means a person *belonging to a part of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander*

- Cook Islanders have the right to travel to, enter and stay in the Cook Islands at any time
- Cook Islanders need to prove their status to access their right, so it can be granted
- Immigration legislation should not be used to prohibit Cook Islanders or to deport them

Who is prohibited from the Cook Islands?

Which non-Cook Islanders are prohibited from travel, entry and stay? Who is prohibited?

Serious offending:

- likely to undertake an action or engage in an activity contrary to the values of the Cook Islands
- likely to commit an offence in the Cook Islands
- a member of a gang of concern
- a threat to security, defence or public order or a member of a terrorist organisation
- subject to immigration related sanctions imposed by the United Nations

Minor offending:

- holding a debt to the Crown
- are serving a ban from entry
- being convicted of any offence and sentenced to a term of imprisonment of more than one year
- being convicted of more than one offence for which the combined imprisonment would be more than one year
- are not an acceptable standard of health

Permanent Residence

Proposals for Permanent Residence for the regulations

The **number of Permanent Residence certificates that can be granted is maintained at 650** BUT:

- certificates granted 75 years prior are excluded from the number
- there is a one-off transitional application process to grant certificates to those who meet new criteria

NOTE: 650 certificates equals approximately 4% of the total Cook Islands resident population

New processes and criteria are put in place for spouses, dependent children and independent applicants

Spouses and dependent children may apply when they meet the criteria

The application must be decided in 28 days

Application processes are held every three years for independent applicants,

But, only if there is room within the 650 certificate cap

A Permanent Resident - Spouse is a life partner in a marriage, civil union, or a de facto relationship that is genuine and stable, and has endured for a period greater than five years

Key application criteria:

- Must have **lived in the Cook Islands for the past five years**
- Must have evidence that the Cook Islands is the couple's **primary place of residence**
- Must provide evidence that their relationship with their spouse is:
 - genuine; and
 - stable
- Must provide evidence that their relationship with their spouse has endured for a minimum of 5 years
- Must have evidence of completing the “Kia Orana Values” programme
- Must pay the prescribed fee

An Independent Permanent Resident is a non-Cook Islander who has made a commitment to the Cook Islands, to Cook Islands culture, to the community and to the success of the Cook Islands

Key application criteria:

- Must be 18 years old or older
- Must be of good character
- Must be of acceptable standard of health
- Must evidence that **the Cook Islands is the applicant's primary place of residence**
- Must have lived in the Cook Islands for the past:
 - five years, if the applicant is a New Zealand citizen; or
 - 10 years if the applicant is not a New Zealand citizen
- Must have evidence of English language proficiency and Maori language ability
- Must have evidence of completing the "Kia Orana Values" programme or other government programme
- Must have **evidence of undertaking 312 hours of community service** over the past five years
- Must have four statutory declarations of **support, including from one aronga-mana in their vaka**
- Must pay the prescribed fee

Proposals for Permanent Residence for the legislation, cont...Can permanent residency be revoked?

Permanent Residence **gained by descent by being born in the Cook Islands** cannot be revoked

Permanent Residence **gained by grant** (not descent by being born in the Cook Islands) can be revoked where:

- it was gained by fraud
- where the person is outside the Cook Islands for three years and ceased to make the Cook Islands their home
- with the agreement of a Judge, where the person has ceased to make the Cook Islands their home
- within the first 10 years, where the person is convicted and sentenced more than 1 year in prison
- they are, on reasonable grounds believed to a threat or a risk to security or a terrorist

Visas and permits

Proposals for Residence visa and permits in the regulations

Resident Spouse:

A Resident Spouse is a life partner of a Cook Islander, Permanent Resident, or an Investor, who is in a marriage, civil union, or de facto relationship with that person that is genuine and stable (and likely to endure)

- Must be of good character, and an acceptable standard of health
- Must be, and remain in, a genuine and stable relationship
- Can stay, for:
 - 5 years where granted to the spouse of a Cook Islander or Permanent Resident
 - 3 years from date of grant where granted to the spouse of a Resident Investor
- Must do a Kia Orana programme if going to work, to learn about the Cook Islands

Resident Child:

A Resident Child is a minor under the age of 18 years old whose parent or guardian has parental responsibility for them (within the meaning of section 34 of the Family Protection and Support Act 2017) and is the spouse of a Cook Islander, Permanent Resident, or an Investor

- Must be of good character, and an acceptable standard of health
- Must have both parent's permission to be in the Cook Islands
- Can stay with parent, for:
 - 5 years where granted to the spouse of a Cook Islander or Permanent Resident
 - 3 years from date of grant where granted to the spouse of a Resident Investor

Investor:

An investor is a non-Cook Islander who is in the process of applying, or has applied, to the Business Trade and Investment Board (BTIB) to make a foreign direct investment or to be a foreign enterprise, and who has agreed to combine the BTIB and immigration application process

- Must be of good character, and an acceptable standard of health
- Must have BTIB approval and meet their investment obligations
- Must be able to speak English
- Can stay for up to 3 years at a time
- Must do a Kia Orana programme

Proposals for Work visa and permits in the regulations

Government Worker:

A Government Worker is a non-Cook Islander travelling to, entering and staying in the Cook Islands as a fixed-term employee of a Government agency or as a contracted worker on a Government-endorsed programme or initiative who intends to reside in the Cook Islands for the duration of their employment or contract

- Must be of good character, and an acceptable standard of health
- Must have a contract with a government agency or organisation contracted to government
- Can stay for the length of the contract or up to 3 years

Specialist Worker:

A Specialist Worker is a non-Cook Islander travelling to, entering and staying in the Cook Islands for a defined period of time, no greater than 31 days at any one time and six months in any one year, to provide technical expert advice or specialist consultancy services, that have been contracted by the Government or a registered business or incorporated society in the Cook Islands

- Must be of good character, and an acceptable standard of health
- Must have a contract for services (if for an overseas business, it must have BTIB approval)
- Can travel for the length of the contract, up to 3 years, but stay only 31 days each time

International Worker:

An International Worker is a non-Cook Islander, 18 years old or older, who has a written and lawful offer of employment with a registered business or organisation in the Cook Islands and wants to take up that offer of employment

- Must be of good character, and an acceptable standard of health
- Must have a written offer of employment AND evidence that their prospective employer has attempted to employ a Cook Islander
- Must be able to speak English, and do a Kia Orana programme to learn about the Cook Islands
- Can stay for the length of the employment contract, up to 3 years at a time
- Cannot stay on this visa and permit for longer than 6 years in total

Proposals for Study visa and permits in the regulations – International Minor Student

International Minor Student:

An International Minor Student is a non-Cook Islander who is under the age of 18 years old and has accompanied their parent or guardian who has parental responsibility for them (within the meaning of section 34 of the Family Protection and Support Act 2017) to the Cook Islands and who wishes to continue their primary or secondary education

- Must be of good character, and an acceptable standard of health
- Must have both parent’s permission to be in the Cook Islands
- May stay for as long as their parent, no longer than 3 years
- Is not permitted to work at any time, as should be in school

International Adult Student:

An International Adult Student is a non-Cook Islander 18 years old or older and has a written and lawful offer of a place of study at a Cook Islands Government school or a registered private school (as defined under the Education Act 2012) who wants to take up that offer of study

- Must be of good character, and an acceptable standard of health
- Must have an offer of study from a registered school
- Must be able to speak English
- May stay for the length of a course, up to one year
- May apply for permission to work up to 20 hours a week

International Intern:

An International Intern is a student or trainee, 18 years old or older, seeking an educational outcome, who is engaged by an intern provider under a written agreement, sometimes without pay, in order to satisfy the requirements for a qualification in which they are enrolled or gain work experience immediately following the receipt of a qualification

- Must be of good character, and an acceptable standard of health
- May stay for the length their internship, up to one year
- May only work for their intern provider, not any other employer

Proposals for VISITOR visa and permits in the regulations

New Zealand Visitor:

A New Zealand Visitor is a New Zealand citizen who holds a New Zealand passport and is travelling to, entering and staying in the Cook Islands as a bona fide visitor for no greater than 90 days

- Must be of good character, and an acceptable standard of health
- May stay for 90 days
- May extend stay no longer than 6 months, on this permit type
- May undertake investment exploration
- May undertake short term training

International Visitor:

An International Visitor is a visitor who is not a New Zealand citizen and is travelling to, entering and staying in the Cook Islands as a bona fide visitor for no greater than 31 days

- Must be of good character, and an acceptable standard of health
- May stay for 31 days
- May extend stay no longer than 6 months, on this permit type
- May undertake investment exploration
- May undertake short term training

Long-Term Visitor:

A Long-Term Visitor is a non-Cook Islander who is seeking to travel to, enter and stay in the Cook Islands for a period of no greater than six months as a:

- *bona fide visitor seeking an extended stay; or*
- *a volunteer, seeking to offer their services to the Cook Island Government or a community organisation*
- Must be of good character, and an acceptable standard of health
- May stay for 6 months
- May extend stay no longer than 12 months
- Needs Police certificate and health checks
- May undertake investment exploration
- May undertake short term training

Proposals for SPECIAL visa and permits in the regulations – Special Spouse

Special Spouse:

A Special Spouse is a life partner of a non-Cook Islander who is in a marriage, civil union, or de facto relationship that is genuine and stable

- Must be of good character, and an acceptable standard of health
- Can stay the same time as their spouse on another permit
- Can work if given permission by Immigration

Special Entrant:

A Special Entrant is a non-Cook Islander travelling to, entering and staying in the Cook Islands for a special purpose or activity, and that purpose or activity does not fit within the permissions and conditions of any other visa and permit class or type

- Must be of good character, and an acceptable standard of health
- Can stay of a set time, not greater than 180 days
- To be used when other visas and permits are not quite right

Summary of removal and deportation proposals

Cook Islanders, and Permanent Residents by descent having been born in the Cook Islands, cannot ever be removed or deported under immigration legislation

A non-Cook Islander who is not a permanent resident can be removed or deported if they:

- fail to meet their immigration obligations on application, arrival or departure
- fail to comply with the conditions of their visa or permit
- are required to have sponsorship and it is withdrawn
- **are in the Cook Islands unlawfully**
- **are in the Cook Islands due to fraud**
- **are convicted of any offence punishable by imprisonment of a term of more than one year**
- are on reasonable grounds believed to be likely to undertake an action or actions contrary to the values of the Cook Islands
- are on reasonable grounds believed to be likely to commit an offence in the Cook Islands that is punishable by imprisonment
- are on reasonable grounds believed to be a member of a gang of concern
- is on reasonable grounds believed to be a threat or a risk to security
- have had their Permanent Residence status cancelled

When can a non-Cook Islander liable for removal or deportation be detained?

A non-Cook Islander is liable for removal or deportation must be detained there is reasonable grounds to believe they:

- will commit an offence
- area threat to security, defences or public order, is a terrorist or subject to sanctions

Initial detention, without a warrant, can be for 144 hours

Ongoing detention must be authorised by a Judge of a High Court for periods no longer than 28 days at a time

There will be an ability to release a non-Cook Islander on the conditions that they:

- reside at a specified place
- report to a specified place at specified times
- provide a guarantor who is responsible for ensuring the person complies with any requirements
- attend any required interview
- undertake any other action to facilitate departure

Summary of impact on employers, education providers and intern providers

Obligations on employers, education providers and intern providers

Every employer, education provider and intern provider must:

- take reasonable steps to ensure that a non-Cook Islander is entitled to work or study
- only employ or enrol (outside of compulsory education) those with entitlement
- make wage and time, or attendance, records available
- support their worker or student to comply with any visa and permit conditions

No employer, education provider and intern provider may:

- use their role or status to coerce, threaten or deceive, or otherwise exploit a non-Cook Islander
- hold or withhold any details or documents, or other materials or monies, or other things that belong to a non-Cook Islander
- use details or documents, or other materials or monies, or other things that belong to a non-Cook Islander to influence them

Penalties for exploitation will be:

- \$500,000
- imprisonment for a term not exceeding 20 years
- both

Obligations on employers and intern providers

Every employer must first try to hire a Cook Islander, unless it is a specialist role

Every employer and intern provider must have a written agreement with a non-Cook Islander that includes:

- the date their agreement commences and expires
- the names of the employee and employer, or intern and intern provide
- a description of the work to be performed
- the normal hours of work
- the employee's revenue management division number
- provisions for payment of wages or salary, annual leave, public holidays and sick leave
- procedures for resolution of disputes

**QUESTIONS?
ISSUES?
CONCERNS?**

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