



BRIEFING

Sector Agreements – Feedback from public consultation and initial advice

Date:	2 April 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3040 18-19

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	<p>Agree to the outcomes being sought from Sector Agreements.</p> <p>Agree that Sector Agreements are compulsory for employers hiring employer-assisted migrants for a role under the scope of the agreement.</p> <p>Agree that Sector Agreements will define the scope of a sector and include benefits to be provided by Government and commitments to be met by sectors.</p> <p>Discuss initial thinking on these components of a Sector Agreement in order to inform the development of further advice.</p>	8 April 2019
Hon Kris Faafoi Associate Minister of Immigration	Copy for your information.	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Siân Roguski	Manager, Immigration Policy	04 901 3855	Privacy of natural persons	✓
Paige Wilburn	Policy Advisor, Immigration Policy	04 901 4951	N/A	

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 Withdrawn |



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Purpose

This briefing provides analysis of feedback received through public consultation on Sector Agreements and seeks your agreement on key design features of Sector Agreements.

Executive summary

Cabinet agreed to undertake public consultation on a set of proposals on a new approach to employer-assisted temporary work visa settings and regional workforce planning from 18 December 2018 to 18 March 2019.

Sector Agreements were proposed to be compulsory and negotiated with key sectors which are high users of migrant labour for lower-skilled roles in order to shift this dependency and ensure that employers place more New Zealanders into jobs.

A total of 643 submissions were received and of those that submitted on Sector Agreements, half agreed that Sector Agreements should be introduced, 15 per cent did not agree, 25 per cent were unsure, and 10 per cent did not have an opinion.

Generally submitters viewed Sector Agreements as beneficial for both employers and migrants, but some employer groups would prefer that Sector Agreements are voluntary. Some submitters raised concerns that the agreements may reduce employer flexibility and that commitments may be too onerous for smaller employers.

In order to inform the development of further advice on the design of Sector Agreements, officials wish to:

- seek your agreement to the outcomes being sought from Sector Agreements;
- confirm that Sector Agreements will be compulsory for employers hiring an employer-assisted temporary migrant for any role covered by an agreement; and
- seek your agreement to the coverage and proposed approach for determining benefits and commitments for a Sector Agreement.
- discuss officials initial thinking on the design of these components of a Sector Agreement in order to inform the development of further advice.

Subject to your agreement, further detailed advice on the design of Sector Agreements will be developed to inform the Cabinet paper seeking final decisions in June 2019.

Recommended action

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

- a **Note** that Cabinet agreed to undertake public consultation on a new approach to employer-assisted temporary work visas and regional workforce planning from 18 December 2018 to 18 March 2019.
Noted
- b **Note** that Sector Agreements were proposed to be compulsory and negotiated with key sectors which are high users of migrant labour for lower-skilled roles in order to shift this dependency and ensure that employers place more New Zealanders into jobs.
Noted
- c **Note** that generally submissions supported the introduction of Sector Agreements, but some employer groups would prefer that Sector Agreements are voluntary.
Noted
- d **Agree** the following key design features for Sector Agreements:
- i. The outcomes being sought from Sector Agreements are to support employers to place more New Zealanders into jobs and, as a consequence, reduce demand for lower-skilled migrant workers over time;
Agree/Disagree
 - ii. Sector Agreements are compulsory for employers hiring an employer-assisted temporary migrant for a role covered by an agreement;
Agree/Disagree
 - iii. The coverage of a Sector Agreement is primarily defined by the ANZSCO 4-5 occupations within that sector; and
Agree/Disagree
 - iv. A framework setting out the range of benefits and commitments that could be sought through a Sector Agreement will be agreed by Cabinet, but the exact mix of benefits and commitments will be negotiated on the basis of the specific circumstances of a sector.
Agree/Disagree
- e **Discuss** with officials initial thinking on the design of these components of a Sector Agreement in order to inform the development of further advice.
Discuss
- f **Note** that prior to the Labour Market Ministers Group Meeting scheduled for 29 May 2019, officials intend to provide further detailed advice on the design and implementation of Sector Agreements.
Noted

Siân Roguski
Manager, Immigration Policy
Labour and Immigration Policy, MBIE

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Hon Iain Lees-Galloway
Minister of Immigration

..... / /

Background

1. On 10 December 2018, Cabinet agreed to undertake public consultation on a set of proposals on a new approach to employer-assisted temporary work visa settings and regional workforce planning [CAB-MIN-0608.01 refers]. The high level objectives for the immigration system that informed the development of the proposals were as follows:
 - temporary work visas are not being used to fill lower skill roles on an ongoing basis;
 - employers place more New Zealanders into jobs, which help their businesses to grow and thrive, and result in better jobs for New Zealanders; and
 - temporary migrant workers, when they are employed, are not exploited and have wages and conditions that are consistent with New Zealand norms.
2. As part of this consultation, Sector Agreements were proposed to be negotiated with key sectors which are high users of migrant labour for lower-skilled roles in order to shift this dependency and ensure that employers place more New Zealanders into jobs.
3. For these sectors, agreements are intended to be negotiated between Government and representative sector bodies to set the terms on which employers covered by an agreement can hire migrant workers over a three-year period. The agreements were proposed to be compulsory and include benefits for employers to provide certainty of access to migrant workers in the short term and resolve ANZSCO anomalies. In return the agreements will set commitments on sectors/employers to take steps to reduce their reliance on lower-skilled temporary migrants in the longer term.
4. Consultation proposed that negotiation be undertaken with the residential aged care and tourism/hospitality sectors in mid-2019 with a view for the agreements to be in effect in January 2020. This would be followed by negotiations with the dairy and road freight transport sectors in 2020.

Feedback from consultation on Sector Agreements was generally supportive

5. Public consultation was open from 18 December 2018 to 18 March 2019. A total of 643 submissions were received and 56 per cent of total submitters responded to the questions on Sector Agreements. Of those that submitted on the proposal, half agreed that Sector Agreements should be introduced, 15 per cent did not agree, 25 per cent were unsure, and 10 per cent did not have an opinion.
6. Generally submitters viewed Sector Agreements as beneficial for both employers and migrants and viewed them as a way to address labour shortages and ensure good terms and conditions for workers. Some submitters thought the agreements would complement the regional lists and would be a good way to support growing sectors that employ high numbers of migrant workers.
7. Some submitters raised concerns that the agreements may reduce employer flexibility and submitted that the agreements should take into account the size of individual businesses and different regional circumstances.
8. In our meetings with key industry representatives, there was strong support for Sector Agreements if they would enable agreed medium term access to employer-assisted temporary migrants and acknowledge growth in sectors.
9. A number of issues have been raised through submissions that officials will provide further advice on before final agreement on the proposals by Cabinet in June 2019. However, a

number of submissions have been received recommending that Sector Agreements are voluntary. Advice in response to these submissions is provided from paragraph 25.

10. A number of sectors not currently proposed for initial negotiations have indicated interest in Sector Agreements, for example the horticulture and viticulture, meat, and forestry sectors. It is clear that there will be demand for Sector Agreement if the benefits in scope of an agreement include:
 - certainty of access to a specified number of migrant workers over the length of an agreement;
 - no Labour Market Test for individual applications;
 - visa durations longer than a year for employer-assisted temporary migrants; and
 - the development of ANZSCO occupations at Level 3 to resolve anomalies in sectors where there are only Level 5 and 1 occupations available.

Specific feedback received from the sectors proposed for initial Sector Agreements

11. There was a mixture of positive and negative feedback from the sectors proposed for the first set of agreements (residential aged care, tourism/hospitality, dairy and road freight transport). Of the four sectors, residential aged care appears to be the most receptive to negotiating an agreement. While there were submissions in support of Sector Agreements from tourism/hospitality, there was a wide range of strongly-held views suggesting that the disparate nature of the sector may create challenges for negotiation.

Residential aged care sector

12. The New Zealand Aged Care Association (NZACA) stated that they are "cautiously optimistic" about the proposal to negotiate Sector Agreements. They state that their members are committed to working with the Ministry of Social Development to get more domestic workers into work.
13. The NZACA notes that the key benefits they would like to see included in a Sector Agreement are exceptions to the ANZSCO¹ framework, removal of annual visa renewals, the ability for lower-skilled temporary workers to bring a partner, and revised income thresholds. The NZACA did raise concerns that the commitments may be too onerous for small employers and were concerned about the proposed caps on migrant workers.

Tourism and hospitality sector

14. The industry bodies, Hospitality NZ and Tourism Industry Aotearoa (TIA), agree that further detail is needed on Sector Agreements in order to provide definitive feedback. Both submit that Sector Agreements should be voluntary, at least initially, with employers who opt out still being covered by the accreditation standards. TIA suggests that Sector Agreements should commence on a trial basis.
15. The industry bodies note that, given the breadth and diversity of the sector, hospitality and tourism are likely to need separate agreements. They recommend that individual businesses have individual needs which need to be considered. TIA believes that finding one organisation to represent all bodies will be difficult and therefore have concerns about the ability to establish who will have the mandate to negotiate from the sector. The industry has more than 15 employer-representative organisations with further organizations where it is unclear who the representative might be. Other submitters from the sector support this position.

¹ ANZSCO, or the Australia and New Zealand Standard Classification of Occupations, provides definitions for occupations and assigns a skill level based on the qualifications and experience required for the occupation. Occupations at ANZSCO Level 1 are considered the most skilled and Level 5 as the lowest skilled.

16. Hospitality NZ, TIA and other employers/representatives also raised questions around: how Sector Agreements will interact with Fair Pay Agreements; whether the number of migrants per sector will be capped and how this might be determined; whether other sectors should be included in the proposed agreement (e.g. retail) or whether they should be more granular in scope (i.e. specific to hotels or airlines); and how ANZSCO codes can be made fit-for-purpose.

Dairy sector

17. Dairy NZ is broadly supportive of the outcomes that the Sector Agreements are trying to achieve, especially regarding improving productivity, increasing investment in skills and training, and making the dairy sector a first-choice career for New Zealanders.
18. Federated Farmers acknowledge the potential benefits of an agreement, especially through more efficient access to the immigration system. However, they argue that beginning negotiation of an agreement, and signing up to the agreement should be voluntary. They raise some concerns that it may be impossible to know enough about the migrant labour requirements of a sector in order to accurately forecast the number of migrant workers that will be required in a 12 month period, which illustrates the need for workforce planning.

Road freight transport sector

19. Bidfood, a national wholesale food distributor, does not support Sector Agreements unless they are regionalised. Their major concern is that Sector Agreements will set wages and conditions nationally and not take into account differences in the cost of living between regions and centres. It should be noted that the proposal was that if wages and conditions were included in an agreement this would be negotiated and would take into account the circumstances of a sector.

Submissions analysis

20. Overall the feedback makes it clear to officials that:
 - the original rationale for Sector Agreements remains valid and sound;
 - the benefits on the table will be vital to the success and desirability of the agreements;
 - Sector Agreements have the potential to be a strong lever for streamlining the system for employers, although this has not been recognised in the submissions;
 - further analysis is required on the order and timing of Sector Agreements; and
 - the details of each Sector Agreement will need to be tailored and the framework allow flexibility in what each agreement will cover (e.g. some agreements might not cover certain roles or employers).

Initial decisions on Sector Agreements to inform the next suite of advice

21. Although the specific terms of a Sector Agreement will be negotiated, officials consider that every Sector Agreement will need to include:
 - a. what an agreement applies to (which sector) and which occupations are covered by an agreement;
 - b. any exceptions to the scope of an agreement;
 - c. how migrants will be approved under an agreement (e.g. numbers, timing and allocation across a sector)

- d. benefits that will be provided by Government and the commitments to be met by employers to achieve the Government's outcomes;
- e. how the agreement will be monitored and enforced; and
- f. the length and renewal process of an agreement.

Sector Agreements should seek to support employers to place more New Zealanders into jobs and, as a consequence, reduce demand for lower-skilled migrant workers over time

22. Employers that are able to easily source labour may perpetuate labour intensive practices and low wages and conditions, which contribute to New Zealand's low productivity. Use of migrant labour is most prevalent in lower-skilled and lower-paid industries. There are indications that certain sectors have become especially dependent on low-skilled migrant labour and lack forward planning to shift this dependency.
23. Sector Agreements are proposed as a targeted intervention for sectors which are high users of migrant labour for lower-skilled roles in order to shift this dependency and ensure that employers place more New Zealanders into jobs, while ensuring access to migrant labour where New Zealanders are not available or suitable.
24. On this basis Sector Agreements are proposed to target sectors that have: labour shortages for lower-skilled roles (ANZSCO 4 and 5 occupations); high reliance on migrant workers for these roles; poor wages and conditions (and/or evidence that these have been depressed over time); and low productivity.
25. Cabinet has agreed to high level objectives for the immigration system (paragraph 1 refers) which informed the development of the overall set of proposed changes to employer-assisted work visas.
26. In line with these broader objectives for the immigration system, officials are seeking your agreement to the outcomes being sought through Sector Agreements to inform further advice on the design of the agreements. These outcomes reflect that Sector Agreements are targeted at a specific part of the labour market where there is high use of migrants to fill lower-skilled roles.
27. Officials recommend that the outcomes that should be sought from a Sector Agreement are:
 - to support employers to place more New Zealanders into jobs; and as a consequence
 - to reduce demand for lower-skilled migrant workers over time.
28. Specific objectives to inform the development of the scope of benefits and commitments that will be set under a Sector Agreement are discussed from paragraph 42 below.

Sector Agreements are recommended to be compulsory for employers hiring employer-assisted temporary migrants in order to ensure that Governments objectives are met

29. Sector Agreements were proposed to be compulsory for employers that wished to hire an employer-assisted migrant in a role covered by the scope of a sector agreement (Annex One outlines the role of Sector Agreements in the proposed gateway framework).
30. A number of submissions recommend that Sector Agreements should be voluntary to allow employers to opt in or out of an agreement. Officials have considered this feedback and recommend that Sector Agreements are confirmed as compulsory.
31. This means if a role is covered by a Sector Agreement, an employer may only hire an employer-assisted migrant under the terms of the agreement. If an employer does not sign up to and meet the terms of the agreement, they cannot hire an employer-assisted temporary

migrant in this role. This would not restrict their ability to hire a migrant with open work rights.²

32. Analysis of a compulsory and voluntary approach is outlined in the table below.

	Compulsory approach	Voluntary approach
Likelihood that outcomes are met	<p>✓</p> <p>All employers would be required to meet the commitments to drive the labour market pivot towards the Government's objectives, while also receiving the benefits under an agreement.</p> <p>As a Sector Agreement is proposed to only apply to employers who wish to hire employer-assisted temporary migrants, employers that have small numbers of vacancies will be incentivised to fill these with domestic workers. This will contribute to a reduction in overall reliance of migrant workers at a sector level.</p>	<p>×</p> <p>Risk that only better performing employers that are more able to meet the commitments of an agreement would sign up, but not the employers who are most dependent on low-skilled temporary migrants.</p> <p>This is likely to mean that there is not sufficient action across a sector in order to achieve the Government's objectives.</p>
Risk of sectors finding work arounds	<p>✓</p> <p>Employers will only be able to hire employer assisted migrants in roles covered by a Sector Agreement under the terms of the agreement and cannot use the Regional Labour Market Test.</p> <p>Employers would, however, be incentivised to hire migrant workers with open work rights.</p>	<p>×</p> <p>As Sector Agreements propose providing easier access to employer-assisted migrants in the short term, this approach would risk that employers opt out of the agreements once the commitments intensify and access to migrants is reduced.</p>
Likelihood that best offer is provided by sectors and an agreement is landed	<p>✓</p> <p>Sectors will be incentivised to negotiate in good faith to provide their best offer and land a final agreement if they are at risk of losing their access to migrants.</p>	<p>×</p> <p>If sectors are able to opt out of an agreement they are not incentivised provide their best offer, as they would be able to opt out of the agreement if the final terms are not sufficiently favourable.</p>

Sector Agreements should define a sector on the basis of the ANZSCO 4-5 occupations within the sector for the purpose of an agreement

- 33. Officials recommend that the definition of a sector is specified in a Sector Agreement to ensure that the policy intervention is targeted to the parts of a sector with the most significant reliance on migrant workers.
- 34. Officials recommend that the coverage of a Sector Agreement is defined primarily on the basis of the ANZSCO 4-5 occupations within that sector. For example, the Residential Aged Care sector could be defined as covering Personal Care Assistant, Aged or Disabled Carer and Nursing Support Worker. Employers are currently required to identify an ANZSCO occupation code for a role they wish to hire an employer-assisted migrant for, which will make it clear for employers whether a role they are trying to fill is covered by an agreement.
- 35. It is proposed that the occupations within a sector are scoped before negotiations commence as a starting point for discussion, however the exact occupations to be part of an agreement could be part of negotiations, which enables us to build flexibility into negotiations.

² This includes, for example migrants on working holiday, post-study, student visas or those with open work rights. Restricting access to these other types of temporary migrants has not been considered in this review.

36. Officials consider that a 'size of occupation' and 'use of migrant workers' test could be applied to the occupations in a sector in order to filter out occupations with very small numbers of employees and occupations where there isn't high reliance on migrant workers.
37. Depending on the nature of the sector, the scope of a Sector Agreement could be further narrowed to ensure that the occupations captured are specific to the sector (i.e. are primarily found in one sector, rather than across the labour market) or by region to capture occupations that are not sector specific nationally, but may be in certain regions.

PROACTIVELY RELEASED

Negotiation of the benefits and commitments for a Sector Agreement should be based on a framework agreed by Cabinet, but the final mix should be based on the specific circumstances of a sector

38. Sector Agreements will outline the terms under which an employer covered by the scope of an agreement can hire an employer-assisted temporary migrant. Officials recommend each agreement specifies the benefits to be provided to employers by Government and the commitments made by employers/sectors.
39. The benefits that could be provided to sectors/employers are being scoped across the immigration, skills/education and welfare systems. Officials propose benefits are tailored to recognise sector specific challenges to ensure that Government investment is well targeted and consistent with broader objectives.
40. The commitments are intended to create the tension in the system required to drive the pivot in these sectors towards the Government's objectives. In line with feedback received through consultation, officials propose that the final design of the commitments will recognise the conditions of the sector, and the employers in it, to ensure that the commitments are achievable and scaled to recognise the size of, and resources available to, different employers.
41. Therefore officials recommend that a negotiation framework is agreed by Cabinet which sets out the range of benefits the Government is willing to offer and the scope of commitments that could be sought as part of an agreement. However the exact mix will be negotiated on the basis on the specific circumstances of the sector. This balances giving certainty to businesses about the potential scope of an agreement, while allowing the flexibility to account for each sector circumstances.

Objectives to guide the development of benefits and commitments

42. Officials are seeking your views on the objectives that will be used to guide the development of the scope of benefits and commitments in order to achieve the proposed outcomes of Sector Agreements.
43. Officials propose benefits and commitments are designed to:
 - improve wages and conditions of lower-skilled roles for both domestic and migrant workers;
 - incentivise the training, upskilling and hiring of domestic workers;
 - provide employers certainty of access to temporary migrant workers;
 - maximise simplicity and ease of interaction with Government for employers; and
 - incentivise more productive ways of working.
44. The exact scope of benefits is subject to broader work being done on the alignment of the education/skills, welfare and immigration systems and through the Review of Vocational Education and Training. Further advice will be provided prior to final decisions by Cabinet in June 2019 on the interdependencies between these programmes of work and advice on recommended scope of benefits and commitments.

Next steps

45. Subject to your agreement, officials will develop further advice on:
 - benefits that could be included in a Sector Agreement from the immigration, education/skills and welfare systems;

- commitments that could be set on employers to achieve the Governments objectives;
- process for negotiation and implementation of Sector Agreements, including the negotiation lead and support required and who will be responsible for signing final agreements; and
- monitoring and governance of Sector Agreements.

46. This advice will also include further analysis of the issues raised through consultation as outlined from paragraph 5. Officials intend to provide advice on the above prior to the May Labour Market Ministers Meeting scheduled for 29 May 2019 in order to inform the Cabinet paper seeking final decisions in June 2019.

PROACTIVELY RELEASED

Annex One: The gateway framework

The proposed gateway framework is made up of three gates:

- The **employer gate** where employers are accredited to employ temporary migrant workers;
- The **job gate** where checks are made to make sure no New Zealander is able to fill the job the employer is recruiting for; and then
- The **migrant gate** where checks are made on migrant worker's identity, health, character and capability.

The job gate is made up of the following job check pathways. Employers must meet the requirements of one of these pathways in order to hire an employer-assisted temporary migrant and the nature of the job determines which pathway applies.

- **Highly paid threshold:** The role is paid at 200 per cent of the median New Zealand income or 150 per cent for employers with premium accreditation (any ANZSCO level);
- **Regional skills shortage list:** The role is on the list which is published annually at a regional level and covers mid-higher skilled occupations (ANZSCO 1-3);
- **Sector Agreements:** *The role is in scope of a negotiated three year Sector Agreement which covers lower-skilled roles (ANZSCO 4-5); or if none of these apply to a role*
- **Regional labour market test:** The role must meet a labour market test adjusted based on the labour market conditions of different regions (any ANZSCO level for jobs that are not covered by the other pathways).

If the role does not meet the highly paid threshold and is included in a Sector Agreement, the employer cannot elect to use the regional labour market test pathway. This model is outlined in Figure 1 below.

