



## BRIEFING

### Further decisions on negotiation process and sectors for initial Sector Agreements

<b>Date:</b>	13 June 2019	<b>Priority:</b>	High
<b>Security classification:</b>	Sensitive	<b>Tracking number:</b>	3471 18-19

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway <b>Minister of Immigration</b>	<p><b>Agree</b> a three stage, cooperative negotiating process, scalable in time and effort to the value proposition in each sector</p> <p><b>Agree</b> the negotiating parties will be government officials and nominated employer representatives</p> <p><b>Agree</b> negotiations should be sequenced, starting with dairy and residential care sectors</p> <p><b>Note</b> we will seek your approval as responsible Minister for each negotiating mandate and to implement any resulting Sector Agreements into Immigration Instructions</p> <p><b>Agree</b> to seek Cabinet approval for new baseline funding to negotiate and monitor Sector Agreements</p> <p><b>Note</b> we will recover costs of processing, monitoring and compliance activities for individual employers and migrants through fees under the immigration system</p>	24 June 2019

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Katherine MacNeill	Policy Director, Labour and Immigration Policy	04 489 5810	Privacy of natural persons	✓
Nat Christensen	Policy Advisor, Skills and Employment Policy	04 896 5140	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 Withdrawn           |

Comments



# BRIEFING

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### Purpose

This briefing seeks your agreement to the detailed design and costs of the negotiation process for Sector Agreements, ahead of Cabinet decisions in July on final proposals for a new approach to employer-assisted temporary work visas.

### Executive summary

As part of a larger suite of changes introducing a new approach to employer-assisted temporary work visas, the Government has proposed that Sector Agreements will be negotiated with a number of sectors which are high users of temporary migrants in lower-skilled, lower-paid roles.

Growing use of temporary migrants is potentially reducing incentives on employers at an individual level to take steps to recruit or train more New Zealanders, improve pay and conditions, invest in productivity or change business models. At a sector level, skill and labour shortages are not triggering adequate or integrated responses from the broader domestic labour market (education/skills and welfare systems). This means the underlying problem is not addressed at a strategic level and the reliance on migrant workers, at the expense of New Zealanders in many cases, is not being reduced over time.

Sector Agreements will create a compulsory, but cooperative sector-government agreement to deal with underlying systemic barriers to effective workforce planning and investments in skills and training. Sector Agreements are intended to be win-win: providing greater certainty for employers in sectors with high reliance on their continued access to temporary migrant workers, in exchange for employers committing to and making progress against an agreed, sector-wide workforce plan to place more New Zealanders into jobs and reduce their reliance on migration over time.

While these agreements are focussed on lower-skilled occupations filled by migrant workers with employer-assisted work visas, the agreements will be aimed at creating broader changes that affect other occupations and workers within the sector. Over time, they could also be expanded to directly include additional types of visas which are currently labour market tested, such as the recognised seasonal employer scheme, or any future category to which you extend labour market testing.

You have already agreed to the objectives and key design elements of Sector Agreements following consultation earlier this year. Ahead of seeking Cabinet approval of final proposals in July, we are seeking your approval of the detailed design of the negotiation process, which sectors to negotiate with and when, and funding of implementation costs. We are proposing:

- a three stage, cooperative approach to the negotiating process. This approach supports the greatest chances of a successful outcome and a process that is efficient and proportionate (scalable to each sector's value proposition and needs);
- confirming the government will negotiate agreements with six nominated sectors in sequence, aiming to conclude all agreements by the end of 2021. The six sectors present differing levels of readiness and value propositions and we recommend taking a

sequenced approach to negotiations, starting with the two sectors requiring least preparation time (dairy and residential care) and allowing more time for the other sectors to prepare; and

- you seek new baseline funding from Cabinet for government costs to negotiate and monitor agreements at the sector level. Costs to process and monitor individual applications by employers or migrants should continue to be cost-recovered through fees under the immigration system.

## Recommended action

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

- a **Agree** to a three stage, cooperative negotiating process for Sector Agreements, which is scalable in time and effort to the value proposition presented by each sector  
*Agree / Disagree*
- b **Agree** the negotiating parties will be government officials and nominated employer representatives  
*Agree / Disagree*
- c **Agree** negotiations should be sequenced, starting with the dairy and residential care sectors with the intention to conclude in early 2020, two further agreements by the end of 2020, and two agreements in 2021  
*Agree / Disagree*
- d **Note** we will seek your approval as responsible Minister for each negotiating mandate and to implement any resulting Sector Agreements into Immigration Instructions  
*Noted*
- e **Agree** to seek Cabinet approval for new baseline funding to negotiate and monitor six Sector Agreements  
*Agree / Disagree*
- f **Note** we will recover costs of processing, monitoring and compliance activities for individual employer and migrant applications through fees under the immigration system  
*Noted*

Katherine MacNeill  
**Director, Labour and Immigration Policy**  
MBIE

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Hon Iain Lees-Galloway  
**Minister of Immigration**

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## Background and previous decisions

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1. Cabinet agreed on 10 December 2018 to consult on a set of proposals to deliver on the Coalition's commitments to ensure work visas issued reflect genuine regional skill shortages and to strengthen labour market testing [CAB-MIN-060801 refers]. The proposals will create a new Gateway framework for employer-assisted temporary work visas, with separate 'gates' to assess the employer, job and migrant against regulatory risks, and supply and demand in the labour market.
2. Following consultation, you have reconfirmed your intent to introduce Sector Agreements as part of the Gateway framework and agreed the objectives and key design elements of Sector Agreements [Briefings 3040 18-19 and 3325 18-19 refer].
3. You now need to approve the design of the negotiation process for Sector Agreements; which sectors you intend to negotiate agreements with and when; and how to fund the costs of implementing the Sector Agreements policy.
4. You currently plan to go to Cabinet in July 2019 to seek approval of final proposals for the Gateway framework. This will include seeking approval of the detailed design and new funding for Sector Agreements. Draft Cabinet papers will be submitted to you in parallel for consideration, which incorporate your previous and these decisions on Sector Agreements.
5. We are also providing advice to you separately on labour market testing at the Job Gate for employers in sectors and occupations not covered by a Sector Agreement; as well as on the overall financial implications and implementation of the Gateway framework.

## Designing a successful negotiating process

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### **A cooperative approach to negotiations can support an efficient and successful outcome**

6. Sector Agreements will form a binding commitment on employers to place more New Zealanders into jobs in specified occupations and, over time, reduce their sector's dependency on temporary migrant labour to fill these lower-skilled, lower-paid jobs.
7. Because the outcome of the negotiation is a joint government-industry partnership, we recommend a cooperative approach to the negotiation process. This kind of negotiation can promote a commitment to discovery and working through issues in an open and high-trust environment towards a common goal for both parties. The design of the negotiating process plays an important role in supporting this intended win-win outcome.
8. Employing a cooperative or 'integrative' negotiating strategy frames the negotiations as interactions with win-win potential, seeking to create greater value for both parties as a result of negotiation. This cooperative approach to negotiations uses objective criteria, looks to create conditions of mutual gain, and emphasises the importance of exchanging information between parties and group problem-solving. It involves uncovering interests, generating options and searching for commonalities between parties, to develop a mutually beneficial path forward (the workforce plan).
9. A cooperative approach typically takes a staged approach to negotiations, allowing time to diagnose, co-develop potential solutions and for each party to agree actions to address multiple and complex issues. Taking a staged approach can be both more efficient overall and achieve a higher likelihood of a successful overall outcome.
10. Taking a cooperative approach to negotiating Sector Agreements would support the objectives and key design elements you have already agreed, in line with the Cabinet approved consultation proposals. It would support development of:

- stronger relationships between employers in the sector, and between employers and government,
  - a common view of underlying issues in the labour market and workforce planning for these sectors, based on better information and deeper insights,
  - solutions to multiple, complex problems or issues raised by the parties; and
  - a jointly agreed plan to improve domestic workforce supply over the medium-term, while supporting immediate workforce needs, meeting aspirations of both sides (win-win).
11. By contrast, taking a more distributive approach to the process would frame the goal of the negotiations as an effort to claim concessions and a greater share of a fixed sum (i.e. maximising numbers of visas for employers, at the lowest cost to employers in terms of commitments).
12. The negotiating process we are proposing has been informed by principles of good regulatory design:
- *Effective.* A process that supports the delivery of intended and clear outcomes, is evidence-based, has scope to evolve in response to changing circumstances or new information and provides for commitments to action that are both robustly tested and can be monitored for delivery and compliance.
  - *Enduring impact.* A process that supports a repeat game; builds long-term relationships, a common information set and deeper insights into the underlying problems and potential actions and solutions to better manage workforce supply and demand.
  - *Proportionate.* A process that delivers the objectives in a flexible and cost effective way, with the level of time and effort involved able to be scaled up or down relative to the scale of problem, value proposition, and commitment to action in each sector, which have different challenges and needs.
  - *Consistent, equitable and transparent.* While accounting for different circumstances, a process that provides a consistent building block approach that is fair and equitable in how it treats different sectors. This kind of process supports all parties impacted by the agreements to understand, contribute to and engage in the negotiating process, including by having their interests fairly represented in the process.

### **Exit points should be built into the process if a win-win agreement is not possible**

13. Employers have voiced their support for the concept of Sector Agreements, both through submissions to the consultation and direct dialogue with officials and Ministers. While Sector Agreements will be a compulsory pathway for these employers and will require commitments on their part to access this category of temporary migrant, employers have indicated they see the potential for real gains. In particular, they see the primary benefit on offer is greater certainty of continued access to this visa category, but have an equal interest in the opportunity to identify and resolve barriers to underlying issues in the labour market.
14. However, there is a risk that at any stage in the process, the rationale for an agreement becomes weaker or irreconcilable differences arise preventing a successful agreement being concluded. Exit points along the way can mitigate against late-stage failure or stalemate in negotiations. The iterative negotiation process we propose is designed to mitigate these late surprises or delays. This includes: initial assessments of sectors that are based on information available to officials at the current time; further detailed analysis of a sector; a stop/go decision for the Minister of Immigration before commencing negotiations; and the option of delaying negotiations to allow more time for a clear and shared value proposition for an agreement to be developed. This ensures that negotiations do not proceed if there is not



sufficient value for Government, or if there is a risk that the sector is not ready for negotiations.

## Proposed negotiation process

15. Taking into account the design considerations above, we propose a three stage negotiating process for Sector Agreements, summarised in the table below.

Phase 1	Phase 2	Phase 3
<b>Prepare for negotiations</b>	<b>Negotiate</b>	<b>Conclude and Implement</b>
<p>Parties share information and identify a common value proposition.</p> <p>Parties appoint negotiating representatives.</p> <p>Parties approve negotiating mandates.</p>	<p>Parties meet and negotiate on the high level terms and scope of an agreement.</p> <p>Detailed discussions on identified areas for negotiation and agreement.</p>	<p>Final formulation of the agreement, including resolution of any details left open in stage two.</p> <p>Parties approve the agreement. Its terms are implemented through Immigration Instructions.</p>

16. These three phases would form the basic building blocks for all negotiations, but can be scaled up and down in time and effort relative to each sector's circumstances and the value proposition of an agreement. A more detailed description of what will happen in each phase of the process is set out below and summarised in the A3 at **Annex One**.

### Phase One: Preparation for negotiations

17. After Cabinet's decision to introduce Sector Agreements is announced, targeted sectors will be informed of your decision to negotiate a Sector Agreement with them and the intended timeframes for that negotiation process.
18. Prior to negotiations beginning formally, we propose an initial stage for parties to share information informally, plan the negotiating process, appoint negotiating representatives, and agree their negotiating mandate.
19. The negotiating process for the first tranche of sectors will quickly follow the announcement of the Cabinet decision, if you decide to retain the current Cabinet mandated timetable. There will be a longer lead-in time to prepare for negotiations with other sectors.

#### *Sharing information and identifying issues early supports the chances of a successful negotiation*

20. Taking a cooperative approach to the negotiation process requires giving parties time at the start of the process to:
- engage informally to share and develop information and insights
  - test the value proposition of an agreement to each side
  - gauge the other party's willingness and readiness to negotiate on a range of issues.
21. As noted in previous advice, there are limitations to the current data and insights available for each sector which can be improved on. Allowing enough time during this period will enable both sides to identify gaps in evidence that could be filled during the process and use this preparation time to develop additional analytical assessments of each sector to support the negotiation process. If you keep to the current timetable of starting negotiations in October, there will be limited time for new insights to be developed for the first negotiations. Sequencing of the negotiations over time and starting with the sectors where data and

insights are more readily available from previous work (e.g. SWEP, pay equity) and can be built on will be important to supporting high quality and rapid negotiation processes and agreements (see further advice in paragraphs 61-70).

22. Parties will need time to identify their common ground and differences, and position themselves for the upcoming bargaining process by gaining agreement to their negotiating mandate. This will support the development of robust negotiating mandates and enable effective planning and sequencing of issues for discussion in negotiations. All the sectors under consideration were foreseen within the consultation document and are 'on notice' for negotiations, and some sectors have indicated strong interest in a Sector Agreement. Again, given time constraints ahead of negotiations beginning in October, we recommend starting with sectors with existing high levels of existing coordination and experience of other types of sector or multi-employer bargaining processes (SWEP, multi-employer collective bargaining, pay equity).
23. The chances of success in generating options, problem solving and moving towards an agreement in the negotiation phase increase with: the quantity and quality of information shared in the preparation phase; the level of planning involved in the sequence of issues being negotiated; and a clear, shared view that a win-win agreement is possible to achieve.

*Time will be needed to appoint negotiating representatives and agree mandates*

24. We recommend you confirm representative industry bodies will negotiate the agreements for the employer side, as consulted. This was broadly supported in consultation feedback.
25. Some sectors may seek to have multiple negotiators around the table, for example, where there are multiple representative bodies in the sector (15+ in tourism/hospitality). It will be important to keep the number of negotiating parties to a manageable number around the table, similar to approaches taken under SWEP and the Construction Sector Accord. However, a negotiating team may be appropriate to cover the range of employers impacted, particularly if the proposed coverage of an agreement is wide.
26. In this instance, we would ask sectors to nominate a lead negotiator. Ideally, they would be at a senior leadership level, with broad credibility and a track record in gathering and representing views from across their sector, likely drawn from one of the larger employers or industry representative bodies in the sector. This will be important to mitigate the risk the sector representative may not have, or may lose, the mandate to negotiate on behalf of the sector. If this were to happen, officials would provide you with advice about options for proceeding or pausing the negotiation while the sector's mandate to negotiate is re-assessed.
27. For the government side, we propose to appoint a senior official lead negotiator with a strong negotiating background and similar levels of expertise in, credibility with and track record of working with the relevant sectors. This approach is consistent with officials having operational decision-making responsibilities delegated under the *Immigration Act 2009*. It provides you with oversight and the authority to determine the overall direction and shape of the agreement, while minimising the risk of sector lobbying of Ministers to influence negotiation outcomes. Regular updates would be provided through reporting to Ministers on the progress of negotiations.
28. Ahead of negotiations commencing, we would prepare and seek your approval for the government negotiating mandate as responsible Minister under the *Immigration Act*. The mandate would detail the terms of engagement proposed for the government side and set out the potential value proposition sought from an agreement.
29. It is possible that initial discussions with the sector suggest more time may be needed for them to organise or that the value proposition or willingness to make commitments is

inadequate to justify proceeding. We will seek a decision from you on whether to proceed, defer, or end the process before entering formal negotiations.

30. Should negotiations require it, we would seek your approval of any terms proposed that are outside of the negotiating mandate you had approved, ahead of concluding an agreement.
31. Government decision-making responsibilities are set out in the table below, with supporting official level roles.

Cabinet	Minister of Immigration	Officials
Agrees policy objectives and design of the Sector Agreements policy	Approves which sectors to negotiate with and when	Advise Minister on: <ul style="list-style-type: none"> <li>sector readiness to initiate negotiations</li> <li>negotiating mandate</li> <li>implementation</li> </ul>
Agrees potential benefits and commitments in scope of negotiation for all agreements	Approves negotiating mandates for each sector, within policy settings agreed by Cabinet	Secretariat for negotiations
Approves funding for negotiation and monitoring of agreements	Agrees final terms are within negotiation mandate	Lead negotiations on the government side
	Approves consequential amendments to Immigration Instructions to implement resulting agreements	Monitor and enforce compliance with agreements

### Phase Two: Negotiations

32. In this phase, the lead government and sector representatives will meet to negotiate the terms of the agreement.
33. You have previously agreed that the sector will be required to provide a workforce plan for the occupations defining the agreement, which would be developed in part or whole as a draft ahead of negotiations. This will need to include clear commitments to actions and a trajectory for increasing the proportion of New Zealanders in jobs in those occupations. We anticipate that over this negotiation period, officials will test the rationale for, credibility of, and commitment to those actions. We will also need to discuss and respond to sector requests for government support to deliver actions and consider any visa setting concessions. An implementation timetable, monitoring and compliance arrangements will also need to be negotiated.
34. The lead government negotiator, supported by officials, will lead the process of negotiating with the sector to ensure the right balance of sector commitments to action, in return for the benefits sought by the sector across the duration of the agreement. This will include an assessment of which benefits should be conditional on delivery of actions and outcomes over time, compared to benefits offered from the date of implementation.
35. We expect third parties may be invited, by joint agreement of both lead negotiators, to join meetings as appropriate to test the workforce plan in ambition and deliverability for sector, employee and wider regulatory system needs. These interested parties may include, as examples, relevant unions, other industry or training bodies, and regulators or agencies.

### Phase Three: Conclusion and implementation

36. Once negotiations have produced a draft agreement, the lead sector negotiator will need to confirm this is acceptable to the employers that they represent. Officials will also confirm with you the proposed agreement meets the negotiating mandate approved by you.
37. It is possible there may need to be an iterative discussion between negotiators if any issues are left open for resolution from the negotiating phase and to agree the final formulation of the terms of the agreement.



38. A cooperative approach to negotiations front-loads consultation with the sector and encourages lead negotiators to seek a broad mandate to support reaching a win-win outcome. However, if agreement cannot be reached, we will provide you with advice about how to resolve the negotiation. This could include seeking mediation by a third party, deferring or ending the negotiation, or re-scoping it.
39. Once both lead negotiators confirm they approve the agreement, the terms will need to be implemented through amendments to Immigration Instructions, which you will need to approve as responsible Minister.
40. The date of coming into force will be negotiated with the employer side and the changes communicated to the sector and likely affected employers. Once the agreement comes into force, Immigration New Zealand (INZ) would begin considering applications by employers against its terms. In the interim period, employers would continue to be considered against existing settings in order to be approved to recruit a migrant worker.

**This process can be scaled up or down in time and effort, relative to the outcomes sought and the circumstances of the sector**

41. We have designed the process to be relatively light-touch and streamlined, in order to support a proportionate response where appropriate and minimise the risk that a one-size-fits-all approach would be overly costly to the value proposition.
42. The first negotiations could be relatively quick to prepare and negotiate, given the notice already provided to sectors, their high level of interest in concluding an agreement as demonstrated in their submissions to the consultation process, and conversations with the sectors at official and Ministerial levels. The first sectors are also those that the SWEP programme has a strong history of working with, which will provide opportunities to leverage existing information, insights and relationships.
43. We would expect the early negotiation processes to take between 4-6 months each. If these are sequenced, as proposed later in this paper, then we would expect the first six negotiations could potentially conclude as early as the end of 2021.
44. The process can be scaled up or down in time and effort to the value proposition we see in each sector. Depending on the scale, ambition or complexity of a Sector Agreement, more time could be allowed in each stage. For example, more time may be needed if we or the employer side attempt to resolve multiple highly complex and previously intractable issues, or if the scope of the agreement were expanded into a wider set of occupations or multiple sectors covering the same occupations.
45. Cabinet anticipated and consulted on the basis that Sector Agreements would last for an initial three-year period and then be renegotiated. This supports a lighter touch and faster first iteration of agreement as an initial exploratory process to test and prove the approach, with the potential for agreements of greater scope and ambition to be renegotiated over time as a repeat game.
46. It is important to note these timeframes represent government intentions. It may take more time for the sector to organise and nominate their representative parties; especially where a sector is less mature in participating in negotiating processes or is highly diverse in makeup.
47. Negotiations may also prove more complex and drawn out than anticipated, a risk which taking a cooperative approach anticipates and mitigates by providing time for mutual discovery and information-sharing. However, a cooperative approach still bears the potential for disputes within the sector or between negotiating parties which will need to be actively managed to enable a final agreement to be reached and could hinder concluding a timely process. Having senior representatives with clear leadership credentials on both sides as lead negotiators will be an important factor in working through and resolving disputes.

## Implementation, monitoring and compliance of the agreements

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48. Once in force, compliance with the agreement will be monitored by MBIE and INZ over its three-year duration. Monitoring activities will be set within the wider risk-based and verification assurance model for the immigration system as a whole. However, specific activities and the level of effort involved in monitoring and compliance activities will depend on the terms of each agreement.

### Monitoring and compliance activities will be needed at sector and individual employer level

49. At an **individual level**, employers will need to demonstrate they are covered by the agreement and are compliant with it when they apply through the job gate for INZ to approve them to recruit an employer-assisted migrant. INZ will also undertake verification and assurance activities as part of their normal course of business before and subsequent to visas being issued to migrants for these roles (the employer and migrant checks)
50. At the **sector level**, the government will need to monitor progress on delivery of the sector's commitments to actions and progress against the sector workforce plan. If a cap or target number of visas were agreed, this will also need to be monitored and managed to avoid a 'cliff edge' developing, whereby the sector reaches the cap more quickly than planned. If this occurs, there could be potential adverse impacts on quality or safety of operations, or exacerbated workforce shortages. We note that implementing a hard cap on visa numbers through INZ systems would require significant business system changes to automate. In the first instance, this would likely need to be implemented through active monitoring and reporting of visa approvals across the occupations covered by the agreements. If it became apparent an agreement was clearly unworkable, it would also be an option for you to trigger early re-negotiation of the agreement during the three year term.
51. It may also be appropriate for other regulators, representative sector or training bodies to undertake some monitoring and reporting roles. For example, a sector may have occupational regulation or industry licensing that aligns with the requirements of a Sector Agreement. This would require the government negotiators to be satisfied the sector had the capability and capacity to undertake these compliance functions.
52. The sector level approach to monitoring also has synergies with the approach taken through SWEP to support and monitor several of the same sectors in their development, including workforce planning. It will be important to make links between the workforce plans formalised under Sector Agreements and SWEP for consistency of approach and aligning incentives on employers, and leveraging wider government interventions and support for sectors.
53. Cabinet consulted on an enduring approach with agreements renegotiated at the end of their three year term. Ahead of the end of each agreement, officials will provide you with further advice on outcomes of the agreement and the potential value proposition of a further agreement term. We would also seek your agreement to renegotiate with the sector at that stage.

### Existing sanctions and penalties for non-compliance can be used, but a sector level approach to compliance will need to be tailored to each agreement

54. The current range of penalties and sanctions within the *Immigration Act 2009* will apply to individual employers and migrants under Sector Agreements. This provides a suite of levers for INZ to address non-compliant behaviour.
55. In addition, agreements will need to specify the consequences and penalties/sanctions of non-compliance at a sector level and how this will impact on individual or groups of employers. Good practice would be for a regular and ongoing dialogue between the government's monitoring function and the sector over the term of the agreement, on a no-

surprises approach to work through barriers to progress as they arise. Negotiations

56. However, should persistent non-compliance develop across the sector, examples of potential consequences include:
- *Withholding benefits of the agreement.* Some benefits may be upfront (i.e. received when it comes into effect), but others **Negotiations** should be conditional on progress. If progress is not made, a key penalty will be employers not securing or a delay to these conditional benefits.
  - *Withdrawing benefits of the agreement.* Even after being made available to employers under the agreement, these benefits could be withdrawn from some or all employers in the sector if they do not continue to meet the requirements of the agreement or fail to meet the commitments in a timely manner.
  - *Employers' accreditation under the employer gateway could be removed* for regulatory non-compliance. This would effectively remove their ability to recruit any temporary employer-assisted migrant until they met the requirements of the agreement.
  - *Early termination or re-negotiation of the agreement.* Employers would be subject to the default settings on the labour market test and lose all associated benefits from the agreement.
  - *Sector-enforced compliance.* For example, a sector could choose to include compliance with the agreement as part of industry licensing requirements or a code of good practice.
57. These are indicative examples of a potential sector level approach to compliance. A bespoke regime for compliance and sanctions will be developed for each agreement based on the circumstances of the sector and form part of negotiations. Separate advice will be provided to you on implementation of the overall system and monitoring and compliance activities.

## **Nominating sectors and sequencing of initial negotiations**

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### **Cabinet consulted on initial sectors and taking a sequenced approach to negotiations**

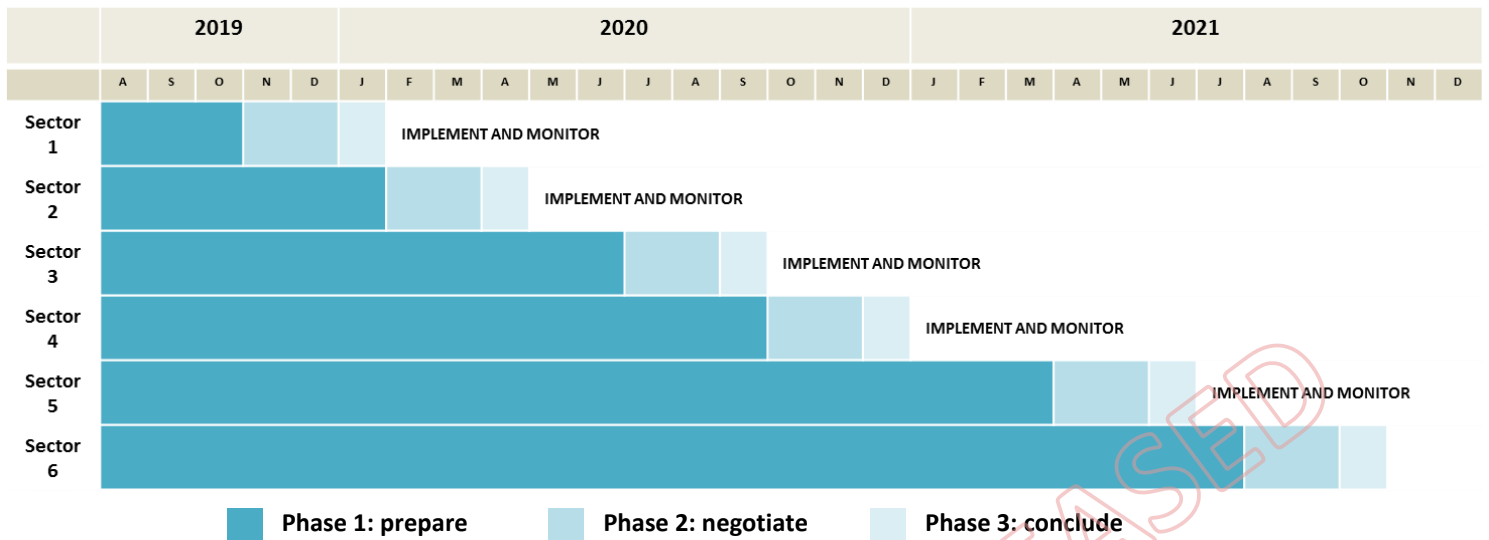
58. Cabinet indicated that Sector Agreements will be a highly targeted intervention, aimed at specific sectors that present common characteristics: a large proportion of lower skilled occupations; a growing workforce with persistent skills and labour shortages; and current reliance on temporary employer assisted migrants as a source of labour.
59. Cabinet consulted on negotiating agreements with the aged residential care sector and tourism and hospitality sector in 2019, with a view to implementation by January 2020. It was also proposed these be followed by negotiations with dairy and road freight transport sectors later in 2020 and, in future, potential agreements with other sectors including forestry and meat processing.
60. We previously advised that in their responses to the consultation, the meat processing and forestry sectors indicated a strong interest in negotiating agreements. Both sectors meet the characteristics targeted by the policy intervention: a large number of lower skilled occupations and high use of temporary migrant labour. We therefore recommend these two sectors be included, bringing the total number of targeted sectors from four to six in the short term.
61. Because Sector Agreements are a new policy intervention, we recommend limiting the number of initial agreements to these six sectors and evaluating the impact of the

intervention before considering whether to widen coverage of Sector Agreements across the sectors using employer-assisted migrants. This will provide an opportunity to evaluate both the process of negotiating agreements, and the underlying policy approach to bespoke targeted systems.

62. Employers in sectors or occupations not covered by an agreement will still be able to recruit migrants and the new system being proposed imposes conditions and commitments on these employers. They can voluntarily take measures to improve workforce training and supply, including through other government mechanisms, such as SWEP.

### **We recommend you confirm a sequenced approach to negotiating agreements**

63. There are a number of advantages to phasing negotiations, and starting with a few initial Sector Agreements covering sectors with high reliance on this visa category, strong interest in this cooperative approach, and with higher chances of a successful win-win outcome. This is because:
- *Sector readiness.* Sectors are at different levels of readiness. Levels of coordination, preparatory work on mandate, and the definition of occupations is much more advanced in some sectors. Others would benefit from more time to coordinate, develop the value proposition, and define the coverage of an agreement.
  - *Set up time.* There is limited time to set up a negotiating unit and gather baseline data ahead of negotiations starting. It is feasible to be ready to start negotiations in October for the first sector, subject to a Cabinet decision by the end of July 2019.
  - *Piloting a new approach.* This is a new policy intervention, and phasing allows both government and industry to test the process and take a continuous improvement approach to future negotiations and renegotiations.
  - *Allows wider changes to impact on employer behaviour.* Changes will be rolled out in parallel to the overall temporary employer-assisted work visa settings, including changes to INZ's systems and introduction of labour market planning functions. Ahead of a Sector Agreement, employers in 'on notice' sectors will be subject to these changes, incentivising behaviour changes in anticipation of a Sector Agreement being negotiated.
  - *Opportunity cost.* Taking a sequenced approach to Sector Agreements will free up officials' capacity to ensure these wider changes are implemented more smoothly and maintain the integrity of the system through a relatively significant change programme.
64. We recommend starting with two Sector Agreements, with the intention to conclude negotiations by mid-2020. Two further Sector Agreements would be negotiated by the end of 2020, with the final two Agreements in 2021. Given the three-year duration of agreements, the first set of agreements would be due for renegotiation from 2022. The timetable proposed would enable the negotiating unit to transition from negotiating initial six agreements into renegotiation, alongside its sector monitoring functions.
65. Working from current plans for Cabinet decisions at the end of July 2019, indicative timeframes for the first six negotiation processes are set out below.



**Some sectors could also benefit from longer preparation time prior to negotiations**

66. We have assessed all six sectors against the following factors for **readiness** and having a **value proposition** for a Sector Agreement:

Readiness	Value proposition
<ul style="list-style-type: none"> <li>Does the sector have identifiable sector bodies, and do these bodies represent the voice of employers and range of employers (both large and small)?</li> <li>Does the sector have a demonstrated awareness of the labour market issues and challenges within the sector?</li> <li>Do the sector bodies have the capability and capacity to engage with the negotiation process, and co-ordinate the sector's involvement?</li> <li>Do the sector bodies have a mandate to negotiate on behalf of employers (or a plan to develop a mandate)? This includes testing their mandate with employers, and demonstrating a process of communicating and receiving feedback from employers.</li> </ul>	<ul style="list-style-type: none"> <li>Does the sector have a high reliance on employer-assisted migrant workers for lower-skilled roles?</li> <li>Is there evidence that the sector might undergo workforce growth or change over the coming years? If so, is there an opportunity to shift the relative shares of domestic and migrant workers?</li> <li>Is the sector responsible for a significant concentration of migrant workers within identifiable key occupations?</li> <li>Is there evidence that the sector relies on migrant workers in general (ie not only employer-assisted visas) to fill roles?</li> </ul>

67. We have concluded that all six sectors meet the value proposition, including the sectors' willingness and interest in negotiating an agreement, but some sectors will require a significant amount of work ahead of commencing negotiations. This time will support a clear value proposition being developed; occupations covered being well defined; and the sector developing adequate coordination and a mandate to negotiate. This preparatory work will enable a smoother negotiating process and better chances of a successful and ambitious agreement. We recommend that sectors that require this work be considered for later negotiations, rather than earlier ones. Below is a summary assessment of the six sectors' readiness and value proposition, with more information provided in **Annex Two**.



<p><b>Dairy</b></p> <ul style="list-style-type: none"> <li>Well-organised, highly representative sector bodies</li> <li>Existing funding structures (levies)</li> <li>Relatively simple occupational structure, concentrated in the sector</li> <li>High proportion of temporary migrants</li> <li>Low wages (even at higher skill levels)</li> <li>ANZSCO anomalies to resolve for mid-skilled occupations</li> </ul>	<p><b>Road Freight Transport</b></p> <ul style="list-style-type: none"> <li>Engagement with sector through SWEF and a good understanding of future workforce needs</li> <li>Ageing workforce and potential labour shortages ahead</li> <li>More work needed to explore limitations of existing interventions for these occupations and additionality of a sector agreement</li> </ul>	<p><b>Forestry</b></p> <ul style="list-style-type: none"> <li>Many small operators and low but growing coordination presents significant challenge to coordinate ahead of a negotiation process.</li> <li>Low use of employer-assisted visas now, but potential for workforce growth (Billion Trees programme).</li> <li>Sector wants to develop career pathways for New Zealanders and avoid future dependency on migrants</li> </ul>
<p><b>Residential Care</b></p> <ul style="list-style-type: none"> <li>Well-organised, highly representative sector bodies with experience in bargaining</li> <li>Large forecast workforce demand growth (+10,000 carers over 10 years)</li> <li>High proportion of overall temporary migrant labour, but mostly on open work visas</li> <li>Low wages (even at higher skill levels)</li> <li>ANZSCO anomalies to resolve for mid-skilled occupations</li> <li>A few occupations concentrated in residential care, weaker case for aged care alone</li> </ul>	<p><b>Meat processing</b></p> <ul style="list-style-type: none"> <li>Well-organised, highly representative sector bodies</li> <li>Small number of employers and concentrated, co-ordinated occupational structure</li> <li>Relatively simple occupational structure, concentrated in the sector</li> <li>High proportion of temporary migrants</li> <li>Low wage, low skill</li> <li>Specific issues to address around Halal slaughterers and qualifications</li> </ul>	<p><b>Tourism &amp; hospitality</b></p> <ul style="list-style-type: none"> <li>15+ industry bodies presents significant challenge to coordinate ahead of a negotiating process</li> <li>Occupations relatively disparate and difficult to define (especially tourism-related roles), but potential to start scope narrow and grow outward over time.</li> <li>Large number of migrant workers (mostly open work visas) and forecast workforce growth presents opportunity to increase New Zealanders in jobs.</li> <li>Challenges include wages, career pathways, and location of work relative</li> </ul>

68. We have made this assessment relying on currently available data and insights, including discussions with the sectors and their consultation feedback. There are limitations to this information and in particular to data on the volume of temporary visas in each occupation with the sectors. For instance, INZ data is collected on an occupational, not sectoral basis. There is also limited occupational information for migrants with open work rights. More detailed data analysis, including new extracts from the IDI and data sourced directly from the sectors, will need to be gathered ahead of negotiations during the preparation phase. Part of the value proposition is this discovery process and development of a shared government-industry view of workforce supply and demand in each sector, future growth trajectories and underlying barriers to domestic supply.

**Dairy and residential care sectors are likely to require the least preparation time ahead of commencing negotiations**

69. We confirm our previous advice that you should start negotiations in the first instance with the two sectors likely to require less time to prepare for negotiations to commence: dairy and residential care. Meat processing could also be a good candidate for an early agreement, due to the concentration of both employers and occupations which would support a simple and tightly-scoped agreement.

70. We also recommend notifying the remaining four sectors that negotiations with them will likely commence over the following 6-12 months. This early notice will enable the sector bodies to begin preparations and an informal dialogue with officials.

71. In addition to the summary of readiness and suitability set out above and in Annex Two, for illustration we have provided below an initial indication of what coverage of the first two agreements might look like (subject to further data analysis and discussions with the sectors), building on our previous advice to you. This table indicates the occupations initially proposed to be covered within the agreements for each of the dairy and residential care sectors.

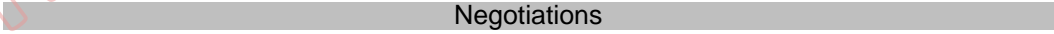
72. We will provide more detailed advice and analysis of the sector and occupations to you during the preparation stage, ahead of seeking your approval of the negotiating mandates. The final occupations covered would also be subject to change through negotiations.

	Residential Care	Dairy
Key occupation(s) at ANZSCO skill level 4 & 5, for initial scoping	Personal Care Assistant (Level 4) Aged or Disabled Carer (Level 4)	Dairy Cattle Farm Worker (Level 5)
Approximate number of employees in these occupation in this sector	33,000	37,500
Approximate number of employer-assisted visas employed currently in coverage	400-500	1,400-1,500
Other sectors with occupation overlap	Other Allied Health Services Other Social Assistance Services Hospitals	Non-Residential Property Owners Beef Cattle farming
Regions with occupation concentration	Auckland (37% of temporary employer-assisted visas for above occupations) Canterbury (32%)	Canterbury (41% of temporary employer-assisted visas for above occupation) Southland (16%) Waikato (13%)
Other occupations and ANZSCO skill level within the sector	Registered Nurse – Medical (Level 1) Kitchenhand (Level 5) Commercial Cleaner (Level 5) Cook (Level 3)	Dairy Cattle Farmer (Level 1) Mixed Crop & Livestock Farm Worker (Level 5) Mixed Crop & Livestock Farmer (Level 1)

## Financial implications

### Negotiating and monitoring Sector Agreements will impose new costs to the Crown

73. The main costs incurred by the Crown to implement the Sector Agreement policy are to:

- negotiate agreements (preparation, negotiation, implementation)
- monitor sector progress against commitments made under the agreements
-  Negotiations
- process applications from individual employers and migrants under the immigration system
- monitor and enforce compliance of individual employers and migrants under the immigration system.

74. In considering how to allocate these costs, we have looked at what would be effective in achieving the intended outcomes of this policy intervention (i.e. getting more New Zealanders into jobs, and by consequence a reduction in the proportion of this visa category employed in these sectors). We also considered what we had legal authority to charge for, what would be fair and reasonable, efficient, equitable and simple to administer. As a result, we propose a partial cost-recovery approach to implementation of Sector Agreements.

75. Where many benefits and commitments are at sector level, potentially uneven in accrual, and there is a strong rationale of public good (i.e. more New Zealanders in jobs) some costs should be met by the Crown and recovered through general taxation. We recommend this approach be taken for the costs to the Crown of negotiating Sector Agreements and monitoring progress against them.

76. Where benefits are direct to individuals or organisations we recommend they should be cost recovered through fees. This is the case for individual employer and migrant applications under the immigration system now, including for associated monitoring and compliance activities (if applications are approved).

### Costs to negotiate and monitor Sector Agreements should be Crown funded

77. Forecast costs to the Crown to negotiate and monitor Sector Agreements are set out in the table below. Costs are based on the negotiation process and timing proposed in this briefing and will need to be revisited if a different approach is taken. The proposed negotiating process has been designed to be scalable to size of sector and outcomes sought. Time and effort involved in participating in the process has been designed to be the minimum needed to reach a robust, but proportionate agreement, particularly for early sector agreements.

New baseline funding required to implement Sector Agreements				
	2019/20 (\$000s)	2020/21 (\$000s)	2021/22 (\$000s)	2022/23 (\$000s)
Negotiating & monitoring agreements (government costs)	1,125	1,425	1,425	1,425
Negotiations				
<b>Total new baseline funding</b>	<b>1,425</b>	<b>1,725</b>	<b>1,725</b>	<b>1,725</b>

78. You will need to seek Cabinet agreement to provide the new baseline funding proposed above, as foreseen in Budget 2019. We recommend including this request when you seek Cabinet approval of the policy changes in July, as part of the overall costs of implementing the system. If you agree to the recommended approach, further advice will be provided as part of advice on overall financial implications of the changes ahead of Cabinet.

### Where there is direct individual benefit, costs should be recovered from users through fees

79. The *Immigration Act* provides for cost recovery of visa services and associated monitoring and compliance activities from users of the immigration system. These charges are imposed on individuals and organisations for services directly provided to and directly benefiting them. This approach is consistent with the principles in Treasury's guidance on cost recovery.
80. Under the changes proposed to employer-assisted temporary migrants, we have proposed that government would charge fees to:
- employers applying for accreditation
  - employers applying to verify the labour market test has been met for individual jobs they seek to fill with temporary employer-assisted migrants
  - migrants applying for a temporary employer assisted work visa.

81. This fees framework would apply to individual employers and migrants covered by a Sector Agreement and you will receive separate advice on the costs and how to set the level of fees across this system.
82. While officials would manage the logistics of arranging the negotiation process, the sector and any invited third parties would be expected to administer and bear their own costs in relation to participation and implementation of the workforce plan or other commitments made by the sector. The costs will depend on the nature of commitments made by employers in the agreement which could vary widely.

## Next steps

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83. If you agree these proposals, we will include them and your previous decisions on objectives and key design features of Sector Agreements in the draft Cabinet papers seeking agreement to the overall Gateway framework. This will be provided to you separately.
84. The timeline below represents the earliest and an ambitious implementation timetable for the first agreement based on current plans for Cabinet decisions in July 2019. If subsequent negotiations are sequenced as proposed in this briefing, the earliest all six negotiations could be completed is the end of 2021.

Cabinet decision and announcement	<b>August 2019</b>
Set up negotiating unit in MBIE; early preparations start with first sector	<b>August – September 2019</b>
Your approval sought to first negotiating mandate	<b>October 2019</b>
Negotiations commence with first sector	<b>October 2019</b>
First negotiation concludes (earliest)	<b>December 2019</b>
Your approval sought to update Immigration Instructions	<b>February 2020</b>

## Annexes

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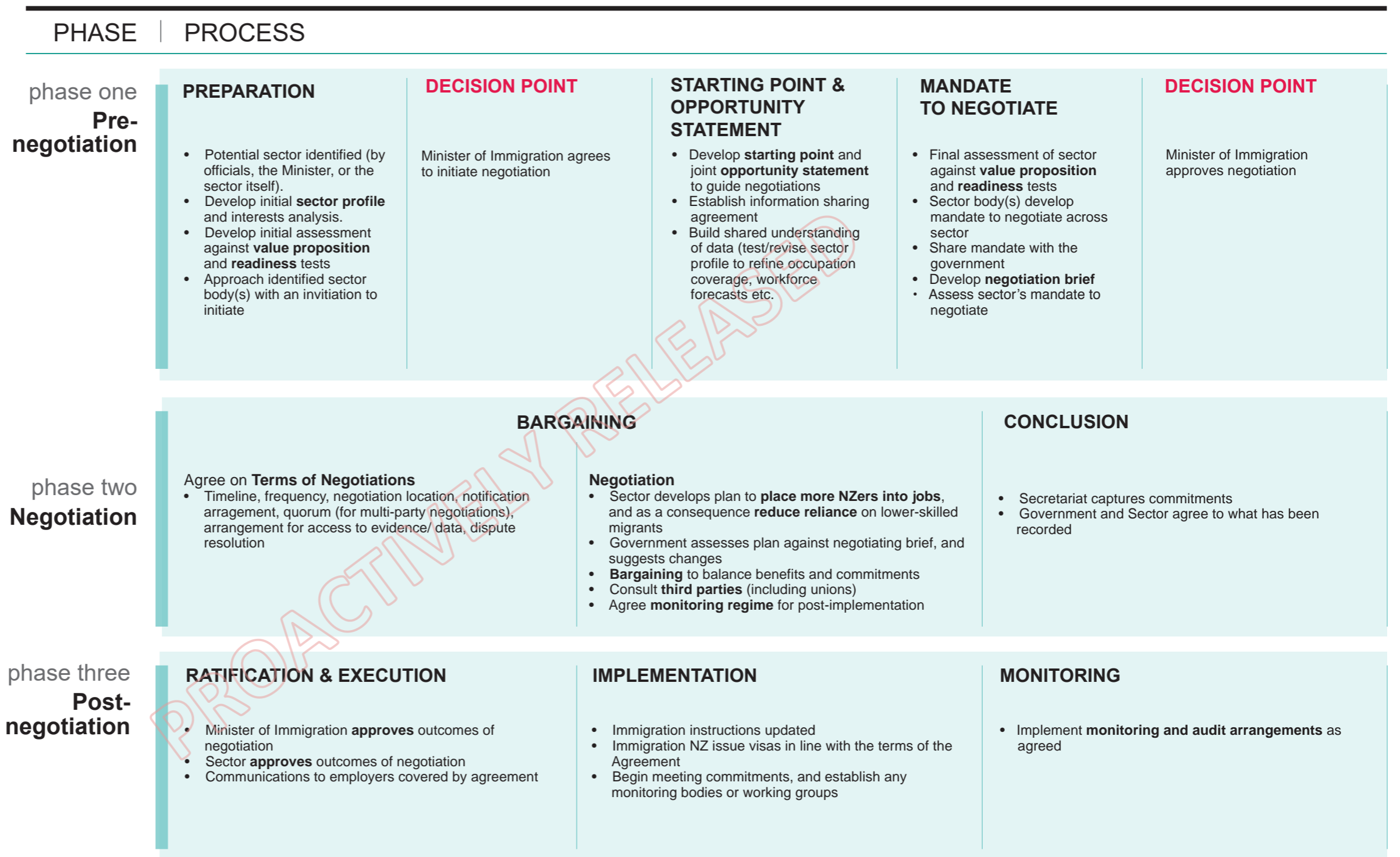
Annex One: Negotiation process overview

Annex Two: Further assessment of sectors' value proposition and readiness

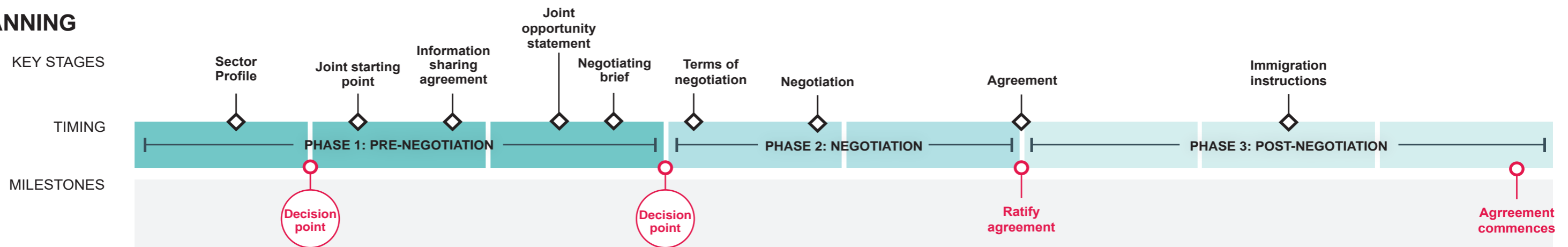
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# NEGOTIATION PROCESS OVERVIEW



## PLANNING



## Annex Two: Further assessment of sectors' value proposition and readiness

Sector	Sector characteristics	Constitutional conventions	Readiness
Residential Care	<p><b>Proposed target occupations:</b> Personal Care Assistant, Aged or Disabled Carer</p> <p><b>Number of employees:</b> 33,000</p> <p><b>Scale:</b> Estimated approximately 420 Essential Skills visa holders in target occupations in the sector</p>	<p style="text-align: center; color: red; opacity: 0.3; font-size: 2em; transform: rotate(-30deg);">PROACTIVELY RELEASED</p>	<p>As this sector was part of the Pay Equity Settlement a number of the sector bodies have experience working with Government and have built up capability.</p> <p>Large industry bodies include the New Zealand Aged Care Association, New Zealand Disability support Network, Care Association NZ and Home and Community Health Association. Although coordination across sub-sectors could be improved, and small-scale operators have lower capability, overall this sector is well prepared for negotiations.</p>
Tourism/ Hospitality	<p><b>Proposed target occupations:</b> Waiter, Kitchenhand, Barista, Café Worker, Bar Attendant (tourism-specific occupations have not been included, and would require further analysis).</p> <p><b>Number of employees:</b> 163,000</p> <p><b>Scale:</b> Estimated approximately 550 Essential Skills visa holders in target</p>		

<sup>1</sup> Using modelled 2018 numbers from Infometrics' Regional Industry Occupation Employment that uses LEED data and interpolated census data, and Essential Skills visa holders in March 2018.

	occupations	Constitutional conventions	
Meat	<p><b>Proposed target occupations</b></p> <p>Meat Process Worker, Slaughterer, Meat Boner and Slicer</p> <p><b>Number of employees:</b> 25,000</p> <p><b>Scale:</b> Estimated approx.420 Essential Skills visa holders in target occupations</p>	<p style="text-align: center; color: red; opacity: 0.3; font-size: 2em; transform: rotate(-30deg);">PROACTIVELY RELEASED</p>	<p>diversity of the sectors would make negotiations challenging.</p> <p>The sector has large, well organised groups like Meat Industry Association and Beef and Lamb, which represent large portions of sector. A small number of firms and concentrated employment improves capability and capacity to address sector-specific issues.</p>
Dairy	<p><b>Proposed target occupations:</b> Dairy Cattle Farm Worker</p> <p><b>Number of employees:</b> 37,500</p> <p><b>Scale:</b> Estimated approximately 1,400 Essential Skills visa holders in target occupations</p>		<p>DairyNZ and Federated Farmers are the key industry bodies for the dairy sector and have high representation, mature engagement with Government, and are well resourced and capable.</p>
Road Freight Transport	<p><b>Proposed target occupations:</b> Truck Driver (General)</p> <p><b>Numbers of employees:</b> 32,500</p> <p><b>Scale:</b> Estimated approximately 200 Essential</p>		<p>The key sector bodies are the Road Transport Association, National Road Carriers, and the NZ Trucking Association, which have been highly engaged with the Sector Workforce Engagement Programme (SWEP) through the Road Freight Forum, and good understanding of future needs.</p>

	Skills visa holders are in target occupations	<p style="text-align: center;">Constitutional conventions</p>	
Forestry	<p><b>Proposed target occupations:</b></p> <p>Forestry Worker, Horticultural Nursery Assistant, Nurseryperson</p> <p><b>Numbers of employees:</b></p> <p>9,000</p> <p><b>Scale:</b> Estimated approx. 100 Essential Skills visa holders in target occupations</p>		<p>NZ Forest Owners Association and Forest Industry Contractors Association are the main bodies, with many small operators. The sector appears to have relatively low capability at this stage, but fairly recently organised and have a desire to be more capable.</p>

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