



COVERSHEET

Minister	Hon Ian Lees Galloway	Portfolio	Immigration
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Office of the Minister of Immigration

Chair, Cabinet Economic Development Committee

A NEW APPROACH TO EMPLOYER-ASSISTED WORK VISAS AND REGIONAL WORKFORCE PLANNING: PAPER ONE - EMPLOYER GATEWAY SYSTEM AND RELATED CHANGES

Proposal

1. This paper is the first of two papers that seek Cabinet agreement to implement a set of changes that reflect our coalition commitments to ensure work visas issued reflect genuine regional skill shortages, and to strengthen labour market testing. The proposals would:
 - 1.1. improve the employer-assisted temporary work visa system and labour market tests to ensure that foreign workers are only recruited for genuine shortages; and
 - 1.2. create better connections between the immigration, education/skills and welfare systems, and increase expectations on employers to employ and train more New Zealanders.

Executive summary

Context

2. In December 2018, Cabinet agreed to consult on a new employer-assisted gateway system for temporary visas and enhanced regional workforce planning, and invited me to report back with final proposals. This paper is Paper One of two papers seeking final agreement to the new employer-assisted gateway system.
3. This paper seeks agreement to the overall gateway system, the employer and worker gateways, and related changes. The second paper titled *A new approach to employer-assisted work visas: paper two - the job gateway* seeks agreement to the specific design of the job gateway, in particular sector agreements and a regionalised approach to labour market testing.
4. These changes recognise that we need an immigration system that is flexible enough to respond to the economic context that New Zealand is operating in. In the current strong economic conditions, with an unemployment rate of 3.9 per cent, we can expect the demand for temporary foreign workers to be strong. However, should economic conditions change, the immigration system needs to remain fit for purpose by being flexible and able to respond to those changes. The proposals in this paper result in a system that puts pressure on employers where New Zealanders are ready, and able, to do the work, and facilitates access to temporary foreign workers where they are not.
5. Cabinet has agreed to establish Regional Skills Leadership Groups as regional labour market planning bodies, which will support the proposed reforms to the immigration system. The proposals in this paper are also consistent with wider Government changes which seek to improve the operation of the labour market, for example the Review of Vocational Education, the Employment Strategy, the Review of Temporary Migrant Worker Exploitation, and the Welfare Reform programme.

The current employer-assisted visa system is not supporting our wider labour market objectives

6. While highly-skilled foreign workers are an important source of skills in the New Zealand labour market, some employers and industries are increasingly reliant on lower-skilled foreign workers. There is evidence that lower-skilled employer-assisted foreign workers are reducing the incentives on employers to train and recruit New Zealanders or move to more productive ways of doing business. There is also increased evidence of exploitation of foreign workers. I have therefore concluded that the existing temporary work visa system is not supporting our labour market objectives:
 - 6.1. it is overly complex with a number of visa options which are difficult to navigate for employers and foreign workers, and can cause unnecessary compliance or delays
 - 6.2. it has a 'one-size-fits-all' approach, which does not recognise regional and sectoral labour market differences
 - 6.3. it does not sufficiently incentivise businesses or industries with high ongoing labour shortages to take steps to address these shortages domestically nor does it trigger any responses from the training, skills and employment systems; and
 - 6.4. there are too few real checks, balances and obligations on employers hiring foreign workers, meaning that some employers with poor track records (e.g. non-compliance with minimum employment standards) are still able to access foreign workers.

I propose that Cabinet agrees to implement a new employer-assisted gateway

7. Overall, the majority of submitters supported the proposed employer-assisted gateway system which would be in place for employers who are seeking to 'sponsor' (or assist) a foreign worker to fill a role on a temporary visa. I therefore propose that Cabinet agrees to implement a new employer-assisted gateway which would simplify the system by reducing six current visa categories into one enhanced employer gateway. The gateway system shifts the focus of the employer-assisted visa system from foreign workers to employers. Employers and foreign workers would be required to go through three gateways:
 - 7.1. the employer gateway - where employers would be accredited to enable them to hire a foreign worker;
 - 7.2. the job gateway - where the job is checked to ensure that no New Zealander is able to fill the job being recruited for, subject to skill, sectoral and regional differentiation; and
 - 7.3. the worker gateway - where checks will be made to make sure the foreign worker is of good character and health.

Employer gateway

8. Employers would need to meet accreditation standards before they could recruit foreign workers. There would be three types of accreditation with different standards:
 - 8.1. Standard accreditation for employers recruiting between one and five foreign workers in a 12 month period (around 22,000 employers last year)
 - 8.2. High-volume accreditation for employers recruiting more than five foreign workers in a 12 month period (around 2,000 employers last year); and
 - 8.3. Labour hire accreditation (around 50 employers).

Table One: Accreditation standards

Standard Accreditation	High-volume accreditation	Labour hire accreditation
Employers would be required to be a genuinely operating business, have no recent history of regulatory non-compliance, and take steps to minimise exploitation	<ul style="list-style-type: none"> • Same as standard accreditation (i.e. must be compliant with minimum regulatory standards) • Must demonstrate a commitment to training and upskilling • Must demonstrate a commitment to improving pay and conditions over time 	<ul style="list-style-type: none"> • Same as high-volume accreditation (i.e. compliant with regulatory standards as well as wages and training commitments) • Some specific requirements for labour hire companies • Additional verification and assurance

9. This would ensure that non-compliant employers are not able to use the system to access temporary workers on employer-assisted work visas. The different accreditation standards provide:

9.1. the appropriate mix of enabling the new system to manage regulatory risk (exploitation of workers and risks to the integrity of the immigration system) and labour market risk (displacement of domestic workers and downwards pressure on wages and conditions), and

9.2. a streamlined process for low-risk and low-volume employers (most of which will be small and medium enterprises (SMEs)) as the highest level of checks would be focused on the highest-risk and highest-volume employers.

Job Gateway

10. The employer would be required to pass through the job gateway to get an approval to recruit a foreign worker. The job gateway would provide a streamlined pathway for higher-skilled and higher-paid jobs, and a strengthened labour market test for lower-skilled roles. Regional differentiation within the job gateway would make it easier for employers in regions and jobs where fewer New Zealanders are available and tougher for employers in cities and regions where there are more New Zealand job seekers. Sector agreements with sectors that have a high reliance on temporary foreign workers would provide employers covered by the agreement with certainty of access to employer-assisted visas for particular occupations, in exchange for demonstrating commitments to place more New Zealanders into jobs and, as a consequence, reduce reliance on lower-skilled foreign workers over time.

Worker Gateway

11. Foreign workers would only be able to apply for a visa once the employer has passed through the employer and job gateways. The current checks on a foreign worker's identity, health and character would remain largely as they are, but there are opportunities to reduce the requirements for a foreign worker to produce evidence of the qualifications and experience where it is not relevant to the application or it has already been checked. Overall the new system would result in faster decisions, more certainty and lower costs for foreign workers.

Changes to visa conditions and settings are also proposed

12. A range of additional proposals are proposed to ensure overall system coherence and fairness and ensure that only highly-skilled foreign workers are able to stay here permanently:

12.1. retain the requirement that lower-skilled foreign workers must spend 12 months out of New Zealand after three years on an employer-assisted visa so that they are not able to remain here indefinitely

12.2. use a simple remuneration threshold set at the national median wage (currently \$25 per hour) to determine regional differentiation through the job gateway and visa conditions for foreign workers (noting that remuneration is a proxy for skill)

- 12.3. provide all lower-paid foreign workers with the ability to support partners and children for the length of their visa, with partners remaining subject to a labour market test should they seek paid employment; and
- 12.4. as an interim measure to manage the impacts on the New Zealand Residence Programme, increase the remuneration threshold for the Talent (Accredited Employers) Work Visa, to at least 150 per cent of the New Zealand median income (\$37.50 per hour or \$78,000 per annum), prior to this policy being disestablished.

I propose some changes to the proposals that we consulted on

13. Feedback from consultation was generally supportive of the new gateway system. However, employers were concerned about increased compliance requirements, particularly for SMEs who hire few foreign workers. To respond to these concerns I am proposing some changes to what I consulted on. These changes would:
 - 13.1. replace premium accreditation with new standards for high-volume employers and focus standard accreditation on managing regulatory risk
 - 13.2. replace the pathway to residence proposed for highly-paid foreign workers employed by 'premium' employers with a pathway to residence for any employer-assisted foreign workers who earn more than 200 per cent of the New Zealand median income, and
 - 13.3. replace Regional Skill Shortage Lists with a regionally differentiated job gateway that removes the labour market test for higher-paid roles in rural regions and retains skills shortage lists only in cities.
14. This would respond to the concerns expressed by employers by streamlining the process for low-risk and low-volume employers (most of which will be SMEs). This would enable the system to focus checks and resources on the highest-risk employers and not duplicate checks at each gateway.

Impacts of the proposals

15. The new gateway framework would provide:
 - 15.1. increased certainty for employers in exchange for upfront checks (as they would be 'pre-approved' before recruiting a foreign worker) and streamlined processes for genuine higher-skill shortages
 - 15.2. a simplified system through the reduction in visa categories
 - 15.3. a system which recognises that regions and sectors have different labour market needs
 - 15.4. an overall lift in the minimum standards for employing foreign workers (with a specific focus on higher-risk employers, such as labour hire companies and employers of high volumes of foreign workers)
 - 15.5. improved incentives on employers to recruit and train New Zealanders and to respond to skill and labour shortages; and
 - 15.6. improved compliance and treatment of foreign workers, and reduced exploitation risk.
16. These changes would support our wider labour market objectives by ensuring that:
 - 16.1. employers are placing more New Zealanders into jobs, which helps their businesses to grow and thrive, and results in better jobs for New Zealanders,
 - 16.2. temporary work visas are not being used to fill low-skill jobs on an ongoing basis, and
 - 16.3. foreign workers, when they are employed, are not exploited and have wages and conditions that are consistent with New Zealand norms.
17. A summary of impacts and measures has been attached as **Annex One** and **Annex Two**. Overall I expect these proposals to place some downward pressure on the number of employer-assisted temporary work visa applications over time and result in a shift in balance towards higher-skilled occupations. However, it is likely that we may see overall growth in

employer-assisted temporary work applications, albeit at a slower pace, particularly if the economy remains strong and demand for labour high. Increasing the remuneration threshold for the Talent (Accredited Employers) is likely to reduce the number of lower-skilled and lower-paid foreign workers being granted residence in the future by around 9,000 people per year.

Implementation and financial implications

18. The change to the remuneration threshold for the Talent (Accredited Employers) policy is likely to be implemented in late 2019, once announcements are made. I expect the first two sector agreements to be in place in mid-2020. The gateway system is likely to be implemented in early 2021, once IT system changes are in place. Implementation timeframes will be confirmed in the Business Case, Constitutional conventions
19. I will report back Constitutional conventions for a new IT system to manage employer accreditation which is required to implement the new system. Negotiations The report back would be subject to an acceptable business case being provided by the Ministry of Business, Innovation and Employment. The Minister for Social Development will also seek Constitutional conventions to implement the strengthened labour market test as part of the job gateway Constitutional conventions

Background

Cabinet agreed to consult on a new employer-assisted gateway system for temporary visas and enhanced regional workforce planning and invited me to report back

20. In December 2018, Cabinet agreed to consult on:
 - 20.1. a new employer-assisted gateway framework to replace six existing temporary work visa categories, and
 - 20.2. proposals to support domestic labour market outcomes by aligning the education/skills, welfare, and immigration systems at a regional level, including through enhanced regional workforce planning. [CAB-18-MIN-0608.01]
21. The proposed changes reflect the Coalition Agreement between the New Zealand Labour Party and New Zealand First by ensuring that work visas issued reflect genuine regional skill shortages and to take serious action on migrant worker exploitation.
22. Consultation took place between December and March. I was invited to report back to Cabinet on:
 - 22.1. the outcomes of the consultation and any changes to the proposals; and
 - 22.2. an implementation plan including the financial implications of the proposals.

This paper is the first of two papers seeking final agreement to the new employer-assisted gateway system

23. This paper summarises the feedback from consultation and seeks agreement to:
 - 23.1. implement the proposed gateway framework for employer-assisted temporary work visas
 - 23.2. the detailed design of the employer gateway and the new accreditation system; and
 - 23.3. other changes to remuneration thresholds and related policy settings.
24. Paper Two seeks agreement to the detailed design of the job gateway, including regional differentiation of the labour market test and sector agreements and the worker gateway.
25. On 29 July 2019, Cabinet also agreed to establish Regional Skills Leadership Groups as regional labour market planning bodies, including their proposed role and functions, composition, appointment process and resourcing [CAB-19-MIN-0363]. The overarching

purpose of the Regional Skills Leadership Groups will be to facilitate coherent, coordinated decision-making at the regional level to encourage businesses, training providers and other local actors to work together. The Groups will support better alignment of the immigration, welfare and education systems.

26. The proposals in this paper are also consistent with wider Government changes which seek to improve the operation of the labour market, for example the Review of Vocational Education, the Employment Strategy, the Welfare Reform programme and the Review of Migrant Exploitation. These programmes, as a whole, will work together to support our labour market objectives to ensure that we have an adaptable and highly-skilled workforce, and that more New Zealanders are employed in skilled and inclusive jobs.

Problem Definition: The current employer-assisted temporary work visa system is not supporting our wider labour market objectives

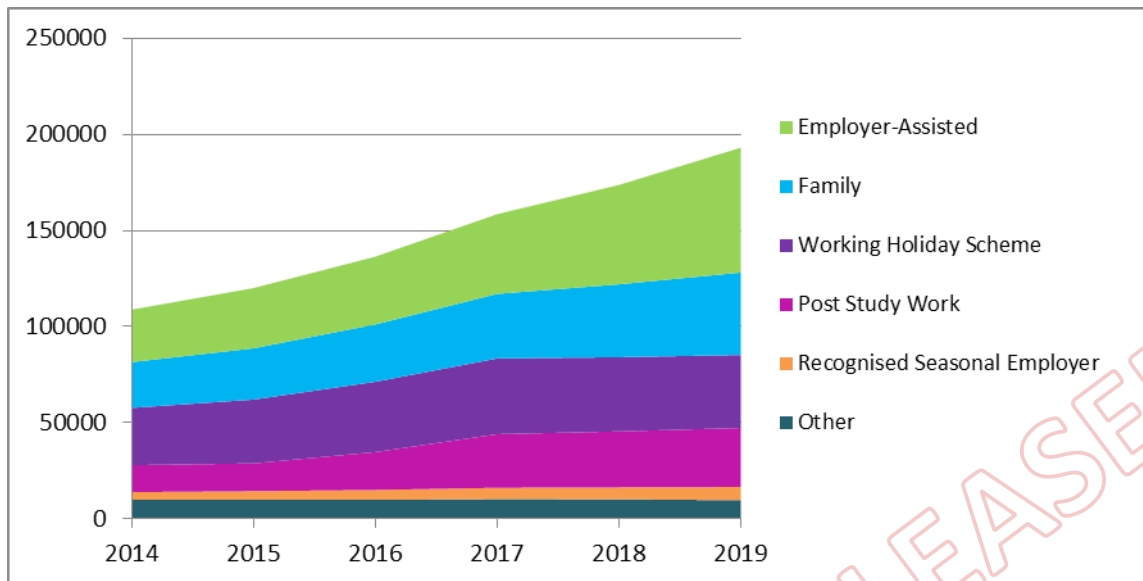
Highly-skilled temporary foreign workers are an important source of skills in the New Zealand labour market

27. Overseas workers' skills and expertise are likely to always be important to New Zealand. Highly-skilled foreign workers can make a significant contribution to New Zealand by filling critical skill shortages, bringing new innovative ideas and linking New Zealand business to overseas networks. Evidence suggests that highly-skilled foreign workers are more likely to complement than substitute New Zealand workers.
28. However, the current temporary work visa system is complex and hard to navigate for highly-skilled foreign workers and employers. More could be done to facilitate the entry of highly-skilled workers and better target resources at higher-risk employers and jobs.

However, some employers and industries are increasingly reliant on lower-skilled foreign workers

29. In industries characterised by lower-skilled jobs, lower wages, lower productivity, and more labour-intensive work, an increasing structural supply of temporary foreign workers to fill labour shortages could have negative impacts on the Government's long-term labour market objectives, for example, by:
 - 29.1. reducing the attractiveness to employers of New Zealanders, including beneficiaries
 - 29.2. reducing the incentives on employers to offer better wages and/or terms and conditions, including training; and
 - 29.3. embedding low-cost labour models and providing disincentives to shift to potentially more productive ways of organising businesses, including with regard to improvements in the use of capital.
30. As shown in Figure 1 below, the number of temporary work visa holders in the country has grown considerably since 2014. Employer-assisted visa holders are the largest group of temporary workers making up around 34 per cent of the total as at 31 March 2019 (around 65,000 foreign workers in total). At the same time the skill level of employer-assisted foreign workers has been dropping. Around 40 per cent of approved Essential Skills applications (the main employer-assisted work visa policy) were for lower-skilled jobs (ANZSCO skill level 4-5) in 2017/18, up from 28 per cent in 2010/11.

Figure 1: Temporary work visa holders in New Zealand as at 31 March (seasonally adjusted)



* Graph indicates the number of visa holders in New Zealand at any one time (seasonally adjusted); this differs from the number of approvals on an annual basis.

31. To a large degree this reflects strong economic conditions. With the unemployment rate at 3.9 percent in the June 2019 quarter we would expect the demand for foreign worker labour to be strong. However, there is evidence that employer-assisted foreign workers have had a negative impact on the hiring of New Zealanders.¹

The existing temporary work visa system is not working for New Zealand

32. I have identified a range of issues with the current employer-assisted visa policies. These include:
- 32.1. the current system is overly complex with a number of visa options - these are difficult to navigate and can cause unnecessary compliance or delays for employers and foreign workers
 - 32.2. the system has a 'one-size-fits-all' approach, it does not recognise regional and sectoral labour market differences
 - 32.3. there is a lack of coherence in the rules around labour market testing and access to foreign workers. There is some evidence that suggests employer-assisted temporary workers are displacing New Zealanders in the labour market
 - 32.4. the immigration system does not sufficiently incentivise businesses or industries with high ongoing labour shortages to take steps to recruit or train more New Zealanders, to improve pay and employment conditions, or to invest in capital and technology to increase productivity, nor does it trigger any responses from the training, skills and employment systems, and
 - 32.5. there are too few real checks, balances and obligations on employers hiring foreign workers, meaning that some employers with poor track records (e.g. non-compliance with minimum employment standards) are still able to access foreign workers.
33. There is opportunity to provide more certainty for employers in exchange for more upfront checks, to reduce the reliance on lower-skilled foreign workers, for more consistency in decision-making, and to make things easier for genuinely highly-skilled foreign workers.

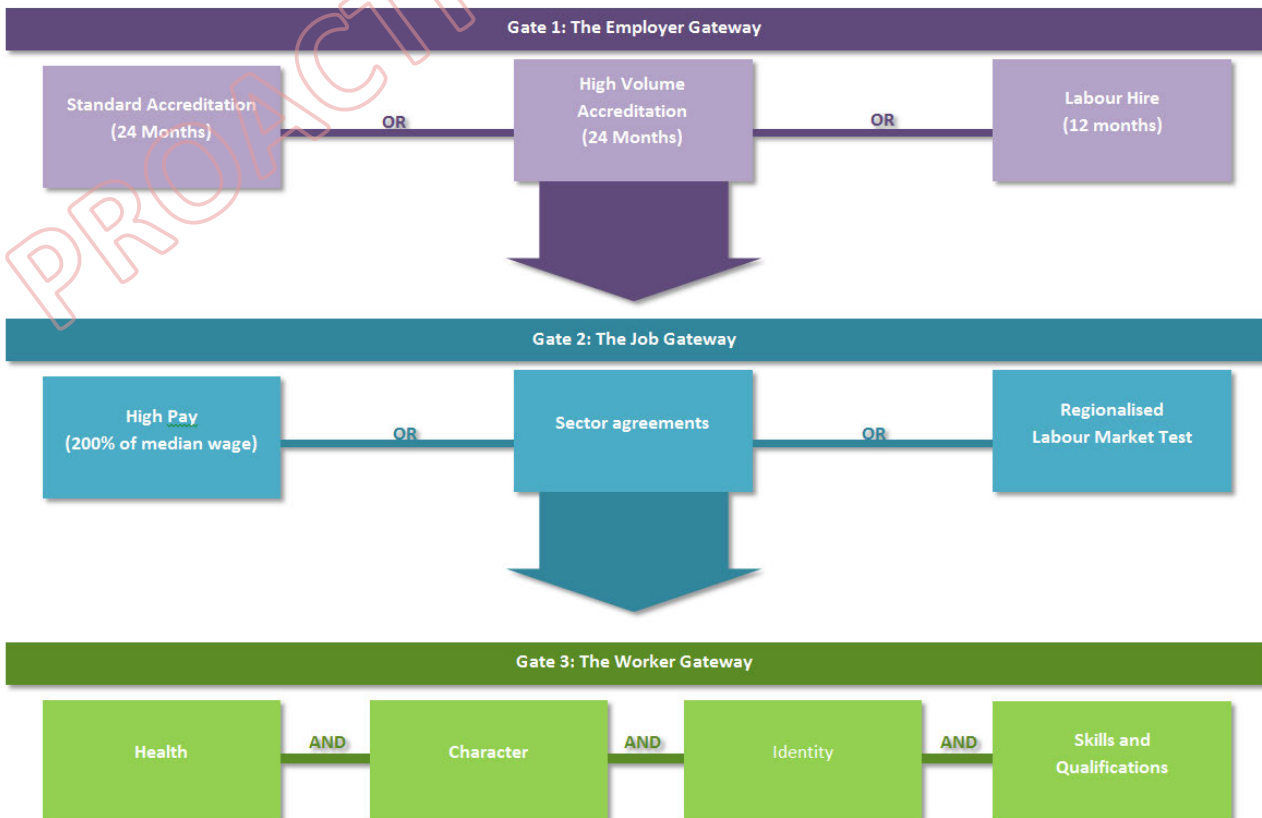
¹ Research published by the Ministry of Business, Innovation and Employment (MBIE) in 2018 found that while overall foreign workers have a small positive impact on labour market outcomes of New Zealanders, there was evidence that employer-assisted temporary foreign workers in particular have had a negative impact on the hiring of New Zealanders.

Gateway System: Employers and foreign workers would need to come through three gates

I propose that Cabinet agree to implement the proposed gateway framework

34. I propose that Cabinet agree to implement the high-level gateway framework that was consulted on. The new gateway framework (summarised in Figure 2) would replace the current Essential Skills, Approval in Principle, Work to Residence - Talent (Accredited Employer), Work to Residence - Long Term Skills Shortage List Occupations, Silver Fern Job Search and Silver Fern Practical Experience visa categories. It would not apply to work visa categories where open visas are granted, for example, working holiday and family visas. It would require all employer-assisted temporary work visa applications and foreign workers to come through three distinct 'gates' where checks are completed by Immigration New Zealand (INZ):
- 34.1. *the employer gateway* - where employers would be accredited to enable them to hire a foreign worker;
 - 34.2. *the job gateway* - where the job is checked to ensure that no New Zealander is able to fill the job being recruited for, subject to skill, sectoral and regional differentiation; and
 - 34.3. *the worker gateway* - where checks will be made to make sure the foreign worker is of good character and health.
35. Central to the new framework is that it is employer-led rather than foreign worker-led. This means that all employers would need to be accredited and have passed the job gateway before they could recruit foreign workers. Currently some employer and job checks are done as part of the foreign worker's visa application.

Figure 2: High level summary of the employer-assisted gateway system



Feedback from consultation was generally supportive of the new gateway system but employers were concerned about increased compliance requirements

36. Consultation on the proposed changes closed on 18 March, and resulted in a total of 947 submissions from a range of groups including foreign workers, employers, industry groups, unions and immigration advisers and lawyers. About 60 per cent of submitters expressed general support for the proposed employer-led gateway system.
37. There was strong support for more regional differentiation and regional workforce planning. Most submitters also supported sector agreements, but wanted more detail on what they would include.
38. Although the overall change was largely supported, there were some concerns from employers that the proposed changes could increase the time it takes to recruit foreign workers and could increase the compliance burden. The specific concerns included the potential cost of accreditation, the cost of increased wages and paperwork adversely affecting small businesses, difficulty fulfilling 'pastoral care' requirements for small businesses, and concern that the proposed accreditation period was too short and should be increased. This was in addition to wider concerns around visa processing times.
39. Most employers and business groups said that the gateway framework needs to be implemented in a way that minimises administration costs and time requirements for employers, particularly smaller ones. MBIE will publish a detailed summary of submissions once policy announcements are made.

The gateway framework would ensure that standards are raised and immigration processes are streamlined for employers where there are genuine shortages

40. I am confident that the proposed reforms will strike the right balance between improving compliance by employers, and employment conditions for both domestic and foreign workers, whilst ensuring the system is fast and efficient for genuine shortages. The new system will enable:
 - 40.1. increased certainty for employers in exchange for upfront checks (as they would be 'pre-approved' before recruiting a foreign worker) and streamlined processes for genuine higher skill shortages
 - 40.2. a simplified system through a reduction in visa categories
 - 40.3. recognition that regions and sectors have different labour market needs
 - 40.4. an overall lift in the minimum standards for employing foreign workers (with a specific focus on higher-risk employers, such as labour hire companies and employers of high numbers of foreign workers)
 - 40.5. improved incentives on employers to recruit and train New Zealanders and to respond to skill and labour shortages; and
 - 40.6. improved compliance and treatment of foreign workers and reduced exploitation risk.
41. To ensure that there is no duplication or unnecessary compliance burden on employers, the checks and balances have been calibrated across the system as a whole:
 - 41.1. **the employer gateway** (and the underlying risk and assurance model) is primarily focused on ensuring that employers are meeting minimum employment and immigration regulatory standards and reducing foreign worker exploitation.
 - 41.2. **the job gateway** is primarily focused on ensuring that labour market risks such as underinvestment in training, displacement of New Zealanders and wage suppression are reduced.

Employer Gate: employers would need to meet accreditation standards before they could recruit foreign workers



There would be three types of accreditation with different standards

42. I propose that there be three types of accreditation through the employer gateway:
- 42.1. Standard accreditation: for employers recruiting between one and five foreign workers in a 12 month period - which provides a more streamlined process for smaller employers
 - 42.2. High volume accreditation: for employers recruiting more than five foreign workers in a 12 month period - which focuses processing effort on higher-volume employers
 - 42.3. Labour hire accreditation - which recognises that labour hire business models pose specific risks of exploitation.
43. The key focus of accreditation is to ensure that employers are compliant with minimum employment and immigration regulatory standards. However, high-volume and labour hire employers would be required to meet higher standards. The key criteria for each type of accreditation are outlined in the table below.

Table two: Summary of accreditation standards and conditions

	Standard Accreditation	High-volume accreditation	Labour hire accreditation
Which employers?	Available for employers recruiting five or less foreign workers in a 12 month period (around 22,000 last year)	Compulsory for high-volume employers (recruiting six or more foreign workers in a 12 month period) (around 2,000 last year)	Compulsory for labour hire companies (around 50)
Standards	Employers would be required to be a genuinely operating business (or other legitimate organisation), have no recent history of regulatory non-compliance, and take steps to minimise exploitation	<ul style="list-style-type: none"> • Same as standard accreditation (i.e. must be compliant with minimum regulatory standards) • Must demonstrate a commitment to training and upskilling • Must demonstrate a commitment to improving pay and conditions over time 	<ul style="list-style-type: none"> • Same as high-volume accreditation • Some specific requirements for labour hire companies
Duration	Initial accreditation lasts for 12 months and requires renewal every two years for subsequent renewals	Initial accreditation lasts for 12 months and requires renewal every two years for subsequent renewals	12 months
Verification and assurance	Up front verification (including site visits) and post decision assurance for higher-risk employers	Up front verification (including site visits) and post decision assurance for higher-risk employers	Site visits and verification done up front for all employers, and post-decision assurance where issues identified

Standard accreditation would be low-touch, with the emphasis on managing regulatory risk

44. For standard employers (those who recruit between one and five foreign workers per year), I propose that the process for accreditation would be fairly light-touch. Employers would be required to be a genuinely operating business, have no recent history of regulatory non-compliance and take steps to reduce exploitation risks. For example:

Table Three: detailed standards for standard accreditation

Compliant with regulatory standards	Reduces exploitation risk
<ul style="list-style-type: none"> • The employer must be a genuine business (or other legitimate organisation) with a financial presence. • The organisation and key office holders (for example, directors and propriety owners with day to day responsibility for the business) must: <ul style="list-style-type: none"> • not be on the stand down list; • not be non-compliant with any relevant industry specific or other regulatory standards (i.e. Companies Office) • have no history of non-compliance with the immigration system, including: <ul style="list-style-type: none"> ▪ convictions under the Immigration Act 2009; ▪ providing false or misleading information; ▪ employing unlawful foreign workers; or ▪ not paying foreign workers the wages that were promised in a visa application. 	<ul style="list-style-type: none"> • Employer commits to provide already publicly available information to foreign workers on employment rights and settlement. • The employer commits to paying all costs and fees for the recruitment of foreign workers.

45. The new system would enable INZ to build a more complete picture of each individual employer, based on their interactions with the immigration and other regulatory systems, in order to better target riskier employers and identify non-compliance. This would provide a new framework to enable INZ to work more closely and share information with other labour market regulators (e.g. Employment Services and Worksafe) to address non-compliance with regulatory standards. The Review of Temporary Migrant Worker Exploitation will also provide further opportunities to build more system integration to reduce non-compliance.

46. I expect a significant number of employers (around 22,000 based on the last year) are likely to apply for standard accreditation, many of whom will be small or micro businesses (for example, individual farmers). Around 18,000 of these employers recruited either one or two foreign workers over the past 12 months. The strong feedback I received in consultation is that the process needs to be fast and efficient, and to not set unrealistic standards that these small or micro businesses could struggle to meet. I have therefore decided that for standard employers, labour market risks such as training, displacement and wage suppression would be solely managed through the job gateway.

47. This would set the standard at an achievable level for most employers on day one, whilst still ensuring that we are able to exclude non-compliant employers. It would enable the system to be relatively simple and quick for INZ to process, and impose lower compliance costs for the bulk of smaller employers. INZ would be able to target effort and resources at those employers who pose more labour market risks via other mechanisms in the new system (such as in the job gateway).

High-volume accreditation would require employers to demonstrate their commitment to training and pay and conditions

48. High-volume employers are those that employ more than five foreign workers per year. Around 2,000 employers employed more than five foreign workers in the last year.

49. I propose that high-volume employers be required to meet the same level of compliance with regulatory standards as standard accreditation. In addition they would be required to make specific commitments to training and upskilling New Zealanders, and to increasing wages and conditions. Employers would be required to indicate how they propose to meet each labour market standard in their initial accreditation application. The commitments would be checked at accreditation, the job check, at re-accreditation and/or through post-decision audit and assurance.
50. A range of options would be provided that employers could use to demonstrate their commitments, depending on their circumstances. To ensure that the rules are clear, transparent and quick to assess, the options would be rules-based as much as possible and require minimal judgement to assess.
51. The indicative options for each labour market commitment are provided in Table Four.

Table four: Examples of training wage commitments for high- volume accreditation

Demonstrate they are committed to training and upskilling	Demonstrate that they are committed to increasing wages and conditions over time
<p>Must make a commitment to training and upskilling. This may be demonstrated by, for example, evidence that the employer:</p> <ul style="list-style-type: none"> • Puts staff through work-relevant formal education leading to an NZQA qualification; or • Has taken on an apprentice in last 2 years; or • Has a structured in-house training programme, i.e. cadetships, managerial programmes etc.; or • Engages with industry/sector training schemes; or • Has a graduate or internship programme; or • Spends 1% of their payroll on formal training. 	<p>Must make a commitment to improving wages and conditions across their business. This may be demonstrated by, for example, evidence that the employer:</p> <ul style="list-style-type: none"> • Pays above industry standard wages, for example: <ul style="list-style-type: none"> ○ is a certified living wage employer; or ○ evidence from payroll records and industry surveys etc.; or • Increases wages for employees over time, for example: <ul style="list-style-type: none"> ○ Has a collective agreement or other formal pay agreement in place at the workplace; or • Increases wages of foreign workers each year in line with the percentage increase in the median wage or relevant collective or pay equity or other formal pay agreement.

52. Further consultation would be undertaken with employers and unions prior to implementation of the system to ensure that these commitments are achievable, and to identify any additional options. I would also expect that these options would be flexible and could be added to or removed over time.

There would be upfront assessment and higher standards for labour hire companies

53. Labour hire companies present higher risks of exploitation and immigration non-compliance due to the nature of the employment relationships. I therefore propose that assessment upfront would be required, rather than commitments made. Labour hire employers would be required to meet the same standards as high-volume employers, but would be subject to more robust verification and assurance. To mitigate against the higher risk these employers pose of exploitation, they would also need to demonstrate that they:
- 53.1. have a history of contracts for the supply of labour and of placing/employing New Zealand workers i.e. can't have been set up for the purpose of recruiting foreign workers
- 53.2. will only contract foreign worker labour to compliant businesses, and
- 53.3. have good systems in place to monitor employment and safety conditions on site.

54. We would expect that all or most labour hire companies would also be subject to additional verification and a site visit. Their fee would be set accordingly.

I have decided not to take forward some proposals that we consulted on

55. A premium accreditation standard was consulted upon as a means of incentivising employers to meet a higher labour market standard, in return for a suite of benefits (examples included a pathway to residence and three-year visas for lower-skilled foreign workers for employers in tight labour markets).
56. After considering consultation feedback regarding the complexity of the accreditation standards, and based on INZ's experience of the current Accredited Employer policy, I do not consider that the system and employer benefits offered by introducing the premium accreditation outweigh the costs and risks. Having a completely rules-based system to determine what best practice looks like is challenging, as an employer's specific context (such as their industry and size) can differ significantly in each case. This also means that some employers that exhibit all the right behaviours in principle, but are unable to demonstrate the mandated piece of evidence, are unable to be recognised.
57. As an alternative, designing a system with the discretion to make judgements about what 'good' looks like is prone to inconsistent decisions, is often reliant on specialist skillsets, and creates difficulty in declining applications from employers that meet the evidentiary requirements but not the intended outcomes (for example, they have an HR policy, but that policy is ineffective or poorly implemented).
58. There are also risks associated with continuing with a work-to-residence policy under the premium accreditation proposal, primarily with regard to the exploitation risks arising from the status of the employer being the key factor as to whether the foreign worker is able to access this pathway to residence.
59. Residence settings should be used to attract genuinely higher-skilled workers who can grow New Zealand's skill base and increase productivity, for which the Skilled Migrant Category (SMC) is the main skilled residence policy to achieve this. I therefore propose that the pathway to residence be delinked from the employers' status and instead attached to the 'highly-paid' threshold in the job gateway (200 per cent of the national median income) as it focuses on the skills of the foreign worker, rather than the employer. This would supplement the SMC, by targeting genuinely highly-skilled foreign workers (as proxied by their pay rates) who may not be able to score highly enough through the SMC points system (for example, they may be an IT worker without a formal qualification, or may be older and therefore get fewer points).

Third party standards and accreditation could also be accepted

60. I propose that industry accreditation or other third party standards could be used as evidence that employers are meeting the standards. Accepting such evidence would streamline the immigration process for those employers who are part of these schemes.
61. More work would need to be done to establish what industry or other accreditations exist and whether they are robust enough. However, if assessed as a similar standard as accreditation, there is no reason why they could not be recognised.

Unions will be engaged in the process

62. The new system will need to engage unions in a way that balances the ability to use any adverse information that they may have on employers (which they indicate only relates to a small proportion of employers) whilst not unduly slowing the process down for all employers. Further consultation would be undertaken with unions prior to implementation of the system to ensure union engagement is well-targeted.

Verification and assurance will be an integral part of the system

63. An assurance model is being developed for the new employer-assisted work visa system to manage risk. This will include pre-decision process controls at the employer, job and worker gateways and re-accreditation, as well as post-decision assurance.
64. The level of verification and post decision assurance for each type of accreditation and employer would be driven by risk settings within the assurance model. Site visits and more in-depth assurance activities would be in place for higher-risk employers. Specific risk factors could include, (but would not be limited to):
 - 64.1. specific concerns raised by organisations such as Employment Services, Worksafe, Unions, and industry bodies;
 - 64.2. the type of industry or business model for example, labour hire, franchises;
 - 64.3. the sector;
 - 64.4. the length of time the business has been operating; and
 - 64.5. previous non-compliance, for example whether the employer or individuals have been on the stand-down list.
65. INZ is also working with Inland Revenue to ensure that information on non-compliant employers can be shared and that employer information can be easily verified through tax records.

Direct employers would need to be accredited, not representative/industry bodies

66. I propose that in order to minimise risk, direct employers must be accredited, not industry organisations, contractors or franchisors or other such groups on behalf of members. Allowing multiple business to have one accreditation would create problems trying to establish accountability if one business was non-compliant.
67. Officials will ensure that online application processes are able to take into account different company structures. For example, a parent company may want to provide employment, training and recruitment policies once on behalf of all of their individual subsidiaries or franchises.

Employers would be required to use a New Zealand Business Number (NZBN)

68. To facilitate the provision of information by employers, and future-proof the new system, it is proposed that employers be required to provide an individual New Zealand Business Number with their accreditation application. The Minister for Small Business and I will consult the Privacy Commissioner with a view to making the use of an NZBN compulsory for employers seeking to be accredited in the new system.

Additional proposals to support the new gateway system

I propose to retain the stand-down period for lower skilled foreign workers

69. Changes made in August 2017 mean that lower-skilled² Essential Skills foreign workers who have worked in New Zealand for three years are subject to a 12 month stand-down period where they must leave New Zealand. The stand-down period is intended to prevent a pool of lower-skilled, lower-paid foreign workers building up in New Zealand that are well-settled but have no pathway to residence.
70. Prior to this policy, lower-skilled temporary foreign workers could roll over their visas indefinitely, provided their jobs continued to pass a labour market test. This meant that they could become well-settled here and lose ties to their homeland, effectively becoming de facto

² Currently lower-skilled foreign workers are those foreign workers that are employed in jobs at:

- ANZSCO skill level 4 and 5 and who earn below 150% of the median income
- ANZSCO 1-3 and who earn below 85% of the median income

The proposed changes would replace ANZSCO with a simple remuneration threshold set at the median income.

residents but without the rights that go along with residence and citizenship. This created a range of negative impacts:

- 70.1. their visa is based on a job offer, and so despite being well settled, if they are injured, no longer able to work, or they lose their job, they lose the basis for their visa and need to leave the country, leaving them in an insecure situation and vulnerable to exploitation;
- 70.2. they don't have access to the same rights, benefits and Government support as New Zealanders, such as subsidised tertiary education – their children may have grown up here but would be unlikely to be able to afford tertiary education; and
- 70.3. there are fewer incentives on employers to access the domestic labour market while they continue to employ a well-settled, low-paid foreign worker.

71. Cabinet agreed to test through the consultation process whether, in the context of the proposals, the policy objectives for the stand-down period could be met in other ways.

The stand-down period has a range of impacts for employers and foreign workers

72. As expected, the majority of employers and foreign workers did not support the stand down and wanted to see it removed. Employers indicated that they need foreign workers at all skill levels, not just those that are highly-skilled. Employers were concerned that they would lose valuable and productive employees, potentially only to replace them with another foreign worker.
73. Despite this, I propose that the stand-down period is retained. However, changes to the stand down period (but not its removal) could form part of the negotiations on a sector agreement. Submitters generally agreed that having a pool of foreign workers here in limbo indefinitely is not a good policy outcome. Submitters' most commonly proposed solution, an ongoing pathway to residence for lower-skilled workers, would undermine the objectives of the policy review by:
- 73.1. Reducing the overall skill level of permanent migration. Lower-skilled workers would need to either replace other more skilled workers in the residence programme, or the planning range in the residence programme would need to be increased to provide for lower-skilled foreign workers;
 - 73.2. Creating incentives for lower-skilled foreign workers to try to extend their temporary stay. Providing the opportunity for residence would provide a significant incentive for foreign workers to seek ways to maximise their stay here, including through fraud;
 - 73.3. Increasing the vulnerability of those foreign workers to exploitation. If residence is a potential incentive for lower-skilled foreign workers, they may be prepared to put up with poor working conditions for longer to achieve their aims; and
 - 73.4. Not necessarily resolving the underlying labour shortages. Foreign workers with residence have more choices and may choose to move to more attractive jobs or regions once they obtain residence, while their old jobs may end up being filled by new foreign workers.
74. The full impact of the existing stand-down policy will not be felt until after August 2020. The three-year period only began for lower-skilled foreign workers who were approved after August 2017. Given this, it is difficult to assess the full impacts of the policy on worker behaviour, at this time. Foreign workers might leave the country, upskill to a higher-skilled visa, or attempt to remain in New Zealand through other means.
75. Of the 52,000 Essential Skills foreign workers in the country as at 31 March 2019, it is estimated that around 3,000 to 4,000 are long-term lower-skilled foreign workers who are likely to be directly affected by the three year stand-down period from August 2020. The three most common regions for existing long-term lower-skilled foreign workers were Canterbury, Otago and Auckland. The most common occupations were dairy farm workers (670), retail supervisors (150), and aged or disabled carers (140).

76. This is a relatively small number and does not indicate that the stand down period is likely to have a significant economy-wide impact. There has been no evidence that the stand-down period has reduced New Zealand's attractiveness to lower-skill foreign workers. Since the policy came into force, the number of these workers arriving has increased significantly.

I propose to reinstate family entitlements for lower-skilled workers

77. As part of the August 2017 policy changes, lower-skilled workers are unable to bring their partners or children to New Zealand unless they qualify for a temporary work visa or visitor visa in their own right. Mid-and higher-skilled workers are allowed to bring their partners and dependent children to New Zealand for the duration of their visa. Their partners are eligible for an open work visa and children can be granted students visas as domestic students.
78. Cabinet agreed to consult on the proposal to reinstate family entitlements for lower-skilled workers. Under this proposal, partners would be able to accompany the principal applicant to New Zealand but would be granted visitor visas for the duration of the principal applicants' visas unless they are able to obtain a work visa in their own right. This proposal is consistent with Government Priority 3, to deliver compassionate government and create an international reputation we can be proud of, as it would support a foreign worker's right to family life.

Feedback from consultation is mostly in support of reinstating family entitlements for lower-skilled workers

79. The majority of licenced immigration advisors, employers and foreign workers supported reinstating family entitlements on the grounds that this change will be fair, humanitarian, and allow foreign workers to contribute economically, culturally and socially to New Zealand. Another benefit cited was that workers would not need to leave New Zealand for a family visit each year. However, some submitters felt that restricting the ability of partners to work could have negative impacts on foreign worker's families by reducing opportunities for partners to settle and integrate in their local communities and by reducing family incomes.

Reinstating the ability to bring family is likely to have some fiscal and labour market impacts

80. I expect that reinstating the family entitlements would result in an increase in the number of families who come to New Zealand in the future under this visa category. As at June 2019, 52,800 Essential Skills (at all skill levels) category workers supported approximately 21,100 partners and dependent children (a 66 per cent increase in the number of family members since March 2016). As a result of these proposed changes it is estimated that an additional 1,700 – 2,000 partners and 600-1000 children would come to New Zealand per year.
81. Increasing the number of accompanying family members would have impacts on the housing, health and education systems. Dependent children would have access to primary and secondary education as subsidised domestic students. They would only be able to access tertiary education as full fee-paying international students. The ability to bring in dependent children would continue to be subject to the existing income requirements in the Essential Skills category to ensure that any children brought in have adequate living conditions.³
82. It is estimated that the mainstream education costs from the additional children could be around \$4m to 6.7m per annum. These costs would be met out of existing population based funding baselines. In addition, some of these students would be likely to need English for Speakers of Other Languages (ESOL) support. These costs have been estimated to be around \$400k to \$680k per year. This would be a cumulative cost (students are funded for up to five years based on need). ESOL is funded by the Crown, from its own appropriation.
83. The temporary nature of the visa would still be emphasised due to the retention of the stand-down period, to ensure that there are no expectations of long-term settlement. There is evidence that family work visa holders have had a negative impact on the employment of New Zealanders. I have therefore decided that the labour market impacts need to be

³ As of 1 July 2018, Essential Skills work visa holders need to earn at least \$42,944.20 per annum to support dependent children for a visitor or student visa. This is based on the maximum jobseeker support and the accommodation supplement combined with a family tax credit for one child.

managed by requiring partners of lower-skilled workers to pass through the new gateway framework in order to be granted a work visa. If they do not get a work visa in their own right they would be granted a visitor visa and would not be able to work.

84. If they do not qualify for a work visa, there is a risk that some partners of lower-paid foreign workers may seek to work unlawfully, in order to supplement the families' income. This could make them vulnerable to exploitation by unscrupulous employers. As part of the implementation of the changes I will ensure that there are no unintended visa barriers for partners who are able to obtain a job in New Zealand.

I propose to replace the existing skill bands with a simple remuneration threshold

85. Under current settings, a combination of the ANZSCO skill level of the job and remuneration thresholds are used to determine the skill band which affects the type of labour market test that applies and the conditions attached to a visa. Cabinet agreed to consult on raising the mid-skilled remuneration threshold for ANZSCO skill level 1-3 jobs from 85 per cent to 100 per cent of the national median wage (\$25 per hour, or \$52,000 per year based on 40 hours per week).
86. However, feedback from consultation has indicated that the current skill band system is complex and that ANZSCO is outdated and does not work well for some occupations. These issues lead to a significant number of incorrect or inflated job titles being provided by employers. This creates a significant amount of administrative work for both the employer and INZ and to delays in visa processing.
87. I therefore propose to remove ANZSCO from the assessment of skill level for employer assisted temporary work visas. Instead I propose to use only remuneration, set at the median wage so that:
- 87.1. higher-paid jobs are defined as those paid at least the median wage; and
- 87.2. lower-paid jobs are those that are paid below the median wage.
88. This would flow through to visa conditions, including the stand down period, family entitlements and duration, and to labour market testing as set out in Paper Two. We would no longer be differentiating people by skill but rather by their salary band.

The proposal reduces complexity and increases transparency and efficiency in the immigration system

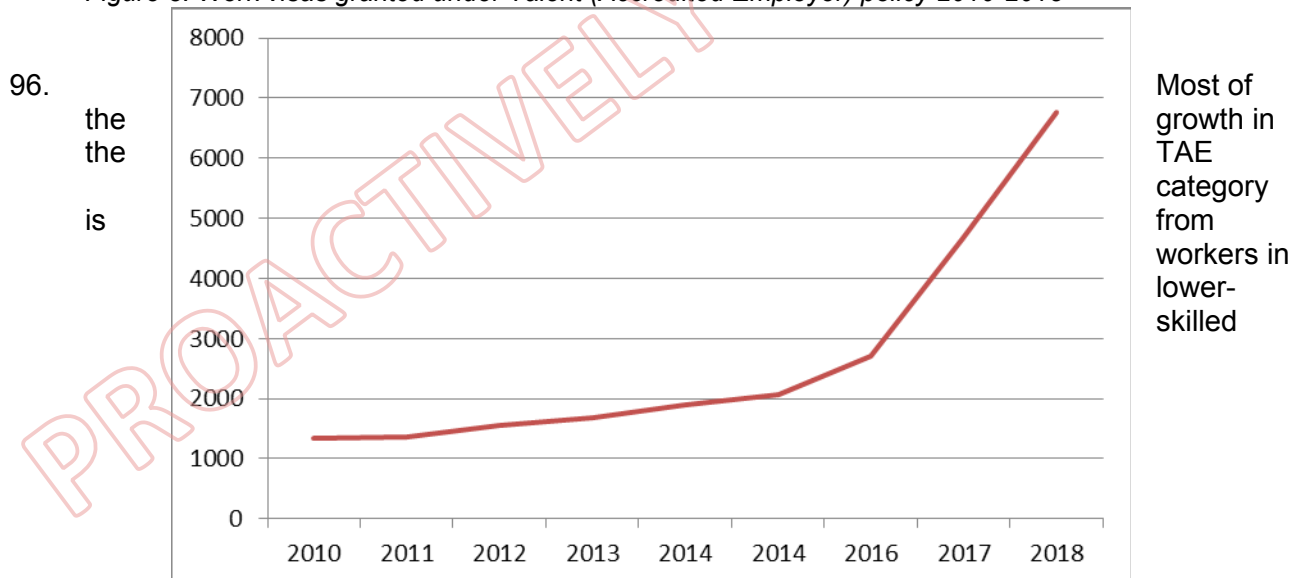
89. This proposed change would result in around 10,000 ANZSCO skill level 1-3 workers who were previously in the mid-skilled bracket now being classed as lower-paid and subject to the stand-down period. A smaller group of approximately 2,000 ANZSCO skill level 4-5 workers that are currently considered lower-skilled would move into the higher-paid group.
90. The main groups of occupations that would move to the lower-paid band would be construction trade workers, food trade workers (i.e. chefs), hospitality and retail managers, and automotive trade workers. The affected workers would predominantly be in Auckland (around 50 percent). Of those workers who would benefit from the proposals by being classified as higher-paid i.e. get better visa conditions, the majority would be dairy farm workers.
91. The proposal would significantly simplify immigration settings. I consistently hear from employers that they are frustrated with the existing ANZSCO based system. By eliminating the work that goes into verifying ANZSCO inflation it would also allow INZ resources to be better used and reduce rework and delays for employers.
92. Setting a criteria based solely on remuneration does mean that there is expected to be some increased risk of fraudulent activity, such as employers not paying or clawing back the agreed wages. This is, however, an issue under current settings and could be managed through the increased verification and post-decision assurance which will be built into the new system. By increasing the number of workers classified as low paid (and subject to the stand down), this proposal would reduce the number of temporary foreign workers who are

able to continuously roll over their visa, without having the stability of a pathway to genuine residence.

I propose to increase the remuneration threshold for the Talent (Accredited Employer) category as a transitional measure

- 93. As previously noted the new gateway system would replace the existing Work to Residence Talent (Accredited Employer) (TAE) category. Under the proposed new system, highly-paid foreign workers (those who are paid more than 200 per cent of the median income) would have a pathway to residence after working in New Zealand for two years. The TAE category would be disestablished when the new gateway system is introduced.
- 94. However the new system is not going to be implemented until early 2021. In the interim period, I propose that the remuneration threshold for the current TAE policy be increased from \$55,000 to 150 per cent of the New Zealand median income (currently \$37.50 per hour or \$78,000 per annum). I also propose that in order to manage the transition to the new policy that INZ will stop granting five year accreditation periods to employers under the TAE policy and will remove the fast tracked access to a permanent resident visa under this policy. Foreign workers would still be eligible for a resident visa.
- 95. The number of foreign workers being approved under the existing TAE category has continued to increase rapidly. In 2018, 6,678 workers were granted work-to-residence visas, a 250 per cent increase on 2016. 2,601 of those were paid between \$55,000 and \$60,000 and 4,408 were paid less than 150% of the median salary.

Figure 3: Work visas granted under Talent (Accredited Employer) policy 2010-2018



occupations who do not meet the requirements of the SMC. Over time, the annual income threshold for this category has become achievable for lower-skilled foreign workers, as it has remained at \$55,000 since 2008. The threshold is now not representative of the wages of genuinely skilled workers and does not align with the original intent of this policy.

- 97. The current growth in these work visas is expected to add approximately 9,000 people per year (existing work to residence visa holders plus their families) to the residence programme from 2019/2020, as workers transition to residence after two years here. This continued growth will make it difficult to manage future residence programme planning ranges.
- 98. Shifting the salary threshold to 150 per cent of the median income as a transitional measure would provide a phased transition to the new gateway system for employers and foreign workers. It would reduce the immediate pressure on this residence pathway from lower-skilled workers by reducing the number of these visas by around 65% (4,400 workers based on 2019 data). The main occupations approved that earned below the proposed new salary threshold were scaffolders, motor mechanics, truck drivers, carpenters, and metal

fabricators. Foreign workers already on the pathway would continue to be able to apply for residence, but new temporary visas would not be granted for lower-paid foreign workers.

Consultation

99. Agency consultation included providing the draft paper to: the Treasury; the Department of Prime Minister and Cabinet, the Ministry of Social Development; the Ministry for Primary Industries; the Ministry of Education; the Ministry of Foreign Affairs and Trade; the Ministry of Health; the New Zealand Police; the Department of Internal Affairs; Te Puni Kōkiri; and the Department of Corrections.

100. Agency feedback has been taken on board in the development of this paper.

Treasury Comment

101. The Treasury supports the intent of the policy proposals but we recommend instead that policy and funding decisions be considered in Budget 2020, primarily on the basis that the policy is not urgent. Constitutional conventions

Implementation and transitional arrangements

102. It is expected that the proposed changes would be implemented in stages starting in late 2019, once the changes are announced. The new gateway framework and employer accreditation is likely to be implemented from early 2021 in order to allow time for development of the new operating model, IT system changes and training. Implementation timeframes will be confirmed in the Business Case, Constitutional conventions

103. It is preferable to not go live until a new online portal for employers can be built. Having a paper-based process would be inefficient and create reputational risks for the Government, if the system is hard to use and slow. I expect that the implementation of the gateway system would be phased in to ensure that 22,000 employers are not required to be accredited on day one and that existing accredited employers would be transitioned smoothly into the new system.

104. The changes to the Talent (Accredited Employers) policy, including increasing the remuneration threshold would be implemented in late 2019, subject to announcements. I will also disestablish the Silver Fern Job Search visa in late 2019. The Silver Fern Job Search visa, which is capped at 300 places, is due to open in April 2020. This visa is not well targeted and due to the huge demand for the limited number of places it creates significant administrative issues for INZ. The Silver Fern Practical Experience would be closed within two years to ensure all current Silver Fern Job Search visa holders can apply for the practical experience visa.

105. Other changes, including the first two sector agreements, reinstating the ability for lower-skilled workers to bring family, strengthening the labour market test and replacing ANZSCO with a single remuneration threshold, would be likely to be implemented in mid-2020.

106. I am seeking Cabinet's agreement to the high-level direction of the changes. There are a range of further detailed decisions required in order to implement the changes and to certify immigration instructions. These include:

106.1. the detailed design of the accreditation standards (in consultation with employers and unions);

106.2. clarifying the immigration rules for self-employed contractors;

- 106.3. a process for suspending and rescinding accreditation and a corresponding complaints and reconsideration process for employers; and
- 106.4. any transitional arrangements to balance recognition of existing employer and foreign worker status with the broader intent of the policy and the operational needs of INZ.
107. To support this work, officials are also identifying gaps in information and barriers to information sharing. This is expected to result in new information and data sharing agreements, including with Inland Revenue. It will also include considering ways to better use existing tools such as the New Zealand Business Number (NZBN) in the immigration system.
108. It may also be necessary for me to make minor and technical changes to the proposals in line with the overall intent of Cabinet.
109. The new gateway system would be subject to a multi-year evaluation once it is in place to assess whether it is having the desired outcomes. Officials would report back to me with the outcomes of the evaluation to inform any further changes.

Financial implications

110. The proposed changes have the following financial implications:
- 110.1. a new IT system, with associated development and project costs, to process employer applications;
- 110.2. operating costs for processing visa applications, employer accreditation and job check applications, including verification and assurance functions, which will be recovered through third party application processing fees. I will report back to Cabinet on a new fees system and related appropriation changes; and
- 110.3. a new function to be established within MBIE to negotiate and monitor sector agreements (funding of \$1.425m in the first year and \$1.725m in outyears is sought in Paper Two).
111. There are also expected to be costs for the Ministry of Social Development to implement the strengthened labour market test. These costs are outlined in Paper Two.
112. [REDACTED] Constitutional conventions [REDACTED]
113. The proposal to reinstate the ability for lower-skilled workers to bring partners and children with them would have some impacts on the education system. It is estimated that the mainstream education costs could be \$4m to \$6.7m per year. These costs would be met out of existing population based funding baselines. In addition, some of these students would be likely to need English for Speakers of Other Languages (ESOL) support. These costs have been estimated to be around \$400k to \$680k per year.

I will report back to Cabinet seeking funding for new IT infrastructure [REDACTED] Constitutional conventions [REDACTED]

114. On 15 April 2019, in the context of considering a bid for contingency funding for the implementation of the employer-assisted visa changes, Cabinet noted that decisions had not yet been made on any potential policy changes. It also noted that any funding decisions for costs associated with potential changes to the employer-assisted work visas and regional workforce planning would be sought alongside policy decisions in mid-2019, and this would be outside the normal Budget cycle [CAB-19-MIN-0174.23, paragraph 34].
115. I propose to report back to Cabinet [REDACTED] Constitutional conventions [REDACTED] to build a new online portal to allow employers to apply for accreditation and job checks. The proposed solution would be cloud-based and enable risk-based screening and real time checks to be undertaken with data held by other regulatory systems.

116. In my view realising the benefits of the policy changes are dependent on the IT system build. Having a paper-based process would be inefficient and create reputational risks for the Government. If the system is hard to use and slow for employers there is likely to be significant criticism. The existing INZ IT system is not fit for purpose to support the gateway system, as it is focused on applications by migrants and geared towards processing visas rather than employer accreditation.

117. Negotiations

118. The report back would be subject to an acceptable business case that is agreed by myself (as the Vote Minister) and the Minister of Finance. The November business case would provide Ministers with more certainty on the total costs the IT system changes and consider how much, if any, of the costs should be funded by fee payers.

119. Constitutional conventions

I will report back to Cabinet on a new fee schedule for employer-assisted visas in 2020

120. The immigration system largely operates on a cost recovery basis, funded through fees and levies paid by users of the system. The Crown funds the cost of compliance activities, intelligence, refugee services and some border processing. Officials have developed an activity based costing model to estimate the ongoing operating costs of the proposed new gateway system, and the fees that will need to be charged to recover its costs.

121. The indicative costs to operate the system are expected to be around \$61 million per year. This estimate includes staff costs (including overheads) for processing employer and worker applications, repaying the capital costs of the IT system, risk management, verification and assurance activities. These operating costs would be fiscally neutral for the Crown.

122. In contrast, it is estimated that it currently costs around \$34 million per year to process these visas. The new system will cost more than the current one to operate because:

122.1. more checks will be undertaken on employers to ensure that non-compliant employers are not able to recruit migrant workers;

122.2. there will be an overall increase in staffing for the system to ensure that employer, job and worker applications will be processed efficiently and effectively;

122.3. more resource will be put into risk management and triaging, verification and post decision assurance to ensure that INZ can maintain good regulatory standards; and

122.4. a new IT system, including an employer online application system, will ensure that the system is user friendly.

123. An indicative range for new application fees, based on the estimated costs and demand, is approximately \$540 for standard accreditation, \$700 for high volume accreditation and \$940 for labour hire employer accreditation. It is expected to cost approximately \$540 to process a job check and around \$390 to process a foreign worker's visa application. These fees would replace the current fees, which are either \$440 or \$580 for foreign worker applications, \$440 for an employer approval in principle, and \$2,130 for employer accreditation.

124. Because the employer-assisted changes are not expected to be fully implemented until early 2021, I am not seeking agreement to the appropriation changes or replacement fees schedule at this stage. I will report back to Cabinet by June 2020 to seek agreement to a replacement fee schedule (and the corresponding appropriation changes) which would need

to be established in order to recover costs from foreign workers and employers. A cost recovery impact statement will be provided with that report back. The report back will allow a more accurate assessment to be made of the likely operating costs of running the system as more detailed implementation work progresses. It would also ensure more accurate volume forecasts are used to set the fees.

I will consider the need for funding for increased compliance, investigation and intelligence resources Constitutional conventions ***alongside work to reduce migrant exploitation***

125. Non-compliant employers pose a significant risk to the integrity of the immigration and employment system. They facilitate the exploitation of migrants which has serious consequences for the migrants themselves and for our international reputation. They also undercut compliant employers and facilitate a 'race to the bottom'.
126. I expect that over time the new system will lead to a decrease in employer non-compliance as the non-compliant employers are identified and excluded. However, it is expected that the shift in INZ's compliance focus to employers will, in the short term, increase INZ's detecting of fraudulent behaviour and exploitation. This is likely to increase the need for the following employer-specific immigration risk management activities to enable INZ to maintain a consistent proportion of investigations and action against non-compliant employers:
- 126.1. Investigations and prosecutions of non-compliant employers;
 - 126.2. Compliance activity in relation to non-compliant foreign workers, as appropriate; and
 - 126.3. Intelligence support to identify employer specific risks.
127. I will consider the need Constitutional conventions for investigation, compliance and intelligence resources to support the employer-assisted changes. The Budget process will enable me to consider the need for additional funding related to the employer-assisted changes together with work underway in parallel on reducing migrant exploitation.

Legislative Implications

128. This paper has no direct legislative implications. Changes to the Immigration (Visa, Entry Permission and Related Matters) Regulations would be required to set new fees for the employer-assisted gateway system. I intend to seek Cabinet's agreement to the new fees and associated regulations changes in 2020 prior to the implementation of the new system.

Regulatory Impact Analysis

129. This paper does not require a Regulatory Impact Assessment as it has no direct legislative implications. A Cost Recovery Impact Statement would be provided when Cabinet agreement to the new fees for the Employer-Assisted Gateway System is sought.

Human Rights

130. This paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

131. There are no gender implications associated with this paper.

Disability Perspective

132. There are no disability implications associated with this paper.

Publicity

133. I will make announcements on the changes in due course in consultation with the Prime Minister and the Ministers of Education, Social Development and Employment. The Ministry of Business, Innovation and Employment will develop a detailed communications and engagement plan and material to ensure that foreign workers and employers are informed how the changes would affect them.

Proactive Release

134. I propose to release this paper proactively subject to any relevant redactions as appropriate, consistent with the Official Information Act 1982.

Recommendations

135. The Minister of Immigration recommends that the Committee:

1. **note** that on 10 December 2018 Cabinet agreed to consult on a package of changes to employer-assisted temporary work visas and regional workforce planning [CAB-18-MIN-0608.01];
2. **note** that the proposals support the priorities as set out in *This is Our Plan* and the Coalition Agreement between the New Zealand Labour Party and New Zealand First;
3. **note** that the changes proposed in this paper will support our wider labour market objectives by ensuring that:
 - 3.1. employers are placing more New Zealanders into jobs, which help their businesses to grow and thrive, and result in better jobs for New Zealanders; and
 - 3.2. foreign workers, when they are employed, are not exploited and have wages and conditions that are consistent with New Zealand norms;
4. **note** that this is the first of two papers: *paper one* covers the overall gateway system, the employer gateway and related changes and *paper two* provides the design of the job gateway including regional differentiation of the labour market test, sector agreements and the worker gateway;
5. **note** that in July 2019 Cabinet agreed to establish Regional Skills Leadership Groups as regional labour market planning bodies, including their proposed role and functions, composition, appointment process and resourcing [CAB-19-MIN-0363];
6. **note** that most submitters supported the proposed gateway framework but some employers expressed concerns about the impact of increased compliance costs;
7. **note** that I will not be taking forward the proposal to implement a premium accreditation that was included in the consultation

Gateway framework

8. **agree** that:
 - 8.1. all employers and employer-assisted foreign workers would need to come through the new employer-assisted gateway framework. consisting of:
 - 8.1.1. *the employer gateway* - where employers would be accredited to enable them to hire a foreign worker;
 - 8.1.2. *the job gateway* - where the job is checked to ensure that no New Zealander is able to fill the job being recruited for, subject to skill, sectoral and regional differentiation; and
 - 8.1.3. *the worker gateway* - where checks will be made to make sure the foreign worker is of good character and health;

- 8.2. the gateway framework would replace the existing Essential Skills, Approval in Principle, Talent (Accredited Employer), Long Term Skills Shortage List Occupations, Silver Fern Job Search and Silver Fern Practical Experience visa categories;

Employer gateway

9. **agree** that:
 - 9.1. all direct employers would need to be accredited before they could recruit employer-assisted foreign workers;
 - 9.2. there would be three accreditation types: standard, high volume, and labour-hire company;
 - 9.3. accreditation would be valid for the following periods:
 - 9.3.1. standard accreditation would last for 12 months the first time, followed by renewal every two years
 - 9.3.2. high volume accreditation would last for 12 months the first time, followed by renewal every two years
 - 9.3.3. labour-hire accreditation would last for 12 months, followed by renewal every 12 months;
10. **agree** that standard accreditation would be for employers recruiting between one to five employer-assisted workers in a 12 month period and would require employers to meet the following standards:
 - 10.1. the employer be a genuinely operating business or other legitimate organisation,
 - 10.2. the employer and any key office holders have no recent history of regulatory non-compliance, and
 - 10.3. the employer is taking steps to minimise exploitation by providing information on foreign worker employment rights and paying the costs of any recruitment;
11. **agree** that high volume accreditation would be for employers recruiting more than five foreign workers in a 12 month period and would require employers to meet the same standards as standard accreditation as well as the following:
 - 11.1. the employer must demonstrate a commitment to training and upskilling workers; and
 - 11.2. the employer must demonstrate a commitment to improving pay and conditions over time;
12. **agree** that labour-hire accreditation would require employers to meet the same standards as high volume and standard accreditation, as well as the following:
 - 12.1. the employer must have a history of contracts for the supply of labour and of placing/employing Zealand workers i.e. can't have been set up for the purpose of recruiting foreign workers
 - 12.2. the employer will only contract foreign worker labour to compliant businesses; and
 - 12.3. the employer has good systems in place to monitor employment and safety conditions on site;
13. **agree** in principle that industry accreditation or other third party standards could be used as evidence that employers are meeting the standards, subject to these being assessed as robust and equivalent to the proposed standards;
14. **note** that further consultation would be undertaken with industry and unions prior to implementation of the system to ensure that these commitments are appropriate; and to identify any additional options;

15. **note** that risk management in the new system would be underpinned by an assurance model that would target pre-decision verification and post-decision assurance, including site visits;

Supplementary and transitional arrangements

16. **agree** that foreign workers who work for an accredited employer for two years and earn more than 200 per cent of the national median income would be able to apply for residence and bypass the normal Skilled Migrant Category requirements;
17. **agree** that a simple remuneration threshold set at the national median income (currently \$25 per hour) be used to determine the labour market test through the job check and visa conditions for foreign workers;
18. **agree** to provide all lower-skilled employer-assisted workers with the ability to support partners and dependent children for the length of their visa, with partners granted a visitor visa and subject to a labour market test should they seek paid employment;
19. **agree** to increase the remuneration threshold for the Talent (Accredited Employers) Work Visa, so that it is aligned with the remuneration threshold for the Skilled Migrant Category, which is indexed to at least 150 per cent of the national median income (\$37.50 per hour or \$78,000 per annum);
20. **agree** that Immigration New Zealand stop granting five year accreditation periods to employers under the Talent (Accredited Employers) policy and remove fast tracked access to a permanent resident visa under this policy;

Implementation

21. **note** that the changes to the Talent (Accredited Employers) Work Visa (recommendations 19 and 20) would be implemented in late 2019, subject to decisions on announcements of the wider changes, other changes that are not dependent on the new IT system could be implemented in mid-2020, and the gateway system itself is likely to be implemented in early 2021, once IT system changes are in place;
22. **note** that the Silver Fern Job Search visa will be disestablished in November 2019;
23. **agree** that the changes will be evaluated by officials and the outcomes of the evaluation reported back to the Minister of Immigration;
24. **invite** the Minister of Immigration to certify any immigration instructions required to implement the proposed changes in due course;
25. **note** that officials will report back to the Minister of Immigration on the detailed implementation of the new gateway system including:
 - 25.1. the detailed design of the accreditation standards, including whether any third party standards may be used as proxies;
 - 25.2. clarifying the immigration rules for self-employed contractors
 - 25.3. a process for suspending and rescinding accreditation and a corresponding complaints and reconsideration process for employers; and
 - 25.4. any transitional arrangements;
26. **note** that the Minister of Immigration will make announcements on the changes in due course in consultation with the Prime Minister and the Ministers of Education, Social Development and Employment;

Financial implications

27. **note** that on 15 April 2019 Cabinet noted that the Minister of Immigration intended to seek out-of-cycle funding to enable work to begin on implementing the employer-assisted temporary visa changes in 2019 [CAB-19-MIN-0174.23];

28. **note** that implementation of the new gateway system will require a new online portal to process employer applications to be built, with associated development and project costs;
29. [REDACTED] Negotiations [REDACTED]
30. **note** that some or all of this funding could be recovered from application fees paid for by employers and migrants and could therefore be fiscally neutral for the Crown;
31. **invite** the Minister of Immigration to report back to Cabinet [REDACTED] Constitutional conventions [REDACTED], subject to a business case agreed by the Ministers of Finance and Immigration, seeking agreement to:
- 31.1. the funding for the online portal system changes and associated costs
- 31.2. whether any costs of the IT system would be recovered from fees, and
- 31.3. the associated appropriation changes.
32. **invite** the Minister for Social Development to report back to Cabinet [REDACTED] Constitutional conventions [REDACTED], subject to a business case agreed by the Ministers of Finance and Social Development, on any additional funding required for the Ministry of Social Development to implement the strengthened labour market test.
33. [REDACTED] Free and frank opinions [REDACTED]
34. **note** that the ongoing operating costs of the employer-assisted temporary visa changes can be recovered from employers and visa applicants and the current estimate of the final cost-recovery fees are \$540 for standard accreditation, \$700 for high volume accreditation, \$940 for labour hire employer accreditation, \$540 to process a job check and \$390 to process a foreign worker's visa application;
35. **invite** the Minister of Immigration to report back to Cabinet [REDACTED] Constitutional conventions [REDACTED] to seek agreement to a replacement fee schedule for the employer-assisted visa system, which would need to be established in order to recover costs from foreign workers and employers, and the corresponding appropriation changes;
36. **note** that the Minister of Immigration will [REDACTED] Constitutional conventions [REDACTED] for investigation, compliance and intelligence resources to support the employer-assisted changes, alongside any proposals resulting from the review of migrant exploitation;
37. **note** that the associated paper titled *A new approach to employer-assisted work visas: paper two - the job gateway* seeks agreement to Crown funding of \$1.425m in the first year and \$1.725m in outyears to negotiate and monitor sector agreements as part of the wider package of employer-assisted changes.

OR (Treasury recommendation)

38. **invite** the Minister of Immigration to submit a Budget 2020 initiative to progress the policy and funding proposals outlined in this paper and Paper Two.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration

Annex One: Summary of the benefits and costs for different groups

Employers ~25,000 employers ~45,000 job checks	Foreign workers ~69,000 foreign worker checks	Regions 15 regions
<ul style="list-style-type: none"> • Reduced overall complexity and clearer pathways. • More certainty and a tailored process that is scaled to the labour market impact/risk of employers' activities and the relevant regional/sectoral circumstances. • Strengthened standards and more weight on improving employers' compliance and behaviour. • New fees, including some of foreign workers' current costs transferred to employers. 	<ul style="list-style-type: none"> • More certain pathways. Focus shifted to employers leading the process, rather than the foreign worker. • Easier pathways for higher-paid foreign workers. • Reduced risk of exploitation. Increased emphasis on improving employer behaviour (including terms and conditions/training of both foreign worker and domestic workers). • More restrictions on employers' use of lower-paid foreign workers, which could place downwards pressure on the employment of foreign workers. 	<ul style="list-style-type: none"> • Recognition that regional labour markets can differ, and have unique characteristics/features. • Providing certainty in regions with low numbers of New Zealanders available (longer visas upfront). • More New Zealanders trained to meet shortages and employed in better jobs. • Empowers regional voice into the response from education, welfare and immigration systems.
<ul style="list-style-type: none"> • Increased rate of placements of New Zealanders into jobs • Downward pressure on growth of temporary work visa numbers (assuming strong economic conditions continue) • ~9,000 fewer low-paid foreign workers being granted residence per year 		

Annex Two: Measuring impacts of the changes

Given the strong interdependencies with economic factors and other key work underway (e.g. the Review of Vocational Education, the Welfare Overhaul and the Review of Migrant Exploitation) the direct impact of these changes will be hard to measure.

However, measures of success would likely include indicators such as:

Objective	Potential measures
1. Ensure that foreign workers are only recruited for genuine shortages, and that businesses across New Zealand can access the skills and labour they need	<ul style="list-style-type: none"> • Improved vacancy rates (i.e. vacancy rates decrease over time) • Improved employer experience (e.g. NZIER Quarterly Business Survey – ease of sourcing skilled/unskilled labour)
2. Increase expectations on employers to employ and train more New Zealanders	<ul style="list-style-type: none"> • Increased successful placements of New Zealanders into jobs as part of the labour market test (including successful transition from jobseekers' benefit)
3. Reduce exploitation of temporary foreign workers and misuse of the immigration system	<ul style="list-style-type: none"> • Pay rates for temporary foreign workers are in line with market rates and with New Zealanders' wages and conditions • Increased skill level for temporary foreign workers and those transitioning to residence • Reduced incidence of intentional employer-related fraud and misuse of the immigration system
4. Create better connections between the immigration, education/skills and welfare systems	<ul style="list-style-type: none"> • Increased share of New Zealand workers in key occupations/key sectors over time
5. Make the system easier to navigate	<ul style="list-style-type: none"> • Reduced processing times and ease of use through the online system