



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Immigration
<b>Title of Cabinet paper</b>	COVID-19: Ongoing Management of Temporary Work Visa Settings	<b>Date to be published</b>	29 October 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
July 2021	COVID-19: Ongoing Management of Temporary Work Visa Settings	Office of the Minister of Immigration
12 July 2021	COVID-19: Ongoing Management of Temporary Work Visa Settings CAB-21-MIN-0272	Cabinet Office

### Information redacted

**YES / NO** (please select)

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister of Immigration

Chair, Cabinet Social Wellbeing Committee

## **COVID-19: ONGOING MANAGEMENT OF TEMPORARY WORK VISA SETTINGS**

### **Proposal**

- 1 I am proposing that Cabinet agree to a time-limited change to Essential Skills visa settings in order to enable migrant workers to remain in their current roles for a further two years. Employers seeking to fill vacant positions will still be required to confirm whether there are New Zealanders available to fill the role.

### **Executive Summary**

- 2 Cabinet has invited me to report back on options to extend temporary work visas for a further two years. Under s78A of the Immigration Act, I am unable to grant an extension of more than six months at a time. For this reason I propose to amend the settings for the Essential Skills visa to enable migrant workers to remain in their current roles for two years while also maintaining the priority for employers to first seek New Zealanders to fill vacant positions.
- 3 I propose extending the minimum duration of an Essential Skills visa from 12 months to 24 months and remove the requirement for a labour market test where a migrant worker is applying for a full-time role they are already occupying.
- 4 We have been working for two years to implement the temporary work visa reforms including launching a new Accredited Employer Work Visa (AEWV). We recently announced the new accreditation standards for employers and that the new visa would commence on 1 November with strengthened labour market testing requirements for lower paid roles. Given that temporary work visa holders onshore are already in work, and the border is largely closed to new migrant workers, making the changes proposed in this paper mean that introducing the new gateway requirements for employers and migrant workers does not make practical sense at this time.
- 5 Deferring the new visa system and strengthened labour market testing requirements is a significant decision and is not consistent with ongoing and recent communications to industry. In our manifesto, we also committed to implementing the reforms and the new system has involved significant investment and work with stakeholders. Deferral will be welcomed by some employers, but will therefore require careful communication given the expectations that Government has set around the introduction of the AEWV in November this year. In particular, I will ensure there is emphasis on this being a temporary deferral as a result of the current border closures rather than a change of policy.
- 6 There may be significant transitional arrangements required, including to reverse some of the measures put in place already for the new visa system, as well as lower fee revenue for the immigration system.

- 7 Note that I am also working on proposals to manage the growing queues in Skilled Migrant Category residence applications Confidential advice to Government

[Redacted text]

## Background

- 8 On 23 June 2021, the Cabinet Social Wellbeing Committee invited me to report back to Cabinet with policy options on extending temporary work visas for migrants already in New Zealand [SWC-21-MIN-0097 Revised refers].
- 9 There are currently over 86,000 people on employer-assisted temporary work visas in New Zealand, including over 60,000 Essential Skills visa holders. In response to ongoing labour demand pressures in the New Zealand economy, the Government is considering options to facilitate access to temporary migrant workers through granting further visas to current temporary work visa holders for a two-year period. While six-month extensions have been granted to many temporary work visa holders (and their families) three times already, the Government is seeking to provide increased certainty to employers and temporary work visa holders by signalling a longer-term commitment to allowing temporary workers to remain onshore as part of the COVID-19 response.
- 10 Since the border closures, Government has sought to balance ongoing demand for temporary migrant workers with its stated policy objectives of ensuring employers seek to place New Zealanders in work wherever possible, lifting pay and conditions for all workers and addressing issues of migrant exploitation.
- 11 The New Zealand economy is stronger than expected, despite reduced migration flows, although particular sectors have been reporting labour and skills shortages. This is to be expected with the combination of factors of the economy recovering strongly, the expected significant impact of COVID-19 on GDP not being realised, unemployment remaining fairly low, and the border closed, even with onshore migrant worker numbers largely holding up.
- 12 However, we need to balance these reports of shortages with information about the need for more work for New Zealanders. Although the data continues to be volatile and looks backward, significant numbers of New Zealand workers have seen fewer hours in the last year and many want more work. In March, there were more than 300,000 working New Zealanders wanting more work – this does not include jobseekers or the wider potential labour force. Also, total hours of paid work across the economy have reduced, jobs filled/growth has been limited, and mainly in part-time roles or self-employment. Wage growth has been fairly muted too, except at the lower levels (driven by rising minimum wages). If labour is tight and labour demand growing, we'd expect to see different results.
- 13 We have seen some businesses adapt by changing the way they work, and improving job conditions and wages to attract workers, but this is not across the board. There is a possibility that the current labour constraints are driving very mixed responses from firms, and it is the slow to respond that are most noisy. Still, there appears to be more scope across the economy for continued improvements and change, in line with the response we have seen from some (better) firms. We should therefore avoid policy responses which over-correct in response to claims

of labour and skill shortages. In addition, because most migrant workers must be employed for at least 30 hours a week, there is a risk that if hours need to be cut back, New Zealanders in jobs in firms with migrant workers will be most impacted.

- 14 Since the border closure, many Essential Skills Visa holders and Work to Residence visa holders (and their onshore partners and dependent children) have had their visas extended by the Epidemic Management Notice (for up to six months) and many then had them further extended for six months twice by Special Direction. I recently announced that Essential Skills visas would no longer be extended. I also deferred the introduction of the stand-down period meaning that migrant workers needed by employers remain able to stay in New Zealand.
- 15 Since then we have heard consistent calls from some employers wanting more certainty that they will be able to retain the migrant workers they already employ. Given the likelihood that a full border re-opening and establishment of predictable and stable flows of migrant workers into the country may remain some time away, it is timely to formalise a process to give employers and temporary workers certainty about the temporary work settings while we continue to respond to the COVID-19 pandemic. While this will involve extending the Essential Skills visa duration, this remains consistent with Government's intent to provide longer-term certainty around the labour market and streamline the process for migrant workers in an environment where rolling six-month extensions will not achieve these outcomes. The need to provide longer-term certainty also reflects issues canvassed in engagement between Ministers and the business community around current labour market pressures they are identifying.
- 16 Onshore Essential Skills visa holders are working in the following industries:

Industry	Percentage
Service (incl. retail, hospitality and tourism)	28%
Construction	20%
Primary industries	12%
Health	10%
Other (incl. office administrators, professionals and managers)	9%
Transport and logistics	7%
Manufacturing	6%
ICT and telecommunications	5%
Education	2%
Creative	1%
<b>Total</b>	<b>100%</b>

**Cabinet has requested options for a two to three year extension for temporary work visas to provide certainty in the labour market**

*The Minister of Immigration can extend existing visas but only for six months at a time*

- 17 Under the powers granted to the Minister of Immigration in 2020, the Minister may extend the expiry date of visas held by a class of persons (Immigration Act 2009

s78A refers). This power limits any extension period to six months, and the power itself is due to be rescinded in May 2023.

- 18 An absolute guarantee of ongoing future extensions under s78A cannot be given. The Minister of Immigration will need to consider each extension separately, and will need to be satisfied that the threshold for granting a class special direction (including that the extension is required to manage the effects of COVID-19) is met at each review. If long-term certainty around temporary work visa duration is sought, a different mechanism will need to be used.
- 19 The ongoing renewal of extensions at six-monthly intervals is undesirable as a medium-term response to labour market demands. It automatically captures all temporary work visa holders, circumvents any requirement for labour market testing to renew, or change the conditions of, a work visa, and provides limited longer-term certainty for employers or workers about when extensions will end.

**I propose to use amendments to the Essential Skills visa settings as a mechanism to provide labour market certainty**

- 20 In this environment I agree that it makes no sense for migrants to have to leave their current jobs and return home. Instead of implementing a series of six-monthly visa extensions, I propose allowing people to apply for an Essential Skills visa with changed settings that will provide certainty for employers and migrant workers alike. The setting changes will increase the minimum duration of the visa to two years and remove the requirement for labour market testing where the applicant is remaining in their current employment. For most migrant workers this will provide a streamlined application/renewal experience and provide certainty around their eligibility to remain onshore for at least a two-year period.
- 21 I have considered where the balance lies in a choice between a two-year or a three-year extension. Extending for three years carries a higher level of risk that labour market settings become locked in beyond the re-opening of New Zealand's borders and Government is unable to respond flexibly to any significant changes that may occur. I am also aware that a decision to offer extended duration work visas will impact the implementation timeframe for the temporary work reforms that were due to commence in November this year and I do not wish to send any signal that could be misconstrued that these are potentially being deferred indefinitely. On balance, I consider a two-year extension to be the most appropriate to respond to the current labour market and border settings without locking the Government into an approach that may not be fit for purpose in three years' time.

*I propose to extend the current 12 month lower limit of the Essential Skills visa to 24 months*

- 22 Current Essential Skills visa settings grant the visa for a duration of either:
  - 22.1 one year – for workers earning under the median wage; or
  - 22.2 three years – for workers earning over the median wage.
- 23 In order to provide medium-term certainty around the labour market, I propose to change the setting for the Essential Skills visa so that the duration of the visa will be for two years, or the duration the applicant would be eligible for under current

settings, whichever is the longer. This change will be effective immediately upon the signing of Immigration Instructions and can be applied to on-hand Essential Skills applications. These settings will also apply to the onshore partner or dependent children of a visa holder.

- 24 Of all Essential Skills visas held by people currently onshore, 35 percent are recorded as being paid below the median wage, and would potentially benefit from the increase in visa duration to two years (a further 62 per cent are for jobs paid at or above the median wage, and 2 per cent have no wage level recorded). There are also about 49,000 open work visa holders (including post-study work and working holiday visa holders) onshore who may choose to apply for an Essential Skills visa in the future and could benefit from the increased visa duration for jobs paid below the median wage.

*A labour market test won't be applied if the applicant is staying with their current employer in the same full-time role*

- 25 I recommend that applicants who are applying for this visa and who are remaining with their current employer in their current full-time role (ie a minimum of 30 hours per week) should not be subject to a labour market test given they are already in the role. Where a worker is changing employer (either on initial application or through a variation of conditions), I propose work testing requirements will continue to apply to ensure there is no New Zealander available to fill the role. This provides certainty that employers will be able to keep their current migrant workforce, but if they are making a new hire, they will be required to make attempts to fill the role with a New Zealander first. Similarly, this ensures that where the hours of employment associated with a role are increased from part-time to full-time, a labour market test is undertaken to ensure there is no New Zealander who may be available for the full-time position.
- 26 The standard requirement for employers to be compliant with employment and immigration law will remain in place, however the evidence that is normally required from employers (such as a compliant employment agreement) will not generally be asked for in these cases. Instead, Immigration New Zealand (INZ) will rely on declarations from the employer that they meet the requirements. As per normal process, employers will not be able to support Essential Skills work visa applications if they are on the stand-down list due to breaches of employment law.
- 27 Additionally, individuals applying with a new offer of employment will be subject to standard employment assessment processes, including the need to satisfy an immigration officer that the job offer is genuine. This will include situations in which a worker is employed within a business and is promoted or redeployed. Retaining the labour market test requirement and provision of employment documentation will ensure the promotion or redeployment is genuine, the employment contract and working conditions meet New Zealand requirements, and that no New Zealand worker is available to undertake the role.
- 28 Confidential advice to Government  
This will strengthen the requirements for lower-paid roles including removing the employer's ability to reject MSD referrals except in specific circumstances and strengthening of advertising requirements

(including skill requirements and pay rate) when roles are publicised. Existing requirements will continue to apply until then.

*The new extended visa arrangements will apply to some types of critical workers coming from offshore*

29 As discussed above, once these changes are in place, onshore temporary workers applying for a new Essential Skills visa will get at least two year visa duration, providing they are staying in the same role (and that role lasts for two years). The application of these arrangements will be different for critical workers coming from *offshore*, depending upon the length of time they are coming:

29.1 Those critical workers coming for an ongoing role (i.e. longer than 12 months) will continue to be issued with their initial 12-month Critical Purpose Visa and will then be able to apply for an Essential Skills visa for two or more years under the proposed arrangements (i.e. without labour market testing). We are seeking to move to issuing Essential Skills visas where appropriate directly as part of border entry for critical workers as early as we can.

29.2 Those critical workers coming for a short-term, time-limited role (i.e. six months or less) will continue to be granted the short-term Critical Purpose Visa to match the duration of their specific, time-limited work. Where work runs over short extensions are possible.

*These changes are time limited to minimise the long-term impact on the labour market as borders reopen*

30 Confidential advice to Government

31 Most applicants would only be granted this visa once under these settings. The exception would be in situations where there is an offer of fixed-term employment that is shorter than 12 months meaning the visa can only be granted for the duration of the employment offer, however this is relatively uncommon.

32 There are over 60,000 Essential Skills visa holders onshore who could be eligible to have their visa renewed without a labour market test if they remain with their current employer in their current role and region.

33 This proposal can be implemented (allowing lead time for IT and system changes within INZ) by 1 September 2021 for new applicants. The cohort benefiting from the last visa extension began to have their visas expire from 1 July 2021. Assuming Instructions are approved immediately following Cabinet's decision on this proposal, the new settings can be applied to current applications that have been submitted to INZ.

*Limiting this option to migrant workers earning the median wage or above would restrict the benefits of the approach*

34 In exempting migrant workers from the labour market test we are trading off certainty of current workers against opportunities for New Zealanders to be offered

and take up these roles. We have choices about how to balance these considerations:

- 34.1 Exempting only highly-paid (ie workers considered highly-skilled) from the labour market test would provide an easy path for better-paid roles where we have more confidence New Zealanders will obtain roles if they are available, while scrutinising all lower-paid roles to check New Zealanders are not available to fill them. This mirrors the new temporary work visa labour market test settings due to come into effect from 1 November this year. This provides maximum opportunity for New Zealanders while migrants who are still required for lower-paid roles will receive two-year visas. This means some employers may have to replace a migrant worker who has been in a role for two years with a New Zealander who is new, but available and willing to take up the role.
- 34.2 Exempting all visa applicants from labour market testing would allow employers to fill any vacant role with a migrant worker without advertising for New Zealanders or checking with the Ministry of Social Development first. This approach does the least to ensure we are not restricting job opportunities for New Zealanders.
- 35 On balance, I consider the proposed approach to exempt all those in current roles but not new roles from labour market testing strikes the appropriate balance in the current environment. Employers can keep employees they already have (having the same effect as a blanket extension) while New Zealanders remain the top priority for any vacancies. This approach ensures migrant workers are still able to move to new employers where New Zealand workers genuinely cannot be found.
- 36 I anticipate that the number of Essential Skill visa holders remaining onshore will remain relatively stable as it has since 2019. This means that there is potential for some migrant workers to occupy roles that could be filled by New Zealanders, and that the requirement for migrant workers to be guaranteed a minimum of 30 hours means these hours may not be apportioned to New Zealand workers in some cases. On balance, as the economy continues to recover and work opportunities continue to be available, I do not consider these risks outweigh the importance of enabling employers to retain migrant workers while the borders remain closed. These changes also provide certainty for both employers and migrants about the settings for the medium term.
- I propose to remove police and medical evidential checks for this visa if the applicant has provided this information to INZ previously*
- 37 All temporary migrants are required to be of good health and character and have to make declarations that they meet these requirements when they apply for a visa. Additionally, people who intend to be in New Zealand for more than 12 months are required to provide a medical certificate, and those who intend to be in New Zealand for more than 24 months must provide police certificates. New medical certificates are required to be provided with applications after 36 months and police certificates for applications after 24 months.
- 38 To streamline the application and assessment process for this visa, I propose to remove the requirement for applicants to provide medical and police certificates if they have provided this information to INZ in any previous application, regardless of how long ago it was. This will not prevent INZ requiring this information from an



individual if there is reason for the immigration officer to think that the applicant may not meet health or character requirements

*Fees will be payable by the applicant*

- 39 There will be a normal fee for the application and I will communicate my strong expectation that employers meet this cost. I propose that the applicant meet the Essential Skills application fee which is currently \$440 plus the Immigration Levy of \$55. Should Cabinet determine that fees should not be charged to applicants, approximately \$30 million of Crown funding will be necessary to meet the loss in revenue to INZ that would result and would be required to maintain core processing services.

**I have decided to defer the introduction of the Accredited Employer Work Visa programme until there is sufficient flow of migrant workers entering the country to warrant the change**

- 40 We have been working for two years to implement the temporary work visa reforms including launching a new Accredited Employer Work Visa (AEWV). We recently announced the new accreditation standards for employers and that the new visa would commence on 1 November with strengthened labour market testing requirements for lower paid roles.
- 41 The AEWV settings were developed from a pre-COVID environment and while these will remain critical elements of the Government's employment and Migrant Exploitation policy settings, the introduction of the AEWV requirements is not fitting in a context where a tightly controlled border means there is extremely limited inward flow of migrant workers into new roles, reported labour pressures mean employers are working to retain the migrant workers already with them, and an existing mechanism remains in place to ensure that any new employment for a temporary migrant shifting employers or roles is appropriately labour market tested. The gains afforded by the AEWV will not be realised in the current labour market environment meaning that introducing the new gateway requirements for employers and migrant workers (and the associated compliance costs for business) does not make practical sense at this time.
- 42 The system build and policy formalisation will continue with systems development and business readiness activity to ensure the system can be implemented once borders re-open. It is not expected there will be a significant impact on the programme budget, and work to develop and implement the new digital platform for the receipt and assessment of visa applications will continue largely unchanged. The Crown is already funding depreciation for the new IT system. I will reassess planned transitional arrangements and timings with officials.
- 43 Deferring the new visa system and strengthened labour market testing requirements is a significant decision and is not consistent with ongoing and recent communications to industry. In our manifesto we also committed to implementing the reforms and the new system has involved significant investment and work with stakeholders. Deferral will be welcomed by some employers, but will therefore require careful communication given the expectations that Government has set around the introduction of the AEWV in November this year. In particular, I will ensure there is emphasis on this being a temporary deferral as a result of the current border closures rather than a change of policy.

**Impacts and alignment of this approach with other components of the immigration work programme**

- 44 This proposal will provide an opportunity for almost all temporary workers to extend their stay in New Zealand until 2023/2024. There is a potential risk that this could squeeze New Zealand workers out of employment, particularly in entry level roles if employers provide available working hours to migrant workers. This is balanced against ongoing commentary from sectors that they are unable to attract and retain sufficient New Zealand candidates for vacant roles and the fact of any new migrant workers primarily being granted border exceptions to fill highly-skilled roles in areas where there are no New Zealanders to fill them.
- 45 Granting of this extended duration visa is also likely to increase the number of onshore temporary workers who want to reunite their families if they have partners or dependent children who are currently offshore. Ministers are separately looking at opportunities for family reunification exceptions.
- 46 Access to this visa, together with previous extensions and the continued deferral in implementing the stand-down requirement means many lower-paid temporary workers will have remained in New Zealand for extended periods of time. The requirement for lower-paid roles to be labour market tested will make it more difficult for some lower-paid workers to move meaning that there is a risk they become tied to employers long-term and become vulnerable to exploitative working and wage conditions. A new reporting, prioritisation and triaging process for complaints of migrant exploitation, and a new visa enabling migrants to quickly leave exploitative employers, was introduced on 1 July. As a result of these changes INZ is likely to receive more reports of exploitative practices.
- 47 While migrant workers will be able to use the new visa to leave an exploitative employer, the delay in introduction of the AEWV will mean that INZ is unable to use employer accreditation as a lever to prevent exploitative employers recruiting further migrant workers, in the absence of full investigation and prosecution.
- 48 Temporary work visa holders (and their family members) become eligible to access publicly funded healthcare after being normally resident in New Zealand for 24 months. In reality, the impact of the previous visa extensions is likely to have already pushed the majority of temporary work visa holders into this category. Any new costs the Crown may incur in respect of health access will be limited to those applicants that have previously held a Critical Purpose Visitor Visa as this visa has only been available since June of 2020.
- 49 Confidential advice to Government  
[Redacted text block]

*Agency consultation*

- 50 The Treasury, and the Ministries of Social Development, Primary Industries, Health, Housing and Urban Development, and Foreign Affairs and Trade were consulted in the development of this paper.

## Financial implications

- 51 The deferral of the employer policy changes (AEWV) will forego the revenue from the Employer Accreditation gateways and Job check, up to \$40m per year. However, this is offset by not requiring additional resources to implement this proposal (ie lower resourcing required of both assessment and verification of employment and the labour market testing components), nor the additional resources that were projected to support the new employer policy. It is not expected that the proposed changes will impact on volumes of work visas in the current financial year. The impact of the proposals on INZ's memorandum account are likely to be negative, however the size of this cannot be confirmed at this stage and it is likely to be relatively small.

## Legislative Implications

- 52 There are no legislative implications associated with this proposal unless Cabinet wishes to waive fees for applicants. In this case a regulation change would be required.

## Regulatory Impact Statement

- 53 This proposal does not meet the threshold to require a RIS.

## Human Rights

- 54 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and with New Zealand's international commitments to enabling movement of people. The Immigration Act 2009 recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, but immigration policy development seeks to ensure that any changes are necessary and proportionate.

## Publicity

- 55 I will announce the decision and timeframes for implementation after Cabinet has made a decision on this proposal.

## Proactive release

- 56 I propose to release this paper proactively. Any redactions made will be consistent with the Official Information Act 1982.

## Recommendations

I recommend that Cabinet:

- 1 **note** that on 23 June 2021, the Cabinet Social Wellbeing Committee invited me to report back to Cabinet with policy options on extending temporary work visas for migrants already in New Zealand [SWC-21-MIN-0097 Revised refers]
- 2 **note** that temporary work visas previously extended by Special Direction began to expire from 1 July 2020
- 3 **note** that under s78A of the Immigration Act 2009 the Minister of Immigration is only able to extend visas held by a class of persons by six months at a time

**Proposed amendments to current Essential Skills visa settings**

- 4 **agree** to allow migrant workers in existing roles to apply for an Essential Skills visa with a minimum two-year duration and streamlined evidentiary requirements
- 5 **agree** to waive the Essential Skills visa labour market test for Essential Skills visas granted from the date of announcement of this policy until 1 July 2022 (inclusive) where the applicant is remaining with their current employer in the same full-time role and geographic region
- 6 **agree** that applicants for the Essential Skills visa between the date of announcement of this policy and 1 July 2022 (inclusive) will not normally be required to provide medical and police certificates where this information has been provided to Immigration New Zealand in a previous visa application
- 7 **note** that the fee for this visa will be met by the applicant
- 8 **note** that holders of short-term border exceptions (Critical Purpose Visitor Visas approved for less than six months) will not be eligible for this visa but may still be eligible to apply for other temporary work visa categories
- 9 **agree** that the Minister of Immigration may make any technical or policy decisions that are required to give effect to this proposal

**Consequential decisions**

- 10 **agree** to temporarily defer the implementation of the Accredited Employer Work Visa which was due to commence on 1 November this year

Authorised for lodgement

Hon Kris Faafoi  
**Minister of Immigration**