



BRIEFING

Immigration Rebalance – material for discussion, 13 August

Date:	11 August 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-0286

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Minister of Immigration	Agree to discuss the contents of this briefing with officials at a meeting on Friday 13 August	12 August 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Andrew Craig	Manager, Immigration (Skills and Residence) Policy	Privacy of natural persons	✓
Steven Sue	Principal Policy Advisor	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Title

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Purpose

To provide you with background material to support our discussion on Friday 13 August discussion about the Immigration Rebalance, particularly focusing on temporary migrant workers and international students.

We would like to explore context and potential scope of these topics with you at this meeting, but are not seeking final decisions. Specifically, we are seeking:

- a steer on the sort of options that you are comfortable with, the magnitude of change you are seeking and the balance you expect to see between options that apply across the system vs options that target sectors, and
- your views on the proposed option set for reforming international student work rights and seek your agreement to the work progressing within this scope.

Recommended action

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

- a **Discuss** the attached material about the Immigration Rebalance with officials on Friday, 13 August.

Discuss / Do not discuss

- b **Note** that officials are working with your Office to schedule further discussions about the Immigration Rebalance, as we work towards producing Cabinet report backs scheduled for October (international students) and November (temporary workers, partners and onshore migrants).

Noted

Privacy of natural persons

Andrew Craig
Manager, Immigration Policy (Skills and Residence)
Labour, Science and Enterprise, MBIE

Hon Kris Faafoi
Minister of Immigration

11 / 8 / 2021

..... / /

Context

1. You previously agreed to a series of discussions on key issues arising from the Immigration Rebalance work, so that we could get a steer from you on where to focus. This briefing supports the first of these sessions, scheduled for Friday 13 August.

How the Immigration Rebalance fits into the broader immigration portfolio work programme

2. We are currently placing significant attention on ensuring that people can come to New Zealand to fill the most critical roles. Despite significant pressure from businesses, there are limits to the volume of migrants who can help meet their workforce needs, given the set number of Managed Isolation and Quarantine spaces available.
3. We expect that even as we start to reopen our borders, we will not be in a position to resume flows of migrants at the levels seen pre-COVID for some time. However, we will eventually get to a place where there will be considerable demand from businesses to bring in greater volumes of temporary migrant labour to meet their workforce needs. Timing continues to be uncertain, and will be guided by *Reconnecting New Zealanders*.
4. The Rebalance work is being done in anticipation for more open borders, to complement the temporary work reforms the Government had agreed prior to COVID-19. The focus of this work is to change the volume and mix of migrants who come to New Zealand, particularly by reducing the flow of low-skilled migrant workers. This will be coupled with consideration of residence options of onshore migrants, to help build more resilience into the onshore workforce and help smooth the transition for businesses.
5. Since Cabinet formally agreed in July to undertake an Immigration Rebalance [CAB-21-MIN-0279 refers], officials have been engaging across agencies to develop advice to flow into report backs in October and November.
6. We are also preparing advice for high-level decisions on a one-off residence pathway for onshore migrants for Cabinet to consider next week.
7. In addition to the Rebalance, our work programme includes:
 - A review of the Recognised Seasonal Employer (RSE) scheme (*ongoing*)
 - Implementing the temporary work visa reforms (*ongoing*)
 - A review of the Skilled Migrant Category (*to begin late 2021*)
 - A review of partnership visas (*scheduled for 2022*)

Topics for discussion

8. The main areas within scope to reduce the flow of migrants able to take on low-skilled and low-paid roles are employer-assisted temporary work visas, partners' work rights and international student work rights. Other relevant visas are out of scope as discussed in the July Cabinet paper (RSE and working holiday). Higher-skilled, higher-paid roles are not within the scope of this work.
9. A proposed agenda for this meeting is attached as **Annex One**. To reiterate, we are not seeking final decisions in this discussion, but an indication of your comfort with the approaches outlined.

Temporary work visas and partners' work rights

10. Officials have developed a high-level sample of options for changes to these areas. These are broad, and we would like to discuss this sample of options with you, to get a steer on your desired scale of change.
11. Materials are attached at **Annex Two** to support this discussion:
 - a. *Slide One* presents the proposed policy framework for this project, for your agreement
 - b. *Slide Two* outlines some possible options for changes in different policy areas, of increasing restrictiveness. We would like a steer of where on the spectrum of restrictiveness you are comfortable with work progressing, for each policy area, and
 - c. *Slide Three* presents some sample packages of options, to give an indication of how different options and different levels of restrictiveness can be bundled.
12. To note, these options do not account for the measures that may be taken for the currently onshore workforce, which may smooth the transition for business.
13. Specific questions we would like to discuss with you:
 - a. What is your comfort with the spectrum of options suggested? Noting that these are examples, and will become more nuanced as policy and sector work progresses.
 - This will be informed by how significant a shift in behaviour you would like to see and over what time period – the stricter and more quickly imposed the measures, the greater the reduction in migrant flows and the faster (but more severe) the transition.
 - b. What is your preferred balance between system changes vs targeted options for sectors and occupations? Seeking a high-level indication, only as impacts across the system and specific sectors are yet to be developed.

International students

14. We are seeking your views on a proposed option set for reforming international student work rights, attached at **Annex Three**:
 - a. *Slide One* outlines the proposed options being developed to reform international student work rights at sub-degree level (a key focus of the work),
 - b. *Slide Two* presents a detailed outline of the status quo, and
 - c. *Slide Three* sets out the further component parts of the international students workstream: review of living cost requirements, changes to work rights at degree level and above, and operational changes to tidy rules and tackle rorting of the system.
15. Specific questions we would like to discuss with you:
 - a. Are you content with the proposed scope of the work at sub degree level - e.g. the options presented on slide one?
 - b. Are you content with the scope of the international students workstream overall?
16. You and Minister Hipkins will receive a briefing asking you to confirm the scope of options for international students after this meeting.

Annexes

Annex One: proposed agenda for 13 August meeting

Annex Two: material for discussion – temporary workers and partners work rights

Annex Three: material for discussion – international students' work rights

Annex One: proposed meeting agenda

Friday 13 August | 10.30am – 12pm | Beehive, EW 5.1

MBIE attendees: Ruth Isaac, General Manager - Employment, Skills and Immigration Policy
 Andrew Craig, Manager - Immigration Policy (Skills and Residence)
 Steven Sue, Principal Policy Advisor
 Zoe Wyatt, Principal Policy Advisor
 Rachel Carruthers, Senior Policy Advisor

Item	Objective	Minutes	Lead
1. Context setting	<ul style="list-style-type: none"> Recap of where the Immigration Rebalance sits in wider immigration policy work 	10	Steven
2. Options for temporary work visas and partners' work rights	To understand: <ul style="list-style-type: none"> your comfort with the sample options suggested (see Annex One) your preferred balance between system changes vs targeted options for sectors and occupations 	40	Steven/Rachel
3. Options for international students' work rights	To determine: <ul style="list-style-type: none"> if you content with the proposed scope of the work at sub degree level (see Annex Two) if you content with the scope of the international students workstream 	30	Zoe
4. Next steps	<ul style="list-style-type: none"> To outline next steps for policy development and stakeholder engagement 	10	Steven
		90	

Annex Two: material for discussion – temporary workers and partners work rights

Objectives, key definitions and focus sectors

Overall objective is to support investment in human and physical capital by firms and sectors by reducing the volume of temporary migrants in lower-skilled, lower-paid roles in New Zealand

Sub-objectives 'Solutions will...	Assessment of options against these sub-objectives could consider....
Ensure access to skills (both migrant and domestic sources) in both the short and long-term	<ul style="list-style-type: none"> • Sector impacts • Genuine labour shortages/needs (current and future) • Training and career pathways (current and planned) • Creating opportunities for Pacific workers • Reduced risk of migrant exploitation
Encourage employers to hire New Zealanders first for available positions	<ul style="list-style-type: none"> • Genuine labour shortages/needs (current and future) • Training and career pathways (current and planned) • Spare capacity in the domestic labour (and allocation)
Encourage productivity-enhancing action by sectors and businesses	<ul style="list-style-type: none"> • Any lift in: <ul style="list-style-type: none"> ○ working conditions and wages ○ investment in skills and capital development (e.g. tech and automation) ○ improved training and career pathways for workers • Sector impacts • Genuine labour shortages/needs (current and future) • Reduced risk of migrant exploitation
Be fair	<ul style="list-style-type: none"> • Migrant perspective • Sector/business perspective • Transitions support
Align with broader government priorities	<ul style="list-style-type: none"> • Managing risk at the border • Reduced risk of migrant exploitation • Te Tiriti principles • Five Point Plan for Economic Recovery • Pacific Rebalance principles • Foreign and trade policy objectives
Be 'doable'	<ul style="list-style-type: none"> • Timeframe for implementation • Cost (immediate and ongoing) • Cross-agency impact • Transitions support

Definitions

'Lower skilled and lower paid roles'

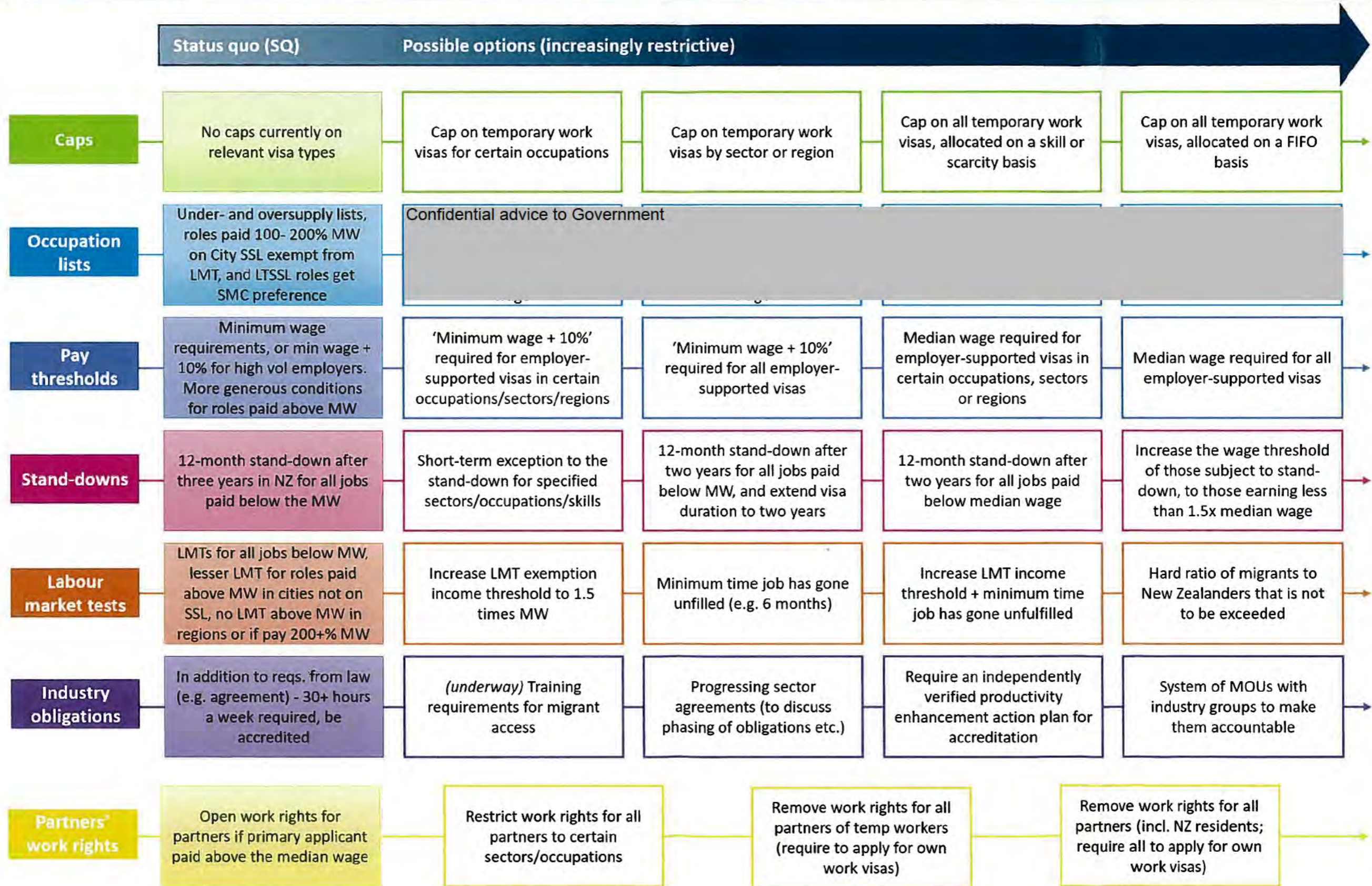
- Currently determined by whether or not a role is paid below the median wage (using wage/salary as a proxy for skill) i.e. a role is considered low skilled or low paid if paid below the median wage
- Officials are not proposing to change the proxy used, however work is ongoing as part of the rebalance to determine where that threshold should sit (i.e. where is the line between lower skilled/paid and higher skilled/paid)

Focus sectors

- Aged care
- Meat processing
- Horticulture and viticulture
- Dairy
- Forestry
- Fishing
- Road freight transport
- Tourism and hospitality
- Construction
- Retail
- ICT (TBC)

Strawperson – options for temporary workers and partners’ work rights

Base assumption is that post border reopening, the temporary work visa reforms will have been implemented and form the status quo



Sample option packages



Sample A

- *Transition measure* - short-term exceptions to the stand-down for specified sectors
- Introduce requirement to show that national training pipeline insufficient to fill role in next 6 months
- Living wage required for all employer-supported visas
- Increase LMT exemption income threshold to 1.5 times median wage
- Introduce caps on temporary work visas for certain occupations

So - to get a temporary work visa, the role needs to be:

- **Paid 10% above the minimum wage**
- **If it is a capped occupation, then within cap capacity**
- **Successfully pass a labour market test if paid less than 1.5 times the median wage**
- **Unable to be filled by a training graduate in the next 6 months**

Regarding partners: restrict work rights for all partners (including those who are partners of NZ residents) to certain sectors/occupations (alternatively, could exclude certain sectors or occupations)

Sample B

Confidential advice to Government

- Introduce a cap on temporary work visas for certain occupations
- *Transition measure* - exceptions to stand-down for certain occupations
- Increase LMT exemption income threshold to 1.5 times median wage
- Impose a minimum time that the role needs to have gone unfilled for (e.g. 3 months or more)
- Require an independently verified productivity enhancement action plan for employer accreditation

So - to get a temporary work visa, the role must be:

- **Offered by an accredited employer who has submitted a productivity plan**
- **Paid 10% above the minimum wage**

Confidential advice to Government

- **If it is a capped occupation, within cap capacity**
- **Successfully pass a labour market test if it is paid below 1.5 times the median wage, and**
- **Have been available and advertised for 3+ months**

Regarding partners: remove work rights for all partners of temporary work visa holders (these people would need to apply for own work visas).

Sample C

Confidential advice to Government

- Cap on all temporary work visas
- Median wage required for all employer-supported visas
- Increase income threshold for a labour market test exemption to 1.5 times the median wage
- Impose a minimum time that the role needs to have gone unfilled for (e.g. 6 months or more)
- Require an independently verified productivity enhancement action plan for employer accreditation

So - to get a temporary work visa, the role must be:

- **Offered by an accredited employer who has submitted a productivity plan**

Confidential advice to Government

- **Within cap capacity**
- **Paid above the median wage**
- **Have been available and advertised for 6+ months**
- **Successfully pass a labour market test if it is paid below 1.5 times the median wage, and**

Regarding partners: remove work rights for all partners (including partners of NZ residents) and require all to apply for own work visas

Subject to the agreed approach at Cabinet....
 the more expansive the one-off residence pathway on offer, the more permanent staff available onshore - and the more resilient businesses will be to restrictive options for temporary workers.

Annex Three: material for discussion – international students’ work rights

PROPOSED OPTION SET FOR REFORMING INTERNATIONAL STUDENT WORK RIGHTS - SUB-DEGREE LEVEL

NO CHANGE/ CHALLENGE TO SECTOR

MODERATE

EXTENSIVE

Option 1: Status quo	Option 2: No post-study work rights	Option 3A: Target post study work rights and pathways to areas of shortage	[AND] Option 3B: In-study work rights for other courses, but no pathway to stay	Option 4: No in-study or post-study work rights
<p>Keep the current system settings while the sector recovers and volumes of students are low.</p> <p>See overleaf for current settings</p> <p>Pros/Cons</p> <ul style="list-style-type: none"> Does not support rebalance objective to manage down overall volumes. Does not protect against pre-COVID-19 issues growing back, including: <ul style="list-style-type: none"> Many students remaining in New Zealand post-study poorly matched to skill gaps, Extensive exploitation Providers not managing risk effectively when offering places to students. Supports economic recovery of the sector and of sectors reliant on student workforce (hospitality, retail and agriculture). 	<p>Expect students to be able to meet the LMT and move onto work visas if the skill/ qualification is valuable to New Zealand.</p> <ul style="list-style-type: none"> Post-study work rights is key lever for changing profile of students. As an alternative, a Visitor Visa could be granted – which would enable time for students to remain in New Zealand after completing their study. <p>Pros/Cons</p> <ul style="list-style-type: none"> Likely deter students motivated by migration rather than study and also reduce low-value courses/ improve quality of provision. Consistent with rebalance and International Education Strategy. Could improve migrant exploitation Free and frank opinions Therefore challenges the sector in rebuilding; Free and frank opinions 	<p>Link post-study pathways at sub-degree level to demand for these skills and qualifications.</p> <ul style="list-style-type: none"> Could possibly be achieved by using a subset of the LTSSL eg if we can make enough of these skills domestically then should not seek to attract international students in these areas. More responsibility on provider eg to be accredited and to broker employment. Vital that NZQA regulatory framework provides strong assurance regarding programme approval. <p>Pros/Cons</p> <ul style="list-style-type: none"> Clearly communicates to prospective students that if they want to remain in New Zealand long-term they will need to study and work in specific skill shortage areas. Supports better meeting critical skill shortages in longer-term. Could shift some risk management from INZ to providers. Likely result in fewer students, at least initially but could flood the market for those skills - need to think about controlling for volume. Could have positive impacts on exploitation and quality. Challenges the sector in rebuilding; Free and frank opinions Attaching benefits to specific courses can have perverse outcomes and lists become difficult to change if industry dependent on them. 	<p>Minimise losses of genuine students by retaining in-study work rights for some courses.</p> <ul style="list-style-type: none"> In theory, students working while studying should be positive for New Zealand if they're paying for their education and as consumers and working only as much as permitted. (Downsides include possible crowding out of NZ workers and putting pressure on infrastructure when in high volumes and concentrated, and exploitation.) The ability to work while studying matters to a significant proportion of students coming here (around half say it is extremely or very important). Couple limited in-study work rights with clear messages in the system that no pathway to residence goes with this. This could be, for example, a compulsory stand down period eg no onshore application for further visas, except for visitor visas. <p>Pros/Cons</p> <ul style="list-style-type: none"> Provides a clear message in the system that there is no pathway from student visa to residence except for specified courses/ skills. Reduces flows of students from low value courses and into low paid temporary work visas. Could improve migrant exploitation if results in fewer low-end students who are only here for migration reasons. Impacts economic recovery of the sector. 	<p>Underscore that the main purpose of being here is to study Free and frank opinions</p> <ul style="list-style-type: none"> In effect limit work rights/ target New Zealand's export education offer to L7 and above, who have superior skills and employment outcomes. <p>Pros/Cons</p> <ul style="list-style-type: none"> Likely lead to far fewer students coming here to study at sub degree level – expect demand for these courses to dull significantly. In doing so would push the problem to degree level study eg Graduate Diplomas, which we would need to control for. Considerably reduce migrant exploitation. Reduce the workforce for some sectors (hospitality, retail and agriculture in particular).

Current IN-STUDY work rights for international students	
Students	Work allowance
Tertiary Students	<p>20 hours per week while studying a full-time course that</p> <ul style="list-style-type: none"> Is at least 2 academic years in duration, or Is at least 1 academic year in duration and part of an approved exchange, or Results in a NZ qual which gains points under SMC <p>40 hours per week during breaks, and Christmas and New Year holidays if</p> <ul style="list-style-type: none"> They are studying full-time for >1 academic year Their course is worth at least 120 points, and The course is delivered over a period of > 8 months
PhD & research master's	No restrictions on hours per week
School students	20 hours per week if >16 and in Year 12 or 13 (with permission of parents if <18)
English language students	<p>20 hours per week if criteria are met:</p> <ul style="list-style-type: none"> Courses of at least 24 consecutive teaching weeks: study is full-time, main purpose is to improve English, you have approved English test result less than two years old Course of at least 14 consecutive teaching weeks: study is full-time, your study is at a university or Category 1 provider Shorter language courses can be counted towards eligibility if they follow from previous study at same provider.

Current POST-STUDY work rights for international students			
NZQF level		Years of PSWR	Eligibility conditions
7 and above	Degree	3	30 weeks of fulltime study must be undertaken in NZ
	Graduate diploma	1 or 2 (+ 1)	<p>Course must last 30 weeks or more.</p> <p>In Auckland = 1 year; outside of Auckland = 2 years if completed by 31 December 2021.</p> <p>Can apply for 1 more year if working toward occupational registration at accepted registration authority.</p>
4 to 6		1 or 2	<p>Course must last 60 weeks or more.</p> <p>In Auckland = 1 year; outside of Auckland = 2 years if completed by 31 December 2021.</p> <p>Can count 2 separate quals of 30 weeks each if the second is at higher level than the first</p>
English language courses		0	Not eligible at any level
Second post-study work visa		1-3	<p>You can apply for a second post-study work visa if you complete another course in NZ that is:</p> <ul style="list-style-type: none"> 30 weeks or more bachelors' degree or post-graduate qual, and at a higher level than the qual you used to get your first post-study work visa.

OTHER WORK PROGRAMME ELEMENTS

A: Level 7 and above	B: Wider system adjustments	C: Living cost requirements and verification
<p>We see value in thinking about several things here, including:</p> <ul style="list-style-type: none"> Not allowing repeat work rights except at high levels of study Making the length of work rights post-study commensurate with the length of study (after this expect visa holders to be able to pass the LMT and move onto work visas). OR Limiting post-study work rights to 12 months on the basis that this is sufficient time to job search and transition to a work visa. Removing work rights for L7 Graduate Certificates and Diplomas unless clearly linked to registration criteria eg Grad Dip in Teaching as these do not deliver the same benefits as other courses. Partners - have to qualify for work rights in their own right 	<p>There are also a series of tweaks we would like to see made to either negate rorts in the system, or tidy up rules so they can be more easily applied by INZ. These include:</p> <ul style="list-style-type: none"> Online study: Consider changes to reflect that if you do not need to be in the classroom then do not need to be in New Zealand or need a visa. Practical experience: Consider removing the ability to work as part of practical experience relevant to a course of study and require use of the in-study work rights (eg the 20 hours). For full vocational courses could explore a hybrid work/student visa – needs to fit with RoVE changes to eligibility. English language students: Limit work rights to good quality providers by increasing the enrolment period needed, to target those students who intend to transition into higher education and deter students who are only seeking entry to New Zealand. This may also support sector rebuild by encouraging longer enrolments. Full-time work rights over summer and scheduled vacations: NZQA has no rules around holiday breaks Free and frank opinions We want to define summer in terms of months, or consider work rights being consistently 20 hrs per week year round. Separate eligibility for in-study work rights from SMC. At the moment, INZ needs to be satisfied that someone is studying towards a qualification that gets them points under SMC, Free and frank opinions To address this could look to set eligibility by level of study only. Better enforcement of non-Auckland preference eg require evidence under rules of the Offer of Place that the student is residing in the place of provision. 	<p>Work is being undertaken to:</p> <ul style="list-style-type: none"> Review what requirements need to be set at/ indexed to to align with the cost of living Strengthen the evidential requirements/ verification of checks of funds