

Submission by



to the

Ministry of Business, Innovation and Employment

on the

**Suite of proposed changes to the Essential Skills visa:
discussion document**

21 May 2017

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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SUITE OF PROPOSED CHANGES TO THE ESSENTIAL SKILLS DISCUSSION DOCUMENT - SUBMISSION BY BUSINESSNZ¹

1.0 INTRODUCTION

1.0 BusinessNZ welcomes the opportunity to make a submission to the Ministry of Business Innovation and Employment (MBIE) on the discussion document entitled 'Suite of Proposed Changes to the Essential Skills visa'. As the proposed changes have been agreed in principle, **BusinessNZ's submission will be brief.**

1.1 In principle, BusinessNZ supports what the MBIE is trying to achieve, namely an Essential Skills policy that:

- Continues to enable employers to use low-skilled migrants where there is a genuine need,
- Maintains the integrity of temporary migration by ensuring settlement expectations are clear for Essential Skills migrants,
- Makes it easier for employers to recruit higher skilled and higher paid migrant workers and for those migrants to stay on in NZ,
- Increases the attractiveness for employers of employing and training New Zealand workers before recruiting migrant labour, and
- Contributes to a better alignment between immigration, welfare and education settings.

1.2 In order for the Essential Skills Policy to deliver the skills and labour necessary to drive industry growth and competitiveness, there needs to be certainty regarding temporary work policy settings. Other policies need to be considered alongside skill and labour migration including: vocational education and training policy and investment, labour market and employment flexibility, and welfare and social services. Enhancing the work readiness of New Zealanders remains a priority.

1.3 BusinessNZ would welcome the opportunity to work the MBIE on how any improvements to the Essential Skills work policy can be made and operate. Being able to access and labour is vital for business success.

2.0 BUSINESSNZ COMMENTS

2.0 The Essential Skills policy has demonstrated it is reactive to labour market conditions given the demand for temporary migrant workers at all skill levels has fluctuated with the state of the economy and the labour market. The policy generally works well. That said a fundamental problem exists in that the policy **currently takes a 'one size fits' all approach and ignores the substantial differences** between local and regional economies and labour markets.

2.1 The Approval in Principle process as it currently stands (like the Accredited Employer Scheme) applies the same risk framework to all applicants regardless of whether or not the employer has acted responsibly and reliably in the past. BusinessNZ believes there should be an **increased use of existing 'approved and accredited employer'** programmes or design schemes developed for entire industries and/or regions to enable recruitment from the international labour market.

¹¹ Background information on BusinessNZ is attached as Appendix One.

- 2.2 As MBIE notes, the Essential Skills work visa is designed to enable employers to bring in migrant workers on a temporary basis when local labour is not available. The requirements of the Essential Skills policy ensure local New Zealanders are considered first and temporary work visas granted only when New Zealanders are not available to do the work. Regulatory tools include the Essential Skills in Demand lists and the Labour Market Test. But these are not without problems.
- 2.3 Getting and keeping occupations on the Essential Skills in Demand lists continues to be problematic. Regulatory tools are administratively and compliance heavy. All sides would question whether the Labour Market Test and the Essential Skills in Demand lists are effective and efficient regulatory approaches. Given this and the proposed changes to the Essential Skills policy, it would be timely to look at how effective and efficient regulatory tools such as the Labour Market Test and the Essential Skills in Demand lists are in achieving their stated objectives.
- 2.4 As MBIE also notes, low-skilled migration is concentrated in particular industries and areas of New Zealand. These industries tend to be labour intensive and require people to perform specific tasks. Their uneven distribution means the impact of the proposed changes is likely to be experienced differently by industries and regions of the economy. BusinessNZ thanks the MBIE for engaging directly with those likely affected industries and regions directly as part of its consultation process.
- 2.5 We are pleased to see that the proposed changes are not retrospective, although we do recommend that the MBIE develop a clear plan of communications about the transitions arrangements once the proposed changes have been finalised and implemented.
- 2.6 We are keen to see improvements made to both the Approval in Principle and Accredited Employer schemes. A key issue in which the Approval in Principle process and Accredited Employer schemes could be streamlined based on risk is the level and nature of the information and consultation required to gain 'Approval' and 'Accreditation' (INZ1112 and INZ1090 refer). The current levels of information requirements are unnecessarily burdensome and duplicative. Prospective employers have to provide a vast array of information, including seeking comment from third parties. Claims made by third parties and information provided by Worksafe and the Labour Inspectorate need to be better presented back to the employer for their comment, to verify and validate information received (or at least be able to comment on it). We recommend that both the Approval in Principle and Accredited Employer schemes need immediate improvement, specifically streamline the level, nature and detail of information and third party consultation required from prospective employers making an Approval in Principle or Accredited Employer application.

3.0 SPECIFIC COMMENTS

- 3.0 The Essential Skills policy aims to allow migrant workers in New Zealand to fill shortages in jobs for which no New Zealanders are available. But a temporary work policy must balance business growth and competitiveness objectives with protecting migrant workers from exploitation and preventing distortions in the local labour market.
- 3.1 **From BusinessNZ's perspective, trying to identify the scale of the problem MBIE is trying to resolve is difficult.** This is mainly due to the fact that the discussion document does not provide sufficient evidence and information beyond some broad,

high level statements. **For example, page 5 refers to "...evidence that the numbers of temporary migrants are increasing in industries with low-skilled jobs, lower wages and lower productivity. In light of this trend, it is important to make adjustments now to maintain the Government's long term labour market objectives."**

- 3.2 While the purpose of the Discussion Document is to make changes to the Essential Skills policy in keeping with Government's stated labour market objectives, we would also note that the primary purpose of Essential Skills policy is to address temporary skill and labour shortages. This in contrast to Skilled Migrant Category which is about permanent migration.
- 3.3 One of the current problems of Essential Skill policy lies in the 'one size fits' all approach that is currently used. While the proposal approach introduce some limited flexibility it nonetheless risks being another 'one size fits all' approach but with greater uncertainty and higher costs.

Using wage or salary information to help determine skill level and access to Essential Skills migrants

Proposal to align essential skills with the SMC remuneration thresholds

- 3.4 The logic of consistency between the SMC policy and Essential Skills visa policies sounds appealing in practice, but the national median hourly earnings is for all occupations, for all industries, and for all regions. However, using the Skilled Migrant Category earnings thresholds for temporary migration purposes (offsetting skill and labour shortages) may be too high and disadvantage some occupations, regions, and industries. In fact, given the SMC policy and Essential Skills policy have different policy purposes and objectives, a better option may to uncouple the Essential Skills earnings thresholds from SMC earnings thresholds. Earnings thresholds would then be set for Essential Skills policy reflecting that its primary purpose is to address skills and labour shortages in the market.
- 3.5 The use of the SMC earnings thresholds may actually compound current skill shortages. The New Zealand Institute of Economic Research (NZIER)'s Quarterly Survey of Business Opinion (March 2017) reports that shortages of skilled and unskilled labour have become more acute - 41% of firms are experiencing difficulties sourcing skilled labour, and 24% are experiencing difficulties sourcing unskilled labour. StatisticsNZ 2016 data on median earnings for occupation, industry, and region highlight significant median earnings variations. For example, when you review median hourly earnings by occupation groups only 3 were at or above the national median hourly earnings (Managers \$30.69, Professionals \$31.54, and Clerical and Administrative Workers \$23.49). Regional median hourly earnings data shows that just 2 regions (Auckland \$25.00, Wellington \$25.57) are above the median, with Northland (\$20.82), Waikato (\$23.02), Bay of Plenty (\$21.58), Gisborne/Hawkes Bay (\$21.04), Taranaki (\$22.00), Manawatu- Whanganui (\$20.52) below the national median hourly rate. No region is the South Island is at or above the national median.
- 3.6 The median hourly earnings data by ANZSCO industry groupings reveals that about a third of the industries have median earnings at or under the national median. These include Agriculture, Forestry and Fishing (\$19.18); Manufacturing (\$23.49); Retail Trade and Accommodation (\$17.00); Transport, Postal and Warehousing (\$22.00); and Arts, Recreation and Other Services (\$21.72). These represent large sections of

the economy and therefore would be significantly impacted by the proposed changes.

- 3.7 As labour and shortages can vary strongly and given the median earnings data above MBIE should decoupling the Essential Skills earnings thresholds from the SMC policy (reflecting its different primary purpose), and investigate taking a regional, occupational, or occupational approach reflecting that nature of the skill shortage. Further, in light of the StatisticsNZ data above the proposed remuneration threshold for the mid-skilled band needs to be lowered to better reflect the median earnings differences by region, industry, and occupational groupings. Failure to do so will disadvantage regional NZ, industries that have earnings profiles below the median hourly earnings for all NZ, for all industries, and for all occupations.

Proposal One: Introducing remuneration thresholds to determine skill levels and associated visa conditions

- 3.8 BusinessNZ considers the application of the Essential Skills thresholds is appropriate and will act to indicate whether an occupation is skilled, semi-skilled, or low-skilled, particularly as for some time now employers have had issues with the bluntness of the Australian and New Zealand Standard Classification of Occupations (ANZSCO).
- 3.9 While the use of salary thresholds as the main determinant of skill level is another potentially blunt instrument and its use over time will need to be monitored for any unintended consequences, we support the increased flexibility associated with the introduction of remuneration bands.
- 3.10 ANZSCO was never intended for broad use in immigration policy but it can be a useful proxy. ANZSCO is generally appropriate to capture the needs of the labour market given its scope and detail. ANZSCO also allows relevant experience to substitute for the formal qualifications and credentials, although the duties listed for many occupations are open to interpretation. This can make the assessment of whether an occupation is at a lower or higher skill level complex - for example, Chefs (skill level 2), Cooks (skill level 3), Fast Food Cooks (skill level 5) and Kitchen Hands (skill level 5). With hybrid positions consisting of duties from more than one of these occupations, the complexity of determining the correct occupation is increased further.
- 3.11 Remuneration thresholds such as those proposed by the MBIE are an important indicator that an occupation is sufficiently skilled and ensure employers do not gain benefits from inflating either the skills' description or the positions they wish to fill via the Essential Skills policy. However, the proposal does create two issues at the mid-skilled level. First, the proposed Essential Skills skill levels and associated visa condition preclude those low skilled temporary migrant workers who are legitimately qualified, talented and motivated from being recognised as mid-skilled as they may fall short of the median earnings point for mid-skilled. Two, the approach being proposed excludes ANZSCO skill level 4 and skill level 5 employees to be able to demonstrate that they can be mid-skilled (with training and experience). We suggest that given the argument presented for including ANZSCO skill level 4 and skill level 5 employees as high-skilled, the same logic can be applied enabling ANZSCO skill level 4 and skill level 5 to be considered mid-skilled.
- 3.12 Consideration should be given to enabling ANZSCO skill level 4 and 5 the opportunity to be mid-skilled and to create opportunities for low skilled temporary migrant

employees who are legitimately qualified, talented and motivated to be recognised as mid-skilled. This could be linked to enrolment in (and completion of, within a reasonable timeframe) of a programme of learning that led to an industry relevant qualification. It could also be linked to using a percentage of the median hourly earnings as a new minimum threshold for mid-skilled positions.

- 3.13 The use of the thresholds runs the risk that a small proportion of employers might come up with creative schemes to inflate the earnings for a position in order to meet the threshold associated with the proposed skilled or mid-skilled level. The MBIE will need to review the impact the skill and remuneration bands has over time, including the remuneration distribution within each band, and how firms change their remuneration arrangements (e.g. build in overtime, build in guaranteed allowances, build in non-remuneration related earnings).
- 3.14 Introducing remuneration thresholds will likely affect both providers of international education services and recent international student graduates. Recent graduates are unlikely to have relevant work experience and therefore are unlikely to meet the proposed 'mid-skilled' and 'skilled' remuneration thresholds. The introduction of remuneration thresholds and the recent changes to the Skilled Migrant Category points system will bring about a change in international student preferences and therefore reduce the revenue from international education. The changes may also result in some more innovative behaviour from international students seeking a path to residency – something that will need to be closely monitored.
- 3.15 The introduction of remuneration thresholds may also result in increased investment in the training and upskilling of New Zealand workers. Should this happen, it will be important for the industry- and employer-facing parts of the tertiary system to be adequately resourced to meet the increased demand.
- 3.16 BusinessNZ believes the integrity and credibility of immigration policy will be at risk if the remuneration thresholds are not met and that officials will need to ensure minimum labour and employment standards are enforced. The stronger penalties recently introduced and available to government will act as a strong deterrent. A breach by employers will have significant consequences, for example, in not being able to go to the international market place for skills and labour for a specific period of time.

Reinforcing the temporary nature of the Essential Skills visa and managing the settlement expectations of temporary migrants

- 3.17 Proposals 2a and 2b expand access to migrant workers on a temporary basis without imposing risks on **New Zealand's permanent skilled migration programme**. This is welcomed.
- 3.18 In some instances, MBIE might want to think about regional/localised, industry, or **greater use of 'Approved and Accredited Employer' schemes** for concessions reflecting ongoing unmet demand for low-skilled labour, regional employment growth, labour market participation and levels of unemployment, as well as demonstrating commitment to sourcing, employing and training New Zealanders and a track record of compliance and commitment to continuous improvement in health, safety and employment standards.
- 3.19 We also believe there is little point in policies that increase the employment costs associated with accessing low-skilled migrant workers without at the same time

having coordinated policies and programmes in place to enhance the labour market competitiveness of local marginal workers, beneficiaries and NEETs. We welcome the current investment in apprenticeship and workplace literacy training, and believe that there needs to be a training response to skill shortages especially those where there is a lack of people who *can* do the job. There is also a need to develop new attitudes to trades training and apprenticeships. The widespread attitude that the only path to success is through university is simply not true. Addressing literacy and numeracy gaps in the current and future workforce is required. This will involve investing in ways to lift **the literacy and numeracy skills of over 40% of New Zealand's current workforce**. New Zealanders in the workforce with low literacy and numeracy skills are on the back foot economically and socially, with limited work options and earning potential. Increased investment in literacy and numeracy training is required and needs to target those industries where individuals with lower levels of literacy and numeracy tend to be concentrated. We also encourage ImmigrationNZ, who asks the Tertiary Education Commission(TEC) to administer the migrant levy for language support services, to direct the TEC operate this like it does for Employer Led Workplace Literacy Programmes.

Proposal Two A: Introducing a maximum duration for lower-skilled Essential Skills migrants

- 3.20 Limiting the time low-skilled staff can hold an Essential Skills work visa might reduce the chance of such individuals becoming attached to New Zealand, building a life here and trying to avoid returning to their home countries. On the other hand, placing a limit on the length of time an individual may work in New Zealand will create increased non-wage costs for employers who will be required to source, employ and train new staff once an employee's work visa has reached its three years' maximum duration. There will be higher administrative and management costs due to the higher churn.
- 3.21 We believe the proposed three years' maximum duration balances the need to reinforce the temporary nature of Essential Skills policy with an incentive for employers to train temporary workers and offer increased remuneration as they become more skilled. A three year duration means employers can create opportunities for their talented low-skilled employees to progress from an entry level low-skilled position to a more skilled position, thereby potentially allowing them to upgrade their work visa.
- 3.22 A maximum duration shorter than the proposed visa time limit could reduce incentives for employers to train and upskill their employees, reduce the incentive to increase remuneration to reflect a higher level of experience and skills and even encourage overstaying in situations where the worker has simply not had enough time to earn and save enough money to make returning home an economically viable option. A shorter duration could also work against broader efforts to stamp out the exploitation of migrants. It should be noted that one year visas are likely to make employers more reliant on temporary migrant labour.
- 3.23 On balance, BusinessNZ supports the introduction of a maximum period during which a low-skilled essential skills worker can remain working in New Zealand. The suggested three year maximum duration seems a reasonable starting point with the wage differential between source countries and New Zealand continuing to make New Zealand an attractive destination for low-skilled migrants to work.

Proposal Two B: Introducing a stand down period for lower-skilled Essential Skills migrants

- 3.24 Notwithstanding the points made above, BusinessNZ does not have a fixed view on what the minimum stand-down period should be.
- 3.25 Labour intensive businesses and industries will be adversely affected by the proposed stand-down period as their demand for low-skilled workers will likely continue to be unmet by the local labour market. Not only will these businesses potentially experience labour shortages resulting from workforce turnover, they will also experience increased employment costs associated with sourcing, employing, training, and providing settlement support and pastoral care where migrant workers are ultimately employed. These costs could push up the price of goods and services making some firms less productive and less globally competitive.
- 3.26 Notwithstanding issues of competitiveness, as the employment costs of low-skilled Essential Skills workers increase this may act as a means of discouraging employers from recruiting them. Increasing the employment costs may also discourage investment in relatively low productivity activity that is only sustained through low-skilled workers, or it may even encourage employers to take on locally available low-skilled New Zealanders. Reducing operations or moving operations abroad are also possibilities. While these choices and behaviours address the problems identified by the MBIE (page 5), there are also associated issues to consider. For example, while some employers may be able to invest in new technologies to replace labour and or reduce the need for labour, a number of sectors reliant on low skilled essential skills workers – like age care, personal services, retail – have lower potential for automation. In sectors such as manufacturing and food processing and packaging, the costs of investment in technology can be prohibitively high. Furthermore, the tightness of some of our regional labour markets means that there simply is not local low-skilled labour available. Yes, employers could reduce their employment standards and selection criteria but this is not without risks and costs. Reducing operations or moving operations abroad may result in fewer jobs for New Zealanders.
- 3.27 One option for MBIE to consider is taking a regional or industry approach or providing exemptions in situations where firms have received Approval in Principle to source and employ large numbers of low-skilled migrants. Another option is to create a preferential pool of low-skilled migrant workers so that once their stand-down-period ends, they can reapply for a new visa with fewer administrative costs, more timely processing and can best capitalise on their experience and knowledge of New Zealand workplaces and industry, but also regions, cities, and communities.

Proposal Three: Requiring the partners of lower-skilled Essential Skills visa holders to meet the requirements for a visa in their own right

Proposal Four: Requiring the children of lower-skilled Essential Skills visa holders to meet the requirements for a visa in their own right

- 3.28 While many countries do not allow low-skilled migrants to settle permanently, low-skilled migrant workers do take into account the education and employment opportunities available to their partner and/or children. Therefore, Proposal Three and Proposal Four may have the effect of making low-skilled migrant workers see the New Zealand as less desirable to work for short periods of time.

3.29 Proposal Three might also result in partners of low skilled migrants looking to circumvent the restrictions and increase the demand for alternative ways of obtaining the right to work, such as via a Study Visa or the Working Holiday Makers programme. And the Samoan Quota Scheme and Pacific Access Scheme, both currently under- subscribed, might experience increased demand. The impact of this proposal on other migration options will have to be carefully monitored to retain their integrity.

3.30 On balance, BusinessNZ believes Proposal Three and Proposal Four reinforce the lower-skilled Essential Skills visas and will ensure their temporary nature. Differences in income are an important factor for low-skilled migrants. As such, New Zealand should continue to be seen as an attractive place for temporary low skilled migrants to work given income differentials.

Proposal Five: Making it explicit how the 'period of employment' condition applies to seasonal work

3.31 BusinessNZ has no comment on the specific seasonal occupations identified in the Discussion Document and understands that MBIE has engaged with the relevant industry bodies on the issue of seasonal occupations.

3.32 We do want to make the observation that some jurisdictions issue seasonal work visas for 24 months where the visa holder may only work for 6 months of that time. Such an approach would reduce administrative costs on all parties, enables the return of seasonal workers over a period of time, and manages immigration risks.

4.0 OTHER COMMENTS

Essential Skills policy should not disadvantage SMEs

4.0 Small businesses are not equipped with HR departments to manage complicated or costly administrative processes. It will be important for the MBIE to ensure the Essential Skills policy continues to work for SMEs enabling them to take on temporary migrant workers with as few administrative burdens and risks as possible. The Essential Skills policy must enable rather than inhibit SME access to the skills and labour needed to grow and be competitive, including increasing the use of **'Approve and Accredited Employer' schemes**. Such efforts must be complemented by efforts to support and incentivise small business to invest in training and upskilling employees.

APPENDIX 1

Background information on BusinessNZ

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

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