

Submission by



**restaurant
association**
of new zealand

to the
Ministry of Business, Innovation and Employment
on the
**Suite of proposed changes to the Essential Skills visa:
discussion document**

25 May 2017

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

1.0 Introduction

1.0 Restaurant Association of NZ 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'.

1.1 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.

1.2 Restaurant Association of NZ would welcome the opportunity to work MBIE on how any improvements to the Essential Skills work policy can be made and operate effectively. We are available, as are our members, to assist in working on the suggestions made in this document.

2.0 Restaurant Association of NZ's comments

2.0 The Essential Skills policy has demonstrated it is reactive to labour market conditions given the demand for temporary migrant workers has fluctuated at all skill levels 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. In addition to this the policy also fails to address differences in each sector that will be affected by the proposed changes to policy, particularly within the hospitality industry.

2.1 The Approval in Principle process as it currently stands applies the same risk framework to all applicants regardless of whether or not the employer has acted responsibly and reliably in the past. The Restaurant Association believes there should be 'approved and accredited employer' programmes or design schemes developed for the hospitality industry and regulated by the Association and government to streamline recruitment from the international labour market by approved employers. The Restaurant Association has spoken about this proposal to MBIE in recent years.

2.2 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 ensures 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. We believe that programmes like our Prostart Programme, which is run in partnership with the Ministry of Social Development and our members (2000 hospitality business owners) should marked for participating businesses as an indication their commitment to employ New Zealanders. The programme works with the unemployed and trains these candidates for entry level placement and mentoring within our industry. We know first-hand how many of the applicants that come through Work and Income are not necessarily suitable for our industry but we are actively working to improve this. In reality industry would prefer to employ New Zealanders but there are simply not enough to meet industry requirements.

- 2.3 In addition to the above point businesses should be awarded recognition for their participation in the NZ Apprenticeship programme as this also demonstrates a commitment to training New Zealanders.
- 2.4 The hospitality industry is heavily reliant on what has incorrectly been defined as 'low-skilled' migration. The impact of the proposed changes will have a largely negative impact on our industry. Many of our members have stated that the proposed changes will lead to the demise of their businesses.
- 2.5 The hospitality industry as a whole contributes a significant amount to the national economy and we are largely made up of SME's. Essential Skills policy should not disadvantage SMEs. Small hospitality businesses are not equipped with HR departments to manage complicated, time consuming and costly administrative processes. It will be important for 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.
- 2.6 We would like to thank MBIE for engaging with our industry and the Association directly through the consultation process. We appreciate the work that has gone in to communicating with us and listening to our concerns.

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 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."

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

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

- 4.0 We disagree with the position of solely using salary information to determine skill level. The use of salary thresholds as the main determinant of skill level is a blunt instrument and is not indicative of skill level in the hospitality industry. Remuneration levels should not replace ANZSCO as the main determinant of skill level for essential skills visa holders. The proposal to align the remuneration thresholds with those for the Skilled Migrant Category is too generalised an approach and will have a significantly negative impact on the hospitality industry.

- 4.1 For the hospitality industry, where average wages are lower than those of other sectors, and the national average, the rationale that those paid below the proposed threshold are considered lower-skilled does not equate. The average remuneration for a worker in all but the most senior hospitality roles is less than the \$48,859 threshold. The industry is faced with high costs, particularly labour costs, and low profits, profit margins simply do not allow for a large scale increase of wages. Wages are not a reflection of skill level for the hospitality industry. For example a Cookery apprentice will undertake three to four years of on the job training and study, when the apprenticeship is completed the apprentice may be in a position to graduate to Chef de Partie and will be paid on average \$38,200. It would appear that a blanket approach is being proposed, but it does not fit all industries particularly the hospitality industry.
- 4.2 If the policy is introduced as proposed the remuneration threshold for our industry should be set at a lower threshold than other sectors. The Restaurant Association conducts an annual remuneration survey of the hospitality industry and this indicates that the current average salary is \$37,150. We suggest that setting the threshold for the hospitality industry at this level would be a more reasonable approach.
- 4.3 In considering the impact to the industry if this policy is to be enforced as proposed, the majority of visa holders in the mid-skill level would fall under the conditions requiring them to renew their visa each twelve months for a maximum of three years. We have surveyed our members on these proposals and they are very concerned at the increased workload required to go through the application process after such a short duration of time. While employers recognise the need to go through the process of seeking New Zealand workers in the first instance, it needs to be acknowledged that this is an extensive and time-consuming process for many businesses, which need to repeatedly advertise to source suitable applicants. Hospitality business owners will need to start recruiting almost as soon as the visa holder begins their twelve months of work in the business. Time that would more suitably be allocated to other undertakings, such as training and raising the skill levels of the industry. The workload for Immigration NZ would also increase significantly if there was an increase in the number of visa renewal applications being made (after 12 months) and we have serious concerns that this will cause further delay to Immigration NZ's processing times. It appears that Immigration NZ is already not able to keep up with the level of applications coming through, as members have indicated that an eleven week wait for approval is not unusual under the current regime.
- 4.4 In addition, the maximum three year duration for visa holders that do not meet the remuneration threshold for certain roles does not mirror the typical skills pathway for our industry. For example, a Chef de Partie would generally require five years to reach the higher skill level that may elevate them into one of the more senior roles where different visa conditions apply (eg Sous chef). We have the same concerns for the Maitre D' role (which we believe is incorrectly assigned an ANZSCO level 4). For those two roles we recommend that the maximum duration of the essential skills visa should be set as 3 years, with no limit to the number of times someone can reapply and a pathway to residence.
- 4.5 The proposed policy appears to curbs career progression, which is essential for the hospitality industry to grow, as it hinders retention of skilled workers by potentially requiring them to leave after a maximum of three years. While it is recognised that this visa category is not intended to be used to renew indefinitely, it is our view that the restrictions proposed by requiring a worker to renew their visa every twelve months, for an exceedingly short maximum of three years, is not offering a long term solution to our current skills problems but will in fact exacerbate them.

4.6 While ANSZCO is not perfect, with regular updating it can continue to be used as an immigration tool for correctly defining skill. 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. With the introduction of hybrid positions consisting of duties from more than one occupation, the complexity of determining the correct occupation is increased further.

4.7 There is some risk that some employers might inflate the earnings for a position in order to meet the threshold associated with the proposed skilled or mid-skilled level. We believe this leaves a gap for exploitation.

4.8 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.

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

5.0 We believe MBIE should consider regional/localised, industry specific, 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 through the Prostart Programme and a track record of compliance and commitment to continuous improvement in health, safety and employment standards.

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

6.0 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.

6.1 We believe the proposed three years' maximum duration does not balance the needs of employers in the hospitality industry as three years is not consistent with currently accepted career pathways in our industry. For example, three years is not sufficient time for a Junior Chef de Partie to scale up to a Senior Sous Chef position and the same principals can be applied in the case of a Waiter scaling up to Restaurant Manager.

6.3 A maximum duration longer than the proposed visa time limit would allow hospitality industry employers the time to provide training and upskill their employees, it would also lead to increased remuneration over time to reflect a higher level of experience and skills and even contribute to a reduction in 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.

- 6.4 To recognise career progression from a junior role to a more senior role we propose that the maximum visa length for 'low skilled' occupation in the hospitality industry be raised to five years and visas be issued at two, two and half year intervals.

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

- 6.5 The hospitality industry is a labour intensive industry and will be adversely affected by the proposed stand-down period as their demand for workers will likely continue to be unmet by the local labour market. Not only will hospitality businesses 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 many businesses less productive and less competitive.
- 6.6 One option for MBIE to consider is taking an industry approach or providing exemptions in situations where hospitality businesses have received Approval in Principle to source and employ large numbers of low-skilled migrants.
- 6.7 Another option is to create a preferential pool of 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's hospitality industry.

7. 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

- 7.0 Low-skilled migrant workers may take consider 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 New Zealand as less desirable to work for short periods of time.

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

- 8.0 We have no comment on the specific seasonal occupations identified.

9.0 Other comments

Policy change should not cripple productivity

- 9.0 Our industry as mentioned is a very manual industry there are not technologies available to replace the labour that is required. The hospitality industry is reliant on Essential Skills workers to sustain business and continue to grow. Furthermore, there simply is not enough local low-skilled labour available. Yes, employers could reduce their employment standards and selection criteria but this is not without risks, costs and quality of service. Reducing operations may result in fewer jobs for New Zealanders as a whole.

10. About us- Restaurant Association

Who we are and how we assist our members:

Good food is one thing. Good business is something else. Essentially, we are here to assist our members in any way we can. Be it something small, or large, we are a one stop shop to help hospitality business owners do business better. We are not-for-profit, owned by our members and dedicated to helping business owners succeed.

Our membership is more than just restaurants – we have cafes, food trucks, take away sites, chain restaurants, quick service restaurants, standalone cafes, restaurants and bars, catering companies and companies that feed into the industry.

We're passionate about our vibrant industry, which is full of interesting, talented and entrepreneurial people. Restaurant Association membership is a badge of professionalism – we encourage members to actively promote their affiliation to our Association which is the professional industry body representing the hospitality industry. We believe that our members represent the more serious business owners, focused on success.

Essentially, we help our members in 3 different ways:

1. We provide them with information, resources and tools
2. We provide industry benchmarks and ideals for our industry.
3. We save them money
4. We Promote and Market business

We are like the businesses silent business partner - available at a moment's notice to answer questions, offer advice or advocate on our members behalf. Weekly one-on-one mentoring sessions and a 24-hour advice line are all part of the package.

Whether members need advice on an employment dispute or help navigating the terms of their lease, our industry and legal experts have their back.