



## COVERSHEET

<b>Minister</b>	Hon Andrew Little	<b>Portfolio</b>	Immigration
<b>Title of Cabinet paper</b>	Immigration Rebalance - implementing agreed changes to partner work rights	<b>Date to be published</b>	12 July 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
February 2023	Immigration Rebalance - implementing agreed changes to partner work rights	Office of the Minister of Immigration
22 February 2023	Immigration Rebalance - implementing agreed changes to partner work rights DEV-23-MIN-0012	Cabinet Office
25 November 2022	Options for changes to partners work rights and oral item for Cabinet, 28 November	Ministry for Business, Innovation and Employment
8 December 2022	Further advice on possible changes to partner work rights	Ministry for Business, Innovation and Employment
2 February 2023	Draft Cabinet paper on Immigration Rebalance - implementing agreed changes to partner work rights	Ministry for Business, Innovation and Employment

### Information redacted

**YES / NO** (please select)

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Some information has been withheld to maintain the privacy of natural persons.

Office of the Minister of Immigration

Cabinet Economic Development Committee

## **Immigration Rebalance – implementing agreed changes to partner work rights**

### **Proposal**

- 1 In December 2021, as part of the Immigration Rebalance, Cabinet agreed that the partners of most temporary migrants will be required to qualify for work rights in their own right if they wish to work in New Zealand [CAB-21-MIN-0554 refers]. Cabinet subsequently noted that this would be implemented through the Accredited Employer Work Visa [CAB-22-MIN-0145 refers].
- 2 I am instead proposing to grant partners of most temporary migrants a partnership-based visa that allows them to work for any Accredited Employer in a role paid above the median wage. This new method of implementation will forgo upfront assessment of the role, including labour market testing, in favour of a more streamlined and certain approach for visa applicants.

### **Relation to government priorities**

- 3 This is one of the main changes agreed under the Immigration Rebalance changes for employer-assisted workers and their partners, intended to help achieve a more highly skilled migrant workforce and increasing productivity of New Zealand businesses.

### **Executive Summary**

- 4 Cabinet has previously agreed that the partners of most temporary migrants will be required to qualify for work rights in their own right if they wish to work in New Zealand. This was to limit the pool of open work rights holders that employers could continue to access for lower-skilled roles, and help achieve a more highly skilled migrant workforce.
- 5 This was to be implemented by requiring partners of most temporary migrants who hold an Accredited Employer Work Visa (AEWV) to get their own AEWV if they wish to work. Some partners of migrant workers are exempt and will still receive open work rights, if the principal visa holder is working in a role that is on the Green List or highly paid. Partners of other temporary visa holders (like students) and New Zealand residents and citizens are also exempt from these changes.
- 6 Getting an AEWV requires the migrant to find a role with an Accredited Employer that pays above a relevant wage threshold, generally the median wage. The employer needs to hold a valid Job Check for this role before they can offer it to a migrant applicant. The implication for partners is that many would need to first obtain a partnership visa without work rights to enter New Zealand, and search for a job that qualifies them for a work visa.

- 7 To provide more certainty and a more straightforward process for migrants and their families, I am proposing that we instead give partners of most AEWV holders a partnership-based work visa with conditions attached. The Partner of a Worker Work Visa is the open work visa partners of migrants currently get based on an assessment of the partnership. For partners of AEWV holders who are not in Green Listed or highly paid occupations, I propose giving them a version of this visa, with the following conditions imposed:
- 7.1 The visa holder can only work for an employer accredited under the AEWV system, and
- 7.2 The visa holder can only work in roles paid at or above the median wage (or the relevant wage threshold for roles covered by uncapped sector agreements or temporary exemptions to the median wage threshold).
- 8 Partners of temporary migrants on this visa will still not be able to work in roles paying below the median wage unless it is a role covered by an uncapped sector agreement, as agreed under the original Immigration Rebalance package. This represents a trade-off between limiting the displacement of New Zealand citizens and residents from roles and potentially disincentivising migrant families from coming to New Zealand. There is no good data to quantify either potential impact.
- 9 This proposal offers greater certainty and a more straightforward process for migrants. There would be no assessment of the role by Immigration New Zealand (INZ), meaning migrant partners can apply for the visa from offshore without having a specific role arranged. Partners would still need to find a role that meets their visa conditions once they arrive in New Zealand (i.e., that their prospective employer is accredited and the pay is above the relevant threshold), but they could be certain of their right to work before coming to New Zealand.
- 10 At present, this proposal will affect the same group of people it would if it was being implemented through the AEWV. I am considering extending this proposal to cover partners of Essential Skills visa holders, which was the visa replaced by the AEWV. Work is still being done on this matter and I will advise Cabinet of the outcome. To be clear, no current holders of a partnership-based work visa which grants open work rights will be subject to this change until their current visa expires.
- 11 This is a higher trust model. INZ will not be checking that a role meets the conditions and will instead rely on visa holders being incentivised to comply with their visa conditions, as they can be liable for deportation if they do not. There will also be no labour market testing with this approach. This means there is no obligation for employers to advertise a role to New Zealand citizens and residents before offering it to a migrant partner on this visa.

## Background

- 12 In December 2021, as part of the Immigration Rebalance, Cabinet agreed that the partners of most temporary migrants will be required to qualify for work rights in their own right if they wish to work in New Zealand [CAB-21-MIN-0554 refers]. This was to be implemented by requiring partners of most temporary migrants to obtain an Accredited Employer Work Visa (AEWV), but without the minimum hours of work requirement that usually applies.
- 13 This would mean partners of most temporary migrants would need to have a job offer for a role that pays above the median wage (\$29.66 as of 27 February 2023), has first been advertised to New Zealand citizens and residents (i.e., labour market tested) and is with an Accredited Employer. Partners who cannot qualify for an AEWV would instead be able to enter New Zealand on a visitor visa.
- 14 This change applies to most partners of temporary migrants, with the following exceptions:
  - 14.1 Partners of migrants in Green List or highly paid roles, to ensure New Zealand remains an attractive destination for highly skilled migrants
  - 14.2 Partners of other temporary visa holders, who make up a small proportion of the total number of partners of migrants
  - 14.3 Partners of New Zealand citizens and residents, as different considerations apply to this policy.
- 15 Exempt partners will continue to receive open work rights, meaning they can work for any employer, in almost any role, for any number of hours and at any legal rate of pay.
- 16 These changes were to come into effect from December 2022. We agreed that implementation of these changes would be delayed until access to the existing Victims of Family Violence (VFV) Work Visa is extended to partners of temporary migrants in February 2023 [CBC-22-MIN-0054 refers]. Concerns were raised during consultation that this change could lead to greater financial dependency for partners, and it may in some family violence situations increase the coercive control exerted by abusers. The extension of access to the VFV Work Visa is intended to mitigate these concerns by providing a way for temporary migrants in family violence situations to leave their situation without worrying about their immigration status.
- 17 When informing the Cabinet Business Committee of this deferral, I indicated that I would consider alternative ways to implement the partner work rights change, to provide greater certainty to partners about their ability to work in New Zealand in higher paid roles and to streamline the application and assessment process. This was in response to concerns raised that requiring partners of most temporary migrants to also get an AEWV was onerous and meant that they could not be certain of their right to work until they arrived in New Zealand.

## **Rationale for the change to partner work rights**

- 18 The largely unchecked growth in migrant volumes (and a growing proportion of lower skilled workers) prior to the pandemic was not sustainable. The migrant workforce grew by 144 percent from 2012 to 2019, compared to 20 percent for the New Zealand workforce.
- 19 Increasing shares of sector workforces were made up of migrants, both those attached to employers and those with open work rights. Employers were particularly reliant on open work visa holders, such as partners, students and working holiday makers to fill lower skilled roles. In July 2019, partners on work visas accounted for 23 per cent of the potential temporary migrant workforce (44,000<sup>1</sup> of 190,000<sup>2</sup> migrants on temporary work visas).
- 20 To limit the pool of open work rights holders that employers could continue to access for lower-skilled roles, we agreed that partners of most temporary workers would need to qualify for work rights in their own right (i.e., removing open work rights for partners). This supported the Immigration Rebalance aim of lifting the overall skill level of the migrant workforce and encouraging employers to consider higher-productivity alternatives to using lower-skilled migrant labour.
- 21 This policy represents a trade-off between limiting the pool of migrants available that displace New Zealanders from entry-level opportunities and disincentivising migrant families from coming to New Zealand if one member of a partnership is unable to work. This policy will help lift the skill level of migrants, but it is worth noting that this is small portion of the total labour force we have in New Zealand. The recent expansion of the Green List has also lessened the emphasis we are placing on high-skill levels in the face of persistent labour shortages.
- 22 We cannot estimate the impact of this policy on either displacement of New Zealanders or the disincentive effect it has for migrant families. We also cannot accurately estimate the number of the partners affected by this change based on past information, as we lack data on the jobs done by migrant partners. However, based on a range of assumptions, should we return to the same number of temporary migrant workers and partners onshore as we had in July 2019, we could see between 7,000 and 10,000 of those partners at any one time no longer able to work in lower-paid, lower skilled roles.

## **I am proposing that partners of temporary migrants get a partnership-based work visa with conditions, rather than an AEWV**

- 23 I am proposing that we continue to give partners of most AEWV holders a Partner of a Worker Work Visa but with conditions attached. The Partner of a Worker Work Visa is the open work visa partners of migrants currently get

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<sup>1</sup> Including partners of New Zealanders, students and workers

<sup>2</sup> Please note these numbers may differ previous Immigration Rebalance Cabinet papers which reflected the actual numbers of people in work. The data used in this paper reflect the number of people who hold visas which give work rights (but may not necessarily be in work currently).

based on an assessment of the partnership. For partners of AEWV holders who are not in Green Listed or highly paid occupations, the following conditions would be imposed:

- 23.1 The visa holder can only work for an employer accredited under the AEWV, and
  - 23.2 The visa holder can only work in roles paid at or above the median wage (or the relevant wage threshold for roles covered by uncapped sector agreements or temporary exemptions to the median wage threshold).
- 24 I am considering extending this proposal to cover partners of Essential Skills visa holders, which was the visa replaced by the AEWV. Work is still being done on this matter and I will advise Cabinet of the outcome.

**This approach has both benefits and risks**

- 25 Imposing conditions on a partnership-based work visa still gives effect to the main purpose of the proposed change in partner work rights – to limit the number of migrants that employers can access for lower-skilled, lower-paid roles and encourage a higher skill level across the migrant workforce. It achieves this by requiring migrant partners subject to these conditions to work in roles paid above the median wage, which is the proxy for ‘higher skilled’ roles used across the Rebalance. Partners subject to these conditions will only be able to work in below median wage roles where they are covered by an uncapped sector agreement.
- 26 This approach is a more straightforward process (for both employers and migrant partners) and offers more certainty for migrants. If this change were to be implemented through the AEWV, as initially planned, migrant partners would need to find a role that has a valid Job Check<sup>3</sup> (or the employer is willing to undertake the Job Check process) and complete the migrant application under the AEWV. I expect this would most likely happen after they arrived in New Zealand.
- 27 Under this new proposal there is no assessment of a role, meaning migrant partners can apply for the visa from offshore without having a specific job arranged. They would still need to find a role that meets their visa conditions once they arrive in New Zealand, but they could be certain of their right to work before coming to New Zealand.
- 28 Visa holders will be able to work for any Accredited Employer, and they can change roles without interacting with Immigration New Zealand (INZ). There will be some added burden for visa holders as this approach would be migrant-led, instead of employer-led like the AEWV. They would need to confirm that a prospective employer is accredited and the pay rate is at or above the relevant wage threshold before they began working. The INZ

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<sup>3</sup> A Job Check is an assessment completed by INZ to confirm that the role being offered meets the legal requirements on employers, has been advertised to New Zealand citizens and residents, and is paying at the relevant threshold.

website already notes the median wage for immigration purposes, and work is underway to create a searchable register of Accredited Employers, to support migrants to confirm prospective employer's accreditation status.

- 29 This proposal forgoes any upfront assessment of a role. INZ will not be checking that a role meets the conditions and there will be no labour market testing with this approach. This means there is no obligation for employers to advertise a role to New Zealand citizens and residents before offering it to a migrant partner on this visa. Encouraging employers to look to the domestic labour force first is one of the aims of the Rebalance – however I suggest the benefits for migrant applicants warrant forgoing a labour market test.
- 30 This approach instead relies on both visa holders and employers being incentivised to comply with the visa conditions. Visa holders can be liable for deportation if they do not and employers risk losing their AEWV accreditation. Non-compliance may be discovered as part of risk monitoring and review work, and work history anomalies being identified on subsequent visa applications.

### Implementation

- 31 Subject to Cabinet's agreement to this implementation approach, these changes could be made and the immigration system ready to receive applications on 30 April 2023.
- 32 Visa holders need to meet the visa conditions when taking up a role, but employers do not need to maintain accreditation throughout the migrant's employment or meet increases in the wage threshold (for example, the median wage rate annual adjustment). However, the wage rate paid cannot fall below the relevant wage threshold at the time the visa was issued - this is consistent with the approach taken for the AEWV. All other conditions of the existing Partner of a Worker Work Visa category would also apply to this new visa - for example, visa duration would match that of the primary visa holder, and no minimum or maximum hours of work requirement would apply to this option.
- 33 There will be little difference in the fees faced by migrant applicants. The Partner of a Worker Work Visa fee is \$700 and the fee for the migrant application under the AEWV is \$750. However, employers will not need to undertake an AEWV Job Check to employ migrant partners – each Job Check costs \$610.
- 34 Partners of AEWV holders who are already in New Zealand on an open work partnership visa will only become subject to these conditions for future visa applications. This could mean that some onshore migrant families will go down to one income if the partner visa holder is unable to find work paying above the median wage.

### Financial Implications

- 35 There are no financial implications of this proposal, as the processing costs of this approach will be recovered through the fees for the Partner of a Worker Work Visa.

### Legislative Implications

- 36 There are no legislative implications of this proposal.

### Impact Analysis

#### Regulatory Impact Statement

- 37 This proposal does not involve the potential introduction, repealing or amending of legislation, so regulatory impact analysis is not required.

### Population Implications

- 38 Previous papers have outlined impacts of the Immigration Rebalance on key population groups (*Immigration Rebalance – determining the green list and sector agreements*). It is not anticipated that this change in approach to implementation will have a significant additional impact on population groups.
- 39 Historically, significantly more women have held partner work visas than men and will be more affected by the change to partner work rights previously agreed [CAB-21-MIN-0554 refers]. This means proportionally more migrant women could find themselves unable to work if they cannot find roles paid above the median wage. Concerns about this change exacerbating financial vulnerability for women in situations of family violence are being addressed through a separate workstream, including agreed changes to the Victims of Family Violence Work Visa and an ongoing review of the support settings for migrant victims of family violence [CAB-22-MIN-0581 refers].

### Human Rights

- 40 This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### Consultation

- 41 The following agencies and departments have been consulted on the proposal in this paper: Department of the Prime Minister and Cabinet, Ministry for Ethnic Communities, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry for Pacific Peoples, Ministry for Primary Industries, Ministry of Social Development, Ministry for Women, Te Puna Aonui, and the Treasury.
- 42 Agencies were generally supportive of a more streamlined option for migrants and are conscious of the need to provide internationally competitive settings. A partner's ability to work can influence whether New Zealand is an attractive destination for skilled migrants.



## Communications

- 43 I intend to announce this change in approach to implementing the change to migrant partner work rights in conjunction with the expansion of access to the Victims of Family Violence Work Visa in [March 2023.]

## Proactive Release

- 44 This paper will be proactively released subject to redactions as appropriate in line with the Official Information Act 1982 after announcements are made.

## Recommendations

The Minister of Immigration recommends that the Committee:

- 1 note that in December 2021, as part of the Immigration Rebalance, Cabinet agreed to restrict work rights of partners of migrant workers (unless they were in highly paid or Green List occupations) to roles they qualify for in their own right [CAB-21-MIN-0554 refers];
- 2 note that in March 2022, Cabinet noted that the change referred to in recommendation 1 would be implemented through an Accredited Employer Work Visa, although there would be no minimum hours of work requirement [CAB-22-MIN-0145 refers];
- 3 agree that rather than requiring migrant partners of most temporary workers to apply for an Accredited Employer Work Visa, they can apply for a partnership-based work visa which has conditions that only allow the visa holder to work:
  - 3.1 for an employer accredited under the Accredited Employer Work Visa system, and
  - 3.2 in roles paid at or above the median wage (or the relevant wage threshold for roles covered by uncapped sector agreements or temporary exemptions to the median wage threshold);
- 4 note that the changed implementation approach still supports the original intent of the policy by removing the ability for migrant partners to work in lower skilled, lower paid roles and lessening employer reliance on this group, while also provides greater certainty and a more streamlined process for applicants;
- 5 note that compared to the approach outlined in recommendation 2, the approach in recommendation 3 forgoes upfront assessment of the role and there is no requirement for the employer to advertise the role to New Zealand citizens and residents first;

- 6 authorise the Minister of Immigration to make any ancillary decisions required to give effect to the decision outlined at recommendation 3.

Authorised for lodgement

Hon Michael Wood

Minister of Immigration