



COVERSHEET

Minister	Hon Ian Lees Galloway	Portfolio	Immigration
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Office of the Minister of Immigration

Chair, Cabinet Economic Development Committee

A NEW APPROACH TO EMPLOYER-ASSISTED WORK VISAS AND REGIONAL WORKFORCE PLANNING: PAPER TWO - THE JOB GATEWAY

Proposal

1. This paper is the second of two papers that seek Cabinet agreement to implement a set of changes that reflect our coalition commitments to ensure work visas issued reflect genuine regional skill shortages, and to strengthen labour market testing. The proposals would:
 - 1.1. improve the ability of the immigration system to respond to the genuine needs of regions and sectors; and
 - 1.2. increase expectations on employers to employ and train more New Zealanders.

Executive Summary

Context

2. In December 2018 Cabinet agreed to consult on a new employer-assisted gateway system for temporary visas and enhanced regional workforce planning, and invited me to report back with final proposals. The companion paper to this paper [*A new approach to employer-assisted work visas and regional workforce planning: paper one*] seeks Cabinet agreement to the overall gateway system, the employer gateway and related changes.
3. This paper seeks agreement to the specific design of the job gateway, in particular to the introduction of Sector Agreements and a regionalised approach to labour market testing, and the worker gateway.
4. As discussed more fully in the companion paper, these proposals address challenges and issues with the current employer-assisted temporary work system, namely that it:
 - 4.1. is needlessly complex;
 - 4.2. is unable to respond appropriately to regional and sectoral variation;
 - 4.3. does not create an incentive for industry to help address domestic labour market shortcomings;
 - 4.4. is not able to provide information back to other government systems to support domestic investment and responses; and
 - 4.5. does not adequately screen out employers with poor track records of compliance.

The job gateway

5. The job gateway will enable the immigration system to assess whether the job is genuine, has suitable terms and conditions consistent with New Zealand values, and that the employer has made genuine attempts to recruit domestically. If an employer passes the job gateway they will be given approval to recruit a foreign worker into the job.

6. I seek Cabinet's agreement to establish three pathways under the job gateway that reflect regional and sectoral variations across the range of New Zealand's employers, while delivering on our objectives for the domestic labour market. The three pathways are:
 - 6.1. *The highly-paid pathway, as recognised through jobs with high remuneration.* I propose that where an employer proposes to pay 200% of the median wage, that job should be exempt from labour market testing, regardless of the occupation and region;
 - 6.2. *The sector agreement pathway, which enables specific terms and conditions to be negotiated with a sector.* I propose that agreements be negotiated with sectors that have a high reliance on large numbers of foreign workers. These agreements would require collective action from industry to help address domestic labour market challenges and increase the employment of New Zealanders in exchange for certainty of access to foreign workers and reduced compliance costs;
 - 6.3. *The regionalised labour market test pathway, which enables differences in regional labour markets and the wages offered for the job to be reflected in immigration treatment.* I propose to have a tailored framework that allows the approach to labour market testing and visa conditions to be varied depending on the nature of the regional labour market and the wages of the job. This differentiation will enable the system to make it easier for employers in regions and jobs where fewer New Zealanders are available, and tougher for employers in cities and regions where there are more New Zealand job seekers.
7. Importantly, all of these proposals ensure that employers are still able to access foreign workers where there are no New Zealanders available, but that the employment of suitable New Zealanders remains a key focus and an underlying principle of the employer-assisted temporary work visa system.

I propose some changes to the proposals that were consulted on

8. Public consultation indicated wide support for a regionalised labour market test and the development of Regional Skills Shortages Lists. However, further analysis undertaken by officials shows that the current skills shortage lists are not well utilised and that there are very low volumes of visas approved under the lists. Further regionalising the lists would primarily benefit cities, rather than the regions. For this reason I propose removing the labour market test for all jobs paid above the median wage in regions. Skill shortages lists would therefore only be required for cities. This will have the effect of providing more facilitative immigration settings to the regions as compared to cities.

Implementation and financial implications

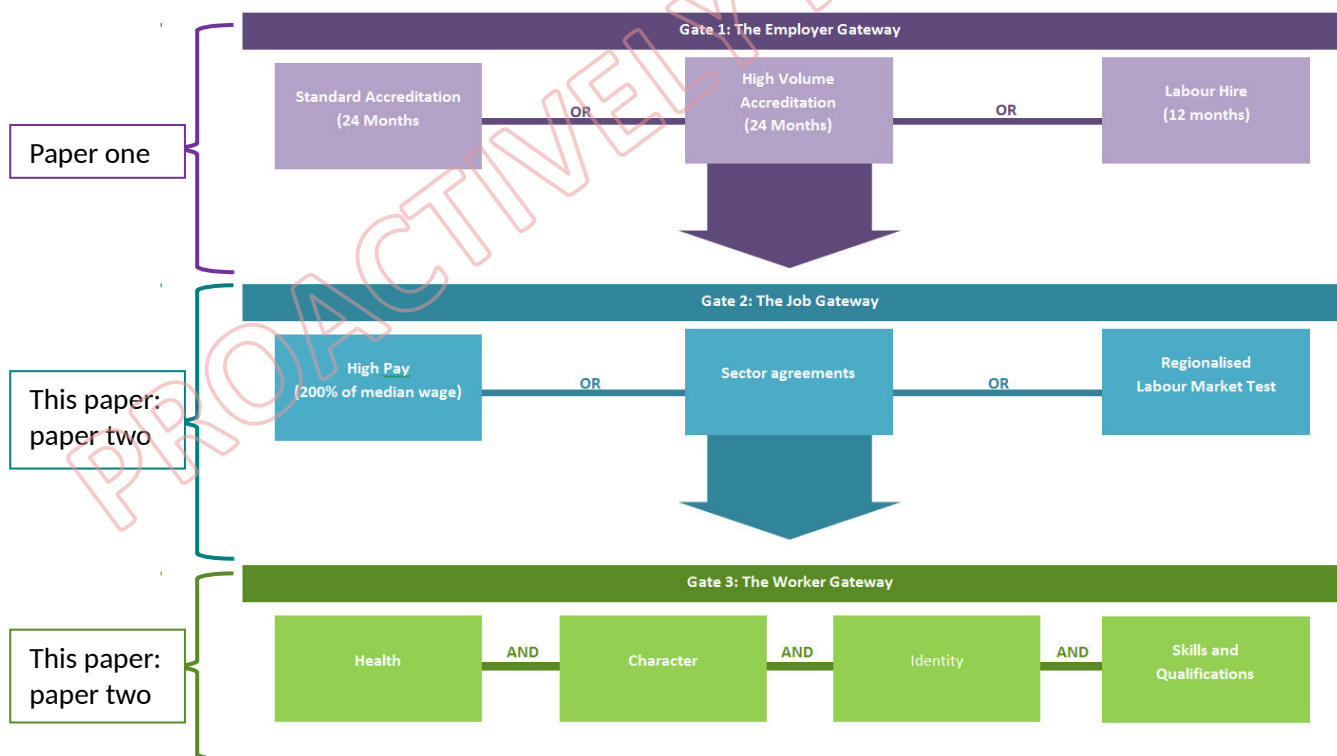
9. The negotiation of the first two Sector Agreements will be completed by mid-2020. I am seeking funding to establish a unit within MBIE to undertake a range of functions to support the ongoing implementation of the proposals, which includes the negotiation and monitoring of Sector Agreements and monitoring of regional labour markets. This paper seeks Cabinet agreement to appropriate funding to implement Sector Agreements. The financial implications of the overall gateway system changes are set out in the companion paper.
10. An overview of my immigration policy work programme demonstrating where this paper fits within my broader priorities has been attached as Annex One.

Background

Cabinet agreed to undertake public consultation, and invited me to report back in mid-2019

11. In December 2018, Cabinet agreed to consult on a new employer-assisted gateway system for temporary visas and enhanced regional workforce planning and invited me to report back on:
 - 11.1. the outcomes of the consultation and any changes to the proposals; and
 - 11.2. an implementation plan including the financial implications of the proposals. [CAB-18-MIN-0608.01]
12. This paper is the second of two papers reporting back to Cabinet, seeking agreement to progress the proposals to improve the employer-assisted temporary work visa system:
 - 12.1. Paper one seeks agreement to the overall gateway system, the employer gateway proposal, and related changes.
 - 12.2. This paper seeks agreement to the job gateway, including the design of Sector Agreements and the regional labour market test, and the worker gateway.

Figure 1: New approach to the employer-assisted temporary work visa system

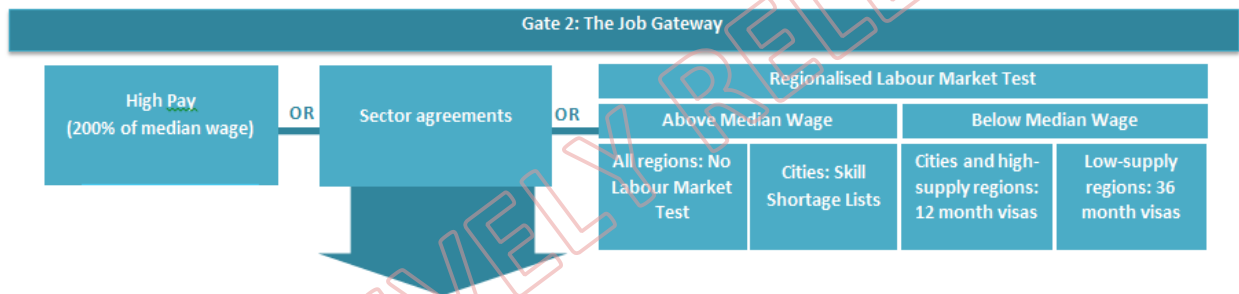


13. The changes I propose seek to ensure that:
 - 13.1. temporary work visas are not used to fill low-skill jobs on an ongoing basis;
 - 13.2. employers place more New Zealanders into jobs, which helps their businesses to grow and thrive, and results in better jobs for New Zealanders; and
 - 13.3. foreign workers are not exploited and have wages and conditions that are consistent with New Zealand norms.
14. Public consultation indicated broad support for the direction of travel, and raised important feedback which is reflected in the proposals in this paper.

This paper seeks Cabinet agreement to the detail of the new Job Gateway

15. The employer gateway will undertake an assessment of the employer. The job gateway will then assess whether the job the employer is seeking to recruit for is genuine and has suitable terms and conditions consistent with New Zealand norms, and that the employer has made genuine attempts to recruit domestically. If an employer passes the employer and job gateways they will be given approval to recruit a foreign worker into the job.
16. I propose that there are three pathways available under the job gateway:
 - 16.1. the highly-paid pathway;
 - 16.2. the sector agreement pathway; and
 - 16.3. the regionalised labour market test pathway.
17. Employers who are recruiting for jobs covered by a sector agreement will be required to use that pathway, unless they meet the wage threshold in the highly-paid pathway.

Figure 2: The Job Gateway



18. These pathways will enable immigration settings to respond to the needs of regions and sectors, without adding significant complexity to the system.

The highly-paid pathway

19. Where high remuneration rates are offered this generally reflects a genuine skills shortage and the value that the employer places on the skills and experience required for the role. One of this government’s key strategies is to lift New Zealand’s overall productivity by shifting emphasis from high-volume to high-value production. Key to this is ensuring that firms have access to highly-skilled people where they need it.
20. To facilitate access to highly-skilled workers, I propose that when an employer pays over 200% of the median wage (currently \$104,000 per annum based on a 40 hour week), that job should be exempt from labour market testing, regardless of the occupation. Employers would still need to pay the market rate for that occupation, if it is higher than the proposed threshold. This threshold would streamline the job check for highly-skilled workers, which would be consistent with the aims of simplifying the system and increasing the skill levels of migrants.
21. I would anticipate that this pathway would include approximately 3,700 foreign workers every year. Relying solely on remuneration does create risks that employers may artificially increase wages and then either not pay, or claw back the proposed wages after payment. This risk will be managed, and will need to include increased verification and post-decision assurance which will be built into the new system.¹

¹ Increased post-decision assurance is crucial for identifying instances where an employer’s records, including IRD records, match requirements, but there is ‘off the record’ activity that results in foreign workers being under paid.

The Sector Agreements pathway

In public consultation, industry recognised the valuable opportunity that Sector Agreements presented

22. Public consultation on Sector Agreements indicated general support for the policy, particularly from those sectors proposed to have an agreement. Recognition of the potential win-win opportunity presented by Sector Agreements and the value of having government prepared to provide incentives to industry, and industry commit to action also meant that a number of sectors not initially identified for agreements also requested consideration.
23. While Sector Agreements will be a new feature in the immigration system, there is experience to draw on in terms of working, and negotiating with industries such as the Recognised Seasonal Employer (RSE) scheme.
24. Concerns were raised on whether the agreements should be compulsory or voluntary, whether large and disparate sectors (such as tourism/hospitality) would be able to negotiate with government, and ensuring flexibility to take into account regional contexts and employer size.

Introducing Sector Agreements will support sector needs in the short term and drive longer-term labour market change

25. Under current settings, some sectors have a high reliance on foreign workers, and an increasing proportion of foreign workers in their workforce. The challenges faced by these sectors in recruiting from the domestic workforce may result from one or more of:
 - 25.1. genuine shortages of domestic labour,
 - 25.2. terms and conditions that are not attractive to domestic workers, or
 - 25.3. systemic barriers to effective workforce planning, resulting in poor labour market outcomes.
26. Employers that are easily able to source lower-paid labour are more likely to perpetuate labour-intensive workforce practices with lower wages and conditions, which contributes to New Zealand's relatively low productivity. Easy access to foreign labour to fill low-skilled and low-paid jobs is one reason for employers to not invest in capital and skills development.
27. I propose that Sector Agreements be negotiated between government and sectors. Sector Agreements will support facilitated access to foreign workers, through increased certainty and lower compliance costs, for key occupations. In exchange the sector will be required to make commitments and progress towards longer-term sector-wide labour market improvements that reduce the sector's reliance on foreign workers in the medium and longer terms.
28. These commitments should show how the sector will make progress towards the following high-level objectives:
 - 28.1. Improving wages and conditions
 - 28.2. Reducing reliance on lower-skilled employer assisted foreign workers
 - 28.3. Incentivising the employment, training, and upskilling of domestic of New Zealanders
29. This approach would allow for a sector-specific approach to immigration settings that delivers targeted interventions to address unique issues facing the sector and would increase the employment of New Zealand workers in these sectors.
30. By addressing sector needs in the short term, and delivering meaningful medium-term labour market changes (such as productivity increases and the quality of jobs), negotiating Sector Agreements will deliver a win-win result for both the sectors involved and Government.

31. Prior to commencing formal negotiations, the Minister of Immigration will approve a government negotiating brief for a sector. This brief will set out the range of benefits and commitments that could be on the table for negotiations. It is likely that different briefs would look different, in order to provide the flexibility needed to reach mutually beneficial outcomes that are meaningful and achievable for the specific sector.

Sector Agreements will be compulsory for specified occupations in a sector

32. Increasing the number of New Zealanders employed in a sector, or increasing the supply of New Zealand workers into a sector will, in turn, drive down reliance on foreign workers to fill roles. In order to be effective, Sector Agreements will need to result in activity from industry, for example commitments on training and upskilling workers. Long-term change cannot come from government activity alone. In practice, this means that the agreements will need to include commitments from both government and the sector.
33. Sector Agreements are designed to overcome coordination barriers for sectors, and to result in sector-wide change. This kind of broad-based change would not be possible if the agreements were optional, and allowed employers to opt out and use more general immigration settings. It is therefore proposed that Sector Agreements would be compulsory for employers recruiting into the jobs covered by an agreement (as is the case with RSE). However, the agreements themselves could include specified exceptions.
34. Making Sector Agreements the only pathway for relevant sectors to access foreign worker for specified occupations means that employers will not be able to opt for the most facilitative settings, and instead will need to contribute to the domestic labour market activities negotiated as part of the Sector Agreements.
35. The occupations to be specified will be negotiated as part of the agreement, so that the occupations included are those where the most benefit accrues to both the broader labour market and the ongoing growth and development of the sector.

Sector Agreement must include three elements in order to deliver on objectives

36. I propose that each agreement will need to include three elements:
 - 36.1. a jointly-agreed 'starting point' that sets out shared information about the sector and its workforce, such as labour supply and demand forecasts, and an 'opportunity statement' that identifies what the sector and government consider a successful agreement will achieve.
 - 36.2. a sector's plan to place more New Zealanders into jobs and to reduce its reliance on foreign workers. This will also include details about the commitments made by employers and the wider sector to address barriers to employing New Zealanders
 - 36.3. details for how foreign workers will be accessed in the specified occupations over the duration of the agreement (up to three-years). This could also include details about additional benefits that Government conditionally offers the sector in exchange for faster progress in delivering on the objectives (as agreed to by the Minister of Immigration) such as more generous visa terms or recognition of new occupations within the immigration system.
37. Sector Agreements will not be used to deliver new funding for new or existing initiatives, as any such proposals should be subject to the usual Budget processes.
38. Negotiating a Sector Agreement will involve representatives from government and the sector, and will be supported by consultation with relevant organisations (such as portfolio agencies, proposed Workforce Development Councils or Regional Skills Leadership Groups, or other regulators like the Labour Inspectorate or WorkSafe). Employers and government will also be

expected to engage with and consult relevant unions, representing workers in the occupations covered by the agreement, throughout the negotiation process.

39. The commitments made by the sector could involve specific and measurable such as:
- 39.1. improving wages and conditions for domestic and foreign workers
 - 39.2. reducing reliance on lower-skilled foreign workers (for instance, through sector-wide targets or regional/individual firm caps)
 - 39.3. incentivising training and upskilling of domestic and foreign workers
 - 39.4. demonstrating a commitment to hiring domestic workers (for instance, through removing barriers to employment, or getting involved in MSD initiatives)

40. Constitutional conventions

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

41. As distinct from the proposal for Fair Pay Agreements, Sector Agreements are not proposed to be wage-setting interventions for entire occupations and sectors, although upwards pressure on wages (in response to a labour shortage) is likely to be an outcome of some negotiations.

The Minister of Immigration will agree sectors suitable for an agreement

42. I propose that the Minister of Immigration, in consultation with the relevant portfolio Ministers, will identify which sectors are suitable for a Sector Agreement, based on an assessment of the value proposition and readiness of a sector. This will include an evaluation of:
- 42.1. the extent to which employers have a reliance on foreign workers for lower-skilled roles (especially employer-assisted foreign workers);
 - 42.2. evidence that the sector might undergo workforce growth or change, and the opportunity to shift the relative shares of domestic and foreign workers; and
 - 42.3. the distribution of occupations within a sector, including whether there is a significant concentration of foreign workers within key occupations.
43. If there is a strong value proposition for pursuing a Sector Agreement, the readiness of that sector to enter into negotiations will be assessed by considering whether:
- 43.1. there are identifiable sector bodies that represent the voice of large and small employers;
 - 43.2. the sector has demonstrated an awareness of labour market issues, and has capability and capacity to make progress towards addressing these;
 - 43.3. the sector bodies have the capability and capacity to coordinate engagement with government, including gaining the mandate to negotiate on behalf on employers.
44. If the Minister of Immigration is not satisfied that there is a clear value proposition or that the sector is ready to negotiate, then a Sector Agreement will not be pursued. These assessment tests provide 'exit points' in the negotiation process if it is clear that circumstances have changed such that the sector no longer satisfies the tests.

45. I intend to commence negotiations with the first two sectors in 2019 which are expected to be aged care and either the dairy or the meat industry. Advice will then be provided to me on further sectors that are to be considered for an agreement.

Funding is required to implement Sector Agreements

46. The negotiation of Sector Agreements will require support (including for the analysis of a sector prior to and during the negotiation process), specialist negotiators to coordinate the government's role in negotiations, and policy and operational advice to implement and monitor an agreement once negotiations have commenced. I am seeking Cabinet agreement to funding these activities through the establishment of a unit within the Ministry of Business, Innovation and Employment (\$1.425m in the first year and \$1.725m in outyears).
47. The unit will negotiate and subsequently monitor a total of six agreements over the coming two years, and prepare to enter renegotiation of the first set of agreements after the end of their duration. I will report back to Cabinet after an assessment of the first six Sector Agreements, before considering whether to proceed with further tranches of agreements with additional sectors. I expect that up to four agreements would be able to be negotiated per year.

The regionalised labour market test pathway

48. Public consultation indicated wide support for a regionalised labour market test (LMT) and the development of regional skill shortage lists for higher-skilled occupations.
49. I propose implementing a simplified regionalised LMT, with some revisions to the proposal for regional skills shortages lists based on consultation feedback and further analysis of uptake of the skills shortage lists, and the situations where they are most effective. In practice this change removes the labour market test for higher-paid roles in regions and reduces the need for the Regional Skill Shortages Lists by developing these for cities only.
50. This change will provide a simplified system which will support the objective of facilitating the flow of foreign workers where it is warranted. I consider that this is preferable to seeking to build a system that accounts for all regional differences. Trying to achieve the latter could create significant complexity. In particular, the potential proliferation of different pathways under different circumstances would create confusion for employers and foreign workers.

Regional skill shortages lists

51. Currently, employers seeking to employ foreign workers for an occupation listed on one of the skill shortage lists do not have to advertise to test whether any New Zealand workers are available, suitable and trainable for the role.
52. Despite industry interest in seeing occupations reflected in the skill shortage lists, analysis of visa numbers shows that only a minority of skilled foreign workers are approved under the lists. This is largely because the requirements specified in the lists aren't being met – that is, the worker applying for the visa does not have the qualifications and/or work experience or licencing set out in the skill shortage lists. Instead, even where occupations are on the list, the majority of visas are being approved through a LMT, as shown in table 1.

Table 1: Essential skills visas approved in selected occupations (12 months to 31 April 2019)

Occupation	Total visas approved	Visas approved using the lists	Percentage using the lists
Chef	1,926	39	2%
Carpenter	1,875	177	9%
Registered Nurse (aged care)	771	369	48%
Dairy cattle farmer	624	321	51%

53. Analysis also indicates that further regionalising the skill shortage lists would primarily benefit main centres, rather than regions. Even with the regionally-adjusted threshold, regions without main centres would see few or even no occupations on their lists, while regions with main centres would see a reasonable number of occupations included.
54. The primary benefits of skill shortage lists experienced by regions appears to be their role in signalling opportunities to both domestic and foreign workers of higher-skilled jobs available. However, this could be done through other means than regional skill shortage lists.
55. Rather than continuing the regional skill shortage lists (including the Construction and Infrastructure Skills Shortage List (CISSL)), I therefore propose restricting revised Regionalised Skill Shortage Lists to the major cities: Auckland, Christchurch, Wellington, Dunedin and Hamilton metropolitan areas.
56. In the regions, the benefit of being on a list (the exemption from having advertising assessed by INZ) would be extended to all high-paid foreign workers' without the added complexity and administrative costs of developing individual regional skills shortage list. This would effectively mean that all highly-paid jobs in the regions would have the same settings as jobs that are on skill shortage lists in the cities.

A simplified framework will differentiate immigration settings on the basis of both regions and wages offered

57. Displacement and wage depression effects for New Zealand workers are more likely to occur towards the lower-paid end of the labour market and in areas with higher supply of available New Zealanders for work. I propose applying different immigration settings to cities and regions alongside the simpler definition of higher-paid, and lower-paid job offers as set out in paper one. This proposal is shown below in Table 2, and is based on:
- 57.1. the relative level of local supply in proportion to demand for labour over time
 - 57.2. the relative size of the region; and
 - 57.3. the volume of employer-assisted work visas issued for that region.
58. This analysis highlights a clear distinction between three different types of regions where tighter, moderate or looser immigration settings are appropriate:
- 58.1. *Cities*: where easy access to foreign workers could create real displacement or wage depression effects.
 - 58.2. *Regions with variable or high supply and high underutilisation*: where easy access to foreign workers could create real displacement or wage depression effects.
 - 58.3. *Regions with low supply and low underutilisation*: where high rates of foreign workers do not seem to have exacerbated under-utilisation issues. While negative effects may not be seen at this point of time, there is a possible risk of this changing over time.

Table 2: Calibration of immigration settings against regional and wage differences

	Cities <i>Auckland, Christchurch, Wellington, Hamilton and Dunedin</i>	Higher-Supply Regions <i>Northland, Manawatū-Wanganui, Bay of Plenty, Gisborne / Hawke's Bay, Taranaki, Tasman / Nelson / Marlborough / West Coast, and regional Wellington</i>	Lower-Supply Regions <i>Waikato, Canterbury, Otago, Southland,</i>
Above median wage	Moderate	Looser	Looser
Below median wage	Tighter	Tighter	Moderate

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59. In summary, I propose that the tighter-moderate-looser approach in table 2 result in the following detailed immigration settings:

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Table 3: Immigration settings by region and wages

*note that, in all cases, at least the market rate must be paid	Cities <i>Auckland, Christchurch, Wellington, Hamilton and Dunedin</i>	Higher-Supply Regions <i>Currently: Northland, Manawatu-Wanganui, Bay of Plenty, Gisborne / Hawke's Bay, Taranaki, Tasman / Nelson / Marlborough / West Coast, and regional Wellington</i>	Lower-Supply Regions <i>Currently: Waikato, Canterbury, Otago, Southland</i>
Above median wage*	Skill shortage list, or streamlined LMT (advertising only) Up to 3 year visa	No LMT Up to 3 year visa, renewable	No LMT Up to 3 year visa, renewable
Below median wage*	Strengthened LMT Up to 12 month visa, with ability to reapply providing for a maximum stay of 36 months, followed by 12 month stand down	Strengthened LMT Up to 12 month visa, with ability to reapply providing for a maximum stay of 36 months, followed by 12 month stand down	Strengthened LMT Up to 3-year visa followed by 12 month stand down

Looser settings

60. Looser immigration settings are intended to facilitate access to foreign workers where the risk of displacement or wage depression is small and is likely to be offset by the expected economic benefit of accessing offshore labour.
61. My proposal is that looser settings would cover jobs that pay above the median wage, in the regions. While this has marginally higher risk, there is evidence that regions have struggled to attract higher skilled foreign workers, and given the overall rates of visas granted for the regions, I consider there is limited risk of displacement for this group.
62. I propose that the parameters of this pathway are:
 - 62.1. *No requirement to advertise or test the labour market.* Most employers hiring at this salary range would have relatively rigorous processes to ensure they select the right candidate. Given the low risk of displacement, the value of checking that the employer has advertised is low. As such we do not consider that there is a need to assess the genuineness of the advertising.
 - 62.2. *Visas granted for up to 3 years in duration.* This reflects the status quo for higher- skilled foreign workers and that there is unlikely to be significant movement in the nature of the displacement risk over time (which in part reflects the fact that there are significant lead times in training New Zealanders for higher-paid jobs).
63. The effect of this loosening is that the reforms should provide significant compliance cost relief for a range of jobs where the risk of displacement or wage depression is low.

Moderate settings

- 63.1. Moderate immigration settings are intended to cautiously facilitate access to foreign workers. It aims to deal with circumstances where there is more than a negligible chance of displacement or wage depression, while at the same time managing compliance costs that may unnecessarily inhibit access to foreign workers. My proposal is that this will cover: *Jobs that pay above the median wage (in cities).* Cities currently

have high volumes of foreign workers and while they have comparatively low rates of underutilisation, the number of underutilised New Zealanders is still high in absolute numbers. So, for example, Auckland has one of the lowest levels of under-utilisation in the country, but the highest absolute numbers of foreign workers and highest number of unemployed New Zealanders. This creates some risk that displacement and/or inefficient skills matching may be occurring in parts of that market.

63.2. *Jobs that pay below the median wage (in the regions)*. In regions such as Southland and regional Otago and Canterbury, the rates of under-utilisation are very low and reliance on foreign workers is low. However, there are New Zealanders in these regions that might be able to be activated into jobs. As such, I consider that there remains some risk of displacement and wage suppression.

64. I propose that the parameters of this pathway should be:

64.1. *In cities, no requirement to advertise where a job is identified on a skills shortage list*. The lists are effective ways of testing the market en masse. As the current skill shortage lists are more heavily used in the urban centres at the moment (and not well used in the regions), I propose maintaining the lists for cities and not for the regions.

64.2. *Application of a strengthened LMT for jobs paid below the median wage*;

64.3. *In low-supply regions, visas granted for up to 3 years upfront for jobs paying below the median wage*. This is intended to reflect the fact that there is unlikely to be significant movement in the nature of the displacement risk over time. Thus, once the market has been tested, some compliance cost relief can be provided by providing a longer term for the visa.

I propose to strengthen the labour market test so that more New Zealanders are given the opportunity to be employed

65. The broad goal of the LMT is to:

65.1. Facilitate the appointment of “suitable, trainable and available New Zealanders” before employers consider any foreign workers; and

65.2. Indicate the need for a response from those with labour market levers (employers, government, education providers and others e.g. regional bodies) to reduce this shortage over time by enabling and incentivising the domestic workforce.

66. The LMT for higher-paid roles is outlined above and primarily consists of ensuring that employers have made a genuine attempt to advertise to New Zealanders. The LMT for lower-paid roles consists of two parts:

66.1. The employer obtaining a Skills Match Report (SMR) from MSD that identifies if MSD has any clients that it considers available, and suitable or trainable; and

66.2. An assessment by INZ as to whether the employer has done everything required of them to test the labour market (such as advertising) in addition to obtaining an SMR.

67. I propose to strengthen and clarify existing general LMT settings to improve delivery of the policy intent by:

67.1. Requiring that employers document and provide the requirements for the role to MSD, including any qualifications, skills and experience requirements (such as multiple years' experience). Employers must also document their reasons for opting not to employ an MSD client, which will be shared with MSD for them to then decide whether or not to support the employer. This information is then provided to INZ for verification of any incoming foreign worker's application.

67.2. Requiring that an employer must include the salary offering for advertising to be considered sufficient for labour market testing. This would enable easy verification that

New Zealanders and foreign workers were offered comparable rates of pay. It would also enable greater transparency, and support verification of market rates.

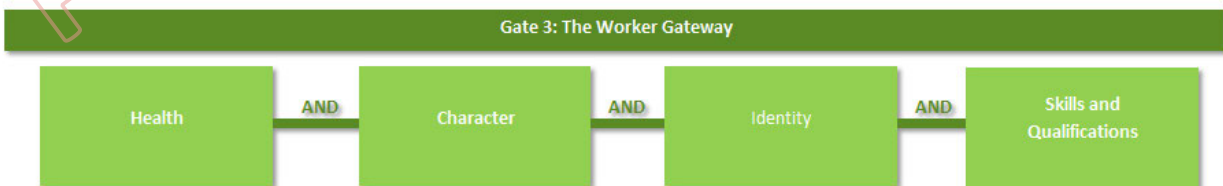
- 67.3. Removing the ability of employers to reject an applicant for not having their own vehicle, or driver's license, unless operating a vehicle is a requirement for doing the job that is being recruited for. In cases where transport is particularly difficult (for example, due to a lack of public transport) or the employees are on shift work where public transport is not available, employers will need to give consideration to providing transport solutions.
- 67.4. MSD referrals will be considered suitable, available and trainable if they lack training which MSD is able to provide or facilitate within four weeks. This provides an incentive for employers to work with MSD on arranging and delivering suitable pre-employment and work-readiness training for clients.
68. In addition, in order to deliver a more effective and efficient LMT, the Minister for Social Development and I propose that there should be tighter restrictions on when INZ considers the LMT to be passed, despite advice from MSD that there is a suitable candidate available.
69. In practice, this means that when MSD advises that there are suitable jobseekers available, and the employer has not made sufficient effort to engage with the domestic labour market, INZ will have limited grounds to determine the LMT has been passed. To achieve this, we propose that in order for INZ to determine that an LMT is passed, the employer must:
 - 69.1. be accredited by INZ; and
 - 69.2. have met their obligations under any relevant sector agreements; and
 - 69.3. demonstrate that they have sufficiently advertised; and
 - 69.4. be paying the market rate for the occupation; and
 - 69.5. have obtained a report from MSD that indicates:
 - 69.5.1. there are no New Zealanders available; or
 - 69.5.2. that the employer has adequately engaged with MSD's broader programme of Active Labour Market Policies; or
 - 69.5.3. the employer has rejected the referral for a limited number of specified reasons.
70. Together the Minister for Social Development and I will jointly agree what the specified acceptable reasons for rejecting a referred MSD client will be (such as non-attendance at an interview or failed a drug test for a vacancy in an applicable high-risk environment).
71. The intention would be to reduce the acceptable reasons for INZ to determine that the LMT has been passed to a set of measurable, reportable reasons that can lead to ongoing process improvement for MSD, INZ and employers, and provide better information on how MSD can support its clients to meet the standards that employers are seeking. Where employers reject a candidate, the process could involve MSD's case management to identify the need for remedial training and other support needed.
72. INZ will continue to make the final decision on whether the LMT has been passed, with MSD advice being one input into INZ's the decision-making process.
73. These proposals will improve the impact of the LMT (in terms of increased placement of MSD referrals) and set clear expectations for agencies and employers. It is expected to be cheaper and quicker overall as there is reduced duplication of assessments by both MSD and INZ.
74. Overall it is also expected that the change will result in an increase in the number of failed LMTs, with the consequence that employers will be unable to recruit a foreign worker given the availability of suitable domestic workers.

- 75. In order to ensure the successful implementation of these proposals some lead time is needed to design and trial (including in consultation with employers) the MSD and INZ systems required to support and implement the change.
- 76. There will also be some cost implications for MSD in implementing these proposals, which will be finalised as part of the development of a business case Constitutional conventions

Work is underway to better integrate the immigration and other labour market systems

- 77. The consultation document proposed an immigration gateway framework and that integrated responses to the demand for foreign workers would be triggered from the skills/education and welfare/employment systems to improve domestic labour supply. The response to the consultation exercise was broadly supportive.
- 78. Alignment with the education and welfare systems will be hardwired into the sector agreement negotiations. I also expect that strengthening the labour market test by placing more importance on the advice from MSD will also ensure that the immigration system is more aligned with the welfare system.
- 79. Cabinet’s recent decision to establish Regional Skills Leadership Groups (RSLGs) will have a key role in assessing local labour market dynamics and providing advice in the form of Regional Workforce Plans (Plans) to the supply-side agencies (including welfare, education and immigration) about shifts in the local markets that may warrant a shift in agencies’ approach to those regions. This will help ensure the systems remain responsive to the local labour markets. The advice in these Plans could trigger shifts in how Government invests in the education and welfare systems to respond to the changing labour market dynamics.
- 80. Both the welfare and education systems currently enable flexibility to respond to shifting local needs and operate programmes that are flexible and responsive to demand. Further, as part of both the Review of Vocation Education (ROVE) and the Welfare Overhaul, the Ministry of Education, Tertiary Education Commission, and MSD remain committed to ensuring that their levers remain as responsive as possible to local labour market dynamics.

Worker Gateway: The worker check would occur only after the job check is completed



81. I propose that the current checks on a foreign worker’s identity, health and character remain largely as they are to ensure that we continue to manage the risks associated with foreign workers. Foreign workers would only be able to apply for a visa once the employer has passed through the employer and job gateways. This would provide foreign workers with more assurance about the employer and the job, while also reducing the administrative burden on them and speeding up the visa processing time. Some of the cost of making a visa application would be transferred from foreign workers to employers to reflect this.

Worker capability checks would not be required in some cases

82. Cabinet agreed to consult on whether any changes were needed for the checks and evidence that should be required at the worker gate to see whether a foreign worker has the skills and

experience to do the job being offered. Foreign worker capability checks (i.e. skills, qualifications and experience checks) are undertaken to ensure that the worker is “suitably qualified by training and experience to do the job they have been offered” (assessed based on ANZSCO or skill shortage list requirements) and that they have occupational registration, if required.

83. There are opportunities to place more trust in some employers to ensure that the foreign workers they recruit are suitably skilled for the job. However, if foreign workers are not required to meet any skills requirements this could undermine the integrity of the system as employers could then set different (higher) standards for New Zealanders than for foreign workers with no consequences, or bypass the labour market test by incorrectly claiming a job is skilled.
84. It is therefore recommended that employers be required to ensure that any foreign worker recruited meets any skills and experience requirements stipulated as part of the job check. If they do not specify any skills requirements then this wouldn't be required at the worker gate. There are also situations where INZ would not need to assess the capability of foreign workers, for example:
- 84.1. where a foreign worker is applying for a further visa for the same or similar position, and skill and experience have already been assessed;
 - 84.2. where the position is lower skilled and does not require any qualifications or previous experience; or
 - 84.3. where the foreign worker already holds occupational registration demonstrating the required skill and experience.

I propose to streamline the ability for foreign workers to change employers to reduce exploitation risks

85. A number of submitters indicated that having foreign worker's visas tied to individual employers increased the risks of exploitation. This is because it makes it more difficult for foreign workers to move to new employers for better terms and conditions, and it increases the power imbalance between employers and employees. There was support from unions and foreign workers for granting 'open' work visas to foreign workers.
86. I do not propose that foreign workers be granted 'open' work visas, because it would undermine the intent of the employer and job gates if foreign workers were able to work in a job with a different employer who may not be accredited, or a different occupation or region to that covered by a labour market test. This would create a risk that foreign workers could work in a job that is not in shortage, potentially competing with New Zealanders. It may also create an incentive for employers to avoid accreditation if they can employ foreign workers on open work visas. I also note that foreign workers on open work visas are not immune to exploitation, especially if they are working for employers who have not been checked.
87. In order to reduce the risks of exploitation with employer-linked visas, I will ensure that the “variation of conditions” rules are streamlined in the new system. Where foreign workers are moving between accredited employers, this should be able to be done simply and quickly. I will consider whether further refinements are necessary as part of work on migrant exploitation that I intend to bring to Cabinet later in the year.

Implementation

88. It is expected that the proposed changes would be implemented in stages starting from the second half of 2019 as set out in the companion paper. The first Sector Agreements are expected to be completed in mid-2020. The new gateway framework would be implemented from late-2020 in order to allow time for development of the new operating model, IT system changes and training.

89. The regionalised Labour Market Test will be implemented from mid-2020.

Consultation

90. The following agencies were consulted in the development of this Cabinet paper: the Treasury; the Ministry of Social Development; the Ministry for Primary Industries; the Ministry of Education; the Ministry of Foreign Affairs and Trade; and the Ministry of Health;
91. The following agencies were provided with the paper as part of consultation for their information: the New Zealand Police; the Department of Internal Affairs; Te Puni Kokiri; and the Department of Corrections.

Financial Implications

Regional Workforce Planning Unit

92. Financial implications related to overall immigration system changes are set out in the companion paper. Financial implications related to the establishment of a new unit to support Sector Agreements are set out below.
93. In order to deliver Sector Agreements, I propose to establish a unit within the Ministry of Business Innovation and Employment that would be responsible for the negotiation, implementation, support and monitoring of agreements. The unit will require negotiating, policy and data analysis capability, and resourcing for monitoring and providing support to sectors. This will cost approximately \$1.425m in the first year and \$1.725m in following years.
94. This level of funding assumes that the unit is able to support two negotiation processes to be completed by mid-2020, two further negotiations by the end of 2020, and two more in 2021. The unit would provide ongoing monitoring of agreements and renegotiation as they expire.
95. In addition to its functions related to sector agreements, this unit would be responsible for:
- 95.1. the regular updating and maintenance of Skills Shortage Lists, including analysis and consultation activities; and
 - 95.2. carrying out a range of governance, support, analysis and monitoring functions necessary to deliver effective RSLGs.
96. Constitutional conventions

Implications of strengthening the Labour Market Test for MSD

97. In order to strengthen the LMT MSD will also require additional resourcing to improve the quality of referrals to employer vacancies. As the new job gateway process will lead to increased reliance on MSD referrals it is essential that MSD can improve its job matching processes to ensure quality referrals are made. This will include:
- 97.1. MSD capital expenditure to make IT changes to successfully triage employer applications, facilitate the transfer of information between MSD and INZ and to improve MSD's job matching system to effectively identify client supply for employer vacancies; and
 - 97.2. Expenditure to improve MSD's job matching services to effectively identify client supply for employer vacancies and deal with any potential increase in employer demand (helping to mitigate the risk of unsuitable MSD referrals).
98. Costs for MSD are separate to those set out in paper one related to INZ implementing the Gateway system, Constitutional conventions

Legislative Implications

99. This paper has no direct legislative implications. Changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations would be required to set new fees for the Employer-Assisted Gateway System. I intend to seek Cabinet's agreement to the new fees and associated regulations changes prior to the implementation of the new system, which is expected to be late-2020.

Regulatory Impact Analysis

100. This paper does not require a Regulatory Impact Assessment as it has no direct legislative implications. A Cost Recovery Impact Statement would be provided when Cabinet agreement to the new fees for the Employer-Assisted Gateway System is sought.

Human Rights

101. This paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

102. There are no gender implications associated with this paper.

Disability Perspective

103. There are no disability implications associated with this paper.

Publicity

104. I will make announcements on the changes in due course in consultation with the Prime Minister and the Ministers of Education, Social Development and Employment. The Ministry of Business, Innovation and Employment will develop a detailed communications and engagement plan and related collateral material to ensure that foreign workers and employers understand how the changes would affect them.

Proactive Release

105. I propose to release this paper proactively subject to any relevant redactions as appropriate, consistent with the Official Information Act 1982.

Recommendations

106. The Minister of Immigration recommends that the Committee:

1. **note** that this is the second of a suite of two papers, reporting back to Cabinet on the outcome of public consultation and seeking agreement to final proposals for the reform of employer-assisted work visas;

The highly-paid pathway

2. **agree** that employer-assisted foreign workers with a job offer over 200 per cent of the median household income would be exempt from labour market testing;

The Sector Agreements pathway

3. **agree** that Sector Agreements will:
 - 3.1. provide tailored immigration settings for specific occupations within a sector; and
 - 3.2. be compulsory for employers within a sector wishing to employ foreign workers to a role covered by an agreement;
4. **agree** that the objectives for Sector Agreements are to support employers to place more New Zealanders into jobs, and as a consequence reduce demand for lower-skilled foreign workers over time;
5. **agree** that Sector Agreements be negotiated within specified parameters, and will include the sector's 'starting point', the sector's workforce plan to deliver the agreed objectives, and how the Government will support the sector (including access to foreign workers and other benefits);
6. **agree** that the Minister of Immigration, in consultation with relevant portfolio Ministers, be responsible for:
 - 6.1. selecting sectors that are suitable for a Sector Agreement;
 - 6.2. establishing a negotiation process with sectors, in accordance with the parameters agreed to by Cabinet; and
 - 6.3. concluding and agreeing the terms of the agreement;
7. **agree** to the funding to support the negotiation, implementation and monitoring of Sector Agreements;

The regionalised labour market test pathway

8. **agree** that the Job Gateway should be tailored to take into account regional labour market dynamics and remuneration;
9. **note** that job offers paid at least the median wage are considered to be higher-paid, and those paid below the median wage are considered lower-paid;
10. **agree** to the following immigration response for higher-paid job offers:
 - 10.1. in Auckland, Wellington, Hamilton, Christchurch and Dunedin: Work visas valid for up to three years with no stand-down period and access to skills shortage lists;
 - 10.2. in areas other than Auckland, Wellington, Hamilton, Christchurch and Dunedin: No requirement to meet a labour market test and the availability of work visas valid for up to three years;
11. **agree** to the following immigration response for lower-paid job offers:
 - 11.1. in Auckland, Wellington, Hamilton, Christchurch and Dunedin: A strengthened labour market test and temporary work visas available up to 12 months;
 - 11.2. in regional areas where domestic labour supply is determined to be high: A strengthened labour market test and temporary work visas available up to 12 months;
 - 11.3. in regional areas where domestic labour supply is determined to be low: A strengthened labour market test and temporary work visas available up to three years;
12. **agree** that for all employer-assisted work visas, employers must ensure that:
 - 12.1. the job pays the at least the current market rate; and
 - 12.2. the job requirements are necessary to do the job being recruited for;

13. **agree** to restrict Regional Skills Shortage Lists to Auckland, Hamilton, Wellington and Christchurch;
14. **agree** to strengthen the labour market test by:
 - 14.1. Reinforcing that where an employer has identified that they require specific skills and/or experience and/or qualifications, the foreign worker applying must meet or exceed those requirements;
 - 14.2. Requiring that, for advertising to be considered relevant for labour market testing, an employer must include the salary offering;
 - 14.3. Removing the ability of employers to reject an applicant for not having their own vehicle, or driver's license, unless operating a vehicle is a requirement for doing the job that is being recruited for;
 - 14.4. Requiring that, where a candidate is rejected only because they lack training that MSD is able to provide or facilitate within four weeks, the candidate is still considered suitable, available and trainable;
15. **agree** to strengthen the labour market test by requiring that in order for INZ to determine that an LMT is passed for lower-paid occupations, the employer must:
 - 15.1. be accredited by INZ; and
 - 15.2. have met their obligations under any relevant sector agreements; and
 - 15.3. demonstrate that they have sufficiently advertised; and
 - 15.4. be paying the market rate for the occupation; and
 - 15.5. have obtained a report from MSD that indicates:
 - 15.5.1. there are no New Zealanders available; or
 - 15.5.2. that the employer has adequately engaged with MSD's broader programme of Active Labour Market Policies; or
 - 15.5.3. the employer has rejected the referral for a limited number of specified reasons.

The Worker gateway

16. **agree** that foreign workers would only be able to apply for an employer-assisted temporary work visa after employers are approved or accredited and checks have proven there are no New Zealanders available to do the job;
17. **agree** that foreign workers would not be required to provide evidence of their skills and experience where:
 - 17.1. a foreign worker is applying for a further visa for the same or similar position, and skill and experience have already been assessed;
 - 17.2. the position is lower skilled and does not require any qualifications or previous experience; or
 - 17.3. the foreign worker already holds occupational registration;

Implementation

18. **note** that officials will report back to the Minister of Immigration on the detailed implementation of the new gateway system;
19. **invite** the Minister of Immigration to certify any immigration instructions required in order to implement the proposed changes;

20. **note** that the Minister of Immigration will make announcements on the changes in due course in consultation with the Prime Minister and the Ministers of Education, Social Development and Employment.

Financial implications

21. **note** that the Minister of Immigration proposes to establish a unit within the Ministry of Business Innovation and Employment that will:

- 21.1. negotiate Sector Agreements and monitor their implementation
 21.2. update and maintain Skills Shortage Lists, including analysis and consultation activities
 21.3. carrying out a range of governance, support, analysis, and monitoring functions necessary to deliver effective RSLGs

22. **note** that functions relating to skills shortage lists is expected to be funded from within existing baselines

23. Constitutional conventions

24. **approve** the following changes to appropriations to give effect to the policy decision in recommendation 7 above, with a corresponding impact on the operating balance and net core Crown debt:

Vote Labour Market	\$m – increase/(decrease)			
	2019/20	2020/21	2021/22	2022/23 & Out-years
Multi-Category Expenses and Capital Expenditure				
Policy Advice and Related Outputs (MCA)	1.425	1.725	1.725	1.725
<i>Departmental Output Expense:</i>				
Policy Advice – Immigration (funded by revenue Crown)				
Total	1.425	1.725	1.725	1.725

25. **agree** that the proposed change to appropriations for 2019/20 above be included in the 2019/20 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply

26. **agree** that the expense incurred under recommendation 25 above be charged as a pre-commitment against Budget 2020

27. Constitutional conventions

Authorised for lodgement

Hon Iain Lees-Galloway

PROACTIVELY RELEASED

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