



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Ministry of Business, Innovation and Employment

on

**A new approach to employer-assisted work visas and
regional workforce planning**

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Summary of recommendations

1. The CTU recommends that the proposals contained in the consultation document and cabinet paper be adopted, subject to the recommendations below.
2. We recommend careful attention to the development of immigration instructions for the assessment of applications for employer accreditation, to set substantive requirements for training and recruitment of New Zealand resident workers, along with improvement in wages and conditions, sufficient to meet future workforce needs.
3. We recommend that professional associations and unions be notified and given an opportunity to indicate an interest in any application for employer accreditation. Professional associations and unions that indicate an interest in an application should be provided with a copy of the application and sufficient time to provide comment.
4. We recommend that a requirement for accreditation be that the employer demonstrates support for collective bargaining.
5. We recommend that a requirement for accreditation be that the employer shall pay all costs and fees for recruitment of migrant workers and ensure that any recruitment agency or contractor does the same.
6. We recommend the establishment of Skills and Jobs Hubs to act as regional employment services and to support full employment of New Zealanders in meaningful and decent work, with responsibility for carrying out regional labour market tests, for assisting workers through changes such as redundancies and industry restructuring, and for working closely with tertiary education institutions, Industry Skills Bodies, Work and Income NZ, employers, workers and unions.
7. We recommend that visa conditions that currently allow work only for a specified employer and job be replaced by conditions allowing work for any accredited employer in any approved job, with a requirement to notify Immigration NZ of any change in employment.
8. We recommend that application fees be removed for workers renewing existing visas.
9. We recommend that Labour Hire Companies not be granted accreditation until an investigation is completed into employment practices by these employers. Following

this, we recommend further work to develop appropriate conditions, including an overall cap on recruitment of migrant workers by labour hire companies, to be reduced over time.

10. We recommend that Premium Accreditation require employers to demonstrate high levels of commitment to lifting wages and conditions, health and safety, good faith engagement, and pastoral care.
11. We recommend that applications under the Highly Paid Threshold be subject to additional checks to ensure that the job offer is commensurate with industry standards and that training and recruitment of New Zealand resident workers is promoted.
12. We recommend that the standards and commitments set by Sector Agreements should be in addition to the criteria for Regional Labour Market Tests, which should still be required for positions covered by Sector Agreements.
13. We recommend that the negotiation of sector agreements include relevant professional associations and unions.
14. We recommend the support and promotion of collective bargaining as a requirement within sector agreements.
15. We recommend that enhanced information and support, including access to in-work training and skill development, be provided to migrants on temporary visas, to promote progression into skilled jobs that provide a pathway to residency.
16. We recommend the stand-down period for lower-skill categories of temporary work visas be removed, or alternatively that the limit on renewals be extended to at least six years, applying from the time the change is introduced.

1. Introduction

- 1.1. This submission is made on behalf of the 27 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi

Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

- 1.3. The CTU supports the proposals contained in the consultation document and cabinet paper. Our further recommendations seek to support the intent of the proposals, as well as responding to other issues raised for consultation.

2. Gateway Framework

- 2.1. The CTU supports the proposal to introduce a gateway framework for temporary work visas comprising processes for employer accreditation, job approval, and migrant approval.
- 2.2. The CTU welcomes the shift that these proposals represent, from a focus on assessing individual migrant visa applications to a focus on accreditation of employers and approval of jobs in which migrants may be employed, within a system of robust employment standards and workforce planning.

3. Gate 1: Employer Gateway

- 3.1. The CTU supports the proposal to establish three categories of employer accreditation: standard accreditation, labour hire employer accreditation, and premium accreditation.
- 3.2. The CTU supports the proposal to require accreditation for all employers of temporary migrants. In particular, we support the proposal to set criteria for accreditation so that:

Accreditation would require employers to demonstrate that their business practices:

- Incentivise training and upskilling of New Zealanders
- Put upward pressure on wages and conditions
- Meet minimum immigration and employment regulatory standards to minimise the exploitation of migrant workers
- Maintain the integrity of the immigration system

- 3.3. Immigration instructions will need to be set carefully and with sufficient detail and guidance to ensure that the intent of this proposal is followed in practice.
- 3.4. Under the existing system for employer accreditation, immigration instruction WR1.25 requires the immigration officer to be satisfied that the employer 'has a demonstrable commitment to training and employing New Zealand citizens or residence class visa holders'. However, based on the experience of the CTU and our affiliate unions in consulting on these applications, the standard of evidence

required to meet this criterion has been set unacceptably low. It has become standard practice for immigration officers to accept copies of any job advertisement as evidence of commitment to employing New Zealanders, and to accept evidence of any training whatsoever, including standard induction sessions, as evidence of commitment to training New Zealanders. In our view, this current practice is clearly contrary to the intent, if not the letter, of immigration instructions.

- 3.5. To give effect to the intent of the proposal, we recommend careful attention to development of immigration instructions that set substantive standards for the assessment of commitment to recruitment and training of New Zealand residents and commitment to improving wages and conditions for all workers.
- 3.6. We recommend that the standard for assessing training should require evidence that the employer is actively supporting training and local recruitment programmes, including through in-work training for existing employees, at a sufficient level to meet their future workforce needs.
- 3.7. We support the proposal to require all employers applying for accreditation to demonstrate that their business practices put upward pressure on wages and conditions. This should include support for collective bargaining and payment of wages that are, at a minimum, above the current living wage.
- 3.8. We recommend that a requirement for accreditation be that the employer shall pay all costs and fees for recruitment of migrant workers. The employer should be required to ensure that any agency or contractor engaged for recruitment services does not allow any fee to be charged to potential workers for recruitment services.
- 3.9. The process for each of the three forms of accreditation should include an opportunity for any trade union or professional association with an interest in the application to have input and raise any concerns. Given the high numbers of expected applications, we propose that applications be notified in regular batches, providing summary information of each application and allowing 10 working days for a union or professional association to notify an interest in any of the notified applications. Where a union or professional association has notified an interest, we propose that a copy of the application, including the employer's responses to the accreditation criteria, and any supporting evidence, be shared with the interested party and a further 10 days be allowed for a response.

- 3.10. The CTU supports in principle the intent of the proposal to require accreditation with enhanced standards for labour hire employers. However, further work is needed before we can have confidence that labour hire companies should have access to employment of temporary migrants. We remain concerned by the effects of the labour hire model of employment on workers, including migrants, and we do not wish to see labour hire become established as a default or dominant mode of employment of migrant workers.
- 3.11. There have been recent cases of exploitation of migrant workers by labour hire companies, including non-payment of agreed wages, over-charging for poor quality accommodation, and intimidation of workers not to join unions or raise complaints.¹ We have called for an inquiry into labour hire practices and potential exploitation with a view towards potential regulation and registration of labour hire companies. Until that has been carried out, labour hire employers should not have access to employment of temporary migrants.
- 3.12. Once such a review of labour hire employers has been completed, the CTU is likely to support a proposal such as setting the requirements for labour hire accreditation at or above the requirements for premium accreditation. In such circumstances, we would recommend that an overall cap be placed on recruitment of migrant workers by labour hire companies and that this cap be reduced over time.
- 3.13. The CTU supports the proposal to introduce a third category of premium accreditation, with enhanced standards. Criteria for premium accreditation should be set meaningfully above those for standard accreditation and other minimum standards set by law. Where possible, opportunities should be taken to incorporate standards that promote connection with, and reduce duplication of, other parts of the training, employment, and welfare systems. On each criterion, employers seeking premium accreditation should be able to show both compliance with the substantive standard, and business practices that promote continuous improvement above the standard. We support the proposal to require premium accreditation for employers of six or more migrant workers and for those sponsoring work-to-residence visas.
- 3.14. Premium accreditation should require, in addition to the criteria for standard accreditation, evidence of the following commitments:

¹ Michael Morrah. 2018. Migrant construction workers languishing in crowded Auckland houses on illegal contracts. Newshub, 9 May 2018. <https://www.newshub.co.nz/home/new-zealand/2018/05/exclusive-migrant-construction-workers-languishing-in-crowded-auckland-houses-on-illegal-contracts.html>

- **Lifting Wages and Conditions.** Premium accredited employers should be living wage employers, either accredited by Living Wage NZ or providing other evidence that they meet an equivalent standard. Employers should demonstrate that they promote and support collective bargaining, and that they provide wages and conditions that are at or above Industry-standard. In assessing wages and conditions relative to industry-standard, immigration officers should take into account any collective agreement in place with a comparable employer in the industry. Employers should demonstrate a high level of commitment to active recruitment of New Zealand resident workers, including provision of training opportunities and pathways to promotion for existing employees.

- **Health and Safety.** Premium accredited employers should be able to demonstrate commitment to best practice in Health and Safety, including compliance with all applicable statutory and regulatory instruments, codes of practice and guidelines. This should require active participation in WorkSafe's Safety Plus programme, as evidenced by a recent independent assessment report and ongoing commitment to continuous improvement against the Safety Plus performance requirements. The employer should be required to provide details of worker participation agreements, including election and training of health and safety reps.

- **Good faith engagement.** The employer should be required to demonstrate commitment to ongoing engagement in good faith with workers and their unions, including in the context of any collective bargaining. In assessing this commitment, immigration officers should consider whether the application has been endorsed by relevant unions and should consider any concerns or objections raised by unions.

- **Pastoral Care.** The employer should be required to demonstrate commitment to promoting the wellbeing of all workers, including migrants. This should include ensuring access to decent affordable accommodation, settlement assistance, language and literacy support, and trade unions.

4. Gate 2: Job Gateway

- 4.1. The CTU supports the proposal to establish four pathways for approval of positions in which temporary work visa holders may be employed: the highly paid threshold, regional skills shortage list, sector agreements, and regional labour market test.
- 4.2. The CTU supports setting the Highly Paid Threshold at 200% of median income.
- 4.3. The CTU has concerns with setting the Highly Paid Threshold at 150% of median income for Premium Accredited employers. The problem is that a threshold at this level cuts into salary ranges of occupations for which there are existing concerns as to the promotion of New Zealand workers, such as registered nurses. Our support would be dependant on implementation of our recommendations on criteria for Premium Accreditation, including a substantial and enforceable requirement for employers to demonstrate a high level of support for training, recruitment, and promotion of New Zealand resident workers.
- 4.4. For either threshold, the employer should also commit to maintaining at least the level of income offered migrant workers for the duration of their employment, and their incomes should continue to be above the threshold as the threshold rises.
- 4.5. For a job offer above any Highly Paid Threshold, immigration instructions should still require officers to check that the job offer is on wages and conditions that are at or above Industry-standard. In assessing wages and conditions relative to industry-standard, immigration officers should take into account any collective agreement in place with a comparable employer in the industry. The employer should also be required to demonstrate sufficient efforts to train and recruit New Zealand residents for roles at this level, including through promotion of existing workers. This is a concern for several of our affiliate unions with coverage of occupations paid at or above the proposed Highly Paid Thresholds.
- 4.6. The CTU supports the proposal to negotiate Sector Agreements for industries that are significant employers of temporary migrant workers. Sector Agreements should be negotiated on a tripartite basis between government, employers' organisations and trade unions. We support the intent of the proposal as set out in the consultation document:

It is proposed the agreements are negotiated with representative industry bodies and made compulsory for employers seeking to recruit migrants in that sector. The agreements would set out specific occupations covered by the agreement, employer accreditation standards, how the labour market test

will be applied, required wages and conditions, caps on the total numbers of migrant workers that can be recruited, training commitments and any special regional or other considerations. This would also address situations where standard visa application processes and the ANZSCO framework don't adequately fit the skill and occupation structure of the sector. The agreements would last for three years and then be renegotiated to reflect changing conditions.

- 4.7. Sector Agreements, applying to all employers seeking approval to recruit migrant workers in a given industry, should set standards for training, recruitment and good employment that cover all workers, including migrants. Commitments should have the effect of reducing dependence on temporary migration over time, in parallel with eliminating exploitation and improving conditions for all workers, including migrants. They should be consistent with, or improvements on, relevant collective employment agreements and Fair Pay Agreements.
- 4.8. It is not entirely clear from the document as to how the job pathways interact, and which has priority. For example we would want a Sector Agreement to set standards and conditions that apply across other job pathways.
- 4.9. We recommend that the standards and commitments set by Sector Agreements should be in addition to the criteria for Regional Labour Market Tests, which should still be required for positions covered by Sector Agreements.
- 4.10. The CTU welcomes the intent of proposals to strengthen regional workforce planning, with greater integration across the education, social welfare, and immigration systems. We suggest that the success of these proposals will depend on building stronger regional capacity for employment support and coordination.
- 4.11. The CTU therefore supports the creation of Regional Skills and Jobs Hubs and recommends that these have responsibility for liaising with employers, unions, education providers, and industry skills bodies. Regional Skills and Jobs Hubs should undertake or provide advice on the proposed regional labour market tests.
- 4.12. Regional Skills and Jobs Hubs should have a role in developing and implementing regional employment strategies and plans, in partnership with other agencies and stakeholders.
- 4.13. Regional Skills and Jobs Hubs should be responsible for assisting workers through changes such as redundancies and industry restructuring. The OECD publication

*Back to Work, New Zealand*² described examples of international good practice for such services which could be drawn on. These include the Rapid Re-employment and Training Service in Ontario, Canada, which “provides an immediate response to large-scale layoffs with the objective of connecting individuals with EmploymentOntario services to help them regain employment” (p.103), and Job Security Councils in Sweden which

are based on collective agreements between social partners in a sector or occupational field, such as white-collar workers in the private sector. Job Security Councils are actively involved in the process of restructuring and provide advice and consultation to employers and trade unions at an early stage in the process. They also provide transition services and guidance to workers who are made redundant, through individual counselling, career planning, job-search assistance and outplacement services. (p.104)

- 4.14. Regional Skills and Jobs Hubs should be supported by improved central capacity for developing and implementing active employment policies in both MBIE and MSD, with responsibility to the Minister of Employment.

5. Gate 3: Migrant gateway

- 5.1. The CTU is aware of reports and mounting evidence that visa conditions requiring temporary migrants to work for a specific employer are acting as a barrier to migrants raising complaints of exploitation. These conditions can also cause hardship for migrants who are dismissed, including in cases of exploitation and unjustified dismissal. For this reason, we supported the 2018 changes to Post-Study Work Visas, which were converted to open work visas.
- 5.2. In the case of temporary work visas, the challenge is to design a system that allows greater freedom for migrant workers to choose their employer without undermining the system of targeted migration, which allows standards to be set for good employment and to promote training and recruitment of New Zealand resident workers. Under the existing system, where scrutiny of employers and job conditions is primarily tied to assessment of visa applications, it has not been possible to achieve both goals. However, the proposals for employer accreditation and job approval would make it possible to allow migrant workers to change employment within the pool of accredited employers and approved jobs, without compromising

² OECD. (2017). *Back to work, New Zealand: improving the re-employment prospects of displaced workers*. Paris, France: OECD Publishing. Retrieved from <http://dx.doi.org/10.1787/9789264264434-en>

the broader goals for the immigration system to be targeted and well-regulated. Targeting of migration, including labour market testing and promotion of employment and training for New Zealand residents, should continue to be a part of the immigration system at the level of employer accreditation and job approval, but this does not require individual migrants to be tied to individual employers.

5.3. The CTU recommends that current visa conditions allowing work only for a specified employer and job be replaced by:

- a visa allowing work for any accredited employer in any approved job (i.e., those that have passed through the employer accreditation and job approval gateways); and
- a requirement on both the employer and the worker to notify INZ of any change of employment.

5.4. This recommendation would involve no change to the proposed process for issuing visas to new migrants. A new visa would only be issued where an applicant has a confirmed and approved job offer with an accredited employer.

5.5. Feedback from migrant workers, including Pacific workers on temporary work visas, has been that fees for renewing visas can create hardship. In the new system it would be more appropriate for the cost of visa renewals to be met through fees for job gateway approvals. The CTU recommends that visa fees be removed for workers renewing existing visas.

6. Other arrangements

6.1. The CTU supports the change in income thresholds for Mid-skilled threshold and work-to-residence visas.

6.2. The CTU supports reinstating family entitlements. In our submission on changes to visa rules in 2017, we opposed the removal of entitlement to family accompaniment.

7. Reviewing the stand down period for lower-skill-category work visas

7.1. In our submission on changes to visa rules in 2017, the CTU opposed the introduction of a three-year limit on renewal of lower-skill category Essential Skills Visas and the introduction of a one-year stand-down period following the renewal limit being reached. We expressed concern that reinforcing the temporary nature of

work visas, without measures to reduce dependence on migrant labour, would have the effect of increasing the precarity and vulnerability to exploitation of migrant workers on this category of visas. We recommended that concerns about the long-term employment of migrant workers on rolling temporary visas could be better addressed 'through strengthened labour market testing and more robust processes of employer accreditation'.

7.2. In the context of the current proposals, which would introduce the kind of strengthened process for employer accreditation and labour market testing we called for in 2017, the policy objectives behind the renewal limit and stand-down period can be better achieved by other means.

7.3. The policy objectives are identified in the discussion document as being to avoid the following negative impacts:

- As a visa is based on a job offer, despite being well settled, if workers are injured or no longer able to work, the basis for their visa is lost leaving them in an insecure situation and vulnerable to exploitation.
- Workers do not have access to the same rights, benefits and Government support as New Zealanders (such as subsidised tertiary education for their children).
- Reduced incentives for employers to recruit New Zealanders meaning that potential local workers were substituted with temporary migrant workers.

7.4. The first two concerns relate to the fact that temporary visa holders do not have access to the same benefits and entitlements as permanent residents and citizens. This is a particular concern for migrant workers who become well settled but lack a pathway to residency.

7.5. We would therefore frame the policy challenge as being to establish realistic pathways to residency for this category of migrants, without undermining the policy objectives of the Skilled Migrant Category. We suggest that the solution lies in promoting enhanced information and support for migrants on temporary visas, including requiring employers to provide access to in-work training and skill development, that will allow migrants to progress into jobs that provide a pathway to residency. To provide sufficient time for this transition, the limit on visa renewals would need to be substantially extended, or removed altogether.

7.6. The third concern, related to substitution, should be addressed through the employer and job gateways. As we suggest in our recommendations above, policy settings for

both gateways should seek to ensure that temporary migration is used to cover genuine short-term skills shortages. Long-term dependence of employers on temporary migrant labour, particularly in lower-skill categories, should be discouraged by requiring employers to demonstrate commitment to workforce development, including training and recruitment of New Zealand resident workers and investment in improving labour productivity.

- 7.7. We recommend that enhanced information and support, including access to in-work training and skill development, be required to be provided to migrants on temporary visas, to promote progression into skilled jobs that provide a pathway to residency.
- 7.8. We recommend the stand-down period for lower-skill categories of temporary work visas be removed, or alternatively that the limit on renewals is extended to at least six years applying from the time the change is introduced.
- 7.9. We are particularly concerned for the cohort of workers who have been on lower-skilled-category temporary visas since before August 2017, who would be denied visa renewal under the stand-down policy from August 2020. If the stand-down policy is continued in any form, we recommend further work on a pathway to residency for this group of workers, as was done by the previous government for a select group under the South Island Pathway.

8. Implementation

- 8.1. The CTU supports the proposed implementation plan. As noted above, we suggest that successful implementation of the proposals will require greater regional capacity and we recommend the establishment of regional employment services to coordinate this work.

9. Conclusion

- 9.1. The CTU supports the proposals contained in the consultation document and cabinet paper. We have made further recommendations to support the intent of the proposals. Our recommendations seek to promote full employment in decent and meaningful work for all, including New Zealand residents and temporary migrant workers.