

SUBMISSION

Consultation on employer-assisted temporary work visa proposals

Restaurant Association of New Zealand submission to the Ministry for
Business, Innovation and Employment

March 2019

Introduction

The mission of **Restaurant Association of New Zealand** (**the Association**) is to be the link between good food and good business so that our Member's businesses can thrive. We are passionate about our vibrant industry, which is full of interesting, talented and entrepreneurial people.

Since 1972, **the Association** has worked to offer advice, help and assistance in every facet of the vibrant and diverse hospitality industry. We now advocate for more than 2,300 hospitality businesses in New Zealand. Our members cover the length and breadth of the country; we are organised into 12 regional branches and led by a national office located in Mt Eden, Auckland.

The hospitality industry in New Zealand continues to grow, now employing more than 130,000 people at more than 17,000 restaurants and food outlets and generating sales in excess of \$11 billion. In a perfect world, success in hospitality would depend on flair and passion, but in the real world, there is much more to running a business – which is where we come in.

This submission has been compiled following a period of research and stakeholder engagement with our Association Members, industry advisory groups, Ministry of Business, Innovation and Employment (MBIE) and one-on one interviews with industry participants.

“We want to work with immigration to address employment in New Zealand but also in a way that means we can still run viable restaurants, that do employ migrants, but also employ just as many New Zealanders...”

Association Member 11, Survey March 2019

Summary

Our Association is proud to be the representative body for 2,300 hospitality businesses in New Zealand, employing over 30,000 people.

Overall we welcome the review of temporary work visas and the stated intention to streamline visa applications and simplify the system.

The Association supports the objective to place more New Zealanders into jobs, which help these businesses to grow. Consultation with our members has shown they are eager to place more New Zealanders into jobs, however a raft of challenges remain. The primary frustration is an ever growing burden of compliance costs associated with running a business in New Zealand, and we reinforce that this must be managed.

“The financial pressures these changes would put on small profit struggling businesses who are facing increasing compliance costs all over the place is huge.”

Association Member 10, Survey March 2019

We want to tautoko the Minister’s commitment to working with his colleagues in the Education, Social Development and Employment portfolios. Given the far-reaching impact these three departments have on the day-to-day operations of our sector businesses, increased frontline, ‘real world’ interaction with officials from these departments would be welcome.

In addition **the Association** wholeheartedly supports the Government’s endeavours to tackle labour exploitation. Temporary workers are entitled to the same wages and conditions as New Zealanders. We ask the Government to remain measured: to not be overly punitive on the vast majority of New Zealander businesses and workers doing the right thing, in its efforts to catch the small minority acting illegally.

“As an employer of temp labour for many years, we have been made aware of some very irresponsible practises by some previous employers. Some form of accountability regarding the application and management of migrant labour is appropriate.”

Association Member 7, Survey March 2019

We also wish to object to a number of the underlying presumptions and statements in the consultation discussion paper (discussion paper) at the outset.

The Association does not agree:

- that employers are the main beneficiary of migration. Many other groups benefit, including migrants themselves, and those communities affected by migrants' contributions to New Zealand, such as global connectedness and the strengths of having a diverse society;
- that migrant workers displace New Zealand workers. We do not believe the evidence provided in the consultation document is persuasive. Studies and reports¹ have found fears of negative labour market impacts from high migration are often overstated. Employers in both the hospitality and tourism industries have repeatedly emphasised their preference is to employ New Zealanders and supplement with migrant workers when there are no suitable New Zealanders available.

The Association is concerned:

- the changes have a stated intention of putting upwards pressure on wages and conditions. Immigration settings should be used to address labour supply shortages, and not as an artificial – and almost certainly unsuccessful – means to put pressure on wages rates;
- the proposals may force or coerce employers to employ New Zealanders in positions they are unsuitable for. New Zealand is one of the most educated countries in the world, with over half the population over age 35 holding a level 4 qualification or higher. As a result, there are growing shortages for 'lower-skilled' jobs that New Zealanders do not want to do. We consider many skills are in short supply in New Zealand and that individuals who are not currently in work are, for a variety of reasons, unwilling or not capable of taking available jobs.

We encourage the Government to look at the reality of the hospitality industry, not only in a local context but also internationally. As demonstrated by global shortages of key talent in our industry, the challenges being faced here in New Zealand are not unique.

Charles, R.C and Yung-mei, T (2001). Social factors influencing immigration attitudes: an analysis of data from the General Social Survey. The Social Science Journal. Volume 38, Issue 2, Summer 2001, Pages 177-188.

The Gateway Framework

Proposal 1: It is proposed that the current range of employer-assisted temporary work visa categories are unified under one category called the ‘employer-assisted temporary work visa’.

The Association acknowledges the Government’s desire to improve the immigration system and reduce “the spaghetti junction” of options. As a general rule, we view simplification as a positive, especially in an area such as this where the livelihoods of both the employer and employee remain a central focus.

Gate 1: The Employer Gateway

Proposal 2: It is proposed that employer accreditation is introduced for all employers who want to recruit temporary migrant workers.

Without further details around accreditation, **the Association** remains in opposition to proposal 2.

Cost

As with any accreditation system, there will inevitably be additional upfront, and renewal costs for businesses, which has not been clearly outlined, as well as ongoing – possibly unforeseen – compliance costs that could develop over the longer term.

A feature of the hospitality industry is the dominance of small-to-medium enterprises (SMEs), who have limited resources. **The Association** is concerned the level of compliance placed on employers under the premium accreditation is beyond the resources and financial capability of many SMEs. Without any clear costings or indication around who will foot the bill, it is difficult to advise the Government on how vast - or otherwise - the impact of accreditation would be on our members.

“Overall small business will not be able to participate in the migrant market. This is a consistent theme in recent government employment legislation, to unreasonably burden smaller business in favour of large business. To date, the government has been deaf to our complaints...”

Association Member 17, Survey March 2019

Compliance activities need to be carefully targeted and must not add additional costs to businesses with genuine needs to access migrant workers.

“Accredit employers fairly based on their track record not by making them jump hoops for workers that are already hard to find.”

Association Member 18, Survey March 2019

It is worth noting that even with New Zealand’s relatively robust economic climate and strong tourism outlook, the bottom lines in hospitality remain tight. Given the discussion paper provides little specific detail on the shape, form and cost of accreditation, it is difficult to anticipate how implementation will affect employers in practice.

High volume employers

We urge the Government to take another look at the definition for high volume employers under the premium accreditation category². We submit that the current number of six is too low, and recommend it be increased to 11 or more.

As the Government is aware, the challenges faced at a regional level vary. Places like Queenstown Lakes District, for example - where the unemployment rate currently sits below the national level at 2.3%³ - need a higher threshold.

Backlog

If the Government proceeds with employer accreditation, we are concerned about the volume of applications and possibility of delays. **The Association** understands up to 16,000 employers may be required to become accredited, or be re-accredited, under the proposals.

To anticipate and alleviate potential bottlenecks in processing applications, we recommend INZ considers mechanisms to smooth the initial accreditation process. For example:

Example 1: Accreditation transition period

An approved transition period of 3 years could be implemented to enable businesses to phase in and comply with the new requirements. We worked closely with MPI on

² MBIE’s discussion document, Figure 2

³ Queenstown – Lakes District Quarterly Economic Monitor, December 2018 retrieved from <https://ecoprofile.infometrics.co.nz/Queenstown-Lakes%20District>

the implementation of the Food Act 2014, which was successfully phased in over a number of years.

Example 2: Existing Accredited Employers

Those existing employers that are already accredited and have oversight could be “deemed” to be accredited for 12 months, without them being required to go through the actual accreditation process.

Example 3: Accreditation Fast-track

Fast-track the accreditation process for employers who are early adopters through the transition period. This type of incentive has worked well in other areas of compliance.

Accreditation duration

The discussion paper proposes that standard accreditation would be for one year, and premium accreditation would initially be for one year and renewed every two years thereafter. Given the rigorous process for initial accreditation, we submit:

- standard accreditation should be for two years; and
- premium accreditation should be for four years.

Work-to-residence

The Association is in support of being able to assist employers and employees through a pathway to residency, and believe this pathway to residency should also be available to standard accreditation as well as premium accreditation employers.

“We are constantly struggling to find staff let alone staff with experience. We often invest many years in to the training and development of migrant workers who initially join us as students and then work their way up in our business. These individuals prove to be extremely valuable to us and usually end up in senior positions. I do feel that continuous experience within one business should be held in high regard when visa applications are considered.”

Association Member 3, Survey March 2019

Areas for clarification

We remain concerned about the following aspects of the accreditation criteria, which need to be clarified:

It is unclear who the employer is for the purpose of accreditation. Some of our members have multiple workplaces, for example franchise or multi-site operations. Can the parent organisation be accredited or does each workplace require accreditation? Requiring multiple accreditations would add significant complexity to the process;

- It is unclear how new employers would be assessed under the criteria. Some of which requires a “history of actions”, for example, being able to demonstrate they have previously worked with migrants;
- The accreditation criteria require employers to show they have increased hourly rates of pay by at least the dollar value of increase in median wages upon visa renewal. Due to the small average profit margins of businesses within the
- hospitality industry annual increases are not always achievable. In a recent survey conducted by the Association 47.7% of respondents stated that their response to an increase in minimum wage is to increase the working hours of the owners of the business.

35% of our business owner members state they work over 60 hours/week in the business currently, 62% work over 50 hours a week in their business and 33% plan on increasing their hours of work in 2019.

- The accreditation criteria appear subjective and therefore open to different interpretations by immigration officials. For example, “actively training and upskilling New Zealanders”;
- There appears to be no appeal process when accreditation is declined; and
- Elements of the disqualifying criteria is unclear.

Industry Association to become approved accreditation providers?

An option available to the Government, is to support industry association bodies to become approved accreditation providers. This could mitigate the need for employers to become accredited on an individual basis.

Gate 2: The Job Gateway

Proposal 3: It is proposed that there are four job pathways available to employers to recruit temporary migrant workers in the future.

The Association supports regional skills shortage lists and opposes the highly-paid threshold.

The highly-paid threshold

The Association does not support the proposal that no labour market test will be needed for skilled migrant workers paid a sufficiently high remuneration

Given the phrase “consistent with New Zealand values” is used in the consultation document’s overarching strategic outcomes, we do not consider this proposal befitting for this suite of changes. In our view, allowing accredited employers to pay three times the average New Zealand salary to have an open pathway to residency is not a solution. Pathways to residency should be based on genuine skills shortages and not awarded to the highest bidder.

**“Pathways to residency should be based on genuine skills shortages
and not awarded to the highest bidder.”**

Marisa Bidois, Chief Executive

Employers in the hospitality industry have told us the proposed *highly paid threshold* would not be attainable, and effectively mean this proposed pathway will be unavailable to them. If the Government adopts the *highly paid threshold*, we recommend the Government considers either:

- lowering the thresholds to meet our industry averages;
- or consider having industry or sector thresholds that take into account variances in wages levels across different sectors and regions.

We recommend these be included in sector or industry agreements.

Regional Skills Shortage lists

The Association supports the concept of the Regional Skills Shortage lists (RSS). We know the pressures faced by our members vary significantly from region to region.

To ensure RSS lists are meaningful, accurately reflect local needs, and remain up-to-date, we recommend the Government:

- consult closely with local communities, local organisations (such as our regional branches), iwi, community groups and Council;
- review the lists regularly (annually); and
- have a straightforward amendment process.

With regional dynamics are at play, any changes will need to be supported at the local level. For example, local political leaders are generally far more cognisant of the

challenges in their communities, than the Wellington based policy shop. Policy solutions in this space must be flexible enough to respond to the feedback from those ‘on-the ground’ and be reflective of the views and preferences of the communities the RSS lists are designed to support.

Sector Agreements

It came as a surprise to **the Association** the discussion paper identified the tourism and hospitality industry is to be one of the first sectors to have a sector agreement. Given there is very little detail on how any sector agreement will work, our ability to comment is limited.

It is unclear who would negotiate sector agreements. This presents a significant issue for the tourism and hospitality sector, which has more than 15 industry organisations that represent particular industries. We recommend the Government considers industry specific sector agreements. These should be included in any final policy proposals.

Given the nature of sector agreements, **the Association** submits these also should:

- commence on a trial basis; and
- be voluntary for employers for the first three years.

The discussion paper also proposes sector agreements will include caps on the total number of migrant workers that can be recruited. Until we have seen more detail about the structure of the caps, it is difficult to provide the Government a position.

However, we are concerned that they could undermine the reforms achieving their intended outcomes. For example, they could result in labour shortfalls (if the cap is too low) or labour shortages in specific regions (if there were regional caps). For these reasons, coupled with the lack of specificity, we disagree with the proposal of caps at this stage. We know migrant workers are filling a critical labour shortage in our industry. Furthermore, we would like to strongly emphasize that the reason the industry employ migrant workers is because currently there are few New Zealanders willing and with the skills to carry out the work.

Regional Labour Market Test

Proposal 4: It is proposed to review the labour market test to make it easier or harder to recruit temporary migrant workers in a region depending on the dynamics of the local labour market in that region.

The Association supports the move to a more nuanced approach to the labour market test, to reflect regional market dynamics. There is clearly merit in being able to adjust the labour market test to take into account the regional employment market. As previously mentioned, the pressures faced by our members vary significantly from region to region.

We also suggest the RSS lists include positions in ANZSCO skill bands 4-5. As the ANZSCO framework currently does not adequately fit the skill and occupation structure of many skilled roles in our sector, employees are often reassigned to other ANZSCO 4-5 positions. Employers in the hospitality industry often experience shortages in these level 4-5 skill bands for roles which require considerable ability, knowledge and judgement.

It is also important to note – especially in this regional context – the challenges facing those in hospitality are not necessarily the same as those in tourism. **The Association** often finds the two industries are thought of collectively, despite the individual differences in our sectors. Tourism involves the movement of people to places outside their usual environment. Hospitality involves the comfort and wellbeing of guests at a variety of events and establishments, food preparation and often alcohol management.

We encourage Ministers and officials, when giving consideration to the changes going forward, the hospitality industry is thought of in its own right.

Our industry represents more than 17,000 business owners in restaurants and cafes, food to go operations, bars and taverns, clubs, caterers and food retail, who collectively employ more than 120,000 people. We welcome the opportunity to engage with officials on this matter separately, following this consultation period.

Regional Indicators

Proposal 5: It is proposed that labour market testing should be differentiated based on a set of indicators which reflect the labour market dynamics and growth pressures of New Zealand's sixteen regions.

The Association supports the proposal that regions are differentiated based on a set of indicators and measures which reflect the labour market dynamics and growth pressures of the regions.

We ask the Government to use caution if defining the regions by the 16 differentiated regions used for local government purposes, as there are limitations. For example our members in Queenstown and Dunedin, while both falling within the Otago region, experience significantly different employment market dynamics.

The Domestic Labour Market System

Proposal 6: The job pathways will trigger a signal from the immigration system to the broader labour market system to ensure there is an adequate domestic labour supply response.

The Association strongly supports proposal 6 and the need to improve the feedback loops between all parts of the labour system, in order to improve employment outcomes for New Zealanders and migrants alike.

We agree that current job pathways lack flexibility and do not have the right incentives in place to encourage the resolution of underlying issues that are leading to demand for temporary migrant workers. Our Members are not shy when it comes to expressing their frustration with the talent pipeline we have, and the severe shortage of New Zealanders able and willing to work in hospitality:

“We would love to hire more Kiwis but unfortunately they are in short supply and very rarely want to work the hours and in the positions that we have on offer. We are extremely proactive in working with education providers throughout Auckland in an attempt to find good people however this again has become increasingly difficult over the past 2 years.”

Association Member 3, Survey March 2019

“Kiwis are not applying for hospitality jobs.”

Association Member 12, Survey March 2019

“...it's naïve to think that making it harder to employ and maintain migrant labour will get more Kiwis working. Over the last two years there has been a marked reduction in applicants with working holiday visas and we can't foresee any increases on the horizon. We would employ more Kiwis and are happy to offer training but where are they?”

Association Member 7, Survey March 2019

“...in Mount Maunganui about 25 % of hospitality staff are Kiwis, because few apply, do not want to work hospitality hours, and quite frankly are lazy (and I am a Kiwi owner saying that!).”

Association Member 5, Survey March 2019

With the wider tourism sector now New Zealand's biggest export earner, there has never been a more opportune time to encourage rangatahi towards a career in hospitality. This is not a job for Government to do alone. **The Association** firmly believes it is fair to expect the hospitality industry to be driving the outcomes it wants to see.

With the Ministry of Education *Vocational Education Reform* currently underway, we will be advocating for a significant increase in employer-led learning.

In 2015, we developed Hospo Start with the support of the Ministry of Social Development (MSD): a programme that introduces participants to the basics of hospitality. The training takes place over four weeks to get our participants ready for work (or get them back into work) in hospitality, with an overall goal of employment upon completion. We designed the course to reflect the key skill set required for job seekers in our industry – it is practical and hands on learning. This is the kind of employer-driven learning that New Zealand needs more of.

While we will be encouraging our industry to take a stronger stance in driving what is being taught in tertiary study, we want to make it clear to the Government we are not seeing the level of responsiveness and openness to change from tertiary providers in this area that we expect.

We acknowledge the various consultations underway provide a unique opportunity for industry to work alongside Government and improve the way training and pathways are offered in New Zealand. We support the idea of us helping our own.

“On a personal level I can truly say you guys have changed my life. I was a shell and you have brought me out of it. The thought and consideration you have put into our placements is awesome. Every single person I have spoken to is blown away by how suited they are to the position you put them in.”

Participant, February/March 2019 Hopso Start Programme

Our main reservation remains that with any significant reform comes disruption, and the proposals across Government will significantly disrupt the supply of employees to the tourism and hospitality sector. It is crucial both the immigration and vocational education sector reforms “inform each other” to ensure disruption is minimised.

Proposal 7: How regions are differentiated will influence the domestic labour market response. This would be a collaborative response led by Government which considers education, skills, welfare, employer and other local mechanisms.

The Association supports a regional labour market strategy and plan, which would be a useful mechanism to improve domestic labour market outcomes.

There is also a considerable lag between the employment market signalling a particular labour shortage and the response provided through the labour supply system (e.g. increasing training numbers at polytechnics). This lag needs to be factored into any change to the current labour market system.

Regional skills and jobs hubs

We are encouraged by the concept of regional hubs, and believe it is important they are located in the right areas and have relevant decision-making authority. We support the idea that business and industry have an active role in them, for example in governance.

With twelve regional branches we

are in a prime position to assist the Government on a national scale, and see how we can better support young New Zealanders into the hospitality pathway. **The Association** shares the Government’s ambition to see more rangatahi move into fulfilling, and long-term work.

Gate 3: The Migrant Gate

Proposal 8: Migrant identity, health, character and capability checks will largely remain the same.

The Association agrees that migrant checks should remain largely as they are.

We submit that employers should be responsible for undertaking capability checks for potential migrant employees as they are best placed to assess whether a potential employee has the skills required to do the job.

Other Arrangements

Proposal 9: Some other changes impacting lower-skilled temporary migrant workers will be made to support the move to the gateway framework.

The remuneration threshold

The Association opposes the recommendation that the remuneration threshold for mid-skilled workers at ANZSCO Level 1 - 3 be increased from 85% to 100% of the national median wage (from \$21.25 to \$25.00 per hour).

In essence, this change moves 10,000 migrant workers downward, from the mid-skilled classification to the low-level classification. This will mean that instead of a three year visa, they only have secure visas for a maximum period of 12 months, for up to three consecutive years.

We are concerned about the impact this change could have on New Zealand businesses, especially those in the hospitality sector, through:

- their ability to recruit migrant workers;
- the loss of valuable and capable staff after 12 months; and
- the resulting “churn” to find and train replacement workers.

This would, in turn, place upward pressure on wages that employers may be unable to afford.

The Association recommends the Government retains the threshold for mid-skilled workers at 85% of the median wage (\$21.25) and be adjusted for wage inflation.

If the Government concludes it has no choice but to increase the remuneration threshold for mid-skilled workers at this level to 100% of the national median wage, we strongly recommend the Government adopt a phased increase to minimise the impact on SMEs.

Reviewing the stand down period

The Association supports removing the mandatory one-year stand-down period for lower-skilled migrants after three years of employment, where the particular migrant satisfies one of the new job gateway pathways.

With the introduction of the stand-down period in 2017, there is considerable concern that in 2020 when the first stand-down periods become effective it will result in many employers losing valuable and productive employees, and potentially creating the ironic situation of replacing them with another migrant. It can also result in increased costs (e.g. recruitment and training costs) and loss of productivity.

Implementation

Proposal 10: Decisions will be announced in mid-2019 with implementation occurring over the following 12 to 18 months.

The Association is agnostic on proposal 10 as it depends on where the specific proposals land. However, we do believe the timeframes for the gateway framework are aggressive, in particular:

- The short timeframe for MBIE to consider sector feedback and develop final policy proposals;
- Whether the Government has the capacity to implement any changes. For example, assuming the Government goes ahead with accreditation, is there a sufficient process in place to process the estimated 16,000 accreditation applications, and in a reasonable timeframe?;
- The readiness of sector representative groups to negotiate and implement sector agreements within the prescribed timeframes; and
- The proposed changes to the vocational education sector currently being consulted on, which may have an impact on some of the proposals here and adversely affect the supply of labour to the hospitality sector.

In our view, given the significant changes proposed, and considering there is work across a number of portfolios simultaneously, we believe it would be prudent for the Government to give sector groups further opportunity to work with officials on the Government's preferred approach, and provide input on the final-draft policy proposals.

Costs and Benefits

The Association does not agree with the proposal to transfer the \$140 - \$280 per visa cost from migrant to employers.

One of our members in the South Island has suggested that if this change was to be made, this would add an additional \$10,000 - \$15,000 per annum in recruitment costs to their business.

The proposals outlined already highlight significant new costs related to the accreditation and implementation of the proposals. The addition of new employer costs related to the visa process will significantly impact the sustainability of many businesses in the hospitality industry.

Key Information

Would you prefer your submission, either in part or in full, to be withheld from public release?

Yes, please withhold private or confidential information as indicated in my submission. I do not need to be consulted further regarding public release of submissions.

What is the name of the person completing this submission?

Marisa Bidois
Chief Executive
Restaurant Association of New Zealand

If you are submitting on behalf of an organisation, what is the name of that organisation?

Restaurant Association of New Zealand

Please provide us with at least one method of contacting you, in case we need to discuss your submission further.

Email: marisa@restaurantnz.co.nz
Phone: 09 638 8403

What sector(s) does your submission most closely relate to?

Hospitality

Which regions(s) does your submission most closely relate to?

All regions

Which of the following most closely Describes your perspective as a submitter?

Industry organisation

Please indicate the 4 or 6 digit ANZSCO code, if known, for any occupations that are of particular relevance to your submission.

Accommodation and Hospitality Managers nec	141999
Bar Attendant	431111
Bar Useful or Busser	431911
Barista	431112
Brewery Worker	831112
Cafe or Restaurant Manager	141111
Cafe Worker	431211
Chef	351311
Cook	351411
Fast Food Cook	851111
Food Trades Assistants nec	851299
Hospitality Workers nec	431999
Hospitality, Retail and Service Managers nec	149999
Hotel or Motel Manager	141311
Hotel or Motel Receptionist	542113
Hotel Service Manager	431411
Kitchenhand	851311
Licensed Club Manager	141411
Pastrycook	351112
Pastrycook's Assistant	851211
Retail Manager (General)	142111
Retail Supervisor	621511
Waiter	431511