MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Employer-assisted temporary work visa reforms – employer gateway proposals

Date:	23 March 2021	**Priority:**	High
Security classification:	In Confidence	**Tracking number:**	2021-2254

Action sought		
	Action sought	**Deadline**
Hon Kris Faafoi **Minister of Immigration**	**Agree** to the proposed employer accreditation standards for the new employer-assisted temporary work visa system. **Agree** to delay the implementation of the new system so that accreditation is phased in from mid-September 2021, and made compulsory from 1 November 2021.	7 April 2021

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Andrew Craig	Manager, Immigration Policy (Skills and Residence)	Privacy of natural persons	✓
Bronwyn Chapman	Senior Policy Advisor, Immigration Policy (Skills and Residence)		
Matarena Kabwea	Policy Advisor, Immigration Policy (Skills and Residence)		

The following departments/agencies have been consulted
Ministry of Social Development, Ministry of Education, Labour Inspectorate.

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

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Employer-assisted temporary work visa reforms – employer gateway proposals

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Purpose

To seek your agreement to the detailed requirements that employers will need to meet in order to become an accredited employer under the new employer-assisted temporary work visa system, and to delay the introduction of the new system to give employers sufficient time to prepare.

Executive summary

In August 2019, Cabinet agreed to implement a gateway system that employers will need to pass through in order to hire a migrant worker on an employer-assisted temporary work visa [DEV-19-MIN-0228]. The first step in the gateway system will be the employer gateway, where employers must become accredited before they can apply for approval to recruit a migrant worker at the job gateway.

There will be three different levels of accreditation, depending on the number of temporary work visa holders an employer has and their business model:

- Standard accreditation, for employers with one to five temporary work visa holders, will be based around low-touch employer checks intended to reduce the risk of migrant exploitation and other employment and immigration breaches.
- High-volume accreditation, for employers with a larger number of temporary work visa holders, will include the same checks as standard accreditation, as well as additional requirements to manage the labour market risks (suppression of pay and conditions, and displacement of New Zealanders) associated with a high reliance on migrant workers.
- Accreditation for high-risk business models, which will require employers in a triangular employment model and franchisee employers to meet specific requirements designed to manage the higher risk of migrant exploitation associated with these business models.

This briefing seeks your agreement to the detailed design of the accreditation standards for each level of accreditation. It is intended that the standards will be flexible and can be added to, removed or refined over time, as part of regular monitoring and review.

Standard accreditation requirements

All accredited employers will need to meet the standard accreditation requirements. We expect up to 23,000 employers to apply for accreditation.

Cabinet has agreed that employers will be required to meet three broad standards:

- The employer must be a genuinely operating business or other legitimate organisation
- The employer and key office holders must have no recent history of regulatory non-compliance
- The employer must take steps to minimise the risk of exploitation.

The requirement that the employer and key office holders must have no recent history of regulatory non-compliance will introduce a clear and transparent set of rules about which regulatory standards an employer must not have breached, and what conditions must be met following a breach for an employer to become eligible for accreditation again. These rules will largely be based on the existing stand-down list for breaches of minimum employment standards, and will partially implement decisions made as part of the Temporary Migrant Worker Exploitation Review to introduce a stand-down system for employers convicted of immigration offences [DEV-20-MIN-0034]. There will also be exclusions for lower level immigration breaches, such as employing a migrant outside their visa conditions. Compliance with health and safety requirements will be added to the accreditation standards if the stand-down list is expanded to include health and safety breaches as part of further policy work in the Temporary Migrant Worker Exploitation Review.

Taking steps to minimise the risk of exploitation will be a new requirement. Employers will be required to complete specified activities to ensure migrants are well settled and aware of their rights, such as supporting staff to complete Employment New Zealand's online modules about employment rights. As these activities will represent additional costs to employers, we recommend starting with relatively low touch requirements, with the option of expanding and strengthening them over time.

To ensure these requirements do not result in an unreasonable compliance burden, Immigration New Zealand (INZ) will primarily rely on declarations from employers, supported by automated checks where possible. Employers will only be required to provide further information if there are risk indicators and the check cannot be automated.

High-volume accreditation requirements

We expect about 2,300 employers (10 percent of all accredited employers) to apply for high-volume accreditation.

Cabinet has agreed that high-volume employers will be required to demonstrate:

- a commitment to training and upskilling New Zealanders, and
- a commitment to improving pay and conditions over time.

It is intended that employers will be provided with a range of specific options that they can use to demonstrate their commitments, depending on their circumstances. In order to ensure that the requirements are clear, transparent and quick to assess, the options for employers to meet their high-volume commitments need to be rules-based as much as possible and require minimal judgement to assess.

Training and upskilling New Zealanders

Designing the detailed requirements for employers to demonstrate their commitment to training and upskilling New Zealanders has been challenging. We have developed detailed options for different activities that employers could use to meet a training and upskilling requirement. As anticipated, it is not possible to identify a single training and upskilling benchmark that is suitable for all employers.

While we have done limited consultation with a small group of employers and industry representatives on the options we have identified, we do not have good information about the amount and type of training employers in different sectors and regions are currently investing in. This means we are unable to estimate the impact of setting any particular benchmark. We also do not have good information about the compliance costs for employers of recording and reporting on training and recruitment activities (which we think could be significant), or the potential unintended consequences of a strict framework for measuring and verifying these activities.

We therefore recommend delaying the introduction of the training and upskilling commitment for high-volume employers, to allow more time to work through these issues. We will report back to

you within the next three months on different options for implementing a training and upskilling requirement, as well as any alternative options to drive an increase in the number of New Zealanders being trained and recruited into roles filled by migrant workers. This will mean that any training and upskilling requirements for high-volume employers will most likely take effect from 2022.

Improving pay and conditions over time

We recommend focussing this requirement on lower paid roles initially. While we do see some evidence of wage suppression at higher skill levels, the risk of wages and conditions being suppressed as a result of access to migrant workers is generally higher for lower-skilled roles.

We recommend providing two pathways for employers to demonstrate their commitment to improving pay and conditions over time. For each job a migrant workers is hired for:

- there must either be a collective agreement in place, or
- the role must pay at least 10 percent above minimum wage (i.e. $22 from 1 April).

As employers will be required to include the pay rate in their advertising in order to pass the job check, the minimum pay rate of 10 percent above minimum wage for roles not covered by a collective agreement should flow through to any New Zealand applicants.

This approach will provide strong upwards pressure on pay and conditions for the lowest paid roles (as at 12 January 2021, 26 percent of temporary work visas for high-volume employers where a pay rate could be determined were paid below $22). It will also be simple and easy for employers to understand, and low cost to implement, as it will be embedded in an existing process (the job check), and does not require employers to provide any additional information to INZ. While this approach will not provide upwards pressure for roles already paid at least 10 percent above the minimum wage, the threshold could be raised over time to increase pressure on this group.

If you want to require pay increases for roles that are already paid at least 10 percent above the minimum wage at this stage, an alternative option is to require employers to show that pay for roles that are not covered by a collective agreement has increased by at least the percentage increase in the minimum wage plus one percent since the last accreditation period. We do not recommend this approach at this stage, as it will be difficult to apply consistently, more difficult for employers to understand and plan for, and may create incentives for some employers to obscure pay rates to avoid having to increase pay each accreditation period.

Accreditation for high-risk business models

Cabinet agreed to a specific labour hire accreditation category, as these companies present a higher risk of non-compliance or exploitation due to the business model where they place the migrant with a controlling third party. We recommend extending the labour hire category to capture all triangular employment relationships (i.e. where an employer places a migrant worker under the control of a third party), including where an employee may be working for, or across, several subsidiary companies, as this presents the same employment model risks. In addition to standard accreditation, triangular employers will need to meet higher accreditation requirements, which include greater upfront assessment, only sending their migrants to compliant businesses; providing evidence of good systems in place to monitor the migrants' employment conditions and safety onsite, and demonstrating a history of being an employer, i.e. having supplied labour, and employing New Zealanders. We expect up to 600 triangular employers to apply for accreditation.

Cabinet also agreed, as part of a package of changes to reduce temporary migrant worker exploitation in New Zealand, that franchisees would be subject to additional accreditation requirements [DEV-20-MIN-0034]. We recommend that, in addition to standard accreditation requirements, franchisees initially be required to demonstrate that: a) their business has been operating for at least 12 months; and b) that they have a history of employing New Zealanders. There are options for you to consider in how we define a "franchise" for the purposes of the accreditation system. We have provided a working definition of "franchise" in this paper. This

needs to be tested with key external stakeholders. We will advise you on a definition in the coming weeks.

There may be an opportunity to add more requirements to the franchisee accreditation standard in line with an upcoming legislative change introducing a duty to prevent employment standards breaches as part of the Migrant Exploitation Review. Officials will provide further advice as the legislation is developed.

Consultation

We have undertaken limited consultation on the proposed accreditation standards with the New Zealand Council of Trade Unions (NZCTU) and a small group of employers and industry representative groups from sectors that are high users of the temporary work visa system, including farming, meat processing, tourism, hospitality, international education, aged care, transport, horticulture and viticulture, labour hire companies, and franchisors and franchisees. Due to timing constraints, we have not been able to do more comprehensive consultation. Employers may feel this falls short of the level of consultation expected.

Employers were generally supportive of the move to an employer-led system, but were concerned about the compliance costs associated with the proposed standards, particularly in relation to any requirements for employers to demonstrate training and upskilling of New Zealanders. We propose to undertake further targeted consultation on the accreditation standards relating to training and upskilling New Zealanders, to help us better understand the impacts on employers in different regions and sectors before implementing any specific training and upskilling requirements.

Confidential advice to Government

We intend that unions and employer representatives will continue to be regularly consulted as part of the ongoing monitoring and review of the accreditation standards, giving them the opportunity to influence the standards as the accreditation system develops and is refined over time.

Implementation

The new policy settings for employer-assisted temporary work visas were intended to be implemented from 1 July 2021. In order to provide employers with sufficient time to prepare for the new requirements, we recommend delaying the introduction of the new system so that accreditation is phased in from late September 2021, and becomes compulsory on 1 November 2021.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Note** that Cabinet has agreed all employers must be accredited in order to employ a migrant worker on an employer-assisted temporary work visa.

Noted

b **Note** that Cabinet has agreed that there will be three different levels of accreditation:

   a. standard accreditation, for employers recruiting five or fewer migrant workers in a 12-month period,

   b. high-volume accreditation, for employers recruiting six or more migrant workers in a 12-month period,

   c. high-risk accreditation, for labour hire companies and franchisees.

Noted

c **Note** that the accreditation standards will be subject to regular monitoring and review, and it is intended that the standards can be added to, removed or refined over time.

Noted

d **Note** that Immigration New Zealand (INZ) will have no discretion to decline applications for reasons other than those specified in the accreditation standards, but that additional standards can be added over time if additional issues arise through the accreditation process that have not been anticipated.

Noted

Standard accreditation

e **Note** that Cabinet has agreed that all accredited employers will be required to meet the following three broad standards:

a. employer must be a genuinely operating business or other legitimate organisation,

b. employer and key office holders must have no recent history of regulatory non-compliance,

c. employer must take steps to minimise the risk of exploitation.

Noted

f **Agree** that, to demonstrate they are a genuinely operating business, employers will be required to:

a. be registered as an employer with Inland Revenue,

b. be in a sound financial position, either by being profitable (before depreciation and tax), having positive cashflow, or having sufficient capital and/or external investment or funding, or a plan to remain a going concern,

c. if the employer is a partnership or sole trader, not be bankrupt or subject to a No Asset Procedure.

Agree / Disagree

g **Agree** that, to demonstrate they have no recent history of regulatory non-compliance, employers and their key office holders will be required to:

a. not be on the stand-down list for breaches of minimum employment standards,

b. not be subject to a stand-down period or permanent ban from sponsoring work visas following conviction for immigration-related offences,

c. if the employer or a key office holder has previously been subject to a stand-down period for breaching immigration requirements, have satisfied INZ that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance,

d. if the employer or a key office holder has previously employed a person not entitled under the Immigration Act to work in the role, employed a person in a role or under conditions that do not match those provided in their employer-supported visa application, or provided false or misleading information to INZ, have satisfied INZ that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance,

e. if the key office holders have a pattern of immigration breaches in other businesses they have been involved in, have satisfied INZ that they have taken appropriate steps to prevent the same non-compliance in the business that is seeking accreditation,

f. not be essentially the same as another business that does not meet the accreditation requirements, and have been re-established under a new legal entity and NZBN in order to avoid accreditation being declined,

g. not be prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body, either in New Zealand or any other country,

h. not have been convicted in the last five years of any of the offences specified in s382 of the Companies Act 1993, or any equivalent offences in any other country.

Agree / Disagree

h **Agree** that, where an employer or key office holders have an investigation or case pending for any breach that would prevent them from being accredited if proven, their application or accreditation may be suspended until the outcome of the investigation or case.

Agree / Disagree

i **Note** that health and safety compliance will be added to the accreditation standards if the stand-down list is expanded to include health and safety breaches as part of further policy work in the Temporary Migrant Worker Exploitation Review.

Noted

j **Agree** that, to demonstrate they are taking steps to minimise the risk of exploitation, employers will be required to:

a. provide information to migrant workers about local community and services,

b. provide migrant workers with work-related settlement information,

c. provide time during paid work hours for migrants to complete Employment New Zealand's online modules on employment rights (where the modules are offered in a language they are competent in),

d. ensure that everyone who makes recruitment decisions within their organisation completes Employment New Zealand's online module on employer obligations during the accreditation period,

e. pay all costs and fees for the recruitment of migrant workers, both in New Zealand and outside of New Zealand,

f. not charge any fees to migrants outside of New Zealand that would be unlawful if charged in New Zealand.

Agree / Disagree

High-volume accreditation

k **Agree**, in order to better align with Cabinet's policy intent, to amend the definition of a high-volume employer from an employer with more than five visa approvals for employer-assisted temporary work visas in a 12-month period, to an employer with more than five migrant workers on an employer-assisted temporary work visa employed in their business at any one time.

Agree / Disagree

l **Note** that Cabinet has agreed that employers will be required to meet two commitments in order to be granted high-volume accreditation:

a. train and upskill New Zealanders, and

b. improve pay and conditions over time.

Noted

m **Note** that we have developed, and undertaken limited consultation on, detailed options for different activities that employers could use to meet a training and upskilling requirement, but we do not have good information about employers' current investment in training and upskilling and are unable to estimate the impact of these options at this stage.

Noted

n **Agree** to delay the introduction of the training and upskilling commitment for high-volume employers to allow more time for us to refine options, and consult with employers to identify the impacts of different options.

Agree / Disagree

o **Note** that we will report back to you within the next three months on the impacts of different options for implementing a training and upskilling requirement, as well as any alternative options to drive an increase in the number of New Zealanders being trained and recruited into roles filled by migrant workers.

Noted

p **Agree** that, to demonstrate a commitment to improving pay and conditions over time, for each job approved at the job gateway, employers will be required to either have a collective agreement in place, or:

EITHER

a. Option 1 (recommended): pay at least 10 percent above minimum wage.

Agree / Disagree

OR

b. Option 2: increase wages by the percentage increase in the minimum wage plus one percent per annum compared to the previous accreditation period.

Agree / Disagree

High-risk business models

q **Note** that Cabinet has agreed that two groups will need to hold high-risk business model accreditation:

a. labour hire employers, and

b. franchisees.

Noted

r **Note** that Cabinet has agreed that employers with high-risk business model accreditation will:

a. have an accreditation that only lasts for 12 months (as opposed to 24 months for standard or high volume employers renewing after an initial accreditation),

b. all be subject to site visits and up front verification (as opposed to just employers identified as higher risk under the standard and high-volume categories),

c. be subject to more post-decision verification,

d. need to meet specific additional requirements designed to manage the higher risks of migrant exploitation associated with their business model, in addition to meeting the standard and high-volume accreditation requirements.

Noted

s **Note** that Cabinet has agreed that the additional standards that labour hire companies will be required to meet are:

a. only contract migrant workers to compliant businesses,

b. have good systems in place to monitor employment and safety conditions on site,

c. have a history of contracts for the supply of labour and of placing/employing New Zealand workers i.e. cannot have been set up for the purpose of recruiting migrant workers.

Noted

t **Agree** to expand the labour hire category to capture all employers who employ employer-assisted temporary work visa holders in a triangular employment scenario (i.e. send their migrants to work for controlling third parties), which includes traditional labour hire companies.

Agree / Disagree

u **Agree** to remove the requirement that site visits are conducted on 100 percent of employers holding high-risk business model accreditation.

Agree / Disagree

v **Note** that INZ will instead develop a risk based prioritisation process that prioritises the higher risk employers for more robust assessment and more site visits, and will provide further advice as implementation progresses on the ratio of employers holding high-risk business model accreditation that will receive a site visit.

Noted

w **Agree** that employers holding high-risk business model accreditation will not need to meet the high-volume accreditation requirements unless they employ more than five migrants on an employer-assisted temporary work visa at one time.

Agree / Disagree

Triangular-accreditation

x **Agree** that, to demonstrate that they are only contracting migrant workers to compliant businesses, triangular employers will be required to only contract employer-assisted temporary work visa holders to controlling third parties that:

a. have an NZBN,

b. are not on the stand-down list for breaches of minimum employment standards,

c. have declared to the employer that they do not have immigration related issues that would prevent them from being granted accreditation in their own right.

Agree / Disagree

y **Agree** that, to demonstrate they have good systems in place to monitor employment and safety conditions on site, triangular employers will need to demonstrate they have:

a. proactive measures to minimise risks of exploitation and ensure that the controlling third party entity understands their minimum employment and immigration related obligations prior to placing the migrant with the controlling third party,

b. an adequate compliance plan that can allow employers to identify issues of non-compliance while the migrant is with the controlling third party,

c. a robust process to resolve any issues of non-compliance they identify or have been reported to them.

Agree / Disagree

z **Agree** that, to demonstrate a history of contracts for the supply of labour and of placing/employing New Zealand workers, triangular employers will be required to demonstrate:

a. a history of contracting labour for the past 12 months, and

b. at least 15 percent of their placement workforce are New Zealander citizens or resident visa holders in full-time employment.

Agree / Disagree

Franchisee accreditation

aa **Note** that Cabinet agreed, as part of a package of changes to reduce temporary migrant worker exploitation in New Zealand, that franchisees would be subject to additional accreditation requirements.

Noted

bb **Agree** that, in addition to meeting standard accreditation requirements, franchisees will be required to demonstrate that:

a. their business has been operating for at least 12 months, and

b. they have a history of employing New Zealanders.

Agree / Disagree

cc **Note** that there may be an opportunity to add more requirements to the franchisee accreditation standards, related to franchisor oversight, in line with upcoming legislative changes as part of the Temporary Migrant Worker Exploitation Review, and that officials will provide further advice as the legislation is developed.

Noted

dd **Note** that consultation is underway on how a "franchise" is defined for the purposes of the accreditation system, and officials will provide you with a final detailed definition in the coming weeks.

Noted

Implementation

ee **Agree** to delay the introduction of the new policy settings for employer-assisted temporary work visa applicants from 1 July 2021, so that accreditation is phased in from late September 2021, and becomes compulsory on 1 November 2021, to allow employers sufficient time to prepare.

Agree / Disagree

Privacy of natural persons

Andrew Craig
Manager, Immigration Policy
Labour, Science and Enterprise, MBIE

23 / 03 / 21

Hon Kris Faafoi
Minister of Immigration

..... / ..... / .....

Background

1. In August 2019, Cabinet agreed to implement a gateway system that employers will need to pass through in order to hire a migrant worker on an employer-assisted temporary work visa [DEV-19-MIN-0228]. The first step in the gateway system will be the employer gateway, where employers must become accredited before they can apply for approval to recruit a migrant worker. Once an employer has been granted accreditation, they will be able to apply for a job check at the job gateway to make sure the role they want to fill cannot be done by a New Zealander. Following this, they will be able to invite a migrant worker to apply for a visa for the role at the migrant gateway.

2. Cabinet agreed that there would be three different levels of accreditation, depending on the number of temporary work visa holders an employer has, and their business model:

   a. Standard accreditation, for employers with a smaller number of temporary work visa holders, would be based around low-touch employer checks intended to reduce the risk of migrant exploitation and other employment and immigration breaches.
   b. High-volume accreditation, for employers with a larger number of temporary work visa holders, would include the same checks as standard accreditation, as well as additional requirements to manage the labour market risks (suppression of pay and conditions, displacement of New Zealanders) associated with a high reliance on migrant workers.
   c. Labour hire accreditation would require labour hire companies to meet specific requirements designed to manage the higher risk of migrant exploitation associated with this business model, in addition to the standard and high-volume requirements.

3. In March 2020, Cabinet agreed, as part of a suite of change following the Temporary Migrant Worker Exploitation Review, to expand the 'higher-risk' accreditation (i.e. labour hire accreditation) to include franchisees, as franchise business models are associated with an increased risk of migrant exploitation. Cabinet also agreed that, in future, the Minister of Immigration would be able to make decisions on the types of businesses that would be subject to the 'higher-risk' accreditation, to enable more flexibility to add or remove business types based on demonstrable risks.

4. The table below summarises the decisions Cabinet has made about the features of each level of accreditation:

	Standard accreditation	**High-volume accreditation**	**Labour hire and franchisee accreditation**
Which employers?	Available for employers recruiting five or fewer migrant workers in a 12 month period	Compulsory for high-volume employers (recruiting six or more migrant workers in a 12 month period)	Compulsory for labour hire companies and franchisees

Standards	Employers would be required to be a genuinely operating business (or other legitimate organisation), have no recent history of regulatory non-compliance, and take steps to minimise the risk of exploitation	Same as standard accreditation Must demonstrate a commitment to training and upskilling Must demonstrate a commitment to improving pay and conditions over time	Same as high-volume accreditation Some specific requirements for labour hire companies
Duration	Initial accreditation lasts for 12 months and requires renewal every two years for subsequent renewals	Initial accreditation lasts for 12 months and requires renewal every two years for subsequent renewals	12 months
Verification and assurance	Up front verification (including site visits) and post decision assurance for higher-risk employers	Up front verification (including site visits) and post decision assurance for higher-risk employers	Site visits and verification up front for all employers, and post-decision assurance where issues identified

5. Since Cabinet's decisions, we have been working on the detailed design of the accreditation standards, refining the indicative options provided in the Cabinet paper to ensure the standards are both effective and workable for employers and Immigration New Zealand (INZ), and working with employers and unions to identify additional options.

6. This paper seeks your agreement to the detailed standards, as well as some minor changes to Cabinet's previous decisions, needed in order to implement the accreditation system in line with Cabinet's intent.

7. We have done limited consultation on the proposed accreditation standards with the New Zealand Council of Trade Unions (NZCTU) and a small group of employers and industry representative groups from sectors that are high users of the temporary work visa system, including farming, meat processing, tourism, hospitality, international education, aged care, transport, horticulture and viticulture, labour hire companies, and franchisors and franchisees.

8. Due to timing constraints, we have not been able to do more comprehensive consultation, and we note that employers may feel this falls short of the level of consultation expected. We propose to undertake further targeted consultation on the accreditation standards relating to training and upskilling New Zealanders, to help us better understand the impacts on employers in different regions and sectors, before proposing any specific training and upskilling requirements.

9. The accreditation standards will be subject to regular monitoring and review. It is intended that the standards will be flexible and can be added to, removed or refined over time.

10. Note that there will be provisions in the immigration instructions which enable an employer who does not meet the accreditation requirements to support a visa, if there are genuinely exceptional circumstances in the national interest which warrant the visa being granted. There would be an extremely high bar for granting such an exception,

e.g. in the unlikely event that a District Health Board failed to meet the accreditation requirements, they would potentially be granted an exception to hire a limited number of migrants to ensure continuity of medical services.

Standard accreditation requirements

The objective of standard accreditation is to manage regulatory risk

11. All employers recruiting a migrant worker on an employer-assisted temporary work visa will need to meet the standard accreditation requirements. The objective of standard accreditation is to manage regulatory risk, i.e. to minimise the risk of migrant exploitation and immigration breaches.

12. We expect up to 23,000 employers to apply for accreditation.[1] The vast majority of these (about 90 percent) will be low-volume employers who will not need to hire more than five migrant workers at on time, and many of these will be small and microbusinesses (for example, individual farmers).

13. Cabinet agreed that standard accreditation will require employers to meet the following broad standards:

    a. employer must be a genuinely operating business or other legitimate organisation,

    b. employer and key office holders must have no recent history of regulatory non-compliance,

    c. employer must take steps to minimise the risk of exploitation.

14. It is intended that employers will be required to meet a range of detailed requirements in order to show that they meet each standard. Cabinet noted that these detailed requirements should be low-touch, so that they do not place an unreasonable compliance burden on small or micro-businesses, and should be relatively simple and quick for INZ to process.

15. There will be no discretion for INZ to decline applications for reasons other than those specified in the accreditation standards. If we become aware of additional issues through the accreditation process that create a risk of harm to migrants, the New Zealand public, or New Zealand's reputation, we will consider adding additional accreditation standards to address these risks.

Standard 1: Employer must be a genuinely operating business

16. The objective of this standard is to maintain the integrity of the immigration system by ensuring that employers are placing migrants in real jobs that provide economic benefit to New Zealand.

17. This is broadly consistent with existing requirements in the Essential Skills Work Visa policy that employment offered must be genuine, sustainable and full-time for the duration of the employment period. The new system will build on existing practice by more clearly defining the rules for determining whether a business is genuinely operating.

18. The vast majority of employers are genuine and will offer genuine and sustainable employment to migrants. We therefore intend that this standard will be high-trust,

[1] This is lower than the original estimate in the 2019 Cabinet Paper. We are now basing our estimates off 2019 data, as COVID-19 has interrupted the growth in the number of employers sponsoring a temporary work visa.

primarily relying on declarations from employers, supported by automated checks and open source searches by immigration officers to confirm the business is genuine.

19. When there are specific risk indicators (e.g. business has been trading for less than 12 months), INZ may request further documentation, such as financial records to verify that the business is genuine and will provide genuine, sustainable employment to migrant workers. Any financial information requested would generally be documentation that already exists and should be easy for employers to provide, e.g. tax returns and copies of bank transactions.

20. We recommend that employers be required to meet the following detailed requirements in order to demonstrate that they are a genuinely operating business:

Standard 1: Employer must be a genuinely operating business – detailed requirements	
a.	Employer must be registered as an employer with Inland Revenue.
b.	Employer must either: i. be profitable (before depreciation and tax), or ii. have positive cash flow, or iii. have sufficient capital and/or external investment or funding (e.g. from a founder or parent company), or a plan to ensure the business remains viable and ongoing. INZ will develop further guidance around what the threshold is for each of these options to be clear what it means to be financially sound.
c.	If the employer is a partnership or a sole trader, the business owners must not be bankrupt or subject to a No Asset Procedure. This will only be a requirement for partnerships and sole traders, as these business structures are part of an individual's personal finances.

21. Almost all employers who use the immigration system are genuine employers who will be registered with Inland Revenue and able to provide financial statements to demonstrate they are a genuine business and in a sound financial position. Requests for financial statements to demonstrate the business is a going concern will only be used in a small range of cases where other risk factors are present.

Standard 2: Employer and key office holders must not have a recent history of regulatory non-compliance

22. The objective of this standard is to reduce the risk of migrant exploitation and other employment and immigration breaches, by ensuring that employers cannot access migrant workers if they have a recent history of breaching minimum employment standards or immigration requirements, mismanagement of a company, or committing dishonesty offences.

23. In order to ensure that the majority of accreditation applications can be processed efficiently, and do not place an unreasonable compliance burden on employers, this accreditation standard will focus on checking whether the employer has a history of breaching rules resulting in them being placed on the stand-down list or other non-compliance list, rather than actively checking whether they are compliant at the time of application. However, the new system will be supported by a greater investment in post-decision assurance. If a breach is found as part of post-decision verification, or any other compliance scrutiny, and the employer is sanctioned as a result, this will result in their accreditation being revoked.

24. Immigration instructions currently include a broad requirement that employers must have a history of compliance with immigration and employment law, however this is not applied consistently and is not very transparent. We propose removing this broad requirement and replacing it with clear and transparent rules about which immigration and employment laws must not have been breached, and what conditions must be met for an employer to be eligible for accreditation again following a breach.

25. The rules will be based on the existing stand-down list system, through which employers who have been sanctioned for breaching minimum employment standards are banned from supporting new employer-assisted visa applications for a specified period (determined by the type and size of the penalty imposed), and decisions taken by Cabinet in March 2020, as part of the Temporary Migrant Worker Exploitation Review, to expand the stand-down list to include immigration offences [DEV-20-MIN-0034]. There will also be exclusions for lower level immigration breaches, such as employing a migrant outside their visa conditions. Any of the specified breaches will result in the employer automatically becoming ineligible to be accredited, until they satisfy specific conditions.

26. We also propose some additional requirements to cover compliance issues that are not addressed by the stand-down system (e.g. underlying compliance issues that led to a stand-down, addressing businesses that do not meet the requirements setting up a new entity to avoid accreditation being declined, and addressing breaches that are still under investigation), and a check of the banned directors list as a proxy for a "fit and proper person" test for an organisation's key office holders.

27. We do not recommend including health and safety requirements in the employer accreditation system at this stage, because there are a number of issues that need to be worked through in order to develop a transparent and fair system for assessing health and safety compliance (e.g. it often takes years for health and safety breaches to be fully investigated and prosecuted, with low likelihood of further harm in the interim). We plan to complete further work on this as part of the second phase of the Temporary Migrant Worker Exploitation Review. This will potentially lower standards for employers, as INZ's current discretion to determine what constitutes compliance with employment law can be used to decline employers with health and safety breaches. However, we believe this is a small risk, as only very small numbers of employers are currently declined based on health and safety concerns.

28. The move to a more transparent set of rules will mean that the accreditation checks will largely be able to be automated based on INZ and Labour Inspectorate compliance records. Employers will only need to provide more detailed information if they have previously breached immigration requirements or employment standards, in order to show that they have addressed their compliance issues.

29. However, removing INZ's discretion to determine what constitutes a history of compliance with immigration and employment law also means that INZ will no longer have the flexibility to decline employers if there are concerns that are not fully addressed by the stand-down system. For example, resource constraints may mean that the Labour Inspectorate and INZ are unable to investigate potential non-compliance, meaning that the employer will not be stood-down and there will be no grounds to decline an accreditation application. This is appropriate to ensure that immigration officers are not making direct decisions about compliance with employment law.

30. We recommend that employers be required to meet the following detailed requirements in order to demonstrate that they and their key office holders do not have a recent history of regulatory non-compliance. These proposals will partially implement some elements of Cabinet's decision, as part of the Temporary Migrant Worker Exploitation Review, to expand the stand-down list to include immigration breaches. Annex One

contains further detail about the current stand-down policy, Cabinet's decisions to expand it to include immigration breaches, and how those decisions will be implemented.

Standard 2: Employer and key office holders must not have a recent history of regulatory non-compliance – detailed requirements	
a.	Employer and key office holders must not be on the stand-down list for breaches of minimum employment standards. Employers are placed on the stand-down list if a penalty is ordered by the Employment Relations Authority or Employment Court (for more serious breaches), or the Labour Inspectorate issues an infringement notice (for less serious breaches).
b.	Employer and key office holders must not be subject to a stand-down period or permanent ban from sponsoring work visas following conviction for immigration-related offences. Once a stand-down has expired, the employer must also satisfy INZ that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance. This is for more serious offences where employer has been convicted in the courts and has been sentenced to a fine and/or imprisonment.
c.	If the employer or key office holders have previously breached immigration requirements in any of the following ways, they must satisfy INZ that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance: i. employed a person not entitled under the Immigration Act to work in the role, ii. employed a person in a role or under conditions that do not match those provided in their employer-supported visa application, iii. provided false or misleading information to INZ. This is for less serious immigration breaches, which will be determined by INZ without the involvement of the courts. In future, requirements (c)(i) and (ii) will be immigration infringement offences which will result in a stand-down period, and will be dealt with in the same way as immigration offences referred to in (b) above.
d.	If the key office holders have a pattern of immigration breaches in other businesses they have been involved in, they must satisfy INZ that they have taken appropriate steps to prevent the same non-compliance in the business that is seeking accreditation.
e.	INZ must not have reason to believe that the business is essentially the same as another business that does not meet the accreditation requirements, and has been re-established under a new legal entity and NZBN in order to avoid accreditation being declined.
f.	Where an employer or a key office holder has an investigation or case pending for any breach that would prevent them from being accredited if proven, their application or accreditation may be suspended until the outcome of the investigation or case. In deciding whether to suspend an application or accreditation, the immigration officer must consider:

	i. how much time is expected to elapse before there is an outcome of the investigation or court action, ii. the seriousness of the offending and likely stand-down period if the offending is proven, iii. the likelihood of further harm occurring in the interim, iv. whether the investigation will be jeopardised by suspending the application or accreditation.
g.	Key office holders must not i. be prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body, either in New Zealand or any other country, ii. have been convicted in the last five years of any of the offences specified in s382 of the Companies Act 1993 that prohibit an individual from managing a company, or any equivalent offences in any other country.

31. While the majority of employers are generally compliant with immigration and employment law, we expect that this standard will provide the most common grounds for declining or revoking accreditation. As at 17 February 2021, there were 49 employers on the stand-down list for breaches of minimum employment standards. The number of employers who will be ineligible for accreditation due to immigration breaches is likely to be higher than this.

Standard 3: Employer must take steps to minimise the risk of exploitation

32. The objective of this standard is to reduce the risk of migrant exploitation by ensuring that migrants are well settled in the community and are able to report any breaches of their rights, and that employers understand their obligations towards their employees.

33. These will generally be new requirements. Employers will be required to make a commitment to undertake certain activities when they apply for accreditation, followed by a declaration that they have met the requirements when they apply for their subsequent accreditation. INZ may require an employer to provide evidence that they have met the requirements both during the accreditation period and as part of assessing subsequent accreditation applications.

34. The requirements are designed so that they can be easily applied to all employers. There may also be targeted measures that could further minimise the risk of exploitation in specific sectors, which could be negotiated as part of sector agreements.

35. We recommend that employers be required to meet the following detailed requirements in order to demonstrate that they have taken steps to minimise the risk of exploitation:

Standard 3: Employer must take steps to minimise the risk of exploitation – detailed requirements	
a.	Employers must provide information about local community and services, including: i. accommodation options, ii. Transportation options (including driving and drivers licence information, public transportation options),

	iii. cost of living, iv. how to access healthcare services, v. Citizens Advice Bureau services, vi. relevant community groups (e.g. religious or migrant groups).
b.	Employers must provide employee work-related settlement information, including: i. how to obtain an IRD number, ii. any industry training and qualification information and options, iii. specific job or industry hazards.
c.	Employers must provide time during paid work hours for migrants to complete Employment New Zealand's online modules on employment rights (where the modules are offered in a language they are competent in). There are a total of eight modules, that take an estimated 20 minutes each to complete.
d.	Employers must ensure that everyone who makes recruitment decisions within their organisation completes Employment New Zealand's online module on employer obligations during the accreditation period. There are a total of seven modules, that take an estimated 20 minutes each to complete.
e.	Employer must pay all costs and fees for the recruitment of migrant workers, both in New Zealand and outside of New Zealand, including: i. advertising costs, ii. recruitment agency fees, iii. immigration fees for employer and job check applications, iv. training and induction costs related to the job, v. health and safety equipment required to undertake employment safely, vi. branded uniforms, vii. trade testing, viii. tools where the ownership of the tools is retained by the employer.
f.	Employers must not charge any fees to migrants outside of New Zealand that would be unlawful if charged in New Zealand, including: i. any payment to secure or retain an employment relationship, ii. bonding agreements for an unlawful purpose, iii. deductions from wages for accommodation, travel or food that are unreasonable or have not been consented to in writing by the employee.

36. We recommend starting with relatively light touch requirements as employers get used to the new system, with the potential of expanding and strengthening the requirements in future. Commitments a-d are relatively low-effort and should be easily achievable for most employers. Some smaller businesses who do not have dedicated HR staff may find it challenging to keep good records to demonstrate they have met the commitments. INZ will support employers to comply with these requirements where necessary.

37. We expect a small number of employers will breach commitments e and f. Historically, the majority of these employers have been from the construction sector, with smaller numbers in the IT and hospitality sectors.

Stakeholder feedback

38. The employer and industry representatives that we tested the proposals with were generally comfortable with the proposed standard accreditation requirements, and supported more automation of decisions and a primarily declaration-based system for employer commitments.

39. However, employers and industry representatives noted that the proposed standards and the accreditation fee itself would create some additional compliance costs which might not be proportionate to the benefit for smaller businesses wanting to hire just one or two migrants. The provision of financial information was generally pointed to as the biggest potential compliance cost for most businesses, particularly small businesses, and some commenters were concerned that INZ might not have sufficient expertise to assess financial documents.

40. The hospitality industry was the most concerned about the impact of the compliance costs on profitability, noting that many businesses in their industry are currently running on skeleton staff due to the ongoing border closure.

41. The NZCTU was supportive of the objective of making the requirements clear, objective and measurable, and supported a declaration-based system where an automated check is not possible, with the ability for post-decision verification and assurance.

High-volume accreditation requirements

The objective of high-volume accreditation is to manage labour market risk

42. High-volume accreditation is one of a suite of tools in the temporary work visa system designed to manage labour market risk, i.e. ensuring that the use of migrant workers does not result in downward pressure on pay and conditions or displacement of New Zealand workers.

43. The main tool for managing labour market risk is the job check, which ensures that, if a job is filled by a migrant worker, there are no suitable New Zealanders available, and the job pays at least the market rate. High-volume accreditation complements this by ensuring that employers with a large number of migrants are taking steps to train New Zealanders into roles where there are currently no New Zealanders available, and are not supressing the market rate and conditions.

44. Sector agreements have a similar focus to high-volume accreditation, but will operate at an industry level, rather than an individual employer level. They will be negotiated with sectors that have a high reliance on temporary migrant workers, and will provide employers with certainty of access to employer-assisted visas for particular occupations in exchange for demonstrating commitments to place more New Zealanders into jobs. The negotiation of the first two sector agreements (with the red meat processing and

aged care sectors) was intended to be completed in 2020, however the introduction of sector agreements has been delayed due to the effects of the COVID-19 pandemic.

45. Cabinet has agreed that high-volume employers will be required to demonstrate:

    a. a commitment to training and upskilling New Zealanders, and

    b. a commitment to improving pay and conditions over time.

46. It is intended that employers will be provided with a range of specific options that they can use to demonstrate their commitments, depending on their circumstances. Employers will be required to commit to meeting one or more of the options for each commitment when they apply for accreditation. Cabinet was provided with the following indicative options for each commitment:

Training and upskilling New Zealanders	**Increasing pay and conditions over time**
This may be demonstrated by, for example, evidence that the employer: • Puts staff through work-relevant formal education leading to an NZQA qualification; or • Has taken on an apprentice in last 2 years; or • Has a structured in-house training programme, i.e. cadetships, managerial programmes etc.; or • Engages with industry/sector training schemes; or • Has a graduate or internship programme; or • Spends one percent of their payroll on formal training.	This may be demonstrated by, for example, evidence that the employer: • Pays above industry standard wages, for example: o is a certified living wage employer; or o evidence from payroll records and industry surveys etc.; • Increases wages for employees over time, for example: o Has a collective agreement or other formal pay agreement in place at the workplace; or • Increases wages of migrant workers each year in line with the percentage increase in the median wage or relevant collective or pay equity or other formal pay agreement.

47. We have been working to refine these options and develop clear and consistent benchmarks for what an employer must commit to.

We recommend a minor change to the definition of a high-volume employer

48. Cabinet previously agreed that a high-volume employer would be defined as an employer with more than five employer-assisted temporary work visa approvals in a 12-month period. However, we now recommend that a high-volume employer be defined as an employer with more than five migrants on an employer-assisted temporary work visa employed in their business at any one time. Migrants on other visa types, including RSE and open work visas, will not be counted towards an employer's total.

49. Focusing on the number of positions filled by migrant workers is better aligned with the policy intent, as it more directly measures the impact an employer is likely to have on the labour market. For example, if an employer has unexpected resignations and needs to replace migrant workers, they could have more than five visa approvals in 12 months, but never actually have more than five positions filled by migrant workers. Conversely, an employer with only five visa approvals in a 12-month period could actually have up to 15 positions filled by migrant workers at any one time if the roles qualified for three-year visas.

50. The change in definition will not significantly affect the number of employers in the high-volume group. It was originally expected that about 2,000 employers would be high-volume. We now expect up to 2,300 employers will be high-volume (10 percent of all accredited employers).

51. As at 12 January 2021, the following occupations/industries were most represented amongst employers with more than five employer-assisted temporary work visa holders:

a. **Tradespeople and Labourers** (26% of visas tied to high-volume employers, where an occupation was given)

   This grouping represents the construction industry. The majority (about 10% of all visas where an occupation was given) are carpenters (i.e. builders). Many of the employers in this grouping are labour hire companies, several of which have more than 100 migrants on employer-assisted temporary work visas.

b. **Hospitality** (7% of visas tied to high-volume employers, where an occupation was given)

   The most represented occupations in this grouping are chefs and cooks. There are also significant number of café/restaurant managers, commercial housekeepers, hotel service managers, kitchenhands and waiters.

c. **Aged care** (7% of visas tied to high-volume employers, where an occupation was given)

   This grouping represents private aged-care facilities (not District Health Boards). The majority of visas in this grouping are for personal care assistants, however there are also about 500 for registered nurses.

d. **Health care** (6% of visas tied to high-volume employers, where an occupation was given)

   This grouping primarily reflects District Health Boards and covers a wide range of health care roles, with the largest numbers being resident medical officers and registered nurses.

e. **Retail** (6% of visas tied to high-volume employers, where an occupation was given)

   The most represented occupations in this grouping are retail supervisors and managers. There are also significant numbers of bakers and sales assistants.

f. **ICT** (5% of visas tied to high-volume employers, where an occupation was given)

   The most represented occupations in this grouping are software engineers, ICT customer support officers, ICT business analysts, and developer programmers.

g. **Metal** (5% of visas tied to high-volume employers, where an occupation was given)

   The most represented occupation in this grouping is metal fabricator. There are also significant numbers of fitters and fitter-welders, metal machinists, and sheet metal trades workers.

h. **Professionals, technicians, managers** (5% of visas tied to high-volume employers, where an occupation was given)

   Almost all occupations represented in this grouping are from the construction industry. The most represented occupations are civil engineers, building associates and construction project managers.

Commitment 1: Train and upskill New Zealanders

The objective is to ensure New Zealanders are being trained to fill roles currently filled by migrants where possible

52. The intended outcome of the training and upskilling requirement is that New Zealanders are being trained and progressed into roles that are currently being filled by migrant workers. Training and upskilling of migrant workers is also encouraged. However in order to show that they are meeting the objective of the policy, only training and upskilling of New Zealand citizens and residence class visa holders should be taken into account when assessing whether an employer has met their training and upskilling commitment.

53. Where there are traditionally low numbers of New Zealanders willing and available to train into roles filled by migrant workers, it is intended that this requirement would increase pressure on employers to find ways to attract more New Zealanders (e.g. by improving pay and conditions) where possible.

It is challenging to identify a single training and upskilling benchmark that works for all employers, and we do not know what the impact of any training and upskilling requirements will be

54. In 2019, Cabinet noted that, in order to ensure that the requirements are clear, transparent and quick to assess, the options for employers to meet their high-volume commitments would be rules-based as much as possible and require minimal judgement to assess.

55. While it is intended that employers can choose from a range of predetermined training/upskilling options depending on their individual circumstances, the constraints of a rules-based, low discretion system mean that the options themselves will need to have, as much as possible, a single benchmark for the amount of training/upskilling that needs to be undertaken that applies to all employers.

56. Identifying a single training/upskilling benchmark to apply to all employers is challenging, as an appropriate and achievable level of training and upskilling of New Zealanders depends on an industry and an employer's individual circumstances. This was a major concern raised by employers during consultation. Employers noted that it is not always possible to attract and train New Zealanders into all roles. Examples given included:

    a. where an occupation has requirements that are not trainable – e.g. halal slaughterers must be practising Muslims,

    b. where there are elements outside of the employer's control that make the job unattractive to New Zealanders – e.g. poor connectivity in rural areas,

    c. when an employer does not have the resource available to invest in training and upskilling or improving pay and conditions – examples given by employers were small businesses where the majority of employees are migrants, e.g. dairy farms and wine makers, as well as hospitality businesses that are understaffed and operating on low margins due to the effects of COVID-19.

57. This means there is a choice between:

    a. setting a higher benchmark that will be unachievable for some employers, but generally effective at increasing training and upskilling,

    b. setting the benchmark low enough that all employers can achieve it, but too low to drive any meaningful increase in training and upskilling for the majority of employers,

    c. setting a higher benchmark for most employers, but providing exemptions or lower benchmarks for sectors that are unable to meet the requirements, potentially in

exchange for other sector-specific commitments to increase the number of New Zealanders working in the sector, as part of a sector agreement or other sector transition plan, increasing the overall complexity of the system.

58. We do not currently have good information about the level and type of training that employers in different sectors currently undertake. This means that we do not know what the impacts will be of requiring employers to meet any particular training and upskilling requirements.

We have developed some options for activities that employers could use to meet a training and upskilling requirement

59. We have developed a list of specific training and upskilling activities, with associated measures and potential benchmarks, which could be used as options for employers to meet their training and upskilling requirement.

60. The activities fall into two broad categories:

a. Providing direct training for New Zealanders. This could include things like apprenticeship training, courses at Industry Training Organisations, university courses, training placements, scholarships etc. Depending on the type of training provided, we recommend measuring it either by credits awarded (for NZQA standards-based training), learning hours, or dollars spent on course fees.

b. Employing or promoting lower-skilled New Zealanders. These are proxy measures for direct training – we assume that employing someone results in training, and that promoting someone is the result of training. We recommend measuring this by the number of New Zealanders recruited or promoted during the accreditation period, with lower benchmarks when the New Zealander is recruited through an MSD referral or approved MSD training and recruitment programme, to recognise the additional support employers provide to these workers. This complements the test of recruiting New Zealanders at the job gate, as it focuses on lower-skilled New Zealanders who can be trained into a migrant worker's role in future, rather than fully trained New Zealanders who could fill the role already.

However, we recommend deferring the introduction of a training and upskilling requirement to do more consultation with employers on the impacts

61. While we have undertaken limited consultation with a small group of employer and industry representatives on the training and upskilling options identified above, we are still working through several issues that require further development and consultation with employers:

a. As discussed above, there are different options for where to set the benchmark for each training and upskilling activity, and we need to do further work with employers to understand the impacts of any particular benchmark on different sectors.

b. Determining which activities should be made available to employers to meet the commitment requires a choice between limiting employers to formal training and recruitment, or also allowing employers to also use informal training. While limiting employers to formal training and recruitment will ensure training is verifiable and subject to quality controls, this would create a risk that employers may stop investing in high quality and effective informal training programmes in favour of options that do meet INZ's requirements but are less effective. The employers and industry representatives that we tested draft proposals with frequently raised this concern.

c. In the limited consultation we have undertaken, employers raised concerns about the compliance costs of recording and reporting on training and upskilling activities they have completed. There are issues with using either aggregate data (which may not

show that training is appropriately targeted), or identifying specific individual's development (which is compliance heavy).

d. Wider consultation may also help to identify further training and upskilling activities that are measurable and can be benchmarked, which could be added to the list of options that employers can choose from to meet their training and upskilling commitment.

62. We therefore recommend delaying the introduction of the training and upskilling commitment for high-volume employers to allow more time to work through the issues outlined above. We will report back to you within the next three months on the impacts of different options for implementing a training and upskilling requirement, as well as any alternative options to drive an increase in the number of New Zealanders being trained and recruited into roles filled by migrant workers. This will mean that any training and upskilling requirements for high-volume employers will most likely take effect from 2022.

Commitment 2: Improve pay and conditions over time

The objective is to make roles more attractive to New Zealanders

63. The intended outcome of the requirement to improve pay and conditions over time is that roles currently filled by migrants will be made more attractive to New Zealanders.

64. We recommend focussing this requirement on roles paid below the median wage. As at 12 January 2021, 78 percent (14,021) of all temporary work visas for high volume employers, where a pay rate could be determined, were paid below $27 (current median wage).

65. While we do see some evidence of wage suppression at higher skill levels (e.g. ICT roles), there is generally a lower risk of wages and conditions being suppressed as a result of access to migrant workers in higher-skilled roles, as the available pool of migrant workers is smaller and there is greater competition for their skills globally. For jobs paid at or above the median wage, employers would still be required to pay the market rate for that role in order to be able to hire a migrant.

We recommend that all jobs approved at the job check must either be covered by a collective agreement, or meet a minimum pay requirement

66. We recommend that the requirement to improve pay and conditions over time should be checked at the job gateway, by requiring that all job checks for a high volume employer must either be covered by a collective agreement, or meet a minimum pay requirement. This approach will be simple and easy for employers to understand, as well as being low cost to implement, as it will be embedded in an existing process (the job check) and does not require employers to provide any additional information.

67. Allowing employers to meet the requirement by having a collective agreement in place for a role they are recruiting a migrant for recognises that the pay and conditions for that role are supported by unions and workers and subject to upwards pressure. We expect the proposed approach to increase bargaining power for workers in lower-paid roles where there are high numbers of migrant workers, as employers will have to meet a minimum pay requirement if a collective agreement cannot be reached. This option also provides a way for INZ to recognise alternative pay structures, such as piece rates, that cannot be factored into INZ's hourly rate calculation.

68. The alternative option of meeting a minimum pay requirement will ensure upwards pressure in industries and occupations that are not unionised. As employers will be required to include the pay rate in their advertising in order to pass the job check, the minimum pay requirements should flow through to any New Zealand applicants.

We have identified two options for implementing a minimum pay requirement

69. There is a choice between either starting by targeting the lowest paid roles only with a simple wage floor, or requiring general upwards pressure each accreditation period for all roles paid below the median wage. The full details and impacts of each option are outlined in Annex Two.

70. We recommend starting by targeting the lowest paid roles with a minimum pay requirement of 10 percent above minimum wage (i.e. $22 from 1 April), because it will be easier for employers to understand and plan for, and lower cost to implement. While it does not apply any upward pay pressure for roles that are already paid at least 10 percent above the minimum wage, it will still capture a significant group of lower paid roles – in January 2021, about 26 percent (4,585) of temporary work visas for high-volume employers where a pay rate could be determined were paid below $22. There is the potential to raise the threshold in future if the Government wants to increase pressure on these roles.

71. The alternative option would require employers to show that pay for any role under the median wage has increased by a specified amount (we recommend the percentage increase in minimum wage plus one percent per annum) since the last accreditation period. This would capture a much larger cohort – in January 2021, about 78 percent (14,021) of temporary work visas for high-volume employers where a pay rate could be determined were paid below the median wage. However, the pay increases would take effect later, as INZ would need to use the initial accreditation period to collect pay data as the baseline for subsequent increases. We do not recommend this option, as variation in the roles recruited for each accreditation period, and variables such as experience and location, will make it difficult to compare roles to determine the required pay increase. This will make the system more difficult for employers to understand and plan for. It may also create incentives for some employers to obscure pay rates to avoid having to increase pay each accreditation period, e.g. by phoenixing their business and reapplying for accreditation under another NZBN.

Options we have considered and discounted

72. We have also considered and discounted a range of options, including some options that were originally proposed when Cabinet considered the high-level proposals in 2019. A summary of these options and the reasons they were discounted is contained in the table below:

Option	**Reasons for not proposing**
Average pay in occupations where migrants are being recruited is above industry standard.	MBIE does not always have good data about industry standard pay, and this would not take into account variation in skill and experience level within an occupation.
There is a pay equity settlement in place for roles where a migrant is being recruited.	This would not show any commitment to improve wages beyond the legal minimum.
Provide an extra five days of annual leave.	This commitment could only be used once – it does not show a commitment to increasing standards over time.
Provide an extra five days of sick leave.	This would not necessarily be effective, as pressure from the employer could prevent employees from taking the extra leave.

	This commitment could only be used once – it does not show a commitment to increasing standards over time.
Offer flexible working arrangements and have a certain level of uptake by New Zealand employees.	It would be difficult to verify that flexible working arrangements were actually implemented, and to define the minimum requirements for what constitutes flexible working. There is also a risk that employees could be forced into working arrangements they do not want in order to satisfy INZ requirements. This commitment could only be used once – it does not show a commitment to increasing standards over time.
Provide or subsidise transport, childcare, tools, equipment, accommodation etc., and have a certain level of uptake by New Zealand employees.	It would be difficult to verify that the options available were taken up by New Zealanders, due to the constraints of the Privacy Act. This commitment could only be used once – it does not show a commitment to increasing standards over time.

Stakeholder feedback

73. Employers and industry representatives were generally concerned that the added cost of meeting the high-volume accreditation requirements would make migrant labour unviable for some employers, which could increase labour shortages in the short to medium term, jeopardising New Zealand's economic recovery from COVID-19, and potentially resulting in job losses if migrants were not able to fill key roles that enable more New Zealanders to be employed. There was also concern that this could drive workplace standards down (e.g. health and safety, animal welfare, mental health due to increased workload). Dairy NZ and Federated Farmers noted that the farming industry will likely seek to recoup some of the additional compliance costs by increasing the amount they charge their workers for housing.

74. Employers and industry representatives were most concerned about the training and upskilling proposals for the reasons outlined previously, i.e. that it is not reasonable to expect that all roles filled by temporary work visa holders can be filled by New Zealanders in future, and focusing on formal training activities would exclude informal, on the job training, which is widespread and often considered the most appropriate and effective form of training.

75. Some industries (dairy farming and wine making) felt that the threshold of employing more than five workers on an employer-assisted temporary work visa to be classified as a high-volume employer was too low, as many of their employers who will be caught by this definition are small businesses who will struggle to meet the training and upskilling requirements. It was suggested that the threshold should be increased to more than 10 workers on an employer-assisted temporary work visa. Dairy NZ and Federated Farmers expect that most farmers with more than five workers on an employer-assisted temporary work visa will restructure their businesses so that they are no longer considered high-volume employers.

76. Employer and industry representatives were generally less concerned about the proposed options for employers to meet the requirement to improve pay and conditions,

noting that the market rate or legal minimum for many roles is already more than 10 percent above minimum wage. However, the following concerns were raised:

a. The requirement to pay at least 10 percent above minimum wage is not reflective of the skill level or market rate for some roles. There could be unintended consequences of preventing New Zealanders from progressing into higher-paid roles if no migrant workers are available to take their place in lower-paid roles.

b. Some commenters felt that it was inappropriate to use employment relations tools (i.e. minimum wage setting and collective agreements) to drive immigration outcomes.

77. The NZCTU supported the objective of the high-volume accreditation requirements. They supported a focus on formal training activities to meet the training and upskilling requirement, to ensure that training is high quality and verifiable. They recommended that employers should not be able to use a collective agreement as evidence of improving pay and conditions, preferring that all employers be required to pay at least 10 percent above minimum wage.

High-risk business models

Cabinet has agreed to create a separate accreditation category for business models that present a higher risk of exploitation

78. The objective of the high-risk business model accreditation category is to manage the higher risks of exploitation associated with some business models. Cabinet originally agreed that this would be a requirement for labour hire companies. Following the initial decisions, Cabinet also agreed, as part of the Temporary Migrant Worker Exploitation Review, that franchisees will be required to meet these higher accreditation standards [DEV-20-MIN-0034].

79. Cabinet agreed that these businesses will:

a. have an accreditation that only lasts for 12 months (as opposed to 24 months for standard or high volume employers renewing after an initial accreditation),

b. all be subject to site visits and up front verification (as opposed to just employers identified as higher risk under the standard and high-volume categories),

c. be subject to more post-decision verification,

d. need to meet specific additional requirements designed to manage the higher risks of migrant exploitation associated with their business model, in addition to meeting the standard and high-volume accreditation requirements.

80. Cabinet also agreed that the additional standards that labour hire companies will be required to meet are:

a. only contract migrant workers to compliant businesses,

b. have good systems in place to monitor employment and safety conditions on site,

c. have a history of contracts for the supply of labour and of placing/employing New Zealand workers i.e. cannot have been set up for the purpose of recruiting migrant workers.

81. This briefing provides further advice on the detailed design of these additional accreditation standards for labour hire companies, and what additional accreditation standards should apply to franchisee employers.

We recommend expanding the labour hire accreditation category to cover all triangular employment arrangements

82. The risk presented by labour hire employers is their use of triangular employment relationships, where employees are placed under the control of a third party. The use of triangular employment relationships is not limited to traditional labour hire companies. For example, triangular employment also includes, but is not limited to:

    a. employers who send employees on secondments to a third party, and

    b. parent or umbrella companies who place their employees with a third party such as a subsidiary company, or with a branch of their business that has a separate legal entity.

83. We therefore recommend that the labour hire accreditation category be expanded to include all employers who employ an employer-assisted temporary work visa holder under a triangular employment arrangement. This will provide a wider range of employers with the flexibility to move migrant workers across multiple businesses without requiring a variation of conditions, in exchange for meeting higher standards to manage the additional risks associated with this business model.

84. The term "triangular employment" is defined in the Employment Relations Act, and is well understood by employers. It does not capture employees working offsite, but receiving no formal supervision or direction from another employer onsite. For example, a plumber who is contracted to conduct work at an external site, whose work is not being directed by anyone other than the contracting party, or their direct employer, would not be considered to be in a triangular scenario. Employees moving between branches of a single company, where those branches are part of the same legal entity, is also not considered triangular employment.

85. It is estimated that there will be up to 600 employers that will be captured by the triangular employment accreditation category. This includes kiwifruit contractors (using non-RSE workers in supervisor roles), the ICT sector, traditional labour hire companies and hospitality and health sector companies. This is based on data from current users of the immigration system where INZ believes that triangular employment arrangements are in place, however we note that the additional flexibility offered by triangular accreditation could drive an increase in the number of employers using this business model.

We recommend that the 100 percent site visit each year setting is relaxed and INZ will provide further advice on the appropriate ratio

86. Cabinet originally agreed that all employers in the high-risk business model accreditation category would be subject to a site visit as part of our risk management process. When Cabinet made this decision, it was envisaged that it would only apply to 50 labour hire companies.

87. We no longer think that 100 percent site visits each year is appropriate because site visits are not always the most appropriate or efficient risk management tool, particularly with an expanded cohort of employers (i.e. all triangular employers and franchisees). For some employers with a known history of compliance and good employment practices, resource intensive site visits may not be necessary.

88. Instead, INZ will develop a risk based prioritisation process that prioritises the higher risk employers for more robust assessment and more site visits. Current fee modelling is being based on between a third and a half of employers receiving a site visit each year. A high proportion of employers will likely still be visited at least once in three years.

89. There is a standard process for monitoring risk, where officials undertake a process to evaluate INZ's risk management interventions in the system – this includes, but is not

limited to, post-decision verification, analysis of outcome information, and assessing if risk treatments are working as intended. This process will allow officials to review the effectiveness of this approach and may lead to higher numbers of site visits being undertaken.

90. INZ will provide further advice on changes to these ratios and processes as implementation progresses and more information is available about employers. The likely costs of these changes will be outlined in the upcoming briefing on fees.

We recommend that you remove the requirement that all high-risk business models must meet the high volume requirements, regardless of the number of migrants they recruit

91. Cabinet previously agreed that all employers in the high-risk business model category would be required to meet the high-volume accreditation standards, regardless of the number of the migrants they employ. This was based on the understanding that this category would only include 50 labour hire companies, who were very likely to be high-volume employers.

92. With an expanded cohort of employers in the high-risk business model accreditation group, we no longer think that these settings are appropriate. Many franchisees and triangular employers who are not traditional labour hire companies will only employ a small number of employer-assisted temporary work visa holders, so will not present the labour market risks that high-volume accreditation is intended to address.

93. We therefore recommend instead that these businesses will only be required to meet the high-volume accreditation standards if they employ more than five employer-assisted temporary work visa holders at one time.

Triangular accreditation – additional requirements

94. Triangular employers will need to meet a range of specific accreditation standards, designed to mitigate the migrant exploitation risks associated with their business model.

Requirement 1: Will only contract migrant workers to compliant businesses:

95. The purpose of this requirement is to help ensure that otherwise non-compliant businesses cannot access migrant labour through a triangular employment arrangement.

96. Triangular employers should undertake minimal due diligence to ensure businesses they are sending workers to are not poor employers. To meet this standard, we recommend that triangular employers must only send employer-assisted temporary work visa holders to businesses that:

a. have an NZBN,

b. are not on the publically accessible stand-down list for employers who have breached minimum employment standards,

c. have declared to the employer that they do not have immigration related issues that would have otherwise prevented them from being accredited in their own right.

Requirement 2: Triangular employers must have good systems in place to monitor employment and safety conditions on site

97. All triangular employers will need to show they have systems in place to monitor the employment and safety conditions of their workers. This will ensure that there are additional protections for migrant workers in triangular employment arrangements (beyond the basic checks of an employer's compliance history that will apply to all accredited employers), including proactive measures to prevent exploitation.

98. The expectation is that an employer will have systems in place that will enable them to monitor compliance with core employment and safety conditions such as: working in line with visa conditions, working appropriate hours, there are rest and meal breaks, safe working conditions, and no workplace bullying.

99. The employer's systems must cover proactive and reactive actions which could include, but are not limited to the following:

- upfront checking of conditions ahead of placing the worker,
- ensuring that the migrant worker and the controlling third party have a clear understanding of their visa conditions, and other employment and safety obligations,
- monitoring the work conditions of their workers which could include: having channels for workers to report any issues; and conducting appropriate onsite visits depending on the duration of the placements and any perceived risks,
- reactive plans to further investigate and act on potential issues that they identify through their monitoring or via external reports.

100. This includes an expectation that, for significant breaches, like working outside visa conditions, or working unrecorded overtime, employers will remove their workers immediately until issues are resolved. For moderate issues needing further consideration, such as poor workplace culture, or workplace bullying, the employer will need to take appropriate actions to investigate, raise and resolve the issues, or remove the worker.

101. INZ will be developing further guidance on what the appropriate actions and threshold should look like for employers, to ensure expectations are clear.

102. In order to remain accredited, INZ must be satisfied that the employer's systems are appropriate, and that they are being complied with. For example, if a compliance issue is detected, INZ will check whether systems have been genuinely set up and followed. Serious breaches would lead to the employer's accreditation being revoked until it is clear that better systems are in place.

Requirement 3: Must have a history of contracts for the supply of labour and of placing/employing New Zealand workers

103. This standard helps ensure that companies are genuine businesses with trading histories, and have not been set up for the sole purpose of recruiting migrants. We propose that this requirement be met by employers demonstrating:

a. a history of contracting labour for the past 12 months, and

b. at least 15 percent of their placement workforce are New Zealander citizens or resident visa holders in full time employment.

104. The 15 percent ratio is low enough that it allows businesses who have a low proportion of New Zealanders for genuine purposes (e.g. genuine skills shortages) to be able to meet this requirement, while still ruling out solely migrant worker models. The requirement that the New Zealand employees must be in full time employment will prevent against situations (also targeted at the job gate) where employers may have migrants on 30 guaranteed hours per week to meet visa requirements, but have New Zealanders on more causal contracts.

105. This standard will mean that no new businesses operating under a triangular employment model can access employer assisted migrants for their first 12 months of operation. We consider that the greater risk of exploitation associated with triangular employers outweighs the negative impacts of preventing new employers from employing

employer-assisted temporary work visa holders in a triangular employment arrangement. We will continue to monitor situations of new employers needing access to migrants in a triangular employment model in the first 12 months as they arise, and could make changes to allow some exceptions if justified, but we do not see a strong case at present.

106. In cases of businesses that have a change of ownership, any previous non-compliance by the previous owner would be scrutinised and managed as part of the initial standard accreditation checks. Businesses setting up a second separate business as part of expansion with the same owners may be exempted from the 12 month requirement where there are no risks identified.

Stakeholder feedback

107. We consulted a small group of labour hire companies on the draft triangular employer accreditation standards. The group supported expanding the labour hire accreditation category to include all triangular employment arrangements, and noted that the term "triangular employment" is well understood in the industry. Employers also noted that they would need a robust guidance about what the non-compliance threshold is for needing to remove a migrant from a host organisation, and that smaller businesses may need additional support to meet some of the requirements.

108. Employers felt that the shorter accreditation period of 12 months was not always proportionate to the risk proposed by triangular employers, and suggested allowing employers who demonstrate better practice to move to 24 month accreditation periods.

109. The NZCTU supported the proposed standards for triangular employers.

Franchisee accreditation – additional requirements

Cabinet has agreed that franchisees will need to meet additional requirements

110. In March 2020, Cabinet agreed as part of a package of legislative, operational and policy changes to reduce temporary migrant worker exploitation in New Zealand, that franchisees would be required to meet higher standards in the new employer accreditation system [DEV-20-MIN-0034]. This decision acknowledges particular risk factors for migrant exploitation in this business model: lower-paid work, and high up-front and ongoing expenses, combined with the franchisee's lack of control over certain aspects of the business.

111. We expect up to 400 franchisees to apply for accreditation under the new policy.

We recommend aligning these additional requirements with the Labour Hire and Triangular Employment standards

112. In addition to the standard accreditation requirements that all accredited employers are required to meet, franchisees should be subject to additional requirements that are consistent with some of the requirements that will apply to labour hire and triangular employers. These are:

a. **Requirement 1**: that the business has been operating for at least 12 months; and

b. **Requirement 2**: that the employer has a history of hiring New Zealand workers.

113. These requirements are not specifically directed at the risks factors present in franchised businesses. However, we consider that all employers in the higher-risk business categories should at minimum be required to meet these standards before they are able to be accredited, to demonstrate that:

a. they are operating a legitimate business with a history of compliance with minimum employment standards and immigration rules; and

b. the business has not been established solely for the purpose of recruiting migrant workers.

114. Although franchisees will only need to meet the two additional requirements above, they will be subject to further up-front verification and in-depth assessment of the standard accreditation requirements. They will also be subject to more post-decision verification than employers in the standard accreditation category.

In future, there may be an opportunity to include additional requirements for franchisors to monitor their franchisee's compliance with employment law

115. An upcoming legislative change as part of the Migrant Exploitation Review will introduce a duty on third parties with significant control or influence over employers to take reasonable steps to prevent those employers from breaching minimum employment standards [BR 2021-2383].

116. Once this legislation is further developed, we will provide you with advice on how the franchisee accreditation standard could be adapted to align with the new legislation. This could, for example, require franchisees to demonstrate that their franchisor is meeting their obligations under the new legislation before the franchisee can be accredited.

We will provide you with further advice on how a "franchise" should be defined for the purpose of the accreditation standard

117. Franchising is a diverse business model, attracting approximately 33,000 businesses in New Zealand across a variety of sectors. There is no definition of a "franchise" in New Zealand statute, but the immigration instructions implementing the franchisee accreditation standard will need to include a definition to be workable.

118. Broadly, we consider that the following features should form the basis of a definition of a "franchise":

a. A third party (franchisor) grants the employer (franchisee) the right to supply goods or services using the third party's brand;

b. The third party exercises a significant degree of control over the employer's business operations, by providing operating models and guidance that the employer is expected to abide by;

c. The employer has a financial obligation to the third party (e.g. is required to pay an ongoing fee or pay a percentage of their annual turnover); and

d. The third party provides ongoing technical assistance or support to the employer.

119. We need to do more work on this definition and test it with key external stakeholders, to ensure that it is clear, and that businesses are able to identify themselves as a "franchisee" for the purposes of the accreditation system. There is a risk that this definition could exclude businesses who operate in a model that is functionally similar to a franchise, and therefore presents a higher risk of exploitation, but is called something different (e.g. a "buying and marketing group"). We will provide you with separate advice on this issue in the coming weeks.

The franchisee accreditation category could be narrowed over time

120. The franchisee accreditation category may capture a large number of businesses in this first iteration of the new employer gateway system. We will monitor this, and provide

further advice on how the category could be better targeted, for example, to specific sectors with higher risks of exploitation, as more data emerges.

Confidential advice to Government

[redacted]

We recommend delaying the introduction of the three-gateway system, and phasing it in from late September 2021

126. Once you have agreed to the detailed accreditation standards, employers and other stakeholders will need five to six months to prepare before accreditation becomes compulsory. INZ will also need several months to design and build the new online forms, and complete and test the new ICT system.

127. We therefore recommend that employer accreditation should be phased in from late September 2021, with the new policy settings for employer-assisted temporary work visa applicants taking effect from 1 November 2021, rather than 1 July 2021 (which was planned prior to COVID-19). Phasing in accreditation will enable employers to be on-boarded ahead of the policy taking effect, and will help ensure a smooth transition to the new policy settings. This timing will require final decisions from you by the end of March, in order for us to start communicating the requirements to employers by the end of April.

128. If the border is still closed in the latter half of this year, you may decide to further extend onshore work visas. We recommend implementing the new visa settings from November regardless of whether further extensions are granted. Although further extensions would

reduce the number of employer-assisted temporary work visa applications, the strengthened labour market test at the job gateway would still be useful for any new employer-assisted temporary work visa applications, to ensure roles are offered to New Zealand jobseekers where they are available.

Next steps

129. You will receive two further briefings in early April:

    a. One covering further elements of the new system, including further details on the definition of a franchisee employer, and a summary of the Job Gate and the Migrant Gate settings and decisions which will be required to finalise these. The job gateway advice will include some straightforward decisions about advertising requirements and other elements of the labour market test. We will also provide advice on recalibrating other elements of the labour market test such as region and city requirements, which will be informed by the level of interest in tightening settings coming through from the immigration strategy sessions.

    b. One covering the process to transition employers to the new system.

130. Cabinet will need to approve regulations needed to implement the fee schedule for employers and visa applicants, and to make it compulsory for accredited employers to have a New Zealand Business Number (as previously agreed by Cabinet in 2019). We will brief you on the proposed fee schedule and provide you with a draft Cabinet paper by mid-May.

131. We will undertake further targeted consultation with employers to identify the impacts of different options for implementing a training and upskilling requirement for high-volume employers. We will report back to you within the next three months on these impacts, as well as any alternative options for driving an increase in the number of New Zealanders being trained and recruited into roles filled by migrant workers.

132. We are developing a monitoring and review framework for the accreditation standards (which will include a role for employers and unions), and will provide you with further information on this prior to implementation of the new system.

133. INZ is developing a Risk Monitoring and Review model (previously referred to as an assurance model) for the new employer-assisted work visa system. This will include checks before and after decisions are made at the employer, job and migrant gateways, prioritised according to an employer or visa applicant's risk level. It will also include data monitoring and analysis to ensure there is a regular review of the effectiveness of risk management in the system. INZ will report back to you on the details of the model prior to the implementation of the new system.

Annexes

Annex One: Details of the stand-down system for breaches of minimum employment standards and immigration rules

Annex Two: Detailed options and impacts of minimum pay requirements for high-volume employers

Annex Three: Estimate of franchisees holding a work visa

Annex One: Details of the stand-down system for breaches of minimum employment standards and immigration rules

A stand-down list for breaches of minimum employment standards was established in 2017

The current stand-down list system, which prevents employers who have received a penalty for breaching minimum employment standards from being able to support a visa application for a migrant worker, was established in 2017 to create a clear and transparent threshold for what level of non-compliance should be considered unacceptable for an employer supporting a visa application.

The stand-down period is determined by a graduated framework, linked to the type and size of the penalty imposed, to reflect the seriousness of the breach. This is set out in more detail below. If an employer is stood-down, they cannot support any employer-assisted visa application – this includes employer-assisted temporary work visas, as well as other employer-assisted visas such as RSE and SMC visas. A list of employers who are currently stood-down is published weekly on the Employment New Zealand website.

The stand-down periods are as follows:

Infringement Notices

- Six month stand down for a single Infringement Notice
- A further Infringement Notice, if issued outside this six month period, will incur another six month stand down period.
- If more than one Infringement Notice is issued at one time, or at any time within the following 12 months, a fixed 12 months' stand down period will apply.

Penalties ordered by Employment Relations Authority or Employment Court (non-pecuniary):

Individual penalties	Company penalties	Stand-down period
$1,000 or less	$1,000 or less	6 months
greater than $1,000 but less than $10,000	greater than $1,000 but less than $20,000	12 Months
$10,000 or greater but less than $25,000	$20,000 or greater but less than $50,000	18 Months
$25,000 and above	$50,000 and above	24 Months

Penalties ordered by Employment Relations Authority or Employment Court (pecuniary):

- 24 month stand down for pecuniary penalties ordered for a case from the Court.

Declaration of Breach ordered by the Employment Court

- 12 month instant stand down when Declaration of Breach issued, adjusted upwards as appropriate to reflect the resulting penalties ordered (up to a total of 24 months.)

Banning Order ordered by the Employment Court

- 12 month stand down from recruiting migrant workers for employers incurring a banning order of less than 5 years, to be added at the end of the ban period.
- 24 month stand down from recruiting migrant workers for employers incurring a banning order of 5 years and over, to be added at the end of the ban period.

As part of the accreditation system, we propose an additional requirement that, once the stand-down has expired, the employer must also satisfy the Labour Inspectorate that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance.

As part of the Temporary Migrant Worker Exploitation Review, Cabinet agreed that employers would also be stood down – either temporarily or permanently – for some existing Immigration and Crimes Act offences

In March 2020, as part of a suite of changes following the Temporary Migrant Worker Exploitation Review, Cabinet agreed that certain Immigration Act and Crimes Act offences would be added to the stand-down framework. The offences and associated stand-down period are outlined below:

Low-mid level offences where sentence is a fine only:

- Conviction for any of the following Immigration Act offences will result in a temporary stand-down if the sentence was a fine only:

Section	Offence	Penalty
343(1)(d)	Aiding, abetting etc any person to be / remain unlawfully in NZ / in breach of visa conditions (no requirement of material benefit)	Imprisonment for < 3 months and/or <$10,000 fine
344(d)	Resisting or intentionally obstructing an IO	
342(1)(a)	Making a statement / providing information knowing it is false or misleading	<$5,000 fine
347	Knowingly publishing false or misleading information	
350(1)(a)	Knowingly employing a person not entitled to do that work	<$50,000 fine

- The stand-down period will be calculated according to the following formula:

Fine	Stand-down period
< $1,000	6 months
$1,000 to $10,000	12 months
$10,000 to $25,000	18 months
$25,000 +	24 months

Mid-level offences where the penalty is imprisonment

- Convictions under s 343(1)(d) or s 344(d) of the Immigration Act (see above), where the penalty is imprisonment, will result in a permanent bar on supporting visa applications.
- We are currently considering whether there are any circumstances in which it may be appropriate to make an exception to the permanent ban.

Serious Criminal offences

- Convictions for any of the following offences will result in a permanent bar on supporting visa applications, regardless of the level of penalty ordered:

Act	Section	Offence	Penalty
Immigration Act	343(1)(a)	Aiding, abetting etc any person to be or / remain unlawfully in NZ / in breach of visa conditions for material benefit	Imprisonment for <7 yrs and/or <$100,000 fine
	345	Improper dealings with immigration or identity documents	
	348	Altering forms	
	342(1)(b)	Supplying any information to an IO or RPO that is false or misleading in any material respect	
	351	Exploitation of unlawful employees and temporary workers	
Crimes Act	98C	Smuggling migrants	Imprisonment for <20 yrs and/or <$500,000 fine
	98D	Trafficking in persons (including slavery)	

- As above, we are currently considering whether there are any circumstances in which it may be appropriate to make an exception to the permanent ban.

These decisions will be partially implemented through the new accreditation system. The accreditation standards will include stand-down periods and permanent bars for employers convicted of the offences outlined above, however this will only prevent employers from supporting employer-assisted temporary work visa applications. For other employer-assisted visa types (e.g. RSE and SMC), the stand-down periods and permanent bars will be implemented at a later date, as part of the implementation programme for the Temporary Migrant Workers Exploitation Review.

As with stand-downs for employment standards breaches, we are proposing an additional requirement as part of the accreditation system that, once a stand-down for an immigration offence has expired, the employer must also satisfy INZ that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance.

As part of the Temporary Migrant Worker Exploitation Review, Cabinet also agreed to establish an immigration infringement offence regime, and that employers issued with an infringement notice will be stood-down

As part of the Temporary Migrant Worker Exploitation Review, Cabinet also agreed to establish a range of immigration infringement offences to address lower level offending that does not meet the bar for criminal prosecution. When an employer is issued with an infringement notice, they will have to pay an infringement fee and will be stood-down from supporting visa applications. The stand-down period will be determined according to the formula that is currently used to stand-down employers who have been issued with an infringement notice for employment standards breaches (i.e. six months per infringement notice, with a maximum of 12-months for multiple infringements in the same period). Employers will have the ability to challenge an infringement notice in a defended hearing before the District Court.

The new infringement offences that Cabinet has agreed to are:

- Employing a person not entitled under the Immigration Act to work in the role ($1,000 per worker for individuals or $3,000 per worker for body corporates).

- Employing a person in a role or under conditions that do not match those provided in their employer-supported visa application ($1,000 per worker for individuals or $3,000 per worker for body corporates).
- Failing to provide documents requested by an immigration officer exercising a new power I propose below ($1,000 per notice).

Legislative change is required in order to establish these new infringement offences. These changes will be included in the Migrant Worker Protection Bill and will not be in place in time for the go-live of the employer accreditation system. As an interim measure, we propose clarifying that employing a person not entitled under the Immigration Act to work in the role, and employing a person in a role or under conditions that do not match those provided in an employer-assisted visa application, will make an employer ineligible for accreditation until they have satisfied INZ that they have rectified the non-compliance and taken appropriate steps to prevent further non-compliance.

We do not recommend implementing the six-month stand-down period for these breaches until the infringement offence regime has been fully established in legislation. The framework for determining stand-down periods relies on the size and type of the penalty issued to determine a stand-down period that is proportionate to the breach. Without formal infringement offences, there will be no financial penalty attached to the non-compliant behaviour, so it is not appropriate to assign a stand-down period.

We also recommend including the provision of false and misleading information to INZ in the list of non-compliant behaviours that will make an employer ineligible for accreditation, as this has been identified as an area that is not fully addressed by the infringement offences Cabinet has agreed to. Confidential advice to Government

Annex Two: Detailed options and impacts of minimum pay requirements for high-volume employers

Option 1: Minimum threshold of 10 percent above minimum wage (recommended)

Under this option, if there is no collective agreement in place, the job would need to be advertised and paid at a starting rate of at least 10 percent above the minimum wage. Based on a $20 minimum wage, this would mean that employers would need to pay at least $22 for roles approved at the job gateway – roughly equivalent to the current living wage of $22.10.

This would mean that the minimum pay threshold would increase in line with minimum wage increases. If there was no increase in any given year, the minimum pay threshold could be increased in line with the Consumer Price Index instead.

This option would not put any upwards pressure on occupations that already pay at least 10 percent above minimum wage, but the threshold could be reviewed and raised if the Government wished to increase pressure on this group in future.

As at 12 January 2021, 26 percent Privacy of natural person of temporary work visas for high-volume employers where a pay rate could be determined were paid below $22. The table below contains a full list of affected sectors:

Sectors	Number of visas where pay <$22
Hospitality	1051
Tradespeople and Labourers	860
Retail	691
Meat Processing	273
Metal	182
Aged Care	171
Other	153
Telecommunications	132
Wood	112
Cleaning	108
Road	103
Agriculture	97
Personal Services	78
Automotive	69
Warehousing	67
ICT	56
Administrators and Office Workers	49
Forestry	48
Health Care	47
Horticulture and Viticulture	47
Food	33
Tourism	26
Printing Services	15
Sports and Recreation Professionals	13
Management nec	12
Professionals, Technicians and Managers	12
Office Professionals	11
Education	10

Fishing	9
Air	8
Clothing	8
Emergency, Law Enforcement and Security	8
Science Professionals	7
Social Assistance	6
Animal Care Services (non-veterinarian)	Privacy of natural persons
Plastics	
Post	
Creative	
None given	
Grand Total	

Option 2: Employers increase on previous wages each accreditation period

Under this option, if there is no collective agreement in place, employers would need to show that the minimum pay rate advertised and offered for a role had increased by at least the percentage increase in the minimum wage plus one percent per annum since the last accreditation period. INZ would use the job checks approved in the first accreditation period as a baseline, with the pay increases required in the following accreditation period. There would be no requirement to increase the pay rate if the role is paid at least the median wage.

Based on the upcoming increase in the minimum wage from $18.90 to $20 (5.8 percent increase), employers would need to increase wages by 6.8 percent in their second accreditation period. This would result in an increase of between $1.29 and $1.72 for roles paid below the median wage.

We propose using the percentage increase in the minimum wage plus one percent to ensure that employers could not simply meet the requirements by implementing minimum wage increases for their lowest paid employees (other measures such as Consumer Price Index or percentage increase in the median wage have generally increased at a lower rate than minimum wage since 2014). As above, if there is no increase in minimum wage in any given year, the pay increase could be tagged to the Consumer Price Index instead.

As at 12 January 2021, 78 percent (14,021) of temporary work visas for high-volume employers where a pay rate could be determined were paid below the median wage – 52 percent Privacy of natural persons were paid at least 10 percent above minimum wage, but less than the median wage (i.e. $22-26.99). The table below contains a full list of sectors represented in the $22-26.99 pay range:

Sectors	Number of visas where pay is $22-26.99
Tradespeople and Labourers	3,337
Aged Care	1,314
Hospitality	715
Retail	568
Metal	519
Telecommunications	401
Health Care	348
Agriculture	347
Road	247
Administrators and Office Workers	203
Automotive	182
ICT	165
Other	153

Horticulture and Viticulture	95
Professionals, Technicians and Managers	95
Forestry	93
Meat Processing	81
Office Professionals	79
Personal Services	70
Education	58
Management nec	58
Wood	53
Warehousing	48
Food	29
Science Professionals	26
Cleaning	25
Social Assistance	23
Creative	15
Animal Care Services (non-veterinarian)	12
Emergency, Law Enforcement and Security	8
Sports and Recreation Professionals	8
Energy	8
Engineering Professionals nec	8
Fishing	8
Plastics	8
Tourism	7
Marine	6
Printing Services	Privacy of natural persons
Air	
Other Services	
Clothing	
Post	
None given	
Grand Total	

Annex Three: Estimate of franchisees holding a work visa

The following table provides an estimate of franchisees that are currently holding a work visa. This data was extrapolated from a summary of data that lists all employers (including franchisees) that hold a current work visa.

Franchise	Number of franchisees holding a current work visa	Number of franchisees using less than 5 migrants	Number of franchisees using 6 or more migrants
Mechanical Services	25	25	
Fitness and beauty	13	13	
Food and beverages	177	177	
Computer & telecommunications	Privacy of natural persons		
Home and building	17	Privacy of natural persons	
Home services	Privacy of natural persons		
Leisure and education	5	5	
Retail	35	34	1
Other	72	65	8
Total	347	337	10

Additional context for stakeholder feedback

Federated Farmers of New Zealand wish to clarify the following statements:

> *Dairy NZ and Federated Farmers noted that the farming industry will likely seek to recoup some of the additional compliance costs by increasing the amount they charge their workers for housing.* [paragraph 73 refers]

Federated Farmers of New Zealand advise that "Housing is often undervalued by farmer employers in the employment package. We are strongly encouraging farmers to include the full market value of the housing that they provide to ensure that employees are aware of the total value of their employment package, and for migrant employees this will help to help meet the $25.50 per hour requirement to be eligible for a 3 year visa."

> *Dairy NZ and Federated Farmers expect that most farmers with more than five workers on an employer-assisted temporary work visa will restructure their businesses so that they are no longer considered high-volume employers.* [paragraph 75 refers]

Federated Farmers of New Zealand advise that "We understand a small number of farming businesses (circa 20?) will be captured under the proposed high-volume category. Given that many of these larger employers will be several farms run under one business, we considered it may be possible to operate each of these farms as individual entities."

The New Zealand Council of Trade Unions also requested that their feedback on the accreditation proposals (email attached on following page) be proactively released to provide context to the following statement:

> *The NZCTU ... recommended that employers should not be able to use a collective agreement as evidence of improving pay and conditions, preferring that all employers be required to pay at least 10 percent above minimum wage.* [paragraph 77 refers]

From: Privacy of natural per
To: Andrew Craig
Cc: Privacy of natural persons
Subject: FW: Temp work employer accreditation - consultation [UNCLASSIFIED]

Kia ora AC,

Good to talk briefly today. As promised, please find below our initial feedback on the proposals.

In general, we support the approach of seeking to make criteria clear, objective and measurable. However, we would caution against limiting requirements to those that are verifiable by automated processes. We support a mix of requirements, including some that are verifiable by automated checks and others that require a declaration by applicants that can then be subject to a later audit and compliance process.

To clarify and discuss: what opportunity will there be for trade unions and other interested parties to comment on applications for accreditation? We suggest the CTU should receive a regular batched list of applications under consideration, for circulation to affiliates. Affiliates could express interest in any application and then submit comment within a set timeframe, such as 15 working days. This should be incorporated into an updated protocol for communication between CTU and Immigration NZ.

High Volume Accreditation

We support the objective and requirements as agreed by Cabinet, including the high-level criteria to require employers to show commitment to training and upskilling New Zealanders, as well as to improving pay and conditions over time.

We note that MBIE is recommending a change of scope from "employers recruiting more than five migrants over a 12 month period" to "more than five migrants at one time". We clarified with AC today that this means "employing more than five migrants at one time" (and not "recruiting more than five migrants at one time"), which makes sense to us.

Training and upskilling New Zealanders

We support the intent of the three options, being to incentivise recruitment and training of NZ residents, especially MSD referrals.

We are unsure that spending on training is the best measure of commitment, especially in cases where the appropriate training may be covered by a fees waiver. We would suggest an approach more similar to the ratio required by the other two criteria, e.g. for every migrant recruited, the employer must show substantive support for training of at least two NZ residents with a direct pathway into the relevant role. The specific meaning of both "substantive support" and "direct pathway" would obviously require further work. We support the requirement for training by an external provider, for the reasons stated in the proposal.

Improve pay and conditions over time

We support this requirement and the intent of the options provided. However, having a collective agreement in place should not be an alternative to paying a premium above minimum wage. Rather, having a collective agreement covering the relevant roles should be one option to show that market rates are being paid for the roles (in addition to paying above the minimum).

Standard Accreditation
To avoid doubt, add: To maintain accreditation, the employer must comply with the Immigration Act and all employment legislation, including the Employment Relations Act, Minimum Wage Act, Wages Protection Act, Holidays Act, and Health and Safety at Work Act. This would be consistent with the proposals approved by Cabinet and consulted on in 2019, to require accredited employers to 'meet minimum immigration and employment regulatory standards'.

Under steps required to minimise exploitation, add "provide information to employees supplied by any trade union", consistent with s30A of the Employment Relations Act.

Franchisees
We support the rationale and intent of a further requirement for franchisors to 'monitor and regulate' franchisees to ensure compliance with immigration and employment legislation. However, the proposed requirement would place this obligation within franchise agreements without the franchisor having any direct relationship with MBIE that would enable compliance to be audited. We suggest considering a requirement for franchisors to be accredited prior to accreditation of their franchisees, with the requirements of franchisor accreditation establishing the obligation to monitor and regulate franchisees.

Labour Hire
We support the proposed additional requirements.

Ngā mihi,

Privacy of natural persons New Zealand Council of Trade Unions - Te Kauae Kaimahi | PO Box 6645, Wellington Privacy of natural persons

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From: Andrew Craig Privacy of natural persons
Sent: Tuesday, 16 February 2021 8:56 a.m.
To: Privacy of natural persons
Cc: Privacy of natural persons
Subject: Temp work employer accreditation - consultation [UNCLASSIFIED]

Hi Privacy of na

As you'll be aware the team here has been progressing the more detailed work on the temporary work reform settings. Attached is a recent cut on the employer accreditation standards.

These are still being refined and haven't been to Ministers yet, so we'd appreciate any reactions from the CTU and thoughts to work through. In particular the high volume standards that require employers to show a commitment to improving training and wages and conditions (while being simple and easy to verify). Any thoughts are welcome on other things that we should look at, and happy to meet to discuss these plus any union role in the new system.

I'd appreciate that these aren't distributed wider at this point – but also welcome thoughts on an

appropriate small group of other representatives to talk to.

If you're able to provide any feedback by the end of the week that would be great. Also happy to try and find a time to talk through.

Cheers
AC

Andrew Craig
Manager – IMMIGRATION (SKILLS AND RESIDENCE) POLICY
Ministry of Business, Innovation and Employment | Hikina Whakatutuki

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