



New Zealand Productivity Commission
Te Kōmihana Whai Hua o Aotearoa

Primer to New Zealand's immigration system

Working paper 2021/06



NEW ZEALAND
PRODUCTIVITY COMMISSION
Te Kōmihana Whai Hua o Aotearoa



Contents

1	Introduction	1
2	How immigration policy is set and implemented	2
2.1	The overarching immigration legislation leaves room for ambiguity and interpretation.....	2
2.2	The implementation of immigration policy is not always predictable or transparent	4
3	The main components of the immigration system	6
3.1	Visa categories determine who can visit, study, work and live in New Zealand.....	7
3.2	Immigration objectives focus on both short- and long-term economic goals	9
3.3	Visa rules determine the terms and conditions of the migrant experience	10
4	Managing volumes of migrants	13
4.1	Current levers to control temporary migrant volumes risk circumvention.....	13
4.2	The residence programme controls the volume of residents.....	14
5	Managing the composition of migrants	16
5.1	Labour market tests and skills shortage lists help control the composition of migrants.....	16
5.2	The points system selects residents with promising settlement prospects.....	19
5.3	Meeting social and economic objectives through family migration and reunification.....	20
6	Other policies to support the migrant experience	23
6.1	Several policies are underway to address the issue of migrant exploitation	23
6.2	New Zealand offers a number of settlement services, but there are gaps.....	24
7	References	28

Key

F

Finding

1 Introduction

New Zealand's immigration system is constantly evolving, and has historically been responsive to changing circumstances. Although such flexibility and adaptability is undoubtedly a strength of the immigration system, it does mean the system's more detailed features are hard to pin down.

Broadly speaking, New Zealand's immigration system can be understood at two levels: a temporary system and a permanent system. Although two distinct systems operate, it would be a mistake to view them as entirely separate. Some temporary visas have clear pathways to residency, while some migrants on temporary work visas can end up staying in New Zealand for long periods of time without any assurance of being able to remain permanently. And although migrants who gain permanent residence are able to stay permanently in New Zealand, some may choose to continue to be mobile across countries.

This primer describes the main features of the temporary and permanent immigration systems, and the interactions between the two. It is part of the Productivity Commission's (the Commission's) wider inquiry into New Zealand's long-term immigration settings. The Productivity Commission has been asked by the Government to examine New Zealand's immigration system, and make recommendations that would best facilitate its contribution to long-term economic growth and the wellbeing of New Zealanders.

Understanding the main features of the immigration system is an important context for interpreting some of the immigration trends that are occurring, and some of the issues that have arisen as a result of the system.

At the time of writing, the Government is also considering a wider reset of immigration policy, taking advantage of the "once-in-a-generation opportunity to take a different path for immigration while New Zealand's borders are closed" (Hon Stuart Nash & Hon Kris Faafoi, 2021). Details on this immigration reset have not yet been publicly announced.

The Commission has made several key findings about the current immigration system:

- Changes to immigration policy can be passed relatively quickly, without the usual public accountability processes. While the ability to move at pace has some advantages, it can also reduce the transparency and rigour of decision-making processes, and can increase uncertainty and decrease perceptions of fairness.
- The immigration system can accommodate a range of skill requirements and needs, but the Government does not actively use available levers to manage volumes. The residence programme controls the number of migrants who can gain residence, but the number of migrants who can enter and stay in New Zealand on a temporary visa is not capped. Issues arise when the immigration system as a whole cannot deal with large volumes of applications.
- Visa categories differ in their focus on either short- or long-term economic objectives. There is little guidance on how to deal with potential trade-offs between these objectives and whether some of them ought to be prioritised over others.
- Processes for assessing the risk of a migrant competing with local workers for low-waged or low-skilled jobs have not been robust, with few incentives for firms to transition to practices less reliant on migrant labour. Nevertheless, the New Zealand labour market has (on average) performed well on a number of fronts. These conditions likely dampened the potential negative impact of increased employment of migrants on the wages and employment of locals.

2 How immigration policy is set and implemented

Immigration policy directly affects people's lives and livelihoods. Being certain about what the immigration policy of the day is and how it will be implemented, as well as what direction it might be heading in the near future, helps migrants and potential migrants make well-informed decisions about their future in New Zealand. Businesses likewise make decisions about their current and future needs based on their certainty of immigration policy and how immigration decisions will be made.

Yet immigration policy also needs to be flexible. It needs to be able to respond to changing circumstances, such as if the outcomes of a policy are inconsistent with the policy's objectives or if the policy has had unintended consequences. Sometimes these changes might need to be made quickly to minimise further gaming of the system. For instance, giving notice of a change could lead to the system getting flooded with applications from people trying to get in before the policy change is implemented.

2.1 The overarching immigration legislation leaves room for ambiguity and interpretation

The overarching legislation that sets the framework for immigration laws is the Immigration Act 2009 (the Immigration Act). The purpose of the Immigration Act is "to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals" [s 3(1)]. Because the Government is not required to clarify or define what constitutes the "national interest", the purpose of immigration policy can be ambiguous.

Current immigration law and policy does not explicitly reference the Treaty of Waitangi. However, the absence of a Treaty clause in legislation does not mean the Treaty or tikanga obligations are irrelevant or do not apply. There is currently no official guidance on whether there is a Treaty interest in immigration policy, and if there is, how that interest should be acknowledged.¹

Immigration New Zealand's (INZ's) Operational Manual is the guide that INZ immigration officers use to determine whether or not to grant a visa. The Operational Manual sets out the rules and criteria that determine who can be granted a visa or permission to enter the country, and under what conditions.

Amending immigration instructions is the primary mechanism to implement government immigration policy decisions. For the purposes of legislation, immigration instructions are statements of government policy, but are not legislative instruments or disallowable instruments². This makes it easier and faster to change immigration policy compared with laws made by Parliament.

The kinds of matters that the immigration instructions may constitute are wide ranging, and include:

- setting general or specific objectives of immigration policy;
- setting rules or criteria for determining a person's visa eligibility;
- any statement of, or rules or criteria or process for, determining the number or categories or ranking of persons or classes of persons whose applications for visas may be granted at any particular time or period;

¹ As part of its inquiry, the Commission sought the views of Whaia Legal on whether there is a Treaty interest in immigration policy, and how the Crown can honour Te Tiriti o Waitangi and mana Māori in developing and applying immigration policy to ensure it reflects the interests and aspirations of tāngata whenua as whānau, hapū and iwi (Whaia Legal, 2021).

² Legislative instruments are laws made by the Governor-General, Ministers of the Crown, and certain other bodies under powers conferred by an Act of Parliament. Disallowable instruments are delegated legislation that must be presented to the House and can be disallowed by the House.

- matters relevant to balancing individual eligibility for a visa against the overall objectives or requirements of immigration instructions;
- conditions that may be imposed upon a visa;
- the nature and extent of the discretion that immigration officers may exercise in making a decision on any visa [Immigration Act, s 22(5)].

Because changes to immigration policy often do not require legislation, there are several levels of accountability in the standard policymaking system that may be skipped over, including: performing a Regulatory Impact Assessment (RIA); select committee processes; and the public submissions process for draft Bills. Box 1 explains why one part of the standard policymaking process, the RIA, can increase transparency and the quality of policy analysis.

Box 1 **What is the value in conducting a Regulatory Impact Assessment?**

Most new immigration policies have no direct legislative or regulatory implications and therefore do not require an RIA. The NZ Treasury advises that the two main benefits of conducting an RIA include:

- Enhancing the evidence base to inform decisions about regulatory proposals – to ensure that all practical options for addressing the problem have been considered, and that the benefits of the preferred option not only exceed the costs but will deliver the highest level of net benefit; and
- Transparency – the presentation of agencies' free and frank advice to decision makers at the relevant decision points provides reassurance that the interests of all sectors of the New Zealand public have been considered. Impact Analysis also aims to encourage the public to provide information to enhance the quality of regulatory decisions, to further inform the evidence base. (NZ Treasury, 2017)

The fact that major immigration policy decisions (such as what kind of migrants the immigration system should prioritise, whether to introduce or cancel a visa category, the criteria for obtaining a certain visa) are not subject to a RIA process means they miss the following layers of scrutiny:

- Being explicit about what objective the policy change is trying to achieve, and how it will achieve that objective. This also involves defining the problem that the policy is trying to resolve, and assessing its magnitude.
- Evaluating and balancing trade-offs between policy priorities.
- Considering what options are least costly, or would be most beneficial, which requires identifying the full range of feasible options.
- Acknowledging existing legislation and regulations that the policy proposal is related to, including relevant decisions that have already been taken (for example, legislation that has not yet passed).

2.2 The implementation of immigration policy is not always predictable or transparent

INZ, which is located within the Ministry of Business, Innovation and Employment (MBIE), holds most of the powers related to administering the immigration regime. The immigration policy function is also situated in MBIE. INZ's immigration officers have functions and powers over: visa decision making; entry permission; compliance and enforcement; and detention. The Office of the Auditor General (the OAG) conducted an inquiry into visa and permit decision making and other issues in 2009. It recognises there are two main ways immigration officers exercise discretion:

First, officers need to interpret and apply relevant immigration policy to the specific circumstances of applicants. Although different interpretations of policy or balancing of factors could result in two officers making a different decision about similar visa or permit applications, decisions need to be made on a consistent basis.

Secondly, officers must be satisfied that applicants for visas or permits are genuine and meet specified health, character, and other policy requirements. Officers have a great deal of discretion in deciding how much verification work is done about an applicant – or the information the applicant has provided – to test that the applicant meets the specified requirements. (Office of the Auditor-General 2009, 32).

A recent and prominent example of where INZ officials have exercised discretion is in the informal prioritisation of Skilled Migrant Category (SMC) resident applications (Box 2).

Box 2 Chief Ombudsman finds a lack of transparency in INZ application processing

The Chief Ombudsman has received a number of complaints about the lack of transparency around the processing of SMC resident visa applications (see section 1.1 for further information on how SMC visas are processed). Complaints to the Chief Ombudsman claimed that:

- INZ was 'cherry-picking' certain SMC applications and allocating these ahead of other applications;
- these prioritisation criteria were inconsistent with the immigration instructions;
- INZ had not been transparent with applicants and prospective applicants about the criteria (Chief Ombudsman, 2021).

After investigating the substance of these complaints, the Chief Ombudsman considered that during the period July 2018 to 23 February 2020, INZ exceeded the limits of authority and lacked transparency.

During this period, INZ adopted informal prioritisation criteria. INZ advised that the criteria were developed by the residence management team and discussed with the National Manager at the time.

INZ prioritised SMC applicants with job offers where: the principal applicant's salary was equal to or over twice the median wage; the principal applicant worked in an occupation that required occupational registration; or the employer was a government department.³ This approach differed from the official immigration instructions, which only required immigration officers to prioritise SMC applicants with a job offer.

The Immigration Act, s 26 gives immigration officers the discretion to determine the order and manner of processing any visa application unless there are immigration instructions giving specific direction.

³ This criterion was subsequently removed.

The Chief Ombudsman considered that it was not within the National Manager's authority to create internal, informal priority criteria that superseded the immigration instructions (that is, the criteria around salary, occupational regulation and whether the employer was a government department).

The Chief Ombudsman also considered that there was a lack of transparency surrounding the informal priority criteria. In fact, applicants only became aware of the informal priority criteria through discussions with other applicants, through immigration advisers on social media, and Official Information Act 1982 (OIA) requests.

INZ has formally apologised following the Chief Ombudsman's findings, and said "the informal criteria came at a time of increasing visa volumes when INZ needed to make sure those highest skilled applicants did not have to wait in the long residence queue" (Bonnett, 2021).

Source: Chief Ombudsman (2021)

F2.1

Immigration policy needs the flexibility to respond to the country's changing circumstances, but also needs to be transparent and provide certainty to the public and potential migrants. The current immigration system has a lot of flexibility, but does not undergo the same level of transparency, public scrutiny or robust policy assessment requirements as other public policies.

3 The main components of the immigration system

Immigration settings determine who is allowed to enter and remain in a country, enabling governments to exercise control over its borders.⁴ Governments can use immigration settings to control the volumes of migrants, the types of migrants (income, occupation, education qualification, nationality), the length of time migrants can stay in the country, and the rights they have.

The main components of the immigration system are designed to support the purpose of the Immigration Act, and the rights of individuals, by controlling the volumes of migrants, the kinds of migrants, and regulating the conditions of their stay.

In March 2020, New Zealand closed its borders to most non-citizens and non-residents in response to the Covid-19 pandemic. The following sections describe the pre-Covid immigration system. The pre-Covid settings are important to understand as a way of interpreting some of the problems and trends that were emerging, in part, because of these settings. However, significant changes to the temporary visa system have been approved by Cabinet and are expected to be implemented from mid-2022 (Office of the Minister of Immigration, 2019a, 2019c).

Because the changes are not yet in force, it is possible that the policy agreed by Cabinet in 2019 might be different to the policy implemented, as more detailed policy work is being completed. This means the INZ website, which informs the public on how the policy will be implemented, may include slightly different details from the original Cabinet paper (Immigration New Zealand, 2021b; Office of the Minister of Immigration, 2019a, 2019c).

The major changes to temporary visas are described in Box 3.

Box 3 Major changes to the temporary visa system from mid-2022

A new Accredited Employer Work Visa (AEWW) will be available from mid-2022, replacing six temporary work visas, including the two major temporary work categories: the Essential Skills visa and the Work to Residence visa. The new visa system is intended to address some of the challenges and issues with the current employer-assisted temporary work system, including that it:

- is needlessly complex;
- is unable to respond appropriately to regional and sectoral variation;
- does not create an incentive for industry to look to train suitable workers already resident in New Zealand;
- is not able to provide information back to other government systems to support domestic investment and responses; and
- does not adequately screen out employers with poor track records of compliance (Office of the Minister of Immigration, 2019c).

The new visa process will be employer-led. If an employer wants to hire a migrant under this visa category, the employer is required to:

- apply for accreditation under the new system;
- apply for a job check to ensure the role they want to fill cannot be done by New Zealanders; and
- request a migrant worker to apply for a visa.

The temporary work visa categories that will be unaffected by these changes include the Recognised Seasonal Employer (RSE) limited visa, Working Holiday Schemes, Student visas and the Post-study Work visa. Box 7 describes the new job check process in more detail.

⁴ In some countries, high rates of illegal immigration mean that governments cannot have full control of who actually enters and/or remains in the country.

3.1 Visa categories determine who can visit, study, work and live in New Zealand

New Zealand's immigration system is organised by visa categories that determine who can visit and stay in this country. There were dozens of visa categories in operation prior to Covid, but many have been suspended because of the pandemic. A large number of international/humanitarian work visas are bespoke and have relatively few applicants (for example, the Thai Chef's Work visa, the Religious Worker Work visa). Many of the visas under this category, as well as the expansive and high-volume Working Holiday Schemes, have been introduced to meet diplomatic and foreign policy objectives.

The visa system is organised into a taxonomy of different categories and sub-categories. Within the system, each visa category has its own distinct set of objectives and eligibility criteria. At the highest levels⁵, the visa system is organised as follows for temporary and permanent migrants:

- **Residence**
 - Business
 - Skilled Migrant Category
 - Residence from Work
 - Investors
 - Entrepreneurs
 - Family categories
 - Partnership
 - Parent
 - Dependent child
 - Special categories
 - Special categories for certain nationalities (Samoan quota, Pacific Access)
 - Refugee and protection
 - Christchurch response (2019)
 - Covid-19 support
- **Temporary entry class visa**
 - Visitor visas (encompasses a range of categories including tourists, conference delegates, some family members of NZ citizens/residents, visiting academics)
 - Work visas
 - Essential Skills
 - Work to Residence
 - Recognised Seasonal Employer
 - Post-Study Work
 - Working Holiday Schemes
 - Partners of New Zealand citizens, residents, temporary workers and international students
 - International/humanitarian (see paragraph above)
 - Interim visas
 - Student visas
 - International students (includes fee-paying foreign students, exchange students, vocational trainees)
 - Dependants (includes partners and dependent children)
 - Limited visas (granted if there is a risk that the person will remain in New Zealand beyond the expiry of their visa)
 - Military visas (for example, members of a visiting armed force)
 - Special temporary visas (for example, diplomatic staff).

⁵ Not a comprehensive list.

Residents can apply for permanent residency after two years if they have demonstrated a commitment to New Zealand. Permanent residents can then apply for citizenship if they have been living in New Zealand as a resident for at least the last five years. Both resident and permanent resident visas allow the holders to live permanently in New Zealand, the main difference is around travel conditions.⁶

Having a range of visa categories reflects the fact that people arrive in this country with different intentions, and New Zealand may look to attract different kinds of migrants for different reasons. For example, the RSE visa category was introduced in part because of an increase in demand for labour in the horticulture industry during seasonal peaks, at the same time that governments in the Pacific Islands were pressing for more unskilled and low-skilled work opportunities for migrants in Australia and New Zealand (Gibson & Bailey, 2021).

The ability to add or remove visa categories allows the immigration system to be adaptable to new opportunities or respond to changing circumstances and events. However, adding categories that do not limit volumes can lead to unintended growth in the volumes of migrants, or growth in volumes of migrants of a certain type. Most temporary migrant visas, including those that attract the highest volumes of migrants, are uncapped.⁷

Apart from controlling the number of visa categories, governments can also use eligibility criteria for the visa categories to control migrant volumes and composition. For example, tightening eligibility to lower volumes could involve raising salary thresholds, raising maximum age limits, more stringent English proficiency and a higher minimum qualification level. Box 4 describes how a change in the eligibility criteria of a temporary visa can help support residency objectives, but may not be successful if the same applicants have access to other visa categories.

Box 4 **Tightening up visa conditions to reduce volumes: The Post-Study Work visa example**

The Post-Study Work visa is a drawcard for attracting international students to New Zealand and for retaining them. The objective of the visa is to facilitate and retain access for New Zealand employers and industry to global skills and knowledge. The SMC (a residence category) also awards points for having New Zealand qualifications and work experience.

Since its introduction, there have been growing concerns that the visa attracts high volumes of students studying lower qualifications, or studying at low-quality institutions. Because the visa is used as a pathway to residency, it can reduce the average skill level of residents.

Changes were made in 2016 and 2017 to make it more difficult for lower-skilled migrants to gain residency under the SMC: applicants needed to meet a higher threshold to gain points for 'skilled work' as well as needing more points overall. This led to a significant reduction in international enrolments at sub-degree level since 2016, with further reductions seen in 2017.

However, in 2018 the Minister for Immigration was still concerned that immigration settings had enabled the transition to residence for some international students who might otherwise not have been considered suitable for the residence programme (Office of the Minister of Immigration, 2018). Rather than simply tightening residency criteria, eligibility for Post-Study Work visas was tightened up too.

In 2018, the eligibility criteria for Post-Study Work visas was tightened by giving more generous (that is, longer duration) work rights to students with higher qualifications (Immigration New Zealand, 2018).

Raising the qualification requirements and tying them to varying durations will make it more difficult for students on lower-level tertiary qualifications to gain post-study work rights. It was

⁶ Residents are only allowed to travel outside New Zealand for a specified period of time (usually 24 months), while permanent residents have no time limit on travel conditions (Immigration New Zealand, 2021j).

⁷ The temporary visas that are capped include some Working Holiday Schemes, the RSE scheme, and some of the special work stream visas.

expected that a knock-on effect would be that it would also influence the numbers and skills mix of applicants for residence (Office of the Minister of Immigration, 2018).

But there are limitations to this approach. Tightening up visa conditions in one category will only have the desired effect on residency skills and volumes if those same kinds of applicants do not switch to other visa categories and pathways to residency. For example, the Essential Skills Work visa could be used as a substitute for the Post-Study Work visa for migrants in lower-skilled roles.

F3.1

The range of visa categories on offer reflects the various ways migrants can enter New Zealand and businesses can fill positions with migrants. If the criteria for one category becomes more stringent, applicants may shift their efforts to more accommodating visa categories. Attempts to address an observed issue must therefore consider behavioural responses across the immigration system as a whole.

3.2 Immigration objectives focus on both short- and long-term economic goals

Within the immigration system, each visa category has its own distinct set of objectives, as set out in the Operational Manual. These objectives help guide the eligibility criteria and rules of the different visa categories.

The objectives of the temporary work visa instructions (that inform the details of the visa categories) are as follows:

(W1) The objective of work visa instructions is to contribute to developing New Zealand's human capability base.

Work visa instructions seek to achieve this by:

- a) facilitating the access of New Zealand employers and New Zealand industry to global skills and knowledge; while
- b) complementing the Government's education, training, employment and economic development policies; and
- c) ensuring that the employment in New Zealand of non-New Zealand citizens and residence class visa holders does not undermine the wages and conditions of New Zealand workers. (Immigration New Zealand, 2021f)

Many temporary work visa categories also have their own objectives, which are expected to be consistent with the overarching temporary work objective. For example, the objectives of the Essential Skills visa are as follows:

Essential Skills work instructions contribute to the overall work instructions objective (see W1) by:

- a) incentivising the development of a highly skilled workforce, high quality jobs and workplaces, and high value industries; and
- b) helping New Zealand firms maintain capacity and supporting the provision of services meeting important social needs; while
- c) not displacing New Zealanders from employment opportunities or hindering improvements to wages or working conditions; and
- d) managing fiscal risks, settlement risks and public perceptions of migration; and
- e) ensuring the integrity of the immigration system and promoting the international reputation of New Zealand. (Immigration New Zealand, 2021f)

There are some inconsistencies in the objectives of different temporary work visas. For example, while some visa objectives are concerned with the displacement of local workers (Essential Skills, RSE), other visa objectives are not (Work to Residence, Working Holiday, Post-Study Work, Partner).

The economic objectives for permanent migration are similar, but not identical, to the objectives of temporary work visas. The major differences are that the residence programme (the route to permanent migration) has a stronger emphasis on social cohesion and less emphasis on complementing other government programmes or explicitly protecting local workers. The objectives of the residency programme are to:

...contribute to economic growth through enhancing the overall level of human capability in New Zealand, encouraging enterprise and innovation, and fostering international links, while maintaining a high level of social cohesion. (Immigration New Zealand, 2021f)

Although there are many consistencies across the high-level objectives of different visa categories, the immigration system is conspicuous for lacking a clear and single overarching strategy or set of priorities. This can make it difficult to make decisions when there are varying time horizons for benefits and costs. For example, is it more consistent with the objectives of the immigration system to grant visas to high volumes of working holidaymakers in order to secure an important trade deal, or to meet employer demand for workers by granting visas in order to avoid business collapse?

A lack of overarching strategy also makes it more difficult to assess trade-offs between the objectives of different visa categories, and to deal with any internal inconsistencies within the immigration system.

F3.2

The current immigration system seeks to achieve a number of economic objectives. Given there are sometimes trade-offs between short-term economic benefits and long-term productivity gains, the immigration system's lack of overarching objective could make it more difficult to ensure immigration supports the country's long-term productivity growth and wellbeing goals.

3.3 Visa rules determine the terms and conditions of the migrant experience

Different visas confer different sets of rights for migrants, especially around expectations of residency, visa duration and the ability to reapply, the ability to have partners and family join them, and who they can work for. These rights are often related to the objectives of the visa.

For example, migrants on the Essential Skills visa may only work in the specific occupation, for the employer and in the location specified on that visa (Immigration New Zealand, 2021e). In addition, migrants may only work for employers that can demonstrate they have unsuccessfully endeavoured to employ local workers first.

In contrast, other visas confer 'open work rights', meaning they can work for any employer in New Zealand, and those employers do not have an obligation to recruit locally first. The visas with 'open work' entitlements include:

- Working Holiday Scheme;
- Visas related to partners of New Zealand citizens, resident visa holders, or of people who hold certain types of work or student visas in New Zealand; and
- Visas for new graduates, who have recently completed a qualification in New Zealand.

One of the consequences of having different rules for different visa categories is that sometimes migrant may face different treatment, even if they are working in the same or similar jobs. For example, a dairy farm worker on an Essential Skills visa will have different rights and may even earn a different salary than a worker on a Working Holiday visa. Some visa rules may also increase the vulnerability of migrants to exploitation (Box 5).

Box 5 How visa conditions can increase the risk of migrant exploitation

Employer-assisted visas help to balance employers having access to the workers they need, while managing the risks of undermining work opportunities and wages and conditions for local workers. Tying migrants to an employer can ensure that employers undergo proper labour market checks before hiring low-skilled migrants. The Essential Skills work visa is an example of an employer-assisted visa.⁸

Employer-assisted visas require a migrant to work for a specified employer, in a specified region and in a specified occupation. These visa conditions can increase migrants' vulnerability, by making it harder for them to leave abusive or exploitative employers. A small but significant share of respondents to an MBIE migrant settlement survey reported troubling experiences, such as employers threatening to withhold entitlements or asking workers to pay to hold onto their jobs (Palmer & Varcoe, 2021).

In a wide-ranging report looking at the nature, drivers and consequences of exploitation, Collins and Stringer found that "the primary way in which employers have exploited migrants is by taking advantage of their immigration status in order to secure their dependence and their acceptance of exploitative employment conditions" (Collins & Stringer, 2019, p. 25).

Although variations in visa conditions are possible, bureaucratic delays in processing changes may be a barrier for migrants (Collins & Stringer, 2019).

The ability of migrants to easily move to a new job is arguably the best protection against exploitative behaviour. Mobility supports the bargaining power of migrant workers and encourages employers to offer good wages and conditions in order to retain their workers. Greater worker mobility also permits better job matches and opportunities for better labour market outcomes for migrants, with potentially beneficial impacts for productivity and wellbeing.

⁸ Like the Essential Skills visa, the new AEWV will continue to have conditions specifying an employer, job and location. To change any of these conditions, the visa holder will still have to get a variation of conditions or apply for a new visa.

Table 1 gives further examples of the variation in eligibility criteria and rights for different visa categories.

Table 1: Comparison of eligibility criteria and rights under different visa categories

	Working Holiday visa	Essential Skills visa	Work to Residence visa
Description	Temporary working holiday visa to work for any employer.	Temporary work visa tied to a specific employer.	A work visa with a pathway to residence after you have held the visa for 24 months.
Visa duration	Up to 12 months or 23 months for UK and Canada.	Up to 5 years, depending on pay and skill level of job.	30 months.
Age	18–30 or 18–35 (depending on the Working Holiday Scheme).	No limit.	55 or under.
Fulltime job required	Not required.	Required. Visa is issued for a specific job with a specific employer.	Required. Must be from an INZ Accredited Employer or for a job on the Long-Term Skills Shortage List.
Salary		Salary is used to indicate the role's skill band (higher, mid or lower). This affects visa duration and conditions.	Minimum salary requirements: Accredited employer – NZD\$79 560 per annum.
Partner/Dependent visas	Partner/children cannot be accompanied with visa holder.	Separate visas required for partner/children. They may be eligible for visas based on their relationship to the principal applicant, depending on their skill band.	Separate visas required for partner/children. They may be eligible for visas based on their relationship to principal applicant.

Note: Abridged version of original table. Details describe the system as at October 2019.⁹ (Immigration New Zealand, 2021a)

F3.3

Different visas have different rules and conditions, depending on their objectives. These varying conditions can create internal inconsistencies as migrants with similar profiles can work for similar kinds of employers, but be subject to different visa conditions that affect their overall experience. In more extreme circumstances, this can lead to visa conditions that increase migrants' vulnerability and risk of exploitation.

⁹ Noting major changes to the Essential Skills and Work to Residence visas are underway.

4 Managing volumes of migrants

4.1 Current levers to control temporary migrant volumes risk circumvention

Many temporary migrant visas, including those that attract the highest volumes of migrants, are uncapped. Currently, the main lever for controlling the volume and composition of temporary migrants is through the eligibility criteria for each visa category (see section 3.1). However, as Chapter 3 shows, this mechanism is undermined by the ability of migrants to change visa categories.

A secondary lever is through stand-down periods.

The Essential Skills visa includes a stand-down period for some migrants, where they can only stay in New Zealand on the visa for a maximum period of time.¹⁰ After that, migrants on a stand-down period must spend 12 consecutive months outside the country before applying for another Essential Skills visa. Stand-down periods apply to migrants in low-skilled or low-pay work, as a way of disincentivising the long-term use of temporary migrant labour. They also discourage such migrants from making long-term plans in New Zealand.

Stand-down periods can manage the volumes of temporary migrants by slowing down the cumulative volume. However, stand-down periods do not apply when migrants change visa categories. In fact, there are few restrictions to stop temporary migrants from remaining in New Zealand for longer than their original visa stipulated if they successfully apply for another visa. Also, the stand-down period applies to the individual migrant, but not to their employer, meaning that the employer can easily replace the outgoing migrant with a new migrant hire (although there are efficiency costs and possibly productivity costs associated with inducting a new hire). Stand-down periods therefore affect the stock of temporary migrants, but not necessarily the flows.

F4.1

Uncapped temporary visa categories and high degrees of flexibility have contributed to high volumes of immigration. Although governments have made some efforts to influence temporary migrant volumes, these policies are undermined by migrants being able to change visa categories and employers having little or no incentive to be less reliant on temporary migrants over time.

¹⁰ Under the Essential Skills visa, the maximum duration was three years of working if the migrant earned above the median wage, and two years of working if the migrant earned below the minimum wage. Under the AEWV, workers earning below the median wage will need to leave New Zealand for a 12-month period after they have been working for three years.

4.2 The residence programme controls the volume of residents

The Government's residence programme regulates the overall number of people granted residence and provides direction on which migrants' applications are prioritised within this overall number. People granted residence visas can apply for permanent residency if they spend most of two consecutive years within New Zealand and meet their other visa conditions. Permanent residents can enter and leave New Zealand without restriction.

The residence programme includes:

- Residence visa categories, which are the main way the Government controls numbers. This is done by limiting the number of residence visas available under different categories, either through numerical caps (for example, the cap for the parent residency visa is 1 000 a year) or policy requirements (for example, by raising wage thresholds).
- A planning range, which indicates the volume of migrants to be accepted as residents.

The planning range is decided by the Government as part of its overall residence programme. For 2018-19, the planning range was set at 50 000–60 000 visas. Within the planning range, residence visas are allocated in proportional streams:

- skilled/business migrants (60% of places);
- family members of New Zealanders (32%-33%); and
- people who come under New Zealand's international and humanitarian commitments (7%-8%) (Office of the Minister of Immigration, n.d.).

The Skilled Migrant Category (SMC) is the main residence category by volume, with visas allocated through a points-based system (see section 5.2 for an explanation of how the points system works).

Migrants applying for the SMC must meet a minimum threshold for number of points (at the time of writing, this was 100 points). They then enter the Expression of Interest (EoI) pool, which is intended to manage the number of applications received to fit the planning range. The relationship between the planning range and the management of applications for residency is therefore important. If eligible applications (demand for residency) exceed the planning range, queues for residency are likely to form. Where eligible demand is high and the allocation of residency visas is scarce, governments can either increase the planning range or make eligibility more difficult. In its latest Briefing for the Incoming Minister in 2020, MBIE noted this relationship:

The number of on hand residence applications has increased significantly: from around 9,000 in June 2018 to 25,000 (26 per cent are partnership resident visas) in June 2020, resulting in increased queue times for applicants. This results from a spike in demand for both skilled migrant category and residence from work visas with no corresponding increase in the New Zealand Residence Programme planning range (MBIE, 2020a).

Apart from the planning range, government could also tighten eligibility for applicants to (i) enter the EoI pool, and (ii) be invited to apply for residency once they are in the EoI pool. Currently, applicants in the EoI pool that reach a maximum number of points (at the time of writing, 160 points) are invited to apply for the SMC. Applicants are not ranked once they reach that maximum threshold. This can lead to large queues of migrants awaiting their application to be processed or awaiting residency in the EoI pool with an identical number of points (160).

The EoI threshold has remained steady at 160 points since 2017, despite high volumes of applications and a theoretical ability to raise the threshold when demand is high. Before that, the threshold had been 140 points for about a decade.

As at 25 October 2021, there were 11 511 unallocated skilled residence applications in the onshore general queue (Immigration New Zealand, 2021k). Although Covid-induced delays in processing have

contributed to this number, issues with wait-times for residence were evident pre-Covid. From 2018 to 2019, the number of unprocessed applications from skilled migrants for residence jumped from 8 000 to 19 000 (Bonnett, 2019a). In December 2019, more than 35 000 people were awaiting a residence decision, the highest number since 2011 (Bonnett, 2019b). The time taken between an application being lodged and then allocated to an immigration officer was also rising in 2018-19, from around to four months to almost eight months (Bonnett, 2019a). To deal with the large volumes of applications, INZ adopted an informal prioritisation process threshold (see Box 2).

Such queues increase uncertainties for temporary migrants and decrease opportunities for successful settlement. In its Briefing for the Incoming Minister, MBIE noted:

Evidence demonstrates a need for a reset of skilled residence settings: requirements may not sufficiently target highly skilled people and the queue for residence has increased significantly as the number of eligible applicants has exceeded the Government's planning range and processing capacity (MBIE, 2020a).

F4.2

The residency system has not managed to keep up with demand from rising rates of temporary migrants. This is in part due to not adjusting the points threshold in response to this rise in demand.

5 Managing the composition of migrants

5.1 Labour market tests and skills shortage lists help control the composition of migrants

New Zealand's immigration system influences the composition of migrants in some visa categories to mitigate risks to the local labour market. These risks include the displacement (unemployment) of local workers and lowering their wages and conditions. In its published advice to employers, INZ makes clear that:

New Zealand's immigration policies are designed to enable employers to access the skills they need to fill gaps in their workforce. And great care is taken to ensure that New Zealanders with comparable skills are not displaced. (Immigration New Zealand, 2021h)

The two tools currently in use for measuring these risks are the Labour Market Test (LMT) and skills shortage lists. Box 7 describes how labour market testing might change under the new temporary visa system.

When conducting an LMT, a visa or immigration officer must be satisfied that: the employer has made a genuine attempt to attract and recruit suitable workers in New Zealand; and suitable workers are not available in New Zealand (Immigration New Zealand, 2021f).

Matters a visa or immigration officer must take into account when determining whether or not an LMT is satisfied include, but are not limited to:

- the employer's case for an approval in principle, or in support of, an individual worker's application;
- evidence of a genuine attempt on the part of the employer to recruit New Zealand workers by way of advertising and/or use of other appropriate avenues of recruitment likely to attract New Zealand workers;
- advice from the Ministry for Social Development (MSD) on the unavailability of New Zealand citizens or residents suitably qualified by training and experience to do the work offered; and
- labour market advice from the particular industry. (Immigration New Zealand, 2021f)

In practice, the Commission heard from inquiry participants who perceived the LMT process as not being very robust. In its submission on proposed changes to the Essential Skills visa, the NZ Council of Trade Unions (NZCTU) argued that "enhanced and robust labour market testing is required to ensure that Essential Skills visas are issued in response to genuine skills shortages" (New Zealand Council of Trade Unions, 2017). In its submission on the same topic, BusinessNZ said:

All sides would question whether the Labour Market Test and the Essential Skills in Demand lists are effective and efficient regulatory approaches. Given this and the proposed changes to the Essential Skills policy, it would be timely to look at how effective and efficient regulatory tools such as the Labour Market Test and the Essential Skills in Demand lists are in achieving their stated objectives. (BusinessNZ, 2017)

Commenting on the efficacy of the LMT in the context of a regulatory review of the immigration system, MBIE noted in 2015 that:

It is particularly important that we ensure employers are adequately testing the local labour market for lower-skilled jobs. We note that, in practice, the vast majority of visa applications that require labour market tests or specific job offers are approved, so while there may be some compliance costs to employers, they will generally be able to employ a migrant worker. (NZ Treasury, 2015, p. 34)

Box 6 What does it mean to be 'high-skilled or 'low-skilled'?

INZ uses the Australian and New Zealand Standard Classification of Occupation (ANZSCO) to assess the skill level of most occupations. ANZSCO sorts occupations into five levels, with 1 and 2 being 'high skilled', level 3 'skilled', and levels 4 and 5 'low skilled'. In ANZSCO, skill level is defined as a function of the range and complexity of the set of tasks performed in a particular occupation. Skill level is measured by the:

- level or amount of formal education and training required;
- amount of previous experience required in a related occupation; and
- amount of on-the-job training required to competently perform the set of tasks required for that occupation.

There have been concerns that ANZSCO is a blunt tool for indicating the skill levels of individual workers, and that it has not been updated in recent years to reflect the changing labour market landscape. In the upcoming changes to the temporary migrant visa scheme (see Box 1), the assessment of skills will be replaced with a simple remuneration threshold set at the median wage. The terminology has also changed from high skilled/low skilled to high paid/low paid.

However, ANZSCO will still be used as an indicator for 'skilled employment' when applying for residency under the SMC.

Skills shortage lists are used as a more efficient alternative to individual LMTs. Occupations on a skills shortage list are not based on whether they are 'low skilled' or 'high skilled' (see Box 6), but whether an employer is struggling to get workers to meet demand. Skills shortage lists replace the need for employers with sustained shortages to go through repeated LMTs, thereby reducing costs and hassles for them.

There are three skills shortage lists:

- a long-term shortage list (where there is a sustained and ongoing shortage of high-skilled workers both globally and throughout New Zealand);
- a regional shortage list; and
- a construction and infrastructure shortage list.

These lists of occupations are reviewed annually by MBIE. The occupations that are on a list are decided according to information provided by affected industries, employers, unions and other interested parties (for example, occupational licensing bodies). The process of consulting with various parties is intended to identify unmet labour demand, and test whether employers are doing enough to attract workers from the local labour market – thereby endeavouring to manage the risk of migrants competing with local workers. Given the importance of consultation to inform the skills shortage lists, and the fact that the diagnosis of a 'skills shortage' is contestable, the process entails a large degree of judgement.

Box 7 New process for Labour Market Testing

From mid-2022, as part of the temporary work visa reforms described in Box 3, some employers of AEWV migrants will have to subject their jobs to a LMT. Jobs that do not need to undergo a LMT include jobs paying 200% of the median wage, jobs paying at or above the median wage in regions, and jobs in cities that are on a skills shortage list and pay at or above the median wage (Immigration New Zealand, 2021b).

The median wage is used as a proxy for determining “where the risk of displacement or wage depression is small and is likely to be offset by the expected benefit of accessing offshore labour” (Office of the Minister of Immigration, 2019c, p. 11).

Immigration officers have a set of measurable, reportable reasons for determining if a job has passed the test. The LMT for lower-paid (below median wage) roles consists of two parts:

1. The employer obtaining a Skills Match Report (SMR) from the Ministry of Social Development (MSD) that identifies if MSD has any clients that it considers available, and suitable or trainable; and
2. An assessment by INZ as to whether the employer has done everything required of them to test the labour market (such as advertising) in addition to obtaining a SMR.

In practice, this new process means that when MSD advises that there are suitable jobseekers available, and the employer has not made sufficient effort to engage with the domestic labour market, INZ will have limited grounds to determine the LMT has been passed. Employers may only reject a referred MSD client if they meet the specified acceptable reasons agreed by MBIE and MSD.

The new process is intended to improve the connections between the immigration system and welfare system, ensure the immigration system is responsive to the unique needs of different regions, and increase expectations on employers to employ and train more New Zealanders.

Source: (Office of the Minister of Immigration, 2019c)

As part of its inquiry, the Commission investigated the productivity and labour market impacts of immigration. In the decade up to 2020, New Zealand has experienced very high rates of net permanent and temporary migration. Temporary migration accelerated strongly over the period and has seen a shift in composition to migrants working in less-skilled occupations.

Yet throughout the period, the New Zealand labour market has (on average) performed well in creating new jobs, keeping unemployment low and participation high, and providing relatively strong opportunities for workers to access education and training, and to move to new jobs. These conditions likely dampened the potential negative impact of increased employment of migrants on the wages and employment of locals (NZPC, 2021a). This suggests that, despite concerns about robustness, levers to control the composition of migrants may not be the only the thing that matters for labour market outcomes.

F5.1

The immigration system appears to put a large emphasis on ensuring immigration does not displace local workers or undermine local wages and conditions, and it has been largely successful in doing so. Yet the two main tools for managing these risks (labour market tests and skills shortage lists) do not involve robust processes of measuring and testing. For managing the composition of migrants, these processes are also not applied to migrants with open work rights, meaning there are potentially unknown and unaddressed risks to the local labour market.

5.2 The points system selects residents with promising settlement prospects

Temporary migration visas have been an important pathway to residency, with most applications for residency occurring onshore. The Residence from Work visa is granted to temporary migrants who have been employed in New Zealand for more than two years on a Work to Residence¹¹ temporary visa. Ninety-four percent of SMC residency applications are made onshore, and applicants are awarded points under the points system if they are already working in skilled employment in New Zealand or have a job offer here.

The SMC is the largest residence category that allocates visas through the points-based system. This visa category uses a points system to assess applicants based on certain characteristics.¹² Points are awarded based on applicant attributes such as qualifications, age and English proficiency, as well as what they intend to do in New Zealand (for example, having an existing job offer, high remuneration, working in an area of absolute skills shortage, living in a region outside of Auckland). Partners and dependent children (aged under 24) can also be attached to the visa application. Box 8 gives further details on how points are allocated.

Currently, the points system for skilled migrant residency tends to prioritise migrants who are young and skilled. Points are also allocated based on characteristics related to employability and likelihood of successful settlement. The points system may also reflect the Government's other objectives, by shifting the allocation of points for certain attributes. For example, applicants can currently earn extra points if they have been offered work outside of Auckland on the basis that this may ease pressure on the city's housing and infrastructure.

Although the points system prioritises applicants up to a threshold (160 points at the time of writing), it does not rank applicants once they reach that threshold.¹³

It therefore does not prioritise applicants who could make the *greatest* contribution to society.

Box 8 How points are allocated under the points system

Points can be allocated for the following attributes:

- Age: points are allocated based on youth, ranging from 30 points for applicants aged 20–39, to 5 points for applicants aged 50–55.
- Job offer in skilled¹⁴ employment: 50 points.
- Job offer in an area of absolute skills shortage (as determined by the Long-Term Skills Shortage List): 10 points.
- Offered work outside of Auckland: 30 points.
- Job offer with pay above the high remuneration threshold: 20 points.
- Qualifications: points are allocated based on level of qualification, ranging from 70 points for Master's degree or PhD, to 40 points for NZQA level 3–6 certificate or diploma.
- Having a New Zealand qualification and having studied fulltime in New Zealand: 10 points for Bachelor's degree, up to 15 points for postgraduate qualification.
- Having skilled work experience: up to 50 points, depending on years of experience.

¹¹ The Work to Residence visa includes several categories within it, including the Talent (Accredited Employer) visa and Long-Term Skill Shortage List visa, Talent (Arts, Culture and Sports) visa and South Island Contribution visa.

¹² Note the Residence from Work category does not require applicants to go through the points system.

¹³ INZ has previously, however, adopted informal criteria as a form of prioritisation (see Box 2).

¹⁴ As measured by ANZSCO (Box 6).

- Having at least one year of New Zealand work experience: 10 points.
- Having work experience in an area of absolute skills shortage: up to 15 points.
- If the applicant has a partner accompanying the application, points are also allocated based on the partner's English proficiency, whether the partner is working in skilled employment or has a job offer in skilled employment, and whether they have a recognised qualification.

Source: (Immigration New Zealand, 2021g)

5.3 Meeting social and economic objectives through family migration and reunification

There are several pathways for partners and family members to join temporary migrants or residents in New Zealand. These pathways differ in their ease of access, the criteria that applicants must meet, and the conditions regarding how long they can stay in this country and whether they can work. The objectives for these visas tend to have an economic focus, although it is in a broader sense: rather than focus on the economic potential of the individual, some of these categories focus on the economic potential of the family as a whole (for example, attracting high skilled migrants by offering migration pathways for family members).

Table 2 outlines these various pathways. For brevity, the table only covers parents and partners, although there are also some visas available for dependent children, grandparents, siblings and adult children, inter-country adoption and culturally arranged marriages.

Table 2: Visas and pathways for partners and family members of migrants

Name of visa	Residence or temporary?	Objective/purpose (if provided)	Who it covers	Work rights
Partnership category (under the Family Resident Category)	Residence	The objectives of the Family categories are to: <ul style="list-style-type: none"> • strengthen families and communities, while reinforcing the Government's overall objectives in immigration instructions; and • contribute to NZ's economic transformation and social development. 	Applicants must provide sufficient evidence to satisfy an immigration officer that they have been living together for 12 months or more in a partnership that is genuine and stable with a NZ citizen or resident.	Open work rights
Parent Retirement Category (under the Family Category)	Residence	The objective of the Parent Retirement Category is to provide a residence class visa to those with family links to NZ who wish to make a significant contribution to NZ's economy.	Parents of NZ citizens or residents who can demonstrate they can support themselves financially in NZ (by undertaking significant investment in NZ and demonstrating a minimum annual income).	Open work rights
Parent Category (under the Family Category)	Residence	The objective of the Parent Category is to support family connections in order to: <ul style="list-style-type: none"> • progress New Zealand Government economic 	An application for a resident visa under the parent category is a two-stage process. People who intend to submit an application for a resident	Open work rights

Name of visa	Residence or temporary?	Objective/purpose (if provided)	Who it covers	Work rights
		<p>objectives for immigration; and</p> <ul style="list-style-type: none"> attract and retain skilled and productive migrants, while also limiting the costs of NZ Government benefits. 	<p>visa under this category must first submit an EOI. Parents must be 'sponsored' by their adult child, where the child is financially responsible for the parent over an initial 10-year period. The number of resident visas that can be granted under the Parent Category was limited to 1 000 people, but is currently suspended.</p>	
<p>Secondary applicant (under the SMC)</p>	<p>Residence</p>	<p>The aim of providing bonus points for partners' skilled employment and recognised qualifications is to recognise such employment and qualifications as an indicator of the likely contribution of the whole migrating family.</p>	<p>The principal applicant can earn bonus points on their SMC application if the partner has an offer of or current skilled employment in NZ, and whether the partner has a recognised qualification. The partner must meet English language requirements.</p>	<p>Open work rights</p>
<p>Secondary applicants for other residence visas</p>	<p>Residence</p>	<p>The objectives of the individual visa categories apply where allowing family members to join the principal applicant can help attract principal applicants in order to achieve the visa's objective.</p>	<p>The following visas allow applicants to bring in partners and dependent children: Talent (Accredited Employer) Resident visa, Investor visas, Entrepreneur visa.</p>	<p>Open work rights</p>
<p>Partners of international students</p>	<p>Temporary</p>	<p>Not provided</p>	<p>This visa allows partners of Student visa holders, who are in New Zealand studying towards a Level 7 or 8 qualification on the Long Term Skill Shortage List, or a Level 9 or 10 qualification, to work in New Zealand.</p>	<p>Open work rights for the duration of the principal applicant's visa.</p>
<p>Partners of temporary workers</p>	<p>Temporary</p>	<p>Not provided</p>	<p>Partners of people granted work visas allowing a stay in New Zealand of more than six months, excluding Essential Skills where principal applicant is paid below median wage, Working Holiday Scheme, RSE Scheme, and some other minor categories.</p>	<p>Open work rights for the duration of the principal applicant's visa.</p>

Name of visa	Residence or temporary?	Objective/purpose (if provided)	Who it covers	Work rights
Visitor visa (special categories)	Temporary	<p>The objective of the Visitor visa is to foster tourism, trade and commerce, international understanding and cross-cultural links, educational and scientific activities, while:</p> <ul style="list-style-type: none"> maintaining the health, safety and good order of NZ society; and protecting NZ from international crime, terrorism and illegal immigration. 	<p>There are various special category Visitor visas, that allow visa holders to stay for variable amounts of time:</p> <ul style="list-style-type: none"> partners and dependent children of student or work visa holders: valid for the same period as the principal applicant's visa partners of NZ citizens or residence class visa holders: 24 months. Parent and grandparent multiple entry visitor: 18 months in total. 	No work rights.

F5.2

The objectives for allowing (non-humanitarian) family reunification tend to have a broad economic focus. Though there are a number of ways the immigration system influences the composition of principal applicant migrants (including skill level, occupation, income), there are fewer controls on the composition of secondary applicants.

6 Other policies to support the migrant experience

6.1 Several policies are underway to address the issue of migrant exploitation

When migrants come to New Zealand, they are entitled to be treated with the respect and dignity they deserve, and to be protected from exploitation. Occurrences of migrant exploitation not only harm the migrant experience, but can lead to negative outcomes for businesses and New Zealanders too. New Zealand's international reputation is also at stake if migrant exploitation is allowed to continue unaddressed.

MBIE has undertaken a comprehensive review on migrant exploitation and its final proposals were delivered to Cabinet in 2020.

For the purposes of the review, MBIE defined migrant exploitation as

...breaches of minimum employment standards (as set in legislation), and conduct under the Immigration Act 2009, where the outcome of the offending behaviour causes or increases the risk of harm to the economic, social and physical well-being of the migrant worker. It also includes situations where migrant workers are deceived or coerced into paying above market rates for goods and services, such as food and accommodation, or are forced to live in substandard accommodation. (MBIE, 2020b, p. 4)

Exploitation includes activities such as requiring workers to pay for their job, denying leave, working excessive hours and under- or non-payment of agreed wages.

MBIE recommended a suite of policy changes to reduce migrant exploitation, including:

- Better prevention: reducing risks associated with workplace (and other) practices that can enable temporary migrant worker exploitation.
- Improved protection: ensuring migrant workers have a better understanding of their employment rights in New Zealand and are more confident reporting exploitation to authorities.
- Enhanced enforcement: improving the tools available to regulators to take action against exploitative employers (Office of the Minister of Immigration, 2020).

Table 3 shows the full list of policy and operational changes that will be enacted. Some of the policies will work alongside the temporary work visa reforms and changes to the employer accreditation process (see Box 3). One policy that could help reduce migrant exploitation, but is not part of the suite of changes, is de-linking work visas from employers (see Box 5).

Table 3: Policies that will be introduced to reduce migrant exploitation

Prevent	Protect	Enforce
<ul style="list-style-type: none"> • Introduce a duty on third parties with significant control or influence over an employer to take reasonable steps to prevent a breach of employment standards occurring. • Require franchisees to meet higher accreditation standards under the employer-assisted visa gateway system. • Disqualify people convicted of migrant exploitation and people trafficking from managing or directing a company. 	<ul style="list-style-type: none"> • Establish a dedicated migrant exploitation 0800 phone line and online reporting, and establish a specialised migrant worker exploitation-focused reporting and triaging function. • Create a new visa to enable temporary migrant workers to leave exploitative employment situations. 	<ul style="list-style-type: none"> • Establish three new immigration infringement offences targeting non-compliant employer behaviour. • Allow the Labour Inspectorate to issue an infringement notice where employers fail to provide requested documents in a reasonable timeframe. • Expand the stand-down list to cover existing Immigration Act offences.¹⁵ Ensure employers with serious immigration convictions cannot support applications for migrant workers. • Notify impacted migrant workers that their employer has been stood-down.
<p>These changes will be supported by increased funding for Employment New Zealand¹⁶ and INZ, and a new information and education action plan to ensure that migrant workers and employers understand their rights and obligations.</p>		

Source: (MBIE, n.d.)

F6.1

A wide range of proactive and reactive changes are being introduced to deal with the issue of migrant exploitation. One of the changes is to create a new visa to enable temporary migrant workers to leave exploitative situations. The effectiveness of this change will depend on its accessibility/ease of use for migrants.

6.2 New Zealand offers a number of settlement services, but there are gaps

Supporting migrants to achieve good settlement outcomes helps ensure migrants achieve their potential in New Zealand and retain them once they are settled.

The New Zealand Migrant Settlement and Integration Strategy (the Strategy) is the Government's approach to effectively settling and integrating migrants in New Zealand. The Strategy has five key outcome areas:

- **Employment:** Working-age migrants have work that matches their skills and New Zealand-ready qualifications.
- **Education and training:** Migrants achieve educational and vocational qualifications.
- **English language:** Migrants confidently use English in their daily lives.
- **Inclusion:** Migrants participate and have a sense of belonging in their community and New Zealand.
- **Health and wellbeing:** Migrants enjoy healthy lives and feel confident and safe.

¹⁵ Employers who are penalised for not complying with minimum employment standards within employment law can be put on a stand-down list for between six to 24 months. The stand-down list is a collaboration between the Labour Inspectorate and INZ.

¹⁶ Employment New Zealand is the official source of information and guidance on employment law and policy in New Zealand.

Each outcome area has specific objectives and sets of outcomes indicators so that progress can be measured over time (Immigration New Zealand, 2021d). In 2019, the outcomes indicators suggest several key insights about settlement:

- Although 88% of employed principal applicants reported that their current job matched their skills and qualifications, the proportion for employed secondary applicants was much lower in comparison (60%).
- Most, but not all, recent migrants can speak English. In 2018, 93% of recent migrants reported that they could have a conversation about everyday things in English well.
- Inclusion is one area that has not progressed as well as other indicators. Although 84% of recent migrants reported feeling that New Zealand is their home, recent migrants report experiencing higher rates of discrimination compared with New Zealand-born respondents (Immigration New Zealand, 2019a).

As part of its inquiry, the Commission has considered settlement outcomes more broadly. By the standards of OECD countries, migrants in New Zealand have comparatively high overall levels of integration and wellbeing, with some gaps (NZPC, 2021b).

In alignment with the Strategy, the Government is also developing an Employment Action Plan to lift the employment outcomes of former refugees, recent migrants and ethnic communities (Ministry for Ethnic Communities, 2021). The Employment Action Plan outlines a number of initiatives already underway and seeks feedback from affected parties on whether they like or dislike the actions, what actions they think are most important, and whether there are any actions missing that could achieve the employment objectives.

In 2018, INZ consulted recent migrants on their experience of settling and adjusting to life in New Zealand. While most recent migrants who participated in the consultations indicated that they were able to readily access services or information to help them adjust to life in New Zealand, specific areas migrants found challenging included pursuing job opportunities, and understanding health costs and how health services operate (Immigration New Zealand, 2019b).

The Government supports a range of settlement services. Box 9 summarises some of the major settlement services available.

Box 9 A range of settlement services are available, delivered by government agencies or third party providers

The following is an illustrative (but not comprehensive) list of a range of settlement services that are available to migrants. Some of these services are region-specific (for example, there are many services available only in Auckland). Eligibility may also differ, depending on visa type.

Employment

Work Connect: a free mentoring programme available to international students, skilled resident migrants and their partners. It is delivered by the Tertiary Education Commission (TEC) to help prepare skilled migrants for New Zealand's job market. This programme is delivered in Auckland, Hamilton, Wellington and Christchurch.

Regional Newcomers Skills Matching and Job Search Assistance: free programmes linking job-seeking migrants and employers who need their skills. The programmes target eligible skilled migrants and their partners. These programmes are provided by the Chambers of Commerce and economic and community development organisations in seven regions.

New Kiwis: a nationwide employment matching service delivered by the Auckland Chamber of Commerce.

Migrant Employment Solutions: helps match migrant skills with the needs of New Zealand businesses by providing one-on-one services, including advice on the New Zealand job market and workplace, and help with CVs, cover letters and interview preparation. It also includes workshops and a support network. This service is delivered by the Hamilton Multicultural Services Trust (HMST) in the Waikato region.

Education and training

Bilingual support workers in schools: supports refugee and migrant students who are beginning to learn English. It is delivered by the Ministry of Education.

ESOL in schools: supports schools to teach English to non-English speaking migrant students and to help these students to access the curriculum. This service is delivered by the Ministry of Education.

ESOL for adults: the TEC funds a range of ESOL literacy and numeracy programmes that adult migrants can access, and have developed a tool to help migrants find a programme near them.

Inclusion

Migrant participation in host communities: community-based organisations receive funding to deliver initiatives that support interaction between recent migrants and other New Zealanders. Examples are Volunteering New Zealand's Migrant Volunteering Programme and the Auckland Harbour Sport ActivAsian youth volunteering programme.

Ezispeak telephone interpretation service: a free telephone interpreting service used by most government agencies, some doctors and city councils. It is available in over 180 languages at any time of the day or night.

Welcoming Communities: with a focus on the receiving community, this initiative focuses on supporting residents and local government to take a greater role in ensuring the local community is welcoming towards migrants and refugees. Findings from an interim evaluation of this pilot programme indicate that it is on track to deliver its expected outcomes¹⁷ (Office of the Minister of Immigration, 2019b). Following a pilot in five regions and an evaluation, Cabinet has agreed to extend funding and expand this programme across 30 new sites.

Source: (Immigration New Zealand, 2021i)

¹⁷ Including contributing to a positive shift in community perceptions of newcomers, growth in community engagement, locals taking on a 'welcoming' role, and local councils taking a more visible leadership role in promoting diversity and inclusion.

The settlement services are funded through a range of sources, including:

- **Crown funding:** supports established settlement services and access to mainstream services that migrants are eligible for. It also funds information provision, tools and resources for migrants and their employers.
- **The Immigration Levy:** supports settlement services that align with the Strategy outcomes, specifically benefit migrants and have an established evidence base. Cabinet makes decisions on the allocation of Immigration Levy funding every four years. Some funded services are provided directly by government while others are contracted out.
- **Accrued Migrant Levy revenue:** supports one-off, short-term and small-scale settlement initiatives. Previous initiatives funded by this revenue include the Welcoming Communities pilot and Work Connect pilot.
- **Pre-purchased English Language Tuition (PELT):** some migrants are required to pre-purchase English language tuition before arriving in New Zealand to help them meet residency requirements. Migrants must use their PELT funds at a tertiary education organisation approved by the TEC (Immigration New Zealand, n.d., 2021c).

F6.2

Although a range of settlement services are available, eligibility for services and the availability of services can differ, depending on the region and migrant's visa type.

7 References

- Bonnett, G. (2019a, August 23). *Immigration NZ faces questions over unfair queue-jumping amid long waits for visas*. RNZ. <https://www.rnz.co.nz/news/national/397308/immigration-nz-faces-questions-over-unfair-queue-jumping-amid-long-waits-for-visas>
- Bonnett, G. (2019b, December 5). *Immigration quota talks begin as 35,000 wait on residency decision*. RNZ. <https://www.rnz.co.nz/news/national/404866/immigration-quota-talks-begin-as-35-000-wait-on-residency-decision>
- Bonnett, G. (2021, April 23). *Immigration New Zealand apologises and refunds over covert residence policy*. RNZ. www.rnz.co.nz/news/national/441070/immigration-new-zealand-apologises-and-refunds-over-covert-residence-policy
- BusinessNZ. (2017). *Submission: Suite of proposed changes to the Essential Skills visa—Discussion document*. <https://www.mbie.govt.nz/dmsdocument/2589-businessnz-essential-skills-visa-changes-submission-pdf>
- Chief Ombudsman. (2021). *Case note—INZ decisions on skilled migrant category visa applications.pdf*. <https://www.ombudsman.parliament.nz/sites/default/files/2021-06/Case%20note%20-%20INZ%20decisions%20on%20skilled%20migrant%20category%20visa%20applications.pdf>
- Collins, F., & Stringer, C. (2019). *Temporary migrant worker exploitation in New Zealand* [Final report - not government policy]. MBIE. www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand
- Gibson, J., & Bailey, R.-L. (2021). Seasonal labor mobility in the Pacific: Past impacts, future prospects. *Asian Development Review*, 38(1), 1–31. https://doi.org/10.1162/adev_a_00156
- Hon Stuart Nash & Hon Kris Faafoi. (2021, May 17). *Immigration reset: Setting the scene*. Beehive.Govt.Nz. www.beehive.govt.nz/speech/immigration-reset-setting-scene
- Immigration New Zealand. (n.d.). *Accessing Government Settlement Funding*.
- Immigration New Zealand. (2018). *International students: Post-study work visas are changing*.
- Immigration New Zealand. (2019a). *New Zealand Migrant Settlement and Integration Strategy: Outcomes Indicators Dashboard Report 2019*. <https://www.immigration.govt.nz/documents/refugees/br-2021-3315-annex-1-nzmsis-outcomes-dashboard-2019-1.pdf>
- Immigration New Zealand. (2019b). *National Migrant Consultations 2018—Observations of settlement stakeholder organisations* (p. 39).
- Immigration New Zealand. (2021a). *Compare popular visas*. New Zealand Now. www.newzealandnow.govt.nz/move-to-new-zealand/visas-citizenship/compare-popular-visas
- Immigration New Zealand. (2021b). *Employer leads visa application process*. www.immigration.govt.nz/employ-migrants/introducing-new-accreditation-and-single-work-visa/employer-leads-visa-application-process
- Immigration New Zealand. (2021c). *How we fund settlement services*. <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/how-we-support-migrants/how-we-fund-settlement-services>
- Immigration New Zealand. (2021d). *How we support migrants*. <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/how-we-support-migrants>
- Immigration New Zealand. (2021e). *Information about: Essential Skills Work Visa*. www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/essential-skills-work-visa
- Immigration New Zealand. (2021f). *Operational manual*. www.immigration.govt.nz/opsmanual/#35439.htm
- Immigration New Zealand. (2021g). *Points indicator for Skilled Migrant Expression of Interest*. www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/tools/points-indicator-smc-28aug

- Immigration New Zealand. (2021h). *Search locally first*. www.immigration.govt.nz/employ-migrants/explore-your-options/things-to-consider-before-hiring-migrants/search-locally-first
- Immigration New Zealand. (2021i). *Settlement services*. <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/how-we-support-migrants/settlement-services>
- Immigration New Zealand. (2021j). *What is the difference between a resident visa and a permanent resident visa?* <https://www.immigration.govt.nz/knowledgebase/kb-question/kb-question-3704>
- Immigration New Zealand. (2021k, October 25). *Skilled Residence Data as at 25 October 2021*. <https://www.immigration.govt.nz/documents/other-resources/skilled-residence-applications-onshore-general-queue.pdf>
- MBIE. (n.d.). *The temporary migrant worker exploitation review: A summary of changes*.
- MBIE. (2020a). *Briefing for the incoming Minister of Immigration, November 2020*. www.beehive.govt.nz/sites/default/files/2020-12/Immigration.pdf
- MBIE. (2020b). *Impact Statement: Temporary migrant worker exploitation review phase one proposals*.
- Ministry for Ethnic Communities. (2021, September 28). *Employment Action Plan—Have your say*. www.ethniccommunities.govt.nz/news/employment-action-plan-have-your-say/
- New Zealand Council of Trade Unions. (2017). *Submission: Suite of proposed changes to the Essential Skills visa –discussion document*. <https://www.mbie.govt.nz/dmsdocument/2533-ctu-essential-skills-visa-changes-submission-pdf>
- NZ Treasury. (2015). *Best practice regulation: Principles and assessments*. www.treasury.govt.nz/sites/default/files/2012-08/bpregpa-feb15.pdf
- NZ Treasury. (2017). *Guidance note: Best Practice impact analysis—June 2017 (Interim version—Under revision)* (p. 28).
- New Zealand Productivity Commission (NZPC). (2021a). *Impacts of immigration on the labour market and productivity*. www.productivity.govt.nz/immigration-labour
- NZPC. (2021b). *The wider wellbeing effects of immigration*. www.productivity.govt.nz/immigration-wellbeing
- Office of the Minister of Immigration. (n.d.). *Cabinet Paper: New Zealand Residence Programme: New objectives and approach to managing residence numbers*. MBIE. Retrieved 15 July 2021, from www.mbie.govt.nz/dmsdocument/4577-cabinet-paper-new-zealand-residence-programme-pdf
- Office of the Minister of Immigration. (2018). *Consulting on proposed changes to post-study work rights and eligibility of students' partners and their dependent children to work and study in New Zealand* [Cabinet Paper]. www.mbie.govt.nz/assets/cb2f11128b/cabinet-paper-consulting-on-proposed-changes-to-post-study-work-rights-and-eligibility-of-partners-and-children.pdf
- Office of the Minister of Immigration. (2019a). *Cabinet Paper: A new approach to employer-assisted work visas and regional workforce planning: Paper one—Employer gateway system and related changes*. www.mbie.govt.nz/assets/a-new-approach-to-employer-assisted-work-visas-and-regional-workforce-planning-paper-one-employer-gateway-system-and-related-changes.pdf
- Office of the Minister of Immigration. (2019b). *Post-pilot expansion and ongoing implementation of the Welcoming Communities Programme* [Cabinet Paper]. MBIE. www.mbie.govt.nz/dmsdocument/6987-post-pilot-expansion-and-ongoing-implementation-of-the-welcoming-communities-programme-proactiverelease-pdf
- Office of the Minister of Immigration. (2019c). *A new approach to employer-assisted work visas and regional workforce planning: Paper two—The job gateway* [Cabinet paper]. www.mbie.govt.nz/assets/a-new-approach-to-employer-assisted-work-visas-and-regional-workforce-planning-paper-two-the-job-gateway.pdf
- Office of the Minister of Immigration. (2020). *Temporary migrant worker exploitation review – final proposals* (p. 32).
- Palmer, C., & Varcoe, J. (2021). *Settling in New Zealand: Migrant survey trends from 2015 to 2019*. Premium Research.
- Whaia Legal. (2021). *Legal advice on immigration policy and Te Tiriti o Waitangi*.



[Type here]