

# Changes to employer-assisted temporary work visas

– What does this mean for employers?







The New Zealand Government is making a number of changes that will affect employers who want to recruit foreign workers. The changes aim to improve the temporary work visa system by ensuring that foreign workers are only recruited for genuine shortages, while also providing incentives for employers to employ and train more New Zealanders.

**The changes will benefit employers by providing:**

- › A more streamlined process for small businesses and businesses that represent low immigration risk
- › Increased certainty earlier in the process for employers wanting to recruit foreign workers
- › A system that takes into account the difference in labour market needs between different sectors and regions.

We know that employers will have a lot of questions about what these changes mean for them. The high-level framework is described in this booklet and Immigration New Zealand is working on the specific details of what employers will need to do and by when.

There is nothing you need to change immediately in the way you hire foreign workers, unless you are a Talent Accredited Employer. For Talent Accredited Employers the remuneration threshold for the new Work to Residence – Talent (Accredited Employer) visa applications will be increasing to 150 per cent of the New Zealand median income (currently \$38.25 per hour or \$79,560 per annum). This change does not apply to existing Talent (Accredited Employer) visa holders. For more information on this change, see page 17.

Until further details are decided and the changes are implemented, employers should continue using existing processes for hiring foreign workers. Changes will be implemented in stages to help manage a smooth transition over to the new system.

Immigration New Zealand will be working with industry to keep employers updated and to ensure everyone understands the new requirements.

## **Why is the Government making these changes?**

Changes to the employer-assisted work visa system will support the Government's wider programme of workforce improvements, including the changes to vocational education and upcoming welfare reforms, by creating better connections between the immigration, education and welfare systems.

The changes ensure that employers are able to get the workers they need to fill shortages, especially during times of low unemployment. But the changes will also require employers to better utilise the local labour market by employing and training more New Zealanders.

The recently announced Regional Skills Leadership Groups (RSLGs) will support employers to better utilise local labour markets over time and will play a key role in informing government and regional responses to local labour market needs. Each RSLG will develop a labour market plan to identify the availability of skills and labour in the region and any gaps that need to be addressed to help drive the region's economic growth.

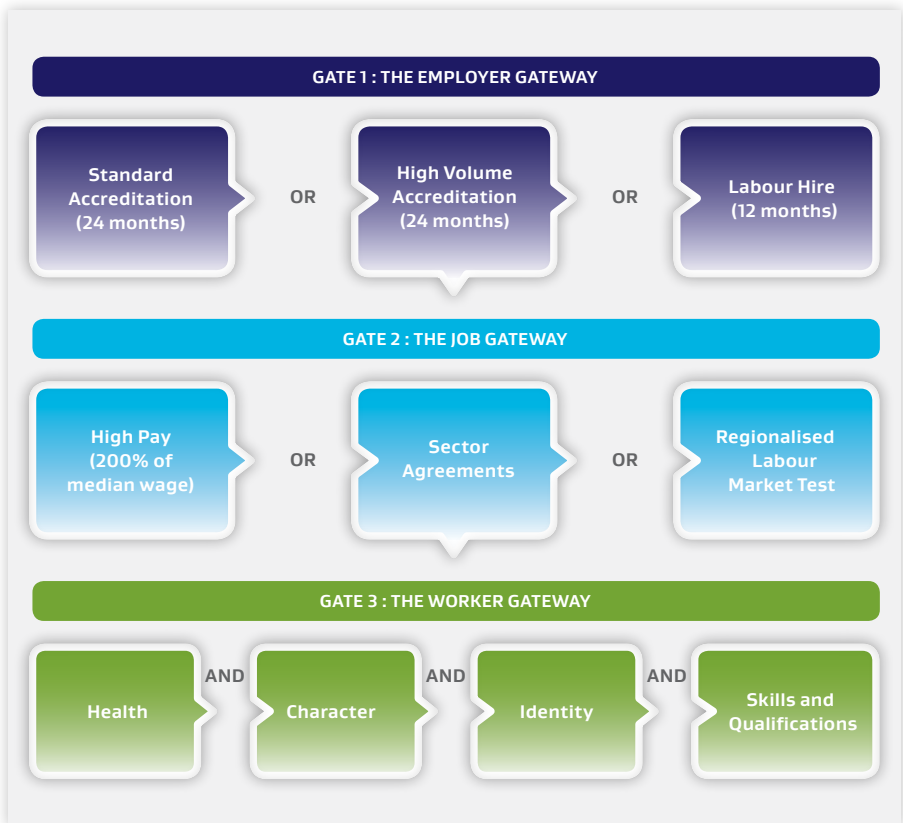
Improvements to the labour market test and the introduction of Sector Agreements will also ensure better linkages to the welfare and skills systems.

Together, these programmes and changes will help to get more people into better jobs with better wages, and equip more businesses with the skilled workers they need to grow and thrive.

## What is the new visa application process?

To make the process of hiring a foreign worker easier and more straightforward for employers, the Government is introducing a new employer-led visa application process that includes:

- › an employer check, where employers would be accredited to enable them to hire a migrant;
- › a job check, where the job is checked to ensure that no New Zealander is able to fill the job being recruited for, subject to skill, sectoral and regional differentiation; and
- › a worker check, where checks will be made to ensure the foreign worker is of good character and health.



Through the employer check, all employers will be required to be accredited before they are able to employ a foreign worker. This will be the first step in the application process.

Requiring all employers to be accredited will help ensure that employers are compliant with minimum employment and immigration standards. This will create a level playing field and ensure that non-compliant businesses aren't at an advantage over compliant employers.

Once an employer is accredited, the job check will then assess whether the job the employer is seeking to recruit for is genuine, has terms and conditions (including pay) that are consistent with New Zealand standards and that the employer has made a real attempt to recruit a New Zealander.

The job check will also provide a new streamlined process for higher-paid jobs to allow foreign workers to fill these in parts of the country where there are few New Zealanders available, which will help make it easier to fill vacancies in areas outside of the main cities.

Once an employer has passed the employer and job checks, they will be able to support a foreign worker for a temporary work visa. The worker check is the last stage of the application process and will check that the foreign worker meets health and character requirements. This application will continue to be made directly by the foreign worker or their representative, not the employer.

Under the new application process, there will only be one type of employer-assisted temporary work visa to apply for. This visa will be called the Temporary Work Visa and will replace six current work visa categories.

The new visa and framework system will have a phased implementation in 2021. This will ensure that all employers are not required to be accredited on the same day. Existing accredited employers will have a streamlined transition into the new system.



## The employer check



Under the new process, all employers wanting to employ a foreign worker will be required to be accredited.

Employers will need to be accredited before they can move onto the next part of the application process.

There will be two types of accreditation, depending on how many foreign workers an employer employs in a 12 month period. Labour hire companies will have specific accreditation requirements.



The Ministry of Business, Innovation and Employment will work with employers and others in coming months to develop the detail of the accreditation requirements.

### Accreditation requirements for employers

|  | <b>Standard Accreditation</b>   | <b>High-volume accreditation</b>   | <b>Labour Hire Companies</b>  |
|--|---|--|---|
| <b>Type of employer</b>                      | Employers who employ between one and five employer-assisted foreign workers in a 12 month period  | Employers who employ more than five employer-assisted foreign workers in a 12 month period   | All labour hire companies   |
| <b>Accreditation standards/ requirements</b> | Employers would be required to be a genuinely operating business, have no recent history of regulatory non-compliance, and take steps to minimise exploitation. | Same as standard accreditation AND: Must demonstrate a commitment to training and upskilling New Zealanders and must demonstrate a commitment to improving pay and conditions over time. | Same as high volume accreditation AND: specific requirements for labour hire companies. |
| <b>Duration</b>                              | Initial accreditation lasts for 12 months and 2 years for subsequent renewals.  | Initial accreditation lasts for 12 months and 2 years for subsequent renewals.   | 12 months   |



## ■ Standard accreditation (employers who recruit between one and five employer-assisted foreign workers in 12 months)

The majority of employers who currently employ foreign workers will require standard accreditation, given that they employ five or less employer-assisted temporary foreign workers.

The process for standard accreditation will be set at an achievable level for most employers so that it is simple and quick and will impose minimal compliance costs for the majority of employers.

Non-compliant employers will not be approved accreditation and will therefore be unable to recruit employer-assisted temporary workers.

### **For standard accreditation, the employer must be a genuine business (or organisation) with a financial presence and must:**

- › not be on the non-compliant employer stand down list;
- › be compliant with any relevant industry specific or other regulatory standards; and
- › have no history of non-compliance with the immigration system

Employers will also be expected to meet the costs of recruiting foreign workers. If an employer decides to use an agent to help with the recruitment process, any fees charged by the agent would need to be covered by the employer, not passed onto the prospective foreign worker.

Accreditation will enable Immigration New Zealand to better target riskier employers and identify non-compliance, and to work more closely and share information with other labour market regulators, such as Employment Services (the Labour Inspectorate). This means that employers won't need to provide this information as often.

## ■ High-volume accreditation (employers who employ more than five employer-assisted foreign workers in 12 months)

As well as meeting the same requirements as standard accreditation, high-volume accredited employers will also be required to make specific commitments to training and upskilling New Zealanders, and to improving pay and conditions.

High-volume accredited employers will need to indicate how they propose to meet these commitments in their initial accreditation application.

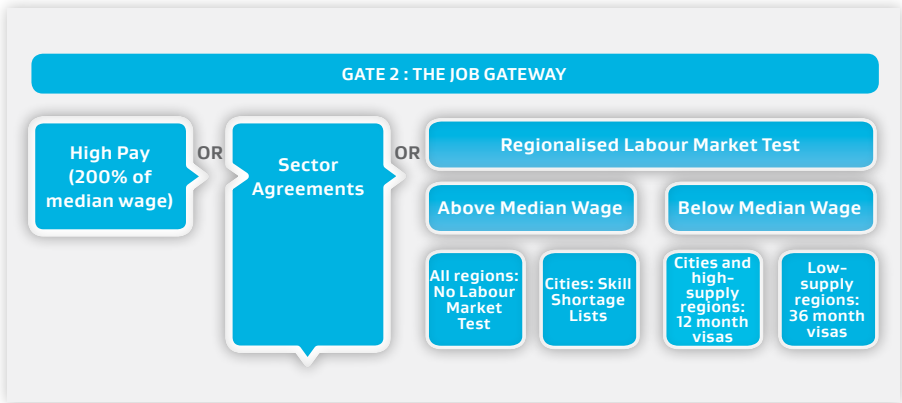
## ■ Labour Hire accreditation

Labour Hire companies will be required to meet all the same standards as high-volume accreditation, but would be subject to more robust verification and assurance. There will also be upfront assessments to ensure that commitments are being met.

### **Labour hire companies will also need to demonstrate that they:**

- › have a history of contracts for the supply of labour and of placing/employing New Zealanders (i.e. can't have been established for the sole purpose of recruiting migrants);
- › will only contract migrant labour to businesses who are compliant with immigration and employment law; and
- › have good systems in place to monitor employment and safety conditions on site.





Once an employer has had their accreditation approved, they will then need to pass the job check before they can recruit a foreign worker. This will assess whether the job the employer is seeking to recruit for is genuine, has terms and conditions (including pay) that are consistent with New Zealand standards and that the employer has made a real attempt to recruit a New Zealander.

**The purpose of the job check is to ensure that:**

- › temporary work visas are not used to fill low-paid jobs on an ongoing basis;
- › employers place more New Zealanders into jobs; and
- › foreign workers are not exploited and have wages and conditions that are consistent with New Zealand standards.

The job check can be met in three ways – via the highly-paid pathway, the sector agreement pathway or the regionalised labour market test pathway. These options exist to enable immigration settings to respond to the needs of regions and sectors, without adding significant complexity to the system.

## Highly-paid pathway

Employers whose job is paying 200 per cent, or twice, the median wage (currently \$50.00 per hour or \$104,000 per annum based on a 40 hour week) will be able to apply through the highly-paid pathway. This means that the employer will not be required to do a labour market test, regardless of what the occupation is and what region the job is in. Foreign workers recruited under this pathway will also have a pathway to permanent residence once they have worked in a highly-paid job in New Zealand for two years.

The highly-paid pathway will simplify the visa application process for employers wanting to employ highly-skilled foreign workers and will help increase the skill level of foreign workers coming to New Zealand. It will also restrict access to residence for lower-paid migrants and ensure that the Skilled Migrant Category is the primary pathway to residence.

**Employers will still be required to pay market rate for an occupation if it is higher than the highly-paid threshold.**

## Sector Agreement pathway

Sector Agreements will be negotiated with sectors that have a high reliance on temporary foreign workers (especially in lower-paid occupations).

Sector Agreements will enable the government to agree a workforce plan with the sector and the conditions to be met for recruiting foreign workers for a specified sector.

This will improve access to foreign workers for employers in the short term by reducing compliance costs and providing more certainty about an employer's ability to hire a foreign worker.

In exchange, the sector will be required to make commitments and demonstrate progress towards longer-term labour market improvements that place a greater share of New Zealanders into jobs in the sector and reduce the sector's reliance on temporary foreign workers over time.

Employers who are recruiting for a job covered by a Sector Agreement will be required to comply with the agreement unless the job meets the wage threshold in the highly-paid pathway.

The following sectors have been identified for initial negotiations – residential care (including aged residential care), meat processing, dairy, forestry, road freight transport, tourism and hospitality. The construction and horticulture and viticulture sectors are also potential candidates.

Sector Agreements will be negotiated two at a time, with the first two negotiations to be completed by mid-2020, two further negotiations by the end of 2020 and two more in 2021.

The first two agreements likely to be negotiated will be for the residential care and meat processing sectors.

### **Regionalised labour market test pathway**

The regionalised labour market test pathway will include a streamlined process for higher-paid jobs, and a strengthened labour market test for lower-paid roles.

#### *Higher-paid jobs (jobs that pay above the median wage):*

The requirement to undertake a labour market test will be removed for employers in the regions (outside of the major cities) wanting to recruit for jobs that pay above the New Zealand median wage, which is currently \$25 an hour. This will effectively mean that all employers recruiting for higher-paid jobs in the regions will have open access to recruit foreign workers.

As a result of this change, skills shortage lists will not be needed for each individual region and will only exist for the following five cities – Auckland, Hamilton, Wellington, Christchurch and Dunedin.

Removing the labour market test for all jobs paying above the median wage in the regions should make it easier for the regions to recruit higher-skilled foreign workers.

#### *Lower-paid jobs (jobs that pay below the median wage):*

All lower-paid jobs will be required to pass a labour market test, which includes a requirement for the employer to advertise the job with pay rates and to check with the Ministry of Social Development whether they have any clients who are considered suitable, available and trainable that can be matched to the job. The new requirements for the check with the Ministry of Social Development are discussed in the next section.

Following the labour market test, the immigration settings for lower-paid jobs that meet the labour market test will take into account the differences in regional labour markets.

Jobs in parts of the country with fewer New Zealanders available to work or wanting more work will enable the foreign worker to get a visa of up to three years' duration. After three years the foreign worker will need to leave the country for at least 12 months (unless during the three years the foreign worker is approved for a job that pays above the median wage).

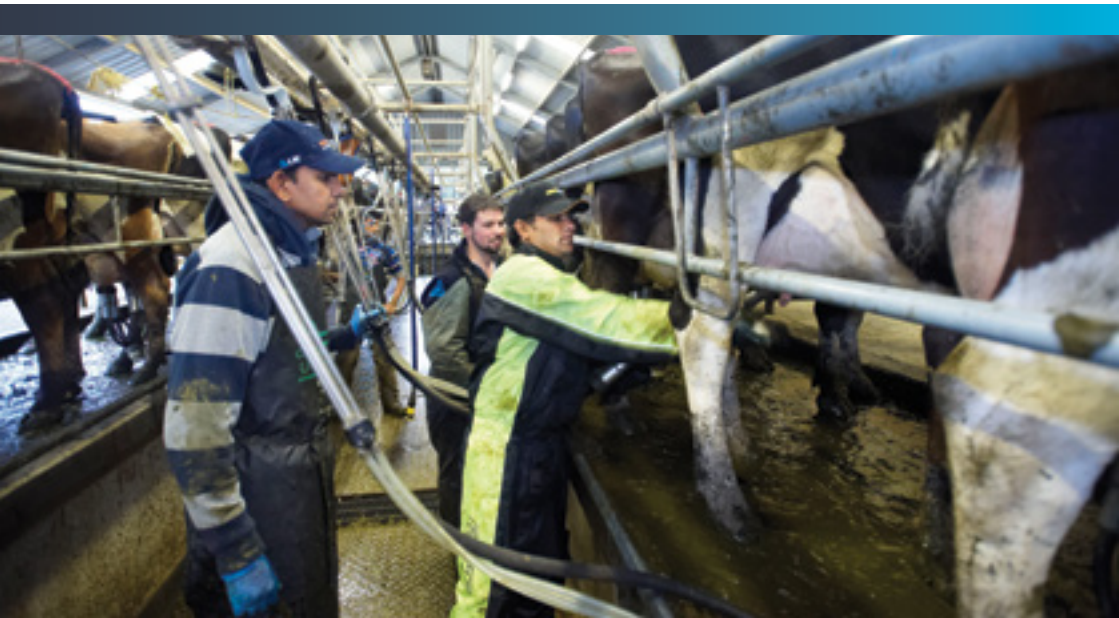
Jobs in cities and regions with a higher-supply of New Zealanders available to work or wanting more work will enable the foreign workers to be granted a one-year visa. Workers will be able to be granted a maximum of three one-year visas, after which they would need to leave the country for at least 12 months (unless during the three years the foreign worker is approved for a job that pays above the median wage).

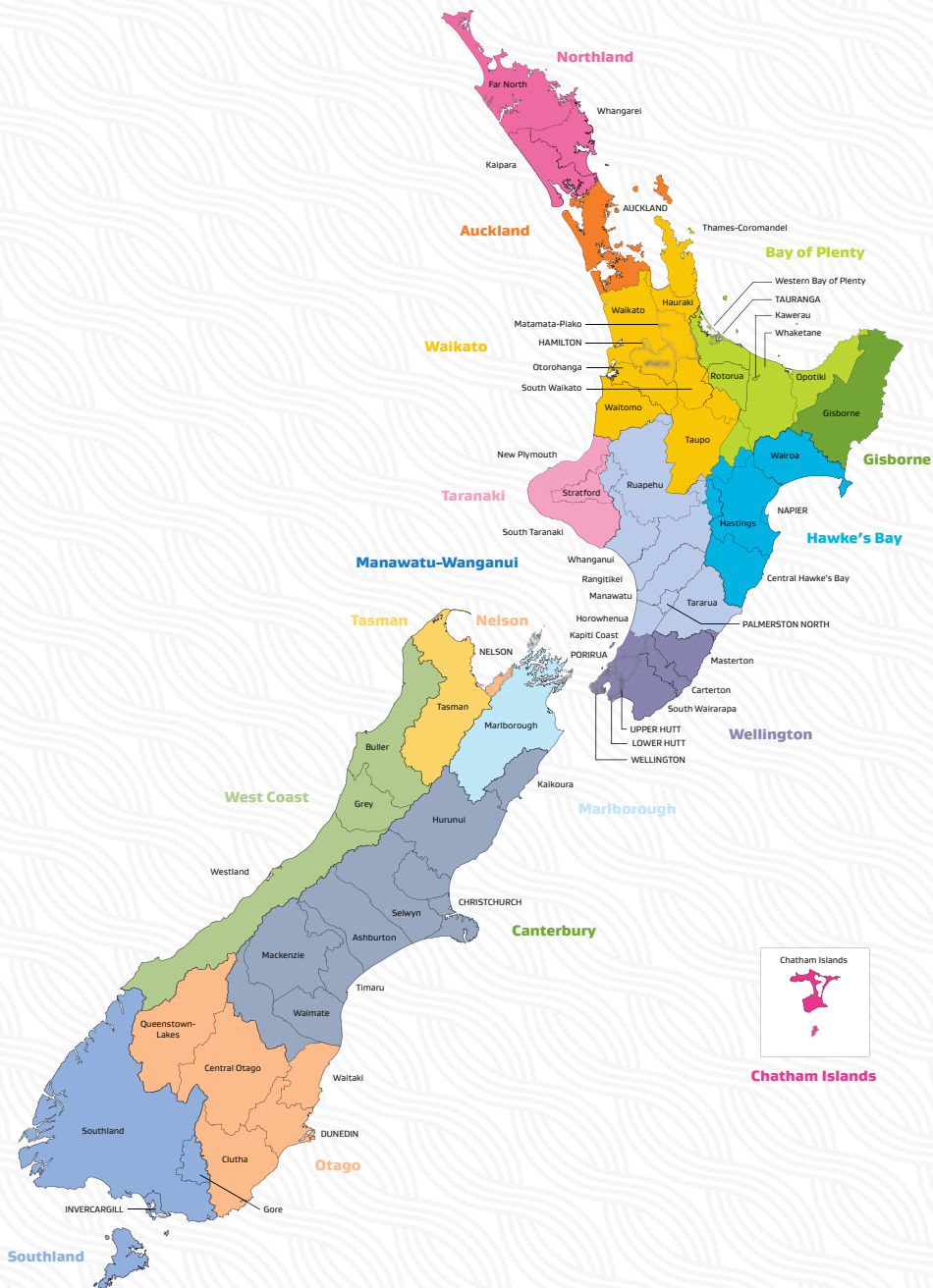
Sector Agreements may vary some rules depending on what is negotiated.

**Based on current labour market conditions:**

- › **Cities** will include Auckland, Hamilton, Wellington, Christchurch and Dunedin;
- › **Higher-supply regions** will include Northland, Manawātū-Whanganui, Bay of Plenty, Gisborne/Hawke's Bay, Taranaki, Tasman/Nelson/Marlborough/West Coast, and regional Wellington; and
- › **Lower-supply regions** will include Waikato, Canterbury, Otago and Southland.

These settings will be flexible and will respond to changes in market conditions. Regional Skills Leadership Groups, which were recently announced by the Government, will help to ensure that local voices are heard. They will play a key role in providing advice on the skills needs in a region and how these are being met by the immigration, education and welfare systems.





**Table 3: Immigration settings by region and wages**

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

LMT = Labour Market Test



## Strengthening the labour market test for lower skilled jobs

The existing labour market test will be strengthened and improved when assessing lower-paid jobs. This is to ensure New Zealanders have the opportunity to fill these roles first and that better matching happens between the available jobs and Ministry of Social Development clients.

The Ministry of Social Development will work with employers to determine whether there are any job seekers that are considered suitable, available and trainable that can be matched to the job. The strengthened labour market test will mean that if Ministry of Social Development determines that there is a suitable candidate available, there will be tighter restrictions on when Immigration New Zealand considers the labour market test to be passed. Employers will not be able to reject suitable referrals and still pass the labour market test, unless there are acceptable reasons to do so, such as when the job seeker has failed to attend an interview or failed a drug test for a vacancy in a high-risk environment. Employers will also no longer be able to reject an applicant for not having their own vehicle or driver's licence unless it is specifically required for the job.

The Ministry of Business, Innovation and Employment will continue to develop the details for how this will be implemented, including how to reasonably accommodate employer and client choice, and how the test will be applied for multiple vacancies.

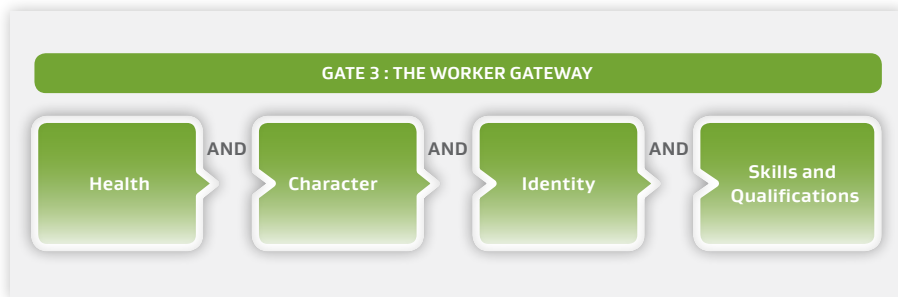
### **As part of the strengthened labour market test, employers will have to:**

- › document and provide the requirements of the job to the Ministry of Social Development, including any qualifications, skills and experience requirements; and
- › include the salary when advertising the role to enable easy verification that New Zealanders and foreign workers are being offered comparable rates of pay.

These changes will make the labour market test process much clearer for employers and will reduce the duplication of assessments between the Ministry of Social Development and Immigration New Zealand.

Reasons for non-acceptance of any Ministry of Social Development referrals will be reported to agencies to inform decision-making. Data and insights from labour market tests will be reported to Regional Skills Leadership Groups to supplement regional forecasts and planning.

## ■ The worker check



Foreign workers will only be able to apply for a visa once the employer has completed the employer and job checks.

The worker check will largely remain as it is with checks on identity, health and character, but with fewer requirements for a foreign worker to produce evidence of the qualifications and experience where it is not relevant to the application or it has already been checked.

**There will be some situations where Immigration New Zealand would not need to assess the skills and experience of a worker. These include:**

- › where a worker is applying for a further visa for the same or similar position and skill and experience have already been assessed;
- › where the position is lower-paid and does not require qualifications or previous experience; or
- › where the migrant already holds occupational registration

The Temporary Work Visa will continue to be tied to an individual employer and location (as is currently the case). However, under the new system, the variation of conditions rules (which enables a foreign worker to apply to work for a different employer) will be streamlined to ensure that the process is simple and quick if the worker is applying to move between accredited employers. Sector Agreements may vary some of these rules if negotiated.

## What other changes are being made?

### *Replacing existing skill bands with a simple remuneration threshold aligned to the median wage*

The Government will remove the Australian and New Zealand Standard Classification of Occupations (ANZSCO) from the assessment of skill level for the new Temporary Work Visa and will differentiate jobs by their remuneration rather than by their occupational skill level.

The remuneration threshold will be set at the median wage (currently \$25 an hour, or \$52,000 per year based on 40 hours per week) so that jobs are defined as those that pay at or above the median wage, or jobs that pay below the median wage. In either case, employers are required to pay at least the market rate for the job. The Ministry of Business, Innovation and Employment's Labour Market's branch will provide greater transparency about market rate assessments.

This change will simplify business processes and make rules clearer and more transparent for users of the immigration system. As outlined in the sections earlier, the duration of the visa granted and other visa conditions will be linked to the remuneration threshold.

### *Increasing the remuneration threshold for the Work to Residence – Talent (Accredited Employer) visa category as a transitional measure until this visa is closed*

The Work to Residence – Talent (Accredited Employer) visa category will be disestablished when the new visa application process is introduced. However, as this will not be until 2021, in the interim period the remuneration threshold for this category will increase from \$55,000 to 150 per cent of the New Zealand median income (currently \$38.25 per hour or \$79,560 per annum).

This transitional measure will reduce the immediate pressure on this pathway to residence from lower-paid workers, which has increased rapidly in recent years, and align this visa category with the settings for the Skilled Migrant Category. Foreign workers already on a Work to Residence – Talent (Accredited Employer) visa will continue to be able to apply for residence under the settings in place when they were approved their visa. Fast tracked access to a permanent residence visa will be removed.

To manage the transition to the new visa application process, Immigration New Zealand will grant a maximum two year accreditation period to employers under the Work to Residence – Talent (Accredited Employer) visa category.

### *Reinstating the ability for lower-paid workers to bring their family to New Zealand*

The Government is reinstating the ability for lower-paid workers to support their partner and children to come to New Zealand for the length of their visa. The foreign worker will need to continue to meet a minimum income threshold, the purpose of which is to ensure that their income is sufficient to support themselves and their family while in New Zealand.

The partner of a lower-paid worker will be granted a visitor visa unless they are able to obtain a work visa in their own right. Partners of highly-paid workers will still be able to be granted an 'open' work visa.

Dependent children of a lower-paid foreign worker will have access to primary and secondary education as subsidised domestic students. However they will only be able to access tertiary education as full fee-paying international students.

### *12 month stand down for lower-paid migrants*

Lower-paid foreign workers who have worked in New Zealand for three years will still be subject to a 12 month stand down period where they must leave New Zealand. This requirement has not changed and aims to prevent a pool of lower-skilled, lower-paid foreign workers building up in New Zealand that are well-settled but have no pathway to residence.



## When do all of these changes come into effect?



- › The changes will be implemented in stages to help manage a smooth transition over to the new system.
- › The changes to the Work to Residence – Talent (Accredited Employers) visa category will be implemented in October 2019.
- › Replacing existing skill bands with a simple remuneration threshold and reinstating the ability for lower-paid foreign workers to bring their family will come into effect mid-2020.
- › The first sector agreements are expected to be completed in mid-2020.
- › The new visa and application process will have a phased implementation in 2021. This will ensure that all employers are not required to be accredited on the same day. Existing accredited employers will have a streamlined transition into the new system.
- › In the meantime, employers and temporary foreign workers should continue using existing processes for hiring foreign workers.

## What will the cost be for employers?

The cost of accreditation and the new visa are still being worked through and will reflect processing costs. Immigration New Zealand will ensure the costs are known to employers well in advance of the new policy being implemented.

More information on all these changes can be found at:  
[www.immigration.govt.nz/work-visa-changes](http://www.immigration.govt.nz/work-visa-changes)







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