

Submission to the Productivity Commission on the:

Immigration Inquiry

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi
December 2021

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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1. Summary of Recommendations

CTU recommends that the Productivity Commission incorporate the following recommendations in its final report and advice to Government:

- 1.1. That the primary goal of the immigration system be to enhance the wellbeing of all people in New Zealand and that this be reflected in objectives set by a regular National Policy Statement on Immigration.
- 1.2. That the objectives of the management of temporary work visas include integration with employment and skills policies to promote full employment in good jobs for all New Zealand residents seeking paid work.
- 1.3. Employers seeking to employ migrant workers be required to show commitment to recruitment and training of New Zealand residents and commitment to improving wages and conditions for all working people.
- 1.4. Employers be required to pay all costs and fees charged by recruitment agents.
- 1.5. That Immigration Officials and Labour Inspectors establish close working relationships with unions and migrant advocacy organisations to facilitate and respond to complaints of exploitation.
- 1.6. That relevant unions and professional associations be included as full parties to the negotiation of Immigration Sector Agreements.
- 1.7. That options be considered for expansion of Pacific residence quotas over time, alongside exploration of options for greater inclusion of Pasifika migrants in other visa categories.
- 1.8. That urgent work be done to ensure that criteria for high-volume employer accreditation in the new system comply, at a minimum, with Cabinet decisions that the employer must demonstrate a commitment to training and upskilling resident workers; and that the employer must demonstrate a commitment to improving pay and conditions over time;
- 1.9. That visa conditions allowing work only for a specified employer and job be replaced by conditions allowing work for any accredited employer in

any approved job, with a requirement on both the employer and the visa-holder to notify INZ of any change of employment.

- 1.10. That a review be undertaken of the employment outcomes, experiences, and impacts of Working Holiday Visa categories.
- 1.11. That consideration be given to what reasonable conditions could be included in working holiday visa schemes, such as a requirement for employer accreditation.
- 1.12. Government should legislate to set out at Budget what the impact of population and demographic change is on spending in areas such as housing, health, education, transport, and justice. Particular care should be provided to show what the impacts of this are for capital expenditure.
- 1.13. Government should have to demonstrate what sources of funding are expected to be used to deliver that need.

2. Introduction

- 2.1. The CTU welcomes the approach that the Productivity Commission has taken to this inquiry. We see the focus on wellbeing in this inquiry as a welcome signal of the Commission's intention to consider improvement of social outcomes as central to its mission.
- 2.2. As we look forward to a future in which cross-border travel will hopefully become easier again, and as we seize the opportunities to build back better, it is important that we consider how our migration system contributes to a fairer and more productive economy, with decent work for all.
- 2.3. The CTU approach to migration is guided the goals of decent work and wellbeing for everyone in New Zealand. This will be best achieved if our immigration system is set up to eliminate exploitation of migrants, involves workers and their unions in raising standards, and is well integrated with workforce and skills systems that support full employment in good work for all New Zealand residents who are looking for paid work.

3. Goals for Immigration: Wellbeing and Decent work for all

- 3.1. CTU supports the Commission's recommendation that Government set objectives for the Immigration system through a regular National Policy Statement.
- 3.2. CTU recommends that the objectives of the immigration system be set in relation to an overarching goal of enhancing the wellbeing of all people in New Zealand, including residents, temporary migrants, and visitors.
- 3.3. The goal of supporting the wellbeing of every person in New Zealand speaks to our fundamental values as a country, of manaakitanga and respect for universal human rights. It is appropriate for government to focus on the wellbeing of New Zealand residents in making policy, but this should avoid undermining the fundamental dignity, rights and wellbeing of others. We consider that New Zealand takes on a duty of care to all people within our borders and it is appropriate that our Immigration system have the goal of protecting and enhancing the wellbeing of both residents and visa-holders.
- 3.4. The immigration system can make a positive contribution to wellbeing if we focus on creating a system that delivers full employment in good jobs for all New Zealanders, ends exploitation and promotes good employment for migrants, involves working people and their unions in raising standards of employment for everyone working here, and upholds New Zealand's international and humanitarian commitments.
- 3.5. **Promote full employment in good jobs for all New Zealand residents seeking paid work**
 - 3.5.1. Our aspiration is for a high value, high skill, high wage economy which provides jobs with the incomes, respect and conditions that working people need for a dignified life and full participation in our society.

- 3.5.2. Full employment for everyone seeking paid work needs to be explicitly adopted as a core goal of an integrated employment policy, including in the immigration system.
- 3.5.3. Employers seeking to employ migrant workers should be required to show commitment to recruitment and training of New Zealand residents, and commitment to improving wages and conditions for all working people.

3.6. **End exploitation and promote good employment for migrants**

- 3.6.1. Migrant workers are too often in precarious positions, reliant on their employers for visa status and consequently vulnerable to exploitation. The CTU has called for changes to give migrant workers more secure status, including more effective processes for changing employers, removal of stand-down periods that enforce churn of temporary migrants, and realistic pathways for visa-holders to achieve permanent residency.
- 3.6.2. Exploitation of migrant workers can start from the beginning of the recruitment process. The CTU calls for rules to ensure that employers pay all costs and fees charged by recruitment agents.
- 3.6.3. Immigration Officials and Labour Inspectors should establish close working relationships with unions and migrant advocacy organisations to facilitate and respond to complaints of exploitation.

3.7. **Involve working people and their unions in raising standards**

- 3.7.1. Unions support the integrity of the migration system by monitoring employment practices and supporting rights at work. Existing processes for Immigration officials to engage with unions should be strengthened.
- 3.7.2. Unions and Professional Associations relevant to an application for employer accreditation for job approval should be given an opportunity to review and comment on the application, including details of wage rates offered.

3.7.3. Unions and relevant professional associations should be full parties to the negotiation of Immigration Sector Agreements. We see sector agreements as an important tool for reaching tripartite agreement on commitments to workforce development and improvements in general conditions of employment that can assist in attracting workers to sectors experiencing labour shortages.

3.8. **Uphold New Zealand's international and humanitarian commitments**

3.8.1. New Zealand makes a small but important international contribution to the resettlement of refugees. CTU supported the increase of the annual refugee quota to 1500 from July 2020. The expanded number of regions engaged in resettlement has also been a welcome development. CTU supports further expansion of the refugee quota over time, with associated funding for resettlement and support.

3.8.2. New Zealand's connections to our Pacific neighbours are recognised through the Samoan Quota and Pacific Access Category for residence visas. However, places are limited to an annual ballot of 1750 visas. CTU supports consideration of an expansion to these Pacific residence quotas over time, alongside an exploration of options for greater inclusion of Pasifika migrants in other visa categories.

4. Employment and Productivity Effects of Immigration Settings

4.1. Immigration policy settings largely determine the composition of the migrant workforce, set the conditions of work visas, and strongly influence the terms and conditions of employment for visa-holders. These factors are at least as important as the scale of migration for investigating employment and productivity effects.

4.2. The composition of the migrant workforce, largely determined by visa eligibility criteria and labour market testing processes, affects whether migration complements or substitutes for the local workforce.

- 4.3. As a general rule, where migration is complementary to the resident workforce there are likely to be benefits for both productivity and employment.
- 4.4. Where temporary migrant workforces are substitutable for the resident workforce, the effects on employment and productivity will depend on labour market conditions.
- 4.5. In conditions of a shortage of substitutable labour, the ability to employ migrants may help to sustain productivity and local employment in the short run, by allowing production to continue at an optimal capacity.
- 4.6. The risk is that, if employers are confident of their continued ability to access substitutable labour over the long term, they may be dissuaded from investing in capital and workforce skill development that could improve productivity. This risk will tend to increase in conditions of an oversupply of substitutable labour.
- 4.7. Any predictions of overall employment effects need to consider that labour markets interact dynamically with other factors that are affected by migration, including aggregate demand. In other words, we should be careful to avoid the 'lump of labour' fallacy that results from treating labour as a commodity, without also considering the effect on the economy of working people as consumers and as taxpayers.

5. Incentives to train and employ New Zealand residents

- 5.1. Under the system for employer accreditation to 2021, immigration instructions required the immigration officer to be satisfied that the employer 'has a demonstrable commitment to training and employing New Zealand citizens or residence class visa holders'.
- 5.2. However, based on the experience of the CTU and our affiliate unions in consulting on these applications, the standard of evidence required to meet this criterion came to be set unacceptably low. It had become standard practice for immigration officers to accept copies of any job advertisement as evidence of commitment to employing New Zealanders,

and to accept evidence of any training whatsoever, including standard induction sessions, as evidence of commitment to training New Zealanders. In our view, this practice was clearly contrary to the intent, if not the letter, of immigration instructions.

- 5.3. The CTU supported the proposal in the Government's 2019 review of Employer-assisted Visas to introduce a category of premium accreditation, with enhanced standards for employers of six or more visa holders. We proposed that criteria for premium accreditation should be set meaningfully above those for standard accreditation and other minimum standards set by law.
- 5.4. Where possible, opportunities should be taken to incorporate standards that promote connection with, and reduce duplication of, other parts of the training, employment, and welfare systems. On each criterion, employers seeking premium accreditation should be able to show both compliance with the substantive standard, and business practices that promote continuous improvement above the standard.
- 5.5. Premium accreditation should require, in addition to the criteria for standard accreditation, evidence of the following commitments:
 - 5.5.1. **Lifting Wages and Conditions.** Premium accredited employers should be living wage employers, either accredited by Living Wage Aotearoa or providing other evidence that they meet an equivalent standard. Employers should demonstrate that they promote and support collective bargaining, and that they provide wages and conditions that are at or above Industry-standard. In assessing wages and conditions relative to industry-standard, immigration officers should take into account any collective agreement in place with a comparable employer in the industry. Employers should demonstrate a high level of commitment to active recruitment of New Zealand resident workers, including provision of training opportunities and pathways to promotion for existing employees.
 - 5.5.2. **Health and Safety.** Premium accredited employers should be able to demonstrate commitment to best practice in Health and Safety,

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

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

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

5.6. The Cabinet Economic Development Committee decided on 28 August 2019 (DEV-19-MIN-0228 refers) that standards for premium or high-volume accreditation would require that:

5.6.1. the employer must demonstrate a commitment to training and upskilling resident workers; and

5.6.2. the employer must demonstrate a commitment to improving pay and conditions over time;

5.7. The CTU advised officials that we would see each of these criteria as best assessed against a basket of measures. We advised that this would allow the assessment to be both nuanced and objective, taking account of feedback from unions.

- 5.8. On the rate of pay criteria, we supported the proposal to require a minimum rate of pay for relevant roles at a premium above minimum wage. We advised that, in addition to this minimum rate, employers should be required to show they are paying above market rates for relevant positions and that they have improved rates of pay over time. Evidence for this could include settlement of collective agreements at or above industry standard.
- 5.9. We also advised that the requirement for employers to support training and upskilling of New Zealand resident workers are essential to the objectives of accreditation. Employers applying for high-volume accreditation should be able to show that they are actively training resident workers for the relevant roles, as part of a plan to reduce their reliance on temporary visa-holders.
- 5.10. However, advice to employers that has now been issued by Immigration NZ, on the advice of MBIE, appears to require only a minimum rate of pay of 10% above the minimum wage, or a collective agreement in place.¹ The published criteria are due to come into effect on 9 May 2022. We understand that officials have advised that further work is needed on criteria for training and upskilling, which could be added at a later date.
- 5.11. The CTU remains concerned that the criteria for employer accreditation published by Immigration NZ do not meet the standards set by Cabinet decisions and are not yet fit for purpose.

6. Decoupling Work Visas from Particular Employers

- 6.1. The CTU is aware of reports and mounting evidence that visa conditions requiring temporary migrants to work for a specific employer are acting as a barrier to migrants raising complaints of exploitation. These conditions can also cause hardship for migrants who are dismissed, including in cases of exploitation and unjustified dismissal. For this reason, we

¹ <https://www.immigration.govt.nz/employ-migrants/new-employer-accreditation-and-work-visa/accreditation-what-you-need-to-commit-to>

supported the 2018 changes to Post-Study Work Visas, which were converted to open work visas.

- 6.2. In the case of temporary work visas, the challenge is to design a system that allows greater freedom for migrant workers to choose their employer without undermining the system of targeted migration, which allows standards to be set for good employment and to promote training and recruitment of New Zealand resident workers.
- 6.3. Under the existing system, where scrutiny of employers and job conditions is primarily tied to assessment of visa applications, it has not been possible to achieve both goals. However, the proposals for employer accreditation and job approval would make it possible to allow migrant workers to change employment within the pool of accredited employers and approved jobs, without compromising the broader goals for the immigration system to be targeted and well-regulated.
- 6.4. Targeting of migration, including labour market testing and promotion of employment and training for New Zealand residents, should continue to be a part of the immigration system at the level of employer accreditation and job approval, but this does not require individual migrants to be tied to individual employers.
- 6.5. The CTU recommends that current visa conditions allowing work only for a specified employer and job be replaced by:
 - 6.5.1. a visa allowing work for any accredited employer in any approved job (i.e., those that have passed through the employer accreditation and job approval gateways); and
 - 6.5.2. a requirement on both the employer and the worker to notify INZ of any change of employment.
- 6.6. This recommendation would involve no change to the proposed process for issuing visas to new migrants. A new visa would only be issued where an applicant has a confirmed and approved job offer with an accredited employer.

7. Planning for the Needs of Our Population

- 7.1. In recent years, New Zealand's infrastructure and housing stock has struggled to provide for the basic needs of a growing population. According to the government there is a \$75bn infrastructure gap, and there has been insufficient investment in public sector assets.
- 7.2. Central and local government need to work together to plan more effectively for the infrastructure and housing needs of a growing population. As one component of coordinated workforce planning, the immigration system has a role in predicting future trends of population growth to inform advance planning and public investment.
- 7.3. Government should legislate to set out at Budget what the impact of population and demographic change is on spending in areas such as housing, health, education, transport, and justice. Particular care should be provided to show what the impacts of this are for capital expenditure. This could be completed through the Fiscal Strategy Model, or as the CTU's preference, via a separate document.
- 7.4. Over the long term, planning of infrastructure and services should allow sufficient absorptive capacity for forecast population growth, with sufficient surplus capacity to allow for short-term fluctuations in temporary migration. Government should have to demonstrate what sources of funding are expected to be used to deliver that absorptive capacity.

8. Monitoring and Evaluation

- 8.1. CTU supports continuous monitoring and regular evaluation of major visa categories, including employment outcomes for migrants.
- 8.2. As far as we are aware, no substantive evaluation has ever been carried out of the employment outcomes, experiences, and impacts of Working Holiday Visa categories. We recommend that this be completed soon.
- 8.3. While the broad outlines of working holiday schemes are set by bilateral agreements, New Zealand would be within our rights to set reasonable

conditions for the operation of the schemes. This could include requirements for employer accreditation.

9. Conclusion

- 9.1. All New Zealanders benefit when migrants bring skills that complement our workforces and add to the productivity of our enterprises. We all benefit when migrants add to the social and cultural diversity of our communities and workplaces.
- 9.2. New Zealand's immigration system should be well integrated with systems of workforce skills planning, active labour market programs, and enforcement of labour standards. This should ensure that when people come to New Zealand to work they can be welcomed into genuine and rewarding jobs that complement, rather than compete with, the available resident workforce.
- 9.3. Eliminating exploitation and ensuring that migrants have good experiences of work in New Zealand will have broad wellbeing benefits for the whole community.
- 9.4. We need to ensure that we are providing the infrastructure necessary for all New Zealanders to lead lives of meaning and purpose – both migrants and existing residents. We should require that government show how it is intending to meet those needs.
- 9.5. The CTU thanks the Productivity Commission for the opportunity to engage in this inquiry. We look forward to working with the Commission on the completion of this inquiry and on further inquiries that explore the intersection of economic productivity and social wellbeing.