In Confidence

Office of the Minister of Immigration

Chair, Cabinet Economic Growth and Infrastructure Committee

Miscellaneous Immigration Policy Changes

Proposal

1 I propose a series of miscellaneous immigration policy changes to address irritants for users of the immigration system.

Executive Summary

2 A review by the Ministry of Business, Innovation and Employment (MBIE) has identified a number of irritants within the immigration system. The proposed changes are either beneficial to users of the system or have only minor impacts. They can be implemented by mid-2017.

3 There are twelve proposed changes, across a range of policies. Five of the proposals require amendments to immigration regulations, the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* and the *Immigration (Carriers' Information Obligations) Regulations 2010*.

4 The proposed changes are:

Work-to-Residence and Residence-from-Work policies

- Proposal one: extending the duration of employer accreditation under the Talent (Accredited Employer) policy. A minor regulation amendment is required.
- Proposal two: aligning the maximum age requirement for Long Term Skill Shortage List policy with the maximum age requirement of other work-to-residence policies.

Partnership visas

- Proposal three: discontinuing the 'partnership deferral' policy for applications for residence under the Partnership Category.
- Proposal four: removing the seven-year limit when considering prior domestic violence or sexual offences of New Zealand partners wishing to support partnership visa applications.
- Proposal five: providing a pathway to residence for some long-term partners of New Zealanders where the relationship has broken down and the family includes a New Zealand born/citizen child or children.

Low risk visitors

- Proposal six: allowing international tourism tour escorts to enter New Zealand as visitors.
- Proposal seven: expanding existing visitor visa provisions for approved arts or music festivals and for high-end acts to all short-term live performers.

Skilled/Business residence stream

- Proposal eight: expanding character requirements for all applicants under the Business stream to ensure compliance with employment and immigration law.

Regulatory changes (in addition to minor regulatory change in proposal one)

- Proposal nine: removing the regulatory requirement to provide a passport or certificate of identity in order for a visa application to be legally made.
- Proposal ten: ensuring that the immigration levy is payable on all 'first residence applications', whether the application leads to a resident visa or a permanent resident visa.
- Proposal eleven: preventing circumvention of immigration health requirements.
- Proposal twelve: updating the provision of passenger information requirements.

Addressing irritants within the New Zealand immigration system to improve user experience and system performance

5 MBIE identified that an area of focus for the 2016/17 immigration work programme was to improve the operation of the immigration system, by fixing several operational policy issues not otherwise captured by bigger policy projects.

6 Consideration was focused on discrete issues requiring Cabinet decisions, where the proposed change was either beneficial to users of the system, or had only minor impacts. MBIE took into account the following limitations:

a the project did not consider issues that require fundamental policy changes, or changes that do not align with the existing objectives of the policy

b the resulting proposals should not pre-empt work already planned or underway, and

c changes should be able to be implemented within the coming year without significant costs or substantial system changes.

7 Twelve proposals are being put forward. The majority of proposals address issues across policies that include Work-to-Residence, Partnership visas, Visitor visas, and the Skilled/Business residence stream. Five of the proposals will require changes to immigration regulations.

8 In September 2016 Cabinet agreed to reduce the annual planning range for the New Zealand Residence Programme (NZRP) and approved a range of policy changes to

improve the overall quality of migrants being granted residence [CAB-16-MIN-0500]. The proposed changes in this paper are not expected to put pressure on the NZRP.

Work-to-Residence and Residence-from-Work policies

9 The first Work-to-Residence and associated Residence-from-Work policies were introduced in April 2002 [DEV Min (01) 19/6]. They offered applicants (and employers) a simple and quick work visa process, and a pathway to residence with a higher level of certainty than the General Skills residence policy in place at the time. They are still in place today, with the main categories being:

a Talent (Accredited Employer) – focused on employer accreditation by Immigration New Zealand (INZ), and a salary threshold[1] as evidence of skill level

b Talent (Arts, Culture and Sports) – intended as a subset of the above, replacing the salary threshold with evidence of international reputation in a field of arts, sport or culture, and

c the Long Term Skill Shortage List (LTSSL) – focused on employment in areas of skill shortage.

Proposal one: extending the duration of employer accreditation under the Talent (Accredited Employer) policy

10 The Talent (Accredited Employer) policy allows employers to hire migrant workers and support work visas without going through the usual labour market test. Accredited employers range from central government agencies and District Health Boards, to technology companies and firms in the hospitality industry.

11 To become accredited, employers must show that they:

a are in a sound financial position

b are committed to training and employing New Zealanders

c have good employment and workplace practices, and

d have a history of compliance with all immigration and employment laws and policies.

12 Accreditation costs $1,775 and is valid for 12 months. It can be renewed yearly, at a cost of $500. INZ has the ability to rescind an employer's accreditation, with approval from the Minister of Immigration, but has never exercised this power. Rescinding accreditation could happen where INZ considers that the employer's conduct has created an unacceptable risk to the integrity of New Zealand's immigration or employment laws or policies.

[1] Visa applicants under the Talent (Accredited Employer) policy must earn at least $55,000 per annum to qualify for a work visa and subsequently for residence. Applicants who earn at least $90,000 per annum at the time they apply for residence can get a permanent resident visa immediately (others get a resident visa for two years before qualifying for a permanent resident visa).

13 The 12-month accreditation period for Talent (Accredited Employer) compares with:

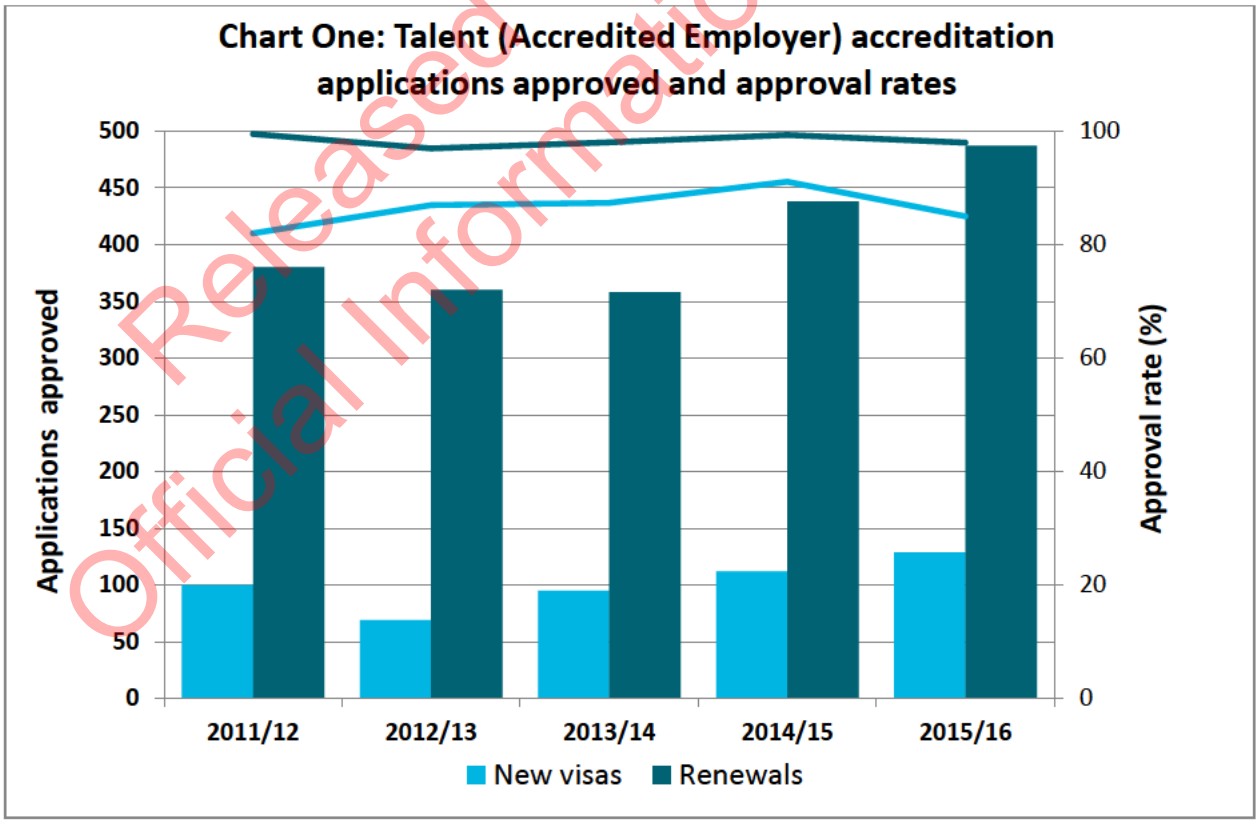
a 12 months accreditation for labour hire companies in the construction sector in the Canterbury region, allowing them to support work visas for construction workers in that region[2]

b an initial two year accreditation period followed by three-year renewals for Recognised Seasonal Employers, allowing them to bring in horticulture and viticulture workers, primarily from the Pacific

c an initial 12 months accreditation followed by two-year renewals, for entertainment industry companies, allowing them to support work visas for entertainment industry workers with an easier labour market test, and

d four years accreditation for approved music producers and approved art or music festivals, allowing them to support visitor visas for high-end music acts and for festival performers.[3]

14 More than 75 per cent of employer accreditation applications under *Talent (Accredited Employer)* decided by INZ each year are renewals. New applications have an approval rate above 80 per cent. Applications for renewal have a much higher approval rate, of between 97-99 per cent over the last five years. This indicates that initial decisions successfully remove poor quality employers and, once accredited, employers maintain high standards. Chart One below shows the number of new applications and renewals and their approval rates for the last five years.



[2] The 12-month accreditation period for the Canterbury construction sector was set to manage the higher level of risk in the sector of employers failing to meet their obligations.

[3] Note that Proposal seven, below, is to extend this policy to other types of entertainment performers.

15 The 12-month duration does not reflect the low level of risk associated with these applications over the past five years. I propose to extend the duration of accreditation under the Talent (Accredited Employer) policy, to instead allow:

a an initial accreditation period of up to two years, and

b renewal accreditation periods of up to five years.

16 Extending the accreditation period will increase the risk posed by employers failing to meet their obligations between assessments. To manage this risk, I propose that:

a INZ develop an appropriate audit programme for accredited employers. Audits can more effectively target high risk employers than shorter accreditation across the board, and

b INZ be able to rescind an employer's accreditation without requiring the consent of the Minister of Immigration, in line with all other accreditation policies.

17 Costs associated with the proposed audits will be met initially by INZ from within baselines, and reviewed as part of the 2017 INZ Fee Review to determine whether they should be reflected in a change to the fee or levy amount charged to employers. The Fee Review will also provide an opportunity to assess what, if any, changes need to be made to the level of work required to assess renewal applications after longer accreditation periods.

18 A minor amendment to the fees schedules (schedule 4) of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* will be required for the proposed changes.

Proposal two: aligning the maximum age requirement for Long Term Skill Shortage List policy with the maximum age requirement of other Work-to-Residence policies

19 Work-to-Residence policies (and associated Residence-from-Work policies) have a maximum age requirement of 55 years. This is the same as for the Skilled Migrant Category, and limits applications from people aged over 55 years at the time the application is made. The age limit aims to ensure that applicants being granted residence on the basis of their work or skills can contribute to the New Zealand workforce for a reasonable period before retirement.

20 The Talent (Accredited Employer) and Talent (Arts, Culture and Sports) policies apply the maximum age requirement at the work visa stage, with no age limit at the residence stage two years later. The LTSSL policy does the opposite, with no age limit placed on the work visa but a maximum age requirement is required with residence applications. This creates a situation where applicants 55 years and older can be granted a work visa under the LTSSL Work-to-Residence policy, but find themselves ineligible for the subsequent resident visa under the LTSSL Residence-from-Work policy. This situation goes against the intent of the Work-to-Residence policies of providing a pathway from work to residence with a high degree of certainty.

21 I propose that the maximum age requirement for the LTSSL policy be reversed, from the residence stage to the work visa stage, to align with the other two Work-to-Residence policies and ensure applicants who meet the eligibility requirements for the work visa are able to proceed to the residence stage as expected.

Partnership visas

22 Partnership visa policies (visitor, work, and resident visas) allow partners of New Zealand citizens and residents to come to New Zealand on the basis of that relationship. Requirements include living together with their New Zealand partner in a genuine and stable partnership, and character checks on both the applicant and their New Zealand partner.

Proposal three: discontinuing the 'partnership deferral' policy for applications for residence under the Partnership Category

23 To be eligible for residence under the Partnership Category, applicants must have been living together with their partner in that partnership for a minimum of 12 months. Where an application is made before that minimum duration is met, and an immigration officer is satisfied with all other application requirements, the final decision on the residence application can be deferred to allow the qualifying period to be met. If the applicant wishes to be in New Zealand with their partner during the deferral period, they can apply for a Partnership Deferral temporary visa.

24 The 'partnership deferral' policy has the benefits of INZ not being required to decline applications when only the partnership duration criterion is not met, and speeding up the final decision at the end of the deferral period (i.e. it is faster than a new application). However, it also adds complexity to the visa options available under partnership, and can be seen to undermine the minimum partnership requirements by allowing applications that do not meet the minimum requirements to be accepted.

25 Importantly, 'partnership deferral' does not provide any special access to New Zealand that is not already available through other, more appropriate visa options. Applicants can, and often do, apply for a temporary entry (visitor or work) visa based on short partnership periods.

26 I propose to remove the 'partnership deferral' option for applications for a resident visa under the Partnership Category. This will simplify the visa categories for partnership, and signal that all the minimum requirements must be met before making a residence application under partnership.

27 The impact of this change will be minimal. Numbers of temporary entry visas granted under partnership deferral are very small and steadily decreasing, and are small in comparison to overall applications for residence under partnership. Table One below illustrates declining numbers of applications through the last ten years.

Table One: Declining number and proportion of partnership deferral temporary entry visas

Year	Partnership residence applications decided	Partnership deferral temporary entry visas decided	Partnership deferral visas as a proportion of partnership applications
2006/07	7872	60	0.76%
2010/11	8214	46	0.56%
2014/15	8195	10	0.12%

28 The small number of applicants who currently use the policy will be able to use other visa options under partnership and wait a few extra months before lodging their residence application. The cost of a temporary entry partnership visa application is between $165 (online visitor visa) and $375 (work visa submitted in hard copy). The change will not affect existing visa applications, which are decided based on the policy in place at the time the application is lodged.

29 The 'partnership deferral' policy is also sometimes used for other types of residence applications, where the 12-month partnership duration requirement applies to partners who are included as a secondary applicant. For example, where a foreign couple has been living together for 10 months when they apply for residence under the Skilled Migrant Category (SMC); instead of removing the secondary applicant from the main application and requiring a separate residence application later under partnership, he or she can get a 'partnership deferral' until the 12 months is met, and eventually get residence based on the original SMC application.

30 Unlike partners of New Zealanders, the cost of removing the partnership deferral for partners of SMC would be high. Delaying the SMC application until the partnership requirement is met may not be possible for the principal applicant. This would require making a separate residence application under the Partnership Category (with the now-resident partner) a few months after the SMC application, adding costs and complexity. In some cases a new character check and medical certificate may be required. The partnership deferral option under the SMC provides a facilitative pathway for these applicants, and I do not propose to change it.

Proposal four: removing the seven-year limit when considering prior domestic violence or sexual offences of New Zealand partners wishing to support partnership visa applications

31 Partnership visa applications include character requirements for the New Zealand partner supporting the application. They must not, in the seven years prior to the date of the application:

a have been convicted of any domestic violence or sexual offence (unless granted a character waiver), nor

b have been the perpetrator of an incident of domestic violence which resulted in the grant of a resident visa to a former partner under the Victims of Domestic Violence category.

32 They are required to submit a police certificate from every country in which they have lived for at least 12 months in the seven years prior to their partner's application being submitted.

33 A review of partnership policies highlighted that the time limit on this requirement offers only limited protection for foreign partners and their children, who have often left their families, friends and support networks behind. In order to bolster the protection of women and children in vulnerable situations, and prevent potentially abusive New Zealanders from supporting partnership applications, I propose to remove the seven-year limit on the character requirements for New Zealand partners.

34 The immediate impact of this proposal will be to require police certificates from New Zealand partners from every country in which they have lived for at least 12 months

since turning 18. This is a stronger requirement than for visa applicants themselves,[4] and reflects the Government's commitment to preventing family violence.

35 A little over 8,000 resident visas, and 14,000 to 15,000 temporary entry visas, are granted under partnership categories every year. For some older partners who lived overseas in their younger years, this could make supporting an application more complicated and more demanding in terms of paperwork required. This negative impact is minor when compared with the overall benefit of the proposal.

36 New Zealand partners with older convictions (not currently captured by the seven-year policy) may no longer be able to support partnership applications. This is the intent of the proposed policy change.

37 The impact on affected New Zealand partners is mitigated by the following:

a existing immigration instructions for dealing with situations where a police certificate may not be available

b protection under the *Criminal Records (Clean Slate) Act 2004,* meaning INZ cannot request disclosure of convictions covered by this legislation

c eligibility for a character waiver under existing policy, meaning immigration officers *must* consider the applicability of a character waiver, giving regard to the nature of the offending and surrounding circumstances of the application. The length of time since the offending occurred will naturally form part of the character waiver consideration, and

d general fairness and natural justice requirements in immigration decisions.

Proposal five: providing a pathway to residence for some long-term partners of New Zealanders where the relationship has broken down and the family includes a child or children

38 Partners of New Zealand residents and citizens must be living with their New Zealand partner in a genuine and stable relationship for at least 12 months in order to apply for residence under the Partnership Category. Partners living with a New Zealander overseas can apply before coming to New Zealand and, if that relationship is long-term (defined as five years or more), can be granted a Permanent Resident Visa immediately.[5]

39 Twelve months is a minimum requirement and some foreign partners may decide not to apply for residence immediately when eligible. Foreign partners who only intend a temporary stay or who are uncertain about applying for residence can get work visas for up to two years.[6]

40 When a long-term relationship breaks down after a family moves to New Zealand but before the foreign partner applies for and gets residence, foreign partners can find

[4] Temporary entry visa applicants must provide police certificates from every country where they have lived for five years or more, since turning 17 years old. Resident visa applicants must provide police certificates from every country where they have lived for 12 months or more, over the previous ten years.

[5] Applicants who do not meet the 'long term' overseas requirement are granted a Resident Visa and must wait two years to qualify for a Permanent Resident Visa.

[6] Foreign partners of New Zealand residents and citizens who intend to stay in New Zealand for more than two years are expected to apply for residence before the end of this two-year period.

themselves with no alternative avenue to stay in New Zealand.[7] This is particularly difficult when the family includes a New Zealand child or children who would stay behind in New Zealand.

41 I propose to create a pathway for these (now former) partners who had been in a long-term relationship to get residence to stay in New Zealand. This new resident visa, under the existing Family Category, will be available to people who:

a are in New Zealand at the time they make the application

b had been, prior to the break-up, living in a genuine and stable partnership with a New Zealand resident or citizen for at least five years, and

c have a New Zealand resident or citizen child or children with their former New Zealand partner, and that child (or at least one of the children) meets the existing definition of 'dependent child' under residence instructions and is habitually resident in New Zealand.

42 Generic residence health and character criteria will apply. Applications under this policy will not count toward the limits on the number of partners and timeframes between applications that apply to supporting visas under Partnership policy.

43 I recommend extending character requirements for applicants under this policy to specifically cover family violence. There is a small risk that New Zealand partners escaping a situation of family violence may be further victimised if their abusive foreign partner is allowed to stay under this new visa category. Standard character requirements rely on actual convictions and are not sufficient to manage this risk.[8] Details of the extended character requirements will be developed through operational policy and are subject to approval by the Minister of Immigration.

44 Limiting the visa to people who had been in long-term relationships will mitigate the risk of creating a perverse incentive for people to enter partnerships and have children for the purpose of getting residence through this new category. This risk is considered very small under the proposed settings.

45 The impact of introducing this policy is expected to be small in terms of numbers but significantly positive for the families affected. The application fee and immigration levy will be the same as for other Family Category residence policies, namely $970 (fee) and $280 (levy).

Low risk visitors

46 New Zealand has a number of special visitor visa categories for people who do some form of work while in New Zealand, but who are here for very short periods of time for specialised engagements, or whose work is incidental to their visit to New Zealand, and whose presence benefits New Zealand. Examples include sports people, their support

[7] This excludes situations where the relationship breaks down because of domestic violence against the foreign partner. In such cases, the foreign partner can apply under existing policies for *Victims of Domestic Violence* (for both temporary and residence visas). These policies have no minimum relationship duration requirement, and focus instead on the intention to seek residence on the basis of partnership. They provide for operational flexibility in establishing evidence of the partnership and of the domestic violence. Applications are assessed by specially trained immigration officers trained to deal with victims of domestic violence.

[8] Only a small proportion of domestic violence complaints to police lead to actual convictions. In domestic violence situations involving a foreign partner as the perpetrator, it is conceivable that in the absence of other criminal behaviour the violent partner would meet character requirements.

staff and media coming for sports events and tournaments, musicians and performers coming for festivals or with certain music promoters, and visiting academics.

47 Proposals six and seven are for new or improved special visitor visa categories for groups of people who may work in New Zealand. They are considered to be low-risk both in terms of overstaying and in terms of displacing New Zealand workers.

Proposal six: allowing international tourism tour escorts to enter New Zealand as visitors

48 Overseas tour groups coming to New Zealand often do so accompanied by a tour escort. The primary role of tour escorts' is providing pastoral care, translation and organisation for the group. They work for an overseas employer, and many who are from visa-waiver countries arrive as visitors. However, they do officially require work visas to conduct their duties while in New Zealand. Those who arrive as visitors run the risk of being detained and questioned at the border and leaving their tour group without support on arrival. Those who apply for the required work visa face an additional challenge as there is no specific visa category that easily applies to them.

49 Tour groups contribute to New Zealand's tourism industry. In a June 2015 survey,[9] inbound tour operators (New Zealand companies facilitating tour groups travel within New Zealand) indicated that tour groups accounted for 55 per cent of the sector's estimated $496 million annual revenue, with a strong growth outlook for the next three years.

50 I propose to better facilitate tour groups visiting New Zealand by allowing tour escorts to travel as visitors. This will mean easier visa applications for those from visa-required countries, and visa-free travel for those from visa-waiver countries.

51 I propose that 'tour escort' be defined here as a person who:

a arrives, leaves, and travels within New Zealand with a tour group, and

b resides offshore and is employed by an employer outside New Zealand (for example, an overseas travel agent).

52 This proposal is low risk. Tour escorts are not considered to pose a risk of displacing New Zealand workers in the tourism industry – they arrive and leave New Zealand with their tour group(s), and when in New Zealand will usually arrange for local tour guides to manage specific activities and provide in-depth local knowledge. The nature of their work also puts them at low risk of overstaying.

Proposal seven: expanding the visitor visas for approved arts or music festivals and for high-end music acts, to all short-term live performers

53 INZ has a suite of visa policies for entertainment industry workers:

a two categories of visitor visas, for entertainers coming as part of approved festivals and for high-end music acts coming to tour with approved music promoters, and

[9] *Auckland Tourism, Events and Economic Development (ATEED) Inbound Tour Operator Survey*, Angus & Associates for Auckland Tourism, Events and Economic Development, June 2015

b work visas under *Specific Purpose* category for entertainers coming for private or public performances (not covered by (a) above) or to work on film or video productions in New Zealand.

54 Visitor visas for high-end music acts were introduced in 2014 [EGI Min (14) 14/11] following a review of policies for entertainers and representations from music promoters. The majority of those who come under the policy are from visa-waiver countries. Based on a sample of 500 tours/groups[10] from the start of 2016, the workers stayed an average of six days in New Zealand.

55 This arrangement has been working well and has received positive feedback from promoters, who have asked that it be extended to include comedy acts and family entertainment. These acts can already come with visitor visas if they are part of a festival, but must otherwise apply for work visas under the Specific Purpose – Performing Artists, Entertainers and Entertainment Industry Workers policy. They are likely to be exempt from the labour market test because of their short stay (it is not required for stays of less than 14 days). According to the 2014 review, 91 per cent of work visas for entertainers fell under the 14-day exemption. Allowing a wider range of live acts to come with a visitor visa instead of a work visa would be unlikely to impact on labour market opportunities for New Zealanders.

56 I propose that the High-End Acts policy be extended to allow a wider range of live acts. This would add acts such as comedy performers, family entertainment, international circus, ballet, and theatre companies. The requirement to come to New Zealand with an approved promoter would still apply, providing INZ with oversight.

Business residence stream

Proposal eight: expanding character requirements for all applicants under the Business stream to ensure compliance with employment and immigration law

57 Applicants for residence under the Business stream (an Entrepreneur category, and two Investor categories) are subject to the generic character test set out in the *Immigration Act 2009* and residence immigration instructions. An additional test applies to *Entrepreneur* applications, whereby the business on which the application is based must comply with all relevant New Zealand employment and immigration law. This test only applies to the business used in the application, not to any other business the applicant may be involved with, nor to any business in which an Investor category applicant may be involved.

58 In light of the Government's efforts to strengthen the enforcement of employment standards and protect employees – including changes made in 2016 to the *Employment Relations Act 2000,* and the new provisions to protect migrants from exploitation in the *Immigration Act 2009* introduced in 2015 – the current character requirements for *Entrepreneur* and *Investor* applicants appear insufficient. I propose an overarching 'fit and proper' character requirement for applications made under any category in the Business stream, to ensure a greater degree of accountability for applicants' compliance with employment, immigration and tax law.

[10] Approved promoters regularly advise INZ of incoming tours, with information on nationalities, main act, numbers of people in the tour, and itinerary/planned dates in New Zealand.

59 I propose that the breadth of accountability be aligned with the new employment standards and apply to 'officers' of a company, being directors and other individuals who occupy positions where they exercise significant influence over the management or administration of the business.

60 The impact on applicants is expected to be small. Additional requirements for applicants could include making a declaration of good character and, in some instances, providing additional information if requested by INZ. The additional checks by INZ are not expected to affect the cost of an application under these categories.

Regulatory changes

61 Five regulatory changes are proposed as part of this paper including a minor amendment to reflect the proposed change to the employer accreditation duration as set out in proposal one under paragraph 18.

Proposal nine: removing the regulatory requirement to provide a passport or certificate of identity in order for a visa application to be legally made.

62 Regulations 5(2)(d)(i) and 10(2)(e)(i) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 require applicants to submit identity documents at the time they lodge their visa applications (other than at an immigration control area):

a their passport or certificate of identity

b their birth certificate (original or a certified copy), or

c other identity document (or a certified copy).

63 The flexibility to provide originals or certified copies of the birth certificate or other identity document does not extend to passports or certificates of identity, when in fact there is no need for INZ to see the original passports when the application is lodged. With the ability to grant electronic visas, there are some circumstances where a physical passport is not required at any point during the processing of a visa application.

64 I propose to change these regulations to allow a certified copy of the passport or certificate of identity to be provided. This will provide flexibility and convenience for applicants and avoid INZ offices having to return passports by post after some applications are lodged.

Proposal ten: ensuring that the immigration levy is payable on all 'first residence applications', whether the application leads to a resident visa or a permanent resident visa

65 The immigration levy was introduced in December 2015 to replace the migrant levy. The migrant levy had been applied to successful residence applicants, as a prerequisite to the new visa being endorsed in the applicants' passports, and used for settlement-related services and immigration research. The immigration levy now applies to all substantive visa applications (successful or not), at the time of application, and is used for a wider range of immigration-related services for which a fee is not appropriate.

66 Applicants subject to the levy are explicitly listed in Schedule 6 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010. The list is exclusive. It includes applicants for a 'resident visa' under a variety of categories, but not applicants

for a 'permanent resident visa' (PRV) – reflecting the fact that PRVs are not usually 'substantive' visa applications, but follow on from a resident visa application after two or more years.[11]

67 This is problematic for the few visa categories where applicants may be immediately eligible for a PRV without first holding a resident visa:

a Partnership Category – where the period of partnership is longer than five years and the couple are living overseas at the time of the application, the foreign partner can get a PRV immediately

b Talent (Accredited Employer) category (Residence-from-Work) – where the applicant meets a higher annual salary threshold ($90,000 per annum instead of the standard $55,000 per annum) they can get a PRV immediately,

c Global Impact Visas – though this policy is not yet implemented, it is intended that applicants who meet the residence requirements will be eligible for a PRV immediately.

68 Applicants under the Partnership Category and Talent (Accredited Employer) pay their immigration levy when they lodge their substantive resident visa application, but that levy amount must be refunded if they meet the special requirements and get an immediate PRV. This does not align with the intention that substantive residence applications would attract the levy regardless of the type of visa granted. It also introduces a different cost for the same application. The immigration levy for Partnership Category applications is $280 and for Talent (Accredited Employer), $580.

69 I propose that the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* be amended to ensure that all substantive residence applications be subject to the immigration levy, while making sure that PRV and second or subsequent resident visa applications are exempted where they follow a resident visa.

Proposal eleven: preventing circumvention of immigration policy health requirements

70 The immigration system regulates the entry of foreign nationals through the comprehensive assessment of visa applications. One reason for this is to protect New Zealand from significant costs imposed on publicly-funded services, including healthcare and special education services. A resident visa can only be approved in its entirety if all family applicants included in the same application meet health and character requirements or a good reason exists to waive those requirements.

71 Some dependent partners and children with high cost healthcare needs who are in New Zealand on temporary visas are being excluded or removed from their family's residence applications in an attempt to circumvent immigration health assessment requirements. The intention is to allow the rest of the family to be granted residence in the belief, that when a subsequent residence application is made, the independent appeal process can then be used to gain residence for the excluded partner or child. This means that the health needs of a dependent person cannot be assessed by INZ for the purpose of determining a family visa application.

[11] Second and subsequent resident visa applications, which allow applicants who are not eligible for a PRV to still maintain their resident status if they travel, are also not included in the list at Schedule 6 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.

72 While numbers are small, circumvention of health requirements by not disclosing dependants' health or education needs undermines the integrity of the immigration system. To address this issue, I propose to amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to require that all dependants must be included in a residence application (or not removed while the application is being processed) where they hold a temporary entry visa linked to the principal applicant's current visa. Only where a change in circumstances during the course of an application makes a dependant ineligible for inclusion (for example divorce, separation or death), would removal be permitted.

73 The proposed change will allow INZ to enforce health policy requirements, thereby strengthening the integrity of the immigration system. The entire family can be assessed as a single unit and INZ can balance the economic contribution of the family against the potential costs to New Zealand when deciding whether or not to grant residence. It will also reduce the number of unlawful dependent children in New Zealand who receive special needs education funding and health services.

74 The proposal will also prevent the removal of dependent family members from residence visa applications in order to circumvent character requirements, although no evidence exists to suggest this is a problem.

75 Amending the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* is the only way to achieve this as immigration instructions cannot be used to set rules relating to the making or lodging of an application (including the withdrawal of an application).

Proposal twelve: updating the provision of passenger information requirements

76 To protect and maintain the integrity of the New Zealand border, INZ, along with the New Zealand Customs Service (Customs), collects passenger name record information from airlines flying into New Zealand (known as PNR data). PNR data is used to run pre-travel risk assessments on passengers both to identify high risk passengers, and facilitate the efficient flow of low risk passengers through international airports. The Ministry of Primary Industries (MPI) also receives PNR information provided to it by Customs.

77 The specific information collected is specified in international standards and reflected in immigration regulations. The International Civil Aviation Organisation (ICAO) has updated the PNR standard to provide a consistent approach to the provision of PNR data by airlines to all governments that require this information. The New Zealand border agencies are updating the information provision requirements to align with the new ICAO standards.

78 The New Zealand border agencies (INZ, Customs, and MPI) have adopted the principle from the ICAO guidelines that where airlines do not already collect or hold a specific data element or elements, the airline is not required to provide that data. Where an airline is unable to provide a specific data element or elements, the *Immigration Act 2009* (the Act) allows for an exemption to be agreed in writing with the airline.

79 Cabinet has agreed to amend Customs legislation to align the *Customs and Excise Act 1996* with the updated ICAO standard (EGI-15-MIN-0064.01: Customs and Excise Act Review: Biometric and Passenger Name Record Information (Paper 3)).

80 To ensure alignment of the immigration regulations with the new international standards and maintain the integrity of New Zealand's border controls, I propose that regulation 6 of the *Immigration (Carriers' Information Obligations) Regulations 2010* be updated.

Implementation

81 The maximum age requirements for Long Term Skill Shortage List change (proposal two), the expanding existing visitor visa provisions change (proposal seven), and the character requirements for all applicants under the Business Stream change (proposal eight), are planned for implementation in November 2016. Implementation of the remaining proposals is planned for April 2017.

Consultation

82 The following government agencies were consulted and their views taken into account in the drafting of this paper: the Treasury; the Ministries of Justice and Social Development, and Inland Revenue, particularly on proposals five and eleven; the Ministry for Culture and Heritage, and Creative New Zealand, particularly on proposal seven; the Ministries of Education, Foreign Affairs and Trade, Health, Pacific Affairs, and the Office for Disability Issues particularly on proposal eleven; the Ministry for Primary Industries, the Ministry of Transport, the New Zealand Customs Service, and the New Zealand Police, particularly on proposal twelve. The Department of Prime Minister and Cabinet has been informed. The New Zealand Music Commission has also been consulted in regards to proposal seven.

83 In respect of proposal twelve, the Border Agencies, during the development of the Customs Cabinet paper, fully consulted airlines and relevant stakeholders about the proposed change to reflect the new ICAO standard and recommended practice for PNR in legislation. The Board of Airline Representatives of New Zealand agreed with the approach while noting, given the sensitivities of the personal information being provided, that particular protection of this information is required. Customs is drafting a Privacy Impact Assessment that details the measures being undertaken to safeguard the passenger information being provided.

Financial Implications

84 The proposals in this paper are fiscally neutral to the Crown. Any additional fees proposed would be met by applicants and volume changes managed through the memorandum account, baseline updates and future fee levy reviews.

Human Rights Implications

85 The proposals in this paper are consistent with the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993.*

86 Proposal eleven ensures that proper account can be made of all visa applicants' health and character. Section 22 of the Act provides for such assessment, and the proposal changes neither the content of the substantive health and character tests nor the way those tests are applied. More generally, section 392 of the Act "recognises that immigration matters inherently involve different treatment on the basis of personal characteristics" and section 45(1) provides that "no person is entitled to a visa as of right".

Legislative Implications

87 Changes to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* will be required to implement proposals one (amending the duration of accreditation periods), nine (to allow certified copies of passports), ten (to ensure the immigration levy applies as intended to all substantive residence applications), and eleven (include all dependent family members who hold temporary entry visas linked to the principal applicant in a residence visa application).

88 The proposal (proposal twelve) to align with the new International Civil Aviation Organisation PNR data standard would require an update to the *Immigration (Carriers' Information Obligations) Regulations 2010*.

Regulatory Impact Analysis

89 A Regulatory Impact Statement (RIS) is not required for proposals one, nine, ten, and twelve on the basis that they are of a minor and technical nature.

90 MBIE has prepared a RIS relating to the proposed amendment to application requirements for residence class visas (proposal eleven). The MBIE Regulatory Impact Analysis Review Panel has reviewed the attached RIS and considers that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Publicity

91 A communications strategy will be prepared by MBIE, as part of the development of operational policy to implement the changes. I also propose that this Cabinet paper be proactively released on the MBIE website.

92 Proposal seven, to extend visitor visas to all foreign national live acts coming to New Zealand with an approved promoter, may attract negative publicity from entertainment workers' unions for not having been consulted. The unions have opposed all changes to policies for entertainment workers since 2012. The 2014 review of policies for entertainment industry workers (mentioned at paragraph 54 above) specifically investigated concerns raised by the unions and found them to be unfounded.

Recommendations

The Minister of Immigration recommends that the Committee:

1 **note** that the changes proposed in this paper address irritants within the immigration system identified by the Ministry of Business, Innovation and Employment and will either be beneficial to users, or have only minor impacts on the immigration system

Proposal one: extending the duration of employer accreditation under the Talent (Accredited Employer) policy

2 **note** that the Talent (Accredited Employer) policy, introduced in 2002 [DEV Min (01) 19/6], allows employers accredited by Immigration New Zealand to more easily hire foreign workers, with a simple and fast work visa process and a pathway to residence;

3 **note** that employer accreditation under the *Talent (Accredited Employer)* policy is valid for 12 months and renewable annually, and that approval rates for renewal applications are consistently extremely high (99 per cent in the last two years);

4 **agree** to extend the duration of employer accreditation under the Talent (Accredited Employer) policy to:

a an initial accreditation period of up to two years, and

b renewal accreditation periods of up to five years;

5 **agree** that any fiscally-neutral changes to the Immigration Services appropriation arising from this change will be reflected in future Baseline Updates (where material);

6 **agree** that Immigration New Zealand develop an audit programme for accredited employers under the longer accreditation timeframes specified at recommendation 4;

7 **agree** that Immigration New Zealand can rescind an employer's accreditation under the Talent (Accredited Employer) policy without requiring the consent of the Minister of Immigration, in line with other accreditation policies;

8 **agree** that the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* be amended to adjust the accreditation periods to accord with the policy detailed in recommendation 4;

Proposal two: aligning the maximum age requirement for Long Term Skill Shortage List policy with the maximum age requirement of other Work-to-Residence policies

9 **agree** that the maximum age requirement for the Long Term Skill Shortage List policy (55 years) be applied at the work visa stage (instead of the residence visa stage it currently is), to align with other Work-to-Residence policies;

Proposal three: discontinuing the 'partnership deferral' policy for applications for residence under the Partnership category

10 **note** that a seldom used Partnership deferral policy allows INZ to defer residence applications made by partners of New Zealand citizens or residents who do not meet the minimum partnership duration requirement (living together for 12 months), and allows partners to apply for a temporary entry visa for the time needed to meet the minimum partnership duration;

11 **note** that discontinuing the Partnership deferral policy would reinforce the importance of meeting the minimum requirements prior to applying for a residence visa, and that it would not impose additional costs for partners of New Zealand citizens and residents in terms of applying for a separate temporary entry visa;

12 **note** that the Partnership deferral policy is also sometimes used for applications for residence under the Skilled Migrant Category when the principal and the secondary applicant do not meet the minimum partnership duration requirement, and that discontinuing the policy for these applicants would impose significant costs associated with making a separate residence application under partnership in the future;

13 **agree** to discontinue the Partnership deferral policy, for applications for residence under the *Partnership Category* (for partners of New Zealand citizens or residents) only;

Proposal four: removing the seven-year limit when considering prior domestic violence or sexual offences of New Zealand partners wishing to support partnership visa applications

14 **note** that in order to support a partnership visa, New Zealand citizens or residents must not, in the seven years prior to the date of the application:

a have been convicted of any domestic violence or sexual offence, nor

b have been the perpetrator of an incident of domestic violence which resulted in the granting of a resident visa to a former partner under the *Victims of Domestic Violence* category;

15 **note** that where a partner has a conviction captured by the character requirements, the immigration officer must consider the applicability of a character waiver, giving regard to the nature of the offending and surrounding circumstances of the application, and applying the principles of fairness and natural justice;

16 **note** that a review of partnership policies highlighted that the seven-year limit on the character requirement for supporting partners does not offer sufficient protection for foreign partners and their children, in preventing New Zealanders with a history of domestic abuse or sexual violence from supporting partnership applications**;**

17 **agree** to remove the seven-year limit on the character requirements for New Zealand partners detailed at recommendation 14;

Proposal five: providing a pathway to residence for some long-term partners of New Zealanders where the relationship has broken down and the family includes a child or children

18 **note** that partners of New Zealand residents or citizens are eligible to apply for residence under Partnership Category once they have been living together with their New Zealand partner in a genuine and stable partnership for at least 12 months;

19 **note** that long-term partners of New Zealanders may be left with no pathway to remain in New Zealand with their children, if their relationship breaks down before they have been granted residence under Partnership Category;

20 **agree** to a new resident visa, under Family Category, for long-term partners of New Zealanders, where the relationship has broken down and the family includes a child or children;

21 **agree** that the new category be available to applicants who

a are in New Zealand at the time they make the application

b had been, prior to the break-up, living in a genuine and stable partnership with a New Zealand resident or citizen for at least five years, and

c have a New Zealand resident or citizen child or children with their former New Zealand partner, and that child (or at least one of the children) meets the existing definition of ‘dependent child’ under residence instructions and is habitually resident in New Zealand;

22 **agree** that character requirements for applicants under this policy include provisions to protect the New Zealand child or children and ex-partner from domestic violence;

23 **agree** that the visa will not count toward the restrictions on the number of partners and timeframes between applications that apply to supporting visas under the Partnership policy;

24 **agree** that applications under this new policy will incur a fee of $970 and an immigration levy of $280, which are the charges applicable to Family Category residence applications;

25 **note** that this change is expected to have no impact on the operating balance because costs will be covered by the application fee and immigration levy outlined in recommendation 24;

Proposal six: allowing international tourism tour escorts to enter New Zealand as visitors

26 **note** that there are a number of special visitor visa categories for people who do some form of work while in New Zealand, but who are here for very short periods of time, for specialised engagements, or whose work is incidental to their visit to New Zealand, and whose presence benefits New Zealand;

27 **note** that overseas tourist tour groups coming to New Zealand often do so accompanied by a tour escort who provides pastoral care, translation and organisation for the group, and that these tour escorts are required to hold work visas when coming to New Zealand with tour groups;

28 **agree** to allow tour escorts to come to New Zealand as visitors, defining tour escorts as people who:

a arrive, leave, and travel within New Zealand with a tour group, and

b reside offshore and are employed by an employer outside New Zealand (for example, an overseas travel agent);

Proposal seven: expanding the visitor visas for approved arts or music festivals and for high-end music acts, to all short-term live performers

29 **note** that certain entertainment industry workers can come to perform in New Zealand with visitor visas where they are part of an approved festival, or are a high-end music act touring with an approved music promoter;

30 **note** that the policy for music acts touring with approved promoters has been working well and received positive feedback from promoters, who would like to see it extended to other live acts, such as comedy and family entertainment;

31 **agree** to extend the policy for high-end acts to other short term live acts who tour New Zealand with approved promoters;

Proposal eight: expanding character requirements for all applicants under the Business stream to ensure compliance with employment and immigration law

32 **note** that applications for residence under the Entrepreneur Category, part of the Business Stream, are subject to a special character requirement whereby the business on which the application is based must comply with all relevant New Zealand employment and immigration laws;

33 **note** that the special character requirement made in recommendation 32 only applies to the business used for the residence application, not to any other business the applicant may be involved with, nor to any business in which applicants under other categories in the Business stream may be involved (for example, the Investor Category);

34 **note** that the Government has already deployed a range of changes in efforts to strengthen the enforcement of employment standards and protect employees, including changes to the *Employment Relations Act 2000* and new provisions in the *Immigration Act 2009* to prevent exploitation of migrant workers;

35 **agree** to introduce an overarching 'fit and proper' character requirement for all applications made under the Business stream, to increase applicants' accountability for compliance with employment and immigration laws where they are involved in one or more businesses in New Zealand (in positions where they exercise significant influence over the management or administration of the business);

Proposal nine: allowing applicants to submit a certified copy of their passport or certificate of identity in order for a visa application to be legally made

36 **note** that the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* require visa applicants to submit identity documents at the time they lodge their application, and these documents can be original or certified copies, with the exception of passports or certificates of identity, which must only be originals;

37 **note** that there is often no need for INZ to see the original passports or certificates of identity when a visa application is lodged;

38 **agree** that the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* be amended to allow applicants to submit certified copies of all identity documents, including passports and certificates of identity, when lodging visa applications;

Proposal ten: ensuring that the immigration levy is payable on all 'first residence applications', whether the application leads to a resident visa or a Permanent Resident Visa

39 **note** that the immigration levy, introduced in December 2015, is payable at the time of application by visa applicants exclusively listed in Schedule 6 of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*;

40 **note** that the list in Schedule 6 of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* does not include any applicants for a Permanent Resident Visa, as those visas do not usually require a 'substantive' visa application but instead follow on from a resident visa application after two or more years;

41 **note** that the exclusion in recommendation 40 inadvertently excludes applicants making a 'substantive' residence application, under categories that can lead to either a resident visa or a permanent resident visa, leading to the need for refunds and to different costs for applications under the same category;

42 **agree** that the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* be amended to ensure that all substantive residence applications be subject to the immigration levy, while making sure that applications for Permanent Resident Visas (and second or subsequent resident visas) are exempted when they follow a Resident Visa;

Proposal eleven: preventing circumvention of immigration health requirements

43 **note** that the omission from residence applications of dependants who do not meet health requirements undermines the integrity of the New Zealand immigration system;

44 **note** that the proposed change will allow Immigration New Zealand to enforce health policy requirements, thereby strengthening the integrity of the immigration system;

45 **agree** that *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* be amended to ensure all dependants are included in a residence application (or not removed while the application is being processed) where they hold a Temporary Entry Visa linked to the principal applicant's current visa**;**

46 **invite** the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office for amending the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to give effect to recommendations 4 and 8 (accreditation period), 38 (allowing certified copies of passports), 42 (immigration levy for substantive applications), and 45 (inclusion of dependants in residence applications);

Proposal twelve: updating the provision of passenger information requirements on airlines

47 **note** that New Zealand is a signatory to the Convention on International Civil Aviation (ICAO) and is required to comply with the standards and recommended practices and policies adopted by the ICAO, including those which provide for the collection of passenger information from airlines flying into New Zealand;

48 **note** the collection of Passenger Name Record (PNR) data is a critical component of ensuring New Zealand borders are protected;

49 **note** that ICAO has updated the PNR standard and that existing regulations do not align with this new standard;

50 **agree** that the *Immigration (Carriers' Information Obligations) Regulations 2010* be updated to align with the new ICAO PNR standard; and

51 **invite** the Minister of Immigration to issue drafting instructions to the Parliamentary Council Office to amend the *Immigration (Carriers' Information Obligations) Regulations 2010*, to ensure alignment with the new ICAO PNR standard.

Authorised for lodgement

Hon Michael Woodhouse

Minister of Immigration

Office of the Minister of Immigration

Chair
Cabinet Economic Development Committee

RECOGNITION OF MARRIAGE AND DE FACTO RELATIONSHIPS FOR IMMIGRATION PURPOSES

Proposals

1. This paper proposes aligning the treatment of married and de facto relationships for immigration purposes and adjusting the policy requirements to ensure that only those in a genuine and stable relationship with a New Zealand citizen or resident are granted residence in New Zealand.

Executive Summary

2. Immigration policies treat married and de facto couples differently in that de facto couples must be living together for at least two years before the relationship will be recognised. Marriages are recognised, however, as soon as that legal status comes about. There is no good reason for maintaining this distinction. It is proposed that both married and de facto couples be required to be living together in a genuine and stable relationship for at least 12 months before the relationship is recognised for immigration purposes.

3. There is also scope for tightening the policies to reduce the potential for abuse and ensure that only those in a genuine and stable relationship with a New Zealand citizen or resident are approved for residence. The following policy adjustments are proposed:

- Shifting the onus of proof to the applicant by replacing a requirement for the New Zealand Immigration Service to accept a relationship as genuine unless there is evidence to the contrary and with guidance on the factors that need to be taken into account in determining whether a relationship is genuine;
- Introducing minimum requirements for the recognition of relationships: that the couple are aged at least 18 years (or 16 years if there is parental support for the relationship), are not close relatives and have met before lodging the application;
- Enabling immigration officers to defer a decision for up to two years; and
- Extending restrictions on sponsorship so that a newly sponsored partner may not themselves sponsor a partner for at least five years, and may only sponsor one partner in total.

4. It is proposed that the changes apply to all relevant areas of immigration policy. This would require a minor amendment to the Immigration Regulations 1999. Implementation costs of $0.272 million (GST inclusive) in 2002/03 would be met from within Vote: Immigration baselines.

Current Policy

5. Immigration policy enables the spouses and partners of New Zealand citizens and residents to be granted residence in New Zealand if the couple are living together in a genuine and stable relationship, and are *either* married *or* have been living together in a de facto

relationship (opposite or same sex) for at least two years. In 2001/02, 5456 applications for residence were approved under these policies, 85% of which related to relationships of marriage.

6. The requirement to be living together in a genuine and stable relationship, for at least two years in the case of de facto couples, is applied to other relevant areas of immigration policy, including assessments of:

- Who is considered part of a family unit applying for residence under other categories (for example, the General Skills Category);
- Who may be granted a visa to accompany a student or work visa holder as their spouse or partner; and
- Who is eligible for a work visa on the basis of being the spouse or partner of a New Zealand citizen or resident.

7. Similar policy requirements are also applied to decisions on who may be granted a visa on the basis of their intention to marry a New Zealand citizen or resident.

Problem Definition

8. There are two problems with current marriage and de facto immigration policies:

(a) The policies differentiate on the basis of marital status; and

(b) The policies are not sufficiently robust to ensure that only those in a genuine and stable relationship with a New Zealand citizen or resident are approved for residence under the policies.

Differentiation on the basis of marital status

9. The policies treat married and de facto couples differently in that the latter are required to demonstrate that they have been living together in a genuine and stable relationship for at least two years, whereas married couples are required to demonstrate only that they are living together in a genuine and stable relationship. The Human Rights Commission noted this distinction in the context of the *Consistency 2000* project and recommended that "standards to establish the genuineness of a relationship should take this into account to avoid marital status discrimination".[1] The Immigration Act expressly recognises the potentially discriminatory nature of immigration decisions and removes the ability of persons to challenge them under the Human Rights Act 1993. However, there must still be a good reason for maintaining any distinctions arising from those decisions.

Potential for abuse of policies

10. The policies require that applicants be living together in a genuine and stable relationship with a New Zealand citizen or resident. However, the policies also state that the New Zealand Immigration Service must accept a relationship as genuine, unless there is evidence to the contrary. In practice this makes it very difficult for a visa or immigration officer to decline an application, even where an officer has reason to believe that the relationship is not genuine and has been entered into with the sole purpose of gaining residence in New Zealand. Furthermore, existing restrictions on a New Zealand citizen or resident sponsoring more than one partner within five years are not mirrored for the partners who have been sponsored. Immigration officers report that, in some cases, the new resident is

[1] Human Rights Commission (1998) *Consistency 2000, Report to the Minister of Justice pursuant to Section 5(l)(k) of the Human Rights Act 1993*, Instances of Conflict & Infringement document, p 39

promptly divorcing their New Zealand spouse and attempting to sponsor a new (often a previous) partner from overseas.

11. The extent to which the policies are being abused is not known. There is some evidence to suggest that applications from some areas, for example Pakistan, Thailand, Cambodia and some parts of India, pose greater risks than others. However, because there is no requirement to check that applicants are in fact living with their partner in a marriage or de facto relationship after arrival in New Zealand, it is not possible to quantify the problem.

Comment

Alignment of marriage and de facto relationships

12. Officials are of the view that marriages and de facto relationships should be treated on the same basis, in that it is the existence of a genuine and stable relationship with a New Zealand citizen or resident that is relevant, not their legal marital status. Aligning the recognition of marriage and de facto relationships for immigration purposes would be consistent with a Cabinet decision of 3 September 2001, agreeing in principle that neutral laws on relationships, whether married, de facto or same-sex, should be applied across the board [CAB Min (01) 27/14 refers].

13. The marriage and de facto policies can be aligned by *either* removing the requirement for de facto couples to have lived together for a period of time *or* imposing a time requirement on married couples. Officials recommend that married and de facto couples both be required to have been living together for a specified period of time. This would assist in reducing the potential for abuse, as all applicants would be required to demonstrate some level of ongoing commitment to the relationship, and would discourage applications that are unable to be properly assessed because of the short duration of the relationship.

14. It is proposed that that the required period of time be set at twelve months. This would strike an appropriate balance between, on the one hand, discouraging relationships of convenience and enabling immigration officers to make an informed assessment about the genuineness of the relationship and, on the other, ensuring that the time requirement is not unnecessarily onerous for genuine applicants. As under current policy, there would be scope for the applicant to be issued with a temporary permit where there are compelling reasons for them to be in New Zealand with their partner. However, a temporary permit would not be issued automatically and would be considered on a case-by-case basis.

Reducing the potential for abuse

15. As noted above, the New Zealand Immigration Service does not have good information on the extent to which the marriage and de facto policies are being abused. However, there are some areas of the policies that are clearly problematic and can be improved.

<u>Shift the onus of proof to the applicant</u>

16. The main barrier to good decision-making under the marriage and de facto policies is the requirement for the New Zealand Immigration Service to accept a relationship as genuine unless there is evidence to the contrary. While in theory the requirement provides some protection against arbitrary decision-making, in practice it is very difficult for immigration officers to obtain *evidence* that a relationship is not genuine, despite having very strong reason to believe that it is not. It is recommended that this requirement be removed and replaced with guidance on the factors that need to be taken into account in assessing whether or not a relationship is genuine.

17. The sorts of factors that would be taken into account would be consistent with the factors listed in section 2D(2) of the Property (Relationships) Act 1976, which relates to whether two people are living together as a couple. For example, they would include but not be limited to:

- The duration of the relationship;
- The nature and extent of common residence;
- Whether or not a sexual relationship exists;
- The degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
- The ownership, use, and acquisition of property;
- The degree of commitment to a shared life;
- The care and support of children;
- The performance of household duties; and
- The reputation and public aspects of the relationship.

18. This proposal would shift the onus of proof to the applicant, as is the case with all other areas of immigration policy. The nature of relationships means that the decision will ultimately rest on the judgement of the immigration officer assessing the application. Setting out the factors to be taken into account would ensure that there is a firm basis for decision-making and would provide guidance to applicants about the type of evidence that is likely to be required. Applicants would continue to have recourse to the Residence Appeal Authority.

Introduce minimum requirements for the recognition of relationships

19. As a policy principle, New Zealand legislation should be the framework within which relationships are assessed for the purposes of immigration policy. While policy should be sufficiently flexible to meet the different cultural needs of New Zealand residents, the standards applied should be consistent with New Zealand law. The policy already states that a genuine relationship is one that is "entered into with the intention of being maintained on a long-term and exclusive basis". It is recommended that the following additional minimum requirements be introduced for the recognition of relationships:

(a) The parties to the relationship are aged at least 18 years of age, or at least 16 years if there is parental support for the relationship.

The Marriage Act 1955 requires people to be at least 20 years of age to marry (or 16 if they have parental consent). However, the age at which guardianship ceases is likely to be reduced from 20 years to 18 years, or 16 years where the young person is married or in a de facto relationship and there is parental consent for the relationship.[2] 18 years, or 16 years with parental support, would therefore be a more appropriate minimum age for recognising marriages or de facto relationships for immigration purposes;

(b) The parties to the relationship are not close relatives.

This requirement would preclude relationships which are among the prohibited degrees of marriage listed in the Second Schedule of the Marriage Act 1955; and

(c) The parties have met before the application is lodged.

20. These requirements would assist to minimise the potential for abuse and, in particular, will help to address concerns about applications that involve internet relationships and proxy

[2] This was agreed by Cabinet in May 2002 as part of a package of amendments to the Guardianship Act 1968 [CAB (02) M 10/7 refers].

marriages[3] where the genuineness and stability of the relationship is often difficult to ascertain. Australia and the United Kingdom have similar requirements. The requirements are unlikely to adversely affect anyone in a genuine and stable relationship with a New Zealand citizen or resident. Applicants in a genuine arranged marriage would be unaffected by the requirement that the couple have met, and temporary entry policy would continue to enable people in such circumstances to travel to New Zealand specifically for the purpose of marriage.

Allow deferral of decision for up to two years

21. Current marriage and de facto policies enable an immigration officer to defer a decision on an application for six months if s/he has some doubt about the genuineness and stability of the relationship. In some cases, six months is not enough time to resolve these doubts. It is therefore recommended that this period be extended to allow immigration officers to defer a decision for any period from six months to two years. This would mean that applicants would not need to make a new application if the immigration officer is unable to approve the application in the first instance. There would continue to be scope for the applicant to be issued with a temporary permit where there are compelling reasons for them to be in New Zealand with their partner during the deferral period.

Extend sponsorship restrictions

22. Officials recommend that the restrictions on sponsorship be extended so that a newly sponsored partner may not themselves sponsor a partner for at least five years. This would be consistent with the sponsorship restrictions introduced in October 2001 limiting New Zealand citizens and residents to sponsoring no more than two partners, at least five years apart [CAB (01) M 41/5C refers] and with sponsorship restrictions in Australia. It would help to prevent cases of people establishing a relationship with a New Zealand citizen or resident and then divorcing them in order to sponsor a new (often a previous) partner from overseas. It is recommended that people who have been sponsored for residence as a partner be able to sponsor no more than one partner in total.

Application of proposed policy changes to other related immigration policies

23. As noted above, the marriage and de facto policies are applied to other relevant areas of immigration policy. It is therefore recommended that the proposed policy changes also be applied to other relevant areas of immigration policy that involve the assessment of a marriage or de facto relationship. Applying the proposed alignment of marriage and de facto couples to other residence policies will, however, require an amendment to Regulation 20 of the Immigration Regulations 1999. This regulation enables partners to be included on the same application and defines de facto partners as "a partner of the principal applicant who has been living with the principal applicant in a heterosexual or same sex relationship for at least 2 years immediately before the application is made". This would need to be amended to reflect the proposed alignment of marriage and de facto relationships for immigration purposes.

Implementation and Monitoring

24. If agreed, the proposed adjustments are likely to be implemented by the New Zealand Immigration Service on 30 June 2003. The proposed adjustments would not affect those who have already lodged applications for residence before this date.

[3] A proxy marriage is where one party is unable to be physically present at the marriage.

25. The Department of Labour would monitor the effect of the proposed policy adjustments over the next two years. If there is evidence that the policies are still not robust enough to ensure that only those in genuine and stable relationships with New Zealand citizens and residents are approved for residence, the need for further policy adjustments would be considered at this time.

Consultation

26. The Ministries of Justice, Social Development, Foreign Affairs and Trade, and Women's Affairs, and the Treasury were consulted in the preparation of this paper and agree with its recommendations. The Department of the Prime Minister and Cabinet, the Department of Internal Affairs (the Office of Ethnic Affairs), Te Puni Kokiri and the Ministry of Pacific Island Affairs were also consulted.

Financial Implications

27. Implementing the proposed policy adjustments would require changes to New Zealand Immigration Service computer systems, policy manuals and business processes. Implementation costs are estimated at $0.272 million (GST inclusive) in 2002/03 and would be met from within Vote: Immigration baselines.

Human Rights Implications

28. The proposal to remove the requirement for de facto couples to have been living together for at least two years would align the treatment of married and de facto couples under immigration policy.

Legislative Implications

29. There are no legislative implications associated with the proposals in this paper.

Regulatory Impact Statement

30. The proposed removal of the requirement for de facto couples to have been living together for at least two years would require an amendment to Regulation 20 of the Immigration Regulations 1999. A Regulatory Impact Statement is not required because the proposal is of a machinery nature and does not substantially alter existing arrangements.

Publicity

31. There would be no advance notice of these policy changes in order to mitigate against the risk of a surge in applications. If the proposals are agreed, the Minister of Immigration will announce the changes on the day that the policy adjustments take effect.

Recommendations

32. It is recommended that the Committee:

1. **agree** that immigration policy should treat married and de facto couples on the same basis by requiring couples to be living together in a genuine and stable relationship;

2. **agree** that married and de facto couples must have been living together for at least 12 months before an application will be considered;

3. **direct** officials to prepare an amendment to Regulation 20 of the Immigration Regulations 1999 to enable the proposal in recommendation 2 to be applied to all relevant areas of immigration policy;

4. **agree** that the onus of proof be shifted to the applicant, by removing the requirement for the New Zealand Immigration Service to accept a relationship as genuine unless there is evidence to the contrary and replacing it with guidance on the factors to be taken into account in assessing the genuineness of a relationship;

5. **agree** to the introduction of the following minimum requirements for the recognition of a relationship for immigration purposes:

   (i) The parties to the relationship must be aged at least 18 years of age, or 16 years if there is parental support for the relationship;

   (ii) The parties to the relationship may not be close relatives; and

   (iii) The parties must have met before lodging the application;

6. **agree** that immigration officers be able to defer a decision on an application for residence under marriage and de facto policies for up to two years;

7. **agree** that a newly sponsored partner may not themselves sponsor a partner for residence for at least five years, and may sponsor no more than one partner in total;

8. **note** that implementation costs of these proposals are estimated at $0.272 million (GST inclusive) in 2002/03 and can be met within Vote: Immigration baselines; and

9. **note** that the Minister of Immigration will announce the policy adjustments on the day that they take effect.

Hon Lianne Dalziel
Minister of Immigration