

## **Civil Contractors New Zealand submission on the Accredited Employer Work Visa Review: Phases One and Two.**

**To:** Ministry of Business, Innovation, and Employment (Skilled Migrant Review)

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### **1. About Civil Contractors New Zealand**

- 1.1. Founded in 1944, Civil Contractors New Zealand is an industry association representing the interests and aspirations of more than 840 member organisations, including 510 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 330 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand.
- 1.2. Our members play a vital role in the development of our country, our economy, and our way of life. They physically construct and maintain the roads connecting our cities and towns; they install and care for the water networks that bring fresh water to houses and wastewater to treatment plants; they install the cables that bring the internet to homes and businesses. These are services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards for all New Zealanders.
- 1.3. The broad civil construction industry employs more than 60,000 people and undertakes infrastructure construction and maintenance projects worth more than \$12b annually. More specifically, our organisation represents the contractors who carry out the physical construction works on country's roading, rail, port, and public transport networks.
- 1.4. Civil construction businesses prioritise hiring from our New Zealand domestic candidate pool. This could be through the education pathway, MSD/Corrections pathway, or people moving from one job to another.

New entrants to the workforce are trained by civil construction companies, but their capacity to train is limited by the amount of work they have on their books. The domestic workforce is necessarily complemented by a migrant workforce, especially at times where the industry needs to scale up rapidly.

- 1.5. In our annual [Construction Industry Survey](#) members have in recent years noted a shortage of skilled workers entering the industry as the biggest challenge the industry faces. 72% of respondents identified skill shortage and availability of workers as their biggest challenge. Skills most in demand are 'machine operators i.e., plate compactor, excavator, roller, etc' (60% of respondents); 'supervisor/team leader' (58%); 'experienced field worker i.e., traffic control, site safety, some industry experience' (56%). A shortage of skilled workers has been noted as the biggest challenge the industry faces since the survey began in 2017.
- 1.6. In addition, 57% of respondents noted the removal of immigration barriers to enable green list pathways for civil construction workers would have the largest potential impact on business over the next 3 years.

## 2. Summary of submission

### 2.1 Civil Contractors New Zealand:

- Requests the roles removed from the Construction and Infrastructure Sector Agreement in April 2024 be restored with urgency.
- Requests the skill level of experienced migrants entering New Zealand to work in the civil construction industry be properly recognised.
- Requests the 'maximum continuous stay' reduced in the announcement on 7 April 2024 be restored to 5 years from 3 years.
- Supports a tiered accreditation system that rewards good employer behaviour.
- Opposes the proposal to automatically assign all triangular employers to the lowest tier.
- Recommends that, rather than use the term "Tier" to define behaviour and compliance, the term "level" or something similar is used as the term "tier" has a different meaning in the civil construction sector
- Supports the highest level companies being subject to no external checks and requirements.
- Supports the second highest level companies being subject to no external checks and requirements, subject to suitable third party verification.
- Opposes minimum threshold requirements for a proportion of domestic workers. If it has been proven there are no available local employees to fill the roles through a job check, why is a certain percentage of local workers proposed?
- Opposes job check requirements being imposed on proven good employers.
- Opposes the use of wage thresholds.
- Opposes MSD having any right of veto for employers who have demonstrably met the criteria to be classified as highest and second highest levels.
- Supports increasing the maximum AEWW duration to at least 3 years (instead of 2 + 1) for levels 4 and 5 roles.
- Opposes removing the ability for employers to support family members for an AEWW.
- Supports the removal of regional settings.
- Opposes employers being responsible for arrangements between migrants and agents.
- Supports flexibility for visa holders whose employment has ended prematurely.

- Urges Immigration NZ to use the compliance levers that already exist before trying to introduce new levers.
- Calls for efforts to reduce complexity and improve processing times.

### 3. Economic Context

- 3.1 The New Zealand construction and infrastructure sector is currently experiencing a significant slowdown in work, in part due to economic headwinds (high inflation and high interest rates), and in part due to central and local government spending being paused awaiting direction and support from the coalition government.

Currently a large proportion of our members are restructuring, parking up or quitting underutilised equipment and laying off underutilised staff. We expect economic conditions to remain challenging for the next 12 to 24 months.

- 3.2 The dilemma for the industry is that in the medium to long term, there is the potential for a huge amount of construction work to come to market. The government has signalled ambitious plans for roading, water, and broader projects to address New Zealand's critical infrastructure deficit. The industry will need to pivot quickly.

Given it can take up to five years to train the average civil construction worker, a well-functioning and efficient immigration pathway will be crucial if we are to get close to the government's targets. Failure to meet targets could be attributed to failures in our immigration pathways, if these pathways do not allow industry to bring in the skilled workers we need to construct and maintain our transport and water networks and increase domestic training capacity.

- 3.3 A lack of infrastructure is often cited as the reason why New Zealand cannot sustain migration – yet in the case of civil construction, this is a catch-22 as migrant workers are needed to upscale our workforce, given the lack of education funding for onboarding and developing civil infrastructure construction workers.

### 4. Industry context

- 4.1 The construction industry is project based. There are situations where member businesses operate regionally (i.e., some road maintenance contracts), but mostly the businesses operate nationally, allocating resources to meet a project delivery requirement.
- 4.2 In addition, with our members effectively being first responders in significant weather events, and being at the forefront of rescue, recovery, and rebuild efforts, our ability to meet these obligations requires maximum flexibility for the effective utilisation of staff and equipment. In reality, it is often hard to predict where a worker may be needed at a given time.

We have been advised that to allow this flexibility, advertising and job checks need to be completed in every region. But that approach is wasteful and unproductive, putting the “fault” back on the employer. The “fault” actually lies with a lack of understanding

of how the industry works, how it fits into the broader economy, and the inflexibility of the system to allow for the fact that employers operate nationally with projects requiring skilled workers in different regions.

- 4.3 Immigration supports, rather than detracts from, training and education outcomes. Much of the workforce training is conducted by people working at supervisor level, so migrant workers provide companies with more capacity to train domestic workers rather than reducing the amount of work available.
- 4.4 Recognition of good employers, and a relaxing of the regional requirements for these employers, will go a long way toward resolving this issue.

## **5. AEWV Review Phase One**

- 5.1 We understood we would have the opportunity to review the decisions taken in Phase One; in particular the decisions to remove civil construction roles from the Construction and Infrastructure Sector Agreement, and from the Green List; and the AEWV Maximum Continuous Stay being reduced from 5 years to 3 years effective 7 April 2024. As that opportunity has not yet been afforded to us, we take the opportunity to submit on that here.
- 5.2 It is not possible to consider only part of the migrant pathway at a time. For example, this consultation on the AEWV must necessarily include consideration of the pathways to residence – this cannot be considered in isolation, because it is directly related to people's right to work in NZ.

### **Removal of civil roles from the Construction and Infrastructure Sector Agreement**

- 5.3 In August 2023 the then Labour Cabinet agreed to add seven civil roles to the C & I Sector Agreement - driller's assistant, earthmoving labourer, earthmoving plant operator, line marker, machine operator, mechanic's assistant, and road traffic controller.
- 5.4 Sometime before 9 March 2024, CCNZ was invited to attend an online meeting where we first learned of the proposal to remove the roles. By way of an email dated 9 March 2024, we made the case that "any suggestion that the roles should be removed from the Agreement or be subject to harsher rules would put at risk our ability to have the capacity to deliver projects at the time that they finally progress". However, notwithstanding our cautionary advice, the changes we announced unexpectedly in a press release on Sunday 7 April 2024.
- 5.5 In the press release, the Minister stated that "The Government is focused on attracting and retaining the highly skilled migrants" and the accompanying Fact Sheet referred to the seven roles as "lower-skilled".

- 5.6 This was contrary to our advice to Immigration NZ, and was based on the assumption that they didn't meet the qualifications or hourly rate tests. It is imperative these roles are restored with urgency.

### **Skilled versus unskilled roles**

- 5.7 We support the government's actions to reduce the number of unskilled migrants from entering New Zealand, to ensure that low or unskilled New Zealanders have an opportunity for work, and to help manage the risk of exploitation. However, the assumption that the civil roles removed from the Sector Agreement are unskilled is simply not correct and does a serious injustice to those who come to New Zealand through this pathway.
- 5.8 Most of these migrants either hold a qualification recognised in their home countries, or have considerable work experience, or a combination of both. However, the New Zealand Qualifications Authority currently does not recognise the international qualifications.
- 5.9 Many overseas workers have accrued extensive experience in sophisticated industrialised nations working on complex infrastructure, operating to a very high standard of health and safety and procedural control. This experience aligns well with complex infrastructure projects in New Zealand and should be the bar we set.
- 5.10 It is erroneous for Immigration New Zealand to compare unskilled MSD clients to civil trades people who often operate large and complex machinery on work sites where the risk profile requires the highest levels of health and safety awareness and practice. There is no comparison.
- 5.11 Arbitrary wage thresholds do nothing other than distort the domestic labour market. We are aware of situations where the prescribed hourly rate has exceeded a negotiated union award rate. If a union is satisfied with an agreed rate, why would that not be acceptable for all staff working in that role?
- 5.12 It is the market that determines wage rates, and we need to trust the market to function effectively and efficiently. Arbitrary distortions can have unintended consequences.

### **Maximum continuous stay requirement**

- 5.13 Included in the changes to the AEWV system on 7 April 2024 was a reduction in the maximum continuous stay requirement from 5 years to 3 years. This has serious consequences for our members.
- 5.14 Members have brought in a variety of overseas specialist skilled workers through the AEWV process. They are very productive workers and have been fully utilised on projects constructing and renewing critical infrastructure and working on large and smaller scale projects around the country.



For example, many are skilled and experienced heavy equipment operators who have demonstrated competency in working in urban infrastructure operating excavators safely; while others are skilled concrete workers who have the requisite experience and knowledge to build complex underground concrete structures for water and wastewater projects. The works are safety sensitive and require attention to detail and quality focus – they are not suitable for new entrants to civil work.

- 5.15 We understand these workers will now be unable to extend their work visas to 5 years and are unable to apply for residency. Members therefore face having to send their highly skilled and experienced workers home and try and replace them with similarly skilled and experienced workers to do exactly the same jobs.

We are not able to fill these skilled roles domestically and the workers have assimilated into their company culture and values, understand their systems and processes, and are valuable staff members.

- 5.16 Replacing them represents a massive cost to businesses from productivity losses, training and upskilling, and the sunk cost invested in bringing them here and paying for their visa and relocation costs in the first place.
- 5.17 In the consultation timeframe provided, we have not been able to accurately determine the number of migrant workers impacted by this decision. However, anecdotally we estimate it would be well into the high hundreds, if not low thousands.
- 5.18 If we have a perpetual skills shortage, which is demonstrably the case in civil construction, immigration is needed. The education sector provides qualifications, but does not provide training for these roles, which is resourced directly through company training capacity. Yet it takes around five years to fully train a multi-skilled civil tradesperson.

## **6. AEWV Review Phase Two**

### **Accreditation**

- 6.1 Until now, it appears all employers have been judged by the lowest common denominator. Exploitation in sectors such as liquor outlets and some horticulture sectors has been well publicised. We understand most of those instances have arisen with a few unscrupulous labour hire companies, and we strongly support action being taken to remove them from the supply chain. However, a few bad examples don't mean there is a systemic problem.
- 6.2 It seems obvious that many accreditations have been granted with minimal to no checks being done. This has allowed high risk employers to employ migrant workers. Policing employers after the fact is too late in many cases. Furthermore, the current policy still allows AEWV holders to continue to be employed by employers who have lost their accreditations.

- 6.3 Rather than threatening all employers and hire companies with punitive action, incentivising and rewarding good behaviour has a far greater impact and will get greater buy-in. To that end, we support a tiered structure to reward such behaviour. To be meaningful, the “rewards” must be significant. The criteria for determining at which level an employer fits into and which “rewards” each level will be eligible for, should be developed in consultation with industry.
- 6.4 We counsel against using the term “tier” to describe each level. In the civil construction sector, “tier” is already used to denote business size, with tier one being a large company and tier four being a small company. For the purpose of this submission, we use the term “highest level” to describe the highest demonstration of behaviour and compliance.
- 6.5 We strongly oppose the proposal to automatically assign all triangular employers to the lowest level. If Immigration NZ proceeds with the tiered system, there must be a thorough assessment on all accredited triangular employers and rank each accordingly. A more tailored ranking system is necessary to avoid disadvantaging employers who are making every effort to comply with Immigration NZ requirements. The term “Accredited Employer” should represent trust. The assumption should be they are compliant until proven otherwise, rather than being presumed non-compliant from the outset.
- 6.6 It is worth noting that employers prefer to hire New Zealanders over migrants. The immigration pathway is expensive, slow, cumbersome, and (unless there is a pathway to residency) temporary. So, when the consultation document refers to a “high trust model”, officials need to trust employers in the highest and next highest level. They have exhausted all domestic options, and the immigration pathway is the only remaining option for filling their skilled roles.
- 6.7 We submit that for the highest level companies, the requirement to comply with the employer module should be removed. There should be no requirement to advertise roles, no requirement for job checks, longer accreditation periods, and priority allocation and processing as required.
- 6.8 We support the second highest level companies being subject to suitably qualified third party verification, although the value of the information they gather and report is dependent on what is asked and how it is asked.
- 6.9 We do not support threshold minimum requirements for a proportion of domestic workers. For labour hire companies, that currently sits at 35%. There is no correlation between a percentage of domestic labour requirement, and worker exploitation. The thresholds are also impractical in our current market, as they assume there are sufficient skilled domestic workers available to fill the quota requirement for the threshold. Even in a candidate strong market, it is a struggle to attract New Zealand workers with requisite skills, or who are prepared to accept work that is offered to them and will turn up on a regular basis.
- 6.10 Some labour hire companies are necessarily heavily migrant focussed, although committed to placing domestic workers wherever possible. These companies fill an

important niche in enabling the industry to raise capacity quickly when required.

Employers taking on small proportions of migrants may not be well set up to support these people or meet their needs, while specialist migrant labour companies can have the right systems and processes in place to do this well. So, if good standards and high levels of migrant support can be demonstrated, companies set up to support migrant workers in New Zealand should be seen as a positive thing, not a negative thing.

### **Job Checks**

- 6.11 As noted previously we do not support job check requirements being imposed on proven good employers. The immigration pathway is the least favoured source of workers due to cost, slow processing, cumbersome requirements, and it is often temporary. It is not reasonable to equate a skilled machine operator from the Philippines with an MSD client.
- 6.12 Delays with the existing job check process are unacceptable. There are examples of employers having to turn down project work due to the uncertainty of when the AEWV will be issued. There are only a limited number of candidates throughout the world who have the skills New Zealand needs, and who are prepared to come here for a few years and then return home again. They are in global demand, and we are losing great international candidates because other countries such as Australia and Canada are approving work visas much quicker.

### **Wage Threshold**

- 6.13 We support having no wage threshold. Wage thresholds do impact hiring decisions, and it is not unusual for the market rate for skilled level 4 & 5 workers to be below the median wage threshold. The market is a powerful moderating tool, and the market rate can be assessed through various means - data from job boards, collective agreements, census, careers.govt.nz, etc.

### **Labour Market Test**

- 6.14 We are not surprised by the failure of the Labour Market Test, with only 2.5% of vacancies lodged with MSD able to be filled. MSD clients have different skills and different support needs from migrant workers. Many MSD candidates don't have the appropriate skills match or will not relocate for the role offered. We are aware of MSD candidates who only apply for a role or attend an interview to meet the criteria for their benefit, not because they are interested in a role. These candidates will usually disappear after the interview or will only work for a few days. This is incredibly wasteful and time consuming for employers.
- 6.15 While suitable candidates will be onboarded, there are many reasons why an employer will not accept candidates referred by MSD, including relevant experience, qualifications, whether they have a current driver's licence, hours of work, pay rate, if they have their own transport, and whether the candidate can pass a drug test.



- 6.16 For those employers who have met the criteria to be classified as highest or second highest level, we do not support MSD having any right of veto in the process.

Employers need suitably qualified workers with the right attitude and aptitude to commit to a role. There are large differences between MSD candidates, who are primarily inexperienced new entrant workers that require significant investment and pastoral care, and migrant workers, who understand work expectations and bring with them heavy machinery and site safety skills and experience.

MSD offers good, industry-specific, programmes to ready new entrants for the workforce. Many employers already engage directly with MSD voluntarily. But, while MSD can offer new entrant workers some pre-employment training, the resulting candidates are not comparable to experienced migrants.

- 6.17 We support increasing the maximum AEWV duration to at least three years, and preferably five (instead of 2 + 1) for levels 4 and 5 roles. This will provide some greater certainty to workers and employers.

Shorter visa terms without the opportunity to renew has seen many great candidates withdraw their applications, and employers making the call not to expand their business and take on extra work. If they are required to induct and integrate a new worker every two years, this leaves them reluctant to consider an AEWV worker. Others will be forced to invest in new cohorts of different people that will be hired to do exactly the same job.

As there are ongoing skills shortages, we would argue forcing people to return overseas does not make sense, and the focus should instead be on building residence pathways to retain the skills these people bring with them.

- 6.18 We do not support removing the ability for employers to support family members for an AEWV. Individuals should not be discriminated against simply because they are family members. Alternatively, where an employer is supporting a family member, Immigration NZ could undertake checks and balances to assess the genuineness of the job, skills, etc.

- 6.19 We note there are times when an employer may change the skills and experience requirements mid-way through the immigration process. For example, due to delays in the approval process (over 8 months in some cases), the original role may no longer be required but the candidate may have the skills required for another vacancy the employer needs to fill.

### **Regional, Sector and Seasonal Settings**

- 6.20 Unlike horticulture, for example, construction work is not really seasonal. While there are tasks better suited to summer months (road paving for example), workers will be deployed where their skills and location flexibility allow. However, current regional setting requirements are a major issue for the industry.

- 6.21 As noted previously, the regional requirements reflect a lack of understanding from officials of how the construction sector works. The sector is project based, and the construction environment dynamic. Civil construction companies tender for work based on project requirements and could be working across several regions based on the need for their skills.

That makes accurate regional labour forecasting difficult and means that (apart from some road maintenance contracts), contractors must have flexibility to move workers to where they are needed. The need to work in a different location may arise very quickly. If workers are required to work in a different region for 3 to 6 months, and the process of obtaining new visas with a new location takes 3 months, this halts workflow.

- 6.22 Previously, Accredited Employers under the Talent policy would have their employees' "Talent - Work to Residence Visas" granted with the allowance to work across the whole of New Zealand. Currently, multiple location visas may only be granted where there is proof of current work available in each of the regions. It is not possible to be that exact with project resource planning.

## **System and Compliance**

### **Preventing migrants being charged excessive fees by agents**

- 6.23 Employers can have little or no control over how a candidate is sourced; the third party may be acting "invisibly", guiding the candidate in the background.

The worker may have been told by the agent charging them a fee that it is to remain confidential, and they are not to tell anyone. Also, offshore candidates have the primary objective of securing a job and so may not be upfront in declaring what fees have been paid. Sometimes this may be disclosed to a Pastoral Care consultant but not always.

- 6.24 The best way to eliminate this practise may be for the New Zealand employer to carry out the full recruitment process themselves. There are, however, some countries such as the Philippines where the only way that you can access their workers is to use an agency.
- 6.25 An effective way of ensuring an employer's compliance and good practice would be to closely assess the documentation provided at their accreditation renewal date. In addition, the Employment Relations Authority should be able to provide feedback on employers who are regularly non-compliant. There are a number of professional and industry bodies who would be prepared to monitor the performance of their members.

### **Settings for migrants whose employment has ended**

- 6.26 If an AEWV holder needs to find a new role due to, for example, restructure or redundancy, the current process is far too lengthy for them to be able to remain in New Zealand without being able to work (unless of course they have been able to build up significant cash reserves to sustain themselves while looking for a new role).

- 6.27 Under current settings, if a job check is already available then 3 months is fine. If it is not available, then it is not. Taking nine weeks for a job check is totally unreasonable.
- 6.28 There is a lack of immediate consequence for an AEWV holder if they leave their employer and go elsewhere. There have been examples of workers leaving their employer without notice or with minimal notice. We know that some of these end up working illegally, but even though the employer contacts Immigration NZ and reports the matter, no action is taken.
- 6.29 One change that would make a big difference is for the AEWV holder to be able to transfer to another accredited employer through an alteration to the conditions of their visa. This could be a temporary transfer for three months until the new AEWV application is approved. This is particularly important in the case of redundancy, which may put the worker in a difficult personal situation where they are unable to work through no fault of their own.

## **7. Other matters not covered previously**

- 7.1 Many of the recent changes already made to Immigration and visa settings have been made retrospectively, adversely affecting applications already underway. This has economic impact on businesses and should be considered more carefully.
- 7.2 Three and five year visas have been reduced to two, the ability to renew has been cancelled, and residency applications that would previously have been approved are now not compliant and have to be re-submitted. This has resulted in many higher skilled workers deciding to leave New Zealand, which exacerbates the shortage of experienced workers.
- 7.3 Current processing times are unreasonable and continue to vary. If you combine job check processing timelines and visa processing timelines, it could take six months or more to secure a new AEWV or a variation of an existing one. Given the robust nature of the two step process, and the compliance thresholds, we cannot understand how it can take so long to make an assessment. This further supports our view that a higher tier structure has merit.
- 7.4 Notwithstanding the proposed changes included in the proposal document, there are already compliance rules in place, but Immigration NZ consistently fail to use them. This is not a failure of the system, but a failure to follow procedure.

## **8. Conclusion**

- 8.1 Thank you for the opportunity to submit on the phase one and phase two changes to the AEWV and the wider immigration pathway. The industry is clear in its concern – if the changes made in Phase One are not reversed, and the changes proposed in Phase Two do not support good employers by removing the current barriers, then it is highly likely that we will not be able to deliver the construction and infrastructure projects that are central to the government's programme and agenda.

- 8.2 This is not an either or situation – consideration of all matters raised in this submission need to happen concurrently.
- 8.3 The industry is ready and willing to assist Immigration NZ to achieve an immigration system that is world class and fit for purpose. The current system is far from that, and that is costing us credibility and candidates.

Yours sincerely



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