

Submission by



GROWING PROSPERITY AND POTENTIAL

to the

Education and Workforce Select Committee

on the

Immigration (Covid-19 Response) Amendment Bill

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Rachel Simpson
PO Box 1925
Wellington
Ph: 04 496 6555

SUBMISSION BY BUSINESS NEW ZEALAND ON THE IMMIGRATION (COVID-19 RESPONSE) AMENDMENT BILL (“THE BILL”)

1.0 INTRODUCTION

1.0 BusinessNZ¹ welcomes the opportunity to make a submission on the Bill. It wishes to appear before the select committee to speak to its submission.

Recommendations

1.1 Business NZ appreciates the need for appropriate legislative and regulatory settings to manage the immigration system while the borders are closed. BusinessNZ supports the Bill and suggests the following amendments.

1.1.1 That the Bill is amended to build in a 12-month sunset clause to expire in May 2022 rather than the proposed expiration on 15 May 2023.

1.1.2 That the proposed extension of visa suspension from three months to six months not be implemented.

1.1.3 That the proposed legislation include an additional provision requiring the Minister to give consideration to the impact of not taking decisions, and an additional public reporting requirement summarising the scale and impact of changes.

2.0 OVERVIEW

2.0 The Immigration (Covid-19 Response) Amendment Bill 2020 was an appropriate response for the time given the insufficient mechanisms for the immigration system to align quickly to the border closure settings.

2.1 The border closure highlighted a number of deficiencies in the ability of the immigration system to respond to a global event leading to border closure. The Bill provided a vehicle for necessary decisions to be taken quickly and this had a largely positive effect for those within New Zealand - people could maintain the legal right to work, there was flexibility for those on visas to work in critical services like the health sector, and extensions for those visiting to remain legally in the country. For people outside New Zealand, it has provided a channel in for vital workers from the Pacific to help with skill shortages and has provided a possible pathway home with extensions to timelines to re-enter the country for those on pathways to residency.

2.2 It is also important to note the ways that the Bill, and the broader immigration settings have not been used. New Zealand risks losing talented skilled workers (and subsequently creating greater pressure on the border) by not addressing the need for family reunification of skilled workers in New Zealand or removing the three year stand down for critical workers that have been integral to New Zealand’s Covid response. The lack of ambition for creating channels for productive investment and revitalising New Zealand’s international education sector ensures these opportunities will go elsewhere.

2.3 At the time of submitting on the initial (2020) Amendment Bill, BusinessNZ provided the following comments, which are still valid for the current Bill. It was suggested the Bill needed to consider:

¹¹ Background information on BusinessNZ is attached as Appendix 1.

- 2.3.1 Higher levels of transparency and effective communication will be necessary to protect the social licence to operate under the new legislative settings, including working closely with business;
 - 2.3.2 Unintended consequences of decisions by visa class should be managed and mitigated through high quality advice from officials; and
 - 2.3.3 There should be ongoing policy development over the 12 months that the legislation was to be in place to inform the longer-term outlook for immigration, with the view that economic recovery activities with dependencies on the border could be responsive, and to ensure the alignment of immigration to 'the world's smartest border'.
- 2.4 The Bill must be considered within the wider border system that it is part of. The border exemptions regime, immigration settings and the capability and capacity of Managed Isolation and Quarantine are the most substantial constraints still in place as a result of Covid.
- 2.5 The principle in the Bill is that the decisions taken should not disadvantage migrants, and this should be applied more broadly to immigration and Covid response provisions, whether undertaken through the powers of the Bill or through the existing regulatory settings. There has been hardship caused to migrants through the lack of decision-making to resolve significant outstanding immigration issues as the demand at the border continues. For example, the lack of provisions for family reunification for critical international workers in New Zealand at the time of the border closure is inconsistent with the existing border exemptions framework that allows for families to enter with critical workers.
- 2.6 As the Bill has been in place for a year, it is useful to review how effective the settings have been in facilitating flows of people and ensuring no migrants are disadvantaged within a robust risk mitigation and management approach to the border. The far-reaching ministerial powers should only be considered appropriate for use in an emergency situation. When the amendments were originally introduced in 2020, there was a high level of uncertainty about the impact of Covid-19 on New Zealand and New Zealand was in the midst of a national lockdown. While the border remains closed, the same state of emergency is not in place today and it is appropriate that the powers are critiqued in terms of whether the settings are fit for purpose for the challenges New Zealand now faces and the ambitions for New Zealand's future. The Bill should be appropriate for managing through the next 12 months as the Covid situation continues to evolve, particularly with the rapid roll-out of vaccination, opening of limited international travel via the Trans-Tasman and Pacific bubbles, and the uncertainty of how international travel will develop in the next year. It is important to signal the intended short-term nature of the powers and that New Zealand will revert to regular immigration settings when able to. Longer term policy settings that can respond to an evolving global landscape and shifting from a reactive to proactive response to immigration and the border are necessary.
- 2.7 These comments apply also to the proposed extension of visa extensions from 3-6 months. BusinessNZ considers there are sufficient safeguards in place, notably that nobody off-shore is able to apply for a visa unless invited to apply after securing a border exemption or being covered by one of the border exemption criteria. The supporting Cabinet paper notes that the criteria are intended to provide certainty to the markets. However, BusinessNZ considers there are better ways of setting realistic expectations through the Government signalling the criteria needed to enable the border to open to low risk countries, outlining

the risk mitigation and management approach necessary to manage other countries, and its priorities for incrementally opening up visa classifications while managing within system constraints.

COMMENT

- 2.8 When Covid initially hit, amendments to the immigration system through existing ministerial powers were executed quickly. For example, on 25 March, an immigration instruction enabled international students to work over 20 hours per week, and for people on work visas to be able to change roles within their company. The speed of these necessary changes recognised the importance of the international skills and talent that contribute to the supply chain and health workforces.
- 2.9 Once the current emergency powers were put in place, BusinessNZ considers the way the powers were applied to meet some of the demands on the system from those within New Zealand, for example, providing extensions by visa class, and delaying the three year stand down period were entirely appropriate at the time. While these changes alleviated immediate stresses, there is a need for more certainty going forward and further work must be undertaken on the fundamental immigration policies that necessitate ministerial intervention, such as the three year stand down rule.
- 2.10 The ability of the Immigration Department to give effect to changes has resulted in confusion and poor advice in some instances and requires strengthening. For example, errors in emailing visa extension notifications, or advice from the department to individuals that they are working illegally if the online portal did not reflect the extended date.
- 2.11 The powers have also been used to provide relaxed visa conditions and mobility for some cohorts of workers and industries, but not others that have similarly pressing skill shortage challenges. There is a need for constructive engagement across different industries to find suitable solutions enabling the retention of staff that businesses cannot afford to lose and providing an equitable channel for the entry of international skills and talent that can support business recovery.
- 2.12 The Bill has known issues, as highlighted by the suspension of residency applications. Essentially it supports a 'wait and see' approach, which in the face of initial forecasts of the Covid impact on New Zealand economy and society, was justifiable in a state of emergency. It has become apparent however that Covid will need to be managed for the foreseeable future and it is now time to reinvigorate the plan for the 'world's smartest border' and consider immigration decisions within the context of a recovery roadmap that will support both the maintenance of a strong public health response, and economic recovery.
- 2.13 Priorities for the border and immigration need to be clearly communicated, and a whole of system view taken to avoid unintended consequences and ensure immigration resources are deployed effectively. For example, the delay in residency application processing results in more short term visas being lodged, creating more work for the Department.
- 2.14 The powers exercised to date have highlighted facets of the immigration system that are now out of date and should be amended through existing regulatory mechanisms. The waiver of chest x-rays for RSE workers for example highlights that the health entry requirements are now outdated against the more significant risk of Covid, and there should be a strong expectation on government that these matters are addressed through the appropriate regulatory mechanisms.

3.0 CONCLUSION

The Bill is necessary at this time to continue to manage through the Covid response, including continuity of the existing provisions currently in place. However, there should be a strong expectation that:

- the broader work of ensuring that the border, immigration and health related systems work coherently to facilitate safe and timely travel is prioritised;
- work is commenced on the more in-depth Immigration Act 2009 review; and
- the Department improves its service delivery to effectively implement any provisions put in place under the Bill.

APPENDIX 1



Promoting New Zealand's success through sustainable market-led growth

BusinessNZ is New Zealand's largest business advocacy body, representing the majority of New Zealand private sector companies as members, affiliates or through membership of BusinessNZ divisions such as the Major Companies Group, ExportNZ, ManufacturingNZ, Sustainable Business Council and Buy NZ Made.

BusinessNZ represents around 14,000 businesses that are members of four regional business organisations:

Employers & Manufacturers Association (EMA) - northern half of North Island

Business Central - central region

Canterbury Employers' Chamber of Commerce (CECC)

Otago-Southland Employers' Association (OSEA)

BusinessNZ's *Major Companies Group* (MCG) works with and represents around 80 of New Zealand's largest companies.

ExportNZ and *ManufacturingNZ* work with and advocate for New Zealand exporters and manufacturers.

The *Sustainable Business Council* (SBC) provides mainstream leadership on sustainable business matters.

The *BusinessNZ Energy Council* (BEC) is a group of New Zealand organisations taking on a leading role in creating a sustainable energy future for New Zealand.

The *Buy NZ Made* Campaign encourages consumers and organisations to help create local jobs and growth by buying New Zealand goods and services.

BusinessNZ's *Affiliated Industries Group* (AIG) is a grouping of 75 industry associations affiliated to BusinessNZ that work together on pan-industry issues.

BusinessNZ undertakes research, analysis and advocacy on behalf of all business in New Zealand.

Research activities include producing monthly surveys of the manufacturing and services sector – the *BNZ-BusinessNZ Performance of Manufacturing Index* (PMI) and *BNZ-BusinessNZ Performance of Services* (PSI) as well as other surveys on business issues.

BusinessNZ analysts work in economic, environmental, employment and skills disciplines and provide submissions on current and proposed legislation affecting the environment for business and New Zealand's growth.

Public advocacy, public speaking, work programmes with other organisations and advocacy with decision makers make up a large part of BusinessNZ's work.

BusinessNZ champions policies leading to:

- international competitiveness
- balanced employment, economic and environmental legislation
- compliance and tax levels that foster growth and investment

- innovation and skill development
- an environment fostering the production of high value goods and services

Websites

BusinessNZ

www.businessnz.org.nz

ExportNZ

www.exportnz.org.nz

ManufacturingNZ

www.manufacturingnz.org.nz

BusinessNZ Energy Council

www.bec.org.nz

Buy NZ Made

www.buynz.org.nz

Sustainable Business Council

www.sbc.org.nz

Regional Business Organisations

www.ema.co.nz

www.businesscentral.org.nz

www.cecc.org.nz

www.osea.org.nz