



tourism  
INDUSTRY  
ASSOCIATION NEW ZEALAND

## **Immigration Act Review**

**1 July 2006**

## **Introduction**

1. This submission is from the Tourism Industry Association of New Zealand (TIA), located at level 4, Travel and Tourism House, 79 Boulcott Street, Wellington.
2. Attached as Appendix 1 are details about our organisation and who we represent.
3. If you wish to contact us regarding this submission, in the first instance, please telephone Simon Wallace, Policy Manager on 04 494 1842 or e-mail him at [simon.wallace@tianza.org.nz](mailto:simon.wallace@tianza.org.nz) Should there be an opportunity, we would also be interested in making an oral presentation to support this submission.
4. Our submission comments on the Immigration Act Review. TIA has consulted with its members and other tourism industry groups to seek their views in the preparation of this submission. This paper provides comment and analysis on the proposals and the extent to which we feel they will impact on the tourism industry.
5. Throughout our submission, two themes are prominent – the impact of the review as it affects international visitors entering and leaving New Zealand and the need to address skills shortages in the labour market, particularly in tourism-related sectors which often rely on working holiday makers to fill seasonal jobs.
6. We make specific comments with regard to sections of the review paper that we think will have the most impact for the tourism industry, notably:
  - Section 4 - Visa Permits;
  - Section 5 - Decision-Making;
  - Section 11 - Use of Biometric Information; and
  - Section 13 – Role of Third Parties
7. TIA wishes to indicate its interest in being consulted and included by Immigration New Zealand in future discussions about changes arising from the review, particularly in the service delivery and policy areas that will flow-on from this work as part of the wider immigration change programme.

## **Overview**

8. We welcome a review of the Immigration Act 1987 and the need to update legislation that is nearly twenty years old. A review is timely given the economic transformation that has taken place in New Zealand over the ensuing period and the need to recognise not only border security risks, but also the competition for skills and labour that currently exist not only in New Zealand, but also worldwide.

9. Immigrants have always been an integral part of New Zealand’s society. They enhance its social and cultural diversity and bring valuable skills to the economy. However, current and past immigration policies have not always been adaptive to changes and demands in the labour market. TIA supports the Minister of Immigration’s stated desire that this legislative review be responsive to labour market needs with the flexibility to allow for future changes.
10. Our association hopes this review will consider whether some issues currently set out in policy could in future be set out in legislation in order to provide greater flexibility within the system. Existing immigration policies are overly prescriptive and create barriers to a smooth transition into work.
11. The tourism industry, as with any other industry, recognises its responsibilities in needing to recruit specialist staff, but all too often such efforts are stymied by the inflexibility of a system that does not recognise both the dynamics of business and the volatility of the labour market. As an example, many people are frustrated in their attempts to gain extensions to work permits or residency because the current exemption system is so prescriptive.
12. TIA acknowledges that the global security environment has changed markedly since this Act was re-written in 1987. International terrorism is unfortunately commonplace and a greater flow of migrants has increased the risk at borders. For the tourism industry, it is critical to have an immigration system that offers security and protection to travellers but equally important is a system that provides a warm welcome and friendly face for international visitors. First and last impressions count and an immigration system that finds this balance will be one that leaves a favourable and lasting memory on overseas visitors as they enter and leave New Zealand.
13. We believe the review of the Immigration Act should include consultation with interested stakeholders as a legislative requirement. Some Acts of Parliament already include mandatory consultation. As tourism and immigration are inter-dependent, a tourism perspective would inform and add value to the review process, particularly in the next stage of the immigration change process when policy and service delivery areas are to be examined.

## **Analysis**

### **Section 4 – The Visa and Permit System**

#### ***Selected Key Questions***

##### ***4.1***

***1. Should the single term “visa” be used for all travel, entry and stay authorisation granted to non-citizens?***

***2. Should the system continue to allow for exceptions to the standard requirement to have authorisation to travel to, enter and remain in New Zealand (for example, through the equivalent of visa-free arrangements or permit exemptions)?***

**4.2**

***Are all the current permit exemptions justified?***

14. Our association broadly supports the establishment of a single, integrated visa framework as detailed in paragraphs 115-128 of the Immigration Review document. The current exemptions regime is unnecessarily complex and sometimes difficult for our members to grasp and deal with.
15. A single term visa with “add-ons” or a menu of requirements that could be applied to various groups of non-citizens will lead to a more simplified system and one that is easy for parties to interact with – in other words, if it results in a more user-friendly system then this is a “win-win” for all parties. While the move to a simplified system will incur some initial costs, over time, the system will be more cost effective to run.
16. On the other hand, however, a merging of the visa and permit system could have implications for the numerous international carriers travelling to and from New Zealand. TIA would seek assurances as to how a single visa might address the problem airlines have when a check-in agent at an overseas port is required to sight onward or return travel. For example, the advent of e-ticketing now means airline check-in agents rarely sight onward or return tickets and a single visa provides no evidence of a person’s validity to enter and remain in New Zealand. Furthermore, it is difficult to see how a single visa will improve the current situation where a person may travel to New Zealand on an expired resident’s visa.
17. TIA believes the current permit exemptions are justified, but should draw on the comparative experiences of Canada and the UK who have flexibility in their system to make exceptions to standard visa requirements (paragraph 111). We believe the wider immigration change programme should include detailed analysis of the exemption system with a view to extending visa-free arrangements beyond the present 53 countries (paragraph 130).
18. We do not support the exemption some people have from the need to submit arrival and departure cards (paragraph 137). Collection of this data by Statistics New Zealand (SNZ) is a source of valuable information for the tourism industry in New Zealand. For example, this data is used for research purposes to inform the tourism industry of current trends in visitor numbers, purpose of visit, types of accommodation used and regions visited.

### **Working Holiday Visas**

19. We have received a number of comments from our members concerning the existing rules around working holiday visas. While we understand these considerations are beyond the direct scope of this review, TIA wishes to

indicate the following concerns when policy and service delivery components of the immigration change programme are considered.

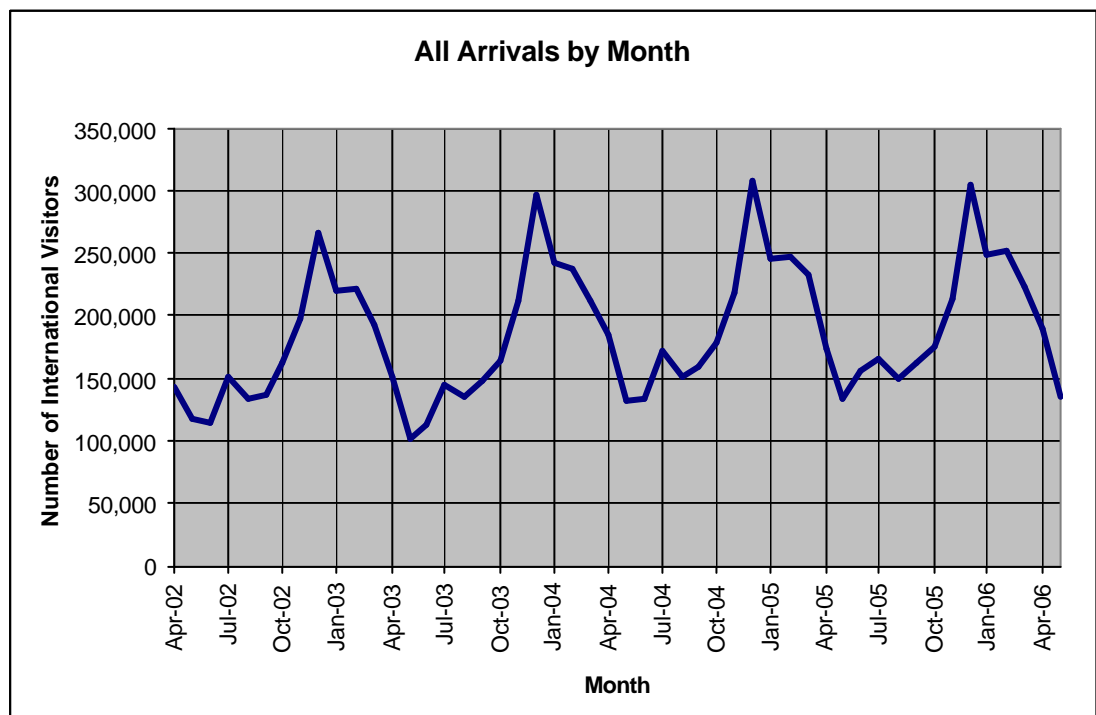
### 19.1 Twelve Week Study Limit on Working Holiday Scheme

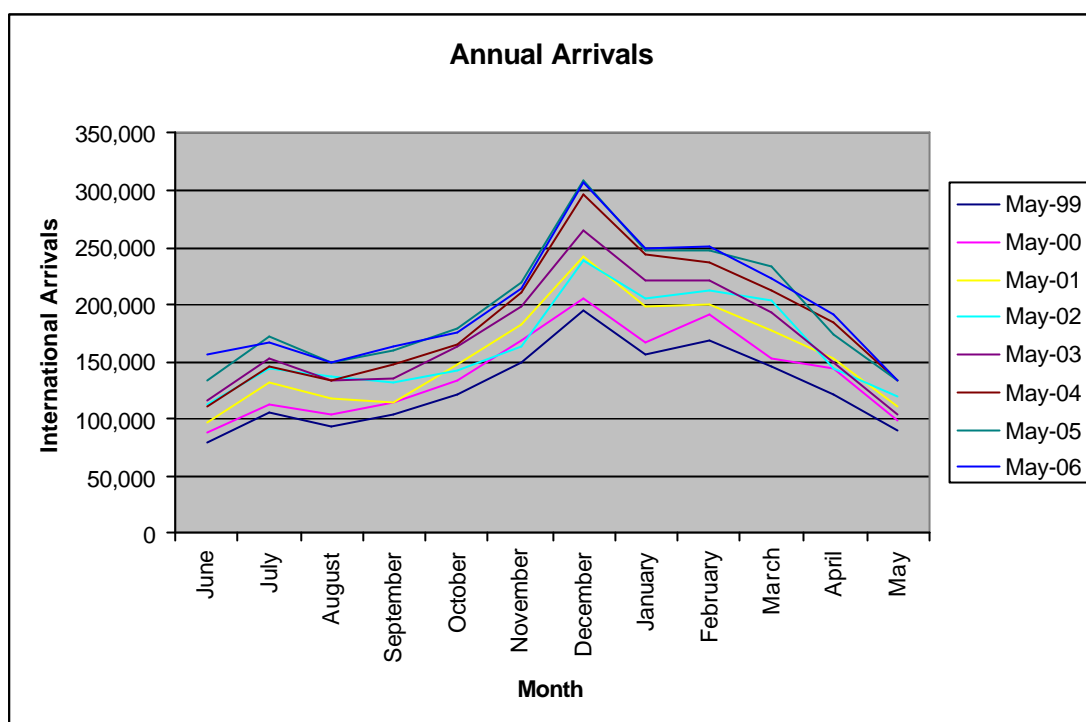
It is our understanding that currently those people holding working holiday visas are permitted to study for a period of just twelve weeks. At an international level, there is a growing trend for combined work and study programmes – if applicants had an opportunity to study for a longer period, perhaps one full university semester, this could precede or follow a work placement. The bi-lingual and multi-lingual skills of international students, for example, are sought after by the tourism and hospitality sectors and could help fill seasonal labour gaps for many tourism businesses. In addition, tertiary institutions would also benefit from increased student numbers.

### 19.2 Three Month Limits with One Employer

Some working holiday agreements still have three month work limitations with the same employer. This is a barrier to many tourism and hospitality operators in taking on workers especially over the peak tourist period in New Zealand (October to April). It is our understanding that Immigration New Zealand is considering the removal of this requirement and TIA supports their efforts in this regard.

The graphs below indicate how international visitor arrivals increase between October and April each year, coinciding with a seasonal demand in the tourism industry for workers and emphasising the importance of “getting people here when we need them”.





Source: *International Visitor Arrival Survey, Statistics New Zealand*

### 19.3 Working Holiday Scheme in Australia

A number of TIA members have commented on recent changes to the Australian Working Holiday Scheme. Key points include:

- introduction of a two year working holiday visa;
- ability for working holiday visa holders to work for up to six months in one job (both amendments provide an incentive for employers to invest in training therefore making the visa holder more employable in skilled and semi-skilled areas); and
- options to extend a working holiday visa by twelve months if a worker has been employed in the fruit picking industry for at least twelve weeks.

20. The initiatives such as these in Australia immediately place New Zealand at a competitive disadvantage in the bid to attract working holiday makers and fill labour market needs for the tourism industry. Meanwhile, the restrictions placed on applicants to have an employer sponsor for a one year visa is a further detriment to employment – many employers are reluctant to enter sponsorship arrangements while most travellers are reasonably happy to fill short term contracts. TIA would like to see changes made in this area.

### Occupational Skills List

21. From time to time, TIA assists members when lodging immigration applications on behalf of their employees. As an industry association, we encourage our members to follow due process and procedures and make no judgements on the merit of an individual case.

22. Our concern relates to the Occupational Skills List (OSL) and its inflexibility in adjusting to changing demands for skills and labour. For example, in a 2005 labour market study of the adventure tourism sector conducted by the Sport, Fitness and Recreation Industry Training Organisation (SFRITO), 50% of workplaces had difficulties recruiting staff and one of the main reasons cited by employers was the skill shortage in New Zealand. Given the Minister's desire for legislation that is "responsive to New Zealand's labour market needs, with the flexibility to allow for future changes", TIA argues that flexibility to make changes to the OSL is critical.

## Section 5 – Decision-Making

### *Selected Key questions*

#### 5.1

*Should the power to make positive exceptions to residence policy be delegable to selected senior immigration officials?*

#### 5.3

*2. Should legislation enable some decisions to be made by third parties such as employers and education providers?*

23. TIA endorses *Option A – Status quo*, with regard to the current individual immigration decision-making process contained in the Act. We do not support positive exceptions to residence policy being made delegable to senior immigration officials. We do acknowledge that a high level of decision-making is invested in ministerial resource, but in a country of New Zealand's size, this is appropriate.
24. As noted in paragraph 172, Australia does not allow for discretionary decisions to be vested in officials and in fact we believe that some protection should be afforded to officials in the decisions made on often controversial, emotive and highly visible immigration cases. That said, direct appeals to the Minister should be viewed under the same criteria as appeals made through the Department.
25. We view with interest the additional tools proposed for effective decision-making as detailed in paragraphs 220 to 245 of the review document, in particular Option C providing for individual decisions made by third parties. TIA broadly supports the development of such a proposal with some reservations. The advantages are clear – decision-making delegated to third parties would provide for a more timely process, improve employer's prospects of securing valuable labour and resource, reduce overall compliance costs and relieve the Department of Labour of its operational and service delivery work.
26. The introduction of third party decision-making does involve some costs that could jeopardise the integrity of the current system. TIA agrees with the

points made in paragraphs 244 and 245 in believing there may some risk around employers seeking to serve their own interests rather than New Zealand's wider national interest. The process to decide which employers or agencies are accredited as third parties would need to be robust and made in consultation with the key industry associations. In principle, we welcome the proposal, but encourage government officials to work alongside the main industry associations and accredited bodies to ensure the system is robust, and monitoring, reporting and audit regimes are sound.

## **Section 11 – The Use of Biometrics**

### ***Selected Key Questions***

#### ***11.1***

***Do you agree that the new legislation should create a two-tier power that enables immigration officers to:***

***1. require, use and store internationally agreed standard types of biometric information; and***

***2. request the voluntary provision of biometric information***

27. With the advent of technology, TIA acknowledges the use of biometric information will become an increasingly valuable tool in detecting cases of identity fraud, occasions of trans-national crime and even family relationships which cannot always be verified with paper documents. In a rapidly changing and often threatening security environment, biometric technology offers the chance to improve the overall integrity of the immigration system.
28. From a tourism perspective, TIA would not want to see biometrics, in particular its usage at international ports, detract in any way from the visitor experience. Clearly, international travellers expect and are reassured by stringent border controls, but as noted in paragraph 12 of this submission, a warm and friendly welcome to New Zealand is critical to the overall visitor experience. It strikes a chord with visitors, creating the right impression before the traveller has even left the airport arrival hall.
29. The fiscal costs of introducing biometrics to the New Zealand immigration system have not been discussed in the review document. Paragraph 774 suggests that biometric information will be introduced at the border. Our members have voiced concerns about who will share the cost of implementing the system. For example, airlines and airports as the major users of immigration services could be faced with increased costs. We recommend that the system be piloted before full implementation and that officials consult widely with affected parties during the next stage of the review.

## Section 13 – The Role of Third Parties

### *Selected Key Questions*

#### 13.3

*1. Should immigration legislation provide a stronger basis for employer responsibilities?*

*2. Should employers be legally obliged to positively check that a prospective employee is entitled to work for that employer?*

*4. How could legislation support the obligation on employers not to employ unlawful workers?*

30. The tourism industry in New Zealand is sustained by more than 8000 small and medium sized enterprises. TIA would be concerned if these businesses were burdened with additional responsibilities as a result of the proposal mooted in this section. We do not believe the review document puts the case for increasing penalties and offences for employers who employ anyone not entitled to work.

31. It is the view of TIA that the onus of proof should be on the employee to present their credentials and eligibility to work. An employer's ability to determine these facts is only as good as the system it works with and unless employer's responsibilities are clearly defined and communicated then the case for increasing penalty and offence provisions cannot be supported.

32. TIA agrees that the "reasonable excuse" defence is valid and if an employer is able to demonstrate they have taken reasonable steps to ascertain a worker's legal status, then that deserves recognition. Furthermore, the current "reasonable excuse" of having a sighted a tax code declaration should be retained.

33. In short, TIA believes the increased penalty and enforcement regimes proposed in the review document are not supported by evidence. There is a responsibility for employers to be treated under these proposals in the same way as any other third party. Again, we encourage Immigration New Zealand to consider the responsibility and role of third parties carefully and consult with stakeholder and industry groups to inform their decision on these proposals.

### **Conclusion**

34. TIA supports this review of immigration legislation and the wider immigration change programme. We re-iterate the two themes that are prominent throughout the submission. First, it is essential that New Zealand manages risks and protects the integrity of its borders – a changing global security environment leaves no room for compromise and we support initiatives that will bolster the safety of our border and protect the increasing number of international visitors who pass through them. Second, the

economic situation has changed – skill shortages are restricting economic growth and the tourism industry in New Zealand is no exception. We support a review that acknowledges New Zealand’s labour market needs and welcome a system that will deliver greater flexibility but retain the integrity that the present system exhibits.

### **Recommendations**

35. TIA recommends:

- a) mandatory consultation with stakeholders, industry and liaison groups as a legislative requirement on matters relating to the Immigration Act;
- b) more flexibility in the Immigration Act to meet changing demands for skills and labour;
- c) the establishment of a single integrated visa framework provided exemptions can continue to be granted;
- d) the extension of the current visa-free arrangements;
- e) changes to the working holiday scheme with provision for the extension of current work visas and introduction of longer work visas;
- f) the retention of current decision-making powers with the Minister of Immigration;
- g) the introduction of third-party decision making provided an effective accreditation, accountability and monitoring system is established;
- h) the use of biometrics, provided it does not detract from the visitor experience; and
- i) the penalty and offence regime for employers is not increased.

## Appendix 1

### Background Information on the Tourism Industry Association of New Zealand (TIA)

1. The Tourism Industry Association New Zealand (TIA) advocates for the interests of the tourism industry in New Zealand. The businesses we represent generate more than 85% of New Zealand's tourism-related revenue.
2. Tourism is a \$17.2 billion industry (\$7.4b from international and \$9.8 from domestic tourism) with international tourist expenditure accounting for 18.5% of New Zealand's total export earnings.<sup>1</sup> The industry, directly and indirectly, employs 1 in 10 New Zealanders in a diverse range of businesses – the majority of which are small and medium sized enterprises. Not only is tourism important because of its size, representing 9.4% of New Zealand's GDP, it is:
  - Highly employment intensive;
  - Regionally disparate; and
  - Very diverse - ranging from large stock exchange listed companies to small cottage industries.
3. These businesses cover a range of tourism-related activities – hospitality, transport, adventure and activities, attractions and retail and related tourism services. In many cases, regional tourism businesses have developed around regional assets divested by other industries and have revitalised those assets and the communities that depend on them.
4. The tourism industry in New Zealand consists of more than 8,000 small and medium sized businesses. Of these businesses, most employ less than five people.
5. New Zealand welcomes more than two million overseas visitors to its shores every year. The domestic tourism industry is also important in helping to sustain a vibrant tourism industry. TIA estimates that over 75 million visitor nights are spent by New Zealanders every year.

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<sup>1</sup> “Key Tourism Statistics – March 2006”, Ministry of Tourism website