



DEPARTMENT OF LABOUR AND INDUSTRIAL RELATIONS

'GETTING THE BALANCE RIGHT'

**A PROPOSAL FOR A NEW LEGAL FRAMEWORK
TO REGULATE THE EMPLOYMENT OF NON-
CITIZENS IN PAPUA NEW GUINEA**

June 2006

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1. OVERVIEW

The *Employment of Non-citizens Act 1978* was introduced in the context of the economic and social conditions that were prevalent during the early years of independence. Apart from relatively minor amendments in 1983 and 1996, the legislation has remained unchanged since it was passed by Parliament more than 25 years ago.

In recent times, changes in the global market have had a significant impact on the employment of foreign labour in Papua New Guinea. Specifically, globalization has meant that we must now compete with other world economies for skilled labour, which is in short supply. It is a simple fact that imported skills are needed to ensure that our economy can grow and remain competitive. For this reason, the law regulating the employment of foreigners must assist the business community to attract and retain the necessary skilled workers.

In addition, the challenges facing Papua New Guinea in the areas of social development are fundamentally different to those that existed at the time of independence. More than ever, there is a need to promote employment and training opportunities so that all Papua New Guineans will be empowered to improve their own living standards. Skilled and experienced foreign workers can make an important contribution to the training and empowerment of our people.

For all of these reasons, it is timely that the law regulating the employment of non-citizens is reviewed.

The Department of Labour and Industrial Relations has worked hard to develop a legal framework that strikes the right balance between the understandable desire of business to operate with a minimum of regulatory control, and the legitimate aspirations of Papua New Guineans to participate fully in the economy of their country. It is sincerely hoped that the proposals contained within this Discussion Document will make a significant contribution towards the development of a final submission to Government on a new foreign employment law for Papua New Guinea.

2. SUPPORTING THE CONSTITUTION AND GOVERNMENT POLICY

The changes to the legal framework proposed in this submission are directly linked to, and support, the principles set out within the Constitution.

In particular, the fundamental principle that Papua New Guineans must have an equal opportunity to participate in, and benefit from, the development of their country is strongly supported. The Constitution also recognizes the need for integral human development and the right of every person to develop to his or her full potential. This submission seeks to build on these principles and establish a legislative framework that supports and promotes the ideals set out in the Constitution.

Of course, the principles enshrined in the Constitution are reflected in the policy framework established by Government. All of the changes proposed within this submission are grounded in Government policy. Indeed, the proposals not only reflect Government policy at a macro level, they are also consistent with the strategic direction of the responsible agency, the Department of Labour and Industrial Relations.

In particular, the Department has drawn strongly on the following 3 policy documents:

2.1 Medium Term Development Strategy 2005 – 2010 (MTDS)

The MTDS provides the strategic or ‘high-level’ framework which guides all other Government policy. The responsibility for translating the broad principles set out within the MTDS into detailed sectoral policies, rests with the relevant department, which possess the appropriate specialist expertise.

The principles underpinning the new law outlined within this paper strongly reflect the values outlined in the MTDS. In particular, all of the proposals are grounded in the overarching development strategy of the MTDS which is defined as:

*“**export-driven economic growth**, rural development and poverty reduction, including through good governance and promotion of agriculture, forestry, fisheries and tourism on a sustainable basis. The strategy will be realized by **empowering Papua New Guineans**, especially those in rural areas, to mobilize their own resources for higher living standards.”* (our emphasis)

This submission also reflects the Guiding Principles of the MTDS, particularly the principles that focus on private sector-led economic growth and empowerment of our people through skills improvement. It is imperative that a new law regulating foreign employment contributes to the achievement of these important objectives.

2.2 Strategic Plan for supporting Public Sector Reform in Papua New Guinea 2003 – 2007 (PSR)

Government’s program for reforming the public sector has provided the catalyst for many of the initiatives proposed in this document. Indeed, we have actively sought to align our proposals with Government’s plan for a streamlined, cost-effective and accountable public service. In simple terms, a new law must be underpinned by the need to improve performance and service delivery. For this reason, many of the proposals put forward are aimed specifically at assisting business by reducing red tape, and removing impediments to service delivery.

2.3 Department of Labour and Industrial Relations - Corporate Development Plan (CDP)

This submission is also guided by the strategic direction of the responsible agency, the Department of Labour and Industrial Relations.

Through the CDP, the Department is committed to *'facilitating human resource development through training and skills development for productive and sustainable employment of the labour force'*. It is true that the Work Permit System cannot, by itself, solve the problems of employment and training in Papua New Guinea. However, it can make an important contribution by complimenting existing Government activities in these areas.

3. STAKEHOLDER CONSULTATION

3.1 An extensive and inclusive process

The level of interest in the issue of foreign employment amongst the community in general is high. There is no doubt that this is an emotive issue. The national press regularly features articles and letters condemning the employment of expatriates at the expense of Papua New Guinean citizens. On the other hand, business is regularly heard to complain about the cost of delays when work permits are not issued in a timely manner.

For these reasons, it is crucial that any moves to amend the law on foreign employment should only proceed after the views of all interested parties have been sought and carefully considered. In keeping with this sentiment, a distinctive feature of this submission is its strong focus on stakeholder input.

In the first instance, the National Working Group on Removing Impediments to Business and Investment (NWG) has been pivotal in driving change. The NWG has identified a number of issues which are geared towards facilitating access by business to much-needed skilled labour. A significant number of these initiatives have been incorporated into this submission.

Secondly, the Department has actively sought comment from the general public. This input was invited by way of public notices placed in the national newspapers, community television and radio. The response has been significant and reflects the level of interest amongst all sectors of the community on this issue. In fact, more than 30 written submissions were received from Government, business, community organization and members of the public.

3.2 What do our stakeholders say?

The written comments received in relation to this review have been summarized in table form and are available on request to interested persons.

Overwhelmingly, the business community has called for a more efficient, responsive and flexible Work Permit System. More specifically, business has proposed a number of improvements/refinements to the current system such as:

- An increase to the length of work permits
- Removal of restriction of the employment of spouses and dependents

- A simplified application process, including a review of the PNG Classification of Occupations
- Removal of the need for repatriation following a change of employment
- Greater flexibility and job mobility for foreign employees
- Special consideration to businesses with a good track record in PNG
- A change in focus from localization
- Strengthened English-language requirements
- Strong monitoring and enforcement
- A closer working relationship between the Departments of Labour and Industrial Relations, and Foreign Affairs and Immigration

Apart from the business community, other stakeholders have stressed the importance of ensuring certain sectors of the job market are reserved exclusively for Papua New Guineans. There is strong feeling within certain sectors of the community that much-needed employment opportunities will be lost to expatriate workers if there is inadequate legal protection. In addition, it is clear that many stakeholders strongly believe that foreign workers should be required to share their knowledge, through training and skills-transfer, with their Papua New Guinean counterparts. It is not simply enough that our legal system allows these workers to enter our job market – the law must also ensure there is some benefit in the long run for our people.

Finally, there is universal support for a strong deterrent and monitoring component so that those who breach the law are brought to justice. Almost all submissions received by the Department as part of the consultation process advocate stronger powers and resources in this area.

4. WHAT IS WRONG WITH THE CURRENT WORK PERMIT SYSTEM?

The primary function of the law is to provide a framework to regulate the Work Permit System. Indeed, much of the existing regulatory framework will be retained in any new legislation. However, in order for us to move forward, we must acknowledge the shortcomings in our current system. The following examples serve to highlight areas for improvement:

4.1 A Changing Economic and Social Environment

As has been noted, the current legislative framework regulating the employment of non-citizens in Papua New Guinea has not kept pace with a changing economic and social environment. This is not surprising – the law is more than 25 years old. In addition, the legislation does not align itself, nor does it support Government policy. It has no clearly stated objective or purpose. These are significant flaws which must be remedied.

4.2 Unnecessary Red Tape

Perhaps one of the greatest criticisms of the current system is that it creates unnecessary red tape and delays for business attempting to attract and retain

much needed skilled labour. Some regulation is obviously necessary; however the challenge is to balance regulation with an environment which is conducive to economic growth and shared prosperity.

Whilst there are a number of areas in which red tape can be reduced, the application of the PNG Classification of Occupations serves to illustrate this point. Regular users of the Work Permit System will be familiar with this document which attempts to classify *all* of the possible occupations and job titles within Papua New Guinea. The relevant skills and education requirements are then identified for each job. Not surprisingly this is an enormous task. Jobs (and job titles) are constantly changing, new positions are created and old ones are abolished. Given technological advancements, one can only imagine the new types of work created in the Mining Sector alone in the last decade!

Applicants, and Departmental staff, are then faced with the difficult task of allocating codes where there is no corresponding job title in the PNG Classification of Occupations. This process is time-consuming and can result in delays. A further complication is that the list has not been updated since 1997, nor does it form part of the Regulations to the legislation.

This is just one example of unnecessary blockages within our system that must be removed to ensure we have a responsive, effective work permit process.

4.3 Employment Promotion

It is the case that the Work Permit System has done little to promote employment and training opportunities for Papua New Guineans. This proposal does not advocate a return to the time-consuming system which requires the approval of positions, nor the submission of detailed training plans prior to the granting of work permits. However, our people have the right to benefit, through training and skills-transfer, from the knowledge of experienced foreign workers and the law must facilitate this outcome.

Experience has shown that this cannot be achieved simply by requiring business, through an Act of Parliament, to localize positions. Instead, the focus must be on creating a climate, through training and skills-transfer, which makes it possible for PNG citizens to be empowered to participate fully in the job market. Localisation is simply the end result of this process. Our efforts must be on encouraging business to invest in the training and skills-development of PNG workers. If we are successful in doing this, then localization of positions will follow.

A natural consequence of employment promotion is the requirement for foreign workers to speak English. It is the case that the requirement for English-language proficiency has not been rigorously enforced by the Department in the recent past. This submission adopts as its premise that all foreigners seeking to work in our country should be able to speak some English (or a local language). The reason is simple. Foreigners should be able to communicate with our people. They must be able to impart their skills and knowledge. They must also

be able to participate in, and contribute to, our society. They cannot do this if they are unable to speak a language that is known to Papua New Guineans. Whilst this requirement should only be relaxed in exceptional circumstances, the law must allow for creative solutions in those cases where it is not possible, nor expedient, for foreigners to speak English.

4.4 Deterrence and Enforcement

The current capacity of the Department to deter and enforce breaches of the rules requires strengthening. The local press regularly reports on flagrant breaches of our system by business and foreign workers. However, it is impossible for the Department to inspect every workplace within our vast country.

While the current financial penalties must be strengthened, it is also imperative that we think 'outside the box' when it comes to ensuring compliance with the legislation. Unfortunately, the current law does little to *encourage* business to do the right thing. A new law must not only deter and punish – it must create a climate whereby business *wants* to comply.

4.5 The Work Permit Trust Account

The rules regulating the use of the Work Permit Trust Account are limiting. In order for the Work Permit System to function effectively, it must enjoy the support of other areas of the Department of Labour and Industrial Relations. For this reason, the current restriction on the use of funds must be lifted to ensure the benefits can be utilized by all areas of the Department, with priority given to the Foreign Employment Division.

4.6 Practical Changes

The law has also not kept pace with changes to the way the Department does business. Over the years, modifications have been made to the day-to-day running of the Work Permit System which have not been reflected within the law.

Two examples serve to illustrate this point:

- Sections 5A and 5B of the *Employment of Non-citizens Act 1978* require employers to make application for 'approval to recruit' before they are eligible to apply for a work permit. Indeed, these requirements were specifically inserted into the Act in 1983. However, this two-stage process caused significant delays and, at the insistence of the business community, the recent practice of the Department has been to process work permits without first issuing an approval to recruit. Whilst this significantly speeds up the process, we are not complying with the provisions of our legislation.
- Section 18 of the Act allows the Minister to issue guidelines: "*for the benefit of employers or self-employed persons seeking to make*

application for work permits". It is clear that the Guidelines were intended by the legislator to provide assistance to prospective applicants – in simple terms, a guide to those applying for a work permit. On the other hand, the Head of State is specifically empowered under section 20 to make Regulations for a range of matters, including fees, occupations, skills and matters necessary for giving effect to the legislation.

Unfortunately, over time, the bulk of the provisions relating to the Work Permit System have been captured by the Guidelines, as opposed to the Regulations. It is imperative for the new law to distinguish between the role of the enabling legislation, the Regulations and Guidelines and we respect the demarcation of these obligations.

4.7 A Modern Law

It is undeniable that the *Employment of Non-citizens Act 1978* requires modernization. The current legislation does not have a user-friendly focus. It lacks clear objectives and definitions section. Where possible, the law and its Regulations and Guidelines should use language that is easy-to-understand by the general public. Finally, we must ensure a new law makes use of gender-neutral language and best practice drafting principles.

5. AN OVERARCHING PRINCIPLE AND GUIDING PRINCIPLES

5.1 An Overarching Principle to Guide a New Law

As mentioned above, the employment of non-citizens in any country is a sensitive issue and any law regulating foreign employment faces an extremely difficult task.

On the one hand, the business community has a legitimate need to access essential labour to enable them to meet their commercial objectives. Strong economic growth is the cornerstone to the development and prosperity of Papua New Guinea. It is a simple fact that we need to attract skilled, experienced labour from external sources to grow our economy. In this regard, business must be supported to be able to operate with as little impediment as possible.

However, on the other hand, the citizens of Papua New Guinea have a right to participate fully in the economic activity of their country. The law cannot allow foreign employees unfettered access to our labour market. Certain jobs must be reserved for Papua New Guineans. However, where foreigners are allowed to work here, they must contribute to the training and skills-development of our people. Papua New Guineans must have access to employment and career advancement opportunities. They must also be allowed the chance to train and develop their skills to their full potential. Our people must have the opportunity to share in the prosperity of their nation through 'quality'¹ economic growth.

¹ The Medium Term Development Strategy explains that 'quality' economic growth means that every Papua New Guinean will be able to benefit from expanded economic activity.

The principles set out within this submission seek to strike the necessary balance between these two important, but competing, interests. For this reason, the overarching principle for a new law to regulate the employment of foreigners in Papua New Guinea is defined as:

“GETTING THE BALANCE RIGHT: a work permit system that promotes export-driven growth by supporting business’ need for skilled labour and contributes to employment, training and empowerment opportunities for all Papua New Guineans.”

This overarching principle strongly compliments Government Policy, in particular the Medium Term Development Strategy 2005 – 2010. It also acknowledges the challenges we face in satisfying the competing needs of our many stakeholders, in particular the business community and the citizens of Papua New Guinea.

5.2 7 Guiding Principles

The Overarching Principle is supported by 7 Guiding Principles. The Guiding Principles perform a number of functions: they expand on the Overarching Principle; they provide the link to Government policy; and they provide the ‘flesh’ on the bones of the new law. These principles are as follows:

Principle 1: The law will promote export-driven growth by assisting business to attract and retain foreign labour.

Principle 2: The law will contribute to employment, training, skills-acquisition and empowerment opportunities for all Papua New Guineans.

Principle 3: The law will encourage businesses to be ‘Good Corporate Citizens of Papua New Guinea’.

Principle 4: The law will provide for strong deterrent, monitoring and enforcement.

Principle 5: The law will provide for fair procedures and a right of appeal.

Principle 6: The law will promote the effective utilization of the Work Permit Trust Account.

Principle 7: The law will have a ‘user-friendly’ focus.

The Guiding Principles are discussed in greater detail below.

6. PRINCIPLE 1: THE LAW WILL PROMOTE EXPORT-DRIVEN GROWTH BY ASSISTING BUSINESS TO ATTRACT AND RETAIN FOREIGN LABOUR

Some regulation of the Work Permit System is obviously essential. For example, the law must set out the rules for the issuing, cost and cancellation of work permits. The law must also prescribe which jobs are prohibited to foreign workers and what penalties exist for a breach of the law.

However, it is clear from the submissions of our many stakeholders that there are a number of unnecessary ‘bottlenecks’ within the current system. It is a fundamental principle of this submission that business must not be prevented by unnecessary ‘red-tape’ from accessing skilled and experienced foreign labour.

Considerable effort has been made to heed the call from the business community for a more responsive, flexible Work Permit System. The initiatives identified below are significant and will go a long way towards meeting our objectives of a flexible, responsive system which understands the needs of modern business.

How will the law achieve this?

- The law will no longer expressly require employers to localize positions occupied by non-citizens. Instead, the legislation will focus on the maximization of training and skills-transfer opportunities for Papua New Guineans. This shift in focus will allow business to concentrate on the issues that matter – quality training and human resource development for staff.
- Training issues will continue to be monitored by the National Training Council.
- The existing repatriation requirements will be relaxed. A non-citizen wishing to take up new employment following the completion of 75% of the time-period of their current engagement will not be required to leave the country.
- The prohibition on the employment of spouses and dependents will be lifted.
- The current age restrictions will be relaxed. Non-citizens who have reached the age of 21 will be eligible for work permits. There will be no maximum age limit, only a requirement that non-citizens are fit and healthy to perform their roles.
- The two-stage application process, which requires approval to recruit prior to the work permit application, will be removed from the law. The application process will be simplified and applicants will make a single application for a work permit.
- The PNG Classification of Occupations will be replaced by a List of Prohibited Occupations. This will remove the need for applicants to identify specific positions and job codes, which will significantly reduce red tape. In its place, the Secretary will be given the power to refuse an application for a work permit if the applicant does not possess the necessary qualifications and/or work experience.
- The law will allow for a delegation of the Secretary’s powers in specific circumstances which will speed up the work permit process, for example in the case of approval of non-contentious renewals.
- A number of additional benefits, including 5 year work permits, will be available to Good Corporate Citizens of Papua New Guinea².

² See the discussion under Principle 3.

7. PRINCIPLE 2: THE LAW WILL CONTRIBUTE TO THE CREATION OF EMPLOYMENT, TRAINING, SKILLS-ACQUISITION AND EMPOWERMENT OPPORTUNITIES FOR ALL PAPUA NEW GUINEANS

Principle 1 proposes a number of improvements to the Work Permit System which support the needs of the business community. Specifically, red tape is to be reduced so that business can have ready access to foreign labour. On the other hand, Principle 2 attempts to balance the concessions to business by ensuring the Work Permit System is administered for the benefit of all Papua New Guineans.

It is a fundamental principle that jobs that can be filled by our people must not be taken by non-citizens - certain sectors of our job market must be reserved exclusively for PNG citizens. Indeed, this is the cornerstone of all foreign worker programmes throughout the world. In the event there are no suitably qualified or skilled employees available from within the country, it is acceptable for these positions to be filled by foreign labour. In this case, the non-citizens, or their employers, must ensure local counterparts are trained so that they can share in the skills and knowledge of their foreign counterparts.

How will the law achieve this?

- Jobs that can be filled by suitably experienced and qualified Papua New Guinean citizens will be prohibited to foreigners. These jobs will be identified in 'The PNG List of Prohibited Occupations'.
- The List will be strengthened by its inclusion in the Regulations to the legislation i.e. it will become part of the law.
- The law will require the List to be reviewed annually to ensure adequate protection for Papua New Guineans.
- If the Secretary believes there are Papua New Guineans who are sufficiently skilled and experienced to perform the job which is the subject of a work permit application, the law will give the Secretary the power to direct that the position is advertised within the local job market before a work permit can be issued.
- No work permits will be issued unless there is clear evidence of the applicant's proficiency in English or a suitable local language. This will ensure non-citizens are able to share their experience and knowledge with our people. Exemptions may be allowed in certain circumstances.
- Employers and non-citizens will be provided with information on their obligations in relation to training as part of the work permit application process. This will ensure a clear focus on these objectives. The Foreign Employment Division will work closely with the National Training Council on this initiative.
- Work permits will not be renewed unless there is clear evidence of training and skills-transfer to PNG citizens by the relevant employer or non-citizen.
- The Secretary will be given the power to cancel an existing work permit if there is clear lack of commitment to training and skills-transfer³.

³ See the discussion under Principle 4.

8. PRINCIPLE 3: THE LAW WILL ENCOURAGE BUSINESSES TO BE 'GOOD CORPORATE CITIZENS OF PAPUA NEW GUINEA'

Principle 3 is based on a simple philosophy - it is premised on the belief that those members of the business community in Papua New Guinea that comply with the rules regarding the employment of foreign labour, should receive due recognition and reward. Indeed, the law should be structured in such a way that it encourages employers to play by the rules.

If the business community can be encouraged and rewarded to comply with the law, this will reduce the burden on the Department in relation to monitoring and enforcement.

It is proposed to establish a scheme under the law to recognize 'Good Corporate Citizens of Papua New Guinea'. Good Corporate Citizens are businesses that can demonstrate a sound track record of compliance with the law, and a history of promoting training and opportunities for Papua New Guineans. These businesses will be rewarded for their good actions through, for example, the issuing of 5 year work permits.

The business community has requested greater freedom and flexibility in a new Work Permit System – it is only fair then that these advantages are extended to those businesses that have a good record in Papua New Guinea.

How will the law achieve this?

- Applications for GCC will only be considered annually at a specified date.
- Applications will be considered by a panel comprising the Secretary, DLIR as chair and 1 representative each of IPA, Immigration, IRC, the business community and the trade union movement.
- GCC must be able to demonstrate a good track record in areas such as:
 - compliance with the laws (especially work permit laws) of PNG
 - strong commitment to attracting, recruiting and training Papua New Guineans
 - good employment, OSH and industrial relations practices
 - sound environmental record
- Business will not demonstrate good corporate citizenship by simply providing a one-off monetary gift – the good behavior must be sustained.
- GCC will be entitled to certain benefits under the work permit system such as:
 - 5 year work permits (for the cost of a 3 year permit)
 - priority service
 - exemption from monitoring
 - public recognition
- GCC status must be renewed each year and proof of continued commitment to the ideals of GCC must be provided.
- The Secretary will have the power to revoke GCC status in the event these ideals are not supported.

9. PRINCIPLE 4: THE LAW WILL PROVIDE FOR STRONG DETERRENT, MONITORING AND ENFORCEMENT

It is clear the current penalty system under the law is not acting as a sufficient deterrent.

Indeed, the press in Papua New Guinea regularly reports on breaches of the work permit rules by employers and individuals that have scant regard for our system of law. How often have we heard of foreigners illegally working within Tucker Shops at the expense of our people? Foreigners working within our country must also respect our legal system. Those that are found to breach our laws must be dealt with fairly but firmly.

The revised Act will provide a range of significant penalties for breaches.

Whilst the focus will remain on financial penalties, a number of additional powers will be made available to the Secretary. These powers will, in the first instance, act as a deterrent. However, in the event of a breach of the law, significant penalties will be at the Secretary's disposal to take action against relevant employer and non-citizens.

The law will empower the Secretary to recommend the cancellation of a business license, prevent businesses and non-citizens from being granted work permits and impose penalties on organizations and non-citizens in the event the Act is breached. Of course, these provisions must be seen in the context of the 'Good Corporate Citizen' initiative identified in Principle 3.

How will the law achieve this?

- The current financial penalties under the legislation will be increased.
- The financial penalties will be removed from the body of the law and placed within the Regulations. This will strengthen the Department's capacity to make changes to the penalty provisions when required.
- The law will require a mandatory annual review of penalties and fees.
- The power to penalize both employers and non-citizens will be strengthened.
- The law will give the Secretary the power to recommend cancellation of a business license for repeat offences.
- The law must set out in more detail the cancellation powers in the case where a non-citizen is deemed not to be a "fit and proper" person to hold a work permit.
- The current power to cancel work permits following a breach of the rules will be strengthened.
- In serious cases, the Secretary will have a discretion to exclude a non-citizen or employer from being granted a work permit.
- The powers of Authorised Officers will be strengthened to ensure they have the capacity for effective monitoring and compliance.

10. PRINCIPLE 5: THE LAW WILL CONTAIN FAIR PROCESSES AND A RIGHT OF APPEAL

Currently, the legislation allows for the cancellation of a work permit on certain grounds⁴. A non-citizen, aggrieved with this decision, is then entitled to appeal to the Minister.

Whilst the legislation indicates that the Minister's decision is final, it is of course the case that all decisions taken under the law are subject to the Judicial Review powers of the Courts as set out in the Constitution. When considering an application for Judicial Review, the Courts will generally not concern themselves with the substance of any decision, but rather the validity or correctness of the decision-making. In particular, the Court will have regard to whether natural justice has been extended.

The proposed changes to the legislation will result in greater fairness in the event consideration is being given to the cancellation of a work permit. The law will require that natural justice, by way of a show cause, is extended before a decision is made to cancel a work permit. Similarly, a right of response will be available where a penalty is proposed in relation to a breach of the law.

The introduction of the right to be heard before an adverse decision can be made will ensure the law is able to deal with potential transgressions in a fair, reasoned manner which will stand up to the scrutiny of Judicial Review. In addition, the acceptance of these provisions is a further indication of the commitment of the Department to a fair and transparent Work Permit System.

These rights will not override the current powers to refuse entry set out within the *Migration Act 1978* (or replacement) to apprehend and deal appropriately with suspect arrivals and unlawful non citizens.

How will the law achieve this?

- Persons whose rights under the law are proposed to be affected, will be required to "show cause" why the action should not be confirmed.
- The show cause process will apply in relation to the proposed cancellation of a work permit or the imposition of a penalty for an alleged breach of the law.
- The affected party will be given the opportunity to respond in writing within 7 days.
- Any response will be considered by the Secretary prior to making any decision.
- The current Appeal mechanisms will be strengthened.
- The law will compliment, but not obstruct, the powers available under the *Migration Act 1978*.

⁴ Section 9 of the Act entitles the Secretary to cancel a work permit if (a) the application contained false or misleading material, (b) there has been a contravention of any of the conditions of the work permit or (c) the Secretary is satisfied the non-citizen is not a fit and proper person to continue to have a work permit.

11. PRINCIPLE 6: THE LAW WILL PROMOTE THE EFFECTIVE UTILISATION OF THE WORK PERMIT TRUST ACCOUNT

The Work Permit Trust Account is established through Section 22 of the *Employment of Non-citizens Act 1978* following a change to the law in 1996. Currently, 50% of all fees and penalties paid under the Act can be utilized, at the Secretary's discretion, for the purposes of improving the administration of the Work Permit System.

Under the law, the proceeds of the Work Permit Trust Account may only be used for a limited purpose. This restriction does not acknowledge the important contribution made by other areas of the Department in supporting and complimenting the effective running of the Work Permit System. If these areas are to continue with their important work, it is imperative that they are entitled to have share in the benefits of the Work Permit Trust Account.

The existing administrative and accounting safeguards will be strengthened through an annual independent audit.

How will the law achieve this?

- The proceeds of the Work Permit Trust Account will be utilized, in the first instance, for the improvement and effectiveness of the Work Permit System.
- In addition, the Trust Account may be used, at the discretion of the Secretary, to enhance other activities of the Department of Labour and Industrial Relations that are necessary for the effective functioning of the work permit system.
- The law will provide for an independent audit to be conducted of the Trust Account on an annual basis.

12. PRINCIPLE 7: THE LAW WILL HAVE A 'USER-FRIENDLY' FOCUS

The basis for the current legislative framework is almost 30 years old and reflects the drafting style of the time. The new law will have a distinctly user-friendly focus.

How will the law achieve this?

- Where possible, the law will use easy-to-understand language.
- The law will have a purpose and definitions section.
- The law will use non-sexist language.
- The law will clearly distinguish between the powers and functions of the Regulations and the Guidelines.
- The law will support modern drafting principles.

13. CONCLUSION AND A WAY FORWARD

This Discussion Document proposes the most radical change to the Work Permit System in Papua New Guinea in over 25 years. These changes are long overdue.

The Department of Labour and Industrial Relations takes very seriously its obligation to promote a foreign employment system which will contribute to the economic and social development of our nation. We have worked hard to put forward a proposal that acknowledges the needs of the business community, but also respects the aspirations of all Papua New Guineans.

In doing this, we have paid careful attention to the views of our stakeholders. Indeed, a key feature of this proposal is its strong reliance on the contribution of those parts of the community which are most affected by the employment of foreign labour in Papua New Guinea. In addition, we have made every attempt to support and compliment Government policy.

The new policy adopts as its guiding principle a balancing of the requirement for continued economic growth with the needs of our people. 7 Guiding principles support this vision for a fairer and more effective Work Permit System.

Of course, the legislation is only one factor influencing the regulation of foreign employment in our country. We must also acknowledge that adequate staffing, resources and the co-operation of our partners in Government, business and the community at large are vital in ensuring our success. In particular, we must explore ways to work closer with our key partner, the Department Foreign Affairs and Immigration and other stakeholders.

It would be unrealistic to expect that every aspect of this proposal will be universally accepted. However, I am hopeful that the open, consultative, and collaborative approach we have taken will strengthen our working relationships with business and the community and we will continue to move forward together.

We invite your comment on this Discussion Document. Please direct your written submissions to the Secretary, Department of Labour and Industrial Relations, P.O. Box 5644, Boroko, NCD. The closing date for comments is **7 July 2006**.

Following consideration of stakeholder submissions, it is the Department's intention to seek approval from the National Executive Council for the preparation of a Bill to Parliament to implement the final proposal.

Approved for distribution

David K.G. Tibu
Secretary
Department of Labour and Industrial Relations