



COVERSHEET

Minister	Hon Andrew Little	Portfolio	Workplace Relations and Safety
Minister	Hon Kris Faafoi	Portfolio	Immigration
Title of Cabinet paper	<i>Temporary migrant worker exploitation review – final proposals</i>	Date to be published	28 August

List of documents that have been proactively released

Date	Title	Author
5 March 2020	Temporary migrant worker exploitation review – final proposals	<i>Office of the Minister for Workplace Relations and Safety</i> <i>Office of the Minister of Immigration</i>
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4 March 2020	Impact Statement: Temporary Migrant Worker Exploitation Review Phase One Proposals	<i>MBIE</i>

Information redacted

YES

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Some information has been withheld for the reasons of commercially sensitive information, legal professional privilege, confidential advice to Government, confidential information entrusted to Government, maintenance of the law, and free and frank opinions.

Budget Sensitive

Office of the Minister of Immigration
Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Economic Development Committee

Temporary migrant worker exploitation review – final proposals

Proposal

1. This paper seeks Cabinet agreement to a package of legislative, policy and operational changes to reduce temporary migrant worker exploitation.

Executive Summary

2. The Labour-New Zealand First Coalition Agreement contains a commitment to “take serious action on migrant exploitation, particularly of international students.” In September 2019, Cabinet agreed to publicly consult on ten proposals to reduce temporary migrant worker exploitation and noted that I would report back in early 2020 on the final proposals [CAB-19-MIN-0470.01].
3. The review into temporary migrant work exploitation (the Review) is important because exploitation has serious, negative outcomes for migrant workers and the New Zealand labour force as a whole, including for our most vulnerable workers such as Māori, youth and lower-paid and insecure workers. Exploitative work practices have a negative impact on businesses and the economy. Good employers are undercut and disadvantaged by exploitative employers using illegal practices to get ahead.
4. There are an estimated 235,000 temporary migrant workers in New Zealand at any one time. Measuring the extent of exploitation in this group is difficult because of the hidden nature of this illegal activity. However, quantitative and qualitative research shows that some groups of temporary migrant workers are more vulnerable to exploitation than others, and exploitation is more common in some industries than others. The number of complaints of exploitation is also growing. The impact on the victims can be extreme and leave them with physical and mental health problems.
5. At my direction, officials have undertaken significant work on the Review. The final proposals are based on:
 - 5.1. submissions received during public consultation, including from key stakeholders, which were supportive of the objectives of the Review and showed strong high-level support for the individual consultation proposals;
 - 5.2. independent research on the nature, scale and impacts of migrant exploitation and a review of international best practice; and

- 5.3. the input and contributions of the external Consultation Group,¹ who were generally supportive of the final options presented here.
6. The proposed changes are grouped under three work streams which aim to:
- 6.1. prevent the occurrence of workplace (and other) practices that might enable temporary migrant worker exploitation;
 - 6.2. protect temporary migrant workers in New Zealand and enable them to leave exploitative employment; and
 - 6.3. enforce immigration and employment law to deter employer non-compliance through a fit-for-purpose offence and penalty regime.
7. The work streams and proposals are interdependent; achieving success under one work stream would have a positive impact on success in another. They are also reliant on an increase in compliance and enforcement activity as part of an end-to-end approach. The proposals are outlined in Table One below.

Table One: Summary of Temporary Migrant Worker Exploitation Proposals

<u>Prevent: Proposals to reduce risks around business models and practices that might enable exploitation</u>	
<i>Proposal</i>	<i>Benefit</i>
1) Introduce a duty on third parties with significant control or influence over an employer to take reasonable steps to prevent a breach of employment standards occurring	A positive duty would incentivise businesses and employers to embed good practice in their supply chains
2) Require franchisees to meet higher accreditation standards under the proposed employer-assisted visa gateway system	Particular risk factors for exploitation exist for these businesses, this would ensure that these are managed through the immigration system
3) Disqualify people convicted of migrant exploitation and people trafficking from managing or directing a company	This would prevent exploitation by ensuring that people who had been convicted of serious exploitation would not be able to use a company to continue such activities
<u>Protect: Proposals to improve the pathways for reporting exploitation and assist migrant workers in leaving exploitative employers</u>	
<i>Proposal</i>	<i>Benefit</i>
4) Establish a dedicated migrant exploitation 0800 phone line and online reporting tool, and establish a specialised migrant worker exploitation-focused reporting and triaging function	This would make it easier for migrants to report exploitation, and provide a trained and dedicated team to take the reports and ensure that they are directed into the most appropriate investigatory stream
5) Create a new visa for exploited migrant workers	This would ensure migrants can quickly leave any exploitative situations without negatively affecting their immigration status, and increase the incentives on migrants to report exploitation

¹ Including business, trade union and migrant representatives.

Enforce: Proposals to strengthen the offence and penalty regime to deter and penalise non-compliant employers

<i>Proposal</i>	<i>Benefit</i>
6) Establish three new immigration infringement offences targeting non-compliant employer behaviour, and a power for immigration officers to compel employers to provide relevant documents	These measures will enable more efficient responses to non-compliant employer behaviour, and decrease the vulnerability of migrant workers
7) Allow Labour Inspectors to issue an infringement notice where employers fail to provide requested documents in a reasonable timeframe	This would ensure that employers are not delaying providing information that is legislatively required under the <i>Employment Relations Act</i> in order to impede investigations
8) Expand the stand-down list to cover existing <i>Immigration Act</i> offences where a fine was issued and, in future, immigration infringement offences, and clarify that employers with certain serious convictions cannot support visa applications for migrant workers	This would ensure that employers with a history of non-compliance with immigration law are not able to support visa applications
9) Notify affected migrant workers that their employer has been stood down	This would ensure that affected migrant workers are aware of the implications on any further visa applications and can make informed decisions on their future employment

8. I also consulted on developing a labour hire licensing regime. I have decided not to seek agreement for this at this time, as there is insufficient evidence to suggest the benefits outweigh the costs. This is because most people are employed by businesses that would need to be accredited under the immigration system and there would be marginal extra benefits for them. I am also not proposing to require sub-contractors to meet the higher accreditation standards under the new employer-assisted gateway system at this stage, although the risk of this business model will continue to be monitored.
9. The policy proposals above will be supported by:
- 9.1. a new information and education action plan to ensure that migrants and employers understand their rights and obligations, including how to report exploitation; and
 - 9.2. a joint compliance and enforcement framework developed by the Ministry of Business, Innovation and Employment (MBIE) to strengthen responses to migrant exploitation across the Labour Inspectorate and Immigration New Zealand (INZ).

10.

Confidential advice to Government

11. The proposals in this paper are complementary to other work that the Government has already progressed which will reduce migrant exploitation. This work includes:
 - 11.1. policy changes to post-study work visas to remove the employer-link and encourage higher-level study;
 - 11.2. the introduction of a new employer-assisted gateway system for temporary work visas and employer accreditation to ensure that non-compliant employers are not able to recruit migrant workers;
 - 11.3. an increased operational focus, supported by increased funding, by agencies, including Immigration New Zealand (INZ), the Labour Inspectorate, and the New Zealand Qualifications Authority to target non-compliant employers and education providers and remove them from the system.
12. These proposals also represent the first phase of work on the Review. I will consider whether further work is necessary to address migrant exploitation, Confidential advice to Government

The policy priorities for the Immigration portfolio are summarised in **Appendix One**.

Background

Cabinet agreed to public consultation on proposals for change, with a report back in early 2020

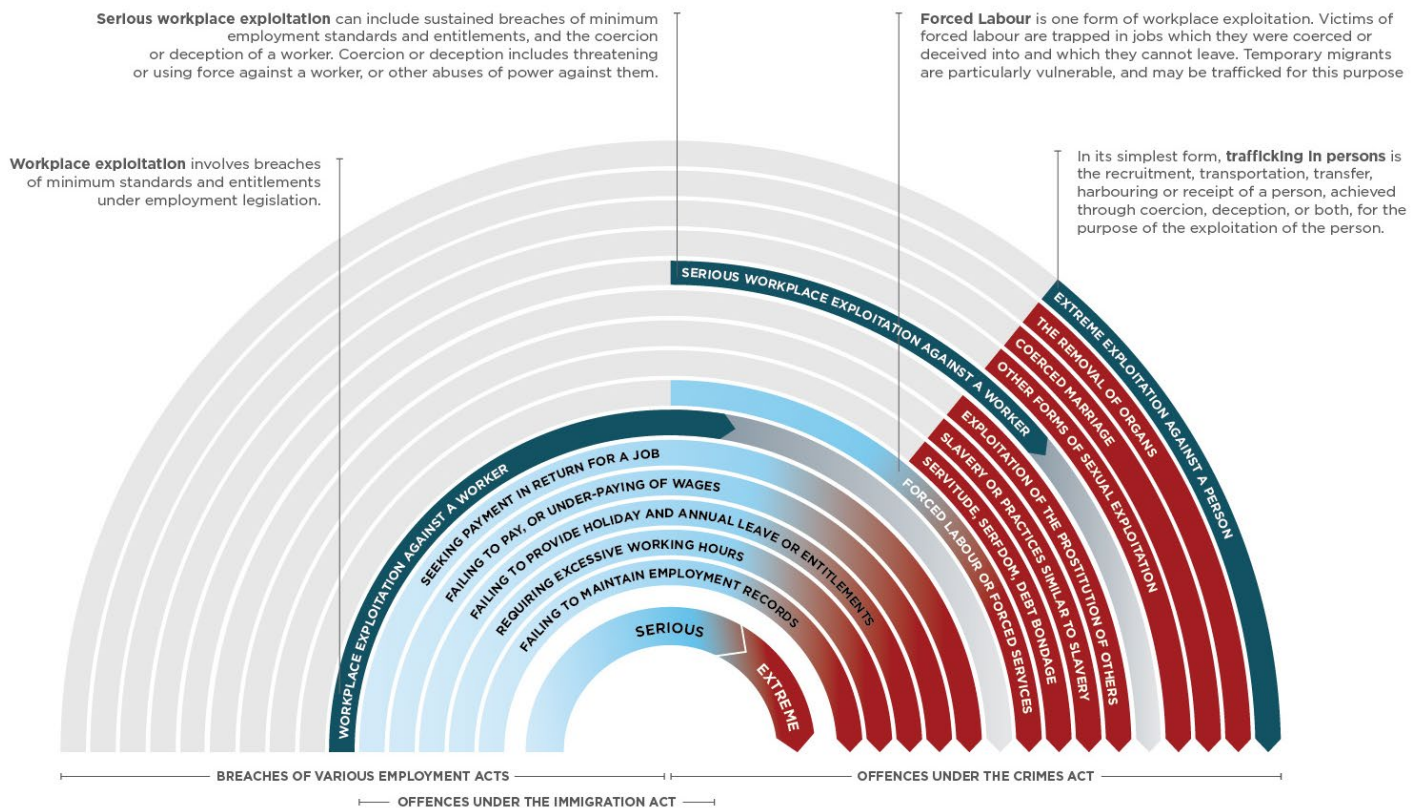
13. The Labour-New Zealand First Coalition Agreement contains a commitment to “take serious action on migrant exploitation, particularly of international students.” On 16 September 2019, Cabinet agreed to publicly consult on ten proposals for regulatory, policy and operational change from the first phase of the Review. Cabinet noted that I would report back to Cabinet in the first half of 2020 to seek agreement to the final proposals.

The Review defines ‘exploitation’ broadly

14. For the purposes of this Review, exploitation refers to a breach of minimum employment standards (set in legislation) and conduct under the *Immigration Act 2009*, where the outcome of the offending behaviour causes, or increases the risk of, harm to the economic, social and physical well-being of the worker. It also includes situations where migrants are deceived or coerced into paying above market rates for goods and services, such as food and accommodation, or forced to live in substandard accommodation.
15. Exploitation takes many forms, including (but not limited to) requiring workers to pay for their job; denying leave; excessive work hours; under- or non-payment of agreed wages; failure to provide an employment contract; retaining or withholding passports; controlling living conditions, movement and communications; and threats and intimidation.
16. At the most serious end of the spectrum, exploitation includes forced labour and people trafficking. These offences are not the focus of this Review, as the Government has existing regulatory responses to these offences. The Government has recently

ratified the Forced Labour Protocol, and has other work underway including the development of a new plan of action to prevent people trafficking and forced labour. However, in practice, it is hard to definitively differentiate between trafficking, forced labour and serious exploitation. Figure One below shows the spectrum of workplace exploitation.

Figure One: Spectrum of workplace exploitation, trafficking in persons and forced labour²



Exploitation has serious, negative outcomes for migrants, businesses, New Zealanders and our international reputation

- Reducing exploitation is a priority as it has serious, negative outcomes for migrant workers, the labour force more generally, businesses, and New Zealand as a whole. It affects our economy and international reputation. Temporary migrant workers make an important contribution to our economy. In recent years we have seen a significant increase in the number of temporary migrant workers, in particular in important sectors such as tourism, primary industries and construction.
- Independent research commissioned by MBIE has identified that exploited temporary migrant workers suffer both physical and psychological harm, and that harm also affects their families. Key types of exploitation identified in the research include the under-payment or non-payment of wages; non-compliance by employers with employment agreements; the non-payment of taxes; denial of entitlements to annual holidays and holiday pay. Some workers experienced controlling and coercive behaviours, such as surveillance while working, control of their accommodation and

² Adapted with permission from Martin Jenkins.

movement, intimidation, and threats related to their immigration status. This compounds the financial losses suffered.

19. Awareness of exploitation extends beyond the temporary migrant worker community and also damages New Zealanders' views of working in New Zealand. In addition, exploitative work practices have an impact on our businesses and the economy. Good employers are undercut and disadvantaged by exploitative employers using illegal practices to get ahead. The most vulnerable New Zealand workers, such as Māori and young people, are also indirectly affected as migrant exploitation can contribute to wage suppression and job displacement in lower-paid industries.

Measuring migrant exploitation is difficult because of its hidden nature

20. There are significant challenges in attempting to accurately measure the extent of migrant worker exploitation. The hidden nature of this illegal activity and the difficulties of accessing migrants willing to participate in research make data collection difficult. These issues, along with language barriers, mean that accurately measuring the extent of exploitation is extremely challenging.
21. In light of this, MBIE uses a mix of administrative, survey and qualitative interview data to understand the nature and extent of exploitation. The evidence suggests that exploitation is a serious issue in New Zealand. The number of complaints has been increasing and a large proportion of complaints that are investigated are substantiated.
22. Research undertaken to support the Review found that exploited migrants were often reluctant to take formal or informal action because of concern that no action would be taken and that their visa status would be affected. These findings were confirmed by the Migrant Survey 2018.

The temporary migrant worker population is diverse and research shows that some groups of temporary migrant workers are more vulnerable to exploitation than others

23. There are approximately 235,000 temporary migrant workers currently in New Zealand. The temporary worker population is diverse and includes workers with a range of visa statuses, skill levels and personal situations. The use of migrant labour has been steadily increasing in New Zealand in recent years. In November 2018, more than 7 per cent of all jobs were held by temporary visa holders (up from around 3 per cent in 2005).³
24. Overall, 8 per cent of temporary migrants (including 13 per cent of working holiday makers) who responded to New Zealand's Migrant Survey 2018 said they had not received one or more of their minimum employment rights or had been asked to pay money to their employer to get or keep their job. Extrapolated out, this means that around 20,000 temporary workers may be being exploited. This is also likely to be an underestimate as exploited migrants are less likely to respond to a survey.
25. Qualitative and quantitative research has identified that three particular groups of temporary workers are more vulnerable to exploitation than others: International Students, Essential Skills visa holders, and Working Holiday Makers.
26. Within these groups temporary workers are more likely to be vulnerable to exploitation if they are a lower-skilled worker, from a low-income source country or if they have significant debt. Debt may cause temporary workers to accept exploitative conditions

³ Data from the Integrated Data Infrastructure (IDI) and uses tax records and INZ data.

out of necessity. Vulnerability to exploitation is enhanced if the migrant has a low level of English language proficiency or a limited knowledge of New Zealand law.

Exploitation is more common in some industries than others

27. Some industries have become reliant on migrant labour. Twenty three per cent of all jobs in accommodation and food service (up from around 11 per cent in 2005) and 18 and 17 per cent of jobs respectively in administration and support service and the primary sectors were held by temporary migrants.
28. There were significant industry trends in the Migrant Survey 2018 results. Nearly one in five migrants working in the agriculture, forestry and fishing industry (18 per cent) and retail industry (17 per cent) indicated that they had not received at least one of their minimum employment rights or had been asked to pay money to their employer to get or keep their job.
29. Analysis of Labour Inspectorate investigation data shows a similar story. Of the 177 investigations completed by the Labour Inspectorate in 2018/19 involving migrant exploitation, 42 per cent were in the construction sector, 22 per cent in the food services sector and 14 per cent in the retail sector. Note that most of the investigations in the construction sector were as a result of a single proactive operation. These are industries where low-paid and low-skilled jobs are common, and where significant proportions of migrants are employed.

The number of complaints of exploitation is growing and a significant proportion of exploitation investigations involve migrants

30. The number of exploitation complaints received by Immigration New Zealand is increasing. In 2011/12, INZ received exploitation allegations involving 31 individuals and businesses. In 2018/19, the exploitation allegations received involved 390. Of the 599 investigations completed by the Labour Inspectorate in 2018/19, 384 (64 per cent) involved one or more migrant workers. Nearly half (177 and 46 per cent) of the completed investigations involving migrants were classified as serious exploitation.

Final proposals to reduce temporary migrant worker exploitation

31. At my direction, officials have undertaken significant work on the Review, including public consultation, independent research and targeted stakeholder engagement across Government and through an external Consultation Group. I am now seeking Cabinet's agreement to a final set of proposals set out below which represent the first phase of work on the Review.

Public consultation was supportive of the objectives of the Review and the proposed changes

32. Public consultation began on 17 October 2019 and concluded on 27 November 2019. MBIE received 167 individual submissions through the consultation from a wide range of submitters. In addition to the results of the written consultation officials also analysed insights from public roadshows and meetings, and from the Review's external Consultation Group.
33. Overall, submitters were supportive of the objectives of the Review. There was widespread recognition that migrant workers are valued and make an important contribution to the economy and to a diverse society. There was high-level support for action and to the objectives of the Review. This translated to high-level support for the

individual proposals. A detailed summary of the consultation feedback is attached at **Appendix Two**.

The changes work together as an overall package and require an increased focus on compliance and enforcement

34. The proposed changes represent a coordinated and deliberate response across the whole system, from education and policy design to enforcement and prosecution. The work streams and proposals are interdependent; achieving success under one work stream would have a positive impact on success in another. They are also reliant on funding for an increase in compliance and enforcement activity as part of an end-to-end approach. A credible compliance and enforcement response will be needed to make the reporting and triaging function and the wider package of changes viable.
35. For example, the 'prevent' proposals would reduce the risks of exploitation occurring. The enhanced reporting function and visa protects migrants and encourages more reporting. Increased compliance and enforcement and better tools are needed to investigate the increased number of reports. A summary diagram of the end-to-end process is provided as **Appendix Three**.

Prevent: Proposals to reduce risks around business models and practices that might enable exploitation

36. The 'prevent' work stream aims to reduce risks associated with workplace (and other) practices that can enable temporary migrant worker exploitation. Success in achieving this objective would result in employers who understand and meet their employment obligations, regardless of the type of business or the complexity of the business' supply chains. There would be fewer opportunities for employers to avoid their obligations and to exploit workers, and good practices would be promoted.

Proposal One – Extending liability for breaches of employment standards to third parties with significant control or influence

37. The problem: Multiple contracting layers may facilitate or hide exploitation, particularly when cost pressures are driven down the supply chain. In these circumstances, liability for employment standards and conditions generally rest only with the direct employer, regardless of the degree to which their business is influenced or controlled by others in the chain. Migrant workers are particularly susceptible to harm in layered supply chains.

38.

Commercial Information



39. The proposal: I propose to amend the *Employment Relations Act 2000* to introduce a duty on third parties with significant control or influence over an employer to take reasonable steps to ensure the employer is not breaching minimum employment

⁴ This has resulted in 13 infringement notices issued, 47 improvement notices issued, 3 enforceable undertakings, and 6 arrears/penalty actions filed in the Employment Relations Authority.

standards. This would apply in situations where both the employer and the third party are based in New Zealand.

40. This proposal draws from legislation introduced in Australia in 2017. Whereas the Australian approach applies only to franchisors and holding companies, we consulted on a broader approach applicable in all cases where a person has significant control or influence over an employer. This is intended to address the risks seen with such arrangements, without creating opportunities for businesses to structure themselves in such a way as to avoid falling in scope of the defined business type. This broader approach was also recommended by the Australian Migrant Workers' Taskforce⁵, and was broadly supported in our public consultation.
41. I propose that penalties for a breach of the duty align with existing civil penalty provisions in the *Employment Relations Act* (up to \$10,000 for an individual and \$20,000 for a corporation) for breaches under that Act. In the event there is a breach of employment standards, the third party would also be liable for money due to the employee if both the employer and any person involved in the breach are unable to pay. This would take a similar approach to existing law, under which a person involved in a breach may, with leave from the Employment Relations Authority or court, be liable for the payment of arrears to the extent the employer is unable.
42. I propose that proceedings may only be brought by the Labour Inspectorate. Powers would be needed to enable Labour Inspectors to request documents for the purpose of testing whether the business has met their duty to take reasonable steps. This should be consistent with existing powers for Labour Inspectors to request and inspect documents they reasonably believe may assist in determining whether legislative requirements have been complied with. I expect this would include relevant contractual documents between the employer and the third party, such as a franchising agreement, and any other relevant document, such as any Manual or Code which may be applicable to the employer.
43. This proposal goes further than what I consulted on by creating a positive duty for third parties, rather than a defence to being held liable if the third party had taken reasonable steps (as with Australian law). I consider that front-footing the obligation in this way by introducing a duty would be more effective in changing business practices. This approach draws from the 'person conducting a business or undertaking' (PCBU) concept introduced through the *Health and Safety at Work Act 2015*. This included expanding duties from the traditional employer-employee and principal-contractor relationships towards a broader approach to protect workers.
44. The PCBU approach was proactively raised in consultations, with some submitters suggesting that the proposal be connected to the health and safety framework. A 'duty' concept was also raised in several submissions, including as a specific duty "to report breaches", "to ensure proper practices are upheld" or "to enquire and make sure processes are appropriate", or as a broad duty of care.
45. The proposed test will be whether a business has significant control or influence over the employer's affairs (such as their operational, financial and corporate affairs). I do not consider that the procurement of goods or services (for example, a homeowner or small business purchasing cleaning or other services) would in and of itself be

⁵ The Migrant Workers' Taskforce was established by the Australian Government following high profile cases of migrant exploitation. It was tasked with identifying proposals for improvements in law, law enforcement and investigation, and other practical measures to address migrant worker exploitation.

sufficient to meet a significant control or influence threshold. Rather, the 'control versus independence' legal test for employee status provides an indication of the relevant factors to be considered. This includes consideration of whether the third party has control over: where, when, what or how the work is to be done; working hours; the availability of the person to perform work; whether the person can work for others; and the supervision and direction of the person.

46. Benefits: This would require businesses to take concrete actions to prevent exploitation where they are structured in such a way that they have significant control or influence over an employer's affairs. It would add a further incentive for businesses and employers to embed good practices in their supply chain.
47. Although there has not yet been a formal evaluation of the *Health and Safety at Work Act 2015*, an Australian evaluation of their law (which forms the basis for New Zealand's settings) found that the duties framework is "settling in people's understanding and working well" and that "initial concerns with the introduction of the PCBU concept have been largely unfounded".
48. Impacts: The compliance costs for third party businesses would vary depending on the nature of the relationship between the third party and the employer. Submitters expressed concern around the uncertainty of who the proposal applied to and what they would be required to do. The Franchising Association of New Zealand considered the cost of implementing a system to monitor franchisees could be up to \$200,000, with ongoing monitoring costs of \$50,000 to \$200,000 per year. However, the costs to individual businesses would vary depending on factors such as the size of the business and the nature of their arrangements with the employer, as well as their existing practices. I do not envisage that this proposal would impose costs on businesses that are disproportionate to their size or resources.
49. Businesses can take a wide range of steps to identify and mitigate the risk of exploitation occurring in their supply chains. Initially they might undertake planning and mapping activity to, for example, determine what changes may be required to enable them to meet their duty and to forecast resourcing requirements. They might then conduct a risk assessment to test the risks and level of involvement needed over different aspects of the employer's business.
50. Other steps will depend on the nature of the business and what the third party has control over; they could include for example: setting appropriate codes of conduct; undertaking due diligence (such as background checking) when selecting franchisees, subcontractors and others; education activity; undertaking audit and assurance procedures; and providing mechanisms for employees to raise concerns.
51. More certainty will be provided to businesses in the legislation and through the provision of guidance by MBIE Employment Services. As part of the legislative design, officials will develop a list of factors for a court to consider in determining whether reasonable steps were taken (as in the Australian legislation). This could include, for example, consideration of the person's ability to influence the employer's conduct; and any actions taken towards promoting compliance such as the provision of education, monitoring arrangements, and avenues for employees to raise concerns. Officials will also ensure that the definition of 'significant control or influence' is transparent, simple, and proportionate to the problem being addressed.

52. Confidential information entrusted to the Government

Proposal Two – Require franchisees to meet higher accreditation standards under the proposed employer-assisted visa gateway system

53. The problem: Some business models are at increased risk of migrant exploitation occurring. Franchises are associated with risk factors including lower-paid work and high up-front and ongoing expenses in combination with a lack of control over certain aspects of the business (depending on the franchising relationship).
54. These risks are supported by their prevalence in the Labour Inspectorate investigations data. In the 12 months from December 2018 to November 2019, 81 investigations associated with franchises were undertaken. Breaches were identified in 45. As at November 2019 there were 73 open investigations. MBIE's analysis of the 338 employers placed on the stand-down list from April 2017 to March 2019 suggested that 16 per cent were franchises. It further suggested that 19 per cent of the highest harm employers (those receiving fines above \$20,000) were franchises.
55. The proposal: I propose that franchisees be required to meet higher accreditation standards under the proposed employer-assisted visa gateway system. Cabinet previously agreed that labour hire companies would be required to meet a higher standard of accreditation which includes more up-front verification and checks, and additional requirements related to their systems and processes. This would expand that 'higher-risk' accreditation to franchisees.
56. I propose that in the future the Minister of Immigration would be able to make decisions on the types of businesses that would be subject to the 'higher-risk' accreditation. These decisions would be made with advice from officials based on enforcement activity, and in consultation with Ministers of portfolios relevant to any substantially affected industries. This would allow more flexibility to add or remove business types based on demonstrable risks. For example, there may be some franchisees or labour hire companies in some sectors that are lower risk and may not need to meet higher standards or additional verification. Conversely, new risks may be identified that need to be addressed. The accreditation system will provide a means of improving our knowledge over time.
57. I do not recommend setting higher standards for subcontractors at this time as there is limited evidence on the additional risks of exploitation associated with this business model. Further, accreditation of this group may be difficult to apply in practice as they would be hard to identify. Individual subcontractors would continue to be subject to verification and post-decision assurance checks based on risk.
58. Benefits: This would mitigate the risk of exploitation associated with franchisees and the franchising model. It would allow INZ to target resources at the highest-risk businesses and to reduce the costs of accreditation for lower-risk businesses.

59. Linking requirements for franchisees to the proposed labour hire framework would be preferable to creating a new set of franchisee standards. The existing standards provide a good base from which to assess employers based on risk, and fewer categories would provide greater consistency and cause less confusion for employers.
60. Impacts: There will be some impacts on franchises that employ migrant labour, in terms of higher accreditation costs (around \$400 higher than standard employers, though further work is underway on the expected fees), costs associated with meeting the additional standards, and more checks. I do not anticipate that these impacts would provide a significant barrier for compliant business to access migrant labour. Officials have estimated that this could affect up to 2,000 franchisees, although the data that this estimate is based on has some limitations. Accreditation would provide a means of improving our data over time to better identify franchises and target risks.

Proposal Three – Disqualify people convicted of migrant exploitation and people trafficking from managing or directing a company

61. The problem: Some company directors leverage corporate structures to avoid personal liability and to avoid detection while exploiting migrant workers. Such persons have demonstrated that they cannot be trusted to direct a company.
62. The proposal: I propose expanding the provisions in the *Companies Act 1993* that enable a person to be disqualified from being a company director, or taking part in the management of a company, to include convictions of exploitation offences under section 351 of the *Immigration Act 2009* and trafficking in persons under section 98D of the *Crimes Act 1961*. Under this proposal the court could make an order to disqualify a person from being a director where their offending was enabled by, or otherwise related to, the use of a company.
63. Benefits: This would reduce migrant exploitation by preventing people who have been convicted of serious exploitation involving a company from using company structures in the future. This proposal was strongly supported in the consultation. It would supplement existing protections which currently allow persons to be issued banning orders under the *Employment Relations Act 2000* to prevent them from being employers for up to 10 years.
64. Impacts: There are very few convictions under these offences (only one person has been convicted of trafficking in persons and there have been a small number convictions for exploitation under section 351). The impacts are therefore likely to be highly localised. However, it is important to protect the public, and particularly migrant workers, from unscrupulous directors who may leverage corporate structures to engage in future offending.

I do not propose to introduce a labour hire licencing system at this time

65. As part of the consultation last year, officials consulted on introducing a labour hire licencing system for all labour hire companies (whether or not they employ migrants). Temporary and short-term work can be associated with precarious employment which, particularly in combination with other factors such as migrant status, may pose a higher risk of exploitation.
66. However, I do not recommend introducing labour hire licensing at this time as there is insufficient evidence to suggest that the benefits of a licensing scheme would outweigh the compliance costs for businesses following the introduction of labour hire

accreditation as part of the employer-assisted temporary work visa changes. I am open to revisiting this decision in future once the employer-assisted accreditation system is in place and more evidence has been gathered.

67. Labour hire accreditation under the new employer assisted work visa system will likely be sufficient to mitigate risks related to labour hire companies. The data suggests around 87 per cent of all workers in the labour supply services industry work for an employer that would need to be accredited under the new temporary work visa system.
68. Officials will also work with the industry to support the development of industry-led standards as part of the accreditation system over time, where these standards are considered sufficiently relevant and robust for this purpose. In its submission, the Recruitment, Contracting and Staffing Association (RCSA) suggested that their industry-designed StaffSure certification could be more effective than a licensing scheme in identifying exploitation in supply chains. This push will provide an opportunity for the industry to champion the use of voluntary, industry-led standards to triangulate behaviours and address risks.

Protect: Proposals to improve the pathways for reporting exploitation and assist migrant workers in leaving exploitative employers

69. Success in achieving this objective would result in migrant workers better understanding their employment rights in New Zealand and being more confident to report exploitation to authorities. It would also provide a victim-focused approach to ensure that migrant workers are able to leave exploitative situations safely and quickly. It is critical for the credibility and success of this work stream that an increased number of reports are investigated and prosecuted.

Proposal Four – a dedicated reporting function and 0800 number, and a specialised reporting and triaging function

70. The problem: The Review has identified that migrant workers have low awareness of their employment rights and how to report exploitation. There are currently multiple channels for migrant workers to report exploitation, and inconsistencies and delays in handling their complaints, and insufficient data collected to enable monitoring of reported exploitation.
71. The proposal: I propose to implement a dedicated migrant exploitation 0800 phone line and online reporting tool, and a specialised migrant worker exploitation-focused reporting and triaging function within MBIE.
72. The detailed design of the function is underway and is subject to Budget 2020 funding, but reports will be received through a single point of contact (the MBIE Contact Centre) that is easily identifiable and includes a dedicated phone line, online reporting tool and the assessment and monitoring of other electronic reports (e.g. Facebook and email).
73. Staff undertaking the reporting and triaging function will provide advice and receive reports regarding employment and immigration issues with a special focus on migrant exploitation. My officials will also work closely with the Ministry of Education, the New Zealand Qualifications Authority, WorkSafe New Zealand and Tenancy Services to ensure reports relating to health and safety at work, international education, and

accommodation will be referred to the appropriate regulator for triage and investigation.

74. The new reporting function will be supported by an Information and Education Action Plan to develop methods to provide streamlined, consistent and accurate information and education to migrant workers and employers. The desired outcomes of the Plan is to help migrant workers better understand their rights and be able to report exploitation through the MBIE 0800 number or online reporting tool if it occurs.
75. Benefits: The benefits of the new reporting function include visibility and transparency for migrants and the ability to provide advice to those who have been exploited, or are vulnerable to it. It will also enable us to collect better information on the scale and nature of migrant exploitation in New Zealand. This is because more migrants will be encouraged to report and their information would be collected in a more systematic way than at present.
76. Impacts: I expect that this proposal (and proposal five below) will double the number of credible reports of exploitation that are received by MBIE from around 500 to 1,000 per year.

77. Confidential advice to Government

Proposal Five – a new visa category for exploited migrants

78. The problem: Feedback from the independent research and submissions indicates that migrant workers do not report exploitation because they have concerns about the negative implications of reporting, such as the consequences for their visa status.
79. There is currently a discretionary process that INZ uses to decide whether an exploited migrant should be granted a further visa. However the process is not well-known, has a high threshold for 'exploitation', and requires an investigation to be launched, which prevents the migrant from quickly leaving their exploitative situation and creates uncertainty of outcome. As a result, the current process is not used very often.
80. The proposal: I propose to implement a new visa category for migrant workers who are exploited. This would support temporary migrant workers to report (and consequently leave) exploitative employment, without fear of the impact on their visa status. I propose that the key features of the visa be the following:
 - 80.1. Exploited migrants would need to be on a current work visa (it would not be available to holders of student or visitor visas, or unlawful migrants). This would maintain the integrity of the immigration system by ensuring that only migrants legally here to work would be able to receive a further work visa. I will further consider whether migrants on 'open' work visas should be eligible or whether it should be limited to only workers on employer-assisted visas.
 - 80.2. It would be granted based on a robust upfront credibility assessment undertaken through the new reporting and triaging function. This assessment would rely on the information supplied by the migrant, and would seek to

confirm that complaints are genuine. It would be designed to ensure migrants are able to leave exploitative situations quickly, without the need to wait for a formal investigation to be complete.

- 80.3. Migrants' complicity in the circumstances leading to their exploitation would not be a disqualifying criterion for meeting the visa policy's eligibility requirements. Most exploited migrants have been complicit in some way, with differing degrees of knowledge and intent that can be difficult to establish. Excluding those who are found to have been complicit would deter reporting and prevent migrants from leaving unsafe situations.
- 80.4. The visa would be an open work visa of up to six months. Six months should be sufficient for the migrant worker to find a new employer or to tidy up their affairs and depart New Zealand. A longer period would increase the incentives for false claims.
- 80.5. Partners and dependent children already in New Zealand in NZ holding a visa on the basis of their relationship to the exploited migrant would be able to be granted a visa of the same duration.
- 80.6. Exploited migrants and their families would be exempt from paying immigration fees and levies and would not normally need to supply new police and medical certificates. This is to ensure that decisions can be made quickly and that cost is not a disincentive to seek help.
- 80.7. Exploited migrants would not be able apply for consecutive visas under this policy but could apply for other types of visas e.g. an employer-assisted work visa. This is to maintain the integrity of the immigration system and ensure that migrants are not using this visa to prolong their stay in New Zealand.
81. **Benefits:** The new visa category will be more transparent and quicker than the current process. This will increase the incentives for temporary migrant workers to make a report of exploitation as they will have more certainty that their visa status will not be negatively affected. The visa will protect migrants by enabling them to quickly leave unsafe situations. The design of the visa will ensure that risks to the integrity of the immigration system are managed.
82. **Impacts:** The design of the visa will not increase the incentives for students, visitors and unlawful workers to come forward, groups that the research indicates are vulnerable to exploitation. However, there are existing processes that could be used to assist these migrants; for example, they could be provided with advice on how to find a new education provider or to request a visa under section 61 of the *Immigration Act*. There will also be costs to the Crown, which would need to fund the cost of the visa processing (which are normally met by migrants).
83. There is a risk of migrants making false claims to prolong their stay in New Zealand if reports are not followed up. To mitigate this risk, the visa will need to be supported by a robust end-to-end process that includes upfront credibility checks, increased compliance and enforcement, and clear consequences for migrants who make false claims, such as prosecution and deportation.

Enforce: Improving the range of offences and penalties to deter exploitation

84. Some employers are not deterred from breaching employment standards or immigration obligations because they perceive a low risk of being penalised, even when breaches are identified. The 'enforce' work stream aims to improve the tools available to regulators to take action against exploitative employers. Success in achieving this objective would ensure that:
- 84.1. employers are deterred from non-compliant behaviour as much as possible;
 - 84.2. non-compliant behaviour receives a robust, proportionate and efficient response;
 - 84.3. our response makes best use of available resources and opportunities for collaboration; and
 - 84.4. the public (particularly victims) has confidence that action will be taken.

Proposal Six – Establish new immigration infringement offences, and a power for immigration officers to compel employers to provide relevant documents

85. The problem: INZ's current enforcement toolkit does not have a mechanism outside of a criminal prosecution before a court to address low-level non-compliant employer behaviour. Prosecutions are a time-consuming, expensive and inefficient response to low-level non-compliance. If left unaddressed, low-level non-compliance may exacerbate a temporary migrant worker's vulnerability or facilitate more serious exploitation.
86. The proposal: I propose to amend the *Immigration Act* to create three new immigration infringement offences to deter lower-level non-compliant employer behaviour that is linked to, or increases the risk of, migrant exploitation. The offences would be:
- 86.1. Employing a person not entitled under the Immigration Act to work in the role. This behaviour increases the vulnerability of workers and affects the integrity of the immigration system (\$1,000 per worker for individuals or \$3,000 per worker for body corporates).
 - 86.2. Employing a person in a role or under conditions that do not match those provided in their employer-supported visa application. This behaviour puts workers in a vulnerable position and may indicate the application included false information. This offence complements the upcoming changes to the temporary work visa system (\$1,000 per worker for individuals or \$3,000 per worker for body corporates).
 - 86.3. Failing to provide documents requested by an immigration officer exercising a new power I propose below. This would support INZ's post-decision verification and assurance activities, as well as investigations into non-compliant employer behaviour (\$1,000 per notice).
87. The infringement offences would lead to a period on the stand-down list, under Proposal Eight below.
88. To prove that an employer is employing a person in a role or under conditions that do not match those supplied in the employer-supported visa application, immigration officers will need to gather a number of records, including: employment agreements; wage, time and leave records; bank statements; Inland Revenue records; and

financial statements. These records allow immigration officers to assess, for example, whether a migrant worker is being paid the salary stated in the employer-supported visa application.

89. Employers who are accredited under the new temporary work visa system will be required to agree to provide these documents on request as a condition of their accredited status. However, where these employers delay providing the documents, or where a sponsoring employer sits outside the accreditation system (e.g. employers supporting a migrant worker for a skilled migrant resident visa), immigration officers will need the ability to compel employers to provide this information, and ensure that employers do not slow down INZ's post-decision verification, assurance and compliance activities.
90. I therefore also propose that a new power be created that would allow immigration officers to compel an employer to produce this information for the purposes of post-decision verification, assurance and compliance. Failure to supply it within 10 working days would result in an infringement notice as above. The 10 working day deadline would align with the deadline for employers to provide records to Labour Inspectors under Proposal Seven.
91. This new power would sit alongside the existing power for immigration officers to enter an employer's premises and inspect records under the *Immigration Act* (section 277). However, the new power would allow a desk-based immigration officer to request and receive the documents necessary for post-decision verification, assurance and compliance, without the need to enter an employer's premises. This would increase the efficiency of INZ's post-decision verification, assurance and compliance activities, and would mean that non-compliant employer behaviour can be captured and addressed faster.
92. Employers will commit the infringement offence referred to in paragraph 85.3 only where they fail to provide documents to an immigration officer exercising this new power. A failure to provide documents requested using the section 277 powers will remain an obstruction offence under existing provisions of the *Immigration Act* (section 344(a)). Employers will not commit this infringement offence where they fail to produce documents that they are not legally obliged to hold, or cannot reasonably be expected to hold.
93. The information gathered using this power could in some circumstances indicate that an employer has breached employment standards, or has committed a more serious criminal offence (e.g. exploitation under section 351 of the *Immigration Act*). In these circumstances, I propose that immigration officers will be permitted to share the information gathered with the relevant regulator for further investigation, for example, the Labour Inspectorate.
94. Employers issued with an infringement notice for any of the proposed offences will have the ability to challenge it in a defended hearing before the District Court. If the District Court finds an employer liable following a defended hearing, the Court has the discretion to require an employer to pay an "infringement fine" (per section 375 of the *Criminal Procedure Act 2011*). To discourage employers from bringing trivial challenges, and to further the objective of Proposal Six (to keep low-level immigration offences out of the court system), I propose clarifying in the *Immigration Act* that the infringement fine payable would be double the infringement fee. This fine reflects the additional costs to Government resulting from the dispute and enforcement, but is not

too high to discourage defendants who believe they have legitimate grounds for requesting a hearing.

95. **Benefits:** The proposed infringement offences would provide an additional tool to respond quickly, efficiently and proportionately to less severe breaches of immigration law and policy. They would reduce migrant vulnerability and prevent some situations from escalating. The proposed infringement regime was supported by submitters in public consultation. The proposed infringement offences, fees and fines are consistent with Ministry of Justice guidelines for infringement regimes.
96. **Impacts:** A range of views were expressed by submitters through the public consultation on what behaviours should be included in the infringement regime. Many of the suggested offences were either already covered by existing offences or were considered serious breaches for which an infringement would be inappropriate.
97. Some submitters also expressed concerns that there could be overlap between the Labour Inspectorate and INZ. Where there is potential overlap, INZ and the Labour Inspectorate's work on a Joint Compliance and Enforcement Framework will ensure that both regulators work together to tackle non-compliant behaviour and avoid unnecessary duplication.

Proposal Seven – Allow Labour Inspectors to issue an infringement notice where employers fail to provide requested documents within a reasonable timeframe

98. **The problem:** The Labour Inspectorate currently experiences delays to investigations when employers stall providing information they are legislatively required to hold and produce to a Labour Inspector.
99. **The proposal:** I propose to amend the *Employment Relations Act* to require employers to produce employment documentation (such as wage and time records) within 10 working days after having been requested by a Labour Inspector. Failure to produce the documents within this timeframe would be an infringement offence, and could result in an infringement notice. I propose an infringement fee of \$1,000.
100. **Benefits:** This proposal would ensure that employers produce employment documents within a reasonable timeframe. This will make it more difficult for employers to delay Labour Inspector investigations. The proposal was strongly supported by submitters in the public consultation.
101. **Impacts:** Some submitters thought that there should be some leeway for employers to provide this information. However, there is also a risk that employers will use the time to create false documents. I am of the view that a 10 working day timeframe is reasonable, and allows sufficient time for employers to compile documents for large requests. I note that a shorter period would still provide time for employers to create false records.

Proposal Eight – Expand the employer stand-down list

102. **The problem:** In 2017 the previous Government established the stand-down list through which employers found in breach of minimum employment standards would be banned from supporting new employer-assisted visa applications for the duration of the stand-down period. Employers who are convicted of offences under the *Immigration Act* are not added currently to the stand-down list which creates an anomaly.

103. While immigration instructions do require employers to have a history of compliance with immigration and employment law, this is not applied consistently by immigration officers and is not very transparent. This may result in some employers who are convicted being able to support applications despite the risks they pose, or conversely some employers who had a minor breach could be prevented from employing migrants for periods of time that are out of proportion to the offending.
104. The proposal: I propose to expand the existing stand-down list to include persons (including companies) who have been convicted of a low to mid-level offence under the *Immigration Act* and, in future, immigration infringement offences under Proposal Six. I propose to adopt the formula currently used for penalties in the employment standards regulatory system to calculate stand-down periods for these convictions.
105. In order to implement this proposal, the *Immigration Act* would need to be amended to give the Chief Executive of MBIE the authority to publish the names of persons convicted of offences under the *Immigration Act*. This would mirror section 223AAA in the *Employment Relations Act*.
106. I also propose that persons with convictions for serious immigration and criminal offences (e.g. aiding a person to remain unlawfully in New Zealand for material benefit and exploitation under the *Immigration Act*, and Trafficking in Persons and People Smuggling under the *Crimes Act*) should be permanently banned from supporting migrant workers' applications and from being accredited. Rather than amending the stand-down list, this would be clarified in immigration instructions.
107. Benefits: There is a strong rationale for preventing employers who breach either their employment or immigration obligations from employing temporary migrant workers. An expanded stand-down list would also reduce the need for immigration officers to undertake an assessment of an employer's compliance at each application and clearly indicate to employers (and migrants) that they are ineligible to employ migrants under the employer-assisted policy.
108. Impacts: While stood-down employers are prohibited from supporting a visa application for both temporary and residence class visas, they have continued access to migrant workers with open work rights. This places these migrants at risk of exploitation when working for employers known to be non-compliant.

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Proposal Nine – Notify affected migrant workers that their employer has been stood down

109. The problem: Temporary migrant workers who are employed by a stood-down employer are not always advised that their employer has been added to the stand-down list, or what that means for them. This has a negative impact on employees, for example, on an employer-assisted work visa that is due to expire during the stand-down period, as that employee may not understand that their employer's ability to sponsor subsequent visas may be impaired.
110. The proposal: I will direct INZ to notify all temporary migrant workers on employer-assisted work visas when their employer is placed on the stand-down list. Where possible INZ will also notify migrants on an 'open' work visa.
111. Benefits: This proposal will ensure that migrants are notified early if their employer is non-compliant. This would ensure the migrant employees understand the impact of

the stand-down for them and have time to consider their options for seeking alternative employment where necessary. This intervention is relatively low cost and part of our responsibility to migrant workers. It was supported by 97 per cent of submissions in public consultation.

112. While INZ will attempt to inform all migrant workers, employees on visas with open work rights are not required to register their employer with INZ. As such, INZ may not be able to readily identify these workers and communicate the stand-down to them.

MBIE is developing a joint compliance and enforcement framework

113. Employment Services and INZ are developing a framework to inform joint compliance and enforcement work for migrant exploitation. The framework will examine each regulator's current engagements and processes with migrant workers, from pre-arrival, to seeking and starting employment, to those migrants that find themselves in the position of being exploited. The framework will:

- 113.1. clarify the respective roles in the journey of a migrant worker and identify 'common ground' where a joint compliance and enforcement framework would benefit both regulatory functions;
- 113.2. provide a clear and consistent pathway for migrant exploitation cases;
- 113.3. set out opportunities for working collaboratively, such as:
 - 113.3.1. information and educational products on immigration and employment rights and responsibilities being delivered to migrants at the right time;
 - 113.3.2. planning effective joint operations to deliver better outcomes for migrant workers and more efficient use of regulatory resources;
 - 113.3.3. using lessons from joint operations to inform and improve how the regulators work together to best effect;
- 113.4. support the sharing of information and intelligence more effectively;
- 113.5. identify and address barriers that stop the two regulators working together effectively;
- 113.6. jointly hold exploitative employers and industries to account; and
- 113.7. develop a joint strategic intent and operational approach to triaging and prioritizing cases.

114. The framework will support the increased compliance and enforcement funding sought through Budget 2020 by ensuring efficient and effective use of resources across the two regulators and enabling better prioritisation.

Work is already being undertaken and further work is proposed for further phases of the Review

115. The proposals contained in this paper complement a range of other work already being done and planned across MBIE and Government, including:
- 115.1. policy changes to post-study work visas to remove the employer-link and encourage higher-level study;

115.2. the introduction of a new employer-assisted gateway system for temporary work visas and employer accreditation to ensure that non-compliant employers are not able to recruit migrant workers;

115.3. an increased operational focus, supported by increased funding, by agencies, including Immigration New Zealand (INZ), the Labour Inspectorate, and the New Zealand Qualifications Authority to target non-compliant employers and education providers and remove them from the system.

116. Confidential advice to Government

117. Confidential advice to Government

Financial Implications

118. Confidential advice to Government

119. Confidential advice to Government

	Confidential advice to Government				

Confidential advice to Government					

120. Confidential advice to Government
121. Confidential advice to Government
122. Maintenance of the law
Free and frank opinions
Confidential advice to Government

Consultation

123. Public consultation on the Review was undertaken in October and November 2019. 167 public submissions were received alongside consultation meetings in the major centres. Feedback was generally supportive of the proposals. The Review has also worked closely with an external tripartite Consultation Group who support the proposals.
124. My officials have consulted The Treasury, The Department of the Prime Minister and Cabinet, Inland Revenue, the Ministries of Foreign Affairs and Trade, Education, Justice, Social Development and Primary Industries, the New Zealand Police, WorkSafe New Zealand, the New Zealand Qualifications Authority, Education New Zealand, the Ministries for Women and Pacific People, and the Office of Ethnic Communities.

Legislative Implications

125. A number of the proposals in the 'enforce' and 'prevent' work streams have legislative or regulatory implications. Changes would be required to the *Immigration Act 2009*, the *Employment Relations Act 2000*, and *Companies Act 1993*. Legal professional privilege

Impact Analysis

Regulatory Impact Statement

126. Proposals 1, 3, 6, 7 and 8 in this paper require regulatory impact analysis. A Regulatory Impact Statement has been prepared and is attached to this paper.
127. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment (CIPA)

128. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Human Rights

129. The proposals will have a positive impact on the maintenance of human rights and labour rights, by promoting the fair and consistent treatment of all workers in New Zealand, and by addressing deficits in the exercise of those rights by migrant workers, due to exploitation.
130. Measures to better identify and sanction migrant exploitation will contribute to the more effective implementation of the rights and freedoms contained in International Labour Organisation (ILO) Conventions and human rights treaties to which New Zealand is a party. For example, if migrant workers are not subject to exploitative practices and restraints, they will be better able to exercise their rights of freedom of association and representation; to receive equal and non-discriminatory treatment, including equal pay; and to not be subject to forced labour. The mechanisms proposed would also enable better enforcement of rights, more effectively implementing existing ILO commitments in the areas of labour inspection, employment policy and equal treatment for migrants.

Gender Implications

131. The proposals will have positive impact for migrant women through supporting them to report exploitation and leave exploitative situations.

Disability Implications

132. The proposals do not have direct implications for those with disabilities, except to the extent that people with disabilities are also vulnerable to exploitation and may benefit from some of the proposals being considered by the Review.

Implementation

133. Implementation of the changes will occur over the next few years, Confidential advice to Government

Publicity

135. I will make announcements on the proposals in consultation with relevant Ministers in due course.

Proactive Release

136. I propose to release this Cabinet paper proactively. This is consistent with the approach taken in the Review to date.

Recommendations

137. I recommend that the Committee:

1. **note** that Labour-New Zealand First coalition agreement contains a commitment to “take serious action on migrant exploitation, particularly of international students”
2. **note** that the goal of the Temporary Migrant Worker Exploitation Review (the Review) is to reduce the exploitation of temporary migrant workers, including international students
3. **note** that in September 2019 Cabinet agreed to publicly consult on the ten proposals arising from the first phase of the Review and noted that the Minister of Immigration would report back in the first half of 2020
4. **agree** that agreement on the policy decisions in this paper is subject to supporting funding being provided through Budget 2020 and the level of the funding provided

Prevent: Proposals to reduce risks around business models and practices that might enable exploitation

5. **agree** to amend the *Employment Relations Act 2000* to introduce a duty for persons with significant control or influence over an employer (‘the person’) to take reasonable steps to ensure the employer is compliant with employment standards

6. **agree** that the person who had breached the duty in recommendation 5 would be jointly liable for the payment of arrears to employees relating to each breach of employment standards associated with the breach of the duty, if both the employer and any person involved in the breach are unable to pay
7. **agree** that, for each failure to meet a duty, the person will be liable for penalties consistent with those provided in the *Employment Relations Act 2000*:
 - 7.1. in the case of an individual, to a penalty not exceeding \$10,000
 - 7.2. in the case of a company or other corporation, to a penalty not exceeding \$20,000
8. **agree** to provide the Labour Inspectorate with powers to request documents for the purpose of determining compliance with the duty
9. **agree** to require franchisees to meet the highest accreditation standard (labour-hire accreditation) under the new employer-assisted visa gateway system
10. **agree** that in future the Minister of Immigration can amend the types of employers (for example, based on type of business model or industry) required to meet the highest level of accreditation depending on the level of risk identified
11. **agree** to amend existing provisions in the *Companies Act 1993* to provide for the disqualification of persons convicted of exploitation under section 351 of the *Immigration Act 2009* and trafficking in persons under section 98D of the *Crimes Act 1961* from managing or directing a company where that offending was enabled by or otherwise related to the use of a company

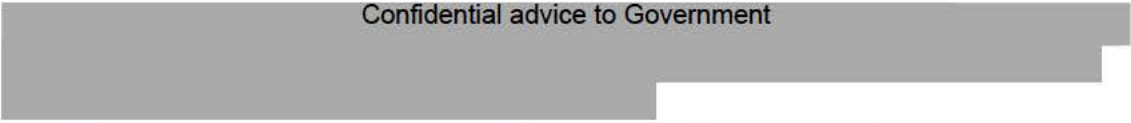
Protect: Proposals to improve the pathways for reporting exploitation and assist migrant workers in leaving exploitative employers

12. **agree** to establish a dedicated migrant exploitation 0800 phone line and online reporting function, and a specialised migrant worker exploitation-focused reporting and triaging function within the Ministry of Business, Innovation and Employment
13. **note** that officials have developed an action plan to improve the information and education provided to migrants and employers to enable them to better understand employment rights and obligations
14. **agree** to establish a new visa category for temporary migrant workers who are exploited, and that it would have the following rules and criteria:
 - 14.1. migrants would need to be on a current work visa (it would not be available to holders of student or visitor visas, or unlawful migrants)
 - 14.2. migrants' complicity in the circumstances leading to their exploitation would not be a disqualifying criterion
 - 14.3. the visa would be an open work visa of up to six months
 - 14.4. partners and dependent children already in New Zealand would be able to be granted a visa of the same duration
 - 14.5. migrants and their families would be exempt from paying immigration fees and levies
 - 14.6. migrants would not be able apply for consecutive visas under this policy but could apply for other types of visas e.g. employer accredited work visa.

15. **note** that recommendation 14.5 will require a change to the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010*
16. **note** that the applicants for the visa would be subject to a robust upfront assessment undertaken through the new reporting and triaging function to assess the credibility of their exploitation claim

Enforce: Improving the range of offences and penalties to deter exploitation

17. **agree** to amend the *Immigration Act 2009* to establish the following immigration infringement offences and fees:
 - 17.1. Employing a person not entitled under the *Immigration Act* to work in the role (\$1,000 per worker for individuals or \$3,000 per worker for body corporates)
 - 17.2. Employing a person in a role or under conditions that do not match those provided in their employer-supported visa application (\$1,000 per worker for individuals or \$3,000 per worker for body corporates)
 - 17.3. Failing to provide documents, requested by an immigration officer exercising the power referred to in recommendation 18, within 10 working days (\$1,000 per notice)
18. **agree** to amend the *Immigration Act 2009* to establish a new power for immigration officers to compel employers who have supported a visa to produce the documents necessary for post-decision verification, assurance and compliance
19. **agree** to amend the *Immigration Act 2009* to clarify that where an employer is found liable by a District Court after challenging an infringement notice, the infringement fine payable will be double the infringement fee
20. **agree** to amend the *Employment Relations Act 2000* to establish an infringement offence (and fee of \$1,000) for failing to provide employment records within 10 working days of them being requested by a Labour Inspector
21. **agree** to expand the stand-down list to cover low to mid-level *Immigration Act* offences, and in future, immigration infringement offences established under recommendation 17
22. **agree** that convictions for serious *Immigration Act* and *Crimes Act* offences should result in a default bar on supporting migrant workers for a visa, rather than a temporary stand-down
23. **agree** to amend the *Immigration Act 2009* to give the Chief Executive of MBIE the authority to publish the names of employers convicted of offences under the *Immigration Act*
24. **note** that officials will notify all temporary migrant workers on employer-assisted work visas when their employer is placed on the stand-down list
25. **agree** that the Minister of Immigration may make further decisions as necessary to implement the proposals, including certifying immigration instructions
26. **authorise** the Minister of Immigration and the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the decisions in this paper

27. **authorise** the Minister of Immigration and, where relevant, the Minister of Commerce and Consumer Affairs to make decisions on any minor or technical matters that may arise during the drafting process
28. **authorise** the Minister of Immigration and, where relevant, the Minister of Commerce and Consumer Affairs, to make decisions consistent with the proposals in these recommendations on any issues which arise during the drafting process
29.  Confidential advice to Government
30. **note** that some changes can be implemented in 2020, while others (particularly those requiring legislative change) will be implemented over the next few years.

Authorised for lodgement

Hon Iain Lees-Galloway

Minister of Immigration
Minister for Workplace Relations and Safety

Summary of 2019/20 Progress in the Immigration Portfolio

The overview covers the policy programme in Immigration. It does not include important operational changes such as increased compliance, enforcement capacity received through the Budget, and work on improving visa processing times

The Government's vision is to improve the wellbeing and living standards of New Zealanders, including through productive, sustainable and inclusive economic growth. The immigration system supports this vision by...

	Improving New Zealand's labour market outcomes including by filling skill and labour shortages and raising overall skill levels			Encouraging investment and supporting innovation and exports		Supporting foreign relations objectives and New Zealand's international and humanitarian commitments		Supporting social inclusion, including through family reunification		Protecting the security of New Zealanders and the border	
Priorities	Labour market and economy			Migrant exploitation	International	Refugee & Humanitarian		System			
System changes	New Zealand Residence Programme	Parent Category	Entrepreneur and business investment	Employer-accredited temp work and regional planning	Migrant worker exploitation	Pacific policy	Refugee Quota Programme	Family and community refugee sponsorship	Border processing	Border Security	
Achieved to date	Agreed NZRP objectives Dashboard of migration indicators	Proposals developed for consultation	Initial policy work on fitness for purpose	Consultation: Completed. Policy decisions: Completed	Consultation document on proposals released	Agreed review objectives + scope (support development, meet NZ's needs)	Increased quota to 1500 annually from July 2020	Process evaluation of community sponsorship pilot	Introduced ETA and removed departure cards	Successful Budget 2018 bid	
Upcoming decisions	Confidential advice to Government	Decision on future of the category and eligibility and entitlement settings	Confidential advice to Government	Agreement to business case and funding implications; implementation and transitional policy decisions.	Final options on stage 1 proposals to prevent exploitation, protect migrants, and enforce obligations	RSE policy changes and decision on further exploration of labour mobility options	Agree changes to international allocations and sub-categories	Extend community sponsorship pilot. Review family reunification options	Completed	Response to any Royal Commission findings. Strengthen settings to better manage an irregular arrival group	
Expected impacts	Confidential advice to Government	Limit number of parent visas granted to 1000 per annum Visas: ↑	Confidential advice to Government	Changes are likely to tighten the settings, making it more difficult to employ low skilled migrants where New Zealanders are available Visas: ↓	All people can be in safe and fulfilling work, and all businesses can operate with confidence on a level playing field	Unknown – no specific changes are proposed at this stage. In the longer term impacts will depend on the decisions made by Cabinet	Increase in number of permanent residence visas granted (by 500 annually) from July 2020 Visas: ↑	Focus on good settlement outcomes. Volume impacts will depend on decisions made by Cabinet Visas: ↔	No expected changes to visa approval numbers. Will facilitate border processes and improve security Visas: ↔	Unknown impacts	
Timing	Confidential advice to Government	Completed ✓	Confidential advice to Government	Implementation in phases from July 2020	Cabinet March 2020	Confidential advice to Government	Completed ✓	Budget 2020	Completed ✓	Confidential advice to Government	

Appendix Two: Summary of consultation feedback

High level summary of consultation feedback

1. MBIE received 167 individual submissions through the consultation from a wide range of submitters, including from: migrant workers, unions, migrant organisations, employers, employer and industry organisations, and non-governmental organisations. Approximately 60 per cent of submissions were from migrant workers or worker aligned organisations, such as unions, and around 30 per cent were from employers or industry organisations.
2. Overall, submitters were supportive of the Review, and there was widespread recognition that migrant workers are valued and make an important contribution to the economy and to a diverse society. There was high-level support for action and to the objectives of the Review. This translated to high-level support for the individual proposals (see Figure One).
3. However, the complexity of the questionnaire meant that some of the commentary, particularly from written submissions, is not fully evident from the quantitative analysis.

Figure 1: Headline summary of submissions by proposal



* Proposal 5 does not lend itself to quantifiable analysis in this manner as submitters were not asked whether they supported this proposal.

** Proposal 6 provided a choice between a bridging visa (Proposal 6A) or improving the current process (Proposal 6B). The graph indicates the breakdown for Proposal 6A. Those who opposed preferred proposal 6B.

Key themes from the submissions

4. The following bullet points represent the high-level cross-cutting themes from the analysis of submissions:
 - **The scale of the problem was disputed.** Worker aligned organisations, saw exploitative practices as widespread and under-reported. However, some

business-aligned organisations (including BusinessNZ) saw the issue as small scale, unquantified or not sufficiently quantified to justify some of the proposals.

- This latter view was **particularly relevant for the proposals on business models** (Proposals 1-3). Several submitters suggested that further research into specific business models or surveying of migrant workers would be useful.
- Sector groups from **agriculture and horticulture were largely supportive** across the range of proposals. Franchisees were the most sensitive to changes in overall accountability/liability arrangements, particularly with reference to Proposal 1 and 2.
- The **importance of education** and improved understanding of rights and responsibilities for all parties was emphasised. More support for businesses, including migrant-owned businesses, in understanding and responding to these issues was identified as important.
- Some submitters had concerns that the proposals would raise **compliance costs** for all businesses to punish/deter only the few who are exploiting.
- There was a general theme across different submitter types of questioning the **effectiveness and resourcing of current regulatory responses**, including of Immigration New Zealand and the Labour Inspectorate. Some raised concerns with overlap and regulatory demarcation between those two regulators, which could be exacerbated by Proposals 7 and 8. Submitters gave widespread support for more resourcing to enforce the current regulatory systems.
- A broad range of submitters raised that there are **multiple participants in the support system** for workers who experience exploitation and that the scope of proposals should not be limited to the relationship between the worker, employers and the Government. Some submitters explicitly stated that the proposals were very Government or MBIE specific.
- A cross-section of submitters also raised the potential for **support and wrap-around services** designed to include NGOs, unions, churches and other support structures including industry bodies. Some raised that it may be better for migrant workers to be supported by these other parties as it would increase the likelihood of workers coming forward to report exploitative practice.
- Some submitters raised concerns that the proposals would skew the labour market toward the **protection of migrant workers versus general labour market protections** for non-migrant labour.
- Some submitters expressed concern that changes to the system must **prioritise follow up action**. Some likely complaints that would not be followed up were identified, particularly where the person requests anonymity or it is from a third party.
- Other specific suggestions raised by multiple submitters, included:
 - de-linking work visas from employers
 - efforts to explicitly decouple temporary visas as a pathway to permanent residency
 - expanded mechanisms to enable the general public to report concerns about migrant exploitation.

End-to-end approach to reduce migrant exploitation

The proposed changes deliver an interdependent and co-ordinated approach, enabling improved prevention, protection and support for exploited migrants, as well as supporting improved investigation and enforcement that will drive reduced offending and exploitation of migrant workers.

