



## COVERSHEET

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

### List of documents that have been proactively released

| <b>Date</b>   | <b>Title</b>   | <b>Author</b>  |
|---------------|--|--|
| 5 March 2020  | Temporary migrant worker exploitation review – final proposals                     | <i>Office of the Minister for Workplace Relations and Safety</i><br><br><i>Office of the Minister of Immigration</i> |
| 11 March 2020 | Cabinet Economic Development Committee (DEV) Minute of Decision [DEV-20-MIN-0034]  | <i>MBIE</i>  |
| 4 March 2020  | Impact Statement: Temporary Migrant Worker Exploitation Review Phase One Proposals | <i>MBIE</i>  |

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of confidential advice to Government.



# Cabinet Economic Development Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Temporary Migrant Worker Exploitation Review: Final Proposals

**Portfolios**                      **Workplace Relations and Safety / Immigration**

On 11 March 2020, the Cabinet Economic Development Committee:

#### Background

- 1        **noted** that the Coalition Agreement between Labour and New Zealand First contains a commitment to ‘take serious action on migrant exploitation, particularly of international students’;
- 2        **noted** 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        **noted** that in September 2019, Cabinet agreed to publicly consult on the ten proposals arising from the first phase of the Review, and invited the Minister for Workplace Relations and Safety and the Minister of Immigration (the Minister) to report back with final proposals, which would be subject to gaining the required funding at Budget 2020 [CAB-19-MIN-0471.01]
- 4        **agreed** that agreement on the policy decisions relating to the paper under DEV-20-SUB-0034 be subject to supporting funding being provided through Budget 2020 and to the level of the funding provided;

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

- 5        **agreed** to amend the Employment Relations Act 2000 (the ERA) 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        **agreed** that the person who had breached the duty in paragraph 5 above 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        **agreed** that, for each failure to meet a duty, the person will be liable for penalties consistent with those provided in the ERA:
  - 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 **agreed** to provide the Labour Inspectorate with powers to request documents for the purpose of determining compliance with the duty;
- 9 **agreed** to require franchisees to meet the highest accreditation standard (labour-hire accreditation) under the new employer-assisted visa gateway system;
- 10 **agreed** 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 **agreed** 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 workstream: Proposals to improve the pathways for reporting exploitation and assist migrant workers in leaving exploitative employers**


- 12 **agreed** 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 (MBIE);
- 13 **noted** 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 **agreed** to establish a new visa category for temporary migrant workers who are exploited, which 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 **noted** that paragraph 14.5 above will require a change to the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010;
- 16 **noted** 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 workstream: Improving the range of offences and penalties to deter exploitation**

- 17 **agreed** 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 paragraph 18 below, within 10 working days (\$1,000 per notice);
- 18 **agreed** 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 **agreed** 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 **agreed** to amend the ERA 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 **agreed** to expand the stand-down list to cover low to mid-level Immigration Act offences and, in future, immigration infringement offences established under paragraph 17 above;
- 22 **agreed** 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 **agreed** 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 **noted** that officials will notify all temporary migrant workers on employer-assisted work visas when their employer is placed on the stand-down list;

**Legislative implications and next steps**

- 25 **agreed** that the Minister of Immigration may make further decisions as necessary to implement the above proposals, including certifying immigration instructions;
- 26 **authorised** 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 above paragraphs;
- 27 **authorised** 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 **authorised** the Minister of Immigration and, where relevant, the Minister of Commerce and Consumer Affairs, to make decisions consistent with the above proposals on any issues that may arise during the drafting process;
- 29 Confidential advice to Government 
- 30 **noted** that some changes can be implemented in 2020, while others (particularly those requiring legislative change) will be implemented over the next few years.

Janine Harvey  
Committee Secretary

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**Present:**

Rt Hon Winston Peters  
Hon Phil Twyford  
Hon Dr Megan Woods (Chair)  
Hon Chris Hipkins  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Iain Lees-Galloway  
Hon Damien O'Connor  
Hon Willie Jackson  
Hon James Shaw  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister for Workplace Relations and Safety  
Minister of Immigration