



COVERSHEET

Minister	Hon Erica Stanford	Portfolio	Immigration
Title of Cabinet paper	Improving the Integrity of the Migrant Exploitation Protection Visa	Date to be published	17 October 2024

List of documents that have been proactively released

Date	Title	Author
August 2024	Improving the Integrity of the Migrant Exploitation Protection Visa	Office of the Minister of Immigration
21 August 2024	Improving the Integrity of the Migrant Exploitation Protection Visa ECO-24-MIN-0167 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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

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Office of the Minister of Immigration
Cabinet Economic Policy Committee

Improving the integrity of the Migrant Exploitation Protection Visa Settings

Proposal

- 1 To improve the integrity of the Migrant Exploitation Protection Visa (MEPV), this paper provides an update on changes I intend to make to tighten the MEPV settings.

Background

Migrant Exploitation is not acceptable in New Zealand

- 2 Migrant exploitation causes harm to migrants, can undermine fair competition across firms and disadvantage employers, and can damage New Zealand's international reputation.
- 3 Earlier this year Cabinet agreed to a package of changes to the Accredited Employer Work Visa (AEWV). These changes will help mitigate the occurrence of migrant exploitation with the introduction of minimum English language requirements for lower-skilled roles and a minimum skills or experience threshold. The new requirements will help reduce migrants' vulnerability to potential exploitation.
- 4 Alongside this, the Ministry for Business, Innovation and Employment (MBIE) are working to respond to the Bestwick Review to improve the identification and management of migrant exploitation across the immigration system.

The Migrant Exploitation Protection Visa is intended to support migrants to leave exploitative situations

- 5 The Migrant Exploitation Protection Visa (MEPV) is intended to:
 - 5.1 enable exploited migrants to quickly leave harmful workplace situations, while remaining lawfully in New Zealand¹;
 - 5.2 increase incentives for migrants to report exploitation, by removing barriers e.g. providing greater degree of certainty that reporting will not jeopardise their immigration status; and
 - 5.3 maintain the integrity of the immigration system, by minimising perverse incentives for migrants to falsely claim exploitation and other risks to the system.

¹ The MEPV is for employer-supported migrants, such as migrants on an Accredited Employer Work Visa.

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- 6 To support migrants to quickly leave exploitative situations, the process is simple and quick. There are two stages to the process:
- 6.1 a light touch assessment to determine whether a migrant's report of exploitation is credible.²
 - 6.2 if a report of exploitation is deemed to be credible, migrants may be eligible for an MEPV. These applications have priority processing and due to the simple eligibility criteria are generally processed very quickly.
- 7 For the purposes of the light touch assessment of the exploitation report, the definition of migrant exploitation is very broad.³ However, it excludes minor and insignificant breaches that can be easily remedied (e.g. payroll miscalculations, or minor breaches of the Holidays Act 2003). The assessment of whether an incident meets the definition of migrant exploitation is set out in operational guidelines, rather than legislation.⁴
- 8 A MEPV provides open work rights⁵ for a migrant to search for another job for six months or until the expiry date of the migrant's current work visa⁶ (whichever is lesser).

Changes by the previous Government enables migrants to be granted a second MEPV and provided financial support

- 9 Changes made by the previous Government enable eligible migrants to be granted a second MEPV⁷ where they have not been able to find employment within six months. As a result, some migrants can be on an MEPV for up to 12 months. Doubling the potential duration of an MEPV with open work rights can result in migrants being in more financially precarious and vulnerable situations, and at a higher risk of future exploitation as a result.⁸
- 10 The previous Government also provided short-term financial support for migrants on an MEPV. Between October 2023 and March 2024, migrants on an MEPV could receive up to \$100 per day. This financial support has now ended.

There has been an exponential increase in MEPV applications

- 11 In the financial year to 30 June 2024:

² This is assessed by the Employment Services triage team in MBIE, based on information provided by the migrant.

³ Migrant exploitation is defined as "behaviour that causes, or increases the risk of, material harm to the economic, social, physical or emotional well-being of a migrant worker".

⁴ Migrant exploitation for the purposes of the MEPV is defined in the Migrant Exploitation Credibility Framework. Exploitation is also defined for separate purposes in the Immigration Act 2009 and Employment Relations Act 2000, with these definitions having a much higher burden of proof.

⁵ Open work rights allow migrants to work for any employer, at any wage rate, in any location.

⁶ An MEPV is specifically for an exploited migrant worker who holds an employer supported work visa.

⁷ A second MEPV is issued for another six months, or until the expiry of a migrant's original work visa (whichever is the lesser).

⁸ The MEPV is an open-work visa and therefore employers of migrants on an MEPV do not need to meet any immigration requirements – for example becoming accredited.

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- 11.1 MBIE received 3,925 complaints of migrant exploitation. This is a four-fold increase from the entire 2022/23 financial year.
- 11.2 2,067 MEPV applications were approved for the year to 30 June 2024, up from 214 the previous year.⁹
- 12 While a single cause is hard to isolate, I consider these numbers indicate that the current settings (and previous short-term financial support) may have created an incentive for offshore agents to charge premiums for non-existent jobs knowing that the highly facilitative MEPV settings provide open work rights for up to 12 months. This poses an undue risk to the immigration system and creates perverse incentives for migrants to try and get to and stay in New Zealand. This may lead to further non-genuine employment offers and/or false exploitation claims.
- 13 There is also a risk that the current facilitative settings, coupled with a light touch approach, is encouraging people not in genuinely exploitative situations to apply for the MEPV. This can create an administrative burden on the system, and can also mean that there is less resource to investigate and action genuine claims.

Changes to improve the integrity of the MEPV and overall immigration system

- 14 To support the objectives of the MEPV, I intend to tighten eligibility for the visa to focus on harmful, exploitative behaviour.

Removing the ability to be granted a second MEPV

- 15 The duration of the MEPV must balance providing enough time for an exploited migrant to find alternative work, not creating perverse incentives to falsely apply for an MEPV, and the impact on wider labour market.
- 16 Currently, exploited migrants can be granted a second MEPV where they have sufficient duration on their original work visa and have provided evidence of applying for jobs. A year is too long for migrants to be looking for alternative work. Migrants with in-demand transferrable skills should be able to find alternative work within the initial six months. A year may also result in migrants being in a more financially precarious situation as they have no eligibility for financial support while on an MEPV. Many of these migrants also have little or no English making them more vulnerable for further exploitation.
- 17 I consider that six months is sufficient time for a migrant to find alternative work, or where there is no suitable work to prepare to return home.¹⁰ It will not be possible for all migrants to find alternative work, as a result of limited skills and changing labour markets. I intend to certify new Immigration Instructions that will remove the ability to be granted a second MEPV.

Clarifying that redundancy is not exploitation

⁹ Note this data set covers all MEPV approvals. The first and second visas are recorded under the same application type.

¹⁰ Note: some applicants may have less than six months to find alternative work if their current work visa has less than six months remaining on it (but no less than one month).

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- 18 I intend on making it explicitly clear that the definition of migrant exploitation excludes situations where a migrant's employment is terminated or they are made redundant and the circumstances are not exploitative. While unfortunate for individual migrants, redundancy is not exploitation. Those made redundant should use any notice period to make arrangements to return home to avoid being made liable for deportation.
- 19 I also intend to explicitly exclude the non-payment of final wages due to liquidation from the definition of migrant exploitation for MEPV purposes.¹¹ Without other poor practices, this is a relatively minor employment breach (noting that the scale of wages could be significant) which can be remedied under existing claims processes.¹²
- 20 It should be noted that termination of employment or non-payment could constitute exploitation for the purposes of the MEPV if it does not follow proper process and/or occurs in exploitative circumstances. Likewise, if the Employment Relations Authority determines that proper process was not followed, any subsequent MEPV applications will be considered in light of this.

Specifying that exploitation must be linked to an employment relationship

- 21 Last August, around 150 migrants who had been granted an AEWV, arrived in New Zealand to find no job existed or the job offer was non-genuine. Many of this group had paid large premiums to offshore agents to secure their visa. The changes Cabinet approved earlier this year, and work I have directed officials to progress, will help to strengthen the integrity of the AEWV and limit these occurrences.
- 22 Currently, it is not clear enough that exploitation is behaviour that is carried out by or on behalf of a migrant worker's employer (defined by their work visa). As a result, instances of non-genuine jobs have been considered as migrant exploitation. I do not consider that the MEPV should cover this, as these migrants do not quickly need to leave a harmful workplace situation. Instead, MEPV settings need to focus on migrant exploitation, which occurs in (or is related to) a workplace. Therefore, I intend to clarify that migrant exploitation is behaviour that is carried out by or on behalf of a migrant worker's employer.
- 23 There are other protections in place for such scenarios. These migrants may apply to have the conditions of their visa varied, or they may apply for a new visa.
- 24 Restricting the definition of exploitation to exclude people where there was no employer is likely to exclude some people who have paid a premium or excessive payment.

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- 26 In June INZ updated the Migrant Visa gateway to require migrants to specify in their application that they have not paid a premium. For all applications since that date

¹¹ The definition set out in the Migrant Exploitation Credibility Framework for the purposes of the MEPV.

¹² Under the Companies Act 1993, nonpayment of wages is a preferential claim.

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migrants have been required to attest that they have not paid a premium to a third party to secure employment in New Zealand.

■ Confidential advice to Government

[Redacted]

■ [Redacted]

Implementation

29 I intend to direct officials to make these changes, which will be in place from 31 October 2024. Applications for second MEPVs underway will be processed under the instructions which were in place on the date the application was made.

Cost-of-living Implications

30 This proposal does not have cost-of-living implications for New Zealanders.

Financial Implications

31 There are no financial implications associated with this proposal.

Legislative Implications

32 Changes to remove the second MEPV (i.e. to reduce the overall MEPV length to a maximum of 6 months) requires amendments to immigration instructions. I intend to certify new instructions in line with the decisions taken following Cabinet’s consideration of this paper.

Impact Analysis

33 This proposal does not require a Regulatory Impact Assessment as it has no direct legislative implications.

34 There are no direct climate implications of this proposal.

Population Implications

35 This change will impact migrants that apply for an MEPV.

Human Rights

36 The proposal in this paper does not have direct implications for the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of external resources

37 There has been no use of external resources in the context of this proposal.

Consultation

The following agencies and departments have been consulted: The Treasury, Ministry for Social Development, Ministry for Primary Industries, Ministry of Transport, Ministry of Education, Oranga Tamariki – Ministry for Children, New Zealand Transport Agency, Ministry for Ethnic Communities, Te Puni Kokiri, Ministry of Housing and Urban Development, New Zealand Qualifications Authority, Tertiary Education Commission, Ministry for Pacific Peoples, Ministry of Health, Ministry for Women, Whaikaha – Ministry for Disabled People, and the Accident Compensation Corporation.

38 The Department of the Prime Minister and Cabinet (Policy Advisory Group) was informed.

Communications and proactive release

39 I intend to communicate these changes at the same time as the changes come into effect.

40 Alongside announcements, updated information will be available on the INZ website to ensure current and future migrants are aware of the changes in eligibility.

41 This paper will be proactively released subject to redactions as appropriate under the Official Information Act 1982 after announcements are made.

Recommendations

The Minister of Immigration recommends that the Committee:

- 1 **Note** that changes were made to extend the duration of the Migrant Exploitation Protection Visa last year, at the same time that a short-term financial support package was introduced;
- 2 **Note** that in the last financial year there has been an exponential increase in claims of exploitation and applications for the Migrant Exploitation Protection Visa;
- 3 **Note** that the current settings for the Migrant Exploitation Protection Visa are creating perverse incentives for migrants, and pose undue risk to the integrity of the immigration system
- 4 **Note** in response to this risk I intend to certify Immigration Instructions, to remove the second Migrant Exploitation Protection Visa, limiting the maximum duration for a migrant to be on this type of visa to six months;
- 5 **Note** I intend to direct officials to make a number of changes to the definition of exploitation (for the purposes of the Employment Services assessment) to:
 - 5.1 Clarify that redundancy and termination that follows legal process is not exploitation; and

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- 5.2 Specify that exploitation must be carried out by, or on behalf, of a migrant's employer

Authorised for lodgement

Hon Erica Stanford

Minister of Immigration

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