

In Confidence

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

Chair, Cabinet Economic Development Committee

ADDRESSING TEMPORARY MIGRANT WORKER EXPLOITATION

Proposal

1. As both the Minister of Immigration and Minister for Workplace Relations and Safety, I intend to direct the Ministry of Business, Innovation and Employment (MBIE) to undertake research and policy work to address the exploitation of temporary migrant workers, including international students.

Executive Summary

2. We have committed in our coalition agreement to “take serious action on migrant exploitation, particularly of international students”.
3. Policy work led by MBIE, based on a policy regulatory systems assessment and an externally commissioned assessment of migrants’ and employers’ perspectives, will position us well to take serious action to reduce temporary migrant worker exploitation in a timely manner. It will complement other work already underway.
4. The objectives for this work will be to:
 - a. learn from migrants, employers, unions and other relevant players, to understand the nature and extent of exploitation of temporary migrant workers (including international students);
 - b. identify where the gaps and opportunities are to reduce temporary migrant worker exploitation;
 - c. make recommendations on potential regulatory, policy or operational changes (including labour market protections) to mitigate vulnerability and reduce migrant worker exploitation.
5. I have directed MBIE officials to take a broad view, within an employment context, of what constitutes migrant worker exploitation. This will involve a focus on the regulatory systems of employment standards and employment relations, health and safety at work, immigration (including visa policy settings), and international education settings (noting that other related areas may be raised in conjunction with breaches within these regulatory systems).
6. This work builds on initiatives underway within MBIE that will assist in delivering on our coalition agreement. The policy work will produce draft proposals on measures to reduce the exploitation of temporary migrant workers. S9(2)(f)(iv)

Background

Addressing migrant exploitation is a key Government priority

7. Addressing migrant exploitation is a key Government priority. We have committed in our coalition agreement to “take serious action on migrant exploitation, particularly of international students”. This connects to our overall vision of improving the wellbeing and living standards of New Zealanders through productive, sustainable and inclusive growth. A number of broad objectives contribute to this vision, including:
 - a. improving aggregate labour productivity;
 - b. lowering unemployment and underemployment across all regions, ages and ethnic groups;
 - c. decent jobs (productive, healthy and safe) which have higher wages and better security;
 - d. higher skilled and more resilient workers that have access to lifelong learning;
 - e. people and workplaces that are adaptive in the face of economic transitions.
8. Migrant exploitation encompasses a spectrum of non-compliance with minimum employment legislation, ranging from ignorant non-compliance through to forced labour and people trafficking.
9. Exploitation of temporary migrant workers takes many forms, including bullying, withholding passports or money, making employees ask permission to eat, sleep or go to the toilet, not paying employees the right amount (or at all), forcing employees to pay off a debt, or issuing threats to the employee or their family members.
10. The types of migrants vulnerable to exploitation include those who are:
 - a. from low income countries or who have limited English or low level skills, or who lack independent means to support themselves;
 - b. migrants working outside of their visa conditions (for example, overstayers or people on visitor visas);
 - c. migrants who need to hold jobs to remain in the country, and potentially to gain residence;
 - d. international students.
11. I want to ensure that our employment and immigration systems work well to protect the working conditions of all workers in New Zealand, including temporary migrant workers.
12. I have directed MBIE officials to lead in-depth policy work to address temporary migrant worker exploitation, in preference to an inquiry approach. This will demonstrate that addressing temporary migrant worker exploitation is a key priority area for this Government, while avoiding the substantial costs and longer timeframes that would result from an inquiry approach.

It is important to address temporary migrant exploitation given its social and economic implications

13. Alongside the direct impacts on migrant workers themselves, exploitation has negative impacts across New Zealand's labour market as well as other societal costs. These include:
 - a. *Distortion of competition* – businesses which are compliant with legislation may find themselves undercut, or even rendered unsustainable, if competitors are able to continue exploiting staff.
 - b. *Failure to comply with required business practices* – firms which exploit workers are more likely to be non-compliant with business regulation. For example, even if taxes are paid correctly on amounts earned, if staff are underpaid that represents a loss to the Crown from the potential tax on the unpaid earnings.
 - c. *Facilitation of crime* – exploitation of migrants can be associated with other offending, such as money laundering or fraud, including fraudulent immigration activity.
 - d. *Reputational and broader 'community' damage* – New Zealand enjoys a reputation as a safe, secure, and non-corrupt country. This helps provide a competitive advantage for New Zealand as a whole, attracting businesses and investment. Migrant exploitation has the potential to damage this reputation and undermine broader community values of fairness and compliance with the law. In particular, it can risk the sustainability of international education, our fifth largest export earning industry.
 - e. *Health costs* – employers who are non-compliant with employment law are more likely to be non-compliant with health and safety regulations, placing all of their employees at risk of injury. Further, when victims of exploitation are identified they may need health support, such as counselling.
 - f. *Compliance and enforcement costs* – investigating, bringing claims against employers for minimum wage breaches and prosecuting exploitation imposes costs on the taxpayer, including agency staff resources and court costs.
 - g. *Not meeting our international obligations* – New Zealand has committed to a range of international human rights obligations regarding the treatment of workers and our most vulnerable people, including migrants.
14. The vulnerability of temporary migrants to exploitation in the labour market is a policy issue that has received attention from international agencies (such as the International Labour Organization), countries with which we trade (such as the European Union) and government agencies responsible for migrant welfare in a range of jurisdictions. The policy work will look at the international picture and examples of what other jurisdictions are doing to mitigate or prevent exploitation.

The full extent of exploitation is hidden but Immigration New Zealand and the Labour Inspectorate are dealing with increasingly complex cases

15. There are a number of barriers to temporary migrants reporting exploitation, which mean that it is difficult to fully assess the scale of this exploitation in New Zealand. These barriers include cultural norms and values (which can include expectations of poorer working conditions or reluctance to challenge seniority), lack of knowledge of entitlements under New Zealand law (including minimum employment standards), debt bondage (providing services to repay a debt that may never be fully repaid), and complicity in non-compliance with New Zealand law (including immigration offending) in order to gain a pathway to residence.

16. Reported exploitation of migrant workers in New Zealand has to date primarily related to people who are being paid but who are working in conditions that do not meet New Zealand's employment standards, or who have paid to gain a job in New Zealand. Cases involving the most serious offending (including human trafficking) are more limited, but MBIE is receiving increasing reports of this type of serious offending.
17. Even within official records it is difficult to get an accurate picture of the number of migrant exploitation cases, as many cases involve wider breaches of employment standards and do not solely relate to migrant exploitation, meaning they may not be reported as such. However, MBIE's Labour Inspectorate and Immigration New Zealand (INZ) are in general seeing increasingly complex cases that involve the exploitation of migrant workers. These regulators are working together and with other agencies to investigate and prosecute breaches.
18. The Masala case is a good example of a complex instance of migrant worker exploitation which required several enforcement agencies to work together, including INZ and the Labour Inspectorate. In 2015 a chain of Auckland restaurants, Masala (not connected to other businesses in New Zealand also called Masala) were found to be breaching a range of employment and immigration laws, including through significantly underpaying staff, forcing staff to work up to 11 hours a day for six days a week, supplying false information to INZ, and employing workers who were in New Zealand unlawfully. This resulted in a number of convictions of directors, management staff and associated individuals. The businesses were also found to be committing large-scale tax evasion. As a result, assets worth \$8 million were forfeited to the Crown.

19. s6(c)



MBIE's policy work will recommend ways to reduce temporary migrant worker exploitation

20. Action to address temporary migrant exploitation will need to focus on both demand and supply side factors, including employers' willingness to exploit this group of workers, as well as the range of behaviours within migrant communities that give rise to and enable complicity.
21. I have directed MBIE officials to build on their existing work programme in this area and further sharpen policies which address temporary migrant worker exploitation.
22. The objectives for this work are to:
 - a. learn from migrants, employers, unions and other relevant players, to understand the nature and extent of exploitation of temporary migrant workers (including international students);
 - b. identify where the gaps and opportunities are to reduce temporary migrant worker exploitation;

- c. make recommendations on potential regulatory, policy or operational changes (including labour market protections) to mitigate vulnerability and reduce migrant worker exploitation.

The scope of the work will be temporary migrants within an employment context

23. In relation to the scope of this work, I have directed MBIE officials to take a broad view within an employment context of what constitutes migrant worker exploitation. Within this scope the primary focus will be temporary migrant workers, including international students working in New Zealand. The regulatory systems considered will be immigration, employment relations

s9(2)(f)(iv)

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted] the work to address migrant exploitation s9(2)(f)(iv) will include the following three components:

a. **An assessment of the range of policy levers available to address temporary migrant worker exploitation.** This involves looking at the suite of levers available to address the supply and demand factors that drive migrant exploitation, and where there may be opportunities to address exploitation across different features of the regulatory systems of immigration, employment relations and standards, health and safety at work, and education (for international students).

b. **Commissioned research services to understand temporary migrant worker exploitation.** Alongside the assessment of policy levers MBIE will commission research services to learn from the experiences of temporary migrants, employers, unions and other key system players, and assess international approaches to reduce temporary migrant worker exploitation. s9(2)(f)(iv)

[Redacted]

c. A **consultation group** will be established to provide an independent view, comprising representatives from the migrant, business, union and international student sectors. This group will inform both the assessment of the range of policy and operational levers available and the research to elicit the views of migrants. Subject to Cabinet agreement to the scope and objectives of the policy work, MBIE will establish the group in September 2018.

25. The results of the policy work will inform recommended changes in regulatory, policy and/or operational settings across the regulatory systems as listed in paragraph 22. s9(2)(f)(iv)

[Redacted]

■ [Redacted]

The work will focus on exploitation within an employment context in the systems of immigration, employment relations and standards, health and safety at work, and education (for international students)

27. The primary levers to address temporary migrant exploitation sit across these systems:
- a. the immigration system, which grants visas to control the entry of temporary migrants and the requirements they must meet while in New Zealand;
 - b. the employment relations and standards and health and safety at work systems, which set both the minimum standards for migrants' employment while onshore, and conduct obligations on employees and employers (including temporary migrants);
 - c. a range of requirements which impact on international students, including:
 - i. education (Pastoral Care of International Students) Code of Practice 2016;
 - ii. visa requirements and employment standards (referenced above);
 - iii. obligations on education providers, through registration and monitoring processes;
 - iv. governance of education agents through education provider obligations, visa requirements, and the (voluntary) Education New Zealand Recognised Agency (ENZRA) scheme.

This work is building on a range of work currently underway to address migrant exploitation

28. This work builds on a range of policy and operational initiatives across the immigration and employment systems, some of which are already underway, which are likely to have an effect on, or address aspects of, migrant exploitation in New Zealand. s(9)(f)(iv)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

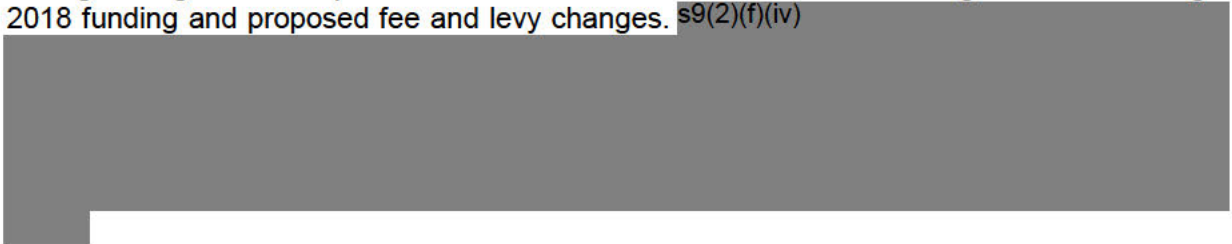
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30. While human trafficking sits at the more serious end of the exploitation spectrum, often various types of exploitation occur simultaneously. An individual migrant worker, for example, may experience being paid below the minimum wage, being prevented from leaving their job as well as being trafficked to New Zealand. The Government has participated at the recent Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.

31. I have also already announced proposals which are intended to reduce the exploitation of international students (removing the employer assisted post-study work visa reduces international students' reliance on job offers from exploitative employers) s9(2)(f)(iv)

[Redacted]

32. Both the Labour Inspectorate (through \$13.1 million in additional operating expenditure over four years) and compliance within INZ have received further funding in this year's Budget. Strengthening INZ's compliance and border functions were funded through additional Budget 2018 funding and proposed fee and levy changes. s9(2)(f)(iv)



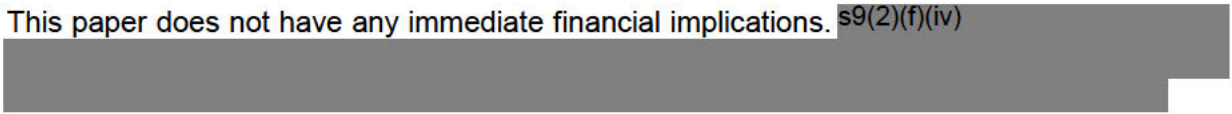
33. Going forward, MBIE will advise me on how the expected benefits from these and other initiatives will work alongside further proposals that are developed to address migrant exploitation through the policy work proposed in this paper.

Consultation

34. The Department of Prime Minister and Cabinet, the Treasury, the State Services Commission, the Ministry of Education, Ministry for Women, Ministry for Pacific Peoples, the Office of Ethnic Communities, WorkSafe New Zealand, Education New Zealand, and the New Zealand Qualifications Authority were consulted on this paper and their views have been reflected in its development.

Financial Implications

35. This paper does not have any immediate financial implications. s9(2)(f)(iv)



Human Rights

36. The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

37. The proposal does not have immediate legislative implications. The findings from the policy work may recommend legislative changes.

Regulatory Impact Analysis

38. A regulatory impact analysis is not required at this stage.

Gender Implications

39. There are no gender implications associated with this decision. However, the findings from the policy work may have gender implications.

Publicity

40. A Communications Plan will be developed to inform stakeholders about this work.

Recommendations

41. The Minister of Immigration and for Workplace Relations and Safety recommends that the Committee:
 1. **Note** that the Government has committed to “take serious action on migrant exploitation, particularly of international students”;
 2. **Note** that the Minister has directed the Ministry of Business, Innovation and Employment to establish a work programme to sit alongside existing work to address temporary migrant worker exploitation, including international students;
 3. **Agree** that the objectives of the policy work are to:
 - 3.1 learn from migrants, employers, unions and other relevant players, to understand the nature and extent of exploitation of temporary migrant workers (including international students);
 - 3.2 identify where the gaps and opportunities are to reduce temporary migrant worker exploitation;
 - 3.3 make recommendations on potential regulatory, policy or operational changes (including labour market protections) to mitigate vulnerability and reduce migrant worker exploitation;
 4. **Agree** that the scope of this work to address migrant worker exploitation will be within an employment context, prioritising assessment of the regulatory systems of employment standards and employment relations, health and safety at work, immigration (including visa policy settings), and international education settings, noting that other related areas may be raised in conjunction with issues in these regulatory systems;
 5. s9(2)(f)(iv) [REDACTED]
 6. [REDACTED]
 7. [REDACTED]
 8. **Note** that officials will work with my office to develop a Communications Plan to inform stakeholders about this work; and
 9. **Note** that this Cabinet paper will be proactively released in due course.

Authorised for lodgement

Hon Iain Lees-Galloway

Minister of Immigration and Minister for Workplace Relations and Safety