



HAVE YOUR SAY – SHOULD NEW ZEALAND RATIFY THE 2014 FORCED LABOUR PROTOCOL?

This discussion paper seeks your views on whether New Zealand should ratify the International Labour Organisation 2014 Forced Labour Protocol. The Protocol is a binding treaty-level instrument which addresses issues of modern slavery and forced labour. It supplements and modernises treaties on this topic that New Zealand is already a party to.

The closing date for submissions is 14 April 2019.

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Overview

Modern slavery and forced labour have long been recognised as serious breaches of human rights and labour rights and measures to eliminate these practices have been adopted at national and international levels.

Target 8.7 of the UN Sustainable Development Goals commits to end all forms of forced labour by 2030 and to end the forced labour of children, along with all other forms of child labour, by 2025.

The 187 member States of the International Labour Organisation have also adopted two legally binding Conventions on forced labour.

What is the 2014 ILO Forced Protocol?

There are two International Labour Organisation (ILO) Conventions on forced or compulsory labour, the *Forced Labour Convention* (No. 29) and the *Abolition of Forced Labour Convention* (No. 105).

Convention 29 was adopted in 1930, when forced labour was equivalent to private sector slavery while compulsory labour (government-enforced) was a practice used by colonial administrations and in certain independent States. Convention 105, adopted in 1957, is specifically aimed at the abolition of the compulsory mobilisation and use of labour by the State for economic development purposes, as well as of forced labour as a means of political coercion or as punishment for the infringement of labour discipline.

Convention No. 29 has been ratified by 178 member States and Convention No. 105 by 175. New Zealand is a party to both these Conventions.

The two Conventions on forced labour provide a framework and jurisprudence concerning the elimination of forced labour and have played an important role in making progress to eradicate forced labour in all its forms.

ILO Convention 29 defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily”. While this definition is still effective, much has changed globally since the Conventions adoption in 1930.

To reflect these changes, the International Labour Conference in June 2014 adopted a new instrument, the Forced Labour Protocol – a treaty-level instrument that is binding on member States who ratify it.¹ This instrument supplements and modernises – but does not replace Convention 29.

¹ Sitting alongside the Protocol is a Recommendation which is a non-binding advisory instrument to provide guidance on how the Protocol should be implemented.

These new instruments supplement and update the two forced labour Conventions

The *Forced Labour Protocol* (the Protocol) and the accompanying *Forced Labour Recommendation* (the Recommendation) bring ILO standards on forced labour into the modern era. These new instruments do not alter the basic definition of forced labour but supplement and update these conventions to account for changes in both the context and forms of forced labour in today's global economy.

These new instruments explicitly recognise modern forms of trafficking for forced labour, including forced sexual commercial exploitation, and the increased number of workers who are in forced labour in the private economy, especially people who are on the move.

The instruments place an emphasis on the causes of forced labour and on ensuring that all victims of forced labour, irrespective of their legal status in that country, have access to appropriate and effective remedies, such as compensation.

The Protocol requires member States that ratify it to prevent forced labour, to protect those subjected to forced labour, and to provide them with access to remedies. In line with *Forced Labour Convention*, No. 29, it also reaffirms the importance of enforcement and of ending the impunity of perpetrators.

More information on the *Forced Labour Protocol*, 2014, and a copy of the full text is available at:

<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

Why is government considering the 2014 Forced Labour Protocol?

There is increasing attention domestically and internationally on these serious crimes

Forced labour and contemporary forms of slavery are seen globally as serious crimes and subject to increasingly widespread domestic and international attention and concern. An estimated 40.3 million people were victims of modern slavery in 2016. Of these 40.3 million victims, 24.9 million people were in forced labour. That is, they were being forced to work under threat or coercion as domestic workers, on construction sites, in clandestine factories, on farms and fishing boats, in other sectors, and in the sex industry². 4.3 million were children below the age of 18 years. Women and girls comprise of 63 percent of people in forced labour and 99 percent of those who are subjected to forced commercial sexual exploitation³.

New Zealand is not untouched by these crimes and is increasingly exposed to instances of these practices.

New Zealand is a part of a global commitment to help eradicate these practices. Target 8.7 of the *Sustainable Development Goals* is to end all forms of forced labour by 2030 and to end the forced labour of children by 2025.⁴

While we have seen certain forms of forced labour decrease over recent years, new forms and practices have appeared and continue to emerge. Increased labour mobility, including temporary migration, is a feature of today's labour markets and has exacerbated vulnerability to forced labour. In New Zealand migrant workers have been found to be at a much higher risk than citizens of a range of exploitative practices, up to and including forced labour. However, even citizens and permanent residents can be vulnerable: young people, the elderly and people with disabilities are relatively more likely to be exploited in our labour market than the average worker.

Businesses and NGOs are increasingly recognising and reacting to the problem of modern slavery, including engaging with governments internationally to address the issue. Governments, including the United Kingdom and Australia, are also taking action to promote private sector responses to the issue, as well as introducing legislative responses.

² https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

³ https://www.ilo.org/global/topics/forced-labour/publications/WCMS_653986/lang--en/index.htm

⁴ <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

The Government is taking serious action to address temporary migrant worker exploitation

Exploitation of workers affects all of us in some way, as workers, employers, businesses, consumers or citizens. It is an assault to the rights of workers, and undermines legitimate businesses (through undercutting), distorts labour markets, and negatively impacts New Zealand's reputation as a fair place to work, live and do businesses.

The government has a strong commitment to addresses worker and temporary migrant exploitation through strengthening legal frameworks and rights, managing the immigration system and ensuring effective enforcement.

Exploitation can happen anywhere in New Zealand and no industry appears to be immune to this issue. There is a spectrum of exploitative behaviours, ranging from denying employees access to breaks to serious offending such as forced labour and trafficking in persons. The Ministry of Business, Innovation and Employment's (MBIE's) operational arms, Employment Services (which included the Labour Inspectorate and the Employment New Zealand website) and Immigration New Zealand (INZ), are seeing increasingly complex cases of migrant worker exploitation. These regulators are working together, and with other agencies such as WorkSafe, NZ Police and IRD, to investigate, enforce and prosecute breaches.

New Zealand has ratified both ILO Conventions on Forced Labour and our law is already largely consistent with the Protocol

New Zealand ratified the ILO *Forced Labour Convention* in 1938 and the *Abolition of Forced Labour Convention* in 1968 and has actively worked to prevent and help eradicate the practice of forced labour.

Domestically, New Zealand already has in place various legislative and policy instruments to prevent and protect the victims of forced labour and trafficking. This legislation and policy provides a national framework to address forced labour that is broadly consistent with the requirements contained within the Protocol. Adopting the Forced Labour Protocol would not require substantial legal or policy changes.⁵

Responsibility as a member of the international community

The Protocol is becoming increasingly adopted by the global community. Since 2015, the Protocol been ratified by 28 ILO member States.

New Zealand is a strong advocate of international law and human rights. Our involvement in the United Nations and observance of international labour standards complements and supports this and contributes to maintaining New Zealand's international reputation.

⁵ Annex 2 identifies areas where New Zealand's legal and policy framework is compliant and shows where and how New Zealand's measures to combat exploitation, forced labour and human trafficking are broadly consistent with the requirements of the Protocol.

Ratification of the Protocol would be a further expression of this, highlighting the importance New Zealand places on ILO core labour standards, the protection of workers and the eradication of forced labour.

Why is MBIE consulting on the potential ratification of the ILO Forced Labour Protocol?

The ILO Conventions on Forced Labour, No. 29 and No. 105 provide a framework and jurisprudence concerning the elimination of forced labour and have played an important role in progress to eradicate forced labour globally. The high rate of ratification of both these instruments attests to the commitment of member States to eliminate forced labour in all its forms.

Changes in both the context and forms of forced labour that we see in today's world has driven the need for new instruments that bring these ILO standards into the modern era and provide a strategic framework for the eradication of forced labour for member States who ratify it.

The new instruments provide this. They explicitly recognise modern forms of trafficking for forced labour, including for forced sexual commercial exploitation, and the increased number of workers who are in forced labour in the private economy, especially people who are on the move.

What does the Protocol require of member States that ratify it?

The *Forced Labour Protocol* obliges member States who ratify it to prevent forced labour, protect victims and provide them with access to remedies. It emphasises the link between forced labour and trafficking in persons, and reaffirms the importance of prosecuting perpetrators of forced labour and ending their impunity.

As a binding treaty-level instrument, if New Zealand becomes a party to the *Forced Labour Protocol* its requirements would have to apply in New Zealand. However, many of these requirements are already implemented through existing legislation and policy.

Officials have undertaken a preliminary analysis of the Protocol⁶. The following tables outline the key requirements of the Forced Labour Protocol; where New Zealand law, policy and practice is considered consistent with the Protocol; and areas where there are likely to be new requirements if New Zealand were to become party to the Protocol.

If you require further information, contact details are provided on page 24 of this document.

⁶ This discussion paper is based on preliminary analysis by the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, New Zealand Police and the Department of Corrections. It is the subject of ongoing discussions with the New Zealand Council of Trade Unions, BusinessNZ and the International Labour Organisation.

Requirements of the Forced Labour Protocol and the current New Zealand situation

Effective measures to suppress forced labour

Article 1(1) of the Protocol sets out its central requirement that each Member must take effective measures to prevent and eliminate its use, to provide victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced labour”.

Current New Zealand situation

New Zealand already has in place various legislative and policy instruments which have the purpose of preventing and protecting the victims of exploitation, forced labour and trafficking. Please see more detailed information on these, including relevant web links, in Annex 2 from page 26.

Such legislation includes:

- Section 98AA of the *Crimes Act 1961* provides for a specific offence for a person who deals with a person under 18 years of age for the purpose of forced labour. Section 98, dealing in slaves, has a similar maximum penalty and is not age specific except in relation to offences by parents. The penalty for these is 14 years imprisonment. Trafficking in people for the purposes of exploitation, or facilitating the exploitation of the person, by means of coercion or deception, is an offence with a penalty of a term of imprisonment up to 20 years, or a fine up to \$500,000, or both (s 98D Crimes Act 1961).
- Provisions in the *Immigration Act 2009* (the Immigration Act) address exploitation of migrant employees who are unlawfully in New Zealand or who are temporary migrant workers. Employers who knowingly exploit temporary workers face a jail sentence of up to seven years, a fine not exceeding \$100,000, or both. Under the Immigration Act it is also an offence for employers to exploit temporary migrant or unlawful workers and be reckless as to their immigration status.
- The *Corrections Act 2004* (the Corrections Act) allows for the competitive tendering of prison management on a case-by-case basis, subject to prior Ministerial consent. Under the Corrections Act, private companies are able to enter into a contract with the Government to manage prisons. It is a legal requirement under the Corrections Act that companies managing prisons will comply with all relevant New Zealand legislation, including the Corrections Act and the *New Zealand Bill of Rights Act 1990*. Private companies must also comply with all relevant international obligations and standards, including international covenants and treaties, such as the *UN Convention Against Torture*, the *UN Standard Minimum Rules for the*

Treatment of Prisoners and the ILO Convention on Forced Labour, 1930 (No.29.)

- Changes made under an amendment to the *Fisheries Act 1996* (the Fisheries Act) require, from 1 May 2016, that all Foreign Owned Fishing Vessels (FOVs) operating in New Zealand waters must be flagged to New Zealand, to ensure that all relevant domestic legislation applies to the activity of these vessels, including employment and health and safety legislation.
- Changes to the *Employment Relations Act 2000* in 2016 introduced stronger sanctions for serious breaches of minimum entitlement provisions. This included a new pecuniary penalty regime with higher penalty levels and banning orders where employers can be prevented from employing people. More recently, employers that incur a penalty for a breach of employment standards will face a set stand-down period preventing them from employing migrant workers for six months, one year, 18 months, or two years, depending on the severity of the breach.
- The *Prostitution Reform Act 2003* prevents migrants from applying for a work or residence visa on the basis that they would work in the sex work / prostitution industry. In addition, intending temporary visa migrants, and residents who have conditions on their visas, cannot provide commercial sexual services, or operate or invest in the business of prostitution. Resident visa holders are liable for deportation if they act as an operator of or investor in the business of prostitution. This is intended to ensure that people who are vulnerable (young, poor, do not speak English, do not understand New Zealand's legal system or do not trust policing authorities) are not subject to exploitation in this sector, while enabling the sector as a whole to benefit from standard employment rights and health and safety protections.
- Sanctions / confiscation of profits: The *Criminal Proceeds Recovery Act 2009* replaced the *Proceeds of Crime Act 1991*. It established a regime for the forfeiture of property that has been derived directly or indirectly from significant criminal activity or that represents the value of a person's unlawfully derived income.

Policy includes:

New Zealand's whole-of-government approach to combating human trafficking is encapsulated in the *National Plan of Action to*

	<p><i>Prevent People Trafficking</i>. Led by Immigration New Zealand (INZ) under the MBIE, the plan was developed in 2009 by government agencies in consultation with non-governmental stakeholders interested in human trafficking issues. The plan is based on the three central pillars of Prevention, Protection and Prosecution. The current Plan of Action does not however recognise the range of issues related to trafficking, such as exploitation, forced labour and slavery. The Plan of Action is to be refreshed over 2019 to include these.</p> <p>The link to the current Plan of Action is: https://www.immigration.govt.nz/documents/about-us/plan-of-action-to-prevent-people-trafficking.pdf</p>
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National Policy coherence, consultation and coordination

<p>Article 1(2) of the Protocol calls for Members to develop a comprehensive national strategy on forced labour and an appropriate institutional framework for its implementation that can strengthen the impact of measures taken against forced labour. The Protocol encourages such policy coherence by requiring Members to develop a national policy and plan of action on forced labour. This must be developed in consultation with employers and workers organisations. More generally, measures taken to apply the provisions of the Protocol and Convention 29. are to be determined by national laws or regulations.</p>	<p>Current New Zealand situation</p> <p>New Zealand does not currently have a national strategy or plan of action on forced labour.</p> <p>New Zealand’s current <i>Plan of Action on People Trafficking</i> (PoA) is a cross-Government response to people trafficking only and fails to recognise the range of other issues related to trafficking, such as exploitation and forced labour, slavery and debt bondage.</p> <p>The current PoA was written in 2009, when there were no known cases of trafficking in New Zealand. Since then, New Zealand has prosecuted three cases of people trafficking (two successfully), and has seen nearly 40 victims of trafficking. The PoA requires updating to reflect the realities that we are now seeing through case experience, increased migration, and exploitation trends.</p> <p>The Government has agreed that the current PoA should be refreshed to reflect changes in legislation, the nature of people trafficking in New Zealand, and expanded to include forced labour and slavery. This will be completed in 2019.</p>
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Prevention

<p>Article 2 of the Protocol sets out an overall strategy for the prevention of forced labour, outlining measures that Members must put in place in several specific areas:</p> <ul style="list-style-type: none"> • Awareness-raising – Members must educate and inform the general public, and especially those considered particularly vulnerable to forced labour. 	<p>Current New Zealand situation</p> <p><u>Educating and informing people</u></p> <p>Efforts which have been made to advance prevention efforts in New Zealand include the development, translation and publishing of targeted information, and its provision to interested groups and via labour inspectors and Government telephone information services.</p> <p><u>Information and counselling for victims regarding their rights</u></p> <p>INZ and the Labour Inspectorate have targeted communications for victims of labour exploitation, specifically for migrant workers,</p>
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<p>Members must also educate and inform employers in order to prevent their becoming involved in forced labour or compulsory labour practices.</p> <ul style="list-style-type: none"> • Legislation and its enforcement, including labour law and administration – the effective enforcement of criminal law can deter forced labour, but other types of legislation are also relevant to prevention. The Protocol requires Members to undertake efforts to ensure that the coverage and enforcement of such legislation, including labour law as appropriate, applies to all workers and sectors of the economy so that certain vulnerable groups are not left unprotected. <p>The Protocol also requires Members to undertake efforts to strengthen labour inspection services and other services responsible for the implementation of this legislation.</p> <ul style="list-style-type: none"> • Protection from abusive and fraudulent recruitment practices – Certain workers, including migrant workers may be particularly vulnerable to abuses committed during the recruitment process that can result in forced labour situations. The Protocol establishes that measures to prevent forced labour must include protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the 	<p>including a specialised phone queue to the Labour Contact Centre (a telephone service, which is available in around 40 languages). The channel for making complaints has been publicised in multiple languages, through front-line NGOs, unions, community law centres and other migrant support organisations.</p> <p>The New Zealand Human Rights Commission offers a free, informal and confidential service for anyone enquiring about human rights or complaining of unlawful discrimination or harassment. It provides information about Human Rights and translated information about how to make a complaint - https://www.hrc.co.nz/enquiries-and-complaints/how-make-complaint/</p> <p>INZ provides a range of resources in a range of languages to inform migrants and their employers about living and working in New Zealand. It has also developed resources for migrant who work in sectors where they may be vulnerable to workforce exploitation. International students, Pacific migrants and migrants working in the dairy farming, construction, hospitality or aged care sectors have been identified as vulnerable.</p> <p>The guides for migrant workers include information about minimum employment entitlements, employment agreements, minimum wage, leave, health and safety requirements, and a list of employment support services.</p> <p>INZ also sends emails to new migrants (all student, work and residence visa holders) shortly after their visa has been approved. The emails provide links to pertinent information on the NZ Now website, which is the main source of online information for new migrants. One of these links is ‘employment rights’ and emails sent to work visa holders also have a section outlining some basic work rights.</p> <p>Employment New Zealand delivers a number of initiatives to inform and educate all employees on their minimum employment rights. These are delivered from through a number of communication channels, including the Employment New Zealand website, Facebook page and newsletter. Employment New Zealand also provides more targeted communications to specific population groups through radio campaigns and events. Online employment modules are also available on the Employment New Zealand website for both employers and employees.</p> <p>https://www.employment.govt.nz/</p> <p><u>Educating and informing employers</u></p> <p>High risk sectors: The Labour Inspectorate has developed sector specific approaches to high risk sectors (eg. dairy, horticulture and</p>
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<p>recruitment process.</p> <ul style="list-style-type: none"> • Due diligence by both the public and private sectors – The exercise of due diligence by both the State and the private sector can help to mitigate forced labour risks. States should encourage, and where appropriate, require human rights due diligence by the government agencies and by those business enterprises or projects receiving their support. The Protocol calls for Members to take measures to support due diligence by both public and private sectors to prevent and respond to risks of forced or compulsory labour. • Addressing root causes and factors – The Protocol requires that Members take measures to address the root causes and factors that heighten the risks of forced or compulsory labour, for example poverty, discrimination. 	<p>viticulture, hospitality, retail, construction, and payroll systems) to build a connected and strategic approach to dealing with non-compliance.</p> <p><i>Elements include:</i></p> <ul style="list-style-type: none"> • building risk profiles, conducting proactive investigation programmes, and taking enforcement action where breaches are found • informing and educating employers • working closely with sector bodies to build employer capability in respect of business and supply chain compliance, and • where sectors have a high proportion of migrant employers and employees, working with INZ, Inland Revenue, WorkSafe and local government Councils (where appropriate) to ensure employers are helped to comply and are held accountable where they do not, and to help provide information to employees to understand minimum employment standards. <p><i>Examples include:</i></p> <p>New editions of guides for migrant workers and their employers in dairy farming, hospitality and aged care sectors have recently been published. A new edition of the guide for migrant construction workers and their employers is planned for 2019. All guides includes information and practical tips and tools to help employers better understand and support their migrant workers. They set out the employers’ responsibilities to ensure migrants understand their entitlements and are employed lawfully.</p> <p>The guide for employers recruiting Filipino workers includes information on: how employers can comply with New Zealand and Philippines law; requirements to engage licensed recruitment agents in New Zealand and the Philippines; and the recruitment process, including how to become an accredited foreign employer. Accreditation helps to ensure employers enforce fair employment practices.</p> <p>A new tool for employers that sets out practical steps on how to identify and mitigate labour rights issues within their supply chains is under development, and has been shared with a number of employers and sector bodies to test its usefulness.</p> <p><u>Undertaking efforts to ensure that the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy</u></p>
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The *Employment Relations Act 2000*, *Health and Safety at Work Act 2015*, *Immigration Act 2009* and the *Crimes Act 1961* apply to all workers within New Zealand. New Zealand employment legislation applies to all employees, irrespective of their occupation. There is statutory provision of minimum employment standards in respect of leave and public holidays, minimum wages, protection of wages, rights against unjustifiable dismissals and unfair treatment. These standards and rights are enforceable and there are specific employment problem resolution processes and services.

Undertaking efforts to ensure that labour inspection services and other services responsible for the implementation of this legislation are strengthened

New Zealand recognises the relationship between forced labour, labour exploitation and trafficking, and that enforcement of labour laws and labour inspection are important measures to reduce vulnerability to both labour exploitation and trafficking. The application of New Zealand's labour law and associated minimum standards to all workers is a fundamental expectation of New Zealand's labour market.

New Zealand recognises the important role of labour inspection in the prevention of labour exploitation. The *Employment Relations Amendment Act 2016* introduced stronger powers for the Labour Inspectorate, including a new regime to deal with serious breaches of minimum entitlements including: broader powers to pursue third parties involved in breaches of employment standards; power to request a wider range of information from employers; and the ability to issue infringement notices for breaches of record keeping requirements.

The Labour Inspectorate is expanding, with eight new warranted staff positions filled in the 2018/19 year. Recent organisational changes to the Labour Inspectorate are aimed at enabling greater training and business support to frontline staff.

Labour Inspectors and Immigration Officers receive training on migrant exploitation. MBIE also provides information resources for workers and employers, and publicises anti-exploitation measures (including its specialised phone service) to encourage victims of migrant exploitation to come forward.

In April 2017 new measures were introduced to stop employers who breach immigration and employment law from employing migrant workers. Employers who have incurred an employment standards-related penalty are banned from employing migrant labour for defined stand-down periods, ranging from six months to two years, depending on the severity of the case. A list of employers that have incurred a stand-down period is published

online, and regularly updated.

Protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process

In New Zealand all employees (including migrants on lawful temporary visas and foreign nationals working outside the terms of their visa or on expired visas) have the same legal rights. Immigration Officers check employment agreements, and job offers for those visas that require a job offer, to ensure that they meet legal minimums and are credible.

Under section 12A of the *Wages Protection Act 1983* it is unlawful to charge employment premiums in New Zealand, regardless of the amount being charged. In situations where someone is charged a premium for employment, a Labour Inspector can initiate proceedings to seek a penalty and recover the premium.

Labour Hire companies that operate in the Canterbury region of New Zealand and wish to hire migrant workers on job-specific visas must be accredited by INZ. (see <https://www.immigration.govt.nz/opsmanual/#66942.htm>).

The requirements include that any employment agreements must contain employment terms and conditions equivalent to those of workers directly employed by the company with whom the worker is placed, and that they must ensure that any third party to whom they hire out a migrant worker has good workplace practices. These requirements apply nationwide to accredited Labour Hire companies (i.e. are not only applicable to staff working in Canterbury) and therefore apply to all of the larger (national) Labour Hire companies.

New Zealand and the Philippines Memorandum of Arrangement on Labour Cooperation (MoA)

In September 2015, New Zealand and the Philippines signed a bilateral arrangement (the MoA) on the recruitment and treatment of Filipino migrant workers. The MoA intends to reduce the vulnerability and potential for exploitation of workers by improving the transparency of recruitment processes and ensuring compliance with both countries' employment and immigration requirements.

A key area of cooperation is focused on enforcing laws and regulations on non-payment of recruitment and placement fees by Overseas Filipino Workers. Debt bondage is a common experience

	<p>of many victims of trafficking. Unfair debt arrangements as well as excessive deductions from a person’s salary, including paying debts to employers / recruitment agents, are potential indications of trafficking.</p> <p><u>Supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour</u></p> <p>Please note the information provided above.</p> <p>In addition, the Government is taking steps to ensure that human rights issues are better incorporated into government procurement practices. It is intended that the <i>Human Rights Act 1993</i> will be referenced in the <i>Government Rules of Sourcing</i> which, along with good practice guidance and the principles of procurement, form the regulatory framework in which government procurement in New Zealand is conducted. The Rules of Sourcing will be amended so that it is clearer that human rights violations by a supplier or in a supplier’s supply chain are grounds for exclusion from a procurement process.</p> <p><u>Addressing the root causes and factors that heighten the risks of forced or compulsory labour</u></p> <p>Please note the information provided above.</p>
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Protection and non-punishment of victims

<p>The Protocol requires Members to take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provisions of other forms of assistance and support. Members must also take measures to provide for the possibility of not prosecuting or imposing penalties on victims for unlawful activities they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour, in accordance with the basic principles of their national legal systems.</p>	<p>Current New Zealand situation</p> <p>The <i>Crimes Act 1961</i> criminalises trafficking, slavery, including debt bondage and serfdom, and dealing in slaves, in New Zealand.</p> <p>The Government has policies and measures to ensure high risk industries are closely regulated or monitored. In New Zealand these include the sex, horticulture and viticulture industries and work on board FOVs. Targeted joint-agency operations were undertaken following the Government becoming aware of allegations of poor pay and work conditions in the retail/hospitality industries. ILO indicators on forced labour are utilised in the work of New Zealand Labour Inspectors.</p> <p><u>Combined INZ and Labour Inspectorate activity</u></p> <p>MBIE’s Labour Inspectorate and INZ work together to address the exploitation of migrants including focusing enforcement activity on the employer, rather than the migrant. Their approach is based on principles that protect the victims of criminal offending.</p> <p>New Zealand is a Contracting State to the <i>Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption</i>. One of the Convention’s key objectives is guaranteeing</p>
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safeguards to prevent the abduction, the sale of, or traffic in children.

<https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

Specific measures for children include that New Zealand also has a set of Cabinet-approved, non-binding Guidelines to direct agencies to respond to international surrogacy. The purpose of these guidelines is to provide safeguards in relation to children born in an overseas country as a result of a surrogacy arrangement, including to prevent trafficking of children.

The Government recognises some populations may be at greater risk of being exploited by employers in the New Zealand labour market. These include recent migrants who may agree to work under substandard terms and conditions, due to a lack of awareness of New Zealand's minimum employment standards. Also, people working unlawfully may be reluctant to report employers who flout employment standards and seek help, due to fear of authorities.

In particular, the Government has identified some issues around the treatment of international students and recent international graduates by some employers. International students and recent international graduates may be particularly vulnerable as they are often young, without existing contacts in New Zealand, and it may be their first time travelling alone or living away from home. They may have financial and family pressures from their home country and they may face language and cultural barriers, including to finding acceptable employment.

These factors, combined with limited work skills and experience, may cause them to accept any work conditions they are offered. The Government is taking steps to address this vulnerability and to enforce employers' compliance with minimum employment standards.

The *National Plan of Action to Prevent People Trafficking* offers protection and assistance to victims of trafficking, including health services, housing, social services, and financial assistance. Victims are also provided support during the criminal justice process.

Protection, recovery and rehabilitation

The exploitation of migrants who are working unlawfully and of temporary workers (ie migrants who are working lawfully) is provided for by [section 351](#) of the Immigration Act 2009 and carries significant penalties. Any person convicted of an offence against this section is liable to imprisonment for a term not

exceeding seven years, a fine not exceeding \$100,000, or both.

INZ has developed an approach to assure migrants that they will not be disadvantaged by coming forward to relevant agencies with any genuine claims of workplace exploitation. Immigration instructions provide an avenue for some victims of migrant exploitation to remain in New Zealand while their complaint is being addressed. In case of workplace exploitation, a person who is lawfully in New Zealand and who makes a claim of exploitation which is accepted for investigation may be able to apply for another visa, of initially up to six months duration. The visa will be of the same type as the visa they currently hold. The exception to this is if the original visa specified that the migrant must work for the employer that exploited them.

Victims of trafficking are afforded access to protection measures and support services consistent with New Zealand's international commitments. The services offered to victims of trafficking include regularised visa status – INZ ensures that at all times a victim of trafficking holds a valid visa with work rights in New Zealand, through a specialised visa for victims of trafficking.

Victims are also entitled to: temporary and long-term accommodation arrangements in secure housing; publicly funded health services for victims and their children; rehabilitation assistance to recover from mental or physical injuries; tailored financial assistance through emergency grants, income support, and assistance with finding suitable and sustainable employment; access to food and clothing; case management and community support; and support through the justice process including information on rights, interpreters, and support to understand court proceedings.

In New Zealand everyone has equal access to emergency services and shelters where the circumstances require this. There are also shelters and temporary accommodation services provided by community groups and NGOs covering a range of circumstances.

Specific measures for migrants: Where a person holding a temporary visa has claimed workplace exploitation, or has had such a claim accepted as genuine by INZ, where appropriate, the person will not be deported for a specified period to allow for the matter to be investigated and/or resolved. In some cases this may include providing the person with an opportunity to obtain alternative employment and apply for a new visa. INZ aims to strongly encourage victims to come forward at the earliest possible opportunity.

New Zealand's policy for victims of people trafficking does not extend to other victims of forced labour. Victims of people

	<p>trafficking are granted a 12-month temporary entry class visa provided they have received certification from the New Zealand Police that they are believed to be victims of people trafficking. Police certification is required to help reduce the risk of immigration fraud.</p> <p>While on the temporary visa, victims of people trafficking will:</p> <ul style="list-style-type: none"> • have access to publicly funded health and disability services; • have access to financial assistance provided under the Special Needs Grants Ministerial Welfare Programme; and • be able to work or, if a child, to study. <p>New Zealand’s Victims of Trafficking Immigration Policy provides a clear pathway to residence for identified victims of trafficking. Adult certified victims of trafficking are able to apply for a resident visa under this policy after they have been granted a special temporary visa. To be eligible for residence, applicants have to:</p> <ul style="list-style-type: none"> • demonstrate that have not obstructed the police investigation during the validity of their temporary entry visa, and • provide evidence that if they returned to their home country they would be endangered, or at risk of being re-victimised, or at risk of suffering significant social stigma and financial hardship as a consequence of being trafficked. <p>Victims of forced or compulsory labour who have been compelled to commit certain crimes may also have recourse to the defence of compulsion found in section 24 of the Crimes Act 1961.</p> <p>Community law centres provide information on legal assistance. Legal proceedings regarding criminal charges provide a defendant with all the rights of persons arrested or detained in sections 23 and 24 of the New Zealand Bill of Rights Act 1990, and the criminal procedure rights in section 25 of the Act. These include the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to obtain that assistance (section 24(f)), and the right to free assistance of an interpreter if the person cannot understand or speak the language used in court (section 24(g)).</p>
Remedies, such as compensation and access to justice	
<p>The Protocol requires Members ensure that all victims of forced labour, irrespective of their legal status in that country, have access</p>	<p>Current New Zealand situation</p> <p>Section 32 of the Sentencing Act 2002 allows a court to impose a sentence of reparation if an offender has, through or by means of</p>

to appropriate and effective remedies, such as compensation.

an offence of which the offender is convicted, caused a person to suffer:

- loss of or damage to property; or
- emotional harm; or
- loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

Personal injury resulting from crime is compensated through the accident compensation scheme (ACC): the term 'accident' is broadly defined in the act and includes criminal conduct that results in personal injury. ACC applies to non-residents.

In addition, civil action could be brought to recover wages and entitlements and/or other damages. All employees may access the employment problem resolution services under the Employment Relations Act 2000 regardless of occupation. The system is a graduated continuum, moving from mediation, to the determination of the issue in the Employment Relations Authority, through to hearings in the Employment Court. Legal access continues regardless of a worker's immigration status.

Victims of Trafficking

Identified victims of trafficking have access to a range of services, including a limited purpose (human trafficking) visa (with work rights).

Victims are not compelled to assist in the investigation and/or prosecution of trafficking, but are empowered to choose whether or not they wish to assist/participate. Victims are given a reflection period to begin recovering from their experiences and make a decision about whether or not to assist with an investigation and/or prosecution. If victims are given adequate support, assistance, and time to recover and make decisions regarding their future, typically they are more willing and able to support the criminal justice process.

Victims of trafficking are supported from the time they are identified and referred until the criminal justice process is complete. Victims are also kept informed (e.g. explaining what is happening, how long the process is likely to take, etc.). During the pre-trial phase, victims are prepared through the provision of counselling and support. This continues during the trial phase. If a victim has returned home and returns temporarily to give evidence in proceedings, they are extended the same level and type of support as victims who have remained in New Zealand. Visas are granted to facilitate travel and entry to New Zealand, travel and accommodation are arranged and costs covered, etc. Information

	<p>on victims' rights is provided.</p> <p>New Zealand law provides for victims to seek compensation for damage suffered. A victim can obtain restitution through the criminal process. This would be as a matter of process: investigators and the Crown will seek financial reparations from any subject convicted of crimes where the victims have been financially affected. Such reparation can be, and have most recently been, based upon the loss of wages that have occurred as a result of exploitation of the victims (including trafficking-related exploitation).</p> <p>There is also a civil process under which victims can potentially make a claim for restitution, via assets that have been restrained or forfeited where those assets have been accumulated via criminal offending. Such breaches are viewed on a balance of probabilities, as opposed to beyond reasonable doubt, and as such, does not require criminal convictions to be obtained as a prerequisite. In general, the civil process is largely made redundant as a result of criminal proceedings and reparations awarded.</p> <p>Legal protection: New Zealand's <i>Victims of Trafficking</i> Immigration Policy provides a clear pathway to residence for identified victims of trafficking. Lawful status allows access to publicly funded healthcare and social services and welfare.</p> <p>https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/people-trafficking/help-for-victims-of-people-trafficking</p> <p>In practice, if a person who is liable for deportation indicates that they have an employment matter (including a potential case of exploitation) under consideration, where appropriate INZ will undertake not to deport the person for a specified period to allow for the matter to be investigated and/or resolved. In some cases this may include providing the person with an opportunity to obtain alternative employment and apply for a new visa. INZ strongly encourages victims to come forward at the earliest possible opportunity.</p>
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International Cooperation	
<p>The Protocol requires that each Member cooperates with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.</p>	<p><u>MoA with the Philippines</u></p> <p>Please see comments under Article 2.</p> <p><u>Migration in the Pacific</u></p> <p>New Zealand supports <i>the Pacific Immigration Development Community</i> (PIDC) Secretariat as a member of the Board and key donor. The PIDC conducts research including on people smuggling</p>

and human trafficking, and in 2014 prepared a report on *People Smuggling, Human Trafficking and Illegal Migration in the Pacific*.

<https://www.pidcsec.org/policy-and-research/>

New Zealand is an active member of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* ('Bali Process'), a regional forum to support and strengthen practical cooperation on countering people smuggling and trafficking. New Zealand seconded an immigration official to the Regional Support Office (RSO) and provides this organisation with financial support.

<https://www.baliprocess.net/>

New Zealand currently co-chairs the *Working Group on the Disruption of People Smuggling and Trafficking in Persons Networks* under the Bali Process. This group focuses on concrete, action oriented activities for enhancing coordination to disrupt and dismantle criminal networks involved in people smuggling and trafficking in persons in the Asia-Pacific region. We currently share the co-chairing duties with Malaysia (and previously Sri Lanka).

Under New Zealand's leadership, this Working Group has deepened regional cooperation to disrupt criminal networks through a flagship initiative called the *Joint Period of Action*. Three Joint Periods of Action have now been undertaken, with concrete results including numerous arrests, the provision of assistance to trafficked persons, information sharing, and capacity building. This has had tangible benefits for New Zealand, including by establishing networks with authorities from key source countries in South East Asia to disrupt criminal activities targeting New Zealand.

Seeking your views

Overall, we believe New Zealand's current legislation, policy and practice fits with the requirements of the Forced Labour Protocol.

We expect that the costs and risks of New Zealand becoming a party to the Protocol would be minimal. New Zealand has ratified both ILO Conventions on forced labour and our legislative and policy framework for the purpose of preventing and protecting the victims of exploitation, forced labour and trafficking is broadly consistent with the requirements contained within the Protocol.

We have noted that the immediate cost for possible ratification of the Protocol within the Protocol, as further work will be required, is on a national plan of action for the suppression of forced or compulsory. This work is already underway, and is scheduled to be completed during 2019.

What do you think?

We want to know the views of the public as to whether:

You think we should ratify the Protocol or not.

- If yes, why? If not, why not?
- Are there particular areas in New Zealand law, policy or practice that would need to be changed before New Zealand could ratify?
- Are there any specific issues you believe will need to be taken into consideration that we have missed?

Submissions are invited from all interested Parties.

Your feedback will inform the Ministry of Business, Innovation and Employment's advice to the government on whether or not New Zealand should become a party to the *Forced Labour Protocol, 2014*.

A *National Interest Analysis* on becoming party to the *Forced Labour Protocol, 2014*, will be provided to Government. It will include a summary of the feedback from this consultation.

Making a submission

To help you with your submission, a template can be found in Appendix 1. This template can be downloaded from the Ministry of Business, Innovation and Employment Website web address www.mbie.govt.nz

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

Submissions, or information contained in submission, may be subject to public release or to disclosure under the *Official Information Act 1982*. This Act requires information to be made available to requesters unless there is good reason, pursuant to the Act, to withhold the information. If you want the information that you provide to be treated as confidential, please clearly identify the material and why you wish the information to be withheld.

The closing date for submissions is 14 April 2019.

What comes next?

If the government agrees to New Zealand becoming a party to the *Forced Labour Protocol, 2014*, a Parliamentary Select Committee will consider both the text of the *Forced Labour Protocol, 2014*, and the Ministry of Business, Innovation and Employment's *National Interest Analysis*.

Should Parliament support New Zealand becoming a party to the Protocol, New Zealand would then deposit the necessary instruments to become a party to the Protocol with the International Labour Organisation.

Contact details

Please email your submission to: jessica.russell@mbie.govt.nz or post it to: Attention: Jessica Russell
Ministry of Business,
Innovation and Employment
PO Box 1473
WELLINGTON 6140

If you have any questions in relation to this discussion paper, or on making a submission, please contact Jessica Russell, by email at jessica.russell@mbie.govt.nz, or by phone on (04) 901 3826.

Annex 1: Submission template

The submission template can be downloaded separately as a Word document.

Annex 2: New Zealand's legal and policy framework on forced labour and people trafficking

In New Zealand, we already have in place various legislative and policy instruments which have the purpose of preventing and protecting the victims of exploitation, forced labour and trafficking. Links are provided to the published legislation, on the official website www.legislation.govt.nz

Such legislation includes:

- Section 98AA of the *Crimes Act 1961* provides for a specific offence for a person who deals with a person under 18 years of age for the purpose of forced labour. Section 98, *Dealing in slaves*, has a similar maximum penalty. The offence of enslaving another person makes a perpetrator who, within or outside New Zealand, employs or uses any person as a slave, or permits any person to be so employed or used, or induces any person to sell, let or give any other person into debt-bondage or serfdom, liable to imprisonment for up to 14 years. Trafficking in people for the purposes of exploitation, or facilitating the exploitation of the person, by means of coercion or deception, is an offence with a penalty of a term of imprisonment up to 20 years, or a fine up to \$500,000, or both (s 98D Crimes Act 1961).

<http://www.legislation.govt.nz/act/public/1961/0043/137.0/DLM327382.html>

- Provisions in the *Immigration Act 2009* (the Immigration Act) address exploitation of migrant employees who are unlawfully in New Zealand or who are temporary migrant workers. Employers who knowingly exploit temporary workers face a jail sentence of up to seven years, a fine not exceeding \$100,000, or both. Under the Immigration Act it is also an offence for employers to exploit temporary migrant or unlawful workers and be reckless as to their immigration status. This offence carries a jail sentence of up to five years, a fine not exceeding \$100,000, or both. In addition, exploitative employers who hold residence visas will also be liable for deportation if the offence was committed within 10 years of their gaining residence.

<http://www.legislation.govt.nz/act/public/2009/0051/126.0/DLM1440303.html>

- The *Corrections Act 2004* (the Corrections Act) allows for the competitive tendering of prison management on a case-by-case basis, subject to prior Ministerial consent.

- Under the Corrections Act, private companies are able to enter into a contract with the Government to manage prisons. Prisoners housed in a contract-managed prison remain under the legal custody of the Chief Executive of the Department of Corrections. It is a legal requirement under the Corrections Act that companies managing prisons will comply with all relevant New Zealand legislation, including the Corrections Act and the *New Zealand Bill of Rights Act 1990*. Private companies must also comply with all relevant international obligations and standards, including international covenants and treaties, such as the UN *Convention Against Torture*, the UN *Standard Minimum Rules for the Treatment of Prisoners* and the ILO *Convention on Forced Labour, 1930* (No.29.)
- Under the Corrections Act, prison managers, including managers of prisons under contract, have the power to approve the temporary release of prisoners for purposes that include release to work. There is detailed prescription regarding eligibility for temporary release, and the exercise of this power in contract-managed prisons must comply with legislative provisions.

<http://www.legislation.govt.nz/act/public/2004/0050/latest/DLM294849.html>

- Changes made under an amendment to the *Fisheries Act 1996* (the Fisheries Act) require, from 1 May 2016, that all Foreign Owned Fishing Vessels (FOVs) operating in New Zealand waters must be flagged to New Zealand, to ensure that all relevant domestic legislation applies to the activity of these vessels. This allows: (i) an enforceable legal jurisdiction over areas such as employment contracts, labour conditions, and vessel health and safety on FOVs operating in New Zealand's Exclusive Economic Zone, and (ii) ensures fair standards for all fishing crews working in New Zealand waters.
 - FOV's must apply for registration annually. A comprehensive risk assessment is completed prior to registration, which includes analysis of any offending attributed to the vessel and the entities associated with the vessel (e.g. foreign owner, New Zealand charterer/operator, senior crew). The risk assessment is compiled from information sourced from three Crown agencies: Ministry for Primary Industries (MPI), Maritime New Zealand (MNZ) and Ministry of Business, Innovation & Employment (MBIE).
 - As part of the risk assessment, and based on the information provided by MPI, MNZ and MBIE, a rating of 'Low', 'Medium' or 'High' risk is assigned to the FOV.
 - Conditions which may be placed on the Consent to Registration issued to the vessel arise out of the risk rating that is assigned to a FOV and may include, but are not limited to, conditions that relate to fisheries management, employment, vessel safety, and/or compliance with maritime rules relating to pollution and the discharge of waste material from vessels.
 - All FOVs are required to carry at least one MPI Observer on every trip. 'Low' risk vessels need only carry one Observer, the cost of which is \$450/day, although this cost is spread across the whole of the fishing industry. However, a 'high risk' vessel, for example, must carry two Observers on every trip, and the operator must meet the costs of the second Observer (\$571.65 per day).

- The MBIE Labour Inspectorate and Immigration New Zealand (INZ) have input to the 'Approval in Principle' (AIP) process, which is a conditional approval for an employer to employ someone from outside New Zealand. They also conduct investigations and audits of individual FOVs.
- Immigration instructions for the granting of visas to foreign Fishing Crew have strict requirements, including a 30 day time limit for FOV operators to provide information to authorities and remedy any problems.
- MPI is able to consider employment matters as well as fisheries matters when assessing applications for registration of FOVs, and Observers are able to collect information on employment matters at sea.
- The MBIE Labour Inspectorate has been training Observers on what to look for in respect of minimum employment standards. Since July 2016, MBIE have requested that Observers record crew hours as well as make visual recordings of working conditions on specified vessels of interest.
- Under Section 225 (1) (d) of the Fisheries Act, Observers have access to any person engaged or employed to do work on the vessel so that, if the Observer so wishes, the Observer may discuss with that person any matter concerning his or her engagement or employment on the vessel.
- Seven infringement notices have been issued to Fishing Companies for not keeping wage and time records. Enforcement action by MBIE has resulted in arrears being paid to fishers for unpaid wages.
- Finally, under Section 106A of the Fisheries Act, the Chief Executive of MPI may suspend his or her consent to the registration of any FOV for any reasonable period determined by him or her if satisfied on reasonable grounds that there has been a breach of any condition of consent to its registration.

<http://www.legislation.govt.nz/act/public/1996/0088/152.0/DLM394192.html>

- Changes to the *Employment Relations Act 2000* in 2016 introduced stronger sanctions for serious breaches of minimum entitlement provisions. This included a new pecuniary penalty regime with higher penalty levels and banning orders where employers can be prevented from employing people. The ability to hold third parties liable where they were involved in breaches of employment standards was also introduced. More recently, employers that incur a penalty for a breach of employment standards will face a set stand-down period preventing them from recruiting migrant workers for six months, one year, 18 months, or two years, depending on the severity of the breach.

<http://www.legislation.govt.nz/act/public/2000/0024/109.0/DLM58317.html>

- The *Prostitution Reform Act 2003* prevents migrants from applying for a work or residence visa on the basis that they would work in the sex work / prostitution industry. In addition, intending temporary visa migrants, and residents who have conditions on their visas, cannot provide commercial sexual services, or operate or invest in the business of prostitution. Resident visa holders are liable for deportation if they act as an operator of or investor in the business of prostitution. This is intended to ensure that people who are vulnerable (young, poor, do not speak English, do not understand New Zealand’s legal system or do not trust policing authorities) are not subject to exploitation in this sector, while enabling the sector as a whole to benefit from standard employment rights and health and safety protections.
 - The Supplementary Order Paper that laid the blueprint for what became Section 19 (*Application of the Immigration Act*) of the Prostitution Reform Act 2003 states that the proposed change was to lend “support to New Zealand’s obligations under the United Nations Convention against Transnational Organised Crime and its Protocols on the Smuggling of Migrants and Trafficking of Persons”.

<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>

- Sanctions / confiscation of profits: The *Criminal Proceeds Recovery Act 2009* replaced the Proceeds of Crime Act 1991. It established a regime for the forfeiture of property that has been derived directly or indirectly from significant criminal activity or that represents the value of a person's unlawfully derived income.

Such policy includes:

New Zealand’s whole-of-government approach to combating human trafficking is encapsulated in the *National Plan of Action to Prevent People Trafficking*. Led by Immigration New Zealand under the MBIE, the plan was developed in 2009 by government agencies in consultation with non-governmental stakeholders interested in human trafficking issues. The plan is based on the three central pillars of Prevention, Protection and Prosecution. The current Plan of Action does not however recognise the range of issues related to trafficking, such as exploitation, forced labour and slavery. The Plan of Action is to be refreshed over 2018-19 to include these.

The link to the current Plan of Action is:

<https://www.immigration.govt.nz/documents/about-us/plan-of-action-to-prevent-people-trafficking.pdf>

MBIE coordinates an interagency working group on people trafficking which includes the Ministry of Justice, the New Zealand Police, the Ministry of Social Development, Te Oranga Tamariki (the Ministry for Children) and other agencies. This group will also oversee the update and expansion of the *National Plan of Action to Prevent People Trafficking*, to ensure alignment with the Forced Labour Protocol.

MBIE liaises with other government agencies, NGOs and community representatives / associations to ensure victims of migrant exploitation through forced labour and other means receive support and guidance. The Government invests in activities that increase the likelihood of non-compliant employers being caught and held accountable by improving MBIE’s ability to detect, investigate and effectively prosecute employers who engage in migrant exploitation and the supply chains of which they are a part. This includes developing Sector Strategies and proactive, intelligence-led targeting of employers who exploit migrants.

Government is committed to taking serious action to address exploitation of temporary migrant workers (including international students with work rights), and has a review underway to better understand this problem. The review will hear the voices of stakeholders, including from the migrant, business, union and international education sectors. The review will lead potentially to regulatory, policy or operational changes to mitigate vulnerability and reduce migrant worker exploitation. It complements other policy and operational initiatives already in place or underway that addresses the exploitation of migrants.