



## COVERSHEET

<b>Minister</b>	Iain Lees-Galloway	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Proposed Ratification of the Forced Labour Protocol, 2014	<b>Date to be published</b>	9 July 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
22 May 2019	<i>Proposed Ratification of the Forced Labour Protocol, 2014</i>	<i>Office of Hon Iain Lees-Galloway</i>
22 May 2019	<i>DEV-19-MIN-0122</i>	<i>Cabinet Economic Development Committee</i>
22 May 2019	<i>National Interest Analysis: Forced Labour Protocol, 2014</i>	<i>MBIE</i>

### Information withheld

**YES**

Any information withheld in this document is labelled with the reason for redaction. These reasons may include third party considerations, timing sensitivities, legal privilege, and information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister for Workplace Relations and Safety  
Chair, Cabinet Economic Development Committee

## **PROPOSED RATIFICATION OF THE FORCED LABOUR PROTOCOL, 2014**

### **Proposal**

1. I seek Cabinet's agreement to New Zealand ratifying the Forced Labour Protocol, 2014. Ratification will be subject to satisfactory completion of the Parliamentary treaty examination process.

### **Executive Summary**

2. The International Labour Organisation (ILO) adopted the Forced Labour Protocol (the Protocol) in June 2014. This treaty-level instrument supplements and modernises the Forced Labour Convention, which was adopted in 1930 and which New Zealand ratified in 1938. In particular, it explicitly applies the Protocol to trafficking in persons for the purposes of forced labour.
3. New Zealand's ratification of the Protocol would be consistent with our ratification of the Forced Labour Convention 80 years ago and highlight the importance we continue to place on addressing forced labour, as well as other forms of modern slavery. Ratification would also complement domestic initiatives already underway to combat people trafficking, forced labour and migrant exploitation more broadly.
4. The costs, impacts, and risks of ratifying the Protocol are assessed as minimal, as New Zealand law and practice is already largely consistent with its requirements. Should Cabinet agree to ratify the Protocol, the only obligation needed to align with its requirements would be the development of a National Plan of Action on Forced Labour. This work is currently underway as part of the refresh of New Zealand's Plan of Action to Prevent People Trafficking.
5. Cabinet agreed on 6 March 2019 to public consultation on whether or not New Zealand should ratify the Protocol [CAB 19-Min-0073]. All submissions received were in favour of New Zealand ratifying the Protocol and no significant issues were raised. The New Zealand Council of Trade Unions also supports the Government ratifying the Protocol. BusinessNZ has no objection to ratification should the Government decide to do so.
6. The National Interest Analysis is attached as Annex one.

### **Decision sought and process for ratifying the Forced Labour Protocol, 2014**

7. This paper seeks Cabinet's agreement to ratifying the Protocol, subject to the satisfactory completion of the Parliamentary treaty examination process.

8. Cabinet agreed on 6 March 2019 to public consultation on a proposal to ratify the Protocol [CAB 19-Min-0073] and noted that the Minister for Workplace Relations and Safety would report back to Cabinet with advice and a National Interest Analysis, recommending whether or not New Zealand should ratify the Protocol. This paper, supported by that National Interest Analysis (attached at Annex one) recommends that New Zealand ratify the Protocol.
9. If Cabinet agrees to New Zealand's ratification of the Protocol, the Minister of Foreign Affairs and Trade will present the Protocol and the National Interest Analysis to the House of Representatives.
10. The Protocol and the National Interest Analysis will be referred to the Foreign Affairs and Trade Committee of the House, which will either review the Protocol or refer the Protocol to another Committee. Following that review, the Select Committee will report back to the House on whether New Zealand should ratify the Protocol.
11. The Protocol would enter into force in New Zealand twelve months after the date of which New Zealand's ratification of the Protocol is registered with the ILO.

## **Background to the Protocol**

### *Purpose of the Protocol*

12. There are two fundamental ILO Conventions on forced labour, the Forced Labour Convention, 1930 (No. 29) (ratified by New Zealand in 1938) and the Abolition of Forced Labour Convention, 1957 (No. 105). They are among the most widely ratified of all ILO instruments. The principles contained within these Conventions have become a part of fundamental human rights and have been incorporated into various international instruments.
13. However, while these instruments provide an international framework and jurisprudence on the elimination of forced labour, much has changed globally since their adoption. To reflect these changes, the ILO adopted the Protocol in 2014 to supplement and modernise the Forced Labour Convention, taking into account changes in the context of forced labour in the modern world.
14. While the Protocol retains the basic definition of forced labour as laid out in the Forced Labour Convention, it goes further to provide a strategic framework for the eradication of forced labour, with regards to prevention, victim protection, and compensation, concerning all forms of forced or compulsory labour. This includes trafficking in persons for forced labour, specifically through national policy and a plan of action on forced or compulsory labour.

## **Benefits of ratification**

### *There is increasing domestic and international attention on these issues*

15. Forced labour and contemporary forms of slavery have long been recognised as serious breaches of human and labour rights, and measures to eliminate these practices have been adopted at the national and international level. They encompass a range of exploitative practices that are the subject of widespread domestic and

international attention and concern. New Zealand is not untouched by these crimes and is seeing increasing instances of some of these practices.

16. Whilst certain forms of forced labour have decreased over the years globally, new forms and practices are emerging. Increased labour mobility, including temporary migration, is a feature of today's labour markets. People who live outside their countries of citizenship can be particularly vulnerable to exploitation, and this mobility has therefore exacerbated the incidence of forced labour.
17. Businesses and non-government organisations are increasingly recognising and reacting to the problem of forced labour and other contemporary forms of slavery, including through engaging with governments internationally to address the issue. Governments, including those of the United Kingdom and Australia, are also taking action to promote private sector responses to the issue.

*Ratification is consistent with the Government's priorities for addressing temporary migrant worker exploitation*

18. Exploitation is an issue that affects our workplaces and businesses. Exploitation is an assault on the rights of workers, undermines legitimate businesses (through undercutting), distorts labour markets, and negatively affects New Zealand's reputation as a fair place to work, live and do business.
19. Ratifying the Protocol builds on a range of policy and operational initiatives addressing labour exploitation already underway across the immigration and employment systems. This includes refreshing the existing Plan of Action to Prevent People Trafficking, to include within its scope forced labour and other forms of modern slavery, by the end of 2019.
20. In New Zealand, migrant workers have been found to be at a much higher risk of a range of exploitative practices, including forced labour. 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.
21. The government also has an in-depth policy and operational review underway to better understand the exploitation of temporary migrant workers, including international students, in New Zealand and identify effective and enduring solutions. The review will potentially lead to regulatory, policy or operational changes to mitigate vulnerability and reduce migrant worker exploitation. I will bring proposals to Cabinet for this in the second half of 2019.

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

22. New Zealand has already ratified both ILO Conventions on forced labour and other relevant United Nations Conventions<sup>1</sup>, and has various legislative and policy instruments in place to address and protect the victims of forced labour and trafficking. This framework is broadly consistent with the requirements contained within the Protocol for member States who ratify it.

*Ratification would bolster our credentials as a responsible member of the international community*

23. 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.
24. New Zealand has already ratified the underlying Forced Labour Convention. Ratifying the Protocol would further highlight the importance New Zealand places on ILO core labour standards, the protection of workers, and the eradication of forced labour.
25. The Protocol is becoming increasingly adopted by the global community. Since 2015, the Protocol has been ratified by 30 ILO member States.<sup>2</sup>

### **Obligations arising from ratifying the Protocol**

26. New Zealand law is already broadly consistent with the fundamental rights and principles contained within the Articles of the Protocol. The National Interest Analysis provides detail on the obligations of the Articles and New Zealand's consistency with these.
27. No regulatory changes are needed should Cabinet agree to ratify the Protocol.

*A Plan of Action for the effective and sustained suppression of forced or compulsory labour*

28. One area identified where New Zealand's practice does not meet the requirements of the Protocol, is the obligation to have developed a Plan of Action for the suppression of forced or compulsory labour.
29. New Zealand's current Plan of Action to combat human trafficking was established in 2009<sup>3</sup>. It was developed to meet the requirements of the United Nations Convention against Transnational Organised Crime and therefore does not address the full range of issues related to forced labour, such as forced labour crimes against citizens.

1 New Zealand is a party to the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2 This includes Denmark, France, the Netherlands, Norway, Sweden and the United Kingdom.

3 To meet New Zealand's obligations as a party to the Trafficking in Persons Protocol under the United Nations Convention against Transnational Crime, ratified by New Zealand in July 2002.

30. Since the current Plan of Action was finalised, New Zealand has prosecuted four cases of people trafficking and supported almost 40 victims. New Zealand's legal framework for people trafficking has also become more nuanced; in 2015, the Crimes Act 1961 was amended to recognise domestic trafficking. Prior to that time, it was only applicable to cross-border trafficking.
31. Following advice from the Ministry of Business, Innovation and Employment, I agreed that the current Plan of Action should be revised to reflect changes in legislation, the nature of people trafficking in New Zealand, and for the scope to be expanded to include forced labour and other forms of contemporary slavery. This revision is expected to be completed by the end of 2019 and would enable New Zealand to meet the requirements of the Protocol should it be ratified.

#### *Other issues*

32. Advice has been sought and received from the ILO on New Zealand's current conformity with the requirements of the Protocol, and the identification of any areas where changes to our law or practice would be required to ensure alignment.
33. The ILO's initial comments<sup>4</sup> agreed that New Zealand's general legislative, policy and law enforcement frameworks appear to be in compliance with the provisions of the Protocol, while acknowledging for the need to refresh the current Plan of Action to Prevent People Trafficking to include issues related to forced labour, slavery and debt bondage.
34. One issue the ILO raised in its comments was in relation to the identification, protection and assistance available to victims of forced labour. They noted that while victims of trafficking are granted a 12 month temporary entry visa and are given a reflection period to make a decision about whether or not to assist with an investigation or prosecution, other categories of victims including forced labour victims are excluded from this range of protection.
35. Immigration New Zealand (INZ) provides support to people who may have been exploited while any investigation is underway and afterwards, and has developed and published guidance for staff dealing with allegations of exploitation. Maintenance of the law  
[REDACTED]  
I note that there is specific policy provision for the potential grant of a temporary visa to a worker who has made a claim of workplace exploitation, or who INZ considers has been exploited, even if they have worked unlawfully.
36. Therefore, I am confident that New Zealand's suite of policy and operational responses to claims of labour exploitation, including of migrant labour exploitation, enable New Zealand to ratify the Protocol.

<sup>4</sup> The Office clarified that any comments they provided at this stage were without prejudice to any comments that may be made by ILO bodies responsible for supervising compliance with international labour standards. This meant that should New Zealand ratify the Protocol, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), in the context of the regular supervisory system, will assess the extent to which the law and practice appear to be in conformity with its provisions following New Zealand's first report post ratification.



## **Risks of ratifying the Protocol**

37. The risks of ratifying the Protocol are low as New Zealand's general legislative, policy and law enforcement framework are mostly in compliance with the provisions of the Protocol.
38. Similar to all ILO Conventions and Protocol's New Zealand ratifies, we would need to report periodically on our adherence to it and would become subject to the ILO's supervisory system for this Protocol. The ILO's Committee of Experts on the Application of Conventions and Recommendations requires New Zealand to report, two years after ratification of the Protocol, on the measures taken to implement the Protocol and whether New Zealand's national laws align with the Protocol. The Committee of Experts may seek further information from Government and suggest further regulatory changes.

## **Consultation**

39. Cabinet agreed to public consultation on a proposal to ratify the Protocol [CAB-19-MIN 0073 refers]. Public consultation over March – April 2019 examined the background, risks, legislative implications and potential benefits of New Zealand becoming party to the Protocol.
40. Five submissions were received. All submissions agreed that New Zealand legislation broadly aligns with the Protocol, and supported ratification of the Protocol with no specific concerns raised.
41. The New Zealand Council of Trade Unions also supports the Government ratifying the Protocol. BusinessNZ has no objection to ratification should the Government decide to do so.
42. The following agencies were consulted on this Cabinet Paper: The Department of the Prime Minister and Cabinet, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the New Zealand Police, the Treasury, the Department of Corrections, and the Ministry for Women.

## **Application of the Protocol to Tokelau**

43. Tokelau is a non-self-governing Territory of New Zealand and is "part of New Zealand" under the Tokelau Act 1948. While substantially self-governing in practice, it does not have its own international legal personality. Any treaty-making with respect to Tokelau is carried out by the New Zealand Government, in consultation with the Government of Tokelau.
44. The ILO Convention on Forced Labour already extends to Tokelau. If determined that New Zealand should proceed to ratify the Protocol the Government will consult with the Government of Tokelau on whether the Protocol should also extend to Tokelau.

## **Financial Implications**

45. The proposal in this paper has no financial implications for Government. There will be some implementation costs for Government agencies to implement the revised Plan of Action, but these costs are expected to be low and are likely to be managed from existing funding. These costs will arise anyway given the revision of the existing Plan of Action on to Prevent People Trafficking to include forced labour and is not dependent on whether New Zealand ratifies the Protocol or not.

### **Legislative Implications**

46. New Zealand law is already consistent with the Protocol.
47. Should Cabinet agree that New Zealand ratify the Protocol, this will create binding legal obligations on New Zealand.

### **Human Rights, gender and disability implications**

48. There are no gender, or disability implications of New Zealand becoming party to the Protocol. There are human rights implications, in that ratification of the Protocol would improve the range of measures New Zealand has to protect human rights.

### **National Interest Analysis**

49. An extended National Interest Analysis is not required with respect to the proposal to ratify the Protocol because no legislative or regulatory changes are expected to be required.
50. I have considered the analysis and advice of my officials, as summarised in the attached National Interest Analysis. I am satisfied that, aside from the risks already noted in this Cabinet Paper, the proposal to ratify the Protocol is in the public interest.

### **Publicity**

51. The discussion document, *Have your say – Should New Zealand ratify the 2014 Forced Labour Protocol?* examined the Protocol and is publicly available on the Ministry of Business, Innovation and Employment's website.
52. Following Cabinet's decision, I will consider the opportunities for publicity.

### **Proactive release**

53. I intend to proactively release this paper in full within 30 business days of Cabinet's consideration.

### **Recommendations**

54. The Minister for Workplace Relations and Safety recommends that the Committee:
1. **Note** that on 6 March 2019, Cabinet agreed to the release of a discussion document on the proposal to ratify the International Labour Organisation (ILO) Forced Labour Protocol (the Protocol) [CAB 19-Min-0073];



2. **Note** that the Protocol updates the ILO Forced Labour convention which New Zealand has ratified;
3. **Note** that ratification of the 2014 ILO Protocol to the Forced Labour Convention (the Protocol) would highlight the importance we place on addressing forced labour and other forms of contemporary slavery occurring within our jurisdiction;
4. **Note** that ratification of the Protocol aligns with Government initiatives already underway on people trafficking, forced labour and temporary migrant worker exploitation more broadly;
5. **Note** that New Zealand's law and practice is already largely consistent with the Protocol's requirements;
6. **Note** that the Protocol will be brought into effect by the deposit of an instrument of ratification following notification that the necessary procedures to give effect to the Protocol have been fulfilled;
7. **Agree** that New Zealand ratify the Forced Labour Protocol 2014, subject to the satisfactory completion of the Parliamentary treaty examination process, by lodging an Instrument of Ratification with the ILO;
8. **Approve** the contents of the National Interest Analysis (NIA) attached to this paper at Annex one;
9. **Agree** to present the Protocol and the NIA to the House for the purposes of the Parliamentary treaty examination process, under Standing Order 397; and
10. **Note** that the Protocol will enter into force for New Zealand 12 months following the date of deposit the instrument of ratification.

Authorised for lodgement

Hon Iain Lees-Galloway  
Minister for Workplace Relations and Safety

# NATIONAL INTEREST ANALYSIS: FORCED LABOUR PROTOCOL, 2014

## Executive summary

It is proposed that New Zealand ratifies the International Labour Organisation's (ILO) Forced Labour Protocol, 2014 (the Protocol). ILO is the preeminent global labour body and source of international labour law.

The Protocol supplements and modernises the Forced Labour Convention, 1930, which New Zealand ratified in 1938. It takes into account changes seen in the context of forced labour in today's world and explicitly recognises trafficking in persons for forced labour.

Ratification of the Protocol by New Zealand would highlight both internationally and domestically the importance New Zealand places on addressing forced labour and other forms of modern slavery. Ratification also aligns with domestic initiatives already underway on people trafficking, forced labour and migrant exploitation more broadly.

No legislative or regulatory changes will be necessary to give domestic effect to the Protocol as current New Zealand laws and policy are largely consistent with its requirements. The Protocol requires the development of a national plan of action for the suppression of forced or compulsory labour, and this work is currently underway.

The New Zealand Council of Trade Unions supports the Government's decision to pursue ratification of the Protocol. BusinessNZ does not object to ratification. Public consultation was undertaken in over a four-week period in March – April 2019. All submissions supported New Zealand ratifying the Protocol. No significant issues were raised.

The Protocol entered into force on 9 November 2016. As at 1 April 2019 30 member States of the ILO have ratified it.

## **Nature and timing of proposed treaty action**

1. ILO Conventions and Protocols are legal instruments which are subject to ratification by individual countries. Upon ratification, they create binding legal obligations on the ratifying State.
2. Once Parliamentary treaty examination is complete, New Zealand can ratify the Protocol. The Protocol would enter into force in New Zealand twelve months after the date on which its ratification has been registered with the ILO.
3. The ILO Convention on Forced Labour extends to Tokelau. If it is determined that New Zealand should proceed to ratify the Protocol, the Government will consult with the Government of Tokelau on whether the Protocol should also extend to Tokelau.

## **Reasons for New Zealand ratifying the Protocol**

### ***Summary of the Protocol***

4. The ILO is the preeminent global labour body and source of international labour law. The ILO was established in 1919 by the then League of Nations and, following the formation of the United Nations (UN) in 1946, became one of the first specialist UN agencies. All but eight of the 193 UN member states are ILO members. New Zealand was a founding member of the ILO and has had a strong association with it throughout its history.
5. The ILO works to promote employment rights, set international labour standards, encourage decent employment opportunities and enhance social protection.
6. The Forced Labour Protocol (the Protocol) and the accompanying Forced Labour Recommendation (the Recommendation) were adopted by the International Labour Organization (ILO) on 11 June 2014 and came into force internationally on 9 November 2016.
7. The Protocol supplements and modernises the ILO Forced Labour Convention (No. 29), which alongside the ILO Abolition of Forced Labour Convention (No. 105), provides an international framework and jurisprudence on the elimination of forced labour. New Zealand ratified the Forced Labour Convention in 1938 and the Abolition of Forced Labour Convention in 1968.
8. The Protocol does not alter the basic definition of forced labour as contained within the Forced Labour Convention but supplements it to account for changes in both the context and forms of forced labour in today's global economy.
9. The Protocol explicitly recognises modern forms of trafficking for forced labour, including forced sexual commercial exploitation.
10. The Protocol works on three levels, requiring ratifying States to prevent forced labour, to protect those subjected to forced labour and to provide those subjected to forced labour with access to remedies. It requires States to do this through setting national policy and establishing a plan of action (PoA) on forced or compulsory labour.

## ***Advantages of New Zealand to ratifying the Protocol***

11. New Zealand should become a party to the Protocol because:
- New Zealand has ratified both ILO Conventions on Forced Labour and our law and practice are already largely consistent with the Protocol
  - Ratification is consistent with the Government's priorities for addressing temporary migrant worker exploitation
  - There is increasing domestic and international attention on these issues
  - Ratification will bolster our credentials as a responsible member of the international community

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

12. Ratification of the Protocol is recommended to keep the ILO Convention on Forced Labour (NO.29) effective in a modern context.
13. New Zealand has ratified both ILO Conventions on forced labour (No.29 and No. 105), and has various legislative and policy instruments in place to address and protect the victims of forced labour and trafficking. This framework is broadly consistent with the requirements contained within the Protocol.
14. Forced labour is addressed in the Crimes Act 1961 through provisions on trafficking in persons and dealing in slaves, which provide the most serious penalties available in New Zealand law addressing modern slavery. The penalty for dealing in slaves under section 98 of the Crimes Act is 14 years imprisonment, as is the penalty for dealing in people under the age of 18 in forced labour. The penalty for trafficking in persons is 20 years imprisonment and/or a \$500,000 maximum fine<sup>1</sup>. The Crimes Act states that the exploitation of a person for the purpose of trafficking includes slavery and practices similar to slavery, servitude, forced labour and other forced services.
15. The Immigration Act 2009 was amended in 2015 to introduce new offence provisions for employers who fail to comply with their obligations to migrants under the Holidays Act 2003, the Minimum Wage Act 1983 and the Wages Protection Act 1983. It is also an offence for an employer to take an action that would prevent a migrant employee from leaving their employment, leaving New Zealand or seeking out their entitlements under New Zealand law. The maximum penalties for these offences range from 5-7 years imprisonment and/or a fine not exceeding \$100,000.
16. Other legislation which addresses aspects of exploitation and forced labour includes the Employment Relations Act 2000, the Corrections Act 2004, the Fisheries Act 1996, the Prostitution Reform Act 2003 and the Criminal Proceeds Act 2009.

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<sup>1</sup> The "fine only" penalty allows for convictions to be imposed on corporations, which cannot be imprisoned.

*Ratification is consistent with the Government's priorities for addressing temporary migrant worker exploitation*

17. Exploitation is an issue that is increasingly affecting our workplaces and businesses. Exploitation is an assault on the rights of workers, undermines legitimate businesses (through undercutting), distorts labour markets, and negatively affects New Zealand's reputation as a fair place to work, live and do business.
18. In New Zealand, migrant workers have been found to be at a much higher risk than local workers of a range of exploitative practices, including forced labour. 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 INZ is receiving increasing reports of this type of serious offending.
19. The ratification of the Protocol would build on a range of policy and operational initiatives already underway across the immigration and employment systems which are addressing exploitation. These include the policy and operational review of temporary migrant worker exploitation and new measures introduced in 2017 to stop employers who breach immigration and employment law from employing migrant workers. This work also involves, by the end of 2019, refreshing the 2009 PoA to Prevent People Trafficking to include within its scope forced labour and other forms of modern slavery.

*Both domestic and international attention on these issues is increasing*

20. Forced labour and contemporary forms of slavery have long been recognised as serious breaches of human and labour rights, and measures to eliminate these practices have been adopted at the national and international level<sup>2</sup>. They encompass a range of exploitative practices that are the subject of widespread domestic and international attention and concern.
21. The ILO estimates there are about 21 million men, women and children in forced labour around the world – trafficked, held in bondage or working in slavery-like conditions. Other estimates place the number of slaves globally at more than twice this number. New Zealand is not untouched by these crimes and is increasingly seeing instances of these practises.
22. Whilst certain forms of forced labour have decreased over the years, new forms and practices are emerging. Increased labour mobility, including temporary migration, is a feature of today's labour markets and has exacerbated the incidence of forced labour globally.
23. Businesses and NGOs are increasingly recognising and reacting to the problem of forced labour and other contemporary forms of 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.

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<sup>2</sup> New Zealand is a party to the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political rights; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

24. Ratifying the Protocol would validate and underscore New Zealand's continued commitment to the domestic and international effort to address forced labour.

*Ratification will bolster our credentials as a responsible member of the international community*

25. 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.
26. 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.
27. Changes in both the context and forms of forced labour have driven the need for a new instrument 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.
28. The Protocol provides this. It 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.
29. The Protocol is being increasingly adopted by the global community. Since 2015, the Protocol has been ratified by 30 ILO member States, including Denmark, France, the Netherlands, Norway, Sweden and the United Kingdom.
30. New Zealand has already ratified the underlying ILO Convention on Forced Labour. Ratification of the Protocol would further highlight the importance New Zealand places on ILO core labour standards, the protection of workers, and the eradication of forced labour.
31. New Zealand has also ratified other existing international law to which this Protocol complements, in particular the The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also referred to as the Trafficking Protocol or UN TIP Protocol), which is a protocol to the United Nations Convention against Transnational Organised Crime.

### ***Disadvantages to New Zealand ratifying the Protocol***

32. No disadvantages or risks have been identified with regards to New Zealand ratifying the Protocol and meeting its obligations, as our current legislative framework and existing practices are already broadly consistent with the obligations imposed by the Protocol.

### ***Overall assessment***



33. Taking into account the anticipated advantages and disadvantages, there are strong reasons for New Zealand to ratify the Protocol.

**Legal obligations that would be imposed on New Zealand by the treaty action**

34. The key provisions (obligations) are:

- Article 1(1) of the Protocol sets out its central requirement: "In giving effect to its obligation under Convention No. 29 to suppress forced or compulsory labour, each Member must take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.
- The Article emphasises that in fulfilling this obligation, Members must take measures of prevention, protection and remedy, as well as to punish perpetrators.
- Article 2 of the Protocol sets forth an overall strategy for the prevention of forced labour, outlining measures that Members must put in place in several specific areas:
  - Awareness-raising through education and information for both the general public and employers
  - Legislation and its enforcement, including labour law and administration
  - Protection from abusive and fraudulent recruitment practices
  - Due diligence by the public and private sectors
  - Addressing root causes and factors.
- Take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support (Articles III and IV(2)).
- Ensure that victims have access to appropriate and effective remedies, irrespective of their presence or legal status (Article IV(1)).
- Ensure that measures taken under the Protocol include specific action against trafficking in persons for forced labour (Article 1(3)).
- Develop national policy and a PoA (Article I(2)).

35. Many of the Protocol's obligations continue obligations that New Zealand already existing has under the Forced Labour Convention, meaning New Zealand will be able to demonstrate compliance with many requirements of the Protocol through processes it already has in place.

36. The table below sets out the obligations of the Protcol and how New Zealand meets, or does not meet, these obligations.

<b>Effective measures to suppress forced labour</b>	
<b>Obligations</b>	<b>What this means for New Zealand</b>

<p>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”.</p>	<p>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. <u>This legislation includes:</u></p> <ul style="list-style-type: none"> <li>• Section 98AA of the <i>Crimes Act 1961</i> 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 purpose 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 <i>Crimes Act 1961</i>).</li> <li>• Provisions in the <i>Immigration Act 2009</i> (the <i>Immigration Act</i>) 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 <i>Immigration Act</i> it is also an offence for employers to exploit temporary migrants or unlawful workers and be reckless as to their immigration status.</li> <li>• The <i>Corrections Act 2004</i> (the <i>Corrections Act</i>) allows for the competitive tendering of prison management on a case-by-case basis, subject to prior Ministerial consent. Under the <i>Corrections Act</i>, private companies are able to enter into a contract with the Government to manage prisons. It is a legal requirement under the <i>Corrections Act</i> that companies managing prisons will comply with all relevant New Zealand legislation, including the <i>Corrections Act</i> and the <i>New Zealand Bill of Rights Act 1990</i>. Private companies must also comply with all relevant international obligations and standards, including international covenants and treaties, such as the <i>UN Convention Against Torture</i>, the <i>UN Standard Minimum Rules for the Treatment of Prisoners</i> and the <i>ILO Convention on Forced Labour, 1930</i> (No.29).</li> <li>• Changes made under an amendment to the <i>Fisheries Act 1996</i> (the <i>Fisheries Act</i>) 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</li> </ul>
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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:

Prevention is a main focus of the Government's National Plan of Action to Prevent People Trafficking, which provides for a consistent and coordinated response to people trafficking and includes targeted awareness-raising. The Plan of Action is being updated to include forced labour and slavery, and this process will include public consultation.

The government has an in-depth policy and operational review underway to better understand the exploitation of temporary migrant workers, including international students, in New Zealand and identify effective and enduring solutions. The review will potentially lead to regulatory, policy or operational changes to

	mitigate vulnerability and reduce migrant worker exploitation; decisions are expected in the second half of 2019. Changes resulting from the review will be implemented into 2020 and beyond.
<b>National Policy coherence, consultation and coordination</b>	
<b>Obligations</b>	<b>What this means for New Zealand</b>
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>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>
<b>Prevention</b>	
<b>Obligations</b>	<b>What this means for New Zealand</b>
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: <ul style="list-style-type: none"> <li>• <b>Awareness-raising</b> – Members must educate and inform the general public, and especially those considered particularly vulnerable to forced labour. Members must also educate and inform employers in order to prevent their becoming involved in forced labour or compulsory labour practices.</li> </ul>	<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, including a specialised phone queue to the Labour Contact Centre (a telephone service, which is available in 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</p>

<ul style="list-style-type: none"> <li>• <b>Legislation and its enforcement, including labour law and administration</b> – 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.</li> </ul> <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"> <li>• <b>Protection from abusive and fraudulent recruitment practices</b> – 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 recruitment process.</li> <li>• <b>Due diligence by both the public and private sectors</b> – The exercise of due diligence by both the State and the private sector can</li> </ul>	<p>or complaining of unlawful discrimination or harassment. It provides information about Human Rights and translated information about how to make a 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><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 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"> <li>• building risk profiles, conducting proactive investigation programmes, and taking enforcement action where breaches are found</li> <li>• informing and educating employers</li> <li>• working closely with sector bodies to build employer</li> </ul>
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<p>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.</p> <ul style="list-style-type: none"> <li>• <b>Addressing root causes and factors</b> – 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.</li> </ul>	<p>capability in respect of business and supply chain compliance, and</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> <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 include 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> <p>The <i>Employment Relations Act 2000</i>, <i>Health and Safety at Work Act 2015</i>, <i>Immigration Act 2009</i> and the <i>Crimes Act 1961</i> apply to all workers within New Zealand. New Zealand employment legislation applies to all employees, irrespective of their occupation. There is statutory provision of <u>minimum employment standards</u> 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.</p> <p><u>Undertaking efforts to ensure that labour inspection services and other services responsible for the implementation of this legislation</u></p>
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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.

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.

Supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour

Please note the information provided above.

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 *Human Rights Act 1993* will be referenced in the *Government Rules of Sourcing* which, along with good practice guidance and the principles of procurement, form the regulatory framework in which government procurement in New Zealand is conducted. Subject to Cabinet approval, 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.

Addressing the root causes and factors that heighten the risks of forced or compulsory labour

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.

The Government recognises some populations may be at greater risk of being exploited by employers in the New Zealand labour market including, recent migrants. Please see information provided above on Government initiatives to reduce the exploitation of

	<p>temporary migrant workers, including international students.</p> <p>Please also see the information provided below regarding international cooperation.</p>
<b>Protection and non-punishment of victims</b>	
<b>Obligations</b>	<b>What this means for New Zealand</b>
<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>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 safeguards to prevent the abduction, the sale of, or traffic in children.</p> <p>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.</p> <p>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.</p> <p>In particular, the Government has identified some issues around</p>

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 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.

While on the temporary visa, victims of people trafficking will:

- 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.

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:

- demonstrate that have not obstructed the police investigation during the validity of their temporary entry



	<p>visa, and</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> <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>
<b>Remedies, such as compensation and access to justice</b>	
<b>Obligations</b> <span style="float: right;"><b>What this means for New Zealand</b></span>	
<p>The Protocol requires Members ensure that all victims of forced labour, irrespective of their legal status in that country, have access to appropriate and effective remedies, such as compensation.</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 an offence of which the offender is convicted, caused a person to suffer:</p> <ul style="list-style-type: none"> <li>• loss of or damage to property; or</li> <li>• emotional harm; or</li> <li>• loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.</li> </ul> <p>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.</p> <p>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.</p> <p><u>Victims of Trafficking</u></p>



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 on victims' rights is provided.

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).

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.

Legal protection: New Zealand's *Victims of Trafficking* Immigration Policy provides a clear pathway to residence for identified victims of trafficking. Lawful status allows access to publicly funded

	<p>healthcare and social services and welfare.</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>
<b>International Cooperation</b>	
<b>Obligations</b>	<b>What this means for New Zealand</b>
<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>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.</p> <p>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 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>Migration in the Pacific</u></p> <p>New Zealand supports the <i>Pacific Immigration Development Community (PIDC) Secretariat</i> as a member of the Board and key donor. The PIDC conducts research including on people smuggling and human trafficking, and in 2014 prepared a report on <i>People Smuggling, Human Trafficking and Illegal Migration in the Pacific</i>.</p> <p>New Zealand is an active member of the <i>Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime</i> ('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.</p> <p>New Zealand currently co-chairs the <i>Working Group on the</i></p>

	<p><i>Disruption of People Smuggling and Trafficking in Persons Networks</i> 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).</p> <p>Under New Zealand's leadership, this Working Group has deepened regional cooperation to disrupt criminal networks through a flagship initiative called the <i>Joint Period of Action</i>. 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.</p>
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### **Reservations**

37. There is no provision in the Protocol allowing for parties to make a reservation upon ratification.

### **Dispute resolution**

38. There is no specific provision in the Protocol regarding dispute resolutions covering all provisions.

### **Measures which the Government needs to adopt to implement the Protocol**

#### ***A National Plan of Action to prevent people trafficking, forced labour and other forms of modern slavery***

39. Article 1 of the Protocol requires ratifying States to develop a national PoA for the suppression of forced labour. This is the main area identified where New Zealand would have to change current practice.
40. New Zealand has a current PoA to prevent people trafficking, established in 2009 to meet New Zealand's obligations as a party to the Trafficking in Persons Protocol under the United Nations Convention Against Transnational Crime. New Zealand's legal framework for people trafficking has also become more nuanced since 2009. In 2015, the Crimes Act 1961 was amended to recognise domestic trafficking. Prior to that time, the term and penalties were only applicable to cross-border trafficking.
41. However, the current PoA does not recognise the full range of issues related to trafficking, such as forced labour and slavery as contained in the Protocol. It is therefore being revised to reflect changes in legislation and developments in the nature of people trafficking in New Zealand, and for the scope to be expanded to include forced labour and other forms of

contemporary slavery. Once complete, this will bring New Zealand more in line with the requirements of the Protocol.

### ***ILO supervisory system***

42. If New Zealand ratifies the Protocol it will be required to undergo a formal review by the ILO Committee of Experts on the Application of Conventions and Recommendations (the Committee). One year following the Protocol's entry into force, New Zealand will be obliged to submit a detailed report to the Committee outlining measures it has taken to implement the Protocol. This report will indicate whether New Zealand's national laws aligns with the Protocol and what action has been taken to ensure the Protocol has had a practical impact.<sup>3</sup>
43. Once the Protocol has been ratified, the Committee may issue unpublished direct requests to the Government. These requests may seek further information on specific aspects to be kept informed of any new developments or raise technical questions with New Zealand's implementation of the Protocol. The Committee will give New Zealand time to respond to these issues before any comments are published in its annual report and presented at the International Labour Conference.
44. Officials have consulted with the ILO regarding the implementation of the Protocol and it has offered initial comments on the requirements of the Protocol against New Zealand laws, policy and practice. These comments indicate that New Zealand broadly complies already and therefore the likelihood of further substantial comments by the Committee is minimal.

### **Economic, social, cultural and environmental costs and effects of the treaty action**

45. No direct economic, social, cultural and environmental impacts have been identified related to the proposed treaty action.

### **The costs to New Zealand of compliance with the Protocol**

46. The Protocol will not impose new costs as New Zealand's current legislative framework and existing practices are already broadly consistent with the obligations of ratifying the Protocol.
47. No additional regulatory costs would be imposed if New Zealand ratifies the Protocol.

### **Consultation**

48. The following government agencies have been consulted in the preparation of this NIA: the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry for Women, the Department of Corrections, the Treasury, the New Zealand Police and the Department of the Prime Minister and Cabinet.

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<sup>3</sup> The Committee of Experts on the Application of Conventions and Recommendations is composed of 20 eminent jurists appointed by the Governing Body of the ILO for three-year terms. The Experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

### **Consultation with worker and employer organisations**

49. As required by the ILO, officials have undertaken detailed engagement and consultation with Business New Zealand and the New Zealand Council of Trade Unions, including sharing the analysis of the application of New Zealand law, and of potential changes and impacts.
50. The New Zealand Council of Trade Unions supports New Zealand ratifying the Protocol. BusinessNZ does not object New Zealand ratifying the Protocol.

### **Wider public consultation**

51. A consultation document *Have your say – Should New Zealand ratify the 2014 Forced Labour Protocol?* was released in March 2019. Interested parties were invited to make a submission. Consultation took place over a four week period from 12 March to 14 April 2019.
52. An electronic copy was made publically available on the Ministry of Business, Innovation and Employment's website.
53. Five submissions were received. All submissions agreed that New Zealand legislation broadly aligns with the Protocol, and supported ratification of the Protocol and no significant impediments or concerns were raised.
54. No specific Māori interests were identified during the consultation.

### **Amendments to the Protocol**

55. Amendments to the Protocol may be adopted by the annual International Labour Conference of the ILO, in terms of the framework of Article 19 of the Constitution of the ILO and its rules and procedures for the adoption of Conventions (Article XIV).

### **Withdrawal or denunciation provision in the Protocol (Article IX)**

56. The Protocol may be denounced by any Member to the Protocol after the expiration of ten years from the date on which the Protocol enters into force. Any denunciation takes effect one year after the date on which the instrument of denunciation is registered (Article IX).

### **Adequacy statement**

57. The Ministry of Business, Innovation and Employment has undertaken analysis to confirm that:
  - the advantages of ratification outweigh the (minimal) costs, impacts and risks associated with ratifying the Protocol.
  - the National Interest Analysis requirements under Standing Order 398 have been met.

- the analysis outlined in this report is based upon analysis of a comparison of the requirements of the Protocol compared to New Zealand law and practice undertaken by the the Ministry of Business, Innovation, and Employment.
- this analysis has been tested and supported through consultation with the public and the International Labour Organisation.

58. We do not consider any further analysis is required before policy decisions can be taken.

Jessica Russell

Senior Policy Adviser

**Ministry of Business, Innovation and Employment**

*Signature*

*Date*

PROACTIVELY RELEASED