



COVERSHEET

Minister	Hon Iain Lees-Galloway	Portfolio	Immigration and Workplace Relations and Safety
Title of Cabinet paper	Temporary migrant worker exploitation review – Approval to consult	Date to be published	29 October 2019

List of documents that have been proactively released

Date	Title	Author
16 September 2019	Temporary migrant worker exploitation review – Approval to consult	<i>Office of Hon Iain Lees-Galloway</i>
16 September 2019	Temporary Migrant Worker Exploitation Review: Release of Consultation Document	<i>Cabinet Office</i>

Information redacted

YES

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

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

In confidence

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

Chair, Cabinet Economic Development Committee

Temporary migrant worker exploitation review – Approval to consult

Proposal

1. This paper updates Cabinet on work to reduce temporary migrant worker exploitation and seeks Cabinet agreement to publicly consult on proposals for legislative, regulatory and policy change.

Executive Summary

2. The Labour-New Zealand First coalition agreement contains a commitment to “take serious action on migrant exploitation, particularly of international students.” In September 2018, Cabinet agreed to direct officials to undertake a policy and operational review towards achieving this goal [CAB-18-MIN-0434 refers].
3. The review is important because exploitation has serious, negative outcomes for migrant workers, the labour force more generally, businesses, and New Zealand as a whole. There are an estimated 450,000 temporary migrant workers in New Zealand at any one time. The number of these workers at risk of, or being exploited, is difficult to determine due to the hidden nature of exploitation. However, it appears to be a significant issue and one that Government must address.
4. At my direction, officials have undertaken significant work on the review, including independent research and targeted stakeholder engagement across Government and through an external Consultation Group. I now seek Cabinet approval to release a public consultation document (appended at **Appendix One**) to consult on wide-ranging proposals for change. The proposals are grouped under the following work streams, with a summary provided at **Appendix Two**:
 - **Prevent:** Proposals to reduce risks around business models and practices that might enable exploitation.
 - **Protect:** Proposals to improve the pathways for reporting exploitation and assist migrant workers in leaving exploitative employers.
 - **Enforce:** Proposals to strengthen the offence and penalty regime to deter and penalise non-compliant employers.
5. I plan to undertake wide consultation with migrants and their representatives, employers and businesses, and other stakeholders over a two-month period from early October 2019. An engagement plan has been developed to support this. The consultation process, and further work, will enable me to report back to Cabinet on

this phase of the review in the first half of 2020 with proposed options for change.

Confidential advice to Government

6. I also plan to direct Employment Services (including the Labour Inspectorate) and Immigration New Zealand to develop a joint compliance and enforcement strategy on migrant exploitation and will report back to Cabinet on this. The Ministry of Business, Innovation and Employment (MBIE) is also working to identify and address any barriers to cross agency collaboration and action. This work should inform and enable future enhancements to the whole-of-Government approach to reducing worker exploitation.
7. The proposals contained in this paper are complementary to the advice considered by Cabinet to improve the employer-assisted temporary work visa system [CAB-19-MIN-0439 refers]. The policy priorities for the immigration portfolio are summarised in **Appendix Three**. The proposals are also complementary to a range of other work already being done and being planned across MBIE and Government. For example, alongside the Minister of Education, I am considering further work on international education settings.

Previous Cabinet direction and background to the review

8. The Labour-New Zealand First coalition agreement contains a commitment to “take serious action on migrant exploitation, particularly of international students.” In September 2018, Cabinet agreed to direct officials to undertake a policy and operational review towards achieving this goal [CAB-18-MIN-0434 refers].
9. Cabinet agreed that the review should focus on migrants in an employment context and span four regulatory systems – employment relations and standards, immigration, health and safety at work, and international education. It directed officials to, in summary:
 - learn about the nature and extent of exploitation of temporary migrant workers
 - identify the gaps and opportunities to reduce exploitation
 - make recommendations on potential regulatory, policy or operational changes.
10. Based on Cabinet’s agreement and direction, and the overall goal, a set of work streams were established. These are interconnected; achieving success under one work stream should have a positive impact on success in another. The work streams are to:
 - **Prevent** the occurrence of workplace (and other) conditions that might enable temporary migrant worker exploitation.
 - **Protect** temporary migrant workers in New Zealand and enable them to leave exploitative employment.
 - **Enforce** immigration and employment law to deter employer non-compliance through a fit-for-purpose offence and penalty regime.

Exploitation has serious, negative outcomes for migrants, businesses, New Zealanders and our international reputation

11. There are an estimated 450,000 temporary migrant workers in New Zealand. The number of these workers at risk of, or being exploited, is difficult to determine due to the hidden nature of exploitation. However, reports and research indicate that it appears to be a significant issue and one that Government must address.
12. Reducing migrant exploitation is a priority for the Ministry of Business, Innovation and Employment's (MBIE's) Employment Services (which includes the Labour Inspectorate). Between 2013/14 and 2017/18, the Labour Inspectorate completed 2,558 investigations, with 1,461 involving a migrant worker (57 per cent). The Labour Inspectorate reports that these cases are becoming more complex.
13. Immigration New Zealand (INZ) received \$31 million over four years in operating funding in Budget 2019 for additional resources for immigration education, intelligence, compliance and investigation functions which will also help reduce exploitation. This funding supports a targeted compliance strategy in priority sectors, aimed at better detecting and punishing unlawful behaviour and incentivising industry self-regulation, to increase compliant behaviour by employers.
14. Reducing exploitation is a priority as it has serious, negative outcomes for migrant workers, the labour force more generally, businesses, and New Zealand as a whole. It affects our economy and international reputation. The review has identified that exploited temporary migrant workers suffer both physical and psychological harm, and that harm also affects their families. For example, some workers experienced controlling and coercive behaviours, such as surveillance while working, control of their accommodation and movement, intimidation, and threats related to their immigration status. This compounds the financial losses suffered.
15. Independent research commissioned by MBIE identified several kinds of exploitation that temporary migrant workers may be subject to. Key types of exploitation identified in the research include the under-payment or non-payment of wages; non-compliance by employers with employment agreements and other documentation (such as by inflating job descriptions and wages for immigration purposes); the non-payment of Pay as You Earn (PAYE) taxes; denial of entitlement to annual holidays; and the non-payment of holiday pay.
16. Several of the migrant workers participating in the independent research had been required to pay their employer to work for them. This was in return for the promise of employment that would qualify them for an essential skills or residence visa. The research found that exploitation seemed to occur most frequently with employer-assisted temporary work visas and student visas, including both essential skills and post-study work visas. This was prior to the November 2018 changes which replaced the employer-assisted post-study work visa with a post-study open work visa.
17. Those on employer-assisted temporary work visas are vulnerable due to their dependency on their employer to maintain their visa status. For those on student visas, exploitation can begin in their home country where they are encouraged to come to New Zealand with promises of jobs leading to permanent residence. In practice, many then find it difficult to obtain a job and become vulnerable to

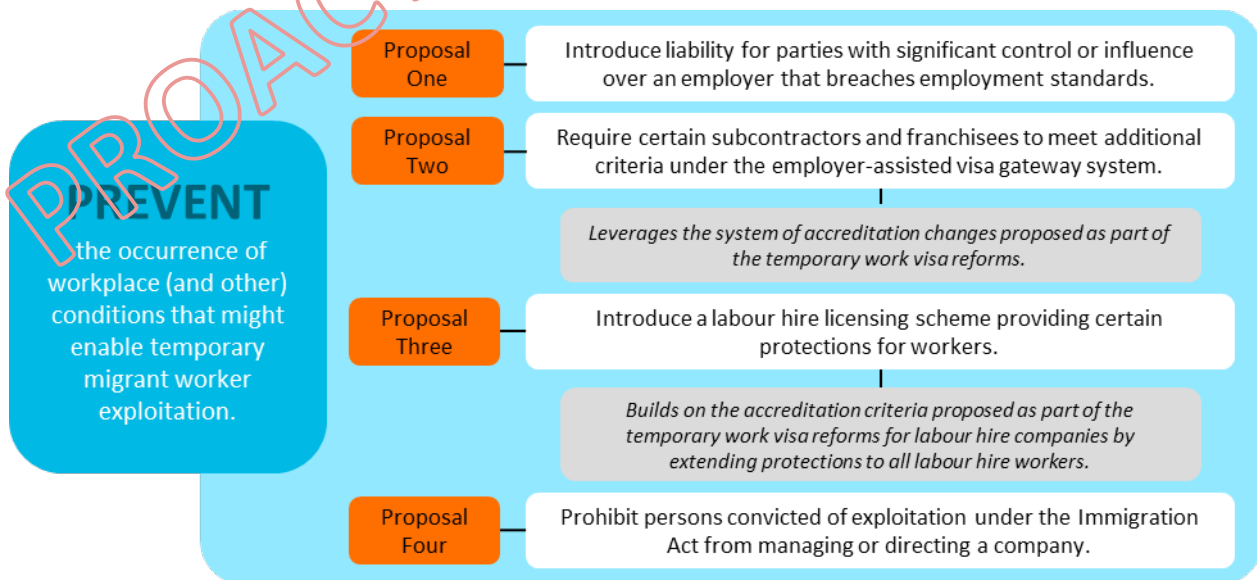
exploitation. This may be exacerbated by debts they have incurred to travel to and study in New Zealand.

18. Research participants reported that their experiences of exploitative working practices damaged their view of work and life in New Zealand. Awareness of exploitation extends beyond the temporary migrant worker community and also damages New Zealanders' views of working in New Zealand. In addition, exploitative work practices have an impact on our businesses and the economy. Good employers are undercut and disadvantaged by exploitative employers using illegal practices to get ahead.

Proposals to address the issues that contribute to worker exploitation

19. At my direction, officials have undertaken significant work on the review, including independent research and targeted stakeholder engagement across Government and through an external Consultation Group. I am now seeking Cabinet's agreement to publicly consult on the wide-ranging proposals set out below and detailed in the draft consultation document which represent the first phase of work.
20. The proposals in the "prevent" work stream are at an early stage. The consultation process will inform my future advice to Cabinet as to whether the proposals should be progressed. Some proposals, particularly in the "protect" and "enforce" work streams, are well developed and the consultation process will inform work on their detailed design and cost to enable me to seek Cabinet's agreement to implement them in the future.

Prevent: Reducing risks around business models and practices



21. **The problem:** Businesses with multiple contracting layers may facilitate or hide exploitation, particularly when they drive cost pressures down their supply chain. In these circumstances, liability for employment standards and conditions generally rest only with the direct employer, regardless of the degree to which their business is influenced or controlled by others in the chain.

22. Migrant workers are particularly susceptible to harm in layered supply chains. Some company settings also contribute to the risk of exploitation, particularly the risk of individuals creating companies to avoid personal liability and penalties. I plan to consult on four proposals to reduce the circumstances in which exploitation can occur through business models and practices.
23. Proposal One: I propose to extend the accessory liability provisions in the *Employment Relations Act 2000* (the Employment Relations Act) to enable parties with significant control or influence over an employer that breaches employment standards to be held to account. I propose testing this approach based on existing Australian legislation. This would require that the party knew, or could reasonably be expected to have known, that the breach would occur, or that a breach of the same or a similar character was likely to occur, and that they did not take reasonable steps to prevent it.¹
24. Proposal One would add a further incentive for businesses and employers to embed good practice in their supply chain and:

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- enhance the work being done by the Ministers for Small Business and of Commerce and Consumer Affairs to address unfair commercial practices. In July 2019, Cabinet agreed to introduce a new prohibition against unconscionable conduct in connection with the supply of goods or services, and extend existing consumer protections against unfair contract terms to business contracts valued below \$250,000 per year [CAB-19-MIN-0362 refers]. These protections will apply to subcontracting and franchisor-franchisee relationships, and reduce the risk of power imbalances driving a 'race to the bottom' at the expense of employees.
- complement the use of government procurement to improve conditions for workers and future-proof the ability of New Zealand businesses to trade. This was one of four priority outcomes agreed by Cabinet in October 2018 [CAB-18-MIN-0516.01 refers]. From 1 October 2019, agencies will need to ensure that their contracts include requirements that suppliers, and their domestic supply chains, comply with employment standards and health and safety requirements.²

25. Proposal Two: I propose to consult on requiring certain subcontractors and franchisees to meet additional accreditation standards under the proposed new employer-assisted visa gateway model (or through another mechanism if necessary). This would mitigate the risk of exploitation being the outcome of contracting layers driving cost pressures down. I wish to seek stakeholder views on whether those

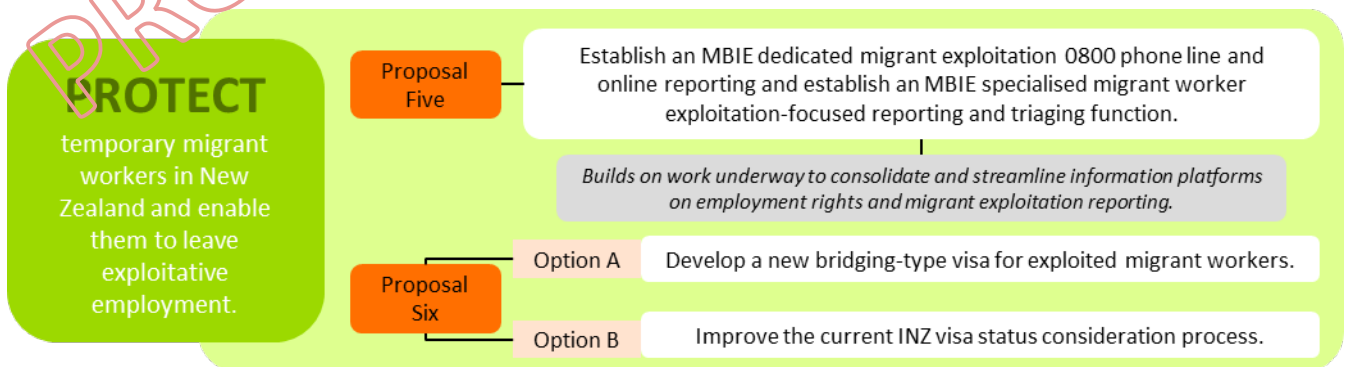
¹ This proposal is modelled on Australian provisions introduced through the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017.

² Implementing this priority outcome is currently mandatory for designated contracts. For employment standards this covers cleaning, security services and forestry contracts, and for health and safety it applies to all contracts but with focused support to lift performance in high risk areas, starting with forestry and construction. Employment standards and health and safety requirements are required by law; this focus adds a level of assurance that these legal requirements are being met in government contracts.

businesses should be required to meet higher accreditation standards and on the criteria for any additional standards.

26. Confidential advice to Government
 The visa gateway model will place additional accreditation requirements on labour hire firms seeking to employ sponsored temporary migrant workers, but I am interested in exploring any added value of such a scheme outside of this context.
27. Key questions for consultation on Proposal Three include whether there is demand for a licensing scheme across stakeholder groups. Consultation will also seek feedback on whether the value of a scheme (including benefits to migrants on open work visas who are not covered by accreditation, such as working holiday and post-study work visa holders) would outweigh the administration costs.
28. Proposal Four: I propose to consult on expanding the provisions in the *Companies Act 1993* that enable a person to be prohibited (or banned) from being a company director, or taking part in the management of a company, where they have been convicted of exploitation offences under section 351 of the *Immigration Act 2009*. This could increase deterrents against exploitation and mitigate some risk of people liquidating companies to avoid enforcement of these offences.
29. Proposal Four would supplement existing protections which currently allow persons (including individuals such as company directors) “involved in” a breach of employment standards to be held liable as accessories, and banning orders that can stop people from being employers, officers of employers and being involved in the hiring of employees for up to 10 years. These were introduced by the former Government and implemented in 2016.

Protect: Improving the pathways for migrants to leave exploitative employment

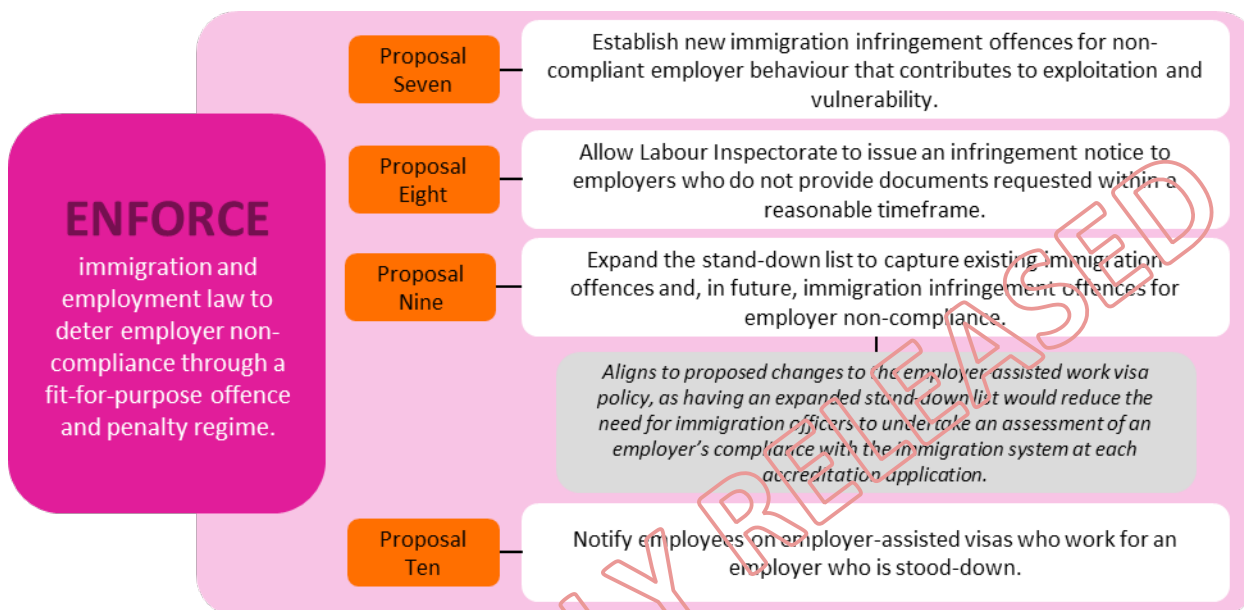


30. **The problem:** The review has identified that migrant workers have low awareness of their employment rights and how to report exploitation. Migrant workers also have concerns about the negative implications of reporting, such as possible action by INZ affecting their visa status. There is inconsistency and delays in handling migrant worker exploitation complaints and insufficient data collected to enable monitoring of reported exploitation.

31. Proposal Five: Confidential advice to Government, I propose to develop a dedicated 0800 number and online reporting form, and a specialised exploitation-focused reporting and triaging function. I intend to consult on the design features of these functions, so that stakeholder feedback informs decisions associated with their implementation. This will mean that there is a one-stop-shop for migrants (and others) to report exploitation, and a trained and dedicated team to take the reports and ensure that they are directed into the most appropriate investigatory stream. This will build on work underway to review and update the information and education provided to temporary migrant workers and employers on New Zealand's employment standards and employment rights, and about exploitation.
32. Proposal Six: I also propose to consult on two options for supporting temporary migrant workers to report (and consequently leave) exploitative employment without being concerned about the impact on their visa status. Those options are:
- Option A: developing a new bridging-type visa specifically for temporary migrant workers who have reported exploitation as a transparent mechanism through which they can leave an exploitative employer; or
 - Option B: making changes to the current INZ process for when a migrant worker reports exploitation, to allow Immigration Officers, on a case-by-case basis, to issue a new visa to a migrant worker reporting exploitation.
33. Both options require a balance between providing an accessible pathway for migrants to report and leave exploitative employment and preserving the integrity of the immigration system. The independent research has shown that almost all migrants who are exploited have been complicit, to some degree, in their own exploitation.
34. Under Option A, the issue of complicity would be explicitly considered in the decision-making process; either upon an initial decision to grant a bridging-type visa, or as part of a decision on any further visa application. Under Option B, work would be undertaken to improve Immigration Officers' current case-by-case basis consideration of complicity. They are currently guided by an "Internal Administration Circular" which offers them advice (but is not a policy).
35. If awareness of exploitation increases, along with awareness of the pathway to report exploitation and address visa status issues, more temporary migrant workers are likely to make reports. As a result, either option may require additional funding.
36. While neither option A or B is intended to provide a pathway to residence, both options create an incentive for temporary migrant workers to make a report of exploitation to potentially extend their stay in New Zealand. This incentive may, in part, be mitigated by changes I propose for employer-assisted temporary work visas which will reduce the numerous pathways for these visas into one enhanced framework that includes up-front employer, job and migrant checks to better manage risk. It will also rebalance the incentives and support for businesses to employ more permanent residents and New Zealanders.
37. At this stage, I do not intend to consult on introducing new pathways through which migrant workers unlawfully in New Zealand can address their visa-status issues.

Under the status quo, these workers can request intervention and the granting of a visa through the established process.

Enforce: Improving the range of offences and penalties to deter exploitation



38. **The problem:** Some employers are not deterred from breaching employment standards or immigration obligations because they perceive a low risk of being penalised even when breaches are identified. Maintenance of the law

Increased resourcing will help increase the number of prosecutions, but the enforcement toolkit would also benefit from additional tools to respond quickly, efficiently and proportionately to less severe breaches.

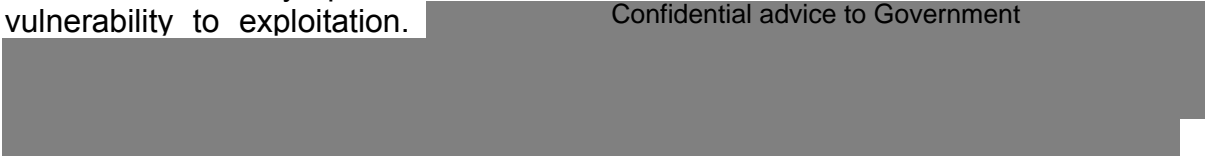

39. **Proposal Seven:** To enhance the enforcement toolkit to respond to non-compliant employers, I propose to consult on expanding the current immigration infringement regime to incorporate non-compliant employer behaviour that is linked to, or increases the risk of, migrant exploitation. Examples of that behaviour could include:

- failing to provide information or documents when requested by an Immigration Officer (which may impede an investigation into migrant exploitation)
- employing workers who are not entitled to work in New Zealand, or in breach of their visa conditions (which puts workers in a vulnerable position)
- paying less than the salary listed in a visa application (which puts workers in a vulnerable position and may indicate the application included false information).

40. Infringement offences and fees under Proposal Seven would be for lower-level breaches. They would be an additional tool where enforcement action should be taken against an employer but where prosecution may not be proportionate, timely or cost effective. Officials will work with the Ministry of Justice to prepare advice on the specific offences and fees after feedback from the public consultation.

41. It is my intention to link the written warnings already used by INZ with the proposed infringement regime. For example, a warning letter could be used where there are mitigating circumstances that suggest an infringement should not be the first enforcement action taken.
42. Proposal Eight: I also propose to consult on closing a gap in the Employment Relations Act to address the current delays in employers providing information that is legislatively required. This could be done by introducing an ability to specify a timeframe for the provision of employment documentation (such as wage and time records) to the Labour Inspectorate, with a corresponding infringement fee for non-compliance.
43. Combined, the use of warning letters and new infringements will complement and strengthen the proposal under the employer-assisted temporary work visa package of reforms Cabinet recently approved [CAB-19-MIN-0439 refers]. These reforms require all employers to be accredited and cannot have a history of non-compliance with either the employment or immigration systems. There is also a link between the employer-assisted visa reforms and:
- Proposal Nine: to expand the list of offences that can result in an employer being “stood-down” and prevented (through immigration policy) from supporting migrant workers’ visa applications; and
 - Proposal Ten: to put in place provisions to inform affected migrant workers of the stand-down list so they are aware of the implications for any further visa application.
44. The stand-down list could be expanded to include current immigration offences and the new infringements (along with the existing employment offences already captured). There is a strong rationale for preventing employers who breach either their employment or immigration obligations from employing temporary migrant workers. An expanded stand-down list would also reduce the need for immigration officers to undertake an assessment of an employer’s compliance at each application and clearly indicate to employers (and migrants) that they are ineligible to employ migrants under the employer-assisted policy. I also propose to explore whether health and safety infractions should also result in a stand-down.
45. I propose that INZ would inform impacted employees (those on employer-assisted temporary work visas linked to that employer) of the stand-down. This would ensure the migrant employees understand the impact of the stand-down for them and have time to consider their options for seeking alternative employment where necessary.
46. I also support MBIE enhancing its capacity and capability to refer exploitation cases to the Police for asset recovery if the assets of an employer were acquired illegally. This would prevent employers from using those assets to resume or relocate their business, and then potentially exploit other temporary migrant workers in future. Asset recovery is a lower bar than that required for prosecution, and would provide another effective tool in the enforcement toolkit. This can be done without legislative or regulatory change
- Confidential advice to Government

Work already being undertaken and proposed for further phases of the review

47. The proposals contained in this paper are complementary to the advice considered by Cabinet to improve the employer-assisted temporary work visa system [CAB-19-MIN-0439 refers]. The policy priorities for the immigration portfolio are summarised in **Appendix three**. The proposals are also complementary to a range of other work already being done and being planned across MBIE and Government.
48. As noted above, MBIE is improving information on employment rights and reporting exploitation across its existing platforms. It will then work to streamline information and education platforms between agencies (such as with international education agencies and WorkSafe). Along with this consolidation effort, MBIE is developing ways to assess whether migrant workers and employers are aware of these information and education products and understand their rights and responsibilities.
49. Outlined below is a range of other work underway across MBIE and the Government that will have a positive impact and support the range of proposals to reduce migrant exploitation. This work includes:
- an INZ pilot project to standardise assessment, referral and recording of allegations received (that will work alongside the proposed new approach to triaging reports of exploitation)
 - work to strengthen immigration risk and verification functions, particularly after a visa is granted, to ensure that risk mitigation controls are producing the desired effect and to identify any adverse outcomes that may occur
 - the roll-out of a case management tool (TIKA) for INZ compliance staff, which is already used by the Labour Inspectorate and will strengthen MBIE's ability to undertake joint investigations and provide opportunities to improve our data collection and reporting.
50. To ensure strong co-ordination and efficient use of resources across the two regulators, I also plan to direct Employment Services and INZ to develop a new joint compliance and enforcement strategy on migrant exploitation. I will report back to Cabinet on this work. I also note that MBIE is working to identify and address any barriers to cross-agency collaboration and action to inform and enable future enhancements to the whole-of-Government approach to reducing worker exploitation.
51. The Minister of Education and I are monitoring international education and student matters to identify potential enhancements to reduce international student vulnerability to exploitation. Confidential advice to Government

52. Confidential advice to Government


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Confidential advice to Government

Financial Implications

53. I expect that delivering the proposals in the review will have financial implications. The preliminary analysis for the costings for the review has been undertaken focussed primarily on the resource implications for Employment Services and INZ. It has identified the need to take an end-to-end approach including:
- information and education needs of migrants even before an application for a visa is made, and for employers in understanding their employment and immigration obligations where they hire migrants
 - visa decision-making, and the monitoring of employers and migrant workers, including ensuring that employment and immigration obligations are met
 - reporting and referral of a report of exploitation, including how MBIE supports reporting for this vulnerable cohort, and the response arising from a report
 - enabling an exploited worker to leave an exploitative employer, considering their needs and the need to ensure the integrity of the immigration system
 - the approach to investigating and potentially penalising an employer and how the various enforcement tools might be best used and by who
 - how MBIE builds capacity and capability to increase referrals for asset recovery to the Police (as this requires specialist skills and takes time).
54. Further work will help us to better understand the benefits of the proposals, which may provide a greater range of tools to prevent exploitation.

Confidential advice to Government

Confidential advice to Government

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Confidential advice to Government

[REDACTED]	Confidential advice to Government	[REDACTED]
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Consultation

57. My officials have consulted affected internal teams across MBIE, including the Employment Services, Immigration New Zealand, Evidence and Insights, the MBIE Corporate Governance and Intellectual Property Policy teams. They have consulted The Treasury, Inland Revenue, the Ministries of Foreign Affairs, Education, Justice, Social Development and Primary Industries, the New Zealand Police, WorkSafe New Zealand, the Ministries for Women and Pacific People, and the Office of Ethnic Communities. The Department of the Prime Minister and Cabinet has been engaged.

Legislative Implications

58. A number of the proposals in the “**enforce**” work stream will have legislative or regulatory implications. These are the proposals for new offences and penalties. I will undertake the appropriate steps to seek a slot on the Legislation Programme and a priority category for any legislative change I may recommend to Cabinet in the future.
59. The proposals in the “**prevent**” work stream – if progressed in the future – may also have legislative implications. This includes the proposals to change the rules and requirements for company directors and any decision to progress a labour hire licensing scheme. I will provide further advice to Cabinet on this as necessary.

Impact Analysis

60. There are a range of proposals in this paper which, if they were to be recommended to Cabinet, would require regulatory impact analysis. The attached consultation document functions as an interim Regulatory Impact Assessment (RIA). The MBIE RIA panel has reviewed the consultation document and confirm that it is likely to lead to effective consultation and support the delivery of RIA to inform future decisions.

Human Rights

61. The proposals will have a positive impact on the maintenance of human rights and labour rights by promoting the fair and consistent treatment of all workers in New Zealand, and by addressing deficits in the exercise of those rights by migrant workers, due to exploitation.

62. Measures to better identify and sanction migrant exploitation will contribute to the more effective implementation of the rights and freedoms contained in International Labour Organization (ILO) Conventions and human rights treaties to which New Zealand is a party. For example, if migrant workers are not subject to exploitative practices and restraints, they will be better able to exercise their rights of freedom of association and representation; to receive equal and non-discriminatory treatment, including equal pay; and to not be subject to forced labour. The mechanisms proposed would also enable better enforcement of rights, more effectively implementing existing ILO commitments in the areas of labour inspection, employment policy and equal treatment for migrants.

Gender Implications

63. The Ministry for Women supports the proposals in this Cabinet paper and notes that women can face additional barriers to reporting exploitation for a variety of reasons, including the power dynamics that may exist within their employment relationship. They recommend that the consultation process explore the issues confronted by women in reporting exploitation and leaving exploitative employment.

Disability Implications

64. The proposals do not have implications for those with disabilities except to the extent that people with disabilities are also vulnerable to exploitation and may benefit from some of the proposals being considered by the review.

Publicity

65. I propose to publicly consult on proposals to which Cabinet agree using the attached consultation document through October and November 2019. I recommend that you agree that I can make minor and technical changes to the proposals and the consultation document.
66. The proposals in the consultation document may impact a wide range of stakeholders. It is my intention that the document is widely distributed to migrants and their representatives, to other community stakeholders and throughout the business community. An engagement plan has been developed. A two month consultation process is planned, meaning I will report back to Cabinet in the first half of 2020 to progress options for change.
67. MBIE officials have developed a range of engagement materials to support the consultation process and I intend to reference the review, where relevant, in my future public engagements. I also intend to publish the independent research. I expect media interest in the consultation document, research and the progress of the review.
68. As part of the consultation process, I anticipate some feedback on the costs to migrant workers associated with the proposals. This could include the costs associated with them leaving exploitative employment, especially if they struggle to find a new job and a better employer. This may result in migrant workers choosing to leave New Zealand but it also risks placing them in a new, vulnerable situation in New Zealand (and this will likely be highlighted by stakeholders).

69. I also expect to receive feedback on the potential costs on compliant businesses. The costs where exploitative employers are prevented from engaging migrant workers and penalised for their illegal actions are of a lesser concern. Further work is necessary to understand the potential impact of non-bona fide reports of exploitation and the cost for businesses that already have good employment standards and practices, and the mitigations to those costs. The benefits of a proposal will have to be weighed against any costs to compliant businesses that cannot be mitigated.

Proactive Release

70. I propose to release this Cabinet paper proactively. This is consistent with the approach taken in the review to date.

Recommendations

71. I **recommend** that the Committee:

1. **note** that Labour-New Zealand First coalition agreement contains a commitment to “take serious action on migrant exploitation, particularly of international students”
2. **note** that in September 2018, Cabinet directed officials to the scope of this policy and operational review [CAB-18-MIN-0434 refers]
3. **note** that the goal of the Temporary Worker Exploitation review is to reduce the exploitation of temporary migrant workers, including international students
4. **agree** to publicly consult on the following proposals to reduce exploitation:

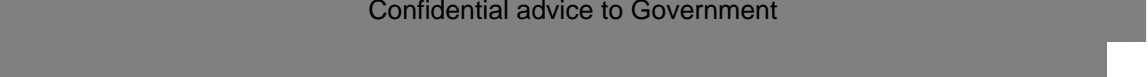
*Under the **PREVENT** work stream*

- 4.1. Proposal One: Introducing liability for parties with significant control or influence over an employer that breaches employment standards
- 4.2. Proposal Two: Requiring specified subcontractors and franchisees to meet additional accreditation standards under the Immigration New Zealand employer-assisted visa gateway model
- 4.3. Proposal Three: Introducing a labour hire licensing scheme, providing certain protections for labour hire workers
- 4.4. Proposal Four: Preventing persons convicted of exploitation offences under the Immigration Act 2009 from managing or directing a company.

*Under the **PROTECT** work stream*

- 4.5. Proposal Five: How the Ministry of Business, Innovation and Employment might establish an 0800 number and online reporting form for temporary migrant workers (and others) to report exploitation, and a specialised worker exploitation-focused reporting and triaging function
- 4.6. Proposal Six: That the Ministry of Business, Innovation and Employment either:
 - Option A: developing a new bridging-type visa specifically for temporary migrant workers who have reported exploitation as a transparent mechanism through which they can leave an exploitative employer; or
 - Option B: making changes to the current Immigration New Zealand process for when a migrant worker reports exploitation, to allow Immigration Officers, on a case-by-case basis, to issue a new visa to a migrant worker reporting exploitation

*Under the **ENFORCE** work stream*

- 4.7. Proposal Seven: Establishing new infringement offences and fees for non-compliant employer behaviour that contributes to exploitation and vulnerability
 - 4.8. Proposal Eight: Providing an ability to issue an infringement offence and fee against employers who do not provide employment documents requested within a reasonable timeframe
 - 4.9. Proposal Nine: Expanding the Immigration New Zealand employer “stand-down” list to capture existing immigration offences, and in future, immigration infringement offences
 - 4.10. Proposal Ten: Introducing a process for notifying employees on employer-assisted temporary work visas if their employer is on the stand-down list and cannot support visa applications
5. **note** that I intend to consult using the attached draft consultation document (see Appendix One)
 6. **agree** that I may make minor and technical changes to the proposals and the draft consultation document
 7. **note** that I intend that the consultation document is widely distributed to migrants and their representatives, other community stakeholders and the business community
 8.  Confidential advice to Government

9. [Redacted] Confidential advice to Government
10. **endorse** my decision to direct the Employment Services and Immigration New Zealand in the Ministry of Business, Innovation and Employment to develop a new compliance and enforcement strategy to take action on migrant exploitation
11. **note** that I intend to report back to Cabinet in the first half of 2020:
- 11.1. to seek in-principle agreement to the proposals to reduce temporary migrant worker exploitation, [Redacted] Confidential advice to Government
- 11.2. on the compliance and enforcement strategy.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety
Minister of Immigration

PROACTIVELY RELEASED

Appendix Two: Overview of proposals

THE PROBLEM

Migrant exploitation leads to serious negative outcomes for...

Migrants

Exploited migrant workers suffer physical, psychological, and financial harm. This harm extends to their families both within New Zealand and in their country of origin.

Businesses

Compliant employers that promote fair and productive employment relationships are undercut by exploitative employers. This may render the business unsustainable.

New Zealanders

Exploitation facilitates crimes that affect the wider community, such as fraud and money laundering. Exploitation also puts pressure on tax and healthcare systems.

Our international reputation

Migrant exploitation damages our international reputation as a non-corrupt, safe place to work and live.

THE GOAL

The overall goal for the Temporary Migrant Workers Exploitation review (the review) is to reduce the exploitation of temporary migrant workers, including international students.

PROPOSED SOLUTIONS

PREVENT

the occurrence of workplace (and other) conditions that might enable temporary migrant worker exploitation.

PROTECT

temporary migrant workers in New Zealand and enable them to leave exploitative employment.

ENFORCE

immigration and employment law to deter employer non-compliance through a fit-for-purpose offence and penalty regime.

Increased capacity and capability to investigate and respond to migrant exploitation.

Proposal One

Introduce liability for parties with significant control or influence over an employer that breaches employment standards

Proposal Two

Require certain subcontractors and franchisees to meet additional criteria under the currently proposed employer-assisted visa gateway system.

Leverages the system of accreditation changes proposed as part of the temporary work visa reforms

Proposal Three

Introduce a labour hire licensing scheme providing certain protections for workers.

Builds on the accreditation criteria proposed as part of the temporary work visa reforms for labour hire companies by extending protections to all labour hire workers.

Proposal Four

Prohibit persons convicted of exploitation under the Immigration Act from managing or directing a company.

Proposal Five

Establish an MBE dedicated migrant exploitation 0800 phone line and online reporting, and establish an MBE specialised migrant worker exploitation-focused reporting and triaging function.

Builds on work underway to consolidate and streamline information platforms on employment rights and migrant exploitation reporting.

Option A

Develop a bridging-type visa for exploited migrant workers.

Proposal Six

Improve the current INZ visa status consideration process.

Option B

Proposal Seven

Establish new immigration infringement offences for non-compliant employer behaviour that contributes to exploitation and vulnerability.

Proposal Eight

Allow Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe.

Proposal Nine

Expand the stand-down list to capture existing immigration offences and, in future, immigration infringement offences for employer non-compliance.

Aligns to proposed changes to the employer-assisted work visa policy, as having an expanded stand-down list would reduce the need for immigration officers to undertake an assessment of an employer's compliance with the immigration system at each accreditation application.

Proposal Ten

Notify those employees on employer-assisted visas who work for an employer who is stood-down.

Confidential advice to Government

Confidential advice to Government

Confidential advice to Government

OVERARCHING BENEFIT

The overarching benefit to arise from the review will be that all people in New Zealand can be in safe and fulfilling work, and that all businesses can operate with confidence on a level playing field.

Summary of 2019 Progress in the Immigration Portfolio

The overview covers the policy programme in Immigration. It does not include important operational changes such as increased compliance, enforcement capacity received through the Budget, and work on improving visa processing times

The Government's vision is to improve the wellbeing and living standards of New Zealanders, including through productive, sustainable and inclusive economic growth. The immigration system supports this vision by...

	Improving New Zealand's labour market outcomes including by filling skill and labour shortages and raising overall skill levels			Encouraging investment and supporting innovation and exports		Supporting foreign relations objectives and New Zealand's international and humanitarian commitments		Supporting social inclusion, including through family reunification		Protecting the security of New Zealanders and the border	
Priorities	Labour market and economy			Migrant exploitation		International	Refugee & Humanitarian		System		
System changes	New Zealand Residence Programme	Parent Category	Entrepreneur and business investment	Employer-accredited temp work and regional planning	Migrant worker exploitation	Pacific policy	Refugee Quota Programme	Family and community refugee sponsorship	Border processing	Border Security	
Achieved to date	Agreed objectives for targeted visa decisions	Proposals developed for consultation	Initial policy work on fitness for purpose	Consultation: Completed Policy decisions: Completed	Launched review and independent research completed	Agreed review objectives (support development, meet NZ's needs)	Increased quota to 1500 annually from July 2020	Process evaluation of community sponsorship pilot	Introduced ETA and removed departure cards	Successful Budget 2018 bid	
Upcoming decisions	Confidential advice to Government	Decision on future of the category and eligibility and entitlement settings	Confidential advice to Government	Agreement to business case and funding implications; implementation and transitional policy decisions.	Consult on proposals to prevent exploitation, protect migrants and enforce obligations	Agree to focus scope of the review. Likely focus on RSE, labour mobility, PAC/SQ outcomes	Agree changes to international allocations and sub-categories	Confidential advice to Government	Completed	Response to any Royal Commission findings. Strengthen settings to better manage maritime mass arrivals	
Expected impacts	Confidential advice to Government	Unknown – impacts will depend on the decisions made by Cabinet	Confidential advice to Government	Changes are likely to tighten the settings, making it more difficult to employ low skilled migrants where New Zealanders are available Visas: ↓	All people can be in safe and fulfilling work, and all businesses can operate with confidence on a level playing field	Unknown – no specific changes are proposed at this stage. In the longer term impacts will depend on the decisions made by Cabinet	Increase in number of permanent residence visas granted (by 500 annually) from July 2020 Visas: ↑	Confidential advice to Government	No expected changes to visa approval numbers. Will facilitate border processes and improve security Visas: ↔	Unknown impacts	
Timing	Confidential	Cabinet Sep 2019	Confidential	Confidential advice to	Cabinet Sept 2019	Confidential advice to Government	Cabinet Sep 2019	Confidential	Completed ✓	TBD	