



BRIEFING

Temporary Migrant Worker Exploitation Review: Improving the pathway for reporting and referring

Date:	12 July 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3490 18-19

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration Minister for Workplace Relations and Safety	Provide feedback and give direction on the options to improve reporting and referral of temporary migrant worker exploitation (including for international students)	17 July 2019
Hon Poto Williams Associate Minister of Immigration	Note for your information	17 July 2019

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Nita Zodgekar	Manager, International Labour Policy	Privacy of natural persons	✓
Tina Jamieson	Senior Policy Advisor, International Labour Policy	Privacy of natural persons	

The following departments/agencies have been consulted
Immigration New Zealand (INZ), Employment Services (MBIE), Department of Prime Minister and Cabinet, Ministry of Education, Office of Ethnic Communities, the Treasury, WorkSafe.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

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Purpose

The briefing seeks your feedback and direction on options to improve the pathway for reporting and referral of temporary migrant worker (including international student) exploitation.

Executive summary

Problems with reporting and referring temporary migrant worker (including international student) exploitation relate to a series of barriers to reporting and inconsistent and inadequate processes for dealing with reporting. This has manifest as a reluctance to report migrant worker exploitation and this results in migrant workers not leaving exploitative jobs.

This briefing links to briefings on the other priority work streams on penalising and deterring employer non-compliance, and business models that facilitate exploitation. We suggest reading this briefing in conjunction with the briefing Temporary Migrant Worker Exploitation Review: Overview (0080 19-20).

Drawing on independent research commissioned to inform the Review of Temporary Migrant Worker Exploitation (the Review), policy analysis and stakeholder views, we have used the following areas of focus to form the basis for the options we have developed:

- **Area of focus 1:** Streamlined, consistent and accurate information and education about migrant worker exploitation and employment in New Zealand
- **Area of focus 2:** Easily identifiable and accessible ways of reporting for temporary migrant workers, and reports (responding to calls and triaging) handled with a specialised and dedicated migrant worker and international student focus
- **Area of focus 3:** Reducing barriers to migrant workers reporting exploitation and leaving exploitative jobs.

The provision of streamlined, consistent and accurate information and education about migrant exploitation and employment in New Zealand will be essential alongside all other measures to address migrant worker exploitation. As indicated to you in our April 2019 briefing (2874 18-19 refers) we will continue consolidating existing information on employment rights and migrant worker exploitation reporting across existing Ministry of Business, Innovation and Employment (MBIE) platforms, and streamlining information and education platforms between agencies (such as international education agencies, WorkSafe and MBIE). Further to this we will develop ways to assess that migrant workers and employers using these information and education products understand their rights and responsibilities regarding employment in New Zealand.

We have considered a range of options to address the problems with reporting and referring migrant worker exploitation. The analysis of each of the options against a set of the criteria is outlined in detail in **Annex One** and summarised in the table below. Additional information on the criteria used to assess the options is provided in the Overview briefing. The recommended options

in area of focus 2 are indicated, as are the proposed options in area of focus 3 which are recommended for further advice following public consultation.

FIGURE ONE: HIGH-LEVEL ASSESSMENT OF OPTIONS AGAINST CRITERIA

Options	Efficiency	Effectiveness	Confide	Simplicity
Area of focus 2: We propose to establish easily identifiable and accessible ways of reporting for temporary migrant workers, and reports (responding to calls and triaging) handled with a specialised and dedicated migrant worker and international student focus (see paragraphs 28 – 36)				
a. MBIE dedicated migrant worker exploitation 0800 phone line and online reporting [recommended]	✓✓✓	✓✓	Confidential advice to Government	✓✓
b. Status quo: Migrant workers report via various channels	x	x		x
c. External migrant worker exploitation 0800 phone line and online reporting	x	x		x
d. MBIE specialised migrant worker exploitation-focused reporting and triaging function [recommended]	✓✓	✓✓		✓✓
e. Status quo: Migrant workers' reports are handled at several places without a dedicated focus	x	x		x
Area of focus 3: We propose to reduce barriers to migrant workers reporting exploitation and leaving exploitative jobs (see paragraphs 37 – 53)				
f. Improving current visa consideration process for exploited migrant workers [for further advice following consultation]	✓	✓	Confidential advice to Government	✓
g. Bridging-type visa for exploited migrant workers [for further advice following consultation]	✓	✓		✓
h. Status quo: Migrant workers claiming exploitation can apply for another visa (up to six months)	x	x		x

Together the recommended options should offer migrant workers the assurance to come forward and report exploitation and enable them to leave exploitative situations. The options would reduce existing barriers to report to MBIE through a new, migrant-centric process directed at, and responsive to, their needs.

These new measures will require additional funding to successfully implement.

Recommendations

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** the problems with reporting and referring temporary migrant worker (including international student) exploitation relate to a series of barriers to reporting and inconsistent and inadequate processes for dealing with reporting.
- b **Note** that MBIE will develop ways to assess that migrant workers and employers using information and education products understand their rights and responsibilities regarding employment in New Zealand.

Noted

Noted

- c **Agree to one** of the following three options for **easily identifiable and accessible ways of reporting for migrant workers**:

Either Option 1: Establish a dedicated migrant worker exploitation 0800 number/plus online reporting through to MBIE (<i>recommended option</i>)	Yes / No
Or Option 2: Establish a dedicated migrant worker exploitation 0800 number/plus online reporting via an external party	Yes / No
Or Option 3: Status quo reporting of migrant worker exploitation via various channels	Yes / No

- d **Agree** to recommend to Cabinet that public consultation be sought on the design details of your chosen option in recommendation c (above) for easily identifiable and accessible ways of reporting for migrant workers.

Agree / Disagree

- e **Agree to one** of the following two options for **responding to reports and triaging**

Either Option 4: Establish a specialised migrant worker exploitation reporting and triaging function with expertise in employment relations and standards, immigration, workplace health and safety and international education in MBIE (<i>recommended option</i>)	Yes / No
Or Option 5: Status quo approach to migrant worker exploitation reports and triaging in MBIE	Yes / No

- f **Agree** to recommend to Cabinet that public consultation be sought on the design details of your chosen option in recommendation e (above) responding to reports and triaging.

Agree / Disagree

- g **Agree** to recommend to Cabinet that public consultation be sought on the following proposed options to **reduce barriers to migrant workers reporting exploitation and leaving exploitative jobs**:

Proposed option 6: A bridging-type visa for temporary migrant workers reporting exploitation	Yes / No
Proposed option 7: An improved INZ process through which migrant workers reporting exploitation can apply for a consideration of their visa status	Yes / No

- h **Note** that officials will provide you with further advice about reducing barriers to migrant workers reporting exploitation and leaving exploitative jobs following public consultation on this issue.

Noted



Nita Zodgekar
Manager, International Labour Policy
Labour and Immigration Policy, MBIE

11 / 07 / 19



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

13 / 07 / 19

PROACTIVELY RELEASED

Background

1. In April 2019, as the Minister of Immigration and for Workplace Relations and Safety, you agreed to a multi-year work programme to reduce the exploitation of temporary migrant workers (including international students) and mitigate their vulnerability. We have grouped the work under the three themes of prevention, protection and deterrence (briefing 2874 18-19 refers).
2. This briefing advises you on an improved pathway for reporting and referral of temporary migrant worker exploitation and seeks your feedback and direction on options to progress and proposed options on which to publically consult. It is accompanied by two other detailed briefings:
 - a. Penalising and deterring employer non-compliance (briefing 3573 18-19 refers)
 - b. Reducing risks around business models and practices that facilitate exploitation (briefing 3821 18-19 refers).

Problems stem from barriers to reporting migrant worker exploitation and inconsistent and inadequate processes for dealing with reports

There is little awareness of employment rights and how to report

3. Migrant workers are more likely to have none, little, or inaccurate knowledge about their employment rights.¹ Where migrants are aware their employment rights are not being met, they are likely to have little knowledge of how to report.
4. These issues are in part due to the range of official and unofficial channels through which migrant workers access information, which include personal contacts, the Citizens Advice Bureau (CAB) and Community Law Centres (CLCs), immigration and employment government websites and other news and social media platforms. Information provided by government can be inaccessible, inconsistent and difficult to navigate. Some workers rely heavily on personal contacts, and whilst this issue is not specific to migrants, it may be particularly acute for temporary migrant workers.
5. To address issues in information from government sources, we propose to work on streamlining and improving official sources of information on employment rights and reporting exploitation as part of **area of focus 1** (discussed further in paragraphs 20 – 27).

There is inconsistency and delays in handling complaints

6. Migrant workers who wish to report exploitation find it difficult to know where to report their employer, and experience delays and inconsistent handling of their complaints. In addition, migrant exploitation calls are not always given priority above other calls and callers may experience long delays and make several calls before being able to obtain relevant information for their complaint. This compounds some migrants' low trust in public institutions, which may already exist due to their previous expectations of government services that have been influenced by experiences in their home countries.
7. These issues in migrants' experiences of reporting exploitation is in part due to the range of places that migrants can go to report exploitation, including CAB, CLCs, Police, Crimestoppers, Employment NZ (which includes email and an 0800 number to MBIE's Service Centre), and the Immigration Contact Centre (ICC). The two primary points of contact for reporting exploitation are the MBIE Service Centre and ICC, and other agencies can refer migrants to either or both of these two contact centres. The diagram in **Annex Two**

¹ MBIE's *International Students in Non-Compliant Employment* report (2013) found that 37 per cent of international students do not know where to go for information on employment rights, and almost all underestimated the minimum wage.

shows the complexity of the current system through which complaints of migrant worker exploitation flow when reported to MBIE.

8. As both the employment and immigration regulatory systems have levers for reporting, resolving and investigating migrant worker exploitation, there are dual reporting and triaging systems operating in parallel. This results in inconsistency in handling and triaging complaints through to investigation. Some complaints that may meet the threshold for investigation by one regulator may fall through the system if it is reported elsewhere.
9. Over the last 12 months an average of 173 calls per month coming through the MBIE Service Centre chose the 'migrant exploitation' option from a series of alternatives; placing them ahead of other callers in the Employment Relations phone line. However, after initial assessment by a client service adviser, many of these calls were not actual complaints of migrant exploitation, and some did not even relate to migrant exploitation. These calls took an average of approximately 17 minutes per call. Of these, an average of 7 per cent or 11 calls per month were assessed and directed to the current Labour Standards team for triaging.

10. Maintenance of the law

Further work is also needed to look at aligning or combining the triaging functions within INZ and Labour Inspectorate for the purpose of triaging migrant worker exploitation cases.

11. Callers not meeting the threshold for labour inspector intervention are triaged out into self-resolution and may opt to attend mediation. The independent research has indicated that some migrant workers with exploitation issues are ending up at mediation, and therefore risk migrant exploitation not being dealt with in a proportionate manner. The confidentiality of mediation may further facilitate the hidden nature of the problem and hinder proportionate consequences for employers who remain unnamed and not publically penalised.
12. Currently Mediation Services do not collect data that allows a full assessment of cases involving migrant workers; however they have work underway which may enable a better estimation of this problem in the future. The first six months of reporting from this work will be available in the third quarter of 2019/20.

Confidential advice to Government

13. We propose to address issues in reporting, triaging, and handling of complaints through a single point of contact as part of **area of focus 2** (see discussion in paragraphs 28 – 36).

Even where migrants wish to report exploitation, fears about immigration status and retaliation may prevent them from doing so

14. Research indicates in some cases the experience of exploitation is an "incremental series of occurrences wherein exploitation only occurs after a particular threshold is reached"; such as significant financial, physical and emotional impacts that led to them leaving their employer. In cases where migrants are aware of exploitation and the methods to report their employer, the migrants' degree of complicity or acceptance of exploitative conditions may deter them from reporting. This relates to their fear of negative consequences (ranging from failure to secure another visa, to deportation, through to prosecution) which may result from reporting their exploitation.
15. Immigration officers can currently grant new visas on a case-by-case basis to migrants who have experienced exploitation. Migrant workers report that this uncertainty of the consequences of reporting exploitation prevents them from reporting. We will consider these issues in **area of focus 3** (see discussion in paragraphs 37 – 53).

16. There are also cultural reasons that mean migrants are reluctant to challenge their employer's authority, distrust public institutions, and fear they will be unable to support themselves financially without the income from their exploitative employer and without an ability to work due to their having breached immigration or employment laws.

A migrant-centric approach emphasising prevention and protection will encourage migrant workers to report exploitation

17. Drawing on independent research, policy analysis and stakeholder views (including views from the consultation group) we propose to address the identified problems, recommending options on which to publically consult through the following three areas of focus:
- **Area of focus 1:** Streamlined, consistent and accurate information and education about migrant worker exploitation and employment in New Zealand
 - **Area of focus 2:** Easily identifiable and accessible ways of reporting for temporary migrant workers, and reports (responding to calls and triaging) handled with a specialised and dedicated migrant worker and international student focus
 - **Area of focus 3:** Reducing barriers to migrant workers reporting exploitation and leaving exploitative jobs.
18. Together, the recommended options provide a visible, joined up and migrant-centric approach to reporting exploitation to MBIE. The recommended options offer migrant workers assurance to come forward and report exploitation through a new and migrant-centric process directed at, and responsive to, their needs; enabling them to leave an exploitative situation. The migrant-centric approach relies on a new way of working (regulators sharing information and expertise) and a dedicated focus on migrant worker exploitation.
19. The recommended options focus on MBIE-led actions and responsibilities, but this is underpinned by working together with other agencies (in particular WorkSafe, the Ministry of Education and community organisations such as unions and non-government agencies) to mitigate vulnerability and reduce migrant worker exploitation through improving the pathway for reporting and referring migrant worker exploitation. **Annex One** outlines in detail the analysis of each of the options against the criteria, and this is summarised in the table provided in the executive summary.

Area of focus 1: MBIE will provide streamlined, consistent and accurate information and education about migrant exploitation and employment in New Zealand, and will develop the means to test migrant worker and employer understanding of this information

20. In our April 2019 briefing to you on the proposed focus for future policy options (2874 18-19) we indicated that consolidating existing information on employment rights and reporting across existing MBIE platforms would be an item for early action this year, and that we would further consider measures to streamline information and education platforms between agencies (such as international education agencies, WorkSafe and MBIE) on identifying and reporting migrant worker exploitation.
21. Further analysis and the findings of the independent research confirm that the provision of streamlined, consistent and accurate information and education about migrant exploitation and employment in New Zealand will be essential alongside the other options in the package to address migrant worker exploitation.
22. **Annex Three** shows current information and education products from Employment Services and INZ. Employment Services' guidance focuses on employment rights and duties for the general population; INZ hosts information specific to migrants, covering immigration,

employment and various other guidance, and also includes targeted sector specific information, and information for international students.

In the short to medium-term MBIE is improving information and education on employment rights and migrant exploitation reporting ...

23. Enhanced information and education measures underpin the effectiveness of the package of recommended options for this work stream. Currently, use of the language line and the number of downloads of information from MBIE's website provide some measures to indicate use of information. We propose however to develop ways to assess migrant workers' and employers' understanding of their rights and responsibilities. This will assist with indicating the impact of the information and education measures on addressing migrant worker exploitation, in particular, their impact on facilitating reporting.
24. MBIE is consolidating existing information on employment rights and information to assist migrants to report exploitation across its INZ and Employment Services platforms. This will ensure messages about employment and migrant exploitation are accessible, accurate, and consistent.
25. Employment Services is developing a basic module for employers on their obligations. Employment Services together with INZ are also assessing the feasibility of mandatorily requiring migrants applying for a work visa or an international study visa, to complete the basic Work Rights module. They will also assess whether it should be a requirement of the new employer accreditation system.

...and MBIE has further plans to streamline information and education platforms between MBIE and other agencies

26. Next steps involve streamlining platforms between MBIE and other agencies including Education NZ and WorkSafe on identifying and reporting migrant worker exploitation. MBIE is also working with other organisations, such as Industry Training Organisations, the Foreign Students' Union Association, Private Training Organisations, the secondary and tertiary sector, and careers advisors to use the same basic e-learning modules on Employment New Zealand.
27. Future work also includes working across MBIE on a collective approach to community agencies and associations, to disseminate information to the hard to reach workers (including migrants), educating them about their rights and providing information about how to deal with situations in which their minimum rights are breached, including how to complain.

Area of focus 2: We recommend a specialised migrant worker exploitation focus for reporting and triaging functions, including a dedicated reporting line

A specialised migrant worker exploitation focus could deliver a dedicated reporting line, consistent data recording, triaging and referring migrant exploitation for investigation

28. While MBIE recognises migrant worker exploitation as a serious issue, there is no dedicated or specialised focus on migrant worker exploitation from the point of reporting. We are therefore proposing a dedicated function to act as a first point of contact, to receive complaints, gather data, triage reports, and refer them to investigation.
29. Building this function would allow:
 - visibility of where to report
 - reducing delays in accessing the point for assessment of allegations across both INZ and the Labour Inspectorate
 - the ability to connect through to information about not only the employment and immigration regulatory systems but also health and safety and international education

- enhanced monitoring of reports of migrant worker exploitation to improve data and to enable effective follow up with the person reporting.²
30. While there are no international examples of a specific migrant worker exploitation reporting function, the United Kingdom (UK) has a number of first responders for human trafficking and modern slavery.³ In Australia the Fair Work Ombudsman handles reports of workplace exploitation of migrants, but does not have a dedicated line for migrant exploitation.
 31. We have considered two options: a centralised function within MBIE, or an external party to deliver the same functions.
 32. A specialised migrant worker exploitation function within MBIE could offer expertise across the regulatory systems of employment, immigration, workplace health and safety and international education. These trained staff can provide the early triaging to the appropriate part of the system, with specialisation in the Labour Inspectorate and INZ.
 33. We have considered the potential merits of an external party being the sole visible portal for migrants to report exploitation. An external party would offer the same functions as one within MBIE, but might offer migrants a more trusted place to report to. However, this is offset by the fact that complaints would still need to come through to the government to proceed to investigation, and therefore this option may create delays before investigation. In addition, a dedicated migrant worker exploitation external reporting function would likely need to rely on government funding which could compromise its independence in practice or perception.
 34. We therefore recommend a dedicated migrant worker exploitation function be developed within MBIE. MBIE would continue to work with community groups and unions with expertise in this area to develop a migrant-centric function.

Successful implementation of specialised function will require additional funding and effective investigation response

35. A specialist migrant worker exploitation function will require training of specialised staff with knowledge across regulatory systems. We have provided indicative costings for this function in **Annex Four**
36. Building trust from migrant workers, regulator capability and the volume of reports will depend on demonstrating that actions will result from reporting. Therefore, the success of migrant worker exploitation reporting will rely on reports being investigated, timely and proportionate investigation response, and the ability to proportionately sanction exploitation. Advice on potential options for change regarding deterrence and penalising employer non-compliance is provided in the accompanying briefing (3573 18-19 refers).

Area of focus 3: We recommend public consultation and further analysis to inform further advice on reducing barriers to migrant workers reporting exploitation and leaving exploitative jobs

37. Migrant workers who have been exploited commonly articulate that concern with their immigration status is a barrier to their reporting exploitation. This is due in part to their concerns with having been complicit to some degree in activities which could be in breach of employment or immigration laws during their time in New Zealand. This complicity could have negative consequences (ranging from failure to secure another visa, to deportation, through to prosecution) resulting from reporting their exploitation.

² Migrants would actively consent to their information being passed on to INZ and Labour Inspectors, having been provided with information about their options so they fully understand the implications of doing so.

³ These include Migrant Help, a helpline for victims of slavery and trafficking and refugees seeking assistance with settlement and the Salvation Army's Modern Slavery Helpline that receives reports of modern slavery which are then referred to the National Referral Mechanism for appropriate agency support.

38. We have considered various other measures with the potential to reduce barriers to migrant workers reporting exploitation and leaving an exploitative situation. These measures include: a firewall between labour enforcement and INZ to protect information that could jeopardise a migrant worker's visa status, changes to the current process for considering visa applications from those reporting migrant exploitation, and a new visa category. Our consideration has included balancing a migrant-centric approach while maintaining the integrity and effective functioning of the immigration system. This adds complexity to the analysis, because of potential trade-offs. See **Annex One** for initial analysis of these options against the criteria.

A 'firewall' may reduce the barrier to reporting but at the expense of system integrity and a joined up agency response

39. We have considered an option of a 'firewall', which prevents information sharing between regulators to protect migrants' immigration status while their complaints are investigated by labour enforcement agencies. This proposal was raised by some UK unions and community groups concerned with migrant exploitation in the UK.

40. Internationally, the UK Government has not indicated that they will consider this proposal. Aside from the United States (with no evaluation available), there are no other examples of jurisdictions with firewalls. The Australian Migrant Workers' Taskforce (2019) considered that a firewall could impinge on the "effectiveness of investigations and enforcement", as the Fair Work Ombudsman, the Australian Border Force and the Department of Home Affairs "have a joint role in monitoring employer compliance with sponsorship obligations and employment conditions for particular visa subclasses".

41. The Labour Inspectorate and INZ have reinforced the importance of collaborative investigations and improved information sharing for combatting migrant worker exploitation. Briefing *Penalising and deterring employer non-compliance* (3573 18-19) proposes a joint compliance and enforcement strategy on migrant exploitation. Implementing a 'firewall' could work against the objectives of such a strategy and reinforce the perception of government agencies working in silos. While a 'firewall' could assure genuinely exploited migrants that their immigration status will not be negatively affected, it would also assure the same outcome to migrants who have been highly complicit in the illegal activity (for example, paying a fixer for a visa based on a false job).

42. For these reasons, it is not recommended.

Improvements could be made to the existing process for consideration of visa status issues for migrant workers reporting exploitation

43. Currently, a migrant worker who is lawfully in New Zealand and who makes a claim of exploitation which is accepted for investigation may apply for another visa (the same type as the visa they currently hold) of initially up to six months duration via an operational process (as per INZ Internal Administration Circular No 16/05). A migrant who is unlawfully in New Zealand may come forward and request regularisation of their status under section 61 of the Immigration Act. Such requests are for the absolute discretion of the decision maker, and there is no obligation to consider them, make further enquiries, or provide reasons for any decision.

44. The existing INZ process for migrant workers claiming exploitation to apply for another visa is currently not widely known about or used. The research indicates that migrant workers are concerned that reporting exploitation will jeopardise future visa applications, and also fear prosecution for any level of complicity.

45. Improvements could be made to current processes to make them more visible and widely understood by migrants. These would be relatively low-cost and straightforward. However, we would anticipate an increased number of exploitation claims as a result of the package of measures to address migrant worker exploitation, and additional funding would be required to triage and deal with these applications appropriately, including investigation.

46. These improvements would only partially address the barriers to reporting. In particular it would not address fears of compliance action if the migrant has been complicit, and the impact on future visa applications would likely remain.

A bridging-type visa could be considered for migrant workers reporting exploitation

47. A bridging-type visa could enable a temporary migrant worker to leave an exploitative workplace situation. Following this they could potentially apply for a further visa or tidy up their affairs before returning to their home country. This would not be a guaranteed pathway to staying in New Zealand long-term, as any further visa application may still be declined (under the relevant immigration policy).
48. A bridging-type visa could offer more certainty about their immigration status to an exploited migrant worker. However, providing a level of tolerance for factors that might traditionally hinder a migrant from being granted a work visa, such as complicity in previous non-compliance (but not more serious offending such as immigration fraud), will require further analysis. The development of a level of tolerance and of criteria for assessment is likely to be required.
49. Other countries provide some assurance for exploited migrant workers. In Canada migrant workers on employer-specific work permits either experiencing or at risk of abuse in the context of their employment may apply for an open work permit to provide them with a means to leave their employer. In Australia, the Australian Assurance Protocol (AAP) provides assurance to migrants in breach of their work-related visa conditions through exploitation that their current visa will not be cancelled. The AAP has received some criticism for not providing assurance that reporting exploitation would not jeopardise future visa applications.
50. While some migrants who are in New Zealand unlawfully will also be exploited migrants, we would not propose that these migrants be eligible for a visa of this type. Allowing the regularisation of the status of unlawful migrants could undermine the integrity of the immigration system.
51. We recommend that public consultation be undertaken on the high level proposed options of an amendment of the current process and a new bridging-type visa to reduce barriers to migrant workers reporting exploitation and leaving exploitative jobs. Alongside this we will undertake more analysis on these proposed options and their implications. It may be that a combination of both proposed options can be developed involving different approaches to types of different exploitation or levels of complicity.

Additional funding will be needed to effectively implement options for reducing barriers to migrant workers reporting exploitation and leaving exploitative jobs, as well as for investigations resulting from exploitation reports

52. While the reporting impact of introducing a bridging-type visa is difficult to quantify, it can be expected that MBIE will experience a significant rise in reports of exploitation, at least within the first few months of introduction. Further, a high number of applications for such a visa would require faster processing of initial evaluations, and have resourcing implications for INZ. We would anticipate additional resourcing will be also needed for dealing with increased exploitation reports through improvements to the existing operational process. It will be important to ensure that investigatory resources are sufficient to prevent backlogs of exploitation cases emerging, to ensure a high level of confidence among stakeholders and the public in MBIE's role as the regulator.
53. We have provided indicative costings in **Annex Four**.

Next steps

54. After you have made decisions on this briefing, we will develop a draft Cabinet paper and public consultation document. We will formally consult affected internal teams and government agencies. The Cabinet paper will be a tool for you to update Cabinet on the Review and to seek their agreement to public consultation on the proposals; including the proposals you have chosen to progress and those that require further exploration (along with the work already being done). It will note the complexity of the issue and the range of mechanisms needed to address temporary migrant worker exploitation. It will inform Cabinet that there are likely to be costs associated with any proposals that they agree to at a later date. Some may also result in the need for legislative, regulatory or policy change.

Annexes

Annex One: Options analysis summary

Annex Two: Current pathways of migrant worker exploitation complaints to MBIE

Annex Three: Summary of MBIE's relevant information and education activities

Annex Four: Estimated indicative costs for additional funding required for options

Annex One: Options analysis summary

Criteria:

- Efficiency:** including timeliness of implementation and ease of implementation for regulators, system responsiveness, alignment with other initiatives (MBIE and government), and does not impede aims of other aspects of the Review or make migrants more vulnerable to exploitation.
- Effectiveness:** including stakeholder acceptance, feasibility (can it work in practice), sustainability, evidence-based, avoidance of adverse consequences.
- Cost:** fiscal impact, including whether can be met from baselines or requires additional funding, and cost to users (employers, employees).
- Simplicity:** ease of understanding for users.

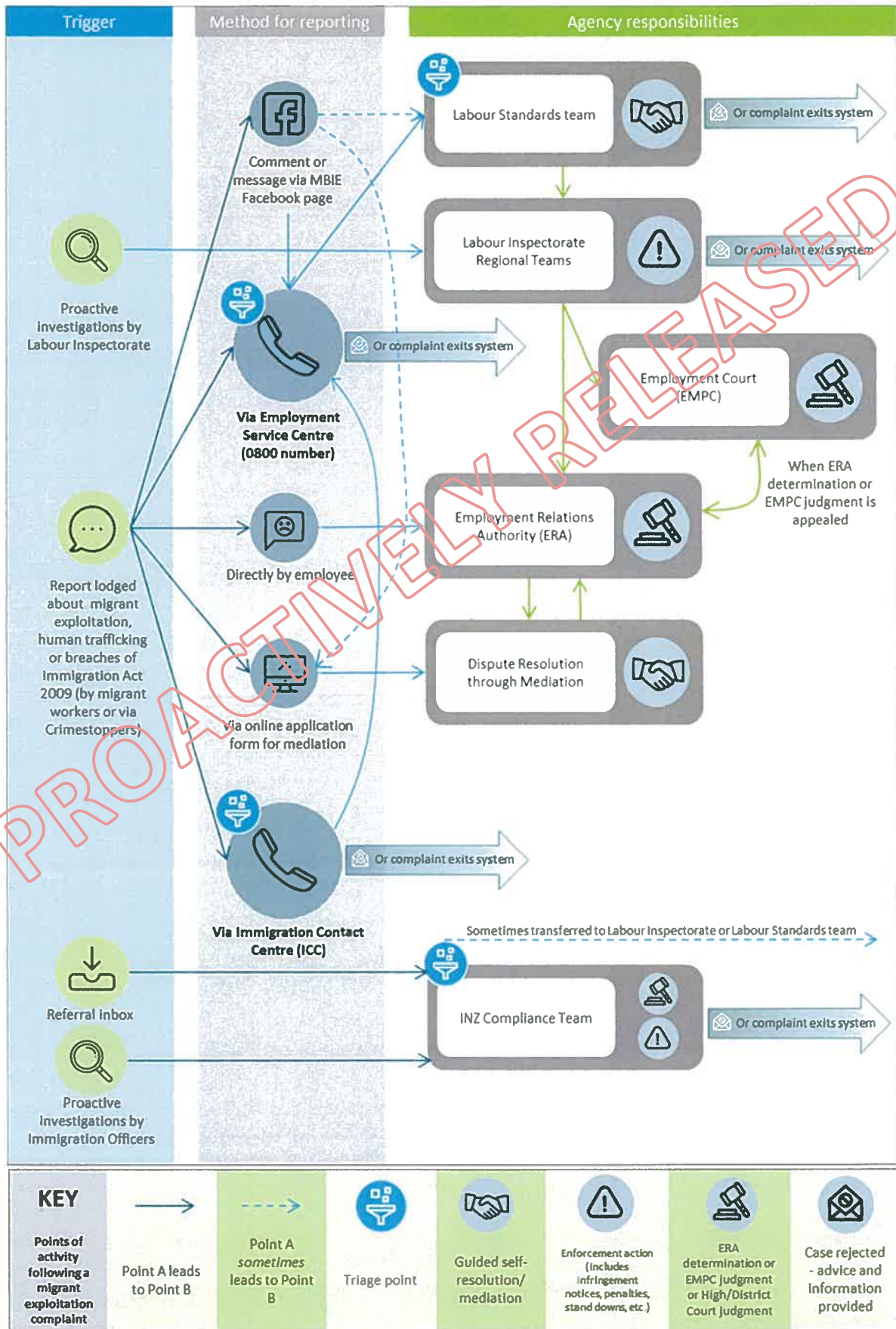
Options	Efficiency	Effectiveness	Cost	Simplicity	Recommendations
Easily identifiable and accessible ways of reporting for migrant workers	<p>Dedicated 0800 line through to MBIE offers an efficient approach directly through to the regulator that can deal with the allegations.</p> <p>Online reporting offers a potentially quick means to get a report to MBIE.</p> <p>Direct reporting enables regulator responsiveness.</p>	<p>Migrant representative groups may prefer that this is situated outside of government but this can be managed with a migrant-centric approach (drawing on expertise from NGOs and unions).</p> <p>More workable due to reporting coming through to a specialised team to make decisions about triaging.</p>	<p>Confidential advice to Government</p>	<p>Dedicated line can offer simple and clear messaging and more certainty for users to understand next steps.</p>	<p>✓ Recommended option</p>
	<p>External migrant worker exploitation 0800 phone line and online reporting</p>	<p>Dedicated 0800 line through to external party would then need to refer to MBIE for further action, so some double handling.</p> <p>Online reporting externally first could slow getting a response from MBIE.</p> <p>Could mean less efficient regulator responsiveness.</p>	<p>May receive acceptance from migrant advocate stakeholders.</p> <p>We do not have evidence that it could work in practice. It may encourage reporting anonymously but cases still need to be referred to MBIE for investigation (these cannot be</p>	<p>External party would potentially seek government funding to achieve this reporting function.</p>	<p>Dedicated line can offer some simple messaging but less certainty for users to understand what happens to their reporting</p> <p>There may be a risk of mixed messaging between regulator and external party providing the reporting function.</p>

Options	Efficiency	Effectiveness	Cost	Simplicity	Recommendations
		<p>anonymous).</p> <p>Government would need to be assured of the external party's reporting effectiveness, so will need to monitor and evaluate (particularly if funding).</p>			
<p>Status quo: Migrant workers report via various channels</p>	<p>Migrants continuing to report via various channels is less efficient than through MBIE or a single external reporting line. This delays responses and results in reports being handled by many people and inconsistently. Perpetuates confused messaging and unclear pathway.</p>	<p>Migrants continuing to report via various channels is less effective than MBIE or external reporting line - less visibility of where to report, not knowing where to report, and/or reporting through various routes, lack of migrant-centric approach.</p> <p>N/A</p> <p>Poses a barrier to reporting and therefore the effectiveness of other measures to reduce migrant worker exploitation.</p>		<p>Perpetuates confused messaging and unclear pathways for reporting exploitation.</p>	<p>x Do not recommend</p>
<p>Responding to calls and triaging handled with a specialised and dedicated migrant worker focus</p>	<p>Dedicated line directly through to MBIE offers an efficient approach. A specialist team responding to this means there is less need for multiple parties to handle and pass on information. The specialist function may take some time to be established (developing capability and new way of working).</p>	<p>Migrant representative groups may prefer that this is situated outside of government but this can be managed with a migrant-centric approach adopted by MBIE (drawing on expertise from NGOs and unions). More workable due to reporting coming through to a specialised</p>	<p>Confidential advice to Government</p>	<p>Clear messaging can be conveyed that this is the point through which to report with a dedicated focus on migrant worker exploitation. This function offers more certainty for users to understand next steps.</p>	<p>✓ Recommended option</p>

Options	Efficiency	Effectiveness	Cost	Simplicity	Recommendations
		<p>team to make decision about triaging, and aligning with MBIE's joined up approach to enforcement.</p>			
<p>Status quo: Migrant workers' reports are handled at several places without a dedicated focus</p>	<p>Less efficient – multiple parties may handle and pass on information and migrants may either not report or have to go to several places.</p>	<p>Less effective - does not offer migrant-centric approach, not joined up across regulatory systems, or from reporting through to triaging</p>	<p>N/A</p>	<p>Less simple as confusion likely to continue about where in MBIE to report and what happens to that information.</p>	<p>* Do not recommend</p>
<p>Bridging-type visa for exploited migrant workers <i>(Pending further analysis following consultation)</i></p>	<p>Efficiency will rely on developing design features to enable smooth visa processing. This would include a clear definition of exploitation for purposes of the visa application, and potentially the development of criteria for assessing acceptable thresholds of complicity.</p>	<p>The migrant-centric approach of the visa should encourage reporting of a higher number of legitimate cases of exploitation. Migrants fearing retaliation from their employer would be more able to report exploitation. Open work rights could enable recipients to find work with a different employer. May not address impact on future visa applications or fears of other negative consequences if the migrant has been complicit.</p>	<p>Confidential advice to Government</p>	<p>Bridging-type visa would offer more visibility and certainty with clear criteria for application. This would rely on a well-designed information campaign and clear messaging.</p>	<p>Recommend consulting on this proposed option</p>
<p>Measures to reduce barriers to migrant workers reporting exploitation and leaving exploitative jobs</p>	<p>Does not align with a key compliance recommendation for the Review. It would undermine overall system efficiency for addressing migrant worker exploitation through a joint</p>	<p>May offer some initial protective appeal to migrants wanting to report. Potential to undermine the integrity of the immigration system</p>	<p>Confidential advice to Government</p>	<p>May appear to offer clarity but it would be difficult for migrants to have certainty of a proportionate enforcement response given it would impede</p>	<p>* Do not recommend</p>
<p>Firewall</p>					

Options	Efficiency	Effectiveness	Cost	Simplicity	Recommendations
	<p>approach to compliance and enforcement between regulators.</p>	<p>without the ability to provide proportionate response to varying levels of complicity. It would result in lack of visibility of breaches of immigration and employment laws to INZ.</p>		<p>joint enforcement activity.</p>	
<p>Status quo: Migrant workers claiming exploitation can apply for another visa (up to six months)</p>	<p>There are administrative and application difficulties with the current process.</p>	<p>This is not effective. A low number of exploited migrants apply for, and are granted, new visas under the current process which is not widely known about.</p>	<p>Confidential I advice to Government</p>	<p>The user experience of the current process for both INZ and migrants is unsatisfactory. Process not widely known about. Uncertainty and misinformation about likely consequences of reporting.</p>	<p>* Do not recommend</p>
<p>Improvements to existing process <i>(Pending further analysis following consultation)</i></p>	<p>Making improvements to the existing process could offer straightforward and timely implementation.</p>	<p>Greater effectiveness due to increased visibility and better understanding of the process. May not address impact on future visa applications or fears of other negative consequences if the migrant has been complicit.</p>	<p>Confidential I advice to Government</p>	<p>Making improvements to the existing process could offer straightforward and timely implementation. This would rely on a well-designed information campaign and clear messaging.</p>	<p>Recommend consulting on this proposed option</p>

Annex Two: Current pathways of migrant worker exploitation complaints to MBIE



Annex Three: Summary of MBIE's relevant information and education activities

MBIE's Employment Services' Information and Education team are working with INZ to build a joined up approach to the provision of information and education to assist migrants and employers to understand employment rights and obligations in New Zealand and with how to report migrant worker exploitation to get assistance.

Employment Services maintain MBIE's employment.govt.nz website, which provides employers and employees with information about New Zealand's employment rights and obligations and how to manage workplace disputes. This includes guides on employment rights translated into 14 languages.

Employment Service's key current activities relating to migrant exploitation include: general guidance on employment standards for employers and employees through web, social media, print, radio, with a translation service. There is also targeted face-to-face and social media information and education. Specifically, these include:

- **Worker rights modules** – from July 2019 these will be available on the employment.govt.nz website; targeted at migrants and those with low-level English literacy, and initially translated into five languages with voice-over.
- **Guides on employment rights** – produced in 2018, translated into 14 languages. These have recently been made into HTML webpages to improve their accessibility and usability and are provided in print format via the Citizens Advice Bureau, the Community Law Centres and MBIE's Service Centre.
- **An employment Facebook page** – established in August 2018, now has over 60,000 followers. This provides information about each area of employment-related legislation, identifies allegations of work exploitation and responds to specific queries about cases. This is monitored five days a week during office hours. Complex requests, including those needing multiple engagements, are referred for further assistance to other parts of Employment Services, such as the mediation webpage, the MBIE Service Centre or the Labour Standards' Rapid Resolution team as appropriate.
- **A monthly newsletter for employers and employees** – informed by frequently asked questions from website traffic trends and cases of exploitation and questions on those topics provided by MBIE's Service Centre, the stand-down list, and other issues in the media.
- **Biannual multi-media campaign** – includes advertisement on ethnic radio, websites, Facebook and press in six languages, targeting migrant employees about their minimum rights and employers about their legal obligations.
- **Informing visa recipients of New Zealand work rights** – work is underway to ensure work visa and international student visa recipients are emailed referring them to employment.govt.nz's translated work rights pages.
- **Language line** – MBIE funds the Citizen Advice Bureau's language line, that provides information to migrants in their own languages. This is used by MBIE's Service Centre advisors, including those receiving calls concerning migrant exploitation.
- **Working with migrant and community associations** to disseminate knowledge about employment legislation, which includes presentations about minimum rights.

INZ's key information and education activity include general web guidance through social media and the New Zealand Now website, and sector-specific guidance and information targeted for international students. Specifically, current activities relating to migrant worker exploitation include:

- **New Zealand Now website** – which contains information about work in New Zealand including employment rights, and links to the employment website and its online learning modules. It provides information about migrant exploitation and how to get assistance, and is translated into 11 languages.
- **Settlement guides** for the aged care, construction, dairy and hospitality sectors to support the settlement process for migrant workers and to provide useful information for both the employer and employee. This includes information on employment rights and employer obligations, health and safety, protection from exploitation, workplace culture and living in NZ. The guides are available online and in print formats.
- **New to New Zealand Facebook page** features information on the topics of employment and migrant exploitation. These include #Know your rights series of posts that links to specific content on the employment.govt.nz website.
- **Targeted international student information** – INZ works alongside Education New Zealand (ENZ) to provide information targeted at international students. The ThinkNew webpage provides advice in nine languages on employer rights and obligations in New Zealand, and detailed information about visa obligations. ENZ also recently launched a phone app named NauMai NZ, which provides international students, both pre- and post-arrival, with information on a range of subjects including student visa conditions (including working on a student visa), laws, government, and the cost of living in New Zealand.

Annex Four: Estimated indicative costs for additional funding required for options

Confidential advice to Government

PROACTIVELY RELEASED