



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

**Submission of the  
New Zealand Council of Trade Unions  
Te Kauae Kaimahi**

to the

**Ministry of Business, Innovation and Employment**

on the

**Temporary Migrant Worker Exploitation Review**

**P O Box 6645**

**Wellington**

**22 November 2019**

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## Summary of recommendations

1. The CTU recommends that the proposals contained in the consultation document be adopted, subject to the recommendations below.
2. The CTU supports Proposal One to 'introduce liability for parties with significant control or influence over an employer that breaches employment standards.' We recommend that the definition of control and influence should be broad enough to cover procurement, contracting of services and franchising relationships.
3. The CTU supports Proposal Two to 'require certain subcontractors and franchisees to meet additional criteria under the employer-assisted visa gateway system.' We recommend that criteria developed for high-volume employer accreditation should be applied.
4. The CTU supports Proposal Three to 'introduce a labour hire licensing scheme providing certain protections for workers.' We recommend that this include a clear process for de-licensing companies that breach employment and immigration standards.
5. The CTU supports Proposal Four to 'prohibit persons convicted of exploitation under the Immigration Act 2009 from managing or directing a company.'
6. The CTU supports Proposal Five to 'establish an MBIE dedicated migrant exploitation 0800 phone line and online reporting AND establish an MBIE specialised migrant worker exploitation-focused reporting and triaging function.' We recommend that the specialist team should be well resourced with sufficient personnel, training and powers to provide appropriate follow-up and assistance, including liaison and navigation of other services, to migrants making complaints of exploitation.
7. The CTU supports Proposal Six B to 'develop a bridging-type visa for exploited migrant workers'. We recommend that Immigration Officers be instructed and trained to make this visa available to any migrant worker reporting exploitation. In addition, we recommend further work prior to the introduction of the new system for temporary work visa applications in 2021, to set visa conditions allowing migrant workers to freely move between approved jobs with accredited employers.
8. The CTU supports Proposal Seven to 'establish new immigration offences for employer behaviour that contributes to exploitation and vulnerability.'

9. The CTU supports Proposal Eight to 'allow the Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe.'
10. The CTU supports Proposal Nine to 'expand the stand-down list to include existing immigration offences and, in future, immigration infringement offences for employer non-compliance.'
11. The CTU supports Proposal Ten to 'notify employees on employer-assisted visas who work for an employer who is stood-down.'
12. The CTU recommends further work to establish realistic pathways to residency for holders of temporary work visas.

## **1. Introduction**

- 1.1. This submission is made on behalf of the 27 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU supports the proposals contained in the consultation document and cabinet paper. Our further recommendations seek to support the intent of the proposals, as well as responding to other issues raised for consultation.

## **2. Preventing migrant worker exploitation**

- 2.1. Exploitation of migrant workers is not restricted to any particular industries and occupations. Previous reports by MBIE have found widespread non-compliance with minimum employment and immigration standards for migrant workers in every industry investigated, including dairy farming, hospitality, and construction.<sup>1</sup> Across

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<sup>1</sup> Ministry of Business, Innovation and Employment (MBIE). 2014. 'Dairy farm visits show majority of farmers breaching employment laws'. <http://www.mbie.govt.nz/about/whats happening/news/2014/dairy-farm-visits-show-majority-of-farmers-breaching-employment-laws/>; Searle, Wendy, Keith McLeod & Christopher Stichbury. 2015. Vulnerable Temporary Migrant Workers: Hospitality Industry. Ministry of Business, Innovation and Employment. <http://www.mbie.govt.nz/publications-research/research/migrants---settlement/vulnerable-temporary-migrant->

these different industries, the primary common element contributing to exploitation of migrant workers is the vulnerability created by the temporary and precarious status of work visas tied to employers.

- 2.2. Our affiliate unions have raised concerns that exploitation of migrants is even occurring in professional occupations such as Nursing and Teaching, where migrants on temporary visas are tied to specific employers, reliant on those employers for continuing employment and professional registration, and consequently face real obstacles to raising complaints of mistreatment. With the growth of significant migrant workforces in industries such as Aged Care and Early Childhood Education, careful monitoring is needed to ensure that exploitation of workers on temporary visas is prevented and that migrants recruited into these industries have realistic pathways to residency.
- 2.3. The CTU supports Proposal One to 'introduce liability for parties with significant control or influence over an employer that breaches employment standards.'
- 2.4. We recommend taking account of the report of the Australian Government Migrant Workers' Taskforce, which recommended extending accessorial liability to all situations where businesses contract out services, in addition to existing provisions covering franchisors and holding companies.<sup>2</sup>
- 2.5. We suggest that 'significant control or influence' should be defined broadly enough to include situations of indirect but significant influence, including in procurement, contracting of services and franchising relationships. It is important to ensure that the definition is sufficient to establish duties and liability for primary contracting parties, franchisors, and in other situations where one business or individual has significant control or influence over another.
- 2.6. The CTU supports Proposal Two to 'require certain subcontractors and franchisees to meet additional criteria under the employer-assisted visa gateway system.'
- 2.7. Additional criteria should be similar to those developed for high-volume accreditation and/or Labour hire accreditation. One possible approach would be to apply high-

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[workers-hospitality-industry-2015.pdf](#); Searle, Wendy, Keith McLeod & Natalie Ellen-Eliza. 2015. Vulnerable Temporary Migrant Workers: Canterbury Construction Industry. Ministry of Business, Innovation and Employment. <http://www.mbie.govt.nz/publications-research/research/migrants---settlement/vulnerable-temporary-migrant-workers-canterbury-construction.pdf>;

<sup>2</sup>Department of Jobs and Small Business. 2019. Report of the Migrant Workers' Taskforce. <https://www.ag.gov.au/industrial-relations/industrial-relations-publications/Pages/report-migrant-workers-taskforce.aspx>, p10

volume accreditation standards to all applications by franchisees and sub-contractors. This would avoid any incentive for a business or undertaking requiring large numbers of migrant workers to engage those workers through sub-contracting rather than direct employment.

- 2.8. The CTU supports Proposal Three to ‘introduce a labour hire licensing scheme providing certain protections for workers.’
- 2.9. We note that the Australian Government Migrant Workers’ Taskforce has also recommended establishing a compulsory registration scheme for Labour Hire companies, with provision for companies to ‘have their registration cancelled if they contravene a relevant law’. We recommend that New Zealand follow this approach.
- 2.10. There have been recent cases of exploitation of migrant workers by labour hire companies, including non-payment of agreed wages, over-charging for poor quality accommodation, and intimidation of workers not to join unions or raise complaints.<sup>3</sup> We have called for an inquiry into labour hire practices and potential exploitation with a view towards potential regulation and registration of labour hire companies. Until that has been carried out, labour hire employers should not have access to employment of temporary migrants.

### **3. Protecting migrant workers**

- 3.1. The CTU supports Proposal Four to ‘prohibit persons convicted of exploitation under the *Immigration Act 2009* from managing or directing a company.’
- 3.2. This would be an important measure to prevent persons convicted of exploitation from avoiding consequences by liquidating their business and re-starting a similar business.
- 3.3. The CTU supports Proposal Five to ‘establish an MBIE dedicated migrant exploitation 0800 phone line and online reporting AND establish an MBIE specialised migrant worker exploitation-focused reporting and triaging function.’
- 3.4. We are especially supportive of the proposal to create a dedicated specialist team to handle reports of exploitation. It will be important that this team is well resourced and well trained to enable timely and consistent responses to reports of exploitation,

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<sup>3</sup> Michael Morrah. 2018. Migrant construction workers languishing in crowded Auckland houses on illegal contracts. Newshub, 9 May 2018. <https://www.newshub.co.nz/home/new-zealand/2018/05/exclusive-migrant-construction-workers-languishing-in-crowded-auckland-houses-on-illegal-contracts.html>

including following up on all complaints. This team should include people with expertise in both employment and immigration law and procedure.

- 3.5. Policies and procedures for the team should enable migrant workers to be assured that reports of exploitation will be taken seriously and that workers will not be disadvantaged or negatively affected in any way by making a report of exploitation. In particular, workers making reports of exploitation should be assured that their immigration status will not be negatively affected and that no deportation notice or other enforcement action will be initiated against them, even if they are dismissed from employment as a result of making a complaint.
- 3.6. The specialist team should be the consistent single point of contact for a migrant worker reporting exploitation from the time they make a complaint. This will require the team to be well resourced and trained to fulfil a navigator role, liaising directly with both the Labour Inspectorate and Immigration Officers. The team should have all necessary access to information systems for both agencies and should be empowered to require responses within defined timeframes and to escalate issues that have not been satisfactorily resolved.
- 3.7. The specialist team should establish dedicated points of contact for advocates, including trade unions and worker support associations, to assist with the investigation and resolution of exploitation complaints.
- 3.8. The CTU supports Proposal Six B to 'develop a bridging-type visa for exploited migrant workers.' We recommend that this change be accompanied by clear instruction and training for Immigration Officers to offer a bridging visa to any migrant worker who reports exploitation.
- 3.9. In the experience of our affiliate unions, and of community advocacy groups with whom our affiliates work closely, the New Zealand Immigration system as currently constituted is fundamentally unable to respond to migrant complaints of exploitation in an appropriate, timely, or consistent manner. We are concerned that any proposed changes that rely on the discretion of Immigration Officers will suffer from the same difficulties, delays, and inconsistencies as the present system.
- 3.10. It is now well established that visa conditions requiring work for a specific employer are creating increased vulnerability to exploitation and present barriers to leaving exploitative employment. This evidence for this, in New Zealand and in other comparable jurisdictions, has been confirmed and added to by the report of the

independent researchers commissioned by MBIE for the present review. We drew attention to this problem in our submission on the changes to temporary work visas, to be introduced from 2021.

- 3.11. We recommend that the primary goal of any solution should be to allow migrant workers to change employer, including in situations of exploitation, without needing to wait for permission from Immigration Officers.
- 3.12. The CTU has previously advocated for Immigration Officers to be advised to follow the process established by Internal Administration Circular 16/5 in responding to all reports of exploitation, including by issuing an open work visa in any case where a migrant worker has been dismissed as a result of raising a complaint of exploitation and in any case where a migrant worker is at risk of ongoing exploitation as a result of their present employment.<sup>4</sup>
- 3.13. As a further measure, we support Proposal Six B to codify this process in immigration instructions through the introduction of a new bridging visa with open work rights for migrant workers who have reported exploitation.
- 3.14. Prior to the introduction of the new system for temporary work visas in 2021, we recommend further work on ways to enable visa holders to change employer that are consistent with the broader goals of the immigration system. In our submission on the recently announced changes, we recommended that current visa conditions allowing work only for a specified employer and job be replaced by:
  - a visa allowing work for any accredited employer in any approved job (i.e., those that have passed through the employer accreditation and job approval gateways); and
  - a requirement on both the employer and the worker to notify INZ of any change of employment.
- 3.15. We recommend that this approach be implemented from 2021, in parallel with the immediate adoption of Proposal 6b, to create a bridging visa in cases where a migrant worker reports exploitation. The advantage of our recommended approach is that it would reduce the vulnerability of migrant workers to exploitation that is

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<sup>4</sup> Immigration New Zealand. 2016. Internal Administration Circular No: 16/05.  
<https://www.immigration.govt.nz/documents/internal-administration-circulars/iac-16-05.pdf>



currently created by visa conditions. Our proposal would not compromise the broader goals of a targeted migration system, because migrants would normally be able to move only between accredited employers and approved jobs.

#### **4. Enforcing immigration and employment law**

- 4.1. The CTU supports Proposal Seven to ‘establish new immigration offences for employer behaviour that contributes to exploitation and vulnerability.’
- 4.2. The CTU supports Proposal Eight to ‘allow the Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe.’
- 4.3. The keeping of proper records by employers is an important enabler of accountability to basic employment standards. It is important that penalties for failure to keep records are sufficient to deter employers from attempting to hide exploitation by failing to keep records or by failing to provide records in a timely manner.
- 4.4. The CTU supports Proposal Nine to ‘expand the stand-down list to include existing immigration offences and, in future, immigration infringement offences for employer non-compliance.’
- 4.5. This proposal is consistent with the purposes of the stand-down list to protect the integrity of the immigration system and to protect migrant workers from exploitative employment practices.
- 4.6. The CTU supports Proposal Ten to ‘notify employees on employer-assisted visas who work for an employer who is stood-down.’
- 4.7. This proposal is common sense and it is surprising that this is not already standard practice. We recommend that care is taken in drafting communications to migrant workers, to advise workers fully on their options to extend or re-apply for work visas, their rights to report any instances of exploitation, and the support that is available to them.

#### **5. Reviewing the stand down period for lower-skill-category work visas**

- 5.1. In our submission on changes to visa rules in 2017, the CTU opposed the introduction of a three-year limit on renewal of lower-skill category Essential Skills Visas and the introduction of a one-year stand-down period following the renewal

limit being reached. We expressed concern that reinforcing the temporary nature of work visas, without measures to reduce dependence on migrant labour, would have the effect of increasing the precarity and vulnerability to exploitation of migrant workers on this category of visas. We recommended that concerns about the long-term employment of migrant workers on rolling temporary visas could be better addressed 'through strengthened labour market testing and more robust processes of employer accreditation'.

- 5.2. In our submission on recently announced changes to temporary work visas we recommended further work to establish realistic pathways to residency for this category of migrants, without undermining the policy objectives of the Skilled Migrant Category. We suggested that the solution lies in promoting enhanced information and support for migrants on temporary visas, including requiring employers to provide access to in-work training and skill development, that will allow migrants to progress into jobs that provide a pathway to residency. To provide sufficient time for this transition, the limit on visa renewals would need to be substantially extended, or removed altogether.
- 5.3. As noted in our previous submissions, we are particularly concerned for the cohort of workers who have been on lower-skilled-category temporary visas since before August 2017, who would be denied visa renewal under the stand-down policy from August 2020. If the stand-down policy is continued in any form, we recommend further work on a pathway to residency for this group of workers, as was done by the previous government for a select group under the South Island Pathway.

## **6. Conclusion**

- 6.1. The CTU supports the proposals contained in the consultation document and cabinet paper. We have made further recommendations to support the intent of the proposals.