

Submission to EDUCATION AND WORKFORCE SELECT COMMITTEE on the:

Worker Protection (Migrant and Other Employees) Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi
30 November 2022



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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

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.

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1. Summary of Recommendations

- 1.1. The CTU supports the Worker Protection (Migrant and Other Employees) Bill.
- 1.2. We note that the new powers that this Bill provides will only be meaningful if Immigration New Zealand and the Labour Inspectorate are adequately resourced to exercise them.
- 1.3. We note that penalties for infringements need to be set at levels that will have materially significant impacts upon employers/businesses. Adequately resourced inspectorates and impactful penalties are essential if this Bill is to have a meaningful effect on preventing migrant worker exploitation.
- 1.4. We note that although this Bill represents important progress in addressing the scourge of migrant worker exploitation, further work is required. The CTU's February 2022 submission on the Migrant Exploitation Inquiry, attached in the Appendix, identifies a set of actions that Government should take to prevent migrant worker exploitation.

2. Introduction

- 2.1. The CTU welcomes the opportunity to submit on the Worker Protection (Migrant and Other Employees) Bill ("the Bill") and contribute to this important kaupapa.
- 2.2. Through our affiliated unions, we represent migrant workers in multiple sectors. Unions are a critical voice for migrant workers who otherwise have no ability to call for improvement in their working conditions. We know from the stories of migrant workers, and from a range of supporting evidence (see Appendix), that migrant exploitation is a significant and systematically entrenched problem in New Zealand.
- 2.3. The CTU's approach to migration is guided by the goals of decent work and wellbeing for everyone in New Zealand, including the migrant workforce. We aspire for New Zealand to be a high-skill, high-wage economy. This means that all people living in New Zealand should have

access to jobs that provide the income, respect, and conditions needed to lead a dignified life and fully participate in society. Combatting migrant exploitation, and the precursors that lead to the exploitation of migrants, is a critical element of reaching this aspiration.

- 2.4. We therefore strongly support the policy intent behind this Bill, which is to improve the compliance and enforcement legislation so as to deter employers from exploiting migrant workers. This will help to improve conditions for migrant workers, and, by doing so, improve conditions for all New Zealanders. We believe this Bill makes important steps towards improving compliance and enforcement legislation, building on the work of the Temporary Migrant Worker Exploitation Review from 2020.

3. Feedback on the Bill

- 3.1. We broadly support all changes that the Bill puts forward.
- 3.2. We note that further work is needed to eliminate migrant worker exploitation. In an earlier submission on the Migrant Exploitation Inquiry (see Appendix), the CTU recommended that Government take action to end migrant exploitation across a wider range of areas than covered by the present Bill. We recommend that action is still needed on the issues raised in that submission and not addressed by the present Bill.
- 3.3. **Empowering immigration officials and labour inspectors**
 - 3.3.1. We support the additional powers for immigration officers and labour inspectors to access information relating to wages and time records, leave records, and any other documents relating to the remuneration or employment conditions of certain employees.
 - 3.3.2. We note that resourcing is needed to ensure that there are sufficient numbers of immigration officials and labour inspectors to actually exercise these powers in a meaningful way. Employers need to have a realistic expectation that they will be audited if these new powers are to act as a deterrent to exploitative behaviour. Investing in further resources for the Labour Inspectorate would also enable pro-active

investigation and enforcement action to uncover and eliminate exploitation.

3.3.3. We recommend that immigration officials and the Labour Inspectorate should establish close working relationships with unions and migrant advocacy organisations to facilitate and respond to complaints of exploitation. This will help to further strengthen the enforcement of labour standards and protections for migrant workers.

3.4. **Infringement offences**

3.4.1. We support the implementation of infringement offences so that immigration officers and labour inspectors can proportionally respond to offences committed by employers. However, as above, we note that these powers are only meaningful if sufficient resourcing is provided to officials. Clarity is needed on what level of resourcing is required to make these new infringement offences act as a credible deterrent to exploitative behaviour.

3.4.2. We would support regular reviews of the efficacy of infringement offences and whether new categories of infringement offence need to be developed to respond to emergent issues.

3.5. **Penalties**

3.5.1. We would seek greater clarity on the levels at which the infringement-offence penalties would be set. Penalties need to have a materially significant impact on employers/businesses to be taken seriously. If penalties are insufficiently high, then they can be treated by employers as a simple “cost of doing business”. This undermines the use of penalties as a form of deterrence.

3.6. **Further improvements – feedback from CTU affiliates**

3.6.1. Repeal section 19 of the Prostitution Reform Act, which prohibits temporary visa holders from working in the sex industry. This provision in the Act marginalises vulnerable migrant workers who

work in this industry and precludes them from fundamental protections.

4. Conclusion

- 4.1. The exploitation of migrant workers remains a significant problem in New Zealand. The CTU strongly supports the policy intent of the proposed Bill and the specific provisions of the proposed Bill.
- 4.2. We note that there are still major issues that need to be addressed if we are going to end the exploitation of migrant workers in New Zealand. We look forward to continued engagement with Government and officials to this end.

5. Appendix

See below for the CTU submission on the Migrant Exploitation Inquiry.

Submission to the Education and Workforce Select Committee on the:

Migrant Exploitation Inquiry

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi
23 February 2022

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6. Summary of Recommendations

CTU recommends that Government take action to prevent migrant exploitation as follows:

- 6.1. Ensure that Immigration Officials and Labour Inspectors establish close working relationships with unions and migrant advocacy organisations to facilitate and respond to complaints of exploitation.
- 6.2. Expand funding to the Labour Inspectorate to enable pro-active investigation and enforcement action against migrant exploitation.
- 6.3. Make funding and resources available to support the work of unions and migrant advocacy organisations to educate and advocate for migrant workers on their rights.
- 6.4. Replace visa conditions allowing work only for a specified employer and job with conditions allowing work for any accredited employer in any approved job.
- 6.5. As an immediate measure, ensure that the Variation of Conditions process is swift and responsive, to allow migrants to easily change employers.
- 6.6. Consider options for employer accreditation to require commitments to health and safety, good faith engagement, and pastoral care.
- 6.7. Require employers to pay all costs and fees charged by recruitment agents.
- 6.8. Undertake a review of the employment outcomes, experiences, and impacts of Working Holiday and Recognised Seasonal Employer visa categories.
- 6.9. Consider what reasonable conditions could be included in working holiday visa schemes, such as a requirement for employer accreditation.

The CTU further recommends reform of the migration system, consistent with eliminating exploitation and promoting good employment for all, as follows:

- 6.10. Require employers seeking to employ migrant workers to show commitment to recruitment and training of New Zealand residents and commitment to improving wages and conditions for all working people.
- 6.11. Identify the primary goal of the immigration system as enhancing the wellbeing of all people in New Zealand and ensure this is reflected in objectives set by a regular National Policy Statement on Immigration.
- 6.12. Set the objectives of the management of temporary work visas to include elimination of exploitation of migrant workers.
- 6.13. Set the objectives of the management of temporary work visas to include integration with employment and skills policies to promote full employment in good jobs for all New Zealand residents seeking paid work.
- 6.14. Remove stand-down periods for renewal of temporary work visas.
- 6.15. Identify realistic pathways for visa-holders to achieve permanent residency and ensure that migrant workers are supported to meet any conditions required.
- 6.16. Include relevant unions and professional associations as full parties to the negotiation of Immigration Sector Agreements.

7. Introduction

- 7.1. The CTU welcomes the Education and Workforce Committee's Inquiry into Migrant Exploitation. This inquiry is a timely opportunity to ensure that elimination of the ongoing scourge of migrant exploitation is a core priority of reform in the immigration system.
- 7.2. As we look forward to a future in which cross-border travel will become easier again, and as we seize the opportunities to build back better from the impacts of Covid-19, it is important that we consider how our migration system contributes to a fairer and more productive economy, with decent work for all.

- 7.3. As we move to reopen borders, it is important that we take the opportunity to introduce changes to immigration policy settings that contribute to eliminating exploitation of migrant workers.
- 7.4. The CTU approach to migration is guided by the goals of decent work and wellbeing for everyone in New Zealand. This will be best achieved if our immigration system is set up to eliminate exploitation of migrants, involves workers and their unions in raising standards, and is well integrated with workforce and skills systems that support full employment in good jobs for everyone who is looking for paid work.

8. Goals for Immigration: Wellbeing and Decent Work for All

- 8.1. In its interim report on immigration, the Productivity Commission has recently recommended that Government set objectives for the Immigration system through a regular National Policy Statement. CTU supports the Commission's recommendation.
- 8.2. CTU recommends that the objectives of the immigration system be set in relation to an overarching goal of enhancing the wellbeing of all people in New Zealand, including residents, temporary migrants, and visitors.
- 8.3. The goal of supporting the wellbeing of every person in New Zealand speaks to our fundamental values as a country, of manaakitanga and respect for universal human rights. It is appropriate for government to focus on the wellbeing of New Zealand residents in making policy, but this should avoid undermining the fundamental dignity, rights and wellbeing of others. We consider that New Zealand takes on a duty of care to all people within our borders and it is appropriate that our Immigration system have the goal of protecting and enhancing the wellbeing of both residents and visa-holders.
- 8.4. **Promote full employment in good jobs for all New Zealand residents seeking paid work**
- 8.4.1. Our aspiration is for a high value, high skill, high wage economy which provides jobs with the incomes, respect and conditions that

working people need for a dignified life and full participation in our society.

8.4.2. Full employment for everyone seeking paid work needs to be explicitly adopted as a core goal of an integrated employment policy, including in the immigration system.

8.4.3. Employers seeking to employ migrant workers should be required to show commitment to recruitment and training of New Zealand residents, and commitment to improving wages and conditions for all working people.

8.5. End exploitation and promote good employment for migrants

8.5.1. Migrant workers are too often in precarious positions, reliant on their employers for visa status and consequently vulnerable to exploitation. The CTU has called for changes to give migrant workers more secure status, including more effective processes for changing employers, removal of stand-down periods that enforce churn of temporary migrants, and realistic pathways for visa-holders to achieve permanent residency.

8.5.2. Exploitation of migrant workers can start from the beginning of the recruitment process. The CTU calls for rules to ensure that employers pay all costs and fees charged by recruitment agents.

8.5.3. Immigration Officials and Labour Inspectors should establish close working relationships with unions and migrant advocacy organisations to facilitate and respond to complaints of exploitation.

8.6. Involve working people and their unions in raising standards

8.6.1. Unions support the integrity of the migration system by monitoring employment practices and supporting rights at work. Existing processes for Immigration officials to engage with unions should be strengthened.

- 8.6.2. Unions and Professional Associations relevant to an application for employer accreditation for job approval should be given an opportunity to review and comment on the application, including details of wage rates offered.
- 8.6.3. Unions and relevant professional associations should be full parties to the negotiation of Immigration Sector Agreements. We see sector agreements as an important tool for reaching tripartite agreement on commitments to workforce development and improvements in general conditions of employment that can assist in attracting workers to sectors experiencing labour shortages.

9. The Scourge of Migrant Exploitation

- 9.1. We know from the stories of migrant workers, and from a range of supporting evidence, that migrant exploitation is a significant and systematically entrenched problem in New Zealand.
- 9.2. In 2019, Associate Professor Christina Stringer and her colleagues prepared a major report for MBIE's consultation group on migrant exploitation, which CTU took part in. The researchers found that migrant workers in New Zealand faced various forms of exploitation: exorbitant fees and debt; contract substitution; wage theft; Excessive hours of work; and Health and safety violations.
- 9.3. In one case that the researchers highlight, a group of Chinese workers were charged between \$40,000 and \$57,000 for a work visa, based on false promises that it would enable them to apply for residency. In another case that came to light in February 2019, a Canterbury bakery paid nothing to a migrant who did 985 hours work for them. Even more common is underpayment. We've seen particularly bad examples of this at some franchise liquor and convenience stores. In 2019, one worker at a Bottle-O franchise came forward to say that he had been working an 84-

hour week but was only paid for 32 hours, meaning he was effectively only being paid \$7 an hour.¹

- 9.4. Exploitation of migrant workers is not restricted to any particular industries and occupations. Visits by the Labour Inspectorate to dairy farms across New Zealand between December 2013 and 2014 found breaches of legal minimum employment rights in 33 out of 44 cases.² Research published by MBIE in 2015 found widespread exploitation of migrant workers in the hospitality industry across New Zealand³ and in the construction industry in Canterbury.⁴ Every time that a regulator has looked closely at an industry that employs migrants, they have found major non-compliance with minimum employment standards.
- 9.5. Our affiliate unions have raised concerns that exploitation of migrants is even occurring in professional occupations such as Nursing in the Aged Care sector and Teaching in Early Childhood Education. Migrants on temporary visas in these occupations are still 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 these industries, we need to do a lot more to ensure that exploitation of workers

¹ Christina Stringer and Snejina Michailova. 2019. Understanding the Exploitation of Temporary Migrant Workers: A Comparison of Australia, Canada, New Zealand and the United Kingdom. <https://www.mbie.govt.nz/dmsdocument/7110-understanding-the-exploitation-of-temporary-migrant-workers-a-comparison-of-australia-canada-new-zealand-and-the-united-kingdom>, p8; Francis Collins and Christina Stringer. 2019. Temporary Migrant Worker Exploitation in New Zealand. <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>, p1.

² John Anthony. 2014. Majority of farmers breaking employment laws – MBIE. 28 April 2014. <https://www.stuff.co.nz/business/9986064/Majority-of-farmers-breaking-employment-laws-MBIE>

³ Searle, Wendy, Keith McLeod & Christopher Stichbury. 2015. Vulnerable Temporary Migrant Workers: Hospitality Industry. Ministry of Business, Innovation and Employment. <https://www.mbie.govt.nz/dmsdocument/2682-vulnerable-temporary-migrant-workers-hospitality-industry-2015-pdf>

⁴ Searle, Wendy, Keith McLeod & Natalie Ellen-Eliza. 2015. Vulnerable Temporary Migrant Workers: Canterbury Construction Industry. Ministry of Business, Innovation and Employment. <https://www.mbie.govt.nz/dmsdocument/2681-vulnerable-temporary-migrant-workers-canterbury-construction-pdf>

on temporary visas is prevented and that migrants recruited into these industries have realistic pathways to secure employment and residency.

- 9.6. Across 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. The most precarious conditions tend to be faced by migrant workers with temporary immigration or work status that makes them dependant on employers to endorse a continuation of their visa, or not to report a violation of conditions.⁵ Evidence from Australia has shown that the categories of workers most vulnerable to exploitation, and facing the greatest barriers to making complaints, are those on temporary working holiday visas, international students, and those with irregular migration status.⁶
- 9.7. Additional factors can make migrant workers more vulnerable to exploitation, especially in the immediate period after arrival, including lack of familiarity with language and labour rights.⁷ A survey by Caritas found that the first year after migration to New Zealand was a period of heightened vulnerability for migrants, often due to a lack of confidence and social isolation, which tended to improve over time.⁸ This means that a high turnover of temporary migrants will tend to contribute to greater vulnerability to exploitation.
- 9.8. Unions know that any time a group of workers is left vulnerable to exploitation, some employers will use that to their advantage. Those bad employers may be a minority, but if they are allowed to get away with exploiting their workers, treating them as a source of cheap labour to be

⁵ Yuan, Sylvia, Trudie Cain and Paul Spoonley. 2014. Temporary Migrants as Vulnerable Workers: A literature review. Ministry of Business, Innovation and Employment. <http://www.massey.ac.nz/massey/fms/Research/ntom/Yuan%20Cain%20and%20Spoonley%202014.pdf?23A2F083283EE192CA49A530EA4B72F8>, p47.

⁶ UNSW Human Rights Clinic. 2015. Temporary Migrant Workers in Australia. Issues Paper. https://law.unsw.edu.au/sites/default/files/imce/files/UNSW-Law-migrant_workers_paper.pdf

⁷ Yuan, Cain and Spoonley. 2014, p36-48.

⁸ Caritas Aotearoa New Zealand. 2016. Stand up for what's right: Supporting migrant workers. http://www.caritas.org.nz/system/files/SJW%20research%20paper_web.pdf

exploited, then that creates unfair competition and undermines good employers.

- 9.9. The extent and impact of migrant exploitation is currently unknown. What we do know is that every case of migrant exploitation has a huge personal cost to the victims, negative economic effects, and costs to the Crown in lost revenue. Investing in further resources for the Labour Inspectorate would allow for pro-active investigation and enforcement action to uncover and eliminate exploitation. Even a modest investment in enforcement actions would have significant social and economic benefits and would likely be cost-neutral or revenue-positive to the Crown.

10. Decoupling Work Visas from Particular Employers

- 10.1. The CTU is aware of reports and mounting evidence that visa conditions requiring temporary migrants to work for a specific employer are acting as a barrier to migrants raising complaints of exploitation. These conditions can also cause hardship for migrants who are dismissed, including in cases of exploitation and unjustified dismissal. For this reason, we supported the 2018 changes to Post-Study Work Visas, which were converted to open work visas.
- 10.2. In the case of temporary work visas, the challenge is to design a system that allows greater freedom for migrant workers to choose their employer without undermining the system of targeted migration, which allows standards to be set for good employment and to promote training and recruitment of New Zealand resident workers.
- 10.3. Under the previously existing system, where scrutiny of employers and job conditions was primarily tied to assessment of visa applications, it has not been possible to achieve both goals. However, the proposals for employer accreditation and job approval would make it possible to allow migrant workers to change employment within the pool of accredited employers and approved jobs, without compromising the broader goals for the immigration system to be targeted and well-regulated.

- 10.4. Targeted migration, including labour market testing and promotion of employment and training for New Zealand residents, should continue to be a part of the immigration system at the level of employer accreditation and job approval, but this does not require individual migrants to be tied to individual employers.
- 10.5. The CTU recommends that current visa conditions allowing work only for a specified employer and job be replaced by:
- 10.5.1. 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
 - 10.5.2. a requirement on both the employer and the worker to notify INZ of any change of employment.
- 10.6. This recommendation would involve no change to the proposed process for issuing visas to new migrants. A new visa would only be issued where an applicant has a confirmed and approved job offer with an accredited employer.

11. Reviewing Working Holiday and Seasonal Work Programmes

- 11.1. CTU supports continuous monitoring and regular evaluation of major visa categories, including employment outcomes for migrants.
- 11.2. As far as we are aware, no substantive evaluation has ever been carried out of the employment outcomes, experiences, and impacts of Working Holiday Visa categories. We recommend that this be completed soon.
- 11.3. While the broad outlines of working holiday schemes are set by bilateral agreements, New Zealand would be within our rights to set reasonable conditions for the operation of the schemes. This could include requirements for employer accreditation.
- 11.4. We understand that MBIE has been undertaking an internal review of the Recognised Seasonal Employer (RSE) programme, but we have not seen any public information or opportunities for engagement in the review. A

review of the RSE programme should include full consideration of employment outcomes and impacts for both migrant and resident workforces. The review should also consider and respond to the findings and recommendations of the International Labour Organisation report on Seasonal Work schemes in New Zealand and Australia.⁹

12. Conclusion

- 12.1. Migrant exploitation remains a serious problem in New Zealand. Eliminating exploitation and ensuring that migrants have good experiences of work in New Zealand will have broad wellbeing benefits for the whole community. Implementing the recommendations we have made in this submission would contribute to removing the systematic causes of vulnerability and the barriers to reporting exploitation.
- 12.2. The CTU thanks the Education and Workforce Committee for the opportunity to engage in this inquiry.

⁹ International Labor Organisation. 2021. Seasonal Worker Schemes in the Pacific through the Lens of International Human Rights and Labour Standards. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_832224.pdf