

Submission to the Education and Workforce Select Committee on the:

# Immigration (Enhanced Risk Management) Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi  
29 April 2026

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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 300,000 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**

CTU recommends that the Government:

- 1.1. Does not extend s 161 (1)(a) out to 5 years.
- 1.2. Does extend s 161 (1)(d) out to 15 years.
- 1.3. Does not remove the right to appeal to the Immigration and Protection Tribunal for temporary visa holders and instead funds the IPT to improve its timeframes to hear a matter.
- 1.4. Does not amend s 280.
- 1.5. Does clarify s 150 but in a way that allows a claimant who withdraws their claim to make another one in the future.
- 1.6. Does improve the Act enforcement powers against employers who exploit migrant workers.

## **2. Introduction**

- 2.1. The CTU has mixed views on the proposed amendments and the motivations behind them. Consequentially, we support some of the amendments while there are others we do not want to see progressed.

## **3. Expanding criminal deportation liability**

- 3.1. Our first concern with expanding criminal deportation liability is the motivation behind the change. Although the CTU in no way endorses criminality, the regulatory impact statement<sup>1</sup> refers to two recent examples that are redacted. Generally, is it poor law making to make changes that could affect large numbers of people in response to a couple of isolated incidents.
- 3.2. Our second concern with expanding criminal deportation liability is the changes to the proportionality of the provisions, particularly at the lower end. Looking at the current Act, there is an important change in the

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<sup>1</sup> Page 9.

language between ss 161 (1)(a) & (b) and s (1)(c) where (a) and (b) use the language “court has the power to impose imprisonment for a term of...” and then under (c) “and sentenced to imprisonment for a term of 5 years or more...”.

- 3.3. This is an important distinction and cannot be looked at as a linear scale from 3 months to 2 years to 5 years to 10 years. There is routinely a large difference between the maximum sentence available to a court and the final sentence a defendant receives on sentencing.
- 3.4. Under s 161 (1)(c) a sentence exceeding 5 years has already been imposed, which is a significant sentence and the addition of deportation will seem proportionate.
- 3.5. However at the lower end of the scale, a crime with a maximum sentence of 3 months will very seldomly involve any custodial sentence. Suffering deportation on top of a minor sentence for a lower-level offence could be seen as disproportionate, and extending the time this can affect a resident visa holder out to five years is unhelpful.
- 3.6. The CTU notes that the extensions to deportation timeframes are proposed for all sentence lengths, except the ss 350(1), 351 & 351A offences. These are specifically about the exploitation of migrant workers. In our experience, the most serious migrant exploitation is perpetrated by other members of the exploited migrant’s ethnicity that are already resident in New Zealand. The employer’s standing in their local community contributes to the power imbalance that prevents the exploited migrant worker from speaking up. We would like to see an extension to the s 161 (1)(d) timeframe along with the other extensions.
- 3.7. The CTU supports the views of victims being taken into account at the IPT.

#### **4. Limiting humanitarian appeal rights to the Immigration and Protection Tribunal for temporary visa holders**

- 4.1. The CTU is concerned by the motivation for this change, which leads to people losing existing appeal rights. From reading the regulatory impact

statement it seems born of a frustration within MBIE that they cannot deport people fast enough because they have the right to justice on humanitarian grounds.

- 4.2. The frustrations felt by MBIE over the delays at the IPT are felt system-wide and the obvious solution is to sufficiently resource the IPT to clear the backlog and allow efficient processing of applications.
- 4.3. Removal of the appeal right on humanitarian grounds is wrong on two fronts:
  - 4.3.1. First, if the same number of appeals are lodged along the alternative pathways – the Minister, judicial review or the Ombudsman – this moves the work away from the specialist tribunal to other actors, who have no more capacity themselves.
  - 4.3.2. Second, if the removal of the right to appeal reduces the total amount of applicants seeking redress, then this is justice denied to those who would otherwise have had their matter heard by the tribunal.
- 4.4. Temporary visas are a broad category, spanning visitor visas to student or work visas that include a pathway to residency. Despite the temporary nature of the visas, some migrant visa holders have committed significant time and resources and intend to live in New Zealand long term, if possible.
- 4.5. There is also a perverse incentive where someone who has been accused of a crime, on a temporary visa, who will be liable for deportation upon conviction, will be motivated to defend the charge. Instead of pleading guilty they may exercise their right to a trial, even appeal, which would be substantially more expensive for the justice system to deal with than via the IPT.

## **5. Enabling more effective compliance powers for immigration purposes**

- 5.1. The potential application of this proposal raises serious concerns. We are currently witnessing the abuse that of migrant communities in the United States due to the expansion state powers to target migrants.

- 5.2. The obvious risk is that racial biases will be imposed simply on the basis of location, language, body language or skin colour, and the examples in the regulatory impact statement<sup>2</sup> show that MBIE is not ready as an organisation to mitigate these biases. Only one of four examples is acceptable.
- 5.2.1. In scenario one the immigration officer encounters an individual who refuses to engage or walks away from the immigration officer. They are under no obligation to engage, and they may be busy and have things to do. This is not enough to “may be liable” or “may be breaching” and could see this individual harassed.
- 5.2.2. Scenario two admittedly needs a solution in the legislation, but a more nuanced approach is needed.
- 5.2.3. In scenario three the officers have either assumed the other workers were migrants, in which case we have a racial bias in play, or they have identified themselves as migrants, in which case the current law is sufficient.
- 5.2.4. Scenario four includes risk behaviours such as “no eye contact” while hard at work, “attempting to leave the premises”, which could be part of their job, or their lunch break, and “wearing the same uniform”.
- 5.3. As we can see from scenarios one and four, the “good cause” behaviours that MBIE accepts range into the spurious and even the comical.<sup>3</sup> The presentation of the scenarios in the regulatory impact statement from MBIE proves that officers of MBIE should not be given the discretion that the Minister is proposing.

## **6. Section 150**

- 6.1. The CTU supports the clarification of s 150, on principle that ambiguous law should be clarified.

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<sup>2</sup> Pages 60-61 of the pdf.

<sup>3</sup> Wearing a work uniform.

- 6.2. However, we would prefer to see it go the other way with asylum seekers who withdraw their claim able to apply in the future.
- 6.3. There simply isn't evidence that those who withdraw their claims because they have achieved a visa by another route, were not legitimate claimants. There is, however, anecdotal evidence that genuine asylum seekers can find the process to be uncomfortable; while opportunities for another visa option can present themselves. The CTU asks the select committee to listen to migrant advocacy groups on this point.

## **7. Strengthening penalties for employers**

- 7.1. The CTU supports the extension of the timeframe for MBIE to act against employers. The 90-day time limit in employment law is arbitrary and unusually short compared to other areas of law; the CTU recently campaigned to have the time limit for sexual harassment personal grievances to be extended to 1 year. Migrant exploitation often stems from a strong power imbalance between employer and worker and can traumatise workers. Extending the timeframe is therefore appropriate. Starting the clock when MBIE becomes aware of the issue is also consistent with employment law.
- 7.2. The CTU does not agree that extending a maximum custodial sentence has a significant deterrent effect. However, increasing sentences sends a clear signal to the courts about the seriousness of the offence and higher sentences should result. Migrant exploitation runs the spectrum from minimum standards non-compliance to virtual slavery, and so the courts need to have the power to sentence appropriately.
- 7.3. The CTU supports the proposed improvements to MBIE's enforcement powers under s 359A.

## **8. Proposed policy additions**

- 8.1. Proposal 1 seems unnecessary, but the CTU is not opposed to it.

- 8.2. Proposal 2: the CTU is in favour of giving Refugee and Protection Officers more latitude to consider claims for protected status when there is a risk of refoulement.
- 8.3. Proposal 3: The CTU is concerned by proposal 3. While it seems reasonable for the IPT to consider all relevant information, the nature of an appeal process is that it assesses the decision that was made at the time based on the circumstances at the time. Claimants can be under a lot of stress, in a system they are not familiar with and have just experienced rejection. If that rejection was in fact incorrect, that should be more pressing on the IPT, rather than what the applicant may have done between the INZ decision the IPT decision.
- 8.4. Proposal 4: The CTU strongly disagrees with proposal 4. It is extremely common for a court or tribunal to allow late applications in special circumstances. The IPT is best placed to assess whether the late application should be accepted. The rationale for removing this ability is based on under resourcing of the IPT and removing it will create hardship for applicants whose lateness has a genuine excuse.
- 8.5. Proposal 5: The CTU mildly opposes proposal 5. An appeal should be on the decision that was made, and there seems to be a process (INZ citing that circumstances haven't changed) to enable the IPT to do what is proposed anyway.
- 8.6. Proposal 6: The CTU supports this clarification for consistency.
- 8.7. Proposal 7: The CTU supports this clarification.

## **9. Conclusion**

- 9.1. Some of the proposed changes in the Immigration (Enhanced Risk Management) Bill are positive and will do more to protect the vulnerable. Some of the changes however, seem to be motivated by a frustration with the current system and these proposed changes will have negative consequences to vulnerable actors that will outweigh any gains to system efficiency.

- 9.2. The government should proceed with some of these proposed changes, modify some and reject others.
- 9.3. Those that are rejected are not unsolvable problems, and the system probably could be more efficient, but solutions that won't create victims should be found. More work needs to be done here.