

27 November 2019

International Labour Policy  
Labour and Immigration Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
WELLINGTON 6140

Via email: [MigrantExploitationReview@mbie.govt.nz](mailto:MigrantExploitationReview@mbie.govt.nz)

### Migration exploitation review submission

Thank you for the opportunity to submit regarding the Addressing Temporary Migrant Worker Exploitation Consultation Document, dated October 2019.

Through our three membership brands, the Wellington Chamber of Commerce, Business Central and ExportNZ, our organisation represents around 3,500 businesses across the central and lower North Island. Our organisation is one of the four regional organisations that make up the Business New Zealand family and is also accredited through the New Zealand Chambers of Commerce network.

The Wellington Chamber of Commerce has been the voice of business in the Wellington region since 1856 and advocates policies that reflect the interests of Wellington's business community and the development of the Wellington economy as a whole. Business Central represents employers and provides employment, health and safety, and human resources advice, and advocates policies that reflect the interest of the business community.

As members of Business New Zealand, we support and endorse their submission on the discussion document. This submission highlights the issues most important to our members and us.

The goal of the review to reduce the exploitation of temporary migrant workers, including international students, is welcome. We agree with the high-level objectives to: "prevent the occurrence of workplace (and other) conditions that might enable temporary migrant worker exploitation; protect temporary migrant workers in New Zealand and enable them to leave exploitative employment, and enforce immigration and employment law to deter employer non-compliance through a fit-for-purpose offence and penalty regime."

Overall, we support the proposals in the discussion document. The focus from the government on improving compliance and making further enhancements to the ability for enforcement agents to crack down on migrant exploitation are welcomed. This includes some of the policy measures outlined in the discussion document as well as additional enforcement resources.

#### *Section A: Prevent migrant worker exploitation*

This section contains the most concerning policy proposals, which are either misaligned with the objectives of the review or overreach into punitive actions against companies not actually employing the migrant workers.

The overall thrust of the changes laid out as proposals one to four is to make companies other than the employer responsible for the breaches of employment standards. While there is anecdotal evidence of exploitation happening in these so-called "higher risk" business models, the discussion document provides no quantitative analysis of the problem seeking to be solved. Justifying the creation of new and onerous obligations on companies to look through their commercial contracting arrangements and supply chains for evidence of abuse requires a very high threshold. There is no evidence provided that this threshold is being met in New Zealand currently.

The question of escalating liability up the supply chain is not just a question of practicalities but fairness. Employers found exploiting migrant workers, or indeed any breach of employment standards, are already liable and subject to sanctions. Any company found collaborating in such a scheme is also punishable under current law.

The proposal to introduce a labour hire licensing scheme is particularly ill-suited for this current suite of policy changes. Labour hire companies operate across many sectors and employ a wide range of people. Introducing a generic licensing scheme within the context of migrant exploitation does not make sense. Work already underway on temporary migrant visas contains improved accreditation of employers sponsoring visas; there is no compelling evidence to double-up on this work.

We agree with the proposal to prohibit people convicted of exploitation under the Immigration Act from managing or directing a company, where they could repeat their crimes. The threshold for such prohibitions should be relatively high as the punishment is significant. But in situations where serious offending has taken place, such a ban from future involvement in companies is appropriate.

#### *Section B: Protect temporary migrant workers*

Additional efforts to reach out into migrant worker communities and provide better education and reporting channels is applauded. Setting up phone and online communication channels are welcome. The government should provide as many digital channels as possible, especially when the cost of running each channel is so low. We would also suggest additional promotion and educational resources be distributed to migrant workers, so they know where to go if they see or experience exploitation.

Providing a specialist team dealing with these issues is a positive move and will increase enforcement actions. Migrant workers and their advocates will hopefully increase their confidence in the government to deal appropriately to complaints which will further increase reporting of non-compliance.

Regarding proposal six's two options, we have no view either way. The only caution would be for the government to avoid designing a visa pathway which is more favourable to migrants than the regular pathway.

*Section C: Enforce immigration and employment law*

The proposed set of enforcement proposals are a welcome addition to the tools the government has to crack down on exploitation.

Establishing a set of infringements, which are below the level of a prosecution and therefore easier to administer, is a good idea. Particularly where it results in faster remedies for workers to regain their minimum legal rights. Infringements for offences that involve sloppy or incomplete paperwork, or in situations where the employer refuses to cooperate with enforcement offices, is a practical solution. Someone should not be able to escape prosecution for offences against migrants simply because they are unable or unwilling to produce the documentation supporting such a prosecution. The penalty for such non-compliance should be equal to the penalty for actual exploitation; otherwise, the incentive is for people to offend without a paper trail in the hope any prosecution will give up.

We do recommend against expanding the stand-down list to include immigration infringement offences. We agree that expanding the list to include immigration offences and Crimes Act offences is worthwhile. We do not agree that including relatively lower-level infringements is justified given the punishment of being able to access migrant workers could be financially very significant. The infringement notice will already include the relevant penalty, so there is no need for recourse to a more substantial penalty as well.

Thank you again for the opportunity to submit.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Milford', written in a cursive style.

John Milford  
Chief Executive  
Wellington Chamber of Commerce, Business Central