



BRIEFING

Preventing Worker Exploitation and Modern Slavery

Date:	11 November 2020	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2021-1137

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Minister of Immigration	Agree to the proposed worker exploitation and modern slavery work programme	30 November 2020
Hon Michael Wood Minister for Workplace Relations and Safety	Agree to the proposed worker exploitation and modern slavery work programme	30 November 2020

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Nita Zodgekar	Manager, International Labour Policy	04 901 3889	s 9(2)(a)	✓
Sam Foley	Principal Policy Advisor	s 9(2)(a)	N/A	
Rebekah Hood	Principal Policy Advisor		N/A	

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



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Purpose

Worker exploitation and modern slavery are serious issues in New Zealand and around the world. This briefing seeks your agreement to a proposed work programme with three focus areas to reduce worker exploitation and modern slavery in New Zealand and globally.

Executive summary

Addressing worker exploitation and modern slavery are priorities for both the Workplace Relations and Safety and Immigration portfolios and will need a cross-Government response. In 2018, the Government agreed to a multi-year work programme to take serious action to address temporary migrant worker exploitation. In March 2020, Cabinet agreed to a wide-ranging set of policy and operational changes to address migrant exploitation and has invested \$50 million over four years to support the changes. These changes are yet to be implemented.

The 2020 Labour Party election manifesto proposes to:

“Continue our work to stamp out migrant worker exploitation with a focus on exploring the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains.”

Exploitation has serious, negative outcomes for migrant workers and the New Zealand labour force as a whole, including for our most vulnerable workers such as Māori, youth and lower-paid and insecure workers. Exploitative work practices have a negative impact on businesses and the economy. Compliant employers are undercut and disadvantaged by exploitative employers and businesses using illegal or unethical practices to get ahead.

Quantitative and qualitative research shows that migrant exploitation is a significant problem in New Zealand and one that is likely to increase due to COVID-19. Migrants who are currently in New Zealand are likely to become more vulnerable due to labour market conditions. The recent conviction of Joseph Matamata on people trafficking and slavery charges, which is currently under appeal, also shows that New Zealand is not immune to serious worker exploitation.

We also know that exploitation, including modern slavery at its most extreme, is prevalent internationally and we have international commitments that require us to address it.

Work to address worker exploitation is already underway across a number of agencies and Ministerial portfolios. This includes:

- as part of the multi-year review of migrant exploitation the government has agreed to a set of policy and operational changes. The changes include a new reporting mechanism and protection visa, increased enforcement resources and tools, and a new duty on third parties with significant influence or control over an employer to take reasonable steps to prevent employment breaches. The new duty will be a significant change and will require careful design and implementation;
- employer-assisted temporary work visa changes will ensure that non-compliant employers are not able to recruit migrant workers through employer-assisted work policies; and

- the development of a national Plan of Action against Forced Labour, People Trafficking and Slavery.

However, this work has not been implemented yet and needs a sustained focus to ensure it is implemented effectively. In addition, we have identified some gaps in our regulatory settings that these changes do not fully address. We therefore recommend that you agree to a work programme to reduce worker exploitation with three areas of focus:

1. Implement the previously agreed changes to reduce migrant exploitation. The implementation of these changes is complex and includes legislative change as well as an integrated package of operational changes across Immigration New Zealand (INZ) and Employment New Zealand (ENZ).
2. Investigate whether further changes to regulatory settings are needed to prevent and reduce migrant exploitation, with a particular focus on international students. This work will align with the work Cabinet has agreed to undertake to reset and support the recovery of the international education industry.
3. Investigate whether we are adequately protecting workers in New Zealand and elsewhere from modern slavery, including finalising and implementing the national Plan of Action against Forced Labour, People Trafficking and Slavery; expanding our knowledge base/evidence on the scale of the issue in New Zealand and developing our understanding of different approaches or mechanisms for addressing modern slavery, including addressing supply chain transparency.

The Ministers of Immigration and for Workplace Relations and Safety are jointly responsible for addressing migrant worker exploitation. The Minister for Workplace Relations and Safety is lead Minister on modern slavery issues.

The proposed work programme will reduce worker exploitation and aligns with your wider portfolio and Government commitments. Overall the proposed work programme will focus on preventing harm, protecting victims and taking enforcement action against perpetrators. If you agree to the proposed work programme we will provide further advice on different aspects of the work programme over the next few months.

However, you have choices about how much work is done in each focus area, and how fast it is done, depending on your wider portfolio priorities. While there is little scope to reduce the resources devoted to implementing the existing migrant exploitation changes there are opportunities to consider the scope of the work undertaken in focus areas two and three. Officials are available to discuss your priorities within these focus areas and your wider work programmes.

Recommended action

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

- a **Agree** to the proposed worker exploitation work programme with the following three focus areas:
 - 1) implement the changes to reduce migrant exploitation agreed by Cabinet in early 2020, including introducing new legislation in 2021;
 - 2) investigate whether further changes to regulatory settings are needed to prevent and reduce migrant exploitation, with a particular focus on international students; and
 - 3) Investigate whether we are adequately protecting workers in New Zealand and elsewhere from modern slavery, including:
 - o Finalising and implementing the national Plan of Action against Forced Labour, People Trafficking and Slavery;

- Expanding our knowledge base/evidence on the scale of the modern slavery and forced labour issue in New Zealand; and developing our understanding of different approaches or mechanisms for addressing modern slavery within supply chains; and
- Providing advice on the legislative and non-legislative options with regards to addressing modern slavery within international supply chains.

Agree / Disagree

b **Note** that the Ministers of Immigration and Workplace Relations and Safety are jointly responsible for addressing migrant worker exploitation (focus areas one and two) and the Minister for Workplace Relations and Safety is lead Minister on modern slavery issues (focus area three)

Noted

c **Note** that we will provide further advice on different aspects of the work programme over the next few months, including:

- Focus Area One: advice on detailed policy settings for the migrant exploitation visa (late 2020), advice on draft legislative options (early 2021), and an update on MBIE's joint compliance and enforcement strategy (early 2021);
- Focus Area Two: advice on the cost of living requirements for international students (early 2021);
- Focus Area Three: a final draft of the Plan of Action against Forced Labour, People Trafficking and Slavery to take to Cabinet (late 2020); and
- Focus Area Three: initial advice on the prevalence of modern slavery issues in New Zealand and the different approaches or mechanisms for addressing exploitation within supply chains (early 2021).

Noted

s 9(2)(a)



Nita Zodgekar
Manager, International Labour Policy
 MBIE

11 / 11 / 20

Hon Kris Faafoi
Minister of Immigration

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Hon Michael Wood
Minister for Workplace Relations and Safety

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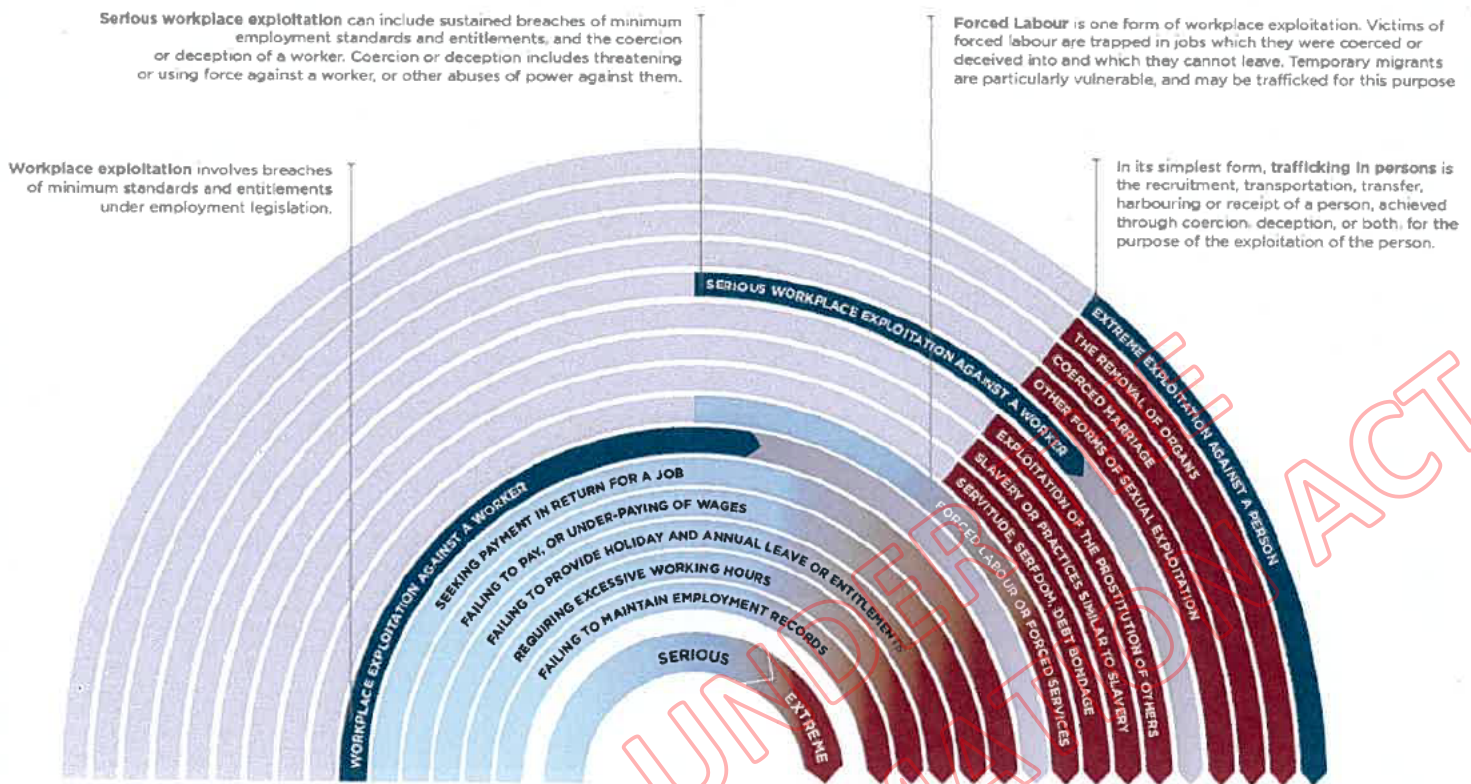
Context

1. Addressing worker exploitation and modern slavery are priorities for both the Immigration and Workplace Relations and Safety portfolios and will require a cross-Government response. The Labour party election manifesto proposes to:
“Continue our work to stamp out migrant worker exploitation with a focus on exploring the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains.”
2. In 2018, the Government agreed to an in-depth policy review of temporary migrant worker exploitation and earlier this year committed to a multi-year work programme to address the issue. The review included external research and substantial engagement with stakeholders. In March 2020, Cabinet agreed to a wide-ranging set of policy and operational changes to address migrant exploitation [DEV-20-MIN-0034]. In July, they agreed to invest \$50 million over four years to support the changes. These changes are yet to be implemented.
3. Addressing exploitation will support the Government’s aims for a productive, sustainable and inclusive economy, will improve worker wellbeing in New Zealand and ensure that we are maintaining an international reputation that we can be proud of.
4. Traditionally the labour market has worked well in generating and filling jobs, and participation rates are high. However, there are also longstanding weaknesses, including concerns around job quality, poor matching of skills and equity of outcomes. Some vulnerable groups, such as temporary migrant workers, have seen persistently poor outcomes, including conditions that fall below statutory minimum standards.
5. The factors that can lead to poor labour market outcomes for workers and potentially exploitation are:
 - **Individual risk factors may predispose workers towards poor labour market outcomes or experiences.** For example, lower understanding or expectations of obligations and rights, English being a second language, and lower educational attainment.
 - **Market conditions can crystallise those risks.** For example, sector employment norms such as: contracting, casual or fixed term employment; monopsony or limited numbers of employers in some sectors; high use of migrant labour.
 - **The regulatory framework and institutions** can help mitigate or obviate the risk factors where they apply. They may, however, entrench the situation where they don’t apply or apply in a limited way, are disconnected or are not enforced sufficiently.

Worker exploitation is a serious issue in New Zealand

6. Exploitation takes many forms. It can include: requiring workers to pay for their job; denying leave; requiring excessive work hours; under-paying or not paying agreed wages; failing to provide an employment agreement; retaining and withholding passports; controlling the living conditions; movement and communication of individuals; dangerous working conditions; and threats and intimidation. Worker exploitation can also begin even before the work starts, such as through the charging of premiums by recruitment agents. At its most extreme, exploitation includes serious crimes such as slavery and people trafficking which are domestic and cross-border crimes. Figure One outlines the spectrum of workplace exploitation.

Figure One: Spectrum of workplace exploitation, trafficking in persons and forced labour¹



It is hard to quantify the extent of exploitation but we know it has serious outcomes for victims and the wider economy (including New Zealand's reputation)

7. Exploitation has serious, negative outcomes for migrant workers and the New Zealand labour force as a whole, including for our most vulnerable workers such as Māori, youth and lower-paid and insecure workers. Exploitative work practices have a negative impact on businesses and the economy. Compliant employers are undercut and disadvantaged by exploitative employers using illegal practices to get ahead. The impact on the victims can be extreme and leave them with physical and mental health problems.
8. Measuring the extent of exploitation is difficult because of the hidden nature of this illegal activity. However, quantitative and qualitative research shows that exploitation is a significant problem in New Zealand and one that is likely to increase due to COVID-19 (migrants are likely to become more vulnerable due to labour market conditions).
9. New Zealand is also not immune to slavery and people trafficking. The Global Slavery index estimates that in New Zealand as many as 3,000 people are currently subject to modern slavery (including forced labour, human trafficking, slavery and forced marriage), based on a range of risk indicators and international survey findings. Fifty one victims of people trafficking have been identified in New Zealand since 2009. There have been two convictions² for people trafficking and other serious cases of exploitation have been identified. However, based on the experiences of other nations, the actual number is likely to be far higher. It is important to further our understanding of the prevalence of victims in New Zealand in order to address the issues effectively.

¹ Adapted with permission from Martin Jenkins.

² This includes the recent conviction of Joseph Matamata. Matamata was convicted of 10 charges of trafficking in persons and 13 charges of dealing in slaves, though the conviction and sentencing are currently under appeal.

10. We also know that exploitation, including modern slavery at its most extreme, is prevalent internationally and that due to an increasingly global economy, it is easier for it to be hidden within complex supply chains. In addition, businesses which apply good practices in this area, including by implementing robust assurance systems, are often undercut by those which do not. Meanwhile, the limited incentives that currently exist for businesses and procurers to take steps to address exploitation in their supply chains are relatively new and do not capture all businesses.
11. Temporary migrant workers, who make up a significant proportion of the labour force, are particularly vulnerable to exploitation. Around 200,000 temporary migrant workers are currently in New Zealand³ (out of a total labour force of 2,860,000 in the September 2020 quarter⁴). Temporary migrants are often dependent on their employer for their ability to remain in the country which makes them particularly vulnerable to exploitation. The number and proportion of exploitation complaints has been growing (currently around 60% of Labour Inspector investigations relate to migrant workers) and cases are becoming more serious and complex.
 - One example of exploitative conditions within a supply chain is the significant breaches of employment standards found with subcontractors involved in the roll-out of ultrafast broadband, as part of a supply chain led by Chorus. The Labour Inspectorate investigated 82 subcontractors operating throughout Auckland, and has taken compliance action against 69. Over half the workforce were migrants and all cases of exploitation involved migrant workers.
 - The 2018 Migrant Survey found that 8 per cent of temporary migrants were not receiving one or more of their minimum employment entitlements or had paid to keep their job. This increased to nearly one in five migrants working in the agriculture, forestry and fishing industry (18 per cent) and retail industry (17 per cent). Due to the nature of surveys on exploitation this is likely to be an underestimate of the overall scale.

COVID-19 has increased the vulnerability of workers to exploitation

12. The International Labour Organisation has noted the profound impact of COVID-19 on businesses across a range of economic sectors, with 5.4 per cent of global working hours (equivalent to 155 million full-time jobs) lost in the first quarter of 2020 relative to the fourth quarter of 2019. This difference was expected to increase to 14 per cent in the second quarter of 2020.
13. The ILO notes that the vast majority of the world's workers reside in countries with some sort of workplace closure measure in place, and that the COVID-19 crisis is disproportionately affecting women. The United Nations Office on Drugs and Crime has indicated that COVID-19 may drive people trafficking activity further underground and that criminals are adjusting their business models to the 'new normal', especially through the use of modern communications technologies. It notes that already vulnerable populations have become even more exposed to the risk of severe exploitation as they try to identify means to support their livelihoods.
14. In New Zealand, while the number of temporary migrant workers will likely drop over time as the borders remain closed to most new temporary migrants, those that remain will be at higher risk of exploitation, particularly those in lower-skilled jobs and those who become unlawful in New Zealand. A large number of existing migrants work in sectors that have been hit hard by COVID-19 such as tourism and hospitality. Many will likely lose their jobs or have

³ There are also around 68,000 migrants on student visas, many of whom have the ability to work in New Zealand.

⁴ StatsNZ September quarterly labour market statistics release (the labour force includes: unemployed, employees and self-employed workers).

their hours reduced and be unwilling or unable to return home, especially if they or their families took on debt to come here or if COVID risks are high in their home country.

15. Across the whole labour market the economic conditions are likely to increase the number of non-compliant employers. These employers may seek to reduce their labour costs by underpaying or otherwise exploiting workers, including through the misclassification of employees as contractors. This is likely to put increased pressure on the employment standards system over the next few years. Vulnerable migrants may also be less likely to come forward, or may seek to get redress through mediation rather than making formal complaints, as they will be even more reliant on their employers for their ability to remain in the country. Again this outcome is much more likely if their immigration status is not secure.
16. COVID-19 will likely lead to similar and potentially stronger contractions in the economic and labour markets of many foreign countries. This may further drive foreign nationals to seek out employment opportunities in New Zealand when borders start reopening, and accordingly place them in a position of increased vulnerability including during the recruitment process. At the most serious end of exploitation, this will further increase the risk of people trafficking occurring. As the borders start to reopen there is an opportunity to reset aspects of the migration system to focus on higher skills and reduce the reliance on lower skilled pathways that increase exploitation risks.

We recommend you agree to a work programme to address work exploitation with three focus areas

A multi-year work programme to address exploitation is already underway but more could be done

17. Work to address exploitation is undertaken across a number of agencies and Ministerial portfolios. These include Immigration, Workplace Relations and Safety, Oranga Tamariki, Police and Justice. The Ministers of Immigration and for Workplace Relations and Safety are jointly responsible for addressing migrant worker exploitation, although some specific initiatives will sit more in one portfolio than the other. The Minister for Workplace Relations and Safety is lead Minister (working in consultation with the Minister of Immigration and other relevant Ministers) on modern slavery and the development of a new national Plan of Action against Forced Labour, People Trafficking and Slavery.
18. There is currently work underway in each of the priority areas outlined in more detail below, but there is more to be done to deliver activities already agreed and to address gaps in our ability to address exploitation and modern slavery. The focus should be on implementing the changes outlined in the Migrant Exploitation review as well as the actions identified through the work on modern slavery, including through the Plan of Action and will need a sustained focus to ensure that they are implemented effectively.
19. Further, we have also identified some gaps in our regulatory settings that the upcoming changes do not fully address such as addressing the exploitation of international students; considering migrant specific health and safety risks; and addressing risks in the use of forced labour in global supply chains.

The proposed work programme focuses on implementing agreed changes, addressing any gaps in regulatory settings and investigating modern slavery issues

20. We recommend that you agree to a work programme with three areas of focus:
 - Focus Area One: implement the changes to reduce migrant exploitation agreed by Cabinet in early 2020, including introducing new legislation in 2021;

- Focus Area Two: investigate whether further changes to regulatory settings are needed to prevent and reduce migrant exploitation, with a particular focus on international students;
 - Focus Area Three: investigate whether we are adequately protecting workers in New Zealand and elsewhere from modern slavery, including:
 - finalising and implementing the national Plan of Action against Forced Labour, People Trafficking and Slavery;
 - expanding our knowledge base/evidence on the scale of the issue in New Zealand; and
 - developing our understanding of different approaches or mechanisms for addressing modern slavery.
21. The proposed work programme will reduce worker exploitation and aligns with your wider portfolio and Government commitments to reduce migrant exploitation and explore the need for modern slavery legislation in New Zealand to eliminate exploitation in supply chains. Overall the proposed work programme will focus on preventing harm, protecting victims and taking enforcement action against perpetrators.

Focus Area One: Continue with the work to implement the changes to prevent migrant exploitation, including introducing new legislation in 2021

22. In 2018, the then Government committed to take serious action to address migrant exploitation, including international students, and agreed to an in-depth policy review, to better understand the issue and to identify effective and enduring solutions. To support the review MBIE has published independent and wide-ranging research on the nature of such exploitation. It has also convened a consultation group representing migrants, businesses, unions, and international students. Public consultation on a set of proposals was undertaken in October and November 2019.
23. In March 2020, Cabinet agreed to implement a set of policy and operational changes to reduce migrant exploitation in New Zealand. In July, \$50 million was allocated through Budget 2020 processes to support these changes over the next four years. The proposed changes are supported by key stakeholders and, when implemented, will make a material difference to reducing exploitation. The changes are expected to be implemented over the coming years. A summary is provided in Annex One.
24. The key non-legislative and operational changes that have been funded include:
- an information and education campaign to make sure that migrant workers know where to get accurate information;
 - a new reporting and triaging function that will provide a case management approach to dealing with reports of exploitation;
 - a new migrant exploitation protection visa to allow exploited migrant workers to quickly leave exploitative situations;
 - a substantial increase in funding for compliance and enforcement activity by Employment New Zealand and Immigration New Zealand. Recruitment is currently underway for additional labour inspectors and immigration enforcement officers and investigators; and
 - a new joint compliance and enforcement strategy and operating model that will improve the way Immigration New Zealand (INZ) and Employment New Zealand (ENZ) work together.
25. We recommend that the implementation of the agreed and funded migrant exploitation changes remains a key focus for the work programme. The changes are particularly

important due to increased risks as a result of COVID-19. However, some of the operational activity will need to pivot to respond to different issues created by COVID-19. For example in the short term information and education will need to focus more on migrants already in New Zealand than trying to reach new incoming migrants.

26. The following changes will require new legislation before they can come into force:
 - the duty on third parties with significant control or influence to take reasonable steps to prevent breaches of employment standards;
 - disqualification of company directors who have been convicted of exploitation;
 - expansion of the employer stand-down list for the unlawful treatment of workers; and
 - new infringement offences.
27. The new third party duty is a significant change to the *Employment Relations Act 2000* and will impose new obligations on businesses to take action to reduce exploitation in their New Zealand supply chains. The impact of this could be transformative but it will require careful legislative design and operational implementation to ensure that it has the intended impact and the costs on business are proportionate. It is also a potentially significant step in New Zealand positioning itself to bring about substantial change in worker treatment through supply chain transparency (as is sought to be achieved through global modern slavery legislation).
28. We are aiming to be able to introduce the legislation by mid-2021 and enact it in 2022. However, this timetable is subject to the Government's other legislative priorities, the availability of house time, and Parliamentary Counsel Office's drafting capacity which is likely to be limited over the next few months.
29. The new exploitation visa and reporting and triaging functions do not need new legislation and can be implemented by mid-2021. We are also aiming to finalise the joint compliance and enforcement framework and operating model and the information and education action plan in early 2021. Recruitment for new enforcement staff is underway and expected to be completed by mid-2021.
30. There is still a significant amount of policy and operational work that needs to be undertaken to ensure these changes are implemented successfully. We will report on progress and key milestones to Ministers on a regular basis. A timeline of the upcoming policy and operational work to address worker exploitation is attached as Annex Two.
31. If you agree to the proposed focus area we will provide further advice and seek further decisions from Ministers over the next few months. This will include:
 - seeking agreement to detailed policy requirements of the new migrant exploitation visa by December 2020 to enable it to be implemented by mid-2021;
 - seeking agreement to the legislative design and to undertake targeted consultation on specific legislative proposals in early-2021. In order to ensure that the legislative process runs smoothly we will seek your agreement to undertake further targeted consultation with social partners and other key external stakeholders on this proposal. We are aiming to introduce legislation in mid-2021, subject to PCO capacity; and
 - providing a briefing on the INZ and ENZ joint compliance and enforcement strategy by early 2021.

Focus Area Two: Investigate whether further changes to regulatory settings are needed to address migrant exploitation, with a particular focus on international students

32. Work on phase one of the migrant exploitation review focused on a set of general changes to immigration and employment laws and systems that would have the largest impact on

reducing migrant exploitation in New Zealand. s 9(2)(f)(iv)

33. A number of issues were raised during consultation, or identified through the independent research, or have been identified subsequent to the review. The independent research identified international students as particularly vulnerable to exploitation. Many come to New Zealand with high expectations of being able to obtain work and residence here which may not be reflected when they get here.
34. In June 2020, Cabinet agreed to a strategic recovery plan for international education. This includes taking steps to strengthen and refocus the system to ensure that when international students start returning in larger numbers the sector is more sustainable and resilient. As part of this work MBIE will be reviewing the work rights offered to international students and the funds that students are required to have to support themselves in New Zealand. There are also opportunities to work with the Ministry of Education and other agencies to identify ways to strengthen the regulatory regime for international education providers, including looking at incentives and sanctions and the “offer of place” as a key regulatory tool.
35. Cabinet also noted in the migrant exploitation decisions that we would look at further issues in phase two. This included:

s 9(2)(f)(iv)

37. If you agree to the proposed focus area we will provide further advice and seek further decisions over the next few months. This will include:

s 9(2)(f)(iv)

Focus Area Three: Investigate whether we are adequately protecting workers in New Zealand and elsewhere from modern slavery

38. We recommend that this area remains a focus. Due to the nature of the crime, it is difficult to estimate the number of victims or the wider implications for New Zealand in terms of human and economic cost. Increasing international attention is being placed on this issue and taking

steps to address it would be consistent with our goals of being a good international citizen and ensuring the global trading system is not taking advantage of vulnerable people.

39. The latest Global Slavery Index estimated that there were at least 3,000 victims in New Zealand at any one time. There is a responsibility on New Zealand to demonstrate progress in this area as a responsible global citizen, and build on New Zealand's international reputation in an environment where increasing attention is being placed particularly on the use of forced labour in global supply chains. There are also wider social and economic costs to be considered:
- the human costs in terms of ongoing mental health issues and the wider physical and emotional harm to the victims;
 - the cost to the public purse (a UK study in 2018 found that the average cost per victim £329,000⁵ (\$643,000 per victim in New Zealand));
 - reduction in productivity across all sectors as a result in demotivation and inefficient labour allocation;
 - inter-generational poverty which is exacerbated by these crimes, including in education and social imbalances which are carried through other communities and generations;
 - additional burdens on health and wellbeing services; and
 - capital market failures as slavery can tilt the market unfairly towards those businesses who rely on illegal practices.
40. On 13 December 2019, New Zealand ratified the International Labour Organisation's Forced Labour Protocol. As part of this, it is required to develop a national plan of action to address forced labour by 13 December 2020, when the Forced Labour Protocol enters into force. New Zealand has an existing Plan of Action to Prevent People Trafficking which has been in place since 2009. However, this needs to be updated to reflect new developments and changes since that time. Given the connections between forced labour, people trafficking and slavery, officials are developing an all-of-government Plan of Action to address these practices collectively.
41. In September 2020, the previous Ministers for Workplace Relations and Safety and of Immigration agreed to MBIE entering into targeted consultation with key stakeholders on a draft Plan of Action. The draft Plan of Action sets out current activities the government is undertaking or will be undertaking, and is organised under the pillars of prevention, protection and enforcement, while emphasising the importance of effective partnerships. This consultation was undertaken from mid-September to mid-October, with 37 submissions received from a variety of civil society, business, academic and other groups.
42. Officials are currently analysing the submissions received, and these views will be taken into account as the Plan of Action is developed further. Officials intend to provide you with the Plan of Action in November 2020, for Cabinet's consideration by 13 December 2020.
43. Existing actions in the plan include investigating the case for enacting Modern Slavery legislation similar to the UK and Australia, facilitating processes for the efficient delivery of support services to trafficking victims, and continuing working in partnership with civil society organisations and businesses to raise awareness of these crimes and the indicators to be aware of.
44. Increasing attention is being placed on the role of businesses across supply chains in facilitating or increasing the risk of exploitation. In a domestic context, practices such as those seen in the ultrafast broadband rollout, which resulted in widespread exploitation of

⁵ The economic and social costs of modern slavery, Home Office (UK Government), Sasha Reed, Stephen Roe, James Grimshaw and Rhys Oliver, July 2018.

subcontractors, has resulted in Cabinet agreeing to amend the *Employment Relations Act 2000* as part of the migrant exploitation changes. This will be a significant change which will require parties with significant control or influence over an employer to take reasonable steps to prevent breaches of employment standards. While our international levers are more indirect, there are increasing calls for modern slavery reporting legislation as introduced in the UK and Australia. The action on investigating the need for any modern slavery legislation also supports our commitment through the Universal Periodic Review to review the need for legislation.

45. However, we need to better understand the scale of the problem in terms of modern slavery and forced labour within New Zealand and its prevalence within supply chain. This includes developing our understanding of the wider implications (including the costs and areas outlined above). Further, we need to look at what other countries such as the UK and Australia are doing to tackle these issues, including looking at the successes of those approaches and what can be learned from them.

Next steps

46. If you agree, we will:
 - Send you a final draft national Plan of Action against Forced Labour, People Trafficking and Slavery in November 2020 for Cabinet consideration by 13 December 2020.
 - Provide initial advice early next year which will cover the prevalence of modern slavery issues in New Zealand; and different approaches or mechanisms for addressing exploitation within supply chains, including what can be learnt from other countries.

Other work is underway that may reduce vulnerability to exploitation

Changes being implemented to employer-assisted temporary work visa settings will improve employer compliance and tighten residence pathways

47. Cabinet agreed to reform the employer-assisted temporary visa system in 2019, with the main affected visa types being Essential Skills and Talent (Accredited Employer) work visas. Implementation is happening in stages with the new system expected to be fully operational in mid-2021. These reforms were focused on embedding underlying principles advantaging New Zealand's existing labour force, as well as tackling exploitation.
48. The reforms will also restrict the work to residence pathway to only the highest skilled and paid temporary visa holders. As residence thresholds are a powerful driver of the work conditions migrants accept, this is expected to reduce the scope for migrant exploitation.
49. More permanent change to business models is anticipated over time as a result of the new requirement for all employers to be accredited by INZ before being able to recruit employer-assisted temporary migrant workers. In order to be granted accreditation, employers will be required to be a genuinely operating business, have no recent history of non-compliance with employment or immigration laws, and take steps to minimise exploitation. This includes ensuring migrant workers receive information on their employment rights and paying all the costs and fees for the recruitment of migrant workers. There will be a specific focus on higher-risk employers, such as labour hire companies and employers of high numbers of foreign workers with associated increased verification and assurance activities. It is expected that the new system will lift the standards of poor employers, or render them ineligible to access these migrant workers.

The Recognised Seasonal Employer policy is being reviewed

50. The Recognised Seasonal Employer (RSE) policy allows horticulture and viticulture employers to recruit seasonal migrant labour, predominantly from the Pacific. The current scope of the review includes consideration of changes focused on lifting employer

performance and compliance, and ensuring workers get a fair share of benefits from their participation of the scheme. The Minister of Immigration will receive advice on progressing the RSE policy review in coming months.

The Government Procurement Rules are being strengthened

51. Procurement can also be a key lever for achieving improved labour market outcomes and reducing exploitation. For example, Government Procurement Rule 19 requires for designated contracts, such as cleaning and security services, that agencies ensure their suppliers and their domestic supply chain comply with all relevant employment and health and safety requirements. Work is currently underway to strengthen the Government Procurement Rules and their application and implementation to focus more on employment opportunities for New Zealanders.
52. One of the key proposals in the migrant exploitation changes is to introduce a duty on third parties with significant control or influence over an employer to take reasonable steps to prevent a breach of employment standards occurring. We will ensure that the design of the new duty takes into account the new procurement rules and approaches to ensure that they are effective.

The Transnational Organised Crime Strategy and Action Plan is being implemented

53. New Zealand's Transnational Organised Crime (TNOc) Strategy aims to strengthen capability, improve understanding and raise awareness across relevant government agencies and other partners to unify, prevent, detect and dismantle organised crime. Migrant exploitation and people trafficking can be facilitated through TNOc networks, and MBIE officials are working with New Zealand Police and other agencies to support the implementation of the TNOc Strategy (published in September 2020) and its accompanying Action Plan. This work is complementary to the national Plan of Action against Forced Labour, People Trafficking and Slavery.

There is also work in the Workplace Relations and Safety portfolio that focuses on vulnerability

54. There is other potential work in the Workplace Relations and Safety portfolio which, if progressed, is likely to have a positive impact on reducing worker vulnerability to poor outcomes and exploitation. This might include:
 - progressing work to address the vulnerabilities of non-standard workers, with an initial focus on contractors;
 - fair pay agreements; and
 - reviewing the employment dispute resolution system.

New Ethical and Sustainable Work Practices resources are being released

55. Employment NZ has been rolling out a suite of Ethical and Sustainable Work Practices resources since July 2020. The purpose of the resources is to help users to understand and apply ethical and sustainable work practices, in relation to how workers are treated within their organisations and supply chains.
56. The resources highlight the increasing expectation from stakeholders (e.g. customers, employees, investors, and consumers) that work places are fair. To date they have released products and tools targeting employers, procurers, franchisors, and recruiters. The next releases will be targeted at directors, and investors.

Next steps

57. If you agree to the proposed focus areas on worker exploitation they will be included in the wider immigration and workplace relations and safety policy work programmes. However, you have choices about how much work is done in each focus area, and how fast it is done, depending on your wider portfolio priorities and available policy resource. While there is little scope to reduce the resources devoted to implementing the existing migrant exploitation changes there are opportunities to consider the scope of work undertaken in focus areas two and three.
58. As well as the specific briefings and updates related to worker exploitation outlined in this paper we will also update you regularly on progress on your overall policy work programmes. Officials are available to discuss your priorities within these focus areas and your wider work programmes.

Annexes

Annex One: Summary of the Migrant Exploitation Changes

Annex Two: Timeline of upcoming policy advice and operational changes

Annex One: Temporary Migrant Worker Exploitation Review Changes

Summary of the changes

1. The proposed changes represent a coordinated and deliberate response across the whole system, from education and policy design to enforcement and prosecution. The end-to-end package is strengthened by \$50 million in new funding over four years to ensure an increase in compliance and enforcement activity by Employment New Zealand (ENZ) and Immigration New Zealand (INZ). The changes will also be supported by:
 - an information and education action plan to ensure that migrant workers and employers understand their rights and obligations; and
 - a joint compliance and enforcement strategy for ENZ and INZ to ensure efficient and effective use of resources across the two regulators and enabling better prioritisation on migrant exploitation.

Prevent: Proposals to reduce risks around business models and practices that might enable exploitation		
<i>Change</i>	<i>Current state</i>	<i>Benefit</i>
1) Introduce a duty on third parties with significant control or influence over an employer to take reasonable steps to prevent a breach of employment standards occurring.	Multiple contracting layers may facilitate or hide exploitation, particularly when cost pressures are driven down the supply chain. In these circumstances, liability for employment standards and conditions generally rest only with the direct employer, regardless of the degree to which their business is influenced or controlled by others in the chain. Migrant workers are particularly susceptible to harm in layered supply chains.	A positive duty would incentivise businesses and employers to embed good practice in their supply chains to prevent exploitation.
2) Require franchisees to meet higher accreditation standards under the proposed employer-assisted visa gateway system.	Labour hire companies in Canterbury are currently required to be accredited in order to recruit migrant labour. Changes announced last year to temporary work visa settings (to come into force in 2021) expand that to all labour hire companies. Labour hire companies will go through more robust checks than other employers to ensure that migrants are not exploited.	Franchises companies are associated with risk factors including lower-paid work in combination with a lack of control over some aspects of business. This proposal expands on the changes to temporary work visa settings announced last year by ensuring that franchises will need to meet higher standards, and go through more robust checks in order to be accredited and recruit migrants.
3) Disqualify people convicted of migrant exploitation and people trafficking from managing or directing a company.	Some company directors leverage corporate structures to avoid personal liability and to avoid detection while exploiting migrant workers.	This would prevent exploitation by ensuring that people who had been convicted of serious exploitation would not be able to use a company to continue such activities.

Protect: Proposals to improve the pathways for reporting exploitation and assist migrant workers in leaving exploitative employers

<i>Change</i>	<i>Current state</i>	<i>Benefit</i>
4) Establish a dedicated migrant exploitation 0800 phone line and online reporting tool, and establish a specialised migrant worker exploitation-focused reporting and triaging function.	The Review found that migrant workers have low awareness of their employment rights and how to report exploitation. There are currently multiple channels for migrant workers to report exploitation, and inconsistencies and delays in handling their complaints, and insufficient data collected to enable monitoring of reported exploitation.	This would make it easier for migrants to report exploitation, and provide a trained and dedicated team to take the reports and ensure that they are directed into the most appropriate investigatory stream.
5) Create a new visa for exploited migrant workers.	Feedback from the independent research and submissions indicates that migrant workers do not report exploitation because they have concerns about the negative implications of reporting, such as the consequences for their visa status. There is currently a discretionary process that may lead to the grant of a visa for exploited migrants. However the process is not well-known, has a high threshold for 'exploitation', and requires an investigation to be launched, which prevents the migrant from quickly leaving their exploitative situation and creates uncertainty of outcome.	This new dedicated 6 month 'open' work visa would ensure migrants can quickly leave any exploitative situations without negatively affecting their immigration status, and increase the incentives on migrants to report exploitation. Migrants will be able to use the visa to search for alternative employment or make plans to leave the country. The new visa category will be more transparent and quicker than the current process.

Enforce: Proposals to strengthen the offence and penalty regime to deter and penalise non-compliant employers

<i>Change</i>	<i>Current state</i>	<i>Benefit</i>
6) Establish three new immigration infringement offences targeting non-compliant employer behaviour, and a power for immigration officers to compel employers to provide relevant documents.	INZ's current enforcement toolkit does not have a mechanism outside of a criminal prosecution before a court to address low-level non-compliant employer behaviour. Prosecutions are a time-consuming, expensive and inefficient response to low-level non-compliance. If left unaddressed, low-level non-compliance may exacerbate a temporary migrant worker's vulnerability or facilitate more serious exploitation.	These measures will enable more efficient responses to non-compliant employer behaviour, and decrease the vulnerability of migrant workers.
7) Allow Labour Inspectors to issue an infringement notice where employers fail to provide requested documents in a reasonable timeframe.	The Labour Inspectorate currently experiences delays to investigations when employers stall providing information they are legislatively required to hold and produce to a Labour Inspector.	This would ensure that employers are not delaying providing information that is legislatively required under the <i>Employment Relations Act</i> in order to impede investigations.

<p>8) Expand the stand-down list to cover existing <i>Immigration Act</i> offences where a fine was issued and, in future, immigration infringement offences, and clarify that employers with certain serious convictions cannot support visa applications for migrant workers.</p>	<p>Employers found in breach of minimum employment standards are added to the stand down list and prevented from supporting visa applications for migrant workers. However, employers who are convicted of offences under the Immigration Act are not added currently to the stand-down list which creates an anomaly.</p>	<p>This would ensure that employers with a history of non-compliance with immigration law are not able to support visa applications.</p>
<p>9) Notify affected migrant workers that their employer has been stood down.</p>	<p>Temporary migrant workers who are employed by a stood-down employer are not always advised that their employer has been added to the stand-down list, or what that means for them.</p>	<p>This would ensure that affected migrant workers are aware of the implications for any further visa applications and can make informed decisions on their future employment.</p>

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Annex Two: Timeline of upcoming policy advice and operational changes

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Annex Two: Timeline of upcoming policy advice and operational changes

Focus Area	Workstream	Q4 2020	Q1 2021	Q2 2021	Q3 2021	Q4 2021
s 9(2)(f)(iv)						
Focus Area One: Implement the migrant exploitation changes	Migrant Exploitation Visa: a new visa category for exploited migrant workers	★ Briefing to Minister of Immigration on detailed visa design	Implementation underway including drafting immigration instructions, operational design, training and recruitment		★ Minister of Immigration to certify immigration instructions	Visa introduced mid-2021
	Establish a dedicated migrant exploitation 0800 phone line and online reporting tool, and establish a specialised migrant worker exploitation-focused reporting and triaging function		Implementation underway including operational design of case management approach and credibility assessment, creating online reporting mechanism, recruitment and training			

s 9(2)(f)(iv)

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