



BRIEFING

Temporary Migrant Worker Exploitation Review: Overview

Date:	12 July 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0080 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration Minister for Workplace Relations and Safety	Note the contents of this briefing and the accompanying three detailed briefings with proposals to reduce temporary migrant worker exploitation Review the draft meeting agenda for our Wednesday 17 July meeting, where we will seek your feedback and direction on the proposals Direct officials to draft a Cabinet paper for Cabinet Economic Development Committee consideration in September 2017, seeking approval to consult publicly on the proposals you agree to progress Agree to forward this briefing and the accompanying three detailed briefings to the Ministers of Finance, Education, Justice, Police, Revenue, Commerce and Consumer Affairs, and Ethnic Communities.	17 July 2019
Hon Poto Williams Associate Minister of Immigration	Note for your information	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Nita Zodgekar	Manager International Labour Policy	Privacy of natural persons	✓

The following departments/agencies have been consulted
See the accompanying three detailed briefings

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☐ Withdrawn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

This briefing is the first in a series, and provides:

- an **overview** of the current state and next phase of the Temporary Migrant Worker Exploitation Review (the Review)
- a **framework for seeking your approval of proposals** to be developed into a draft Cabinet paper and public consultation document for Cabinet in September 2019.

Recommended action

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

- a **note** the contents of this briefing and the accompanying three detailed briefings with proposals to reduce temporary migrant worker exploitation

Noted

- b **agree** to review the draft meeting agenda for our Wednesday 17 July meeting, where we will seek your feedback and direction on the proposals

Agree / Discuss

- c **agree** that officials draft a Cabinet paper for Cabinet Economic Development Committee consideration in September 2019, seeking approval to consult publicly on the proposals you agree to progress

Agreed / Discuss

- d **agree** to forward this briefing and the accompanying three detailed briefings to the Ministers of Education, Justice, Police, Revenue, Commerce and Consumer Affairs, Ethnic Communities, and Finance

Agreed / Discuss

Nita Zodgekar
Manager, International Labour Policy
Labour and Immigration Policy, MBIE

12/07/19

Hon Iain Lees-Galloway
Minister of Immigration
Minister for Workplace Relations and Safety

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Our proposals and proposed approach to seeking your feedback

1. This briefing provides an **overview** of the current state, and next phase, of the Temporary Migrant Worker Exploitation Review (the Review). It also proposes an approach for **seeking your feedback on and approval of proposals** to be developed into a draft Cabinet paper and public consultation document for Cabinet in September 2019. The proposals are contained in the accompanying three detailed briefings:
 - a. Briefing one: *Improving the pathway for reporting and referral* [3490 18-19 refers]
 - b. Briefing two: *Penalising and deterring employer non-compliance* [3573 18-19 refers]
 - c. Briefing three: *Business models and practices* [3821 18-19 refers].
2. A summary A3 of the proposals is attached at **Annex One** for your reference. **Annex Two** attaches a draft agenda for our meeting with you at 1:30 – 2:15pm on Wednesday 17 July.
3. Each of the three briefings has been constructed with a clear purpose and an Executive Summary. The Executive Summary includes a table showing each of the proposals measured against the criteria for analysis (outlined in paragraph 17). The body of each briefing contains the detailed discussion and analysis.
4. Each of the briefings has a set of detailed recommendations that seek your **feedback** on the proposals and **direction** on those proposals and options to further develop for Cabinet and public consultation; these are reflected in our draft agenda for the meeting. As the Review is a multi-year initiative, further work will also be undertaken in other action areas that include the international education regulatory system. MBIE's view is that this work is necessary as to identify and address any gaps in this regulatory system that increase migrants' vulnerability to exploitation.

The goal and objectives of the Review

5. The Review has an overall **goal** of reducing the exploitation of temporary migrant workers, including international students, and mitigating their vulnerability.
6. The goal is intended to give effect to the September 2018 Cabinet decision to progress an action item in its coalition agreement [CAB-180-MIN-0434 refers] to "take serious action on migrant exploitation, particularly of international students". Cabinet set out its **deliverables** for the Review, as being to, in summary:
 - a. *learn about the nature and extent of exploitation of temporary migrant workers*
 - b. *identify the gaps and opportunities to reduce temporary migrant worker exploitation*
 - c. *make recommendations on potential regulatory, policy or operational changes.*

The scope of the Review

7. Migrant exploitation is complex and multifaceted. In considering the scope of the Review, Cabinet decided that it should focus on migrants in an employment context and span four regulatory systems - immigration, employment relations and standards, health and safety at work, and international education. To guide our exploration of levers and options for change, migrant exploitation was loosely defined as:

*Breaches of minimum employment standards: non-payment or underpayment of wages, charging premiums to work, unlawful deduction of wages, inability to leave a workplace or work-related accommodation, and breaches of section 351 of the Immigration Act (which covers serious breaches of three employment Acts: the Holidays Act 2003, the Minimum Wage Act 1983, and the Wages Protection Act 1983, and matters of coercion and control). It **excludes** people smuggling and trafficking, which sit at the more serious end of the spectrum, as there are work programmes in place to address these issues.*

8. The scope of **the Review includes migrants on temporary work visas** (including those who may be in breach of their visa conditions – willingly or as a consequence of their exploitation) but many of the proposals should result in benefits for all workers, including permanent residents and New Zealand workers. The scope also includes those holding **student visas** with an entitlement to work – such as international students – and **those who may no longer hold visas**. However, the approaches to the different types of exploitation and the different cohorts of migrants might differ. For example, it may be:
 - a. appropriate to have a pathway for those migrants who are experiencing under-payment at work that is different to those whose freedom of movement is being restricted by their employer
 - b. useful to differentiate between migrants who hold visas with work rights, and those who hold student visas, as the various mechanisms for reducing their exploitation and vulnerability may be different
 - c. necessary to take a different approach to those who hold visas and those that do not, or those complicit in breaching visa conditions and those who are not, considering the need to support the integrity and effective functioning of the immigration system.

The range of stakeholders to the Review

9. Although the scope of the Review is limited to an employment context, it still spans **multiple pieces of legislation, regulations and government policies, and levers for change**. So, while you lead the work as Minister for Workplace Relations and Safety, and of Immigration, **some of the levers are other Ministers' responsibilities**. Their agreement to the proposals will be necessary for the proposals to progress.
10. There are also a number of Ministers that have an interest in the Review due to the scope of their portfolios, as shown in the table below. For this reason, **it is recommended** that you forward this briefing and the accompanying three detailed briefings to the Ministers of Education, Justice, Police, Revenue, Commerce and Consumer Affairs, and for Ethnic Communities. It is recommended that you keep the Minister of Finance informed because the proposals for change may have cost implications. Confidential advice to Government The indicative costs of the proposals are summarised at **Annex Three**.

Ministers with responsibilities or portfolio interests in the Review

Ministers with responsibilities	Ministers with a portfolio interest
Minister Hipkins - Education	Minister Salesa - Ethnic Communities
Minister Little - Justice	Minister Roberston - Finance
Minister Nash - Police and Revenue	
Minister Faaoi - Commerce and Consumer Affairs	

11. Along with multiple Ministers, there are also multiple government and external stakeholders to the Review; all of whom will have a view on the scope of the Review, the definition of exploitation and the proposed means of reducing it. To support engagement with these stakeholders, a **cross-Government Steering Group** and an **External Consultation Group** have been established.

12. The Ministry of Business, Innovation and Employment (MBIE) will, with your support, continue to engage with the Steering and Consultation Groups as we develop the proposals you agree to progress for the Cabinet paper and public consultation document. It would be useful if Cabinet was supportive of specifically directing the Government Steering Group and government agencies to work together on the next phase of the Review. We would also like to explore with them the concept of directing the Review and agencies to have a “migrant-centric” approach (and the implications of this approach). The concept has been discussed in our engagements and briefings, and fully exploring it would add value to the next steps.

Stakeholders consulted on the proposals to-date

13. The proposals in the three detailed briefings have been developed with affected internal and external teams, and government agencies (including Immigration New Zealand, the MBIE Business Law and Employment Services teams, and the Office of Ethnic Communities, Ministries of Justice and Education, Inland Revenue, WorkSafe New Zealand, New Zealand Police). The Department of the Prime Minister and Cabinet and the Treasury have also been engaged. All the teams and agencies with which we have engaged are supportive of the goal and objectives of the Review, and of further analysing and seeking feedback on the proposals being made.

The proposals for change

14. MBIE has initiated research to meet objective (a) as outlined in paragraph 6; *learn about the nature and extent of exploitation of temporary migrant workers*. We are awaiting its finalisation and you will be briefed on it later this month. All the work streams have used early drafts of the research to inform the proposals. The final research is expected to feed into the draft Cabinet paper and public consultation document we will prepare.
15. The **three detailed briefings** that accompany this overview are part of our work to address objectives (b) and (c) and represent the overlapping work streams you agreed to progress in April 2019 [2874 18-19 refers]. These work streams were:
 - a. **Protection** – This work stream includes improving the information about employment rights that is available to migrant workers, and the mechanism for reporting of exploitation and the referral of reports to the appropriate investigative agency (or agencies). It seeks to address the problem that migrants find reporting exploitation a challenge, as they don't know their rights, how to report and are concerned about the negative consequences their reporting exploitation could have, such as for future visa applications
 - b. **Deterrence** – This work stream includes improving the range of tools that can be used to deter employers from exploiting migrant workers and penalising them where exploitation has occurred. It seeks to address the problem that only a few employers are prosecuted and penalised (for the most serious cases of exploitation) because of the resources needed to investigate cases and high evidentiary thresholds
 - c. **Prevention** – This work stream includes options for ensuring that employment standards are met in all types of businesses; including franchises and those with multiple layers of contracting and sub-contracting. It includes proposals for addressing the issues of limited liability companies ceasing to operate to avoid payment of wages and entitlements and prosecution. These proposals seek to address the problem that some business models can create the conditions for exploitation by creating downward pressure on wages and conditions.
16. The briefings identify the gaps, and opportunities and issues we have identified to reduce migrant worker exploitation across the work streams. There is some overlap; particularly between the deterrence and prevention initiatives. The briefings also seek your feedback on proposals for legislative and regulatory, policy and operational change.

17. **Some of the proposals are well progressed**, and we recommended that the Cabinet and consultation processes explore any opportunities or issues that might be associated with their future implementation. These are boxed in **green** in the A3 (Annex One). **The analysis of some of the other potential levers is in its early stages** and MBIE would like Cabinet and public feedback on whether they should be explored further. These are boxed in **teal** in the A3.
18. We used the following criteria to analyse the proposals and options:
- Efficiency** – Includes consideration of the time required, and ease of implementation, for regulators and other actors such as businesses; the anticipated system responsiveness to the proposal; and the proposal's overall alignment with other proposals and options. A goal includes that businesses with good practices would be unaffected. A proposal that is efficient should not impede other aspects of the Review.
 - Effectiveness** – Includes consideration of whether an option could work sustainably if put in practice and whether it would have significant adverse consequences. A proposal that is effective should have an evidence-base and should be accepted by stakeholders, and should reduce exploitation.
 - Cost** – Includes the potential fiscal impact of a proposal, including whether – on face value – the cost of implementing and delivering it can be met from baselines or would require additional funding, along with the cost to employers, employees and other stakeholders; including exploited workers. Costs will need to be further explored as the Review progresses.
 - Simplicity** – Includes consideration of whether a proposal can be easily understood by the actor who would need to implement it. For example, will a potential migrant worker or student be able to understand and use the information provided to them about working in New Zealand, or will an exploited migrant be able and willing to access options for reporting? A simple option should be migrant-centric.
19. Of note, as the Review is a multi-year initiative, further work will be undertaken in other areas while we are seeking to progress the first suite of options for change. This further work will include the international education regulatory system's approaches to student employment. MBIE's view is that this work is necessary to identify and address any gaps in this system that increase migrants' vulnerability to exploitation.
- Confidential advice to Government
20. Other work may also include further exploration of how visa settings can help to reduce vulnerability to exploitation. It will consider what additional protections are needed for migrants on employer-assisted visas, what vulnerabilities are created by open work visas.

Next steps for the package of proposals

Seeking Cabinet agreement to publicly consult on the proposals for change

21. We will brief you on the results of the research we commissioned to better understand the nature and extent of exploitation of temporary migrant workers. **It is recommended** that you direct us to use the research and the feedback you provide on the three detailed briefings to develop a draft:
- Cabinet paper for the Cabinet Economic Development Committee in September 2019
 - public consultation document.

22. The Cabinet paper is intended to update Cabinet on the Review; including the proposals you have chosen to progress and those that require further exploration (along with the work already being done). It will note the complexity of the issue and the range of mechanisms needed to address temporary migrant worker exploitation. It will inform Cabinet that there are likely to be costs associated with any proposals that they agree to at a later date. Some may also result in the need for legislative, regulatory or policy change.
23. The Cabinet paper is also a tool for informing Cabinet about those proposals that cross over Ministerial responsibilities and portfolios, and for seeking Ministerial support to further analyse and seek a public view on those proposals. It will seek Cabinet's agreement to the draft public consultation process.
24. We will provide you with a draft Cabinet paper and public consultation document in mid-August 2019. We will have formally consulted with affected internal teams and government agencies by this time. The consultation document will also be the first step in completing the Regulatory Impact Statement (RIS) that will be needed when we seek agreement to proposals for change.
25. The draft paper will be accompanied by a briefing on the feedback received, and will include our proposed approach to public consultation. We suggest that it would then be prudent for you to consult with your Ministerial colleagues and your coalition partners before lodging the draft Cabinet paper and consultation document. We expect that there will be widespread interest in the Review and the proposals being made.

Steps after the Cabinet discussion and public consultation process

26. Once we have consulted on the proposals and summarised the feedback received, we will brief you further on the next steps and their timeframe. We will need to undertake the initial design and implementation work to further progress those options you may wish to implement. This is because they may include legislative and regulatory change, [REDACTED] Confidential advice to [REDACTED] You will need to seek Cabinet agreement to these things. We will also identify those proposals that you may wish to further explore as part of the next phase of the Review.
27. [REDACTED] Confidential advice to Government [REDACTED] however, this timeframe may depend on the timeframe for, and feedback received from, the public consultation process. The scope and complexity of the Review, and the range of stakeholders, may result in the need to extend the consultation process beyond our planned six weeks. We would discuss this with you if the situation arises.

Other work being undertaken

28. As you are aware, the provision of streamlined, consistent and accurate information and education about employment standards and rights in New Zealand, and about New Zealand's tools for addressing exploitation, will support all the other proposals to address migrant worker exploitation [briefing 2874 18-19 refers].
29. MBIE is continuing to consolidate existing information on employment rights and reporting exploitation across our existing platforms. We are also working to streamline information and education platforms between agencies (such as with international education agencies and WorkSafe). Along with this consolidation effort, we are developing ways to assess whether migrant workers and employers are aware of these information and education products understand their rights and responsibilities. More information is provided on MBIE's consolidation efforts in briefing one [briefing 3490 18-19 refers].
30. In addition to work on information and education, there is a range of other work going on across MBIE and the government that will have a positive impact and support our range of proposals to reduce migrant exploitation. They include:

- a. An Immigration New Zealand (INZ) pilot project to standardise assessment, referral and recording of allegations received (including those related to exploitation).
 - b. Work to strengthen immigration risk and verification functions, particularly after a visa is granted, to ensure that risk mitigation controls are producing the desired effect and to identify any adverse outcomes that may occur.
 - c. Changes to employer-assisted work visa policy, introducing compulsory employer accreditation, including a broader assessment of employers seeking to hire migrant workers and clearer ability to prevent access to migrant workers.
 - d. The organisational realignment of INZ, including a refocusing of its role as a regulator, and establishment of a Data and Intelligence Branch to guide operations, and a Risk Branch to ensure appropriate identification, management and treatment of risk.
 - e. Roll-out of a case management tool (TIKA) for INZ compliance staff, which is already used by the Labour Inspectorate and will strengthen our ability to undertake joint investigations and provide opportunities to improve our data collection and reporting.
 - f. Budget 2019 funding of \$31 million over four years for additional resources in immigration education, intelligence, compliance and investigation functions, to support a targeted compliance strategy in priority sectors.
31. MBIE is also progressing policy work on government procurement, Fair Pay Agreements, Confidential advice to Government and (within the Small Business and the Commerce and Consumer Affairs portfolios) protections against unfair contract terms.

Annexes

Annex One: Overview of proposals in July 2019 briefings package

Annex Two: Draft meeting agenda

Annex Three: Summary of indicative costing of the proposals

PROACTIVELY RELEASED

Annex One: Overview of proposals in July 2019 briefings package

KEY: COSTS

Confidential advice to Government

KEY: IMPACTS

LOW

Indicates proposals we scored **poorly** against the Efficiency, Effectiveness, and Simplicity criteria.

MED

Indicates proposals we scored **moderately** against the Efficiency, Effectiveness, and Simplicity criteria.

HIGH

Indicates proposals we scored **highly** against the Efficiency, Effectiveness, and Simplicity criteria.

KEY: FORMATTING

Green background

Recommended proposal (to be consulted upon).

White background

Other potential proposal (to be consulted upon).

Teal border

Cabinet and public feedback will explore whether the proposal as a concept should be explored further.

Green border

Cabinet and public consultation will explore opportunities or issues that might be associated with the proposals' implementation.

PRIORITY FOCUS AREAS

FURTHER WORK

BRIEFING 1

Improving the Pathway for Reporting and Referral

[3490 18-19 refers]

Migrant workers have little awareness of employment rights and how to report exploitation, and they have concerns about the negative implications of reporting, such as for their immigration status. There is inconsistency and delays in handling migrant worker exploitation complaints and insufficient data collected to enable monitoring of reported exploitation.

Objective: Establish easily identifiable and accessible ways of reporting for temporary migrant workers, and reports (responding to calls and triaging) handled with a specialised and dedicated migrant worker and international student focus

Establish an MBIE dedicated migrant exploitation 0800 phone line and online reporting.

Cost Impact HIGH

AND/EITHER

Establish an MBIE specialised migrant worker exploitation-focused reporting and triaging function.

Cost Impact HIGH

EITHER

STATUS QUO – Migrant workers report via various channels.

Cost Impact LOW

EITHER

STATUS QUO – Migrant workers' reports are handled at several places without a dedicated focus.

Cost Impact LOW

EITHER

Establish an external migrant exploitation 0800 phone line and online reporting.

Cost Impact LOW

Objective: Reduce barriers to migrant workers reporting exploitation and leaving exploitative jobs

Confidential advice to Government
Develop a bridging-type visa for exploited migrant workers.

Cost Impact MED

EITHER

Improve the INZ process through which migrant workers reporting exploitation can apply for a consideration of their visa status.

Cost Impact MED

EITHER

STATUS QUO – Continued use of existing processes for managing exploited migrant workers currently used by INZ.

Cost Impact LOW

BRIEFING 2

Penalising and Deterring Employer Non-Compliance

[3573 18-19 refers]

Employers are not always deterred from breaching employment standards, or penalised. Maintenance of the law
The toolkit requires additional tools to better respond quickly, efficiently, and proportionately.

Objective: Expand the INZ toolkit to ensure that more employers are held to account

Confidential advice to Government
Establish infringement offences for non-compliant behaviour that contributes to vulnerability or exploitation of workers.

Cost Impact HIGH

AND/EITHER

Follow warning letters relating to employer non-compliance with an infringement notice if an employer doesn't remedy the specified matter within the time indicated.

Cost Impact HIGH

Objective: Address gaps in employment infringement offences

Allow Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe.

Cost Impact MED

Objective: Improve the stand-down list to provide a stronger deterrent effect

Expand the stand-down list to capture existing immigration offences and, in future, immigration infringement offences for employer non-compliance.

Cost Impact HIGH

AND/EITHER

Notify those employees on employer-assisted visas who work for an employer who is stood-down.

Cost Impact MED

Objective: Formalise protocols and remove barriers to cross-agency working

Develop a joint compliance and enforcement strategy on migrant exploitation to provide guidance for how/when the two regulators will work together, and ensure better consistency across regions.

Cost Impact HIGH

AND/EITHER

Remove any barriers to cross-agency collaboration by progressing and finalising any outstanding information-sharing agreements.

Cost Impact MED

Objective: Prevent poor employers from starting new businesses

Confidential advice to Government
Increase MBIE's focus on preparing cases for referral to Police for asset recovery, subject to further detail on financial implications.

Cost Impact HIGH

BRIEFING 3

Reducing Risks around Business Models and Practices that Facilitate Exploitation

[3821 18-19 refers]

Business models can facilitate exploitation by creating a downward pressure, 'race to the bottom' approach where reduced labour costs maintain otherwise non-sustainable businesses. Particular models include labour-on-hire, sub-contracting and 'phoenixing'.

Objective: Increase the duty of care and liability for breaches

Introduce liability for parties with significant control or influence over another

Cost Impact HIGH

Objective: Improve current regulation of contracting layers

Require certain subcontractors and franchisees to meet additional criteria under the employer-assisted visa gateway system

Cost Impact Unknown

AND/EITHER

Introduce supply chain reporting requirements.

Cost Impact LOW

AND/EITHER

Introduce a licensing scheme providing certain protections for workers.

Cost Impact Unknown

Objective: Address liability aversion through liquidation

Prevent persons convicted of serious employment offences from managing or directing a company.

Cost Impact HIGH

Confidential advice to Government

Annex Two: Draft meeting agenda

Items	Lead
1. Confirm agenda: confirm or revise this proposed agenda	Nita
2. Overview briefing: - agree we develop a Cabinet and public consultation paper based on your feedback on the three detailed briefings - agree to forward the detailed briefings to key Ministers with responsibilities and interests in the Review	Nita
3. Briefing one: Feedback, and provide direction on: - options for a dedicated reporting line for migrant exploitation - the proposal for a specialised triage and referral function - options for addressing the visa status of migrant workers reporting exploitation	Tina
4. Briefing two: Feedback, and provide direction on: - the proposal to introduce an infringement regime for employer-related immigration offences - the proposal to expand the "stand down" list that prevents poor employers from hiring migrant workers - the proposal to develop a joint enforcement strategy to address temporary migrant worker exploitation - the proposal to enhance our cross agency collaboration by addressing any information-sharing challenges and increasing our asset recovery from employers who have breached their obligations	Alison
5. Briefing three: Feedback, and provide direction on: - options for assigning liability for parties involved in the employment of workers (across the supply chain) - options for providing a defence for parties who fail to meet their employment obligations - options for limiting subcontractors from employing temporary workers - our proposal not to introduce supply chain reporting at this time - our proposal to enable company officers to be charged with section 350 and 351 immigration offences - our proposal to prevent individuals convicted of serious employment offences from managing a company	Paramita
6. Additional issues arising Any other issues or matters arising	Nita

Confidential advice to Government

Confidential advice to Government

PROACTIVELY RELEASED

PROACTIVELY RELEASED