



28 November 2022

S22.20

Submission to the Education and Workforce Committee on the Worker Protection (Migrant and Other Employees) Bill

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 300 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
3. This submission has been prepared by the NCWNZ Economic Independence Action Hub and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

Summary

4. NCWNZ members strongly support the purpose of this bill which is to deter employers from exploiting migrant and other workers. They also strongly support the strategies by which the bill aims to achieve its purpose. Our members are hopeful that the bill will effectively strengthen existing migrant and other employee's employment conditions as our borders reopen and overseas workers are attracted here because of staff shortages in a wide range of industries.

MBIE review on exploitation of migrant workers

5. In 2019 NCWNZ participated in a Ministry of Business Innovation and Employment (MBIE) review on exploitation of migrant workers. We supported a number of the proposals and are pleased to see that this bill implements many of them, in particular:
 - Prohibition of people convicted of exploitation under the Immigration Act from managing or directing a company.
 - Establishment of new immigration infringement offences for non-compliant employer behaviour that contributes to exploitation and vulnerability.
 - Allowing the Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe.
 - Expanding the stand-down list to capture existing immigration offences and, in future, immigration infringement offences for employer noncompliance.
6. In the 2019 review we called for more resources for the Labour Inspectorate and note that since then Labour Inspector numbers have increased. We are aware of anecdotes from advocates for migrant workers that they are now able to get quick and effective support in resolving their workplace issues. Increased powers of the Labour Inspectorate from the enactment of this bill may require further increase in resourcing to enable routine and unexpected monitoring.

Strategies within the Bill

7. Some of our members are not confident that the strategies of the Bill would work across the board. They feel these strategies will work best when they are used to enable external scrutiny of larger businesses but are likely to have less impact on forms of migrant exploitation or diverse forms of people trafficking that occur in small businesses, family businesses and domestic environments in which people (mostly women) from outside Aotearoa New Zealand may be engaged in childcare, cleaning, home-based agriculture, or industrial production and possibly paid sex work. Forced marriages and potential monitoring of these situations will also be very difficult to identify. A suggestion was made that the government fund more generously NGOs such as Shakti who work directly with affected women. Some of our younger members in particular see trafficking as a growing social issue which needs to be addressed.
8. Other members believe these concerns can be addressed by well-resourced and wide-ranging education and support. They believe education should feature highly after this bill is enacted and had the following suggestions:
 - An information programme printed and/or delivered in the migrant workers' native language
 - An Ombudsman of Opportunity for Migrant Workers
 - A code established for accommodation, working hours and wages

- Contracts viewed by migrant workers with a worker advocate fluent in the worker's native language
- Toolkits to provide ways for businesses to become compliant if they are infringing.

Role of Trade Unions

9. Trade unions were also seen as an important vehicle for providing support to migrant workers. Some members noted that for those who are not union members, this bill is extremely important. Union members are more likely to know their rights, or know where to get help, if they are concerned that their rights are being compromised. Migrant workers often come from countries with low union membership density and face issues of isolation and a lack of networks on arrival. Coming to a new country where multiple complex systems have to be navigated, often in a language that is unfamiliar, is extremely difficult. Women workers are less likely than men to complain about their working conditions and unlikely to raise issues regarding sexual exploitation. Some members also suggested that unions be allowed automatic access to workplaces with migrant workers and that the employers pay for these union advocacy services.

Visas

10. NCWNZ congratulates the Government on the progress made with this bill. However, as we submitted to the 2019 review, we would still like to see progress on visas since one of the main causes of exploitation is the temporary nature of the visa. NCWNZ would like to see much less use of repeat temporary visas and instead an easier process for migrants to achieve the protection of permanent visas. We believe that women temporary migrant workers in particular are disadvantaged by the difficult path to permanent work visas in NZ.
11. We call for the separation of the visa from the employer (attach the visa to an occupation/region instead) and the development of a bridging-type visa for exploited migrant workers. We would like to see employees being able to change employment if it was found that their employer was not complying with the regulations. Our members see tying the visa to a specific employer as one of the main reasons that exploited workers do not speak up.

Cultural and ethnic dimensions

12. One of our members who is an academic with specific expertise in this area made the following valuable contribution to our submission:

"I would like to briefly comment on the cultural and ethnic dimensions regarding migrant exploitation from a Pacific perspective. Particularly where cultural dimensions are a critical factor that could – when abused – lead to the exploitation and trafficking of Pacific people by Pacific people. There is evidence that Pacific people's exploitation occurred where the employer was of Pacific descent and held a hierarchical and positional power of authority within Pacific communities (e.g.,

Samoan Matai)¹. As such, the expectation of adhering to cultural obligations and respect could lead to exploitative behaviour within specific Pacific communities that are sometimes hidden or 'closed' for discussion with non-Pacific people. Regarding cultural values, for example, respect, communalism and kin, adherence to gerontocracy, spirituality, va (spatial relationships) and reciprocity are commonplace among South Pacific Island nations².

Moreover, these values are intertwined with a hierarchy that positions Pacific people according to the status of separation. Therefore, a Pacific employer with status (as the example mentioned) has some cultural authority and positional power to make demands that may compel certain individuals to oblige with unethical and illegal requests without question. In other words, they submit and accept their fate (fatalism) according to cultural protocol³, ⁴.

Given that migrant exploitation and people trafficking increasingly involves vulnerable Pacific people, I would suggest that the Government consider coordinating and implementing a 'Pacific Migrants Advisory Group' made up of Pacific people who are accustomed to and familiar with Pacific languages, protocol and customs and New Zealand migrant legislation. In addition to ethical procurement and safe hiring practices⁵, a Pacific lens is required when dealing with Pacific people and their cultural dimensions to understand and grasp 'how things are done' and where culture underpins certain behaviours and perspectives."

Conclusions

13. In summary, NCWNZ is very supportive of the aims and strategies of this Bill. We look forward to its enactment and the subsequent rolling out of associated education and support programmes. We believe the Bill will make a difference and provide increased protections for migrant and other workers. We also look forward to further legislation improving the operations of the New Zealand visa system in particular those elements which enable exploitation.

¹ Bradley A. 2020. *Samoan chief Joseph Auga Matamata found guilty of human trafficking and slavery charges*. <https://www.rnz.co.nz/news/national/411939/samoan-chief-joseph-auga-matamata-found-guilty-of-human-trafficking-and-slavery-charges>

² Ofe-Grant B. 2018. *Smashing through the 'brown glass ceiling': Exploring perceived barriers and facilitators to career advancement for Samoans in Aotearoa, New Zealand*. [Unpublished Doctoral thesis]. The University of Auckland.

³ Ryan D, Grey C, Mischewski B. 2019. *Tofa Saili: A review of evidence about health equity for Pacific Peoples in New Zealand*. Wellington: Pacific Perspectives Ltd.

⁴ McDonald B, Rodriguez L, George JR. 2018. 'If it weren't for rugby, I'd be in prison now': Pacific Islanders, rugby and the production of natural spaces. *Journal of Ethnic and Migration Studies*, 45(11): 1919-1935, <https://doi.org/10.1080/1369183X.2018.1492909>

⁵ Ministry for Pacific Peoples. 2019. *Preventing Pacific Worker exploitation in New Zealand*. <https://www.mpp.govt.nz/news-and-events/2019/preventing-pacific-worker-exploitation-in-new-zealand/>

14. Looking to the future our members call for ongoing commitment by successive New Zealand governments to fund the resources to ensure these new laws are enforceable and migrant and other employees are sufficiently protected while in our country.



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