

Submission

ADDRESSING TEMPORARY MIGRANT WORKER EXPLOITATION

Submission to:

Ministry of Business, Innovation & Employment

27 November 2019

Contents

Contact Details 3

The Forest Owners Association 3

Summary 3

Submitter Questionnaire..... 4

Proposal One 5

Proposal Two 6

Proposal Three 6

Proposal Four 7

Proposal Five 9

Proposal Six 12

Other Options..... 14



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The Forest Owners Association

The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand's plantation forests and over 80% of the annual harvest.

In 2018, the forest growing sector was worth \$6.38 billion in export value and is a 12% share of rural land use.

Summary

The FOA generally supports the objectives to protect Migrant Labour as outlined in the proposal.

However, we strongly consider that government policies that have split migrant families, required them to put their lives on hold while applying for positions in NZ – then are declined, delays in immigration decisions due to poor planning, policy changes and lack of INZ resources, constitutes the major abuse and exploitation of migrant workers.

Immigration NZ policies and capability need a major overhaul.

Submitter Questionnaire

Submitter Questionnaire - Tell Us About Yourself

Questions that are marked * are mandatory. The other questions are optional.

* AA. What sector(s) are relevant to your work or business, or other interest?

You can tick more than one.

- | | |
|--|---|
| <input type="checkbox"/> General submission - no specific sector | <input type="checkbox"/> Labour hire |
| <input type="checkbox"/> Aged Care | <input type="checkbox"/> Manufacturing |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Natural resources |
| <input type="checkbox"/> Finance | <input type="checkbox"/> Petroleum and minerals |
| <input type="checkbox"/> Education | <input type="checkbox"/> Retail |
| <input type="checkbox"/> Energy | <input type="checkbox"/> Tourism and hospitality |
| <input checked="" type="checkbox"/> Forestry | <input type="checkbox"/> Transport and freight |
| <input type="checkbox"/> Healthcare (other than aged care) | <input type="checkbox"/> Viticulture and horticulture |
| <input type="checkbox"/> ICT | <input type="checkbox"/> Other (please specify) Choose an item. |

BB. Which region(s) do your responses most closely relate to? You can tick more than one.

- All regions

CC. Which of the following most closely describes you? Please tick one.

Industry Association

- 10-19 20-49 50-99 100-499 500+

* II. If you are submitting on behalf of an organisation, what is the name of that organisation?

NZ Forest Owners Assn.

* JJ Would you prefer your submission, either in part or in full, be withheld from public release? (Personal information such as your name and contact details would not be released).

- No, the contents of my submission are able to be publicly released in full.

The following questions are optional. We are asking them in case we want to contact you to ask for some clarification on your answers, or if your submission is requested under an Official Information Act request.

What is the name of the person completing this submission?

Glen Mackie

What are your contact details?

Proposal One

Proposal One: Introduce liability for parties with significant control or influence over an employer that breaches employment standards

1A. Question: Do you agree that people with significant control or influence over an employer should be responsible for that employer's breaches of minimum employment standards?

Yes No Unsure

1Ai. Supplementary question, if you answered YES: If people other than employers were responsible, how should we formulate the tests for this responsibility?

For example:

- How should a threshold of "significant control or influence" be defined?
- What evidence should be considered in determining whether the person knew or should have known that a breach of employment standards occurred?
- What evidence or factors should be considered in determining whether the person took reasonable steps to prevent a breach?

Definition: Significant control or influence: Where a company provides the majority of a company's income.

Evidence considered: It must be proven that a company knew workers were being exploited. The test of "should have known" is not high enough. A company exploiting workers may take active steps to hide this activity.

1B. Question: What would be the advantages of making people with significant control or influence over an employer, responsible for that employer's breaches of minimum employment standards? Please give your views below.

An employer should be confident that all workers employed in their operations meet minimum legal requirements – regardless of where or how they are sourced. Oversight of conditions will prevent companies dropping conditions below legal minimums in order to unfairly compete.

1C. Question: What would be the disadvantages of making people with significant control or influence over an employer, responsible for that employer's breaches of minimum employment standards? Please give your views below.

Will take time and resources. Additional cost.

1D. Question: What would be the costs of making people with significant control or influence over an employer, responsible for that employer's breaches of minimum employment standards? Please give your views below.

Will take time and resources. Cost will depend on complexity.

1E. Question: If you run a business, what steps does your business take to identify and mitigate the risk of exploitation occurring in your supply chain? (If you are not a business, please write 'not applicable').

Not applicable.

Proposal Two

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

2A. Question: Do you think subcontractors and franchisees should be required to meet additional criteria under the new employer-assisted visa gateway system?

Yes No Unsure

2Ai. Supplementary question, if you answered YES: What additional criteria should they have to meet?

See below.

2Aii. Supplementary question, if you answered YES: If subcontractors were required to meet certain criteria, who do you think they should apply to? Please choose one answer.

all subcontractors

only to subcontractors that contract beyond a particular tier of a subcontracting chain – please specify which layers you think it should apply to:

See below.

2B. Question: What would be the advantages of requiring subcontractors and franchisees to meet additional criteria under the new employer-assisted visa gateway system? Please give your views below.

Questions 2Ai-2B – These indicate a bias toward the view that longer subcontracting chains are more risky. This is not necessarily the case. Worker conditions are visible by approaching the worker and direct employer. The length of the contracting chain should not be used to limit access or be used as an excuse for additional compliance checks.

Proposal Three

Proposal Three: Introduce a labour hire licensing scheme providing certain protections for workers

3A. Question: Do you think we should introduce a licensing scheme in New Zealand for labour hire companies, to provide certain protections to labour hire workers?

Yes No Unsure

3Ai. Supplementary question, if you answered YES: What criteria should a licensing scheme include?

Click here to enter text.

3Aii. Supplementary question, if you answered NO or UNSURE: Please explain your answer. You might wish to outline what you see as the costs and disadvantages of a licensing scheme.

Additional cost, complexity and critically the potential for delay in being licensed. To operate efficiently will require resources in labour and funding. Immigration NZ/MBIE do not have a good track record in delivery. This adds complexity to a system that has demonstrated it does not cope well with change – as shown by the shambles that resulted from closed overseas offices, redirection of work to offices without capacity, and the ongoing issue with different interpretations of the existing rules by different INZ offices. A recent decision by the Masterton Office to refuse immigrant workers for tree planting due to the closure of the Taratahi training facility a clear example of poor decision making.

3B. Question: What would be the advantages of a licensing scheme? Please explain your answer.

N/a

3C. Question: What would be the disadvantages of a licensing scheme? Please explain your answer.

See 3Aii

3D. Question: What would be the costs of a licensing scheme (to employers or others)? Please explain your answer.

Likely to slow down access to workers – especially in the “licencing” phase. Complexity of regulations surrounding operation and publicity of the scheme. Operational costs likely to be passed onto the employing company.

3E. Question: Do you have any other comments, suggestions or information on this issue?

Do not need another hurdle in an already bureaucratic, overly complex system.

Proposal Four

Proposal Four: Prohibit persons convicted of exploitation under the *Immigration Act 2009* from managing or directing a company

4A. Question: Do you agree with the idea of not allowing persons to manage or direct a company if they have been convicted of exploitation under the *Immigration Act 2009*?

Yes – please provide reasons Click here to enter text.

No – please provide reasons Click here to enter text.

Unsure

There needs to be leeway to address separate blatant exploitation, from technical, inadvertent or minor cases.

Current NZ law provides sufficient control over those who are able to manage or direct companies. A case for additional restraints has not been presented.
A change of manager does not mean company policies will change.

4B. Question: Would you suggest any other reasons that people should be not allowed to manage or direct a company; or are there alternative options you would suggest?

You might wish to consider:

- **whether other serious employment-related offences should be included, and**
- **whether this should only apply in a more limited set of circumstances, such as where a person breaches a banning order?**

Alternative option to manage companies that offend:

Close, ongoing oversight by the Inspectorate. This would be more effective than licencing or banning of directors/managers.

Section A, Final Question:

Do you have any other thoughts on how the risk of exploitation could be reduced through business models and practices, and who might be best to do this?

High risk industries should be identified and additional controls instigated – ie: Restaurants.
Past offenders should be allowed to continue to employ migrant workers but with close, ongoing oversight by the Inspectorate. This would be more effective than licencing or banning.

Proposal Five

Section B: Proposals Five and Six - Protect temporary migrant workers

Proposal Five: Establish an MBIE dedicated migrant exploitation 0800 phone line and online reporting AND establish an MBIE specialised migrant worker exploitation-focused reporting and triaging function

5A. Question: How can MBIE make sure temporary migrant workers know about the 0800 phone line and the online reporting tool?

Provide this information as part of the application process.

Make it compulsory for employers of temporary migrant workers to display this information.

5B. Question: When should migrant workers be told about the 0800 number and online reporting? Please choose from the following options: (you can select more than one)

- In visa application information
- On their visa application form
- When their visa is granted
- When they start their job
- As part of information they receive about study and working while studying
- When they reapply for a visa

Compulsorily displayed at NZ worksites employing migrant workers.

5C. Question: How do you think online reporting could be made easy to use and access? We are considering these options; please tick as many of those you think we should use.

- Text message
- Online form
- App
- Social media platform (e.g. Facebook, Instagram, Twitter, etc.)

5D. Question: What do you think are the advantages of these options?

Txt message – easy access from mobile phone.

5E. Question: What do you think are the disadvantages of these options?

Access information will need to be in multiple languages.

Needs simple, clear explanation of how to access.

5F. Question: Can you suggest other means of reporting exploitation that would also be easy to use and access?

A mobile, resourced, inspectorate with the rights and powers to talk to all temporary migrant workers. The employer to have the responsibility to produce the worker at the worksite for the inspectorate to talk to.

International students

5G. Question: Do you think there are particular barriers that international students face to reporting exploitation in the workplace?

N/A

Yes No Unsure

5Gi. Supplementary question only if answered YES: What do you think those barriers are, and how can they be overcome, to encourage international students to report exploitation?

N/A.

5H. Question: Do you think there are the particular barriers that women face to reporting exploitation in the workplace?

Yes

No

Unsure

5Hi. Supplementary question only if answered YES: What do you think those barriers are, and how can they be overcome, to encourage women to report exploitation?

N/A

5I. Question: Do you think there are other groups of migrant workers who face barriers to reporting exploitation in the workplace and, if so, who are those groups?

Yes All temporary migrant workers are vulnerable – they are in a foreign land, dependent upon their employer for work, accommodation, transport and non-work activities. It is unlikely they know the relevant labour laws that apply to their situation and this uncertainty can be exploited.

There is a need for an advocacy group. This should be supported, but not supplied by Immigration NZ as part of the migrant package.

No

5Ii. Supplementary question only if answered YES: What do you think those barriers are, and how can they be overcome, to encourage the group(s) you identified to report exploitation?

See above.

5J. Question: What types of information could a specialised team provide to someone reporting exploitation?

Legal rights and employment alternatives.

5K. Question: How could a specialised team work with the migrant worker, throughout the process (from the time they first make a report, through to when their report is dealt with)?

N/a

5L. Question: What do you think is a reasonable response time for a decision on a report to be made?

N/a.

5M. Question: What other functions should a specialised team perform?

Crisis intervention - where there is a personal or family crisis they should be available to give advice on options, resources available, etc.

5N. Question: How do you think a specialised team should deal with reports of exploitation that are investigated but are inaccurate or false?

Educate the parties on why / how a decision has been reached.

5O. Question: Is further support needed to encourage migrant workers to report exploitation? If so, what do you think this could be?

They need to know their rights and the likely outcome to them of both a successful / unsuccessful complaint. A successful complaint should not result in a bad outcome for the migrant worker. Immigration needs to work with the successful complainant to identify options (as per next section).

Improve knowledge of the existing INZ process for migrant workers claiming exploitation.

Proposal Six

Proposal Six: Develop a bridging-type visa for exploited migrant workers OR Improve the current Immigration New Zealand visa status consideration process

6. Question: Which of these options do you prefer? Please select one.

Proposal Six (A) - develop a bridging-type visa for exploited migrant workers

OR

Proposal Six (B) - improve the current INZ visa status consideration process

Support either proposal.

6Ai. Supplementary questions if you chose Proposal Six (A): Why do you prefer the option of a bridging-type visa?

Click here to enter text.

6Aii. How long do you think this visa should be for (that is, what should be its duration)?

Click here to enter text.

6Aiii. What conditions or restrictions (if any) do you think should be put on this visa?

Click here to enter text.

6Aiv. What type of evidence do you think migrant workers who report exploitation should have to provide? Please list your ideas. If you think no evidence is necessary, please write "none".

To be eligible for either option the migrant worker must cooperate with INZ. There must be a prima facie case that exploitation has occurred.

6Av. Do you think a temporary migrant worker who reports exploitation should be required to cooperate with INZ with the following actions? Please tick those you agree with.

Giving their name

Cooperating with those investigating their report

Providing information when asked

Providing any changes to contact information, such as a postal or email address

Other requirements (please provide your ideas here)

Click here to enter text.

6Avi. How do you think exploited migrants can be made aware that this visa type exists?

Information pack when their application to work in NZ is approved.

Information available via 0800 number, which must be available at all worksites using migrant labour.

6Avii. What grounds (i.e. reasons) do you think might be acceptable for declining a request from a temporary migrant worker for a bridging-type visa?

Refusal to co-operate with INZ investigative team.

6Bi. Supplementary questions if you chose Proposal Six (B): Why do you prefer the option of improving INZ's current process for re-issuing visas to temporary migrant workers who have been exploited?

N/A. No preference.

6Bii. What do you think the problems are (if any) with the current process?

N/A.

6Biii. What changes to the current process do you think are needed to address these problems?

N/A

6Biv. How do you think we can ensure that migrant workers who are exploited are aware of the existing visa process?

See 6Avi.

6C. Question: Do you think a migrant worker's acceptance of their exploitation (and the reasons for this acceptance) should be an important factor when INZ considers that exploited migrant's visa application?

Yes – please explain: The inequity in power between the migrant and the employer must be taken into account. Exploitation may still provide the migrant with a superior outcome than the loss of the job / opportunity leading to an incentive to not report. Financial drivers must be taken into account and the worker **not penalised** for the employer exploiting the situation.

No – please explain: Click here to enter text.

Unsure

6D. Question: When do you think would be a good time to provide temporary migrant workers with information on what employment standards to expect, what exploitation is, and what to do if they think their employer is exploiting them? Please choose as many as you like from the following:

In visa application information

On their visa application form

When their visa is granted

When they start their job

As part of information they receive about study and working while studying

When they reapply for a visa

6E. Question: How should this information be available? Please choose as many as you like from the following:

Online (web-based)

Paper-based – In a suitable language. With literacy support if needed.

Other - please explain: Click here to enter text.

6F. Question: How else do you think we can educate temporary migrant workers and employers about employment standards and rights, and also immigration requirements?

All workers should attend a compulsory INZ workshop in NZ before they start work. There should be an opportunity to meet with INZ offices without the employer being present.

Employers need to attend compulsory INZ Workshops, where their obligations are outlined to ensure their legal and social licence to operate in using migrant workers is not eroded.

Other Options

Other options you might suggest

We are interested to hear if you have any other ideas on how to improve reporting of exploitation and how to reduce barriers to exploitation. Your ideas do not necessarily need to focus on what government can do. You might want to consider what others, such as community groups, can do.

Section B, Final Question:

Do you have any other thoughts on how to improve reporting of exploitation?

Education of NZ worker rights and complaint procedures via the workshop and information media.

Section C: Proposals Seven to Ten - Enforce immigration and employment law

Proposal Seven: Establish new immigration offences for employer behaviour that contributes to exploitation and vulnerability

7A. Question: Do you think INZ should be able to issue infringement notices when an employer does not comply with immigration law and policy?

Yes No Unsure

The infringement notice is one of seven options. The Demand Notice, Enforceable Undertaking and Improvement Notice options give plenty of alternatives before an Infringement Notice with a financial penalty.

7Ai. Supplementary question if you answered YES: What kind of behaviours do you think should result in an infringement notice?

- failure to provide documents
- failure to cooperate with an investigation

7Aii. Supplementary question if you answered YES: What do you think are the factors (if any) that INZ should take into account when deciding whether to issue an infringement notice? For example:

- the level of harm done (that is, how bad was the behaviour and its effects)
- whether this is repeat or first time offending by the employer (whether or not they got an infringement notice or any other penalty in the past)
- any previous infringement notices that the employer has received, or if this is the first

An enforceable undertaking should be imposed first – before moving to an infringement notice.

Ability to pay a financial penalty must be considered.

7Aiii. Supplementary question if you answered YES: How do you think penalties (the fees) should vary depending on the situation, such as the size of the business, or some other aspect? Please describe what factors should determine how penalties could vary.

Ability to pay. A big company is not necessarily a wealthy / profitable company.

Level of cooperation.

Degree of culpability - Your rules are ridiculously complicated, the level of competency from INZ personnel variable. Did this contribute to the situation.

7Aiv. Supplementary question if you answered NO: Why do you think INZ should not set up a new infringement regime? You might wish to outline what you see the costs and disadvantages (cons) of an infringement regime.

N/A

Proposal Eight: Allow the Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe

8A. Question: Do you think the Labour Inspectorate should be allowed to issue an infringement notice to employers who do not provide requested documents within a reasonable timeframe?

Yes No Unsure

8Ai. Supplementary questions, if you answered YES: What do you think would be a reasonable timeframe for providing documents?

Five working days – assuming these are documents which should already exist – not documents that require research or amalgamation of data – ie: wage records over a period of time – they will take longer. Current records – 5 working days.

8Aii. Supplementary questions, if you answered YES: What should the penalty be for not providing information?

Escalating level of investigation into the company migrant employee operations.

Proposal Nine: Expand the stand-down list to include existing immigration offences and, in future, immigration infringement offences for employer non-compliance

9A. Question: Do you know where to find a copy of the stand-down list?

Yes Employment NZ Website: <https://www.employment.govt.nz/assets/Uploads/stand-down-report-13nov2019.pdf>

No Unsure

9B. Question: Do you think we should expand the stand-down list's criteria, so that it includes breaches of the *Immigration Act* and immigration policies?

Yes

No

Insufficient information supplied on the impact of additional criteria.

9Bi. Supplementary question, if you answered YES: Are there any particular immigration offences that you think should be part of the stand-down list's criteria?

Yes – which? Click here to enter text.

No

N/A

9Bii. Supplementary question, if you answered YES: As well as offences under immigration law and policy, are there offences under other laws or policies that you think should also be included in the stand-down list (for example, breaches of health and safety law)?

N/A

Proposal Ten: Notify employees on employer-assisted visas who work for an employer who is stood-down

10A. Question: Do you think we should notify temporary migrant workers whose visas are linked to their employer if their employer is put on the stand-down list?

Yes .

If a migrant workers visa expires while their employer is on the stand down list, their visa will not be renewed. They need to know for personal planning / financial purposes. Ie: they need to seek a job with a different employer if they wish to re-apply.

No

10Ai. Supplementary question, if you answered YES: What information should we be providing to migrant workers when their employer is put on the stand-down list?

Reason why the employer is on the list.

When the exclusion expires.

What they need to do if their visa expires while their employer is on the exclusion list.

10Aii. Supplementary question if you answered YES: How else can we best support temporary migrant workers who are working for that employer?

Ensure they are being employed according to NZ Employment law.

Support to recover money / leave etc owed.

If their visa expires while the employer is on the list, identify other employer options.

Section C, Final Question:

Do you have any other thoughts on how to improve the ways we can deter and penalise employers' non-compliance with immigration and employment requirements?

Contact companies that are utilising that employer to supply labour and inform them that they have had workers supplied that were being exploited. Insist they document actions they will undertake to prevent this occurring in the future.