



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

1st December 2022

1. Summary

- 1.1. The Salvation Army strongly supports the stated purpose of this Bill to “improve compliance and enforcement legislation to deter employers from exploiting migrant workers”.
- 1.2. The narrow scope of this Bill does not however adequately address the extent of the problem of migrant worker exploitation and potentially risks increasing exploitation through over-emphasis on tying workers’ visas to their employers.
- 1.3. The experience of the victims of exploitation needs to be at the centre of legislative responses to migrant worker exploitation. This Bill does not do this but instead focuses on one aspect of the employer’s compliance with employment and immigration law. Adding clauses to provide for compensation and restitution for harm caused would strengthen the Bill.
- 1.4. Disqualifying offenders from being directors and publishing their names will have some deterrent effect and is welcomed.

2. Background

- 2.1. The mission of The Salvation Army *Te Ope Whakaora* is to care for people, transform lives and reform society by God’s power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
- 2.2. The Salvation Army in this country is part of a territory that includes the countries of Fiji, Tonga and Samoa. The combined services of The Salvation Army in New Zealand support around 150,000 people annually. In the year to June 2022, these services included food assistance, transitional housing, social housing, supporting families with whanau support/social work, help with addiction services, prison reintegration services, and financial mentoring.
- 2.3. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army together with Captain Samantha Millar, Territorial Coordinator for Fight for Freedom campaign. The SPPU works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army’s Aotearoa New Zealand Fiji Tonga and Samoa Territory.
- 2.4. The Salvation Army works for a fair and just society founded on faith in God’s compassionate love and justice. This includes seeking change to the national level policy and structural issues that cause poverty and exclusion. There is a close connection between work to reduce worker exploitation and the wider issues of modern slavery and human trafficking.

2.5. *Fight For Freedom* is the international campaign of The Salvation Army worldwide and this is underpinned by an *International Positional Statement on Modern Slavery and Human Trafficking*ⁱ. This campaign brings together the work of The Salvation Army in 125 countries in the attempt to end modern slavery and human trafficking.

3. Work plan on temporary migrant worker exploitation

- 3.1. This Bill appears to complete the government's work on the review of migrant worker exploitationⁱⁱ which then brings the question whether what is being done goes far enough to address the extent of the problem.
- 3.2. The Salvation Army's awareness raising work on the issues of exploitation and modern slavery has brought to light people's experiences in this country that would fit the definitions of worker exploitation or in some cases modern slavery. The release of the Global Slavery Estimates in September showed that the number of people worldwide affected by modern slavery has increased to 50 millionⁱⁱⁱ. That includes over 15 million people in the Asia and Pacific region affected by all categories of forced labour.
- 3.3. Migrant workers, RSE workers and former refugees are identified in the research as most at risk of worker exploitation. Women and children are more likely to be impacted. Examples include their ability to stay in the country relating to their partner's employment (partner-sponsored visa) or being forced into illegal sex work through intimidation, removal of documents, threats of deportation or simply economic necessity. Migrant workers are part of the group most vulnerable to these extremes of exploitation and it underlines the need for New Zealand to do as much as is possible to counter the increasing problem.

4. Part 1 Clause 4 – Amendments to Immigration Act

- 4.1. (New Section 275A) We support the aim of increasing the powers of immigration officers to access employer documentation to ensure they are complying with the law. It is a frequently reported experience that documents such as wage records, leave records and proof of employment conditions are not supplied to workers and in some cases do not exist.
- 4.2. The focus of the legislation is only on employers who are employing people whose work visa is dependent on a job offer from the employer. The Accredited Employer Visa continues the current policy that ties workers' ability to stay in the country to their employment and current employer, which greatly increases the risk of exploitation. We note that the officials in their briefings relating to the Bill defend this approach because they believe exploitation occurs for migrants on other types of visas such as student and visitor visas. The officials argue that removing the link between visa and accredited employers would undermine immigration policy and incentivise employers to try and avoid the accreditation scheme.
- 4.3. TSA prioritises the needs of those most vulnerable to exploitation and in need of support in our response to immigration policy that this bill represents. Concerns have been raised about tying immigration status so tightly to an employer. On balance we believe this concern is justified with much of the identified migrant exploitation taking place in the context of the limited forms of work visas available. The risk of exploitation is too high with visas that are tightly restricted. It is also true that others being exploited are here on student or visitor visas and some are overstayers. The focus needs to be on mechanisms to identify exploitation and support those

who are victims to be able to safely report abuse and not face disproportionate consequences such as deportation.

- 4.4. We recommend amendments that would allow workers to move between accredited employers and sectors. This would reduce the risk of employees facing exploitation because they can move roles but remain within the boundaries of the accreditation scheme that ensures the employer is under appropriate regulation in relation to work visas.

5. Migrant Exploitation Protection Visa

- 5.1. The current Migrant Exploitation Protection Visa is not providing sufficient protection for exploited migrants and risks opening them up to stigma simply because of the name. The length of time that such a visa can be issued for needs to be extended beyond the current six months. The reality of the length of time it takes to investigate and prosecute employers for exploitation can be many months or longer and can mean that workers find themselves with limited security to stay in the country and seek other employment. We note the recommendations relating to this in the Select Committee's Inquiry into Migrant Exploitation (August 2022 p.16ff). Stronger safeguards need to be added to this Bill allowing workers to access to a bridging visa or easier, faster access to the Migrant Protection Visa.
- 5.2. Lack of direct support for organisations working with people facing exploitation means that there is limited support available to migrant workers who may be experiencing exploitation. The recently introduced changes do not go far enough to fund support services and legal advice to those threatened with exploitation. We recommend significant increases in funding for organisations that are active in educating migrants about their rights and risks of exploitation as well those as supporting victims of exploitation.

6. Fines for Non-compliance

- 6.1. (Part 1 Clause 7) The level of fines proposed under the new Section 359A of \$1,000 - \$3,000 seem too low to have significant deterrent effect for employers not complying. Neither do such fines seem to offer a serious penalty for breaking employment law. We recommend a higher level of fines be applied, such as for repeated non-compliance. We also recommend considering adding clauses to provide for compensation and restitution for harm caused to victims as a way to strengthen the Bill's positive impact for victims.
- 6.2. Disqualifying offenders from being directors (Part 3 Clause24) and publishing their names (Part 1 Clause 10 - Section 383A) will have some deterrent effect and is a welcome initiative.

7. Better Enforcement

- 7.1. The focus of this Bill is implementing one aspect of the recommendations arising from the Select Committee Inquiry into Migrant Exploitation (August 2022), relating to compliance with employment standards. The inquiry report identified better enforcement and monitoring as the primary means for reducing migrant exploitation (p.21 of inquiry report). The report noted that submitters called for more investigations and penalties for exploitation.
- 7.2. The new Accredited Employer Work Visa has been implemented since July 2022 and extra staff have been employed to verify accreditation of employers and undertake site visits. It also allows Immigration NZ to do compliance checks with employers after the application process has finished to ensure employers are meeting the required standards and reduce the risk of

exploitation. Given the rapid increase in complaints the question arises whether the additional staffing and resources will be sufficient.

- 7.3. We recommend that more resource be applied to increase the scrutiny and to use more innovative methods to test documents supplied and verify information provided by employers. Those involved in the more sophisticated forms of exploitation will not be captured by simple desk-based documentation verification and more proactive forms of audit and enforcement are needed to strengthen measures that are proposed in this Bill.

ⁱ Modern Slavery and Human Trafficking, The Salvation Army International Positional Statement, May 2020 <https://s3.amazonaws.com/cache.salvationarmy.org/ae2261b4-a199-4f60-8289-7310dfeadc57 Modern+Slavery+Human+Trafficking+--+May+2020.pdf>

ⁱⁱ Summary of changes: <https://www.mbie.govt.nz/dmsdocument/11555-the-temporary-migrant-worker-exploitation-review-a-summary-of-changes>

ⁱⁱⁱ Global estimates of modern slavery 2022, Walk Free <https://www.walkfree.org/reports/global-estimates-of-modern-slavery-2022/>