



Submission on Addressing Temporary Migrant Worker Exploitation in New Zealand by the Human Trafficking Research Coalition and Christina Stringer

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www.workerexploitation.co.nz

the
préscha
initiative.

HAGAR
the whole journey

childALERT
eCPat.nz Protecting Children from Sexual Exploitation



Introduction

1. The Human Trafficking Research Coalition (the Coalition) is a network of four anti-human trafficking organisations, Hagar NZ, The Préscha Initiative, ECPAT Child Alert and Stand Against Slavery.
2. On 14 December 2016, the Coalition published the first report on worker exploitation in New Zealand, entitled, “Worker Exploitation in New Zealand – A troubling Landscape” (“Worker Exploitation Report”).¹
3. The report represented two-years of research undertaken by Dr Christina Stringer from the University of Auckland. The research had two stages: a desk review of secondary sources and a summary of exploited workers voice, including semi-structured interviews with 105 workers.
4. The research is a significant contribution to New Zealand’s first understanding of worker exploitation issues in New Zealand. The research showed that worker exploitation was taking place in many of New Zealand’s primary industries including construction, dairy, horticulture, hospitality, the international education sector and other. Key themes and vulnerabilities were noted that still stand today.
5. The Coalition outlined 11 recommendations in the report. Most of them are of important relevance to the Temporary Migrant Worker Review being undertaken by the Ministry of Business, Innovation and Employment (MBIE). The Coalition recommends that the Worker Exploitation report is re-read by MBIE.
6. This submission outlines the original recommendations from the Worker Exploitation report in full. It then outlines additional recommendations from the Coalition in response to some aspects of the review that were not addressed in the Worker Exploitation Report.
7. For the purposes of this submission, “The Coalition” refers to the four organisations above with Dr Christina Stringer.

Recommendations from The Coalition as outlined in the Worker Exploitation Report

8. Similarly, to the structure of the consultation document, the Coalition structured their recommendations according to the Prevent, Protect, Enforce/Prosecution framework. This was in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (Trafficking Protocol).
9. The recommendations are numbered one to eleven and directly quoted from the report.

¹ This report can be viewed here: www.workerexploitation.co.nz/report

Prevention

Article 9 of Trafficking Protocol outlines that states have an obligation to prevent and combat human trafficking. It further outlines that states should undertake research into the issue of human trafficking, strengthen legislative, educational, social and cultural measures to discourage the exploitation of people and amend or adopt the necessary legislative measures and establish comprehensive policies and programmes to prevent trafficking in persons. Article 10(2) outlines that law enforcement, immigration and other officials should be trained in identifying victims of human trafficking and prosecuting perpetrators of this crime.

Recommendation one: The New Zealand Government should create and resource a specific human trafficking office, in alignment with international best practice, that actively coordinates an interagency government and civil society response to human trafficking and labour exploitation.

Commentary:

The priority of combating people trafficking in New Zealand should be held at the very highest level of the New Zealand Government and a designated office that coordinates an inter-agency cross-government response to human trafficking should be implemented to show visibility. This office would have the responsibility of developing tools and guidelines to facilitate human trafficking investigation, coordinating national awareness and anti-trafficking initiatives, being a first port of call for victims who need assistance, coordinating intelligence and developing and maintaining international partnerships. It is imperative that New Zealand's response is jointly shared between government and civil society.

Recommendation two: The New Zealand Government should actively commit to funding further research into vulnerable demographics identified in this report.

Commentary:

This research has confirmed that there are vulnerable ethnic groups and specific demographics with elevated levels of exploitation. The New Zealand Government should commit to further in-depth research into the vulnerable demographics identified in order to understand and address the specific and unique issues they present. Further research suggestions could also include:

- *Expand the current research to continue to build a better picture of the level of exploitation in New Zealand over the next five years;*
- *A longitudinal study, from 2013 to 2030 of labour practices, migration movement and reports of exploitation including the New Zealand government's response, monitoring and reporting of this issue;*
- *More research into particular visa categories such as working holiday makers, seasonal workers, and post-study work visas which can facilitate the exploitation of people in New Zealand.*

Recommendation three: The New Zealand Government should actively commit to monitoring industrial sectors where labour exploitation is taking

place and regularly publish the results of this monitoring in order to measure and quantify this issue.

Commentary:

This research has confirmed that specific industry sectors within New Zealand have elevated levels of labour exploitation. The New Zealand Government should actively monitor these sectors, set out industry specific guidelines, collect quantifiable data regarding labour practices and publish this annually highlighting best practice where appropriate.

Recommendation four: The private sector should establish a fund to complement government resourcing for continued human trafficking research, policy and law formation, education and frontline training, victim identification and victim support. The governance and management of this fund should be managed by a selected group of people from government and civil society in an intentional, collaborative exercise.

Commentary:

Combating exploitation in New Zealand requires a collaborative effort from both the public and private sector. As labour exploitation and human trafficking is a human rights offence involving the private sector, it is imperative that the philanthropic and commercial sectors of New Zealand take responsibility in addressing this alongside the New Zealand Government.

Recommendation five: The New Zealand Government should adapt MOU's with other countries (where recruitment agencies are involved with migrant workers) to include; a standard contract between a migrant worker and the recruitment agency, a standard employment contract, a limit set on recruitment fees, ensuring the worker has at least one day off per week, ensuring no passports are confiscated, requiring all migrant workers to do an in country induction into New Zealand shortly after arrival.

Commentary:

The research has clearly revealed that recruiters are playing a role in the New Zealand migrant job scene by at times charging exorbitant fees at high interest rates. This leads to indebtedness and vulnerability to exploitation and potential trafficking. Adapting best practice examples and forming MOU's with partner countries could assist in reducing exploitation, abuse and human trafficking.

Recommendation six: The New Zealand Government should establish a New Zealand Labour Code/ red flag system for human trafficking and labour exploitation, with relevant staff trained to identify these and take appropriate action. Red flags would include deception over employment terms and conditions, illegal or excessive placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency and passport retention.

Commentary:

This code should be aligned with international best practice examples from the International Labour Organization and take into account industry specific red flags, where possible.

Protection

The Preamble of the Trafficking Protocol outlines that state parties have an obligation to protect the human rights of victims of human trafficking. Article 6 of the Trafficking Protocol outlines that states should protect victims by providing them with information and services including information regarding court and administrative proceedings, physical, psychological and social recovery services that include medical care, counselling, a safe place to live and employment. The UN Office of Drugs and Crime, International Framework for Action to Implement the Trafficking in Persons Protocol (2009) (“UNDOC Framework”) outlines that states should develop and strengthen victim identification procedures and ensure that these procedures have a human-rights based approach to the protection of victims “regardless of their cooperation with law enforcement.” The framework also outlines that victims should be referred to the asylum system where appropriate.

Recommendation seven: The New Zealand Government should expedite current efforts to update the New Zealand ‘Plan of Action to prevent People Trafficking’ and provide a deliverable timeframe for completion of this. The update should take place through active participation with appropriate stakeholders in government and civil society.

Commentary:

The New Zealand Plan of Action to Prevent People Trafficking hasn’t been updated since 2009. There have been a lot of developments in law and policy since then and a new Plan of Action should reflect this.

Recommendation eight: New Zealand Customs officers, Immigration Officers, Refugee and Protection Officers, Members of the Immigration and Protection Tribunal and all other frontline staff that interact with potential victims of human trafficking should be given mandatory training to assist with victim identification.

Commentary:

While it is acknowledged that training of some frontline staff currently takes place, this should be rolled out to all frontline staff to assist with identification of victims of human trafficking and labour exploitation.

Recommendation nine: A curriculum covering basic New Zealand employment and immigration law should be developed for new migrant workers to New Zealand in conjunction with an organisation, such as the Citizens Advice Bureau, who are often front footing migrant work related issues. The curriculum could form part of an induction course where migrant workers are taught about New Zealand law regarding decent work, employment, what to expect in an employment contract, tax requirements and holiday pay, pathways to residency etc.

Commentary:

The report identified worker exploitation often took place when workers did not understand their employment or immigration rights in the context of their employment agreement. A baseline understanding of employment and immigration rights would clarify expectations in

employment and empower workers to know when they were being exploited or taken advantage of. It would also act as a deterrent to employers exploiting workers.

Prosecution

Article 5(1) of the Trafficking Protocol states that state parties should adopt legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the definition of human trafficking. The European Court of Human Rights states that “the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of human trafficking.” The UNTOC framework encourages states to strengthen legislation in compliance with the Trafficking Protocol and criminalise crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group. Section V of the Trafficking Protocol states that law enforcement entities should develop intelligence led investigations that do not necessarily rely on the testimony of victims.

Recommendation ten: The New Zealand Government should analyse the two human trafficking prosecutions that have recently taken place in New Zealand (one successful, one unsuccessful) and ascertain whether current New Zealand law allows for effective prosecution to take place within the current legal framework.

Commentary:

New Zealand has had two human trafficking prosecutions take place under the amended Crimes Act with vastly different outcomes. Comparative analysis of the two decisions would be helpful in ascertaining factors that contributed and hindered successful prosecution, especially as the legal definition of human trafficking is being tested for the first time. The focus of this exercise should be on ensuring that human rights based, victim centric procedures take place in prosecution.

Recommendation eleven: The New Zealand Government should review the UK Modern Slavery Act 2015 (and other similar, emerging international law) to ascertain whether New Zealand should be implementing similar legislation that makes it unlawful for companies with slavery in their supply chain to operate in New Zealand.

Commentary:

The UK Modern Slavery Act 2015 consolidated slavery and human trafficking offences, set a strong international message that slavery and human trafficking would not be tolerated in the UK and required businesses with an annual turnover of GBP 36 million to report on steps they have taken to ensure slavery and human trafficking are not taking place in their business and supply chain. The New Zealand Government should consider implementing similar legislation which makes it clear that human trafficking and modern slavery attached to any business operations in New Zealand, will not be tolerated.

Additional comments from the Coalition in 2019

10. Recommendation one from the Coalition is similar to Section B: Proposals five and six regarding establishing an MBIE dedicated migrant exploitation 0800 phone line and online reporting and establishing an MBIE specialized worker exploitation-focused reporting and triaging function. The Coalition supports a designated service that focuses on worker exploitation. The Coalition questions whether limiting this to “worker exploitation” may be too narrow and encourages the review team to consider a broader mandate that may include human trafficking victims also.
11. The Coalition also reiterates that a multi-sector approach is needed to address temporary worker exploitation. Recent research on temporary migrant worker exploitation confirmed (again) that victims of exploitation “have little confidence in the willingness or ability of government authorities to deal with exploitation.”² There are historic and inexplicable links between immigration status and exploitation in New Zealand and an independent office, separate from MBIE should also be explored.
12. The Coalition is surprised to note that research and monitoring are not a large part of the Government’s plan in addressing temporary worker exploitation. It is essential as noted in the recommendations above that more research is undertaken into particular industries and that there is transparency and monitoring taking place whereby consumers/ the public are allowed to know where there are particular issues in industry taking place. Please pay particular attention to recommendations two, three and six.
13. The Coalition agrees that the government should look at developing a bridging-type visa for exploited migrant workers similarly to Canada and Australia so that workers can leave their employers without fear. However, the Coalition also recommends that the current immigration New Zealand visa process is improved. Specifically, there should be an independent review of how the current immigration system can negatively impact exploitative work processes. The Coalition recommends this review is not undertaken by MBIE who are too close to the situation and do not see some of the issues and flaws.

Conclusion

14. The Coalition with Dr Christina Stringer appreciate the government taking the issue of addressing temporary worker exploitation seriously and are willing and available to be contacted for assistance.



² Francis Collins and Christina Stringer, *Temporary Migrant Worker Exploitation in New Zealand* (July 2019) <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>