

27 November 2019

International Labour Policy
Labour and Immigration Policy
Ministry of Business, Innovation & Employment
PO Box 1473
WELLINGTON 6140

Via email to: MigrantExploitationReview@mbie.govt.nz

Dear Sir/Madam

Re: Temporary Migrant Worker Exploitation

Please find attached a submission from the kiwifruit industry on Temporary Migrant Worker Exploitation

Please do not hesitate to contact us if you require any further information on this submission.

Yours sincerely



Sarah Cameron
Senior Policy Analyst

TO: Ministry of Business Innovation & Employment

SUBMISSION ON: Temporary Migrant Worker Exploitation

NAME: NZ Kiwifruit Growers Inc (NZKGI)

ADDRESS: PO Box 4246, Mount Maunganui South, 3149

1. The kiwifruit industry in New Zealand

The kiwifruit industry is a major contributor to regional New Zealand returning \$1.8b directly to rural communities in 2018/19. There are ~3000 growers, 14,000ha of orchards, 10,000 permanent employees and up to 25,000 jobs during the peak season. Approximately 80% of New Zealand's kiwifruit crop is grown in the Bay of Plenty and the industry is expected to grow its global sales to \$4.5b by 2025 which is an increase from \$3.1b in 2018/19.

Zespri is a New Zealand company owned by New Zealand kiwifruit growers which exports and markets kiwifruit to more than 50 countries around the world. New Zealand Kiwifruit Growers Inc is a grower advocacy organisation that advocates, protects and enhances the commercial and political interests of New Zealand kiwifruit growers.

2. General comments

The industry is generally supportive of most of the proposals however notes that key definitions have been omitted which makes it hard to provide in depth responses in some areas.

A summary table has been provided below which notes the industry's position on each proposal.

	Proposal	Support/Oppose	Comment
1	Introduce liability for parties with significant control or influence over an employer that breaches employment standards	Support in part	Accept need for co-ordinated approach to labour issues. No definition of 'people with significant control or influence' provided
2	Require certain subcontractors and franchisees to meet additional criteria under the employer-assisted visa gateway system	Support in part	No definition of 'additional criteria' provided
3	Introduce a labour hire licensing scheme providing certain protections for workers	Oppose	Zespri already requires labour contractors to be registered and audited to demonstrate they are complying with labour legislation. We do not support duplication of this process. We require a

			definition of 'labour hire' companies to understand implications for kiwifruit contractors.
4	Prohibit persons convicted of exploitation under the Immigration Act 2009 from managing or directing a company	Support	
5	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	Support	We note that the existing 0800 employment line is under resourced and complaints generally don't get followed up. Could just improve resourcing of existing line. Lack of Immigration New Zealand response is a significant concern to industry
6	Develop a bridging-type visa for exploited migrant workers OR Improve the current Immigration New Zealand visa status consideration process	Support	
7	Establish new immigration offences for employer behaviour that contributes to exploitation and vulnerability	Support	Doesn't go into detail on the type of infringement fees
8	Allow the Labour Inspectorate to issue an infringement notice to employers who do not provide documents requested within a reasonable timeframe	Support	
9	Expand the stand-down list to include existing immigration offences and, in future, immigration infringement offences for employer non-compliance	Support	
10	Notify employees on employer-assisted visas who work for an employer who is stood-down	Support	

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

The industry accepts the need for a coordinated approach to addressing labour issues. Any proposals to introduce liability would need to be clearly defined to allow businesses to fully understand their responsibilities.

We submit that definition of “significant control or influence” is needed for us to make an informed comment on this proposal.

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

There has been no information provided in the consultation document on what the ‘additional criteria’ is therefore it is unreasonable to expect an informed response to this question however additional criteria in this area could be of benefit as there is significant increased risk the further down the supply chain the worker sits.

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

All labour contracting businesses working in kiwifruit are required by Zespri to be registered and audited on their compliance with employment laws. This is part of the Zespri customer assurance programme called Zespri Global GAP¹. Much of the seasonal labour is provided through labour contractors where workers are employed by the contractor and growers employ the contractor. The proposal does not provide a definition for what is considered a ‘labour hire company’ and therefore we are unable to determine if the proposal would impact on the kiwifruit industry. In addition to the compliance programme for labour contractors, the kiwifruit industry maintains a confidential reporting line for non-compliance. Non-compliance is addressed through a targeted audit programme or through the relevant government agency.

The kiwifruit industry does not support a labour hire licensing scheme if this duplicates the process already in place throughout the kiwifruit industry or does not provide additional protection for workers. However, as discussed elsewhere in the submission we do support enhanced resourcing for investigating immigration or employment breaches.

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

The industry agrees with this proposal and submits that serious breaches of the Employment Relations Act 2000 should also be considered as grounds for banning a person from managing or directing a company.

7. 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

The industry submits that regular consistent messaging about rights and responsibilities of points of contact from the start of the visa application process should be adopted. The industry agrees that the following methods should be utilised:

- In visa application information
- On their visa application form
- When their visa is granted

¹ GLOBALG.A.P. is a farm assurance program, translating consumer requirements into Good Agricultural Practice

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- When they start their job
 - As part of information they receive about study and working while studying
 - When they reapply for a visa

The industry agrees that the following methods should be made available for migrant workers (or any workers) to report exploitation:

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

Exposing exploitation may be a traumatic experience and the person doing the reporting should have an extreme level of comfort that the report will be in the strictest of confidence and that their rights will be protected. It is suggested that MBIE review various whistle blower policies that provide policy around protections for people.

We have had feedback from industry calls to the current Employment NZ 0800 hotline are generally not followed up with within a reasonable timeframe. There should be clear response timeframes and adequate resources in place for the hotline to be effective and this should extend to immigration complaints.

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

The industry supports bridging visas for exploited migrant workers. Where workers are exploited and stand to be deported if they lose their visa due to their employers actions, then they are highly unlikely to report exploitation. Consideration also needs to be given to protecting the workers when they return to their homeland if they have reported exploitation.

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

In principle, the industry supports this however it would be helpful to know what range of infringement fees MBIE are proposing. The industry would like to know if the employer is issued multiple infringement notices if there be a pathway for prosecution.

When considering when to issue an infringement notice, INZ should consider the emotional harm to the employee.

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

The industry agrees that the Labour Inspectorate should have the ability to issue infringement notices although reasonable time needs to be defined. The industry submits that providing documents within a maximum 10 working day period is not unreasonable however there should be some flexibility in instances where documents are not readily available. The industry presumes that there will be a monetary penalty for failure to produce a document. The industry supports a \$250 fine per document.

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

The industry agrees to expanding the stand down penalties to include breaches of the Immigration Act 2009.

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

The industry agrees that the migrant worker should be informed directly and explained what the stand down means for them and what their next steps are. It should be possible to transfer temporary migrant workers related to these employers to other compliant employers however there needs to be consideration given to implications as the method of notification is likely to be public.

The industry welcomes the opportunity to discuss the proposals further.