

Worker Protection (Migrant and Other Employees) Bill

Government Bill

Explanatory note

General policy statement

Introduction

This is an omnibus Bill introduced under Standing Order 267(1)(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

The single broad policy and purpose of this Bill is to improve compliance and enforcement legislation to deter employers from exploiting migrant workers. The aim is to deter employer non-compliance with immigration and employment law. The related offence and penalty regimes are amended to ensure mirror enforcement regimes for work by both migrants and non-migrants.

This Bill provides a more proportionate and efficient enforcement toolkit for immigration officers and Labour Inspectors to deal with lower-level offending before it becomes more serious. The Bill aligns the powers of the Labour Inspectorate and Immigration New Zealand and supports greater collaboration between the 2 regulators to undertake compliance and enforcement activity.

To achieve that purpose, this Bill—

- amends the Immigration Act 2009 to empower immigration officers to request documents to verify that employers of migrant workers are complying with their obligations:
- allows Labour Inspectors and immigration officers to issue an infringement notice when employers fail to provide requested information within a reasonable time frame:
- establishes new infringement offences under the Immigration Act 2009 and the Employment Relations Act 2000:
- amends the Immigration Act 2009 so that the chief executive of the Ministry of Business, Innovation, and Employment can publish the names of employers

convicted of immigration offences or issued with infringement notices (and details about the offending):

- amends the Companies Act 1993 so that a person convicted of migrant exploitation and people-trafficking offences cannot be a director or manager of a company if the offending was enabled or otherwise related to the use of a company.

This Bill implements the legislative changes the Government announced as a result of the Temporary Migrant Worker Exploitation Review in 2020.

Creating document production power for immigration officers

Employers who support visa applications make commitments about the pay and conditions of the worker. To ensure that employers are meeting those commitments, immigration officers must be able to require relevant employment records.

Immigration officers have some powers of entry and inspection relating to records of employers under section 277 of the Immigration Act 2009. That power allows them to enter an employer's premises and inspect or copy records or documents under the employer's control, provided the immigration officer has reasonable grounds to believe there may be information in those records or documents that relates to non-compliance with the Immigration Act 2009 or the deportation liability of a worker.

The new document production power will differ from this entry and inspection power by allowing a desk-based immigration officer to require the production of documents and records to verify that an employer is employing a person in a role, or under conditions, that match those stated in the employer-supported visa application.

The kind of records and documents that immigration officers could request from employers include wages and time records, leave records, employment agreements, bank statements, and financial statements. Those records would allow immigration officers to assess, for example, whether a migrant worker is being paid the salary stated in the employer-supported visa application. The document production power relates only to documents that the employer is obliged to hold under relevant legislation or documents relating to the remuneration or employment conditions of a supported employee.

The information gathered using this power could, in some circumstances, indicate that an employer has breached employment standards or has committed a more serious criminal offence. In those circumstances, immigration officers will be permitted to share the information gathered with the relevant regulator if they consider it will be of assistance.

Allowing Labour Inspectors and immigration officers to issue infringement notices if employers fail to provide requested documents within reasonable time frame

The Labour Inspectorate experiences delays to investigations when employers fail to provide statutory information within a reasonable period. Labour Inspectors currently have 2 production powers under section 229 of the Employment Relations Act 2000, but that section does not stipulate any time frame for compliance with requests for information.

The Bill will amend the Employment Relations Act 2000 to require an employer to comply with a document production request within 10 working days. Labour Inspectors will be able to issue an infringement notice to employers who fail to comply with such a request within 10 working days.

This infringement offence will be replicated in the Immigration Act 2009, to enable immigration officers to similarly issue infringement notices. Giving this power to both Labour Inspectors and immigration officers will help to ensure that employers comply with document requests.

Establishing new infringement offences under Immigration Act 2009

Currently, the Immigration Act 2009 allows employers to be prosecuted for serious migrant exploitation or other offending but does not provide a proportionate enforcement response for less serious or less intentional offences. Lower-level breaches of immigration law exacerbate migrant workers' vulnerability and may be the precursor to more serious exploitation.

The Bill will amend the Immigration Act 2009 to create 3 new immigration infringement offences to deter lower-level non-compliance by employers that is linked to, or increases the risk of, migrant exploitation. The offences are when an employer—

- allows a person who is not entitled under the Immigration Act 2009 to work in the employer's service;
- does not employ a person in accordance with a work-related condition of that person's visa;
- fails to provide documents requested by an immigration officer within a reasonable time frame (discussed in more detail above).

The Bill also provides a new ability for regulations to prescribe an offence as an employment infringement offence under the Immigration Act 2009.

Expanding stand-down list

Under section 223AAA of the Employment Relations Act 2000, the chief executive of the Ministry of Business, Innovation, and Employment (**MBIE**) publishes comments about employers found in breach of minimum employment standards. This is what is known as the stand-down list. Employers who are named on the stand-down list are prohibited from supporting a visa application for both temporary and residence class visas for the duration of their stand-down period. Currently, the authorisation to publish names of employers and relevant offending details does not extend to employers convicted of offences or issued with infringement notices under the Immigration Act 2009.

To improve compliance with the Immigration Act 2009 and to give migrants and their advisers access to better information about the compliance history of prospective employers, the Bill introduces a new provision into that Act to enable the chief executive of MBIE to publish the names and certain offending details of employers who are

convicted of offences or issued with infringement notices under the Immigration Act 2009. The names and offending details could be included on the stand-down list.

Expanding the stand-down list to cover offences under the Immigration Act 2009 will help to prevent employers who breach employment or immigration requirements from supporting a visa application for both temporary entry and residence class visas. An expanded stand-down list will also reduce the need for immigration officers to assess an employer's compliance with their obligations at each application, and will clearly indicate to employers that they are ineligible to employ migrants under the accreditation process.

Disqualifying persons convicted of migrant exploitation or people trafficking from managing or directing company

Some company directors leverage corporate structures to avoid personal liability and avoid detection while exploiting migrant workers. This Bill will amend section 383 of the Companies Act 1993 so that persons convicted of exploitation under section 351 of the Immigration Act 2009 or people trafficking under section 98D of the Crimes Act 1961 cannot not be directors, promoters, or managers of any company when their offending was enabled by or otherwise related to the use of a company.

Enabling the High Court to make an order to disqualify persons convicted of migrant exploitation or people trafficking from being a director, promoter or manager of any company will help to reduce migrant exploitation. It will prevent people who have been convicted of serious exploitation that involved the use of a company from using company structures in the future. This measure will supplement existing protections, which currently allow persons to be banned from being employers for up to 10 years under the Employment Relations Act 2000.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=174>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 4 March 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/dmsdocument/11806-impact-statement-temporary-migrant-worker-exploitation-review-phase-one-proposals-proactiverelase-pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill will come into force 6 months after its Royal assent.

Part 1

Amendments to Immigration Act 2009

Clause 3 provides that *Part 1* amends the Immigration Act 2009 (the **Immigration Act**).

Clause 4 inserts *new section 275A* into the Immigration Act. *New section 275A* allows desk-based immigration officers to require certain employers to supply employment-related documents. The documents are—

- wages and time records:
- leave records:
- any other document relating to the remuneration or employment conditions of certain employees.

The employers who may be required to supply these documents are those who—

- have offered employment to a person who needed an employment offer to obtain a visa; or
- are specified on a person's visa as being the employer that that person must work for.

New section 275A gives an employer a maximum of 10 working days to comply with the requirement for documents.

Clause 5 inserts related provisions into the Immigration Act. Information obtained under the *new section 275A* by an immigration officer may not be disclosed by the officer or the Department (*new section 294AAA*) except with other regulatory agencies as permitted by *new section 294AAB*.

Clauses 6 to 9 create a new regime about employment infringement offences. These are to punish any employer who—

- allows a person who is not entitled under the Immigration Act to work in the employer's service to do that work:
- employs a person in a manner that is inconsistent with a work-related condition of that person's visa:
- does not comply with a *new section 275A* requirement within the requisite period.

The first-mentioned of these new infringement offences is currently an offence against section 350 of the Immigration Act. *Clause 6* amends section 350 so that that section will only penalise an employer who, knowing that a person is not entitled to work, allows or continues to allow them to work.

Clauses 7 to 9 re-enact the Immigration Act's existing infringement offence regime. Currently, the Immigration Act only has commercial craft infringement offences. The re-enactment recasts the infringement offence regime in updated drafting and includes the new employment infringement offences.

Clause 10 inserts *new section 383A*, which enables the chief executive of the department administering the Immigration Act to publish the names and certain other details of employers who are convicted of offences against that Act, or issued with infringement notices in respect of offences against that Act.

Clause 11 amends section 388 of the Immigration Act to require immigration officers to be issued with a designation warrant before using the *new section 275A* power.

Clause 12 inserts a new Part into Schedule 1AA of the Immigration Act. This provides for transitional arrangements relating to changes made by the Bill. The power to require a document under *new section 275A* may be used to require documents created before the commencement of that section.

Clause 13 provides for the consequential amendments to the Immigration Act set out in *Schedule 2*.

Clauses 14 and 15 consequentially amend the Summary Proceedings Act 1957 given the adjustments to the infringement offence regime.

Part 2

Amendments to Employment Relations Act 2000

Clause 16 provides that *Part 2* amends the Employment Relations Act 2000 (the **Employment Relations Act**).

Clause 17 amends section 229 of the Employment Relations Act to align it with *new section 275A* of the Immigration Act (inserted by *Part 1* of the Bill and discussed above). In particular, the amendments provide a time frame of 10 working days within which an employer must comply with a requirement to produce or supply employment-related documents.

Clause 18 amends section 233A of the Employment Relations Act to ensure it mirrors *new section 294AAA* of the Immigration Act. The amendment will permit disclosure of information obtained under section 229 or 229A of the Employment Relations Act for the purposes of the Immigration Act.

Clauses 19 to 21 provide for a new infringement offence similar to 1 of the new infringement offences created in the Immigration Act by *Part 1* of the Bill. This would penalise any failure by an employer to comply with a requirement to supply a document within the 10-working-day period specified by the amended section 229.

Other amendments are made to the infringement offence regime to update the drafting.

Clause 22 inserts a new Part into Schedule 1AA of the Employment Relations Act. The new Part concerns transitional arrangements relating to the Bill's amendments.

The transitional provision provides that section 229 will apply to documents and employment information created before or after the amendments come into force.

Part 3

Amendments to Companies Act 1993

Clause 23 provides that *Part 3* amends the Companies Act 1993 (the **Companies Act**).

Clause 24 amends section 383 of the Companies Act, which is the provision under which the High Court may disqualify a director of a company. If certain offending was enabled by, or otherwise related to, the use of a company, the amendment provides that the court may ban the offender from being a director. The relevant offences are—

- the exploitation of unlawful employees and temporary workers (section 351 of the Immigration Act);
- trafficking in persons (section 98D of the Crimes Act 1961).

Under section 383, a ban can be permanent or temporary. A contravention of the ban is one of the offences under the Companies Act that incurs the most serious penalty, namely, up to 5 years in prison or a fine of up to \$200,000.

Hon Priyanca Radhakrishnan

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Schedule 3
New Part 5 inserted in Schedule 1AA of Employment Relations Act 2000

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Worker Protection (Migrant and Other Employees) Act **2022**.

2 Commencement

This Act comes into force on the day that is 6 months after the date of Royal assent. 5

Part 1
Amendments to Immigration Act 2009

3 Principal Act

This Part amends the Immigration Act 2009. 10

4 New section 275A and cross-heading inserted

After section 275, insert:

Power to access employment documents

275A Power to access employment documents

- (1) An immigration officer may exercise the power in **subsection (2)** for the following purposes: 15
- (a) determining whether a supporting employer is employing (or has employed) a supported employee in accordance with the work-related conditions of the supported employee's visa:
 - (b) determining whether a supporting employer is complying (or has complied) with the supporting employer's obligations (which, to avoid doubt, include the obligation not to commit an offence) under this Act. 20
- (2) An immigration officer may require a supporting employer to supply a document (or a copy of it) that is—
- (a) a wages and time record, or leave record kept in accordance with the provisions of any Act; or 25
 - (b) any other document relating to the remuneration or employment conditions of a supported employee (for example, an employment agreement).
- (3) A supporting employer must comply with the requirement immediately after receiving it, or, if that is not practicable, within 10 working days of the date on which the requirement is received. 30

- (4) A supporting employer is not excused from complying with the requirement on the ground that complying might tend to incriminate them or expose them to a penalty.
- (5) In this section, **supporting employer** means an employer in relation to either of the following people (who is a **supported employee** of that employer): 5
- (a) a person who was required by immigration instructions to have an offer of employment to be granted a visa and had an offer from that employer; or
- (b) a person who has work-related conditions of their visa specifying that they must work for that employer. 10

5 New sections 294AAA and 294AAB inserted

After the cross-heading above section 294, insert:

294AAA Obligation of immigration officer and Department not to disclose information

An immigration officer who is provided with a document (or a copy of a document) under **section 275A** and the Department may not disclose any information obtained as a result, unless the disclosure is— 15

- (a) in accordance with **section 294AAB**; and
- (b) for the purposes of one of the following Acts: 20
- (i) this Act:
- (ii) the Employment Relations Act 2000:
- (iii) the Equal Pay Act 1972:
- (iv) the Holidays Act 2003:
- (v) the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016: 25
- (vi) the Minimum Wage Act 1983:
- (vii) the Parental Leave and Employment Protection Act 1987:
- (viii) the Support Workers (Pay Equity) Settlements Act 2017:
- (ix) the Volunteers Employment Protection Act 1973:
- (x) the Wages Protection Act 1983. 30

Compare: 2000 No 24 s 233A

294AAB Information sharing

- (1) An immigration officer and the Department may provide to a regulatory agency any information, or a copy of any document, described in **section 294AAA** that the officer or Department considers may assist the regulatory agency in the performance or exercise of the regulatory agency's functions, duties, or powers under or in relation to any enactment listed in **section 294AAA(b)**. 35

- (2) A regulatory agency may provide an immigration officer or the Department with any information, or a copy of any document, that the regulatory agency—
- (a) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to any enactment; and
 - (b) considers may assist the officer or the Department in the performance or exercise of the officer’s or the Department’s functions, duties, or powers under or in relation to this Act. 5
- (3) An immigration officer who or the Department that provides information or a copy of a document under this section may impose conditions relating to the provision of the information, including conditions relating to— 10
- (a) the storage and use of, or access to, anything provided:
 - (b) the copying, returning, or disposing of any documents provided.
- (4) This section applies subject to any other enactment, including the Privacy Act 2020.
- (5) This section overrides provisions in contracts, deeds, and other documents that are inconsistent with this section. 15
- (6) In this section, **regulatory agency** means—
- (a) the department responsible for compliance and enforcement under the Residential Tenancies Act 1986:
 - (b) the Inland Revenue Department: 20
 - (c) a Labour Inspector under the Employment Relations Act 2000:
 - (d) the New Zealand Police:
 - (e) the Registrar of Companies:
 - (f) WorkSafe New Zealand and any agency designated under section 191 of the Health and Safety at Work Act 2015: 25
 - (g) any other department of State, person, or organisation defined in regulations as a regulatory agency for the purposes of this section.

Compare: 2000 No 24 s 233B

6 Section 350 amended (Offences by employers)

- (1) Replace section 350(1) with: 30
- (1) Every employer commits an offence against this Act who allows, or continues to allow, any person to work in that employer’s service, knowing that the person is not entitled under this Act to do that work.
- (2) In section 350(2), delete “(a)”.
- (3) Repeal section 350(3) and (4). 35

7 Sections 359 and 360 and cross-heading replaced

Replace sections 359 and 360 and the cross-heading above section 359 with:

*Infringement offences***359 Interpretation**

In this Act,—

commercial craft infringement offence means—

- (a) an offence against section 349(1) or 349(2)(a): 5
- (b) an offence prescribed as a commercial craft infringement offence for the purposes of this Act by regulations made under section 400

employment infringement offence means—

- (a) an offence described in **section 359A**:
- (b) an offence prescribed as an employment infringement offence for the purposes of this Act by regulations made under section 400 10

infringement fee, in relation to an infringement offence, means the infringement fee for that offence—

- (a) specified in **section 359A(2)** (for employment infringement offences); or 15
- (b) set in regulations made under section 400 (for commercial craft infringement offences)

infringement offence means an employment infringement offence or a commercial craft infringement offence.

359A Employment infringement offence 20

(1) An employer must not—

- (a) allow a person who is not entitled under this Act to work in the employer's service to do that work:
- (b) employ a person in a manner that is inconsistent with a work-related condition of that person's visa: 25
- (c) fail to comply with a requirement made under **section 275A** within the time period required by that section.

(2) A person who contravenes **subsection (1)(a) or (b)** commits an infringement offence and is liable to,—

- (a) in the case of an employer who is an individual,— 30
 - (i) an infringement fee of \$1,000 for each employee in respect of whom an employment infringement offence is being, or has been, committed; or
 - (ii) a fine imposed by a court not exceeding double the amount of the total infringement fees payable. 35
- (b) in the case of an employer that is a body corporate or another entity,—

- (i) \$3,000 for each employee in respect of whom an employment infringement offence is being, or was, committed; or
 - (ii) a fine imposed by a court not exceeding double the total amount of the infringement fees payable.
- (3) A person who contravenes **subsection (1)(c)** commits an infringement offence and is liable to— 5
- (a) an infringement fee of \$1,000; or
 - (b) a fine imposed by a court not exceeding \$2,000.

360 Infringement offences

- (1) A person who is alleged to have committed an infringement offence may— 10
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under **section 362**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or a Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 15
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

8 Section 361 amended (Immigration officer may require information)

- (1) In section 361, after “infringement notice”, insert “for a commercial craft infringement offence”. 20
- (2) In section 361, insert as subsection (2):
- (2) When considering whether to issue an infringement notice for an employment infringement offence, an immigration officer may require the employer to provide all or any of the following information: 25
- (a) if the employer is an individual, the employer’s—
 - (i) full name:
 - (ii) date of birth:
 - (iii) full residential and postal address: 30
 - (iv) title or position:
 - (b) if the employer is a body corporate or another entity, the employer’s—
 - (i) legal name:
 - (ii) business starting or registration date:
 - (iii) address for service.

9 Sections 362 to 365A replaced 35

Replace sections 362 to 365A with:

362	When infringement notice may be issued	
	An immigration officer may issue an infringement notice to a person if the officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.	
362A	What infringement notice must contain	5
	An infringement notice must be in the form prescribed in regulations made under section 400 and must contain the following particulars:	
	(a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:	
	(b) the amount of the infringement fee:	10
	(c) the address of the Department:	
	(d) how the infringement fee may be paid:	
	(e) the time within which the infringement fee must be paid:	
	(f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:	15
	(g) a statement that the person served with the notice has a right to request a hearing:	
	(h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:	
	(i) any other matters prescribed in regulations made under section 400.	20
363	Reminder notices	
	A reminder notice must be in the form prescribed in regulations made under section 400, and must include the same particulars, or substantially the same particulars, as the infringement notice.	
364	Payment of infringement fees	25
	All infringement fees paid for infringement offences must be paid to the chief executive, and the chief executive must pay all infringement fees received into a Crown Bank Account.	
364A	Maximum fee for commercial craft infringement offence	
	An infringement fee prescribed under this Act for a commercial craft infringement offence may not exceed,—	30
	(a) in the case of a person in charge of a craft, \$2,500; and	
	(b) in the case of a carrier of a craft, \$5,000.	
365	Revocation of infringement notice before payment made	
(1)	An immigration officer may, by written notice served on the person to whom an infringement notice was issued, revoke the infringement notice before—	35

- (a) the infringement fee is paid; or
- (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The revocation of an infringement notice before the infringement fee is paid is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter. 5
- 365A How infringement notice may be served: carriers, and persons in charge, of craft**
- (1) This section applies to infringement notices, reminder notices, and revocation notices relating to commercial craft infringement offences. 10
- (2) A notice may be served on the carrier, or person in charge, of a craft who the immigration officer believes is committing or has committed an infringement offence by—
- (a) sending the notice to the electronic address for service of the recipient, in which case it is deemed to be received by the recipient on the date on which it was sent; or 15
- (b) personal service on the recipient; or
- (c) sending it by registered post to the recipient’s last known place of residence or business, in which case it is deemed to be received by the recipient on the date on which it was posted. 20
- (3) **Subsection (2)** applies despite anything in section 24 of the Summary Proceedings Act 1957, and,—
- (a) if service is effected in accordance with **subsection (2)**, the recipient is deemed to have consented to service in that way (despite sections 220 and 224(1)(b) of the Contract and Commercial Law Act 2017); and 25
- (b) in any case, for the purpose of sections 387 and 389 of the Companies Act 1993, the service is deemed to have been service by way of leaving the notice at the recipient’s address for service.
- 365B How infringement notice may be served: employers**
- (1) This section applies to infringement notices, reminder notices, and revocation notices relating to employment infringement offences. 30
- (2) A notice may be served on a person who the immigration officer believes is committing or has committed an infringement offence by—
- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person’s notice; or 35
- (b) leaving it for the person at the person’s last known place of residence with another person who appears to be of or over the age of 14 years; or
- (c) leaving it for the person at the person’s place of business or work with another person; or

- (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
- (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 5
- (3) Unless the contrary is shown,—
- (a) a notice (or a copy of it) sent by prepaid post to a person under **subsection (2)(d)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
- (b) a notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the Department. 10

10 New section 383A inserted (Publication of names and information in respect of immigration offences)

After section 383, insert: 15

383A Publication of names and information in respect of immigration offences

- (1) The chief executive may, in order to promote the objects of this Act, publish the information specified in **subsection (2)** in relation to an employer who has been—
- (a) convicted of an offence against this Act; or 20
- (b) issued with an infringement notice in respect of an offence against this Act.
- (2) The information that may be published is the following:
- (a) the name of the employer:
- (b) the employer's trading name (if any): 25
- (c) the fact that the employer has been convicted of an offence against this Act, or issued with an infringement notice in respect of an offence against this Act (as applicable):
- (d) a reference number for the conviction or infringement notice:
- (e) a description of any restrictions imposed on the employer as a consequence of being convicted or being issued with the infringement notice: 30
- (f) the period during which those restrictions apply.
- (3) However, despite **subsections (1) and (2)**, information that relates to an employer having been issued with an infringement notice may not be published under this section until at least 28 days after the date on which the infringement notice was issued. 35

- 11 Section 388 amended (Designation of immigration officers)**
In section 388(3)(c), replace “the powers under sections 279,” with “the powers under **sections 275A, 279,**”.
- 12 Schedule 1AA amended**
In Schedule 1AA,— 5
- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments.
- Consequential amendments to principal Act*
- 13 Consequential amendments to principal Act** 10
Amend the principal Act as set out in **Schedule 2**.
- Consequential amendments to Summary Proceedings Act 1957*
- 14 Principal Act**
Section 15 amends the Summary Proceedings Act 1957.
- 15 Section 2 amended (Interpretation)** 15
In section 2(1), definition of **infringement notice**, after paragraph (jh), insert:
(ji) **section 362** of the Immigration Act 2009; or

Part 2

Amendments to Employment Relations Act 2000

- 16 Principal Act** 20
This Part amends the Employment Relations Act 2000.
- 17 Section 229 amended (Powers of Labour Inspectors)**
- (1) Replace section 229(2) with:
- (2) An employer must comply with a requirement under subsection (1)(c) while the Labour Inspector is with the employer, or, if that is not practicable, within 10 working days. 25
- (2A) An employer must comply with a requirement under subsection (1)(d) immediately after receiving it, or, if that is not practicable, within 10 working days of the date on which the requirement is received.
- (2) In section 229(3), replace “subsection (1)(c) or subsection (1)(d)” with “subsection (1)(c) or (d) within the period required by **subsection (2) or (2A)**”. 30
- (3) In section 229(5), replace “on examination or enquiry” with “during an interview or in answer to a question”.

- 18 Section 233A amended (Obligation of Labour Inspector and department not to disclose information)**
- In section 233A(1), after “section 223(1)”, insert “or the Immigration Act 2009”.
- 19 Section 235A amended (Interpretation)** 5
- (1) In section 235A, delete “**infringement offence** means”.
- (2) In section 235A (as amended by **subsection (1)** of this section), after “235F,—”, insert:
- infringement fee** in relation to an infringement offence, means the infringement fee for the offence specified in **section 235E** 10
- infringement offence** means—
- (3) In section 235A, definition of **infringement offence**, after paragraph (b), insert:
- (c) a failure by an employer to comply with a requirement made under section 229(1)(d) within the time period required by **section 229(2A)**. 15
- 20 Section 235B amended (Infringement offences)**
- (1) Replace section 235B(1)(b) with:
- (b) be issued with an infringement notice under **section 235C**.
- (2) In section 235B(2), replace “require” with “do not require”.
- (3) After section 235B(2), insert: 20
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.
- 21 Sections 235C to 235E replaced**
- Replace sections 235C to 235E with:
- 235C When infringement notice may be issued** 25
- A Labour Inspector may issue an infringement notice to a person if the Labour Inspector believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- 235D Revocation of infringement notice before payment made**
- (1) A Labour Inspector may revoke an infringement notice before— 30
- (a) the infringement fee is paid; or
- (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The Labour Inspector must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice. 35

- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

235DA What infringement notice must contain

An infringement notice must be in the form prescribed in regulations made under section 237 and must contain the following particulars: 5

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:
- (b) the amount of the infringement fee:
- (c) the address of the department: 10
- (d) how the infringement fee may be paid:
- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
- (g) a statement that the person served with the notice has a right to request a hearing: 15
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
- (i) any other matters prescribed in the regulations.

235DB How infringement notice may be served 20

- (1) An infringement notice may be served on a person who the Labour Inspector believes is committing or has committed an infringement offence by—
- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or 25
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or 30
 - (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (2) Unless the contrary is shown,—
- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and 35

(b)	an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the department.	
235DC	Reminder notices	5
	A reminder notice must be in the form prescribed in regulations made under section 237 and must include the same particulars, or substantially the same particulars, as the infringement notice.	
235E	Infringement fees	
(1)	The infringement fee,—	10
(a)	for an infringement offence specified in paragraph (a) or (c) of the definition of that term in section 235A, is \$1,000:	
(b)	for an infringement offence prescribed by regulations under paragraph (b) of the definition of that term in section 235A, is the infringement fee specified in regulations.	15
(2)	However, the maximum aggregate infringement fees that an employer is liable to pay in a 3-month period for infringement offences specified in paragraph (a) or (b) of the definition of infringement offence in section 235A is \$20,000 (whether for breaches of the same provision or breaches of different provisions).	20
235EA	Infringement fine	
	The maximum fine that can be imposed by the court in relation to an infringement offence is double the amount of the infringement fee.	
22	Schedule 1AA amended	
	In Schedule 1AA,—	25
(a)	insert the Part set out in Schedule 3 of this Act as the last Part; and	
(b)	make all necessary consequential amendments.	

Part 3

Amendments to Companies Act 1993

23	Principal Act	30
	This Part amends the Companies Act 1993.	
24	Section 383 amended (Court may disqualify directors)	
	After section 383(1)(bb), insert:	
(bc)	a person has been convicted of an offence under section 351 of the Immigration Act 2009 (exploitation of unlawful employees and tempor-	35

ary workers) and the offence was enabled by, or otherwise related to, the use of a company; or

- (bd) a person has been convicted of an offence under section 98D of the Crimes Act 1961 (trafficking in persons) and the offence was enabled by, or otherwise related to, the use of a company; or

5

Schedule 1
New Part 2 inserted in Schedule 1AA of Immigration Act 2009

s 12

Part 2		
Provision relating to Worker Protection (Migrant and Other Employees) Act 2022		5
4	Power to access employment documents The power in section 275A to require a document applies on and from the commencement of that section, even if the document was created before that commencement.	10

Schedule 2

Consequential amendments to Immigration Act 2009

s 13

Section 4

In section 4, replace the definition of **infringement fee** with: 5

infringement fee has the meaning given to it by **section 359**

In section 4, insert in their appropriate alphabetical order:

commercial craft infringement offence has the meaning given to it by **section 359**

employment infringement offence has the meaning given to it by **section 359** 10

Section 161

In section 161(1)(d), replace “section 350(1)(a)” with “section 350(1)”.

Section 357

In section 357(1), replace “section 350(1)(a)” with “section 350(1)”. 15

Repeal section 357(2).

Section 400

After section 400(1)(g), insert:

(ga) prescribing infringement offences against this Act in the case of employ- 20
ers:

Repeal section 400(1)(h)(iii) and (iv).

Section 456

In section 456(2), replace “section 350(1)(b)” with “section 350(1)”.

Schedule 3
New Part 5 inserted in Schedule 1AA of Employment Relations Act
2000

s 22

Part 5	5
Provision relating to Worker Protection (Migrant and Other Employees) Act 2022	
19 Transitional provision relating to section 229 of this Act	
Section 229 (as amended by the Worker Protection (Migrant and Other Employees) Act 2022) applies to documents and employment information created before or after that amendment.	10