

## **Annex Three: Legislative Statement: Worker Protection (Migrant and Other Employees) Bill**

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### **Legislative Statement: Worker Protection (Migrant and Other Employees) Bill**

*Presented to the House of Representatives in accordance with Standing Order 272*

[Insert date]

This legislative statement supports the second reading of the Worker Protection (Migrant and Other Employees) Bill.

The Education and Workforce Committee considered the bill, and recommended, by majority, that it be passed with minor amendments.

#### **Changes from Select Committee**

The Committee recommended a number of small amendments to the bill. These amend the parts of the bill that relate to the Immigration Act 2009 only, and no changes were recommended to the parts of the bill that relate to the Employment Relations Act 2000 or the Companies Act 1993.

New section 275A of the Immigration Act will give immigration officers the power to require employers to supply employment related documents of a 'supported employee'. The Committee recommended amending the definition of a supported employee from a person who must work for a supporting employer, to a person who may work for a supporting employer, to better align with immigration instructions.

New Section 395A of the Immigration Act creates a new set of infringement offences called employment infringement offences. The bill allows further employment infringement offences to be prescribed by regulations. The Committee recommended updating the definition of 'infringement fee' in new section 359 to include employment infringement offences prescribed by regulations, and for the maximum fee for employment infringement offences set in new section 364A to include employment infringement offences prescribed by regulations.

New Section 383A of the Immigration Act will allow the chief executive of the Ministry of Business, Innovation and Employment to publish information about employers who have been issued an infringement notice in respect of an offence. The Committee recommended clarifying that these infringement notices relate to a new 'infringement offence' rather than an 'offence'.

#### **Overview of the Worker Protection (Migrant and Other Employees) Bill**

The Worker Protection (Migrant and Other Employees) Bill (the Bill) implements legislative changes to help address temporary migrant worker exploitation that were announced in July 2020. Taking action to address temporary migrant worker exploitation was a commitment in the Government's 2020 Manifesto.

The Bill proposes to amend the Immigration Act 2009, Employment Relations Act 2000 and the Companies Act 1993. The policy intent of the Bill is to improve compliance and enforcement legislation to deter employers from exploiting migrant workers.

The Bill will come into force 6 months after enactment. This means that the proposed changes do not take effect until that time and will allow the regulatory bodies responsible for the new amendments sufficient time to prepare for the implementation of the changes.

The following is a brief summary of the policy changes proposed in the Bill.

## **Establishing a document production power for immigration officers**

The Bill proposes to amend the Immigration Act 2009 to empower immigration officers to request documents to verify that employers of migrant workers are complying with their obligations with respect to migrant workers.

New section 275A of the Immigration Act allows desk-based immigration officers to require certain employers to supply employment-related documents. The documents are wages and time records, leave records or 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 may work for.

Immigration officers using the new document production power will be required to hold a warrant of designation.

The Bill also enables regulatory agencies to share information collected under section 275A with other regulatory agencies in certain circumstances.

## **Allowing Labour Inspectors and immigration officers to issue an infringement notice when employers fail to provide requested information within a reasonable time frame**

The Bill will amend the Employment Relations Act 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, to enable immigration officers to similarly issue infringement notices. The penalty for employers issued an infringement notice for failure to provide documents within a reasonable timeframe is \$1,000 per notice.

## **Establishing new infringement offences under the Immigration Act 2009**

The Bill will amend the Immigration Act to create three new employment infringement offences to deter lower-level non-compliant employer behaviour that is linked to, or increases the risk of, migrant exploitation. The offences, and accompanying fines, are when an employer:

- allows a person who is not entitled under the Immigration Act to work in the employer's service (\$1,000 per worker for individuals or \$3,000 per worker for body corporates);
- does not employ a person in a way that is consistent with a work-related condition of that person's visa (\$1,000 per worker for individuals or \$3,000 per worker for body corporates);
- fails to provide documents requested by an immigration officer within a reasonable timeframe (\$1,000 per notice).

The Bill re-enacts and recasts the Immigration Act's existing infringement offence regime in updated drafting and includes the new employment infringement offences. The Bill also provides the ability for regulations to prescribe an offence as an employment infringement offence under the Act, to support the new infringement regime.

## **Publishing names of employers convicted of immigration offences**

The Bill amends the Immigration Act 2009 so that the chief executive of the Ministry of Business, Innovation, and Employment (MBIE) can publish the names of employers convicted of immigration offences or issued with infringement notices in respect of offences against that Act (and details about the offending).

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

The Bill amends section 383 of the Companies Act 1993 so that if a person is convicted of exploitation under section 351 of the Immigration Act or people trafficking under section 98D of the Crimes Act 1961, the court may disqualify the person from being a director, promoter or manager of any company where their offending was enabled or otherwise related to the use of a company.