

# Immigration Amendment Bill (No 2)

Submission to the Transport  
and Industrial Relations Select  
Committee by the Public  
Services Association - Te  
Pūkenga Here Tikanga Mahi

February 2014

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### Introduction

1. The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 58,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities, state owned enterprises), local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.
2. The PSA represents New Zealand Immigration (NZI) officers and Labour Inspectorate officers, for whom the proposed Bill has significant implications. This submission has been prepared with members input and reflects their working experience in responding to the exploitation of workers in New Zealand.
3. As an affiliate of the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU), we strongly support their submission and their recommendations. This submission does not reproduce the points made by the CTU but addresses the proposed Bill from the particular perspective and experience of the PSA and its members, and concentrates on the exploitation of workers. Our recommendations are listed in appendix 1.

### Strengthened protection for all workers

4. The PSA supports increasing measures to protect migrant workers from exploitation and unlawful working practices. But the issues of exploitation extend beyond migrant workers to workers generally. We believe that the exploitation of migrant workers is a reflection of inadequate and unenforced protections for all workers in New Zealand. Strengthening the protection for migrant workers is needed, but as the regulatory impact statement notes, the proposed change could “offer better employment protection to migrant workers than to New Zealand workers”.<sup>1</sup>
5. The PSA is concerned about the number of workers in New Zealand do not have a written employment agreement. Data from the Survey of Working Life suggests that around 14% of workers either have no written agreement or are not aware of having one.<sup>2</sup> Failure to provide a written employment agreement is a breach of employment standards and suggests exploitative working practices and vulnerable workers.
6. The current penalties for breaches of the minimum code (\$10,000 for an individual and \$20,000 for a corporation) do not provide a sufficient disincentive for exploitative and/or unlawful employment practices. Nor do the current penalties recognise the seriousness of exploitative or unlawful employment practices. The PSA supports the CTU’s recommendation that the penalties for such breach be increased to \$50,000 for an individual and \$100,000 for a corporation.
7. *The PSA recommends that penalties for breaches of employment standards, outlined in various legislation, should be amended to create a framework that protects all workers in New Zealand from exploitation and unlawful employment practices.*

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<sup>1</sup> Ministry of Business, Innovation and Employment (2013) *Regulatory Impact Statement: Protecting migrant workers from exploitation*. Agency disclosure statement, 27 May 2013, paragraph 25.

<sup>2</sup> Statistics New Zealand (2008) *Survey of Working Life, March Quarter*, Table 3.

## Increased protection for migrant workers

8. The PSA supports increased measures to protect migrant workers from exploitation (section 351). This will align the penalties for exploiting legal and illegal migrants.
9. The mix of non-regulatory and regulatory actions will go some way to safeguarding this group of vulnerable workers.
10. The very low number of employers prosecuted under Section 350 of the Immigration Act 2009, (employing migrant workers who are not legally able to work) strongly supports the need to empower migrant workers to report exploitation and unlawful employment practices. The PSA believes the non-regulatory response to the exploitation of people working in New Zealand – improving the information to employers and employees – is an important step but does not go far enough to address the problem of exploitation.
11. Unions play a significant role in responding to the exploitation of workers in New Zealand. Along with the CTU, the PSA acknowledges the role of FIRST Union and Unite Union in raising awareness about the plight of migrant workers. However, the ability of unions to access workers in their place of employment has been reduced under recent legislation. Information sheets, no matter how well designed, can never take the place of face-to-face conversations. This is even more important in relation to vulnerable workers such as migrants.
12. Unions have a strong and proud tradition of supporting and educating workers about their rights and responsibilities. One of the key strengths of unions is the delegate structure which allows workers to be supported and informed by their peers. The PSA is concerned that the education of delegates through the provision of Employment Relations Education Leave (EREL) is being undermined by the Ministry of Business, Innovation and Employment's reluctance to approve union-based education programmes. Improving workers representatives' knowledge about the legal framework for working conditions should be one of non-regulatory responses to exploitation in New Zealand workplaces.
13. *The PSA recommends the repeal of recent changes to employment legislation that have further compromised vulnerable workers. These include the 2008 introduction (and 2010 extension) of the 90-day trial period, and the 2010 introduction for employers to consent to union workplace access.*

## Extended powers for immigration officials

14. The PSA is broadly supportive of the proposal to extend the search powers of immigration officials which will enable them to more effectively enforce the Immigration Act 2009. These extended powers will allow Immigration New Zealand compliance officers to:
  - undertake a personal search at the border
  - search a property of place for identity documents
  - enter and search an employer's premises in order to search for unlawful workers, check documents and interview employees to ascertain whether the employees and employer are complying with the Act
  - apply for, and execute, a search warrant.
15. These additional powers are not a minor addition to the existing role of compliance officers. They are a significant increase in the responsibilities of, and expectations on, compliance officers that will help ensure the integrity of New Zealand's immigration system.
16. It is vital that the extension powers go hand-in-hand with ensuring the safety of immigration officials. These officials need to receive the appropriate levels of training before they undertake these new duties, particularly in relation to performing personal searches, property searches,

and applying for and executing search warrants. In exercising these new powers, immigration officials may be exposed to risky situations that threaten their health, safety and security.

17. The extended powers for immigration officials will also extend the expectations placed upon them. Currently, there are just under 40 compliance officers who have the responsibility to ensure migrants and employers act in compliance with visa conditions. The PSA believes that the nationwide distribution of compliance officers requires examination before the extension of new powers are enacted. As the exploitation of migrant workers is more prevalent in certain sectors, such as horticulture/viticulture, hospitality, retail and construction, it is essential that the location of compliance officers reflects the distribution of vulnerable workers.
18. *The PSA recommends that immigration officials receive appropriate training to ensure their safety, and the safety of the public, while exercising their new powers. We also recommend that immigration officials are involved in the development of health, safety and security plans before the extension of their powers is introduced.*

### Crucial role of labour inspectors

19. The role of labour inspectors is crucial in identifying and responding to exploitation in New Zealand workplaces. Yet there are only 35 inspectors nationally. This significant under-resourcing enables unscrupulous employers to exploit workers with little fear of detection, let alone prosecution.
20. *The PSA recommends that urgent consideration be given to sufficiently resourcing the Labour Inspectorate to enable labour inspectors the ability to investigate New Zealand workplaces for exploitation of workers and breaches of employment conditions. It is possible the greater co-ordination between immigration officers and labour inspectors in relation to migrant workers would enable better use of the existing resources to address exploitation of workers in New Zealand.*

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## Appendix 1: Summary of recommendations

1. We support the proposal to remove the disparity between penalties for exploitation of legal and illegal migrants.
2. We support the CTUs recommendation that the penalties for such breach be increased to \$50,000 for an individual and \$100,000 for a corporation, which will acknowledge the seriousness of exploiting workers and act as a deterrent against illegal working practices.
3. We recommends that penalties for breach of employment standards, outlined in various legislation, should be amended to create a framework that protects all workers in New Zealand from exploitation and illegal and unsafe working practices.
4. The PSA recommends that immigration officials receive appropriate training to ensure their safety, and the safety of the public, while exercising their new powers. We also recommend that immigration official are involved in the development of health and safety plans before the extension of their powers is introduced.
5. The PSA recommends that urgent consideration be given to sufficiently resourcing the Labour Inspectorate to enable labour inspectors the ability to investigate New Zealand workplaces for exploitation of workers and breaches of employment conditions.