



**National Council of
Women of New Zealand**

Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04)473 76 23
office@ncwnz.org.nz
www.ncwnz.org.nz

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**Submission to the Transport and Industrial Relations Select Committee on the
Immigration Amendment Bill (No 2)**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 30 organisations affiliated at national level and a further 40 organisations affiliated at branch level. It has 22 branches throughout the country attended by representatives of these organisations, as well as individual members. NCWNZ's function is to represent and promote the interests of New Zealand women, families and the community through research, discussion and action. This submission has been prepared by the Economics Standing Committee supported by NCWNZ policy and previous submissions.

Executive summary

NCWNZ welcomes the opportunity to comment on this Bill, recognising that a significant proportion of migrant workers are women, who are particularly vulnerable to exploitation or abuse. Given the recent reports of alleged exploitation in Christchurch¹, we applaud the extending of sanctions to employers who exploit legal migrants. The improvement of investigative powers to detect such practices, and broadening the immigration levy to better fund services for new immigrants may also be beneficial.

However we have concerns about the encroachment in this Bill on privacy and human rights through a wider collection of biometric information, increasing secrecy and a limited right of appeal. We wonder if giving immigration officials and police wider powers of search and seizure is justified. Also this Bill lacks incentives for migrant workers to come forward and report exploitation. In addition, this Bill makes no reference to environmental refugees, which we can expect to see in increasing numbers.

Specific Comments

Clause 8 Section 11 amended (Meaning of absolute discretion of the decision maker)

NCWNZ feels that setting aside Privacy Principle 6², relating to an individual's access to personal information, is dangerous in the extreme and subsumes not only the rights of individuals but also the

¹ <http://www.stuff.co.nz/business/industries/9581043/Workers-rights-key-for-rebuild>

² <http://privacy.org.nz/the-privacy-act-and-codes/privacy-principles/access/#security>

checks and balances provided by our judicial system. (Indeed it is hard to see how access to one's own personal information can threaten national security, but that is an argument for another submission.) **Clause 8** allows no right of appeal to decisions regarding deportation and other measures involving migrant workers, in spite of the increasingly automated nature of the immigration system that dehumanises processes and potentially perpetuates inaccurate information.

Clause 33 – Section 111 replaced (Application for entry permission to allow collection of biometric information)

There is some confusion in the wording of this clause, which allows immigration officers to require biometric information from anyone applying for entry permission, whether permission is granted or refused. Sanctions for not complying with this requirement include refusing to grant entry permission, a measure which has no power over people who have already been refused. Is their biometric information taken by force in that case?

Clauses 60 to 70 (Compliance and information)

While we recognise the need to gather and retain information on people entering New Zealand, we are concerned that basic civil liberties are not undermined. Whether a person is lawfully in the country or not, any body searches, as referred to in **Clause 65 new section 285A**, should be carried out by an immigration officer of the same sex, and with due regard to cultural sensitivities where appropriate. We extend this stipulation to other areas of this Bill where individuals are subject to search.

NCWNZ strongly feels that any searches of employer or migrant worker premises, (as referred to in **Clause 61 new section 277A and Clause 64 new section 281B**) should be properly warranted and carried out by police, rather than extending this power to front line immigration staff. We are concerned that power inappropriately placed and inadequately supervised leaves it open to potential abuse of people who are already vulnerable.

Clauses 77 to 86 (Offences, penalties and proceedings)

We welcome some of the amendments in this Subpart, particularly **Clause 80** which includes 'temporary workers' as well as 'unlawful employees' in proceedings against abusive or exploitative employers. This has been a serious gap in the protection of migrant workers.

However, without a range of protections for migrant workers set out in the Bill, making it safer for them to report abuse or exploitation, it is difficult to see how offending employers will be prosecuted any more effectively than already occurs. Most of these workers have too much to lose to come forward, and nothing has been included in these amendments to change that significantly.

General Comments

The main focus of this Bill seems to be on criminal behaviour in the immigrant sector – better detection, wider powers, broader scope and harsher penalties. We note that the Bill reforms the way Ministry functions are funded, and we sincerely hope that some of this more sustainable income will be put toward positive measures, such as deportation moratoriums, income support and other incentives, to help migrant workers report abuse.

Anecdotal evidence suggests that migrant workers often pay employers large sums for the opportunity to work for almost nothing just to ensure employment as per their visa requirements. This widespread practice damages legitimate businesses by undercutting prices. It is also a human rights issue and an employment issue which will not go away unless migrant workers themselves are considered, not as criminals or overstayers, but as people who deserve the employment rights that residents and citizens enjoy. It may be that more flexible employment criteria as part of visa stipulations will give migrant workers more choices, and employers less opportunity to exploit them for pecuniary gain.

NCWNZ does not consider giving immigration officials greater powers will be effective, and may end up making matters worse by driving migrants into the black market of human trafficking. We would not like to legislate away humanitarian principles and the checks and balances of our judicial system for the sake of efficiency or even for some undefined concept of security. It is evident every day that this is not a secure world, and moves towards a police state will not make it more so.

Environmental refugees

One area of increasing insecurity is climate change, and although we have been warned that the numbers of environmental refugees are rising, this Bill has made no mention of them. NCWNZ considers this a serious lack; New Zealand could very soon face a refugee crisis from our own displaced Pacific neighbours seeking asylum, without any protocols established or resources set aside to deal with the issue.

To be fair, although environmental refugees now outnumber those displaced by war³, the wording of international law lags behind the current reality and does not include them in the guarantee of asylum afforded political refugees. NCWNZ urges the Government to take the initiative in this impending crisis.

Conclusion

Although this Bill goes some way to improving the lot of migrant workers by specifying sanctions against employers exploiting legal migrants as well as illegal ones, NCWNZ feels that a number of immigration issues have still to be addressed. One is the encouragement of migrant workers to

³ <http://geography.about.com/od/globalproblemsandissues/a/environmentalrefugees.htm>

report abuse or exploitation through incentives and protection, and another is the urgent need to anticipate and prepare for an influx of environmental refugees.

The challenges to human rights and privacy in this Bill, through the wider collection of personal information, wider powers of search and seizure, and more limits on the rights of appeal are also of deep concern to NCWNZ.

Thank you for the opportunity to comment on this Bill.

Barbara Arnold
National President

Katherine Ransom, Convener
Economics Standing Committee