



**ROAD TRANSPORT FORUM NEW ZEALAND INC
SUBMISSION
ON
ADDRESSING TEMPORARY MIGRANT WORKER
EXPLOITATION: CONSULTATION DOCUMENT**

Contact:

Mark Ngatuere
Policy Analyst
Road Transport Forum NZ
P O Box 1778
Wellington

Ph: (04) 471 8285
Fax: (04) 471 2649
E-mail: mark@rtf.nz

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1.0 **Introduction**

1.1 Road Transport Forum New Zealand (RTF) is a national organisation representing the road transport industry. RTF provides services to, and public policy advocacy for, its affiliated members who comprise owner-drivers, fleet operators and international corporates engaged in freight and logistics.

1.2 The Forum's Constituent Associations include:

- National Road Carriers (Inc)
- Road Transport Associations NZ (Inc)
- NZ Trucking Association

1.3 RTF's member associations have in excess of 3,000 members and associate members who operate approximately 17,000 trucks over 3,500 kg.

1.4 The RTF is the authoritative voice of New Zealand's road transport industry which employs 22,600 people (3.0% of the workforce), has a gross annual turnover of \$6 billion and carts over 70% of New Zealand's land-based freight on a tonnes/kilometre basis.

2.0 **Comments**

2.1 The consultation document seeks to remedy migrant exploitation. It is right to do so. However, there is a deeper issue that needs addressing and that is exploitation of people in roles of subservience, whether they are migrants or not.

2.2 For example, in the road freight transport industry there is a convoluted chain of command that typically ends at the customer. The customer bargains cost and delivery expectations and the transport operator attempts

to meet that. Profitability margins are slim and are volatile. Returns on assets are at an all-time low, and a large volume of carriers are forced to accept terms that jeopardise business sustainability. By setting low rates the transport operator is forced to do more work (longer hours) to make ends meet. The consultation document seeks to remedy a number of exploitive practices, yet simple and undesirable examples like this are ignored. In the majority of cases vehicles, sites and business equipment are heavily financed so for business owners, just walking away is seldom an option. This exploitive behaviour from customers drives a “race to the bottom” for transport company owners.

- 2.3 The “Designing a Fair Pay Agreements System” discussion paper, also currently under consultation, seeks to address the race to the bottom mentality. Combatting exploitation is another piece in the puzzle to ensure people get a fair go.
- 2.4 “Exploitation” occurs in many forms across many sectors, in multitudes of ways, and to varying degrees. Before providing feedback to the consultation document questions, it is worth highlighting the unfortunate case of Welsh tractor driver Joshua David Park¹. Joshua had amassed 200 hours in a two-week period and died behind the wheel of his tractor. Fatigue was found to be a contributing factor. His employer was fined \$10,000 and ordered to make \$80,000 in reparation.
- 2.5 Like the consultation document writers, we are unsure penalty levels have been set at sufficient quantum to change behaviour appreciably. We question whether upstream PCBU’s also had a portion of responsibility for Joshua’s long hours of work.
- 2.6 Truck and machinery drivers are given a degree of protection from exploitation by Section 79 of the Land Transport Act². That part mandates that people who, whether by act or omission, request or require a person

¹ https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12048990

² Chain of responsibility

to speed or exceed mandated worktime will be held responsible for the offence committed.

- 2.7 WorkSafe legislation also provides high levels of protection for workers. However, given that workers³ continue to be exploited it is right to attempt to address the issue. Not only migrants are exploited in New Zealand.
- 2.8 Section A of the discussion document asks whether "*people with significant control or influence over an employer should be responsible for that employer's breaches of minimum employment standards?*" Our opening statements suggest that is what we would like to see. However, the variations and nuances to what constitutes exploitation makes it difficult to define just how culpable an employer should be for breaching minimum employment standards. What needs exploring more is why these standards are being impinged and what the chain of responsibility is.
- 2.9 Obviously, there will be black and white cases where culpability is obvious and for those cases our answer to that question would be "Yes". An extension of this thinking is covered by 2A. Question. "Do you think subcontractors and franchisees should be required to meet additional criteria under the new employer-assisted visa gateway system?" The paper answers this itself⁴. "*If we increase the requirements for employers operating with these business models, it might help to mitigate the risk that temporary migrant workers are exploited*⁵". *We do not hold comprehensive data on subcontracting and the extent of exploitation in business that subcontract, because of the challenges of sourcing this information.*"
- 2.10 Basic problem-solving technique requires the extent of a problem be identified. The true extent of the problem hasn't been identified. Nor can the extent of success be gauged after a "remedy" has been put in place without that necessary data. The consultation document instead suggests

³ This term is not limited only to direct employees as contractors could also be classified as "workers"

⁴ Proposals two. First paragraph.

⁵ and in the third paragraph before question 2A:

imposing more rigid rules which make it more difficult for employers to source scarce resource.

- 2.11 In general workplace terms, there are already minimum codes to provide workers with necessary protections. In land transport terms, there are chain of responsibility provisions to protect drivers and employers from exploitive and predatory behaviour.
- 2.12 The majority of cases we see in the media are where migrants are being exploited by people from their own countries. It may be that these employers are either unfamiliar with New Zealand law, or knowingly offend. It seems more sensible to attempt to educate those employers on New Zealand rights, values and enforcement when they enter into business, and to make them aware anyone employed in New Zealand is covered by New Zealand law.
- 2.13 One situation that has escaped the document writers is where migrant workers make deposits or payments offshore to employers, or other third parties, to come and work in New Zealand and that payment is used to force the payee to be compliant, or silent, if issues arise. Only international agreements will remedy that type of issue. New Zealand employment legislation is not universal and has not, to date, been applied successfully in those circumstances.
- 2.14 Section 4A questions whether a person that has been convicted of exploitation under the Immigration Act 2009 should be able to manage or direct a company. A prohibition already exists for directors found guilty of a dishonesty offence under the Crimes Act, or if they are convicted of an offence in connection with the promotion, formation, or management of a company.
- 2.15 The difficulty we see is akin to examples in the transport industry where transport services licence holders have their transport service licence revoked. Phoenix companies then spring up, created with other people who hold a goods service licence seemingly in control of the company where in

fact, the holder of the revoked licence runs the company in relative anonymity and beyond scrutiny from the regulator or enforcement. The building trade is another example of that.

- 2.16 Therefore, any ban must be sufficient enough to make sure that person can no longer trade. There is already the ability to deport employers via the Immigration Act⁶.
- 2.17 Section 5C asks how MBIE can make sure online reporting could be made easy to use and access. We note questions 5A and 5B⁷ and their reference to the 0800 number and online reporting tool.
- 2.18 If reporting is to be easy, end-users must know about the tools available to enable them to do so. As such, it is paramount migrants be informed of their rights and the means to ensure they can report exploitive or unsatisfactory work conditions.
- 2.19 We think the provision of useful advice should not be limited to migrant workers only. New Zealand workers would benefit from similar advice and education-, especially those that are new to the workforce. However, the consultation document seeks to improve the situation for migrants and we suppose any useful suggestions for migrants can be adapted and tailored for New Zealand workers⁸.
- 2.20 The provision of information or advice that leads to learning relies on timely dissemination of that information, a clear channel for sending information, and a receptive recipient. Obviously, technology and the use of expert communication techniques is the key to improving that understanding.

⁶ People within 10 years of obtaining residency in New Zealand, are found guilty of migrant worker exploitation can be deported.

⁷ How MBIE can make sure temporary migrant workers know about the 0800 phone line and the online reporting tool? When should migrant workers should be told about the 0800 number and online reporting tool?

⁸ Including people in subservient working relationships.

- 2.21 Section C, 7A. Question: asks whether we think INZ should be able to issue infringement notices when an employer does not comply with immigration law and policy.
- 2.22 As we understand it labour inspectors are already issuing infringement notices. We suspect the consultation document's intended purpose is to cover what other ways an employer can offend, other than failing to provide time and wage copies. In the road freight transport industry failure to produce legitimate and full worktime or logbook records is an offence. Enforcement agents usually delve further into company records to discern what hours and work an employee might have done. So, it seems unnecessary to seek to introduce further reasons for issuing infringement notices in this sector.
- 2.23 By asking whether INZ should be able to issue infringement notices (although this is a function of Labour Inspectors), we suspect there is a motive for positioning INZ to be given jurisdiction to do so.
- 2.24 We believe this would lead to demarcation issues. INZ is already entitled to enter an employer's premises to obtain necessary records where there is suspicion to believe a migrant worker (under the Immigration Act) is not entitled to work in New Zealand, or for the employer in question.
- 2.25 Given the offences regime already in place, we would be opposed to duplication. Duplication is associated with complexity and inefficiency. It is unlikely a new regime would improve the situation of migrants that are being exploited. Greater value would be gained by ensuring migrants are aware of the agencies and policies in place that are there to give them that protection.
- 2.26 As is currently the situation, many migrants will be reluctant to make complaints as their visa only allows them to work for a nominated employer.
- 2.27 Ensuring they know what their rights are, and how to exercise them, is the best way to deal with exploitation.

3.0 CONCLUSION

- 3.1 Of the consultation document contents, we think the questions posed in 5A, 5B and 5C are the most relevant and useful.
- 3.2 When workers, migrant or not, know their rights and are confident they can apply them without recourse, exploitation issues will be able to be addressed more readily.
- 3.3 New Zealand “workers” are also subject to exploitation and we believe remedies should be developed to assist local and migrant workers alike.
- 3.4 Exploitation occurs when a party has power of another and the weaker believe they have no option but to comply.
- 3.5 Often the power holder is difficult to identify and chain of responsibility provisions must be applied.
- 3.6 The consultation document writers suggest ways of addressing that. Clearly, the first step must be to make sure workers, or people in positions of subservience, are aware of their rights.
- 3.7 The second step is to ensure the investigative resource is available and suitably trained to carry out effective investigations across the whole supply chain.
- 3.8 We welcome the opportunity to discuss our comments further.