

# Regulatory Impact Statement: Strengthening migrant exploitation offences

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing Cabinet policy decisions
Proposal	To make it an offence for a New Zealand-based employer, their agent, or any person involved in the recruitment process or dealing with the intending migrant, to charge a premium for employment irrespective of whether an employee/worker has commenced active employment and if the payment is made offshore, to address migrant exploitation
Advising agencies:	The Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers:	Minister of Immigration
Date finalised:	4 September 2024
Problem Definition	
The migrant exploitation offence provisions in the Immigration Act 2009 (the Act) do not currently capture a situation where a premium is required before employment commences, if the payment is made offshore, and situations where the premium is requested by a person engaged on behalf of the employer.	
Executive Summary	
<p>The charging of premiums for employment is an increasing form of migrant exploitation. From financial year (FY) 2021/2022 to August FY 2024/2025, there have been over 640 allegations of premiums paid, <b>Free and frank opinions</b></p> <p>Under section 351(1)(a)(iii) of the Act, an offence is be committed if an employer, while allowing a temporary worker to work in their service, is responsible for a serious contravention of the Wages Protection Act 1983 (WPA) in respect of the employee or worker.</p> <p>As it currently stands, section 351(1)(a)(iii) does not capture situations where a premium is required before employment commences, where the premium is paid offshore, or when it is requested by a person engaged on behalf of the employer. These gaps significantly limit the available methods within the immigration system to address migrant exploitation and hold exploitative employers to account.</p> <p>This Regulatory Impact Statement (RIS) outlines the proposal to make it an offence for a New Zealand-based employer, their agent, or any person involved in the recruitment process or dealing with the intending migrant, to charge a premium for employment,</p>	

irrespective of whether an employee/worker has commenced active employment and if the payment is made offshore.

The overarching objective of this suite of proposals is to enhance the integrity of the immigration system. The sub-objectives for this particular proposal are to:

- improve MBIE's ability to address migrant exploitation,
- close a gap in our migrant exploitation offences.

To achieve this, we have considered two options:

- to either remain within the status quo, or
- to amend the Act to make it an offence for a premium to be paid before employment (and if offshore) (**preferred**). As section 351 only relates to an *employer* committing the offence, this could be achieved by inserting a new section to cover all parties (e.g. a New Zealand-based employer, their New Zealand agent, or any person involved in the recruitment process or dealing with the intending migrant).

While there are other options for recourse (i.e. civil) for this form of exploitation, there are no non-legislative options that will provide a criminal remedy for the identified gap.

The two options have been compared against the following criteria:

- addresses a gap in the immigration regulatory system;
- effective risk management;
- protection of workers; and
- ease of implementation.

This preferred option will help address cases of migrant exploitation, strengthen the integrity of the immigration regulatory system, enable the better management of immigration risk, and demonstrate that New Zealand is upholding its international obligations, specifically with regard to the 2000 United Nations Convention against Transnational Organized Crime, and its protocols focused on combatting people-smuggling and trafficking in persons. It also supports the New Zealand National Party and New Zealand First Coalition Agreement undertaking to "commit to enforcement and action to ensure those found responsible for the abuse of migrant workers face appropriate consequences".

### Confidential advice to Government

However, there will be a case for prosecution if it can be proven that some/all of the premium has been passed on to the New Zealand employer or recruiter.

### Limitations and Constraints on Analysis

The Minister of Immigration's expectation is that the Amendment Bill will be in place before the end of 2025. These timeframes mean that external stakeholder consultation before Cabinet decisions has been limited to informing key stakeholders through one-on-one meetings and receiving their initial feedback on the proposals. Engagement on an

Exposure Draft of the Bill will occur later in 2024 ahead of Cabinet Legislative Committee decisions.

MBIE informed the following stakeholders of the proposals between 29 July and 9 August 2024:

- BusinessNZ
- the Employers and Manufacturers Association
- the Council of Trade Unions
- The Casey Review Focus Group
- the New Zealand Law Society
- the Office of the Ombudsman
- Immigration New Zealand's (INZ) Immigration Focus Group.

While we have not had time to undertake significant external engagement, we have received detailed comments from agencies and key immigration and employment exploitation regulators, and feedback has been incorporated into this RIS.

**Responsible Manager(s) (completed by relevant manager)**

Stacey O'Dowd

*Manager, Immigration (Border and Funding) Policy, Labour, Science and Enterprise, MBIE*



4 September 2024\*

\*Information was updated in November 2024<sup>1</sup>

**Quality Assurance (completed by QA panel)**

Reviewing Agency: MBIE

Panel Assessment & Comment: A Quality Assurance panel with representatives from MBIE has reviewed the RIS *Immigration Amendment Bill (System Integrity proposals)*. The panel has determined that each RIS provided meets the quality assurance criteria.

<sup>1</sup> Updated information is set out in paragraph 11 and 12, and Annex One: *Costs and benefits of preferred option*.

# Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

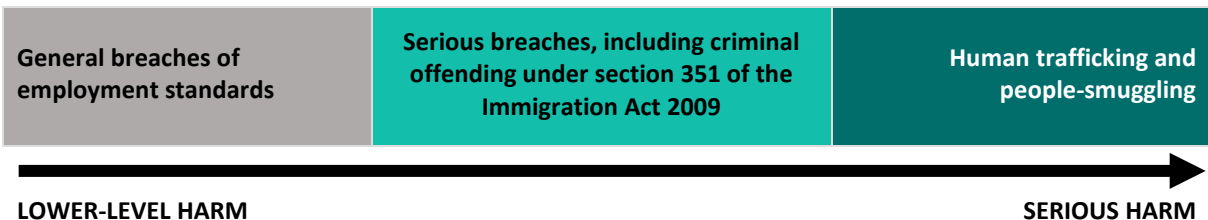
## The purpose of the immigration system

- 1. The immigration system regulates the flow of people into New Zealand. The purpose of the Act is to “manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals”.
- 2. Achieving this balance requires careful consideration of multiple factors – including humanitarian, social and economic objectives, and New Zealand’s international obligations and commitments. A key objective is to ensure that the regulatory settings appropriately respond to threats to New Zealand’s safety and security posed by individuals subject to the Act.

## Charging premiums for employment is an increasing form of migrant exploitation

- 3. Temporary migrant worker exploitation is a serious problem in New Zealand, with agencies receiving increasingly complex cases of exploitation to investigate and address. Exploitation is understood to mean the breach of employment standards which are the standard requirements for all workers in employment law (regardless of immigration status) prescribed in the Holidays Act 2003, the Minimum Wage Act 1983 (the MWA) and the WPA.
- 4. Employment standards prevent employers from underpaying wages, or not paying wages; unlawfully deducting wages; and charging premiums to work. Breaches of employment standards vary, as shown in the figure below.

Figure 1: Spectrum of employment standard breaches



- 5. Under the Act, section 351 contains offence provisions for employers and defines exploitation of unlawful employees and temporary workers as, while allowing such employees to work in the employer’s service, being responsible for serious breaches of the Holidays Act 2003, the MWA, and the WPA in respect of that employee.
- 6. Compliance with the Act is important to manage immigration and security risks and enhance New Zealand’s reputation as a safe working migration destination. Employers have legal responsibility to ensure that their employees are legally entitled to work for them. INZ is in regular contact with employers to ensure they understand their employment and immigration obligations.

7. Recently, steps have been taken to strengthen tools and enforcement measures to address instances of migrant exploitation. In July 2021, the Migrant Exploitation Protection Work Visa (MEPV) and new reporting tools were launched. These initiatives help to address migrant exploitation by encouraging people to report instances of exploitation and provide migrants with a pathway to quickly leave exploitative situations.
8. Between the MEPV's inception and the end of July 2024, MBIE granted over 2,600 MEPVs. Most (2,067 or 86 per cent) were granted in the financial year (FY) to 30 June 2024 (FY 2023/24), and MBIE received over 3,925 complaints of migrant exploitation during FY 2023/24.

#### **The Act imposes penalties for migrant exploitation...**

9. The exploitation of temporary migrants or those working unlawfully is a criminal offence under section 351 of the Act and carries penalties under section 357(3) and 357(4). Such convictions may result in the employer becoming liable for deportation from New Zealand if certain criteria are met.<sup>2</sup>
10. Any person convicted of an offence against:
  - 10.1. section 351(1)(a) is liable to imprisonment for a term not exceeding seven years, a fine not exceeding \$100,000, or both (under section 357(3)).
  - 10.2. section 351(1)(b) is liable to imprisonment for a term not exceeding five years, a fine not exceeding \$100,000, or both (under section 357(4)).
11. The following matters may be taken into account in deciding whether a failure, default, or contravention is serious (referred to in section 351(1)(a)): the amount of money involved; whether it comprises a single instance or a series of instances; if it comprises a series of instances, the number of instances and the period over which they occurred; whether or not it was intentional; whether the employer concerned has complied with record-keeping obligations imposed by the Act concerned; and any other relevant matter.<sup>3</sup>
12. The following are examples of actions of the kind referred to in section 351(1)(b): taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets; preventing or hindering a person (from having access to a telephone; using a telephone; using a telephone privately; leaving premises; or leaving premises unaccompanied); or preventing or hindering a labour inspector (within the meaning of the Employment Relations Act 2000) from entering or having access to any place or premises to which he or she is entitled to have access under any enactment.

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<sup>2</sup> If the exploiter is a residence class visa holder at the time of conviction (that is, has not gained citizenship), and the offence is committed not later than ten years after they first held a residence class visa, they are automatically liable for deportation under section 161(1)(d) of the Act.

<sup>3</sup> Section 351(3) of the Act.

**...but the current wording of section 351(1)(a)(iii) of the Act does not capture all situations where exploitation occurs**

13. Under section 351(1)(a)(iii) of the Act, an offence will be committed if an employer, while allowing a temporary worker to work in their service, is responsible for a serious contravention of the WPA in respect of the employee or worker.<sup>4</sup>
14. Section 12A of the WPA notes it is unlawful for employers or a person engaged on behalf of the employer to charge an employee, or prospective employee, a premium (fee) for employment. This includes charging an employee money in exchange for giving them a job. The wording in section 12A prohibits not just the receipt of a premium but also the seeking of a premium.
15. Section 351(1)(a)(iii), as currently worded, does not capture a situation where a premium is required **before** employment commences, and where a premium is required by someone other than an employer. The current wording, when combined with the definitions of 'employer', 'employee', and 'work' in the Act, only captures situations where an unlawful or temporary worker is working in the employer's service **at the time** the premium is required.
16. No criminal offence is technically committed if New Zealand-based employers, or their agents, or other people dealing with an intending migrant, demand a premium (including if paid offshore) before employment actively commences.

**There is nothing to indicate that the policy was intended to be limited in this way**

17. The creation of section 351(1)(a)(iii) was a consequence of New Zealand's decision to sign up to the United Nations (UN) Convention against Transnational Organised Crime (TOC).
18. In December 2000, New Zealand signed up to both the TOC and the UN's Protocols on the Smuggling of Migrants and Trafficking of Persons. The TOC Bill 2002 followed, containing amendments to the Immigration Act 1987 and provisions that were needed in New Zealand law to meet its obligations under the Convention.<sup>5</sup> The Bill's 'General policy statement' notes that "amendments are made to the Immigration Act 1987 to expand the range of offences available under that Act to deal with the exploitation of migrant workers".
19. Part 3 of the Bill (clause 21) refers to the insertion of section 39A into the Immigration Act 1987, covering exploitation of people not legally entitled to work.<sup>6</sup> On 18 June 2002, section 39A(1)(a)(iii) was introduced into the Immigration Act 1987 through section 5 of the Immigration Amendment Act 2002.<sup>7</sup> When the Immigration Act 2009 was enacted, section 39A(1)(a)(iii) became section 351(1)(a)(iii).

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<sup>4</sup> Under section 12A(1) of the WPA, "no employer ... shall seek or receive any premium in respect of the employment of any person...". [www.legislation.govt.nz/act/public/1983/0143/latest/DLM74853.html](http://www.legislation.govt.nz/act/public/1983/0143/latest/DLM74853.html).

<sup>5</sup> New Zealand Historical Bills. *Transnational Organised Crime Bill* (2002). [Transnational Organised Crime Bill 2002 \(201-1\) \(austlii.edu.au\)](http://www.austlii.edu.au/au/other/dfat/special/TOC/TOC2002/TOC2002-1.html).

<sup>6</sup> Page 9, Clause 21. New Zealand Historical Bills. *Transnational Organised Crime Bill* (2002). [Transnational Organised Crime Bill 2002 \(201-1\) \(austlii.edu.au\)](http://www.austlii.edu.au/au/other/dfat/special/TOC/TOC2002/TOC2002-1.html).

<sup>7</sup> Immigration Amendment Act 2002 No 22. [Immigration Amendment Act 2002 No 22 \(as at 29 November 2010\), Public Act – New Zealand Legislation](http://www.legislation.govt.nz/act/public/2002/0022/latest/DLM74853.html).

20. There is no indication that the policy intent behind section 351(1)(a)(iii) was to limit its application to situations where workers are actively working for their employer at the time they are required to pay a premium.

**If the status quo continues immigration regulators will continue to be unable to prosecute for premiums charged prior to the commencement of employment**

21. This gap significantly limits the available methods within the immigration system to address migrant exploitation and hold exploitative employers, or their agents, or other people dealing with an intending migrant, to account.
22. From FY 2021/22 to August FY 2024/25, there have been 640 allegations of premiums paid (frequently in conjunction with other immigration and employment offences). Often, premiums are paid offshore by migrants before the migrant has arrived in New Zealand and commenced employment. These instances include several scenarios that are not captured under current wording in the Act:
- 22.1. Prospective employee/migrant is offshore and pays a premium to secure employment;
  - 22.2. Prospective employee/migrant is offshore with an employment agreement and hasn't commenced active employment and pays a premium;
  - 22.3. Prospective employee/migrant is onshore and pays a premium before commencing active employment;
  - 22.4. A premium is required (including in the situations above) by an employer's agent, or any other person involved in the recruitment process or dealing with the intending migrant.
23. The inability to prosecute these forms of exploitation has the potential to damage New Zealand's international reputation as a safe place to work and our ability to attract and retain the migrant workers New Zealand wants and needs.
24. Currently, there is no criminal recourse for this specific offending. There may be a civil remedy in the future – **Free and frank opinions**

**What is the policy problem or opportunity?**

**Charging premiums before and during employment is a common form of exploitation, and the number of allegations of premiums being charged has significantly increased**

25. From FY 2021/22 to August FY 2024/25, there have been 640 allegations of premiums paid. A further breakdown each year is depicted in **Table One** below.

**Table One:** Migrant exploitation complaint cases with allegations of premiums paid

Financial Year (FY)	Number of complaints received
2021/2022	105
2022/2023	120
2023/2024	376
2024/2025 (as at 29 August 2024)	39
<b>Total</b>	<b>640</b>



26. Both employment and immigration regulators are also seeing increasing cases of recruitment agents/agencies charging premiums for jobs, in addition to employers.<sup>8</sup>

27. Free and frank opinions

#### Case Study

28. Maintenance of the law

#### **Section 351(1)(a)(iii) does not capture a situation where a premium is required before employment commences and if the payment is made offshore**

29. The current wording of section 351(1)(a)(iii) Act does not capture situations where a premium is required before employment actively commences, if the payment is made offshore, and if the payment is required by someone other than an employer. This limits the available prosecution methods for addressing migrant exploitation.

30. Work has been undertaken to combat the paying of premiums in other aspects of the system:

30.1. The AEWW application forms/declarations make it clear that charging a premium is not acceptable – this also includes that paying/charging a premium may result in revocation of accreditation and mean that a person is not eligible for an MEPV.

30.2. INZ has the ability within immigration instructions to create more stringent criteria in order for someone to obtain a visa. Confidential advice to Government

30.3. The LI can take enforcement action under civil jurisdiction, including penalties against the employer (either at the Employment Relations Authority or Employment Court). This would lead to the offender being on INZ's stand-down list. Depending on the case, and if the breach was serious enough, the LI could seek declaration of breach, pecuniary penalties<sup>10</sup>, compensation order, and/or a banning order<sup>11</sup>.

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<sup>8</sup> Case summary: *Unlawful premiums on employment*. 2017. [Unlawful premiums on employment: Case Summary - Copeland Ashcroft](#).

#### Confidential advice to Government

<sup>10</sup> These penalties include up to \$50,000 for an individual or the greater of \$100,000 or 3x the financial gain for a corporate person.

<sup>11</sup> Prevents a person (individual or corporate) from operating as an employer. INZ is also able to seek a banning order in certain circumstances.



31. The Employment Court found that the demand for, and receipt of, a premium for employment **offshore** is not fully an impediment to New Zealand employment legislation (for the purposes of the WPA). The Employment Court has recently commented that it might already be possible for the WPA to cover premiums paid offshore, but the law is unclear in this area. Confidential advice to Government
32. There is an opportunity to strengthen the integrity of the immigration system by broadening the offence provisions in the Act to clarify that it is an offence to charge/require a premium for employment irrespective of whether an employee/worker has commenced active employment, if the payment is made offshore, and/or if the payment is required by someone other than an employer.

**In addition, there is also the opportunity to consider increasing the maximum liability under the penalty provisions in the Act**

33. As set out in paragraph 9, migrant exploitation or those working unlawfully is criminalised under section 351 of the Act and punishable with up to five or seven years imprisonment, a fine of up to \$100,000, or both.<sup>12</sup> Such convictions may result in the employer becoming liable for deportation from New Zealand if certain criteria are met.
34. Given the scale of premiums being charged, Confidential advice to Government

### **Stakeholders impacted by the problems**

36. We have identified the following affected groups and the nature of their interest:

#### **36.1. Regulated group:**

- Migrant workers impacted by migrant exploitation and who have been subject to providing premiums upon commencing employment or as a requirement for securing employment.
- Employers (including their agent(s) or any person involved in the recruitment process (onshore or offshore)) of migrant workers who commit these offences.

#### **36.2. Regulators:**

- MBIE's ICI team, which undertakes investigations and compliance activities for instances of non-compliance with the Act.
- MBIE's LI, which is responsible for upholding employment standards and works closely with ICI.
- MBIE Legal, which advises on prosecution cases and investigations.

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<sup>12</sup> Section 357(3) and 357(4) of the Act.

- MOJ, which has a regulatory oversight function and advises on infringement regimes/penalties. The majority of criminal cases go through the District Court, with very serious crimes to the High Court.
- The correctional system, designed to keep society, at large, safe by separating them from individuals who have committed crimes.

36.3. **The public:** Confidence that instances of migrant exploitation can be enforced.

37. MBIE has consulted with regulators on the policy problem. Regulators were supportive of the proposal due to its aim to address serious instances of migrant exploitation.
38. The population group mostly impacted are migrants who are victims of exploitation. The other group is New Zealand-based employers of migrant workers who are committing these offences but have not yet been prosecuted.
39. We consulted with Ministry for Ethnic Communities, which had no concerns with the proposal. We also held initial discussions with key stakeholders (BusinessNZ, the Employers and Manufacturers Association, the Casey Review Focus Group, the New Zealand Law Society, the Immigration Focus Group, and the Office of the Ombudsman) on the proposals. All stakeholders were supportive of addressing the problem identified. MBIE will undertake more substantive engagement with stakeholders on an exposure draft following Cabinet policy decisions.

### What objectives are sought in relation to the policy problem?

40. The overarching objective across the suite of proposals is to enhance the integrity of the immigration system. The sub-objectives for this particular proposal are to:
  - 40.1. To address a gap in the offences (Part 10) of the Act<sup>13</sup> - specifically where New Zealand-based employers or their agents demand a premium (including if paid offshore) before employment actively commences can be addressed.
  - 40.2. To improve MBIE's ability to address instances of migrant exploitation, manage risk to the integrity of the immigration regulatory system and uphold New Zealand's international obligations, specifically the UN TOC.
41. These objectives align with the:
  - 41.1. Government's commitment (as expressed in the New Zealand National Party and New Zealand First Coalition Agreement) to greater protections against migrant worker exploitation through "enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences".
  - 41.2. Government's migrant exploitation action plan, which sets out New Zealand's approach to addressing exploitation through internationally-recognised pillars of prevention, protection, and enforcement.<sup>14</sup> Partnership is fundamental to successfully achieving the aims of this plan and includes government, unions, businesses, civil society organisations, and international partners.
  - 41.3. Government's commitment to ensure that regulatory systems remain fit-for-purpose and work well.

<sup>13</sup> Part 10 of the Act covers offences, penalties, and proceedings.

<sup>14</sup> Combatting Modern Forms of Slavery. MBIE. [Plan of Action against forced labour, people trafficking and slavery 2020-2025](#).

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

42. The following criteria, which support the objectives identified for this proposal (identified above in paragraph 41), have been developed to guide the analysis:
- 42.1 **Addresses a gap in the immigration regulatory system:** Option strengthens the integrity of the immigration system and enables MBIE to identify, prosecute, and penalise employers and related actors for charging premiums, irrespective of whether the prospective employee has commenced employment.
  - 42.2 **Effective risk management:** Option strengthens the responsiveness of the immigration system by managing the risk, and addressing instances, of migrant exploitation. This includes the prevention of further risk of undermining international commitments and obligations, and ensures those engaging with the immigration system adhere to compliance requirements.
  - 42.3 **Protection of workers:** Option provides safeguards for workers from instances of migrant exploitation and improves social outcomes.
  - 42.4 **Ease of implementation:** Option supports a seamless implementation process and is feasible operationally, with limited additional costs for government.

### What scope will options be considered within?

43. As part of the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill, the Minister of Immigration has agreed to address a gap in the offence provisions part of the Act specific to premiums charged for employment offshore and prior to commencing employment) to address migrant exploitation.
44. Options have been considered within the parameters set out in the purpose section of the Act.
45. There are no non-regulatory options being considered as the problem identified is due to a regulatory failure identified with current legislation.

### What options are being considered?

46. Two options are being considered:
- 46.1 **Option One:** Status quo – Continue with current offence provisions. This means MBIE ICI would continue to be unable to prosecute employers who require a premium to be paid for employment prior to work commencing (**not recommended**).
  - 46.2 **Option Two:** Amend the Act to make it an offence for a premium to be paid offshore and prior to employment commencing, including those paid to an employer's agent or someone else involved in the recruitment process (**recommended**). As section 351 only relates to an *employer* committing the offence, this could be achieved by inserting a new section to cover all parties (e.g. a New Zealand-based employer, their New Zealand agent, or any person involved in the recruitment process or dealing with the intending migrant).
47. Confidential advice to Government
- However, there are no non-legislative options that could provide a criminal remedy for the identified gap.

## How do the options compare to the status quo/counterfactual?

48. **Table Two** sets out analysis of the two options against the criteria established under paragraph 42.

**Table Two:** Analysis of options against key criteria

	Addresses identified gaps in the immigration regulatory system	Effective risk management	Protection of workers	Ease of implementation	Overall assessment
<b>Option One: Status Quo – Continue with current provisions</b>	<p><b>-1</b></p> <p>Option One will not address the gap in the immigration regulatory system. MBIE ICI is unable to prosecute premiums charged prior to active employment and while the employee is offshore. This option also limits migrant workers from seeking criminal recourse for this specific offending.</p> <p>Confidential advice to Government</p>	<p><b>-1</b></p> <p>Option One will not support effective risk management. Remaining within current offence provisions will not safeguard migrant workers and prevent them from financial exploitation. This option will not strengthen the responsiveness of the immigration system, rather, it has the potential to increase the risk of non-compliance and undermine New Zealand's international commitments and obligations.</p>	<p><b>1</b></p> <p>Option One supports the current level of offence provisions depicted in section 351(1)(a)(iii) and only positively impacts migrants at a marginal level. The current wording does not capture all situations where a premium is required. This option limits migrant workers from seeking criminal recourse for this specific offending.</p> <p>Confidential advice to Government</p>	<p><b>1</b></p> <p>Option One is the status quo and therefore will require no additional implementation effort. However, continuing the status quo does not support a seamless process for compliance measures as immigration and employment regulators are unable to identify, prosecute, and penalise illicit actors of this form of exploitation.</p>	<p><b>0</b></p>

	Addresses identified gaps in the immigration regulatory system	Effective risk management	Protection of workers	Ease of implementation	Overall assessment
<b>Option Two:</b> <b>Amend the Act to make it an offence for a premium to be paid offshore and prior to employment commencing</b>	<p><b>3</b></p> <p>Option Two will address the identified gap to the extent possible within the application of New Zealand law.</p> <p>This option will strengthen the integrity of the immigration system and enable MBIE to identify, prosecute, and penalise employers/their New Zealand agent(s) for charging premiums irrespective of whether the prospective employee has commenced active employment.</p> <p>This option will <small>Confidential advice to Government</small></p> <p><small>However,</small></p> <p>a case will be able to be made if it can be proven that some/all of the premium has gone to the New Zealand employer.</p>	<p><b>3</b></p> <p>Option Two will support effective risk management over time as immigration regulators will have the offence provisions to prosecute illicit actors/ employers and reduce the risk of migrant exploitation instances of this form. It provides a method to addressing migrant exploitation and ensure compliance is met.</p>	<p><b>3</b></p> <p>Option Two will support the protection of migrant workers. It will enable MBIE ICI to prosecute and hold offenders to account, which will in turn have a deterrent effect on other employers or parties acting on behalf of employers.</p>	<p><b>2</b></p> <p>Option Two partially meets this criteria as there are already established systems in place for the justice system and the cost to implementation is minimal.</p> <p><small>However,</small> <small>Confidential advice to Government</small></p> <p><small>but still</small></p> <p>possible with the cooperation of complainants.</p> <p>Overseas agents/recruiters sit outside of New Zealand law and therefore will not be able to be prosecuted (but the New Zealand employer or recruiter may be able to be charged if it can be established that they have received some/all of the premium payment).</p>	<p><b>11</b></p>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

49. MBIE recommends Option Two as it best meets (partially or well) the criteria. It also supports the Minister of Immigration's agreed scope of the Bill to address a gap in the offence provisions in the Act (specific to premiums charged for employment offshore and prior to commencing employment) to address migrant exploitation.
50. Option Two would:
- 50.1. Address a gap in the immigration regulatory system. MBIE would be able to prosecute the charging of premiums by New Zealand employers and agents, irrespective of whether the migrant has commenced active employment or if the premium has been paid offshore. This would strengthen the integrity of the immigration system.
  - 50.2. Enable more effective risk management over time, as regulators will have the right tools to address migrant exploitation cases of this form. Amending the Act to capture these instances of financial exploitation will also ensure compliance is met and uphold New Zealand's international obligations, specifically the UN TOC.
  - 50.3. Safeguard vulnerable migrant workers from exploitation. Workers vulnerable to this form of exploitation will be able to seek criminal recourse and justice. MBIE ICI will be able to prosecute and hold offenders to account, which will in turn also have a deterrent effect on other employers, their agent(s), or any person involved in recruitment processes. This option provides the public confidence in judicial systems in New Zealand.
51. Confidential advice to Government [REDACTED] but still possible with the cooperation of complainants.
52. Confidential advice to Government [REDACTED] However, there will be a case for prosecution if it can be proven that some/all of the premium has been passed on to the New Zealand employer or onshore agent.

## What are the marginal costs and benefits of the option?

53. This section focuses on the costs and benefits of the preferred option (Option Two).
54. Given that most of the costs and benefits associated with Option Two relate to intangible factors such as improved worker wellbeing and enhanced enforcement measures, MBIE has not attempted to accurately describe the non-monetised costs and benefits of this option.
55. We have identified the following affected groups:
- 55.1. **Regulated groups:**
    - Migrant workers impacted by migrant exploitation and who have been subject to providing premiums upon commencing employment or as a requirement for securing employment.

- Employers (including their agent(s) or any person involved in the recruitment process (onshore or offshore)) of migrant workers who are facing these charges but have not yet been prosecuted.

#### 55.2. **Regulators:**

- MBIE's ICI team, which undertakes investigations into non-compliance and would be responsible for enforcing the Act.
- MBIE's LI, which is responsible for upholding employment standards and works closely with ICI.
- MBIE Legal, which advises on prosecution cases and investigations.
- MOJ, which has a regulatory oversight function and advises on infringement regimes/penalties. The majority of criminal cases go through the District Court, with very serious crimes to the High Court.
- The correctional system, designed to keep society at large safe by separating them from individuals who have committed crimes.

#### 55.3. **The public:** Confidence that instances of migrant exploitation can be enforced.

56. **Annex One** sets out the non-monetised costs and benefits of the preferred option: amending the Act to make employers requiring a premium for employment an offence irrespective of commencing employment and if offshore, in comparison to the status quo.



## Section 3: Delivering an option

### How will the new arrangements be implemented?

57. Implementation arrangements will come into effect when the Bill is passed in late 2025. MBIE's ICI team will be responsible for its implementation and operation. A communications strategy will be developed to ensure employers are informed of the offence.
58. A potential issue related to implementation and timing is that if it becomes known that there is a legislative gap, this may encourage further unacceptable behaviour by bad actors. One way to address this is to make it abundantly clear in communications that this behaviour is unacceptable. As noted in paragraph 30.1, AEWV application forms have recently been amended to require applicants to declare if a premium has been paid. If it is found that they have this may amount to the provision of false and misleading information to an immigration officer (an offence already), and loss of accreditation/deportation.

### How will the new arrangements be monitored, evaluated, and reviewed?

59. MBIE ICI will investigate allegations that are made involving offshore payments once the legislative amendment is introduced. **Free and frank opinions**  
[REDACTED]  
[REDACTED] Cases of payments made back to employers onshore will be easier and more feasible to prove.
60. MBIE's ICI function currently reports internally on the number of prosecutions, and this process will continue once the proposal has been introduced.
61. MBIE intends to conduct an implementation review a year after the proposal takes effect. This would monitor the progress and effectiveness of the proposal, scale of investigations and prosecutions captured, and any issues and unintended consequences associated with its enforcement.

## Annex One: Costs and benefits of preferred option (Option Two)

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action (status quo)			
<b>Regulated groups</b> <i>Migrant workers impacted by migrant exploitation</i> <i>Employers (including their agent(s) who breach the Act)</i>	<b>Migrant workers</b> Nature of cost: Administrative costs associated with making a complaint Type: ongoing Comment: Migrant workers may incur an administrative burden through making a complaint or increased documentation requirements to prove their case.	Low	High. MBIE is aware that there are avenues for reporting exploitation and making a complaint (free of charge). Concerns and reports of exploitation (including premium payments) can be received through: <ul style="list-style-type: none"> <li>the Migrant Exploitation reporting line<sup>15</sup> (an online form can be filled out as well<sup>16</sup>),</li> <li>Crime Stoppers (informants/complainants can choose to be anonymous)<sup>17</sup>,</li> <li>Confidential advice to Gov</li> <li>MBIE's Migrant Exploitation channels (e.g. helpline or contact centre) Confidential advice to Government</li> <li>Confidential advice to Government</li> <li>the victim of migrant exploitation, as well as friends, colleagues, or concerned members of the public.</li> </ul> A migrant is also able to apply for a MEPV. An MEPV assessment is started (or is an option) when a migrant reports exploitation to MBIE Employment Services through the Migrant Exploitation reporting line. A migrant will not be able to apply for a MEPV without making a complaint and they can choose to withdraw their complaint after they have received a Report of Exploitation Advice Letter).
	<b>Migrant workers</b> Nature of cost: Financial costs Type: initial stage but some ongoing Comment: Migrant workers may need to seek legal advice or assistance to understand their rights under the new law, incurring additional costs.	Low	Low. MBIE is unable to identify the magnitude for administrative burden.
	<b>Employers (who breach the Act)</b> Nature of cost: Financial cost of penalties Type: one-off Comment: Under section 357 of the Act <sup>19</sup> , employers convicted of an offence against section 351(1) are liable to imprisonment not exceeding seven years, or will pay a fine not exceeding \$100,000, or be liable for both.	Low	High. MBIE is aware that employers will incur a penalty in compliance with section 357 of the Act. INZ is in regular contact with employers to ensure they understand their employment and immigration obligations.
	<b>Employers (who breach the Act)</b> Nature of cost: Administrative cost Type: ongoing Comment: Employers may incur increased costs for compliance measures. Increased documentation and reporting requirements to meet obligations can lead to higher administrative overhead for employers.	Low	Medium. MBIE is aware that employers have legal responsibility to ensure that their employees are legally entitled to work for them. An amendment to existing offence provisions would mean that employers should already have established administrative measures in place to ensure compliance. INZ is in regular contact with employers to ensure they understand their employment and immigration obligations. This will help manage the additional administrative burden (if any).
<b>Regulators</b> <i>MBIE ICI &amp; LI</i> <i>MBIE Legal</i> <i>MoJ</i>	Nature of cost: Increased ICI workload and implementation costs and difficulties Type: ongoing Comment: <ul style="list-style-type: none"> <li>Enforcement will likely require additional resource. The financial cost to implementation is relatively low due to already established enforcement measures to monitor compliance, investigate complaints, and prosecute offenders. It will most likely increase ICI's workload.</li> </ul>	Medium	High. The reasons include: <ul style="list-style-type: none"> <li>Free and frank opinions</li> <li>MBIE also understands that capturing premiums paid offshore will be a new process to navigate. Confidential advice to Government, Free and frank opinions. MBIE's ICI</li> </ul>

<sup>15</sup> People are able to report migrant work exploitation by calling 0800 200 088, with interpreters available for over 180 languages. *Employment New Zealand*. Found here: [Migrant exploitation | Employment New Zealand](#).

<sup>16</sup> Request help. *Employment New Zealand*. [gethelp.employment.govt.nz/](#).

<sup>17</sup> People are able to call Crime Stoppers for free on 0800 555 111. How to report a crime. *New Zealand Police*. [How to report a crime or incident | New Zealand Police](#).

<sup>18</sup> Confidential advice to Government

<sup>19</sup> Section 357 of the Act, *Penalties*. [Immigration Act 2009 No 51 \(as at 05 June 2024\), Public Act 357 Penalties: employers – New Zealand Legislation](#).

Affected groups	Comment	Impact	Evidence Certainty
District and High Court Corrections	<ul style="list-style-type: none"><li>The only option that would necessitate additional costs or may be difficult to manage would be capturing premiums paid offshore. This is also captured under the proposed amendment and regularised under jurisdiction.</li><li>There is also an <b>Confidential advice to Government</b>.</li></ul>		<p>are predominately proactive and will investigate allegations that are made involving offshore payments when/if legislation is amended. <b>Confidential advice to Government</b></p> <ul style="list-style-type: none"><li>If an offshore agent charges and receives a premium without the employer’s knowledge, MBIE knows there is a limitation to charging the offshore agent as this is out of New Zealand’s jurisdiction and New Zealand Law cannot be applied in this scenario. There is a case, however, if ICI can prove that some traces of the premium has been made back to the New Zealand employer. An onshore recruitment agent who charges and receives a premium (without the employer’s knowledge) could be charged when/if legislation is amended, as the offence would be committed in New Zealand.</li></ul>
	Nature of cost: Increased Legal and litigation costs Type: initial stage but some ongoing Comment: New legislation might lead to an increase in legal cases as workers seek legal redress for past exploitation instances of this form.	Low	High. MBIE knows that the established judicial system will face a low financial cost. The likelihood in an increase in instances to prosecute can be reduced as newly amended AEWV application forms require applicants to declare if a premium has been paid and action can be taken earlier on in the process.
	Nature of cost: Costs to Justice system for increased service delivery Type: ongoing Comment: This could place a financial burden on the Justice system as a whole (e.g. in addition to extra work for judges presiding, more cases in court also means additional work for prosecutors, defence, agencies administering sentences etc. In particular, implementation costs could potentially include: <ul style="list-style-type: none"><li>MoJ <b>Free and frank opinions</b> – There could be an impact on expenditure (this is unlikely depending on volume of cases). Interpreters may also be required for migrants. Higher-value fines can impact the government’s debt book (this is unlikely to have an impact). System changes will be dependent on volumes (unlikely to be required).</li><li>MoJ <b>Free and frank opinions</b> – There could be an impact on expenditure, but this impact is relatively low.</li></ul>	High	Medium. Given the significance of the problem (640 allegations from FY 2021/22), MBIE understands that broadening offence provisions increases the likelihood of cases to prosecute. While there are established systems, MoJ has advised that an increase in the courts’ caseloads will still have a minimal cost. These are all very dependent on volume, which is unknown at this stage.
	Nature of cost: Additional burden and costs to Correction facilities Type: ongoing Comment: This could place a potential housing burden and additional costs to accommodate additional prisoners once prosecuted for imprisonment.	Low	High. Corrections has advised MBIE that the additional housing pressures for imprisonment and financial costs to accommodate is minimal as the scale of offenders prosecuted is relatively low compared to other offences.
Others Public	No additional cost as these groups will benefit from the Act being amended as it enhances compliance methods, strengthens provisions for prosecuting illicit actors, and addresses migrant exploitation.	Low	High. MBIE knows that the public will not face costs in relation to the preferred option.
Total monetised costs	N/A		
Non-monetised costs	Medium to Low		
Additional benefits of the preferred option compared to taking no action (status quo)			
Regulated groups  Migrant workers impacted by migrant exploitation  Employers (including their agent(s) who breach the Act)	<b>Migrant workers</b> Nature of benefit: Protection of workers Type: ongoing Comment: Migrant workers (who are often more vulnerable due to language barriers, lack of local knowledge, and with limited access to their rights and legal resource) can receive better protection from exploitation and unfair treatment.	High	High. MBIE knows that Option Two will help address and prevent financial exploitation. Amending the Act will make it an offence for employers to charge premiums, irrespective of whether employment has commenced or if the employee is offshore.
	<b>Migrant workers</b> Nature of benefit: Legal Recourse for victims Type: ongoing	High	High. MBIE knows that Option Two will enable MBIE to identify, prosecute, and penalise employers for charging premiums irrespective of whether the prospective employee has commenced active employment. This does not limit migrant workers to seek legal recourse for exploitation of this form.

Affected groups	Comment	Impact	Evidence Certainty
	<p>Comment: Amending the act strengthens the methods for addressing and deterring migrant exploitation, allowing victims of this form of exploitation the ability to seek a justice remedy. Increased awareness that the law protects their rights can empower workers to report abuses and stand up against unfair treatment.</p>		
	<p><b><i>Employers (who breach the Act)</i></b></p> <p>Nature of benefit: Transparency of the law</p> <p>Type: ongoing</p> <p>Comment: Making the offence clear encourages ethical employment practices. The regulated community has certainty about its legal obligations and rights, the regulator acts in a transparent and predictable way, and there is consistency with other regulatory regimes where appropriate.</p>	Medium	High. MBIE knows that clear legal provisions would incentivise employers to foster more ethical, transparent, and fair labour practices. Employers can maintain their employment obligations and better compliance.
<b>Regulators</b> <i>MBIE ICI &amp; LI</i> <i>MBIE Legal</i> <i>MoJ</i> <i>District and High Court</i> <i>Corrections</i>	<p>Nature of benefit: Strengthening Legal and Regulatory Frameworks</p> <p>Type: ongoing</p> <p>Comment: Enhanced enforcement and legal provisions will make it easier to identify, prosecute, and penalise violators, leading to better compliance with immigration and employment laws. Amending the Act could mean improved monitoring and reporting on exploitation instances.</p>	Medium	High. MBIE knows that options two will strengthen the integrity and responsiveness of the immigration regulatory system.
	<p>Nature of benefit: Helps addresses exploitation instances of this form</p> <p>Type: ongoing</p> <p>Comment: Making instances of this form of exploitation explicitly illegal irrespective of active employment or if it has occurred offshore serves as a deterrent to potential violators, reducing such practices over time.</p>	Medium	<p>High. MBIE is certain that option two will help address this form of exploitation as the amendments will enable regulators with provisions for prosecution of illicit employers.</p> <p>MoJ <small>Free and frank opinions</small> advised that New Zealand recently underwent its 4<sup>th</sup> Universal Periodic Review before the UN Human Rights Council and a number of countries made recommendations to New Zealand to improve protections against migrant exploitation. MoJ supports the intent of the proposal.</p>
	<p>Nature of benefit: Minimal implementation costs across regulators</p> <p>Type: ongoing</p> <p>Comment: The proposed amendment to the Act will incur a minimal cost to regulators.</p>	Low	High. Consultation with key operational agencies highlighted the minimal impact this proposal has on implementation resourcing. While this presents an increase in caseloads across ICI and the justice system, the cost to enforcement through the already established systems are quite low.
<b>Others</b> <i>Public</i>	<p>Nature of benefit: Upkeeping international standards and reputation</p> <p>Type: ongoing</p> <p>Comment: This amendment can enhance New Zealand's reputation as a safe place to work for migrant workers and support Government's commitment to greater protections against migrant worker exploitation.</p>	Medium	High. MBIE understands that option two will uphold New Zealand's international obligations, specifically the UN TOC.
<b>Total monetised benefits</b>	N/A		
<b>Non-monetised benefits</b>	Medium		