



Te Kāhui Tika Tangata
Human Rights Commission

The Accredited Employer Work Visa (AEWV) scheme in Aotearoa New Zealand: A Human Rights Review

Migrant workers' experiences and recommendations

August 2024





Te Kāhui Tika Tangata Human Rights Commission

Te Kāhui Tika Tangata, the New Zealand Human Rights Commission is an independent Crown Entity. One of its primary functions is to promote and protect the human rights of all people in Aotearoa New Zealand. The Commission works towards a free, fair, safe, and just Aotearoa, where diversity is valued, and human dignity and rights are respected.

Under the Human Rights Act 1993, the Commission's primary functions include advocating and promoting respect for, and an understanding and appreciation of, human rights in New Zealand society, and promoting equal employment opportunities (s 5(1)(a) and (d)). In order to carry out its primary functions, the Commission, monitors compliance with the implementation of international human rights treaties ratified by New Zealand (s 5(2)(kc)) and promotes the human rights dimensions of Te Tiriti o Waitangi (s 5(2)(ca)). To that end, the Equal Employment Opportunities Commissioner upholds and protects the human rights of workers, including ensuring that businesses and the government meet their human rights obligations and responsibilities.

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Contents

1. Executive summary	2
2. Recommendations for mitigation and elimination of adverse human rights effects	4
2.1 Worker input for change	4
2.2 Commission Recommendations	4
2.2.1 Recommendations to Government	4
2.2.2 Recommendations to business	6
2.2.3 Recommendations to community organisations	7
3. Approach to the review	8
4. Overview and timeline of the Accredited Employer Work Visa scheme	9
4.1 Media reports of worker exploitation	9
4.2 Independent review of AEWV scheme	10
4.3 Changes to the AEWV scheme	10
4.4 Further media reports and review	11
5. Human rights framework	12
5.1 International human rights	12
5.2 United Nations Guiding Principles on Business and Human Rights	13
6. Te Tiriti o Waitangi	14
7. Rights most relevant to temporary migrant workers under the AEWV scheme	16
7.1 Right to equality and freedom from discrimination	16
7.2 Right to work, and to just and favourable conditions of work	16
7.3 Right to an adequate standard of living	16
7.4 Right to health	17
7.5 Right to freedom of association	17
7.6 Right to an effective remedy	17
7.7 Protections against human trafficking and modern slavery	18
8. Findings of human rights analysis	19
8.1 Right to just and favourable working conditions	19
8.1.1 Exploitative recruitment practices – introduction	19
8.1.2 Exploitative recruitment practices – premiums for employment	19
8.1.3 Tying visas to employers	21
8.1.4 Serious breaches of employment standards	23
8.1.5 Modern slavery and human trafficking	23
8.2 Right to an adequate standard of living – housing and access to food	24
8.3 Right to health	25
8.4 Freedom of association	26
8.5 Right to an effective remedy and access to justice	28

1. Executive summary

All people in Aotearoa New Zealand want and deserve to be treated fairly at work, live in a safe and decent home¹, be able to socialise and have a support network, and have enough money to live with dignity. This applies as equally to people who have migrated to Aotearoa to work, as it does to residents and citizens.

Te Kāhui Tika Tangata Human Rights Commission (the Commission) has been told the Accredited Employer Work Visa (AEWV) scheme provides economic opportunities for migrant workers in Aotearoa. It is also meant to provide much needed labour for key sectors in this country's economy, such as hospitality, construction and health.

The Commission is raising concerns about human rights abuses affecting temporary migrant workers in the AEWV scheme. Since 2022 the scheme has offered a temporary work visa on the condition that workers are tied to a specific accredited employer.²

The scheme's policy settings, however, are contributing to workers being exploited for profit with insufficient access to effective redress. Speaking to migrant workers and others, the Commission identified significant risks to the following human rights:

- the right to equality and non-discrimination
- the right to just and favourable working conditions
- the right to an adequate standard of living
- the right to health
- the right to freedom of association
- the right to an effective remedy and access to justice.

Additionally, the Commission identified the need for the scheme to adequately protect workers against human trafficking and modern slavery.

This review is intended to give voice to the experiences of workers participating in the AEWV scheme and acknowledges the direct effect on them of the human rights risks within it. Workers and others told the Commission about:

- being charged tens of thousands of dollars for fake jobs
- not receiving their wages and/or wage records
- living in poverty and sliding into the informal economy where they are exploited with little or no pay and long hours
- living in crowded, unhealthy, unsafe housing or campgrounds
- being verbally and physically assaulted
- their concerns for potential human trafficking and coordinated profiting from these human rights breaches.

These conditions are not what anyone wants for migrant workers living in Aotearoa. As well as bad practice and examples of exploitation, the Commission heard about good experiences which benefitted migrant workers and their employers. These examples informed the Commission's recommendations for a better AEWV scheme in the future.

Te Tiriti o Waitangi is this country's unique statement on human rights. It provided the legitimate basis for settlement by tauiwi, and subsequently all immigration. The AEWV scheme does not appear to have meaningfully considered Te Tiriti obligations in its design or included substantive consultation with Tangata Whenua.

¹ A decent home is safe, warm, dry, affordable, accessible and culturally adequate. It is supported by necessary infrastructure such as water, and accessible to key services and facilities such as education, health providers, and community. See: <https://tikatangata.org.nz/human-rights-in-aotearoa/right-to-housing>

² This condition was also present in visas which the AEWV replaced.

New Zealand has also agreed international human rights conventions which protect the rights of migrant workers – although it is yet to ratify the International Convention of the Protection of the Rights of All Migrant Workers and Members of their Families despite international pressure to do so.

This review lists human rights legislation, international conventions and other human rights instruments which can all be used to protect migrant workers and guide policy. Migrant workers and the Commission have made recommendations to better protect workers and to promote the good practice of employers that respect the human rights and dignity of their work force.

Practical recommendations are provided, including recommendations from worker participants, for all stakeholders to improve and strengthen the scheme to ensure the rights of all migrant workers are upheld and protected.

Key recommendations include:

- a full review of the AEWV scheme to ensure it has a strong focus on Te Tiriti o Waitangi and human rights. This is necessary to eradicate exploitation and minimise human rights risks present in the scheme
- untying the AEWV visa from a specific accredited employer so workers can more easily change employers if they wish

- requiring and enforcing ethical recruitment standards
- providing better support and effective redress for migrant workers experiencing human rights risks and violations
- more and better scrutiny of and accountability for accredited employers
- promoting and funding initiatives that have a proven record of protecting workers' human rights
- implementing modern slavery legislation to better protect migrant workers from human trafficking and exploitation.

Respecting and protecting human rights is the responsibility of the State, and of businesses and other organisations within our communities. Ensuring our immigration settings protect and respect human rights should involve all stakeholders. They should be set with close attention to this country's unique circumstances and human rights obligations, including those in Te Tiriti.

Upholding our domestic and international obligations will make for a more prosperous community and economy where everyone's contribution is recognised and rewarded. It will also help to uphold the reputation of Aotearoa as a fair country where all people are treated with respect for their dignity.

2. Recommendations for mitigation and elimination of adverse human rights effects

This section has recommendations from migrant workers and Te Kāhui Tika Tangata Human Rights Commission (the Commission) to protect workers and improve the Accredited Employer Work Visa (AEWV) scheme.

2.1 Worker input for change

During engagement with migrant workers on the AEWV scheme, the Commission asked what they thought should be done to better protect them against human rights breaches and exploitation. Their responses included the following themes:

- **Accountability for employers who have taken money.** Workers felt that there was a lack of accountability for those that participated in what they felt had been scams. They believed significant money was being made through their exploitation. Their view was that the financial profits were high, and the risk of sanctions was low. When sanctions occurred on people who were responsible for exploitation, workers considered they were insufficient from both a deterrence and moral perspective. Workers felt the system, in its current form, did not deter, and may even encourage exploitation as a profitable business model.
- **Government support for migrant workers including social assistance and job placement.** Migrants who suffered exploitation face serious financial hardship and have little access to financial support from government. Workers felt that the government should provide migrant workers who were exploited with financial assistance to meet the basic needs such as access to decent food and housing.
- **Stricter penalties for unfair dismissals.** Migrant workers felt there were insufficient penalties for dismissal, particularly where the dismissal occurred in the context of scams or migrant exploitation.

- **Training and support sessions.** Migrant workers felt that there should be access to external support and access to better education on legal rights and navigating agencies including government agencies.
- **Better language support at services.** Migrant workers felt that language support, particularly provided by government agencies, was sometimes insufficient and was a barrier to accessing support from these agencies.
- **More accountability for and scrutiny of accredited employers.** Migrant workers felt there was insufficient scrutiny of accredited employers and a lack of accountability for conduct that led to adverse human rights outcomes.

2.2 Commission Recommendations

The Commission makes recommendations to Government, businesses and community organisations on how to protect migrant workers from human rights violations.

2.2.1 Recommendations to Government

- **Review the AEWV scheme with a focus on human rights and Te Tiriti o Waitangi.** The policy settings within the AEWV scheme present significant human rights risks. The Commission encourages the Government to carry out a review involving migrant workers, their communities and unions, ethical immigration agents and recruiters, members of the business community, and other stakeholders.
- **Require effective regulation and standards for the ethical recruitment of migrant workers entering Aotearoa as a condition of employer accreditation.** Policy should contain minimum recruitment standards that ensure the protection of human rights.

It should also include effective deterrence and active processes of enforcement that meaningfully protect against the payment or acceptance of employment premiums from workers.

- **End the tying of work-visas to a specific employer.** The tying of visas to a specific employer increases the risk of human rights abuse. It is important this is addressed. There are various models to reduce this risk. One proposal, advanced by the Productivity Commission, is to allow migrant workers to freely change between employers but ensure that movement is recorded and monitored both for ‘gaming’ and for adverse employer conduct.³ Another option includes restricting the worker to an industry, region or job type without tying them to a specific employer. This would ensure the worker uses the skills and contributes to the industry where the labour market need was identified, while reducing human rights risks. The AEWV scheme could look to previous immigration settings to assist the Canterbury rebuild as providing an example from which learnings can be taken.
- **Ensure better support for migrant workers under the AEWV scheme** including for the right to housing and health. Workers lack information on legal rights regarding their employment, tenancy and health. Workers also require support in navigating institutions and in reacting to adverse human rights experiences. While there are community organisations, advocates, and unions who provide this support, access to and resourcing of, these services appear to be piecemeal. Likewise, training for community support and migrant workers themselves would be a valuable investment.
- **Increase requirements for employers to provide settlement support.** This should include a requirement on employers to ensure adequate accommodation is organised prior to arrival and that workers are enrolled with primary health providers (not just a requirement to provide information) and receive specific information about ACC entitlements. A structured scheme of support (independent of employers) needs to be explored along with considerations of how it is funded. Reviewing the Recognised Seasonal Employer scheme’s worker welfare and pastoral care standards including the recent 2023 policy review recommendations would provide some useful guidance.
- **Extend public health coverage to workers who transfer to the Migrant Exploitation Protection Visa.** The current settings mean that workers who transfer from the AEWV visa to the Migrant Exploitation Protection Visa can lose public health coverage. This creates real problems for access to the right to health and is not consistent with the Government’s obligations to protect human rights.
- **Ensure effective remedies supported by government.** The United Nations (UN) Guiding Principles on Business and Human Rights set out that effective remedy includes “considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy”.⁴ To achieve this, there needs to be a review of the barriers to accessing effective remedies (a number are explored in this review). Government services need to be appropriately funded including provision of translation services, access to labour inspectors, and investigation of breaches including those reported through the ‘migrant exploitation hotline’. Consider how policy settings can be changed to ensure that workers in the informal economy can feel safe making complaints of migrant exploitation.
- **Consider changing policy settings so that they are enforceable given available resources.** Currently stakeholders report that Immigration New Zealand (INZ) has insufficient resources to meaningfully monitor the tens of thousands of accredited employers that exist. Without a significant upscaling of resources, policy settings may need to be redesigned to better manage

³ Productivity Commission, ‘Immigration – Fit for the future’ report, p57.

⁴ UN Guiding Principles, Principle 26, p28, downloaded at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

human rights risk. One approach could be to require accredited employer involvement with reputable industry bodies who can participate in compliance with minimum standards and have the scale and track record to ensure employment standards are met and human rights risks are mitigated. This could have the benefit of reducing the likelihood of workers being recruited to fake jobs. Involvement could also be designed to assist workers to move easily between different businesses within the industry.

- **Promote and fund initiatives that have a proven record of protecting workers' human rights.** There are businesses, unions, advocates and migrant community groups involved in initiatives that have positive human rights outcomes for migrant workers. Many of these initiatives could be expanded and the experiences and information generated by these groups used to shape AEWV policy. We are not aware of any current government initiatives/funding streams that provide funding for advocacy or other support to workers under the AEWV either directly or through community or non-governmental programs. The Government should work closely with, and consider better resourcing, these organisations as an effective means of combatting migrant exploitation and human rights breaches.
- **In the AEWV scheme, and in any review, provide meaningful opportunity for involvement of Tangata Whenua, hapū and iwi in policy design.** Such input would include allowing Māori to determine the use of te ao Māori concepts in relation to the scheme. Such involvement should be appropriately funded.
- **Make New Zealand party to the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families.** The treaty acknowledges that migrant workers are regarded internationally as vulnerable and

in need of specific human rights protections. Ratification of the treaty was a notable theme at New Zealand's 2024 UN Universal Periodic Review.⁵

- **Implement effective and specific modern slavery legislation.** Effective modern slavery⁶ legislation must include human rights due diligence requirements, including that steps are taken by dominant actors in supply chains to ensure there is no exploitation within their supply chain. Stakeholders who were involved in large projects reported adverse human rights outcomes. Due diligence is an important mechanism to ensure there is proper oversight of human rights risks including mitigation, elimination and remediation.

There is growing international pressure for modern slavery legislation. It was recommended by Brazil and the United Kingdom in the 2024 UN Universal Periodic Review with Mexico recommending that New Zealand's legal framework needs to prevent cases of modern slavery.

In April 2024, the European Union (EU) imposed mandatory corporate due diligence requirements through the Corporate Sustainability Due Diligence Directive.⁷ This will require large companies doing business in the EU to conduct due diligence on human rights and environmental impacts.

- **Undertake a national plan of action for business and human rights.** Prioritise the adoption and development of the action plan which should include an all of government response to migrant exploitation.

2.2.2 Recommendations to business

- **Do not accept free or unreasonably cheap recruitment services.** Ensure you engage ethical recruitment agents by asking questions of the recruitment process and checking assurances.

⁵ Honduras, Madagascar, Niger, Nigeria, Egypt, Columbia, Côte d'Ivoire, Bolivia, Bangladesh, Afghanistan, Uruguay, Paraguay, Philippines, Senegal and Algeria all recommended that New Zealand either ratify or consider ratifying the treaty.

⁶ See definition of modern slavery at section 7.7 below.

⁷ See: <https://www.mfat.govt.nz/en/trade/mfat-market-reports/european-union-corporate-sustainability-due-diligence-february-2024>

- **Ensure you have a sound business plan and are in a stable financial position before recruiting workers through the AEWV scheme.** Do not engage workers you might not have work for.
- **Ensure you understand and take seriously obligations to provide settlement support services** which includes: providing relevant industry training, accommodation and transportation options, outlining the cost of living, how to get an IRD number, how to access healthcare services, and an introduction to the Citizens Advice Bureau. Ensure that workers have reasonable and fair accommodation arrangements organised before arriving in the country and ensure they receive assistance enrolling with primary health providers. Provide employer supported counselling.
- **Familiarise yourself with the UN Guiding Principles on Business and Human Rights.** Ensure you undertake effective due diligence when engaging workers other than as employees, for example through subcontractors, and write decent employment standards into contracting arrangements. Provide information about employment rights and remedies to all workers engaged in your business. If your business does not have a current union relationship, consider forming relationships with migrant worker unions and present membership as an option for migrant workers.
- **Ensure workers you interact with know how to raise employment issues and can exercise their right to freedom of association.** If your business engages workers on AEWV visas not as employees, for example through subcontracting arrangements, talk to the workers about their rights at work, provide information on access to remedies, and ensure that adequate employment standards form part of contracting arrangements. Ensure workers have meaningful opportunity to join a union.

2.2.3 Recommendations to community organisations

- **Ensure that community organisations and faith groups are aware of government agencies, unions and advocacy services** which provide support to migrant workers and ensure migrant workers are supported in accessing these services.
- **Encourage community members to respect and take steps to protect human rights and create a safe environment for migrant workers to raise issues.** Educate community members on human rights and how it applies to migrant exploitation. Discuss migrant exploitation at community functions and events. Speak out about employers who recruit workers who utilise unethical recruitment.
- **Provide support, including emotional and linguistic support and social inclusion, where possible.**

3. Approach to the review

Te Kāhui Tika Tangata Human Rights Commission (the Commission) has a responsibility to advocate for and promote respect for human rights in Aotearoa New Zealand.⁸ All people in Aotearoa have the right to dignity, equality, respect and the protection of the law.

In 2023, the Commission became aware of growing concerns about adverse human rights impacts on workers participating in the Accredited Employer Work Visa (AEWV) scheme. This was apparent from media reports and through human rights concerns raised with the Commission by community and union stakeholders.

From January to May 2024, the Commission met with key stakeholders and workers to better understand the human rights risks within the AEWV scheme. We met with:

- workers participating in the AEWV scheme (predominantly male workers from China, India and the Philippines)
- migrant community workers
- migrant worker advocates
- migrant union representatives
- an ethical recruiter
- immigration agents
- a journalist who had extensively covered the AEWV scheme
- a business participating in the AEWV scheme
- a rural community representative.

The Commission has been impressed by the genuine commitment from all stakeholders to ensure the AEWV scheme, and immigration policy more broadly, protects and respects the human rights of workers coming to Aotearoa.

During stakeholder engagements, the Commission identified significant human rights risks within the AEWV scheme, including risks to the following rights:

- to equality and non-discrimination
- to just and favourable working conditions
- to an adequate standard of living
- to health
- to freedom of association
- to an effective remedy and access to justice.

Additionally, we have identified the need for the scheme to adequately protect workers against human trafficking and modern slavery.

This review focuses on giving voice to the experiences of workers participating in the AEWV scheme and acknowledges the direct effect on them of the human rights risks in the scheme.

⁸ Section 5, Human Rights Act 1993.

4. Overview and timeline of the Accredited Employer Work Visa scheme

In March 2020, with minor exceptions, Aotearoa New Zealand closed its borders in response to the Covid 19 pandemic. The Government announced a phased reopening in February 2022 and a full reopening occurred in July 2022 (after initially being scheduled for October 2022).⁹

The Accredited Employer Work Visa (AEWV) scheme was introduced in 2022 with the reopening of Covid 19 related border restrictions. It brought together six work-related visas into a single visa and the scheme moved from a migrant-led to an employer-led process. Under the scheme an employer becomes accredited, advertises the roles locally to check no citizens or residents are available, and then completes a job check which includes whether the migrant is qualified and skilled for the role. Following this process a worker can apply for their visa.¹⁰

The scheme is administered by Immigration New Zealand (INZ). A key feature of the policy design is a “high trust model”, whereby the employer components of accreditation were “designed to rely heavily on the declarations made by employers”.¹¹ The main mechanism for assessing

the validity of the employer assurance is through the digital platform Advanced Digital Employer-led Processing and Targeting (ADEPT) and through post-decision checks.¹²

4.1 Media reports of worker exploitation

In the first half of 2023, there were growing media reports of exploitation of workers participating in the AEWV scheme. This included workers not receiving wages,¹³ workers paying tens of thousands of dollars as a premium for employment,¹⁴ and reports of migrants arriving in Aotearoa to non-existent jobs or dubious and early dismissals.¹⁵ There were also reports of pressure placed on family offshore to encourage workers to withdraw grievances in New Zealand,¹⁶ migrants living in garages, and migrants working in informal employment after job losses.¹⁷

On 14 August 2023, there was a further high-profile news story regarding exploitation under the AEWV scheme with reports of workers in crowded and unsanitary living conditions without food and without work¹⁸. Later that month, it was

⁹ Assurance review of the operation of the Accredited Employer Work Visa Scheme, February 2024, Executive Summary, paragraph [2].

¹⁰ See <https://www.immigration.govt.nz/employ-migrants/new-employer-accreditation-and-work-visa/steps-to-hiring-migrants-on-the-aewv>

¹¹ Ibid, paragraph [4].

¹² Ibid.

¹³ <https://www.rnz.co.nz/national/programmes/morningreport/audio/2018882160/filipino-construction-workers-say-they-owed-thousands>

¹⁴ <https://www.stuff.co.nz/business/industries/131621939/eating-instant-noodles-every-day-the-penniless-chinese-builders-left-destitute-by-uncaring-employers>

¹⁵ <https://www.rnz.co.nz/national/programmes/morningreport/audio/2018894291/work-visa-scam-leaves-dozens-of-migrants-destitute>

¹⁶ <https://www.stuff.co.nz/business/industries/131621939/eating-instant-noodles-every-day-the-penniless-chinese-builders-left-destitute-by-uncaring-employers>

¹⁷ <https://www.rnz.co.nz/national/programmes/morningreport/audio/2018895071/chinese-migrant-living-in-garage-after-job-disappears>

¹⁸ <https://www.newshub.co.nz/home/new-zealand/2023/08/major-criminal-investigation-after-dozens-of-migrants-discovered-living-in-squalid-auckland-home.html>

reported that INZ staff had been warning their managers since soon after the scheme was put in operation¹⁹ that the system “is a recipe for migrant exploitation”. INZ staff said employers “are being allowed to bring in migrants without any paperwork or financial checks, even when immigration officers fear jobs may be fake, paid for with illegal premiums, or the migrants will be exploited.”²⁰ It was also reported that “only two employers, from 27,894 applicants, [had] been declined accreditation” and that staff were instructed to “do no verification work on low-risk and medium-risk applications” and “to do ‘quick’ verification” on “high risk applications”.²¹

4.2 Independent review of AEWV scheme

On 15 August 2023, the then Immigration Minister, announced an independent review into the AEWV scheme. The terms of reference for the review explicitly dealt with operational aspects of the employer accreditation and job check processes and did not consider wider policy settings.²²

The findings of the independent review of the AEWV scheme were released on 27 February 2024 and included that:

- the scheme went live in conditions described as a “perfect storm” with new processes being introduced where technology was not fully operational.²³ The team to implement the work was almost entirely new (200 people recruited in 2022)²⁴
- the volume of applications was exceeding the capacity of INZ to process them in accordance with the published time frames²⁵

- operational changes were made for the period July 2022 to 30 June 2023 that “did not include sufficient risk assessment”²⁶
- the review heard many reports of migrant exploitation including falsified employment documents, non-existent jobs and migrant workers working for free, and migrant workers “being forced to work illegally as part of organised crime networks”²⁷
- there is no clear picture of the extent of possible system abuse. MBIE does not appear to have a method to monitor the extent and nature of migrant exploitation.²⁸

4.3 Changes to the AEWV scheme

In early April 2024, the Government announced changes to the scheme including changes to minimum skill requirements, English language proficiency requirements for some workers, and reduced visa lengths for some jobs.

Employers were required to:

- take reasonable steps to ensure workers are suitably skilled, with new minimum skill requirements
- inform INZ when a migrant leaves their job.²⁹

In late June 2024 further changes were introduced. These meant migrant workers on an AEWV visa, with a role containing an Australian and New Zealand Standard Classification of Occupations of level 4 or 5 without a pathway to residency, could no longer support work, visitor or student visa applications for their partners and dependent children.³⁰ While not explored

¹⁹ Assurance review of the operation of the Accredited Employer Work Visa Scheme, February 2024, Executive Summary, paragraph [17] note that concerns were raised with INZ senior leadership from April 2023.

²⁰ [The system is f.....: Immigration staff say bosses knew visa system didn't work, and ignored it | Stuff](#)

²¹ Ibid.

²² Letter to Public Service Commissioner from Andrew Little, 17 August 2023.

²³ Assurance review of the operation of the Accredited Employer Work Visa Scheme, February 2024, Executive Summary, paragraph [10]

²⁴ Ibid

²⁵ Ibid, paragraph [12].

²⁶ Ibid, paragraph [16].

²⁷ Ibid, paragraph [47].

²⁸ Ibid, paragraph [27].

²⁹ <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/changes-to-the-accredited-employer-work-visa-aewv>

³⁰ See <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/further-changes-to-accredited-employer-work-visa-aewv>



in this review, we note these changes appear to negatively affect the right to family including to live and raise a family together and for children to live with their parents.³¹ One way to meaningfully uphold this right is for temporary migrant visas, like the AEWV, to allow participant workers to sponsor family members.³²

4.4 Further media reports and review

Reports of migrant exploitation continue to receive media coverage. On 28 May 2024, the *New Zealand Herald* reported on a determination of the Employment Relations Authority, Labour Inspector v JDFoods Ltd.³³ In JDFoods there were three workers “on less than \$8 per hour” who “were told they had to give \$30,000 to their employers to remain in the country or risk deportation”.³⁴ In addition the employer breached its minimum obligations in respect of annual holidays, public holidays³⁵ and requirements to keep wage and time records. There was “compelling evidence” of falsified records.³⁶

In October 2023, the Commission was approached by a community stakeholder, raising housing issues for migrants on the AEWV visa in their community. Since January 2024 the Commission has taken steps to examine and review the scheme focusing on interviews with workers and other key stakeholders from affected communities. This included meeting with an immigration agent who expressed concerns about the lack of checks being completed on applications. This agent reported that, following the review, INZ continued to allow ongoing automatic acceptance of employer accreditation applications without scrutiny.

It is against this background that a human rights review of the scheme was prioritised by the Commission. The following human rights framework has governed the review.

³¹ ‘We wanted workers, but human beings came’: [Human Rights and Temporary Labour Migration Programme in and from Asia and the Pacific](#), 2022, issued by the Office of the United Nations High Commissioner for Human Rights, p29.

³² Ibid, p30.

³³ [2024] NZERA 288.

³⁴ [Extortion of immigrants exposed as Hamilton restaurant ordered to pay \\$99K in damages - Waikato Herald](#)

³⁵ *Labour Inspector v JDFoods Ltd*, paragraph [32]

³⁶ Ibid, paragraph [38].

5. Human rights framework

Human rights are basic rights and freedoms which belong to everyone and cannot be surrendered or diluted. They apply to everyone irrespective of their country of birth, religion or immigration status.

The New Zealand Bill of Rights Act 1990 provides human rights protection in Aotearoa New Zealand and applies to migrants including those participating in the Accredited Employer Work Visa (AEWV) scheme. It provides the right to freedom from discrimination, freedom of movement, and freedom of association.

The Employment Relations Act 2000 is our primary employment legislation and provides a foundation for protecting human rights at work. It provides protections to employees (irrespective of migration status) such as personal grievance rights.³⁷ It also provides infrastructure to uphold these rights, for example providing for labour inspectors,³⁸ mediation³⁹ and the Employment Relations Authority.⁴⁰ Other legislation provides for basic minimum rights such as minimum wage⁴¹, holiday pay, sick leave entitlement,⁴² and health and safety protection.⁴³ Such legislation plays an important part in protecting human rights of workers, for example the right to just and favourable conditions and remuneration, protections against unemployment, the right to form and join trade unions and the right to safe and healthy working conditions.⁴⁴

5.1 International human rights

New Zealand is a party to:

- the International Covenant on Civil and Political Rights (ICCPR), which upholds the right to freedom of association⁴⁵
- the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides the right to just and favourable conditions of work⁴⁶ and the right to health.⁴⁷ ICESCR also contains a provision protecting economic and social rights of non-citizen⁴⁸ and affirming the enjoyment of employment and labour rights for non-citizens⁴⁹
- the Convention on the Elimination of All Forms of Racial Discrimination. General Recommendation 30 on Discrimination Against Non-Citizens contains recommendations relevant to migrant workers, including a recommendation to States to “take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices...”⁵⁰

New Zealand is a member of the International Labour Organization (ILO) and is party to many conventions providing relevant labour standards.⁵¹

³⁷ Section 103, Employment Relations Act 2000.

³⁸ See for example section 223 of the Employment Relations Act 2000.

³⁹ Section 144 of the Employment Relations Act 2000.

⁴⁰ Section 156 of the Employment Relations Act 2000.

⁴¹ Minimum Wage Act 1983.

⁴² Holidays Act 2003.

⁴³ Health and Safety at Work Act 2015.

⁴⁴ These rights are all protected by Article 23 of the Universal Declaration of Human Rights.

⁴⁵ Article 22.

⁴⁶ Article 11.

⁴⁷ Article 12.

⁴⁸ Article 29.

⁴⁹ Article 35.

⁵⁰ Available on the [UN Treaty Body Database](#).

⁵¹ Of relevance are C029 - Forced Labour Convention, 1930 (No. 29), C097 - Migration for Employment Convention 1949 (No. 97), C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

New Zealand has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This is despite significant international pressure. This includes recommendations at New Zealand's 2024 Universal Periodic Review at the United Nations to ratify (or consider ratifying) the convention.⁵²

5.2 United Nations Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) are non-binding principles endorsed by the UN Human Rights Council.⁵³ These principles provide guidance to the State and business and represent a global standard for preventing and addressing adverse human rights impacts resulting from business activity. The UN Guiding Principles incorporate three pillars, known as the Protect, Respect and Remedy framework as follows:

- the State duty to **protect** human rights
- the corporate responsibility to **respect** human rights
- the need for rights and obligations to be matched to appropriate and effective **remedy** when breached.

The Government is currently implementing a plan of action against forced labour, human trafficking and slavery that structures Government action under these three pillars.⁵⁴

⁵² These recommendations came from Uruguay, Afghanistan, Bolivia, Bangladesh, Côte d'Ivoire, Egypt, Honduras, Madagascar, Niger, Nigeria, Paraguay, Philippines, Senegal and Algeria.

⁵³ UN Human Rights Council, Protect, respect and remedy: a framework for business and human rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, 7 April 2008, A/HRC/8/5, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁵⁴ <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/implementation-report>

6. Te Tiriti o Waitangi

Te Tiriti o Waitangi (Te Tiriti) is Aotearoa New Zealand’s own unique statement on human rights and is consistent with our obligations under international human rights law, including the rights of Indigenous peoples to self-determination.

As our founding constitutional document, Te Tiriti provided the legitimate basis for tauwiwi settlement, and subsequently all migrants, in Aotearoa.⁵⁵ It reaffirms pre-existing Māori rights to exercise tino rangatiratanga.⁵⁶ It is described as “the first immigration policy” and as the “original charter for immigration in New Zealand”.⁵⁷

Immigration is explicitly acknowledged in the preamble of Te Tiriti: “he tokomaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e haere mai nei” (*a great number of [the Queen’s] people have settled in this country, and others will come*).⁵⁸

Any assessment of the role of Te Tiriti in respect of immigration policy in Aotearoa should consider the historical context of settler colonialism and the experiences of Māori. These include the negative consequences of colonisation involving “the usurpation of Māori tino rangatiratanga”,⁵⁹ the replacement of

tikanga - as the first law of Aotearoa with English common law, large-scale confiscation of land, and policies of cultural assimilation.⁶⁰

Policy development leading to the creation of the AEWV scheme does not appear to have genuinely considered obligations of Te Tiriti. Nor did it involve any substantive consultation with Māori communities. Immigration policy generally has “largely ignored Te Tiriti”⁶¹ and has failed to give Māori an opportunity for input.⁶²

Tikanga Māori is based on an underlying set of principles such as mana, whakapapa, tapu, and manaakitanga.⁶³ Tikanga, which comes from the word ‘tika’ has been described as “what is ‘right, just, fair or proper”⁶⁴ and is a values based system that helps to maintain positive relations and provide a way forward when these have been damaged.⁶⁵ Similarly manaakitanga has been defined as “the process of showing and receiving care, respect, kindness and hospitality”⁶⁶ to others, that we might enjoy good relations. Manaakitanga is often used in connection with the responsibilities of mana whenua when hosting manuhiri. It captures the “concept of mutual care and respect”.⁶⁷

⁵⁵ Te Kāhui Tika Tangata, Co-governance, human rights & Te Tiriti o Waitangi, November 2023.

⁵⁶ Te Tiriti o Waitangi, Article 2.

⁵⁷ New Zealand Productivity Commission | Te Kōmihana Hua o Aotearoa, Immigration Fit for the Future, April 2022, p12.

⁵⁸ Translation as found at e-tangata.co.nz/comment-and-analysis/rangatiratanga-and-immigration/

⁵⁹ See <https://e-tangata.co.nz/comment-and-analysis/its-time-for-maori-to-be-heard-on-immigration-policy/>

⁶⁰ Kukutai, Tahu and Arama Rata. (2017) From Mainstream to Manaaki: Indigenising Our Approach to Immigration. In Fair Borders? Migration Policy in the Twenty-First Century. Hall, D. (ed.) Brigit Williams Books, Wellington, p. 27.

⁶¹ New Zealand Productivity Commission | Te Kōmihana Hua o Aotearoa, Immigration Fit for the Future, April 2022, p8. <https://www.treasury.govt.nz/sites/default/files/2024-05/pc-inq-is-immigration-fit-for-the-future.pdf>

⁶² Ibid, p92.

⁶³ Mikaere, Ani. (2007) “Seeing human rights through Māori eyes. Yearbook of New Zealand Jurisprudence 8(10). Available at [Mikaere, Ani --- “Seeing human rights through Maori eyes” \[2007\] NZYbkNZJur 8; \(2007\) 10 Yearbook of New Zealand Jurisprudence 53 \(nzlii.org\)](https://www.nzlii.org/nz/aukri/ynzlj/ynzlj8/ynzlj8_10.htm)

⁶⁴ Kukutai and Rata, 2017, p. 40. See also <https://e-tangata.co.nz/comment-and-analysis/its-time-for-maori-to-be-heard-on-immigration-policy/>.

⁶⁵ Moana Jackson: Decolonisation and the stories in the land. E-Tangata, 9 May 2021, <https://e-tangata.co.nz/comment-and-analysis/moana-jackson-decolonisation-and-the-stories-in-the-land/>.

⁶⁶ Kukutai and Rata, 2017, p. 40.

⁶⁷ Ibid.



Such kaupapa provide a strong foundation for promoting and respecting human rights in the context of immigration and have much to offer.

It is important that future immigration policy, and any review of the AEWV scheme, upholds

obligations under Te Tiriti. This includes resourcing and allowing iwi and hapū to decide what input and engagement look like, and to determine how Tikanga Māori, its values and concepts, ought to shape immigration policy moving forward.

7. Rights most relevant to temporary migrant workers under the AEWV scheme

In this section the rights most relevant to the Accredited Employer Work Visa (AEWV) scheme are identified and explained.

7.1 Right to equality and freedom from discrimination

The principle of non-discrimination is set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁸ and the International Covenant on Civil and Political Rights (ICCPR).⁶⁹ While not yet ratified by New Zealand, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides guidance on how principles of equality and non-discrimination can apply to migrant workers, for example the convention provides that migrant workers shall receive no less favourable treatment than people national to the State:

- in remuneration and other conditions of work⁷⁰
- in access to housing and protection against exploitation in respect of rents, and access to social and health services (provided they meet the requirements for participation).⁷¹ The State is also required to promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy these rights.⁷²

7.2 Right to work, and to just and favourable conditions of work

Article 6 of the ICESCR provides the right to work including the right of everyone to gain their living by work which they freely choose or accept. Article 7 provides for just and favourable conditions of work, including:

- fair wages and equal remuneration for work of equal value
- safe and healthy working conditions
- equal opportunity for everyone to be promoted to an appropriate higher level, subject to no considerations other than those of seniority and competence
- rest, leisure and reasonable limitation of working hours, and periodic holidays with pay, as well as remuneration for public holidays.

7.3 Right to an adequate standard of living

The right to an adequate standard of living is guaranteed under Article 11.1 of the ICESCR. It includes adequate food, clothing and housing, and the continuous improvement of living conditions. Te Kāhui Tika Tangata Human Rights Commission (the Commission) conducted an inquiry into the right to a decent home in Aotearoa.⁷³ The guidelines produced clarify that the right to housing, includes a right to a healthy, secure, affordable, accessible and decent home.⁷⁴

⁶⁸ Article 2.2.

⁶⁹ Article 26.

⁷⁰ Article 25.1

⁷¹ Article 43.1

⁷² Article 43.2

⁷³ New Zealand Human Rights Commission, Aratohu tika tangata ki te whai whare rawaka i Aotearoa, Framework Guidelines on the right to a decent home in Aotearoa, August 2021. <https://tikatangata.org.nz/our-work/framework-guidelines-on-the-right-to-a-decent-home-in-aotearoa>.

⁷⁴ Ibid, p 11.



7.4 Right to health

ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.⁷⁵ The right requires the State to provide equality of opportunity for everyone, including for migrants and nationals alike.⁷⁶

7.5 Right to freedom of association

As a member of the International Labour Organization (ILO), New Zealand is required to promote freedom of association, which includes the right to join trade unions. This right is also protected by domestic legislation including the New Zealand Bill of Rights Act 1990 which protects the right to freedom of association.⁷⁷ The Employment Relations Act 2000 explicitly states that one of the objects of the Act is to promote observance in New Zealand of the principles underlying ILO Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.⁷⁸

7.6 Right to an effective remedy

The right to an effective remedy is expressed in Article 8 of the Universal Declaration of Human Rights which provides that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁷⁹ It is also provided for in Article 2 of the International Covenant on Civil and Political Rights.

Access to remedy is a foundational principle to the UN Guiding Principles in Business and Human Rights. It provides that as: “part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”⁸⁰

⁷⁵ Article 12.1.

⁷⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights) (2000).

⁷⁷ Section 17.

⁷⁸ Section 3(b).

⁷⁹ <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

⁸⁰ United Nations Guiding Principles on Business and Human Rights, Principle 25, foundational principle. See p27 of https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

7.7 Protections against human trafficking and modern slavery

Under domestic law, human trafficking is criminalised by section 98D of the Crimes Act 1961. It is punishable by up to 20 years in prison, a fine of up to \$500,000, or both.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”⁸¹

MBIE refers to modern slavery as “severe exploitation that a person cannot leave due to threats, violence or deception. It includes forced labour, debt bondage, forced marriage, slavery, and human trafficking.”⁸²

The Walk Free 2023 Global Slavery Index estimated that in 2022 the number of people in modern slavery in Aotearoa was 8000.^{83,84}

Aotearoa does not yet have any modern slavery legislation. In 2023, the then Minister for Workplace Relations announced a commitment to address modern slavery by introducing new legislation that would require organisations and businesses to be transparent about their operations and supply chains through a public register.⁸⁵

Modern slavery was an important theme at New Zealand’s 2024 Universal Periodic Review. The United Kingdom (UK), United States and Mexico recommended New Zealand do more to address modern slavery. The UK recommended introducing “modern slavery legislation that is inclusive of entities of all sizes with international supply chains in both the private and public sectors”.⁸⁶ The government has stated that modern slavery legislation is “not a current priority but remains under consideration”.⁸⁷

⁸¹ Article 3(a) of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, at https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf

⁸² See <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/modern-slavery>

⁸³ <https://cdn.walkfree.org/content/uploads/2023/05/17114737/Global-Slavery-Index-2023.pdf>, p118.

⁸⁴ Note the use of a slightly different definition of modern slavery from MBIE “situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, or abuses of power”, *Ibid*, p8.

⁸⁵ See <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/plan-of-action-against-forced-labour-people-trafficking-and-slavery/modern-slavery>

⁸⁶ See <https://www.newshub.co.nz/home/politics/2024/04/countries-call-for-govt-to-get-businesses-to-address-modern-slavery-pm-says-legislation-not-priority.html>

⁸⁷ See <https://newsroom.co.nz/2024/07/17/govt-shuts-down-modern-slavery-group/>

8. Findings of human rights analysis

In this section Te Kāhui Tika Tangata Human Rights Commission (the Commission) applies human rights conventions and other human rights principles to the Accredited Employer Work Visa (AEWV) scheme and notes recommendations for improvement.⁸⁸

8.1 Right to just and favourable working conditions

There are several issues related to the right to just and favourable working conditions which are outlined under 8.1.

8.1.1 Exploitative recruitment practices – introduction

Stakeholders described the recruitment of workers outside of Aotearoa New Zealand as occurring through a range of methods, including through social media platforms, word of mouth, recruitment agents (both Aotearoa-based and overseas), advertising and recruitment drives. Migrants reported that overseas recruitment agents in some jurisdictions are required to hold accreditation, but that this is often fraudulent and difficult to check.

While many workers spoken to were recruited from their home country, a number were recruited from third party countries where they were working as temporary migrant workers. Some had significant experience working overseas. One had previously been a temporary migrant worker in the United States, Singapore and the United Arab Emirates.

Workers, immigration agents and advocates spoken to reported it was common for overseas agents to give workers misleading information about the migration experience in Aotearoa. Workers were often given an unrealistic impression of the ease of obtaining residency and the prospect of changing/finding

employment (particularly given the AEWV settings). Migrant workers were also misled about their ability to make money and about the living standards they would enjoy. One stakeholder described that many of the workers they had dealt with came from rural agricultural backgrounds and lacked the experience and knowledge to test the truth of claims made by recruitment agents.

It was the view of many stakeholders that setting unreasonable expectations was a deliberate tactic to extract the significant premiums for employment often charged to workers. Several workers cited the positive international reputation of New Zealand as a reason they believed the assurances provided by overseas recruitment agents.

A common view expressed by migrant workers who paid premiums, but did not get the job offered, was that they had been scammed. They generally considered this occurred through a coordinated deception between overseas recruiters and employers in Aotearoa. Workers and other stakeholders reported significant collaboration between overseas recruitment agents and employers.

Workers who had arrived to no job or other negative experiences on arrival, for example substandard accommodation, reported contacting overseas recruitment agents to discuss their concerns and being met with evasive or unhelpful communication.

8.1.2 Exploitative recruitment practices – premiums for employment

The AEWV scheme policy, in theory, does not allow the charging of premiums from migrants for employment. It requires that employers must pay all costs and fees inside and outside of Aotearoa for recruitment.⁸⁹ However, many

⁸⁸ A full list of all recommendations is provided in section 2

⁸⁹ See <https://www.immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/working-in-nz/work-rights/your-employers-commitments-to-hire-you-on-an-aevw>

migrant workers reported paying a significant premium for employment. Throughout our engagement, the Commission regularly heard of jobs being 'sold' for \$15,000 - \$20,000, with one migrant worker stating they had paid approximately \$60,000. This was echoed by other stakeholders, with an immigration agent describing a widespread practice of people paying for jobs that do not exist.

Many workers spoken to, who had paid premiums, had done so by taking on significant debt in their home country. One worker was left unemployed on arrival in Aotearoa when their family had financed the premium by selling long held family land. Another worker spoke of providing security for debt through family gold. Some workers spoke of taking on debt with unscrupulous lenders in their home country. One worker reported having family members physically threatened in their country of origin as they had been unable to make debt repayments.

Many migrant workers and other stakeholders are of the view that a significant level of fraud is facilitated by the AEWV scheme where migrant workers are 'scammed' into buying non-existent jobs. An immigration agent held the view that some workers were aware they were purchasing 'fake' jobs to enter the country believing they could get employment on arrival.

One experienced worker described his immigration experience as a coordinated 'scam'. They stated that they paid approximately \$18,000 to an offshore agent but arrived in Aotearoa to no job and extremely poor housing conditions with no pay. This person considered that at least 100 people had been similarly scammed by the same group. They said one of the people who had participated in the scam, from inside Aotearoa, had previously been named in the national media for conducting

schemes of migrant exploitation. They said, "the first day I came to New Zealand, I cried". These allegations echo concerns of other workers and raises a concern that coordinated international networks may be running large, and likely very profitable, operations involving migrant exploitation under the AEWV scheme.

An immigration agent observed that many workers were being recruited for the profit of premiums, not for their labour. They considered that this meant workers did not meet the scheme's criteria of recruiting "skilled migrants where genuine skill or labour shortages exist."⁹⁰ This also left migrant workers more vulnerable when trying to get new employment as they lack sought-after skills. This could lead to exploitation in informal employment (see 8.1.3).

The payment of a premium for employment is out of step with human rights norms. Article 9 of the ILO Protection of Wages Convention 1949 (Convention No. 95) prohibits deductions for the purposes of obtaining or retaining employment. This prohibition includes recruitment fees or related costs, which are "any fees or costs incurred in the recruitment process in order for workers to secure employment or placement".⁹¹ These "should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties".⁹² The ILO is clear that "No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers."⁹³

Premium payments may also be inconsistent with the Wages Protection Act 1983 which states "No employer or person engaged on behalf of the employer shall seek or receive any premium in respect of the employment of any person".⁹⁴

⁹⁰ Immigration NZ Website at <https://www.immigration.govt.nz/about-us/media-centre/common-topics/accredited-employer-work-visa-aevw>

⁹¹ General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs, International Labour Office Geneva: ILO 2019, p12.

⁹² Ibid, p12.

⁹³ Ibid, General Principle 7, page 13.

⁹⁴ Wages Protection Act 1983, section 12A(1).

Problem: Misleading and unethical recruitment of workers is a major human rights risk that is not adequately addressed by the AEWV scheme.

Recommendations:

- **Government:** Ensure effective regulation and standards for the ethical recruitment of migrant workers entering Aotearoa as a condition of employer accreditation. Policy should contain minimum recruitment standards that ensure the protection of human rights. These should provide effective deterrence and processes for enforcement that meaningfully protect against the payment or acceptance of employment premiums from workers.
- **Business:** Do not accept free or unreasonably cheap recruitment services. Ensure you engage ethical recruitment agents by asking questions of the recruitment process and checking assurances.
- **Community organisations:** Educate community members on human rights and how it applies to migrant exploitation. Discuss migrant exploitation at community functions and events. Speak out about employers who recruit workers who utilise unethical recruitment.

8.1.3 Tying visas to employers

Migrant workers and advocates raised concerns about employer-tied visas. The AEWV scheme permits the worker to work only for the employer specified on their visa. The Commission is concerned this creates a power imbalance with serious risk for the human rights of workers.

The visa settings, including the tied visa, work type and pay requirements impose significant restrictions on migrant workers, who lose their job, finding new employment. All this occurs for economically vulnerable workers with no access to unemployment benefits and other welfare support normally available.

Workers reported that the tied visa employment plays an overt, as well as subtle, role in the power dynamic with their employer. For example, workers with few contracted hours and low pay struggled to afford food and rent. One worker said that when they raised this issue with their employer, they were threatened with having their visa removed if they continued to raise the issue.

Workers cited having a tied visa as the most significant factor stopping them from raising breaches of their employment agreements or minimum employment standards.

Workers reported that the power dynamic associated with tied visas could continue even after a worker stopping working for an employer. One worker who believed there was no justification for their dismissal was threatened that if they raised a complaint, or a personal grievance, the employer would advise Immigration New Zealand (INZ) they had stopped working and they would be deported. This created a subservient relationship to the employer and a dependency that lingers, even after the end of the employment relationship.

Because of the constraints the AEWV scheme places on workers who have lost their job finding legitimate employment, these workers often turn to informal employment, which creates serious risks of adverse human rights outcomes and exploitation. The ILO has defined informal employment as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements”.⁹⁵ The Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, identified the following characteristics of informal employment:

- lack of regulation or coverage by national labour and social protection legislation⁹⁶
- jobs can be undeclared or unregistered⁹⁷

⁹⁵ International Labour Organization (ILO), in paragraph 3 of its resolution concerning decent work and the informal economy of 2002

⁹⁶ A/77/163: contemporary forms of slavery in the informal economy - Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (2022), p6. Available from <https://www.ohchr.org/en/documents/thematic-reports/a77163-contemporary-forms-slavery-informal-economy-report-special>. p6

⁹⁷ Ibid, paragraph [17].

- informal workers and businesses do not pay income taxes or contribute to social security schemes⁹⁸
- lack of pre-determined hours, temporary nature of work and lack of long-term job security.⁹⁹

One worker, who had arrived to a non-existent job, sought other work and described their visa as “my handcuffs”. Workers are often desperate to earn money to meet their basic needs and are often in debt from recruitment costs. Workers we spoke to reported great difficulty getting a new employer to offer employment that would allow them to apply for a job change under their visa. Workers often resort to informal employment under precarious circumstances. One worker explained they worked for free on ‘unpaid trials’ in the construction sector in hopes of securing regular, paid work. They accepted insecure work without employment agreements, with ill-defined hours of work and rates of pay, including periods of no pay. They worked long hours for \$500 per week, well below minimum wage, and did not receive holiday pay.

A large, accredited employer described a climate of competition within the construction sector. They reported that tied visas addressed the interest of ensuring that workers would not be poached by competitors. This employer paid for the recruitment costs of around \$10,000. They felt that the tied visa provided security that the worker could not leave their company even if they were offered a higher payrate once in the country.

Concerns about adverse human rights impacts of tied visas are a common theme when speaking with migrant community stakeholders and in discussion with migrant worker advocates including their unions.

These concerns were also echoed by the ILO in its 2023 ‘Guidance note: Wage protection for migrant workers’ which sets out that:

“Labour migration governance regimes that impose employment restrictions on workers can increase vulnerability. For example, workers on employer-sponsored visas, which tie a worker to a specific employer, may be reluctant to complain about wage issues, as this could result in the loss of their employment and residence in the country of destination.”¹⁰⁰

The New Zealand Productivity Commission’s 2022 report ‘Immigration – Fit for the future’ stated that, for a migrant, a tied visa “raises the risk of their exploitation.”¹⁰¹ The Productivity Commission noted other negative economic effects of restricting labour mobility, including that it can drive down wages and conditions for migrants and non-migrant workers.¹⁰² The report further noted that tied visas enable gaming of the system whereby “an employer could agree with a prospective migrant to an employer sponsorship so the migrant can migrate to New Zealand but without intending that the migrant remain in that employment relationship.”¹⁰³

Problem: Tying of visas to a specific employer exaggerates power imbalance, is a serious human rights risk to workers, and is a primary system fault in facilitating migrant exploitation.

Recommendations:

Government: End tying of visas to a specific named employer. The tying increases the risk of human right abuses (See section 2.2.1 on pg 9).

⁹⁸ Ibid, paragraph [17].

⁹⁹ Ibid, paragraph [18]

¹⁰⁰

¹⁰¹ Productivity Commission, ‘Immigration – Fit for the future’ report, p55. <https://www.treasury.govt.nz/sites/default/files/2024-05/pc-inq-is-immigration-fit-for-the-future.pdf>.

¹⁰² Ibid p56.

¹⁰³ Ibid p57.

8.1.4 Serious breaches of employment standards

One of the most significant human rights concerns identified was the recruitment of workers to non-existent jobs. Additionally, workers reported a similar situation where they were recruited to a job and started work, only to be dismissed soon after employment.

A few workers reported this experience and believed their dismissal was done in bad faith as part of a 'scam', for example one worker said that a manager had been heard saying they were making \$15,000 per new worker and believed their dismissal was to facilitate further recruitment and payment of a premium.

A worker reported being told to resign otherwise he would get a bad reference and not be able to get other work in Aotearoa. While the Commission notes these workers do have the right to challenge their dismissal, there are many practical barriers to this happening.

Workers described arriving in Aotearoa and being told that their work and/or the location of their work would be different from what was in their employment agreements and visa. Complying with these requests can cause a worker to breach their visa in relation to job type and location. One worker recruited to the construction industry reported being presented with an employment agreement from a different employer than named on his visa. They were then told that they could work as a rubbish collector in a different region for a government project. On arrival in the new location, they were told that this work was not occurring, but that there was some work available as a farm worker.

A common complaint from workers was that they were underpaid. This could be in the form of not being paid the agreed rate in their employment agreement or not receiving the guaranteed hours, including workers being paid under the minimum wage (sometimes significantly). Workers reported these problems occurring with

some accredited employers; however, breaches of minimum entitlements are particularly acute in informal employment.

Problem: Workers participating in the AEWV scheme are at an increased risk of experiencing breaches of their minimum employment standards and/ or being subject to dubious loss of employment.

Recommendations:

- **Government:** Increase resourcing for investigations of complaints of exploitation and minimum standard breaches including labour inspectors. Promote and provide resourcing to proven community advocates and migrant unions to provide better access to justice for migrant workers.
- Untie visas from a specific employer to reduce human rights risk. This will also likely reduce workers entering the informal economy and experiencing exploitation.
- **Community organisations:** Be aware of government services and agency support. Form relationships with migrant worker unions and advocates to help facilitate legal support.

8.1.5 Modern slavery and human trafficking

People have raised concerns about human trafficking facilitated by the AEWV scheme. In August 2023, *Newshub* reported a large group of workers not being provided with a job or income and living in unsanitary and crowded conditions.¹⁰⁴ When asked if this report of migrant exploitation was human trafficking, the then Minister for Immigration, responded "Yes, almost certainly", but denied that an increase in migrant worker exploitation complaints was related to the AEWV scheme.¹⁰⁵

¹⁰⁴ <https://www.newshub.co.nz/home/new-zealand/2023/08/four-more-auckland-properties-under-investigation-for-allegedly-housing-exploited-migrants.html>

¹⁰⁵ <https://www.newshub.co.nz/home/new-zealand/2023/08/four-more-auckland-properties-under-investigation-for-allegedly-housing-exploited-migrants.html>

Concerns about the AEWV scheme were also raised in February 2024 by a migrant union spokesperson, who described seeing cases “more like human trafficking and not just exploitation.”¹⁰⁶

Whether any specific situation meets the criteria of human trafficking must be assessed on its own facts. However, throughout this review, the Commission heard from workers and key stakeholders that there is widespread recruitment of workers through either fraud or deception for profit. These allegations raise serious concerns that the settings of the AEWV scheme may be facilitating human trafficking, migrant exploitation and modern slavery.

The Commission spoke with a worker reporting exploitation in the supply chain of a major event, for example one worker reported they were recruited to work in the security industry in Auckland. However, on arrival they were not provided work or pay for almost one month which put them in a precarious economic position. Finally, they were told they could travel to Wellington where they would be provided work. They travelled to Wellington, at their own cost, and were provided with sporadic security work including for an international sporting event.

The United Nations Guiding Principles on Business and Human Rights provide that “[i]n order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence”.¹⁰⁷ Appropriate modern slavery legislation would be a meaningful way to provide due diligence and ensure that steps are taken by dominant actors in supply chains to ensure there is no exploitation within their supply chain.

Problem: Workers participating in the AEWV scheme are at an increased risk of experiencing modern slavery and human trafficking.

Recommendations:

Government: Introduce effective modern slavery legislation with due diligence and undertake a national plan of action for business and human rights.

Business: Familiarise yourself with – and take steps to implement – the UN Guiding Principles on Business and Human Rights.

Ensure that you undertake effective due diligence when engaging workers other than as employees, for example through subcontractors, and write decent employment standards into contracting arrangements. Provide information about employment rights and remedies to all workers engaged in your business

8.2 Right to an adequate standard of living – housing and access to food

While there is no requirement in the AEWV scheme for employers to provide housing to workers, many workers we spoke to said that housing was provided (at least initially) by or through their employer. The vast majority of AEWV workers arrive in the country with no, or few, connections beyond their employer and little understanding of tenancy rights or norms. These circumstances are risk factors when it comes to realising the right to an adequate standard of living, including housing and food.

Many workers the Commission spoke to reported living in crowded, unhealthy and expensive living conditions, including mouldy rooms. Many experienced broken or inadequate bathroom facilities.

¹⁰⁶<https://www.rnz.co.nz/news/indonz/510328/limited-scope-of-accredited-employer-work-visa-review-dismays-immigration-groups>

¹⁰⁷United Nations Guiding Principles on Business and Human Rights, p17 (see https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

Workers also reported not being provided with tenancy agreements or written terms of lodging, and landlords taking, but not lodging with Tenancy Services, a bond. It is common for workers to share a room with other workers and not to have security of tenure, for example workers reported living with approximately 40 other migrant workers in a three-bedroom house.

Workers experienced broken plumbing, poor toilet facilities that were not properly addressed, no hot water and no heating during winter. These workers were not being provided with work and had to rely on their employer for food before eventually being evicted. The provision of food was inadequate, and some workers resorted to approaching people in the neighbourhood and asking them if they could pick fruit from their fruit trees.

One worker reported being scammed by accommodation providers. He paid a significant deposit and signed a rental contract and then realised the contract was fake and there was no house.

More common complaints were of cramped, unhealthy living conditions and unreasonable rents. One worker described living with a group of nine workers in a three-bedroom house with one bathroom. They were paying \$140 each in rent per week.

The Commission was also contacted by a concerned community member about a group of workers hosted at a campground during winter. This community member had organised blankets and bedding for these workers who did not have adequate bedding. They also said that these workers were evicted, despite not having secured adequate accommodation, so the campground could host a new group of migrant workers arriving in the country.

Access to decent food can be problematic, largely driven by poverty. The Commission met with workers who have, because of their precarious economic positions, skipped meals and/or relied on cheap but inadequate food to sustain themselves, for example one worker said they were only eating bread since losing their employment.

Problem: Many workers participating in the AEWV scheme pay unreasonable rents and/or receive substandard housing which is frequently provided by (or through) the accredited employer. Additionally, some workers report poor access to food because of poverty.

Recommendations:

Government: Expand and reconsider settlement support obligations including a structured scheme of support (independent of employers) for the AEWV scheme. Support should ensure that the right to an adequate standard of living is meaningfully protected and that supporting access to adequate accommodation is a requirement of employer accreditation.

Business: Ensure obligations to support worker settlement are complied with and take steps to ensure they are receiving adequate accommodation. Ensure adequate accommodation is arranged for workers prior to their departure for New Zealand. Speak with workers about their housing situation and assist them in resolving any problems.

8.3 Right to health

Health issues were a theme emerging from the Commission's engagements with stakeholders. Some migrant workers were not supported or advised of their rights to access support from the Accident Compensation Corporation (ACC), were dismissed due to injury, and remain vulnerable to physical assaults.

One worker reported breaking a finger at work and being advised that, because of this, their employment could not continue. This worker was not given access to accident compensation. Another worker reported being physically assaulted by a superior in their employment. Additionally, a migrant worker advocate advised they had supported a worker who was assaulted after they had spoken out about their exploitation. The Commission also met with a migrant worker who said they had been physically assaulted by a landlord.

Workers, union and community representatives raised serious concerns regarding the mental health of many migrant workers. Their mental health was affected by the many stressors highlighted in this report as well as isolation from family and the challenges of adapting to a new society.

The Commission heard reports of significant mental pressures placed on migrant workers who had financial obligations and debt, for example workers reported experiencing mental anguish at the amount of unserviceable debt they were carrying in their home country.

Others reported that family members were being threatened in their home country because of their debt obligations. One migrant worker advocate talked about their deep concern about the mental health of the migrant worker community. They also noted there were cultural and practical barriers to getting mental health support and that adequate support or services are not available to many migrant workers.

Migrant workers were also concerned about moving from the AEWV to the Migrant Exploitation Protection Visa¹⁰⁸ and losing their entitlement to public health, which is provided free or at low cost for citizens, residents or people on work visas valid for two years or more.¹⁰⁹ The Commission heard reports of workers transferring to the Migrant Exploitation Protection Visa, then being hospitalised and presented with bills for many thousands of dollars. Migrant worker advocates said that many workers were not aware of the implications for health care of transferring to the new visa.

Problem: Many workers participating in the AEWV scheme do not have adequate access to mental and physical health services and some are not provided with appropriate advice on entitlements.

Recommendations:

- **Government:** Expand and reconsider settlement support obligations for the AEWV scheme to ensure that information that supports the right to health information is available to all worker participants in a language they can read including explicit advice about accessing ACC and access to physical and mental health care. Consider requiring employers to organise access to health care options as part of these obligations.
- Change policy settings to ensure that all workers transferring from the AEWV visa to the Migrant Exploitation Protection Visa remain covered by the public health system.
- **Business:** Ensure workers receive appropriate support enrolling with primary health services on arrival. Make employer supported counselling services available to migrant workers. Speak with your workers about their access to health care and assist them in resolving any problems.

8.4 Freedom of association

Freedom of association includes the right to freely join trade unions. The Commission heard several reports of migrant workers' exercise of freedom of association being discouraged by people in their faith community.

One group of migrants being supported by a migrant workers union, after experiencing serious exploitation, reported being pressured by a faith group in their ethnic community to leave the union. Workers reported that, under duress, some left or did not join the union.

¹⁰⁸The Migrant Exploitation Protection Visa allows workers on the scheme who have reported exploitation to leave their job and apply for alternative employment anywhere in New Zealand for any employer.

¹⁰⁹See <https://www.live-work.immigration.govt.nz/live-in-new-zealand/healthcare>

Workers who remained, or rejoined the union, reported receiving effective advocacy and support from the union. These workers shared that exposing migrant exploitation was seen as detrimental to their community's reputation. Similarly, in August 2023, *Radio NZ* reported accusations (denied) that a charity supporting migrant workers was "threatening to withdraw its help if the workers [spoke] with the media".¹¹⁰

There are options in Aotearoa for migrant workers to join trade unions that are structured to specifically address migrant worker rights. These unions adopt special features that respond to the unique issues associated with migrant workers. This includes new models of advocacy that do not require a migrant worker to have union membership prior to an issue arising (a rule that is common in trade unions). Migrant workers unions have been prominent in raising the issues of exploitation publicly and organising support to migrant workers facing difficult economic circumstances, for example organising a food bank for redundant workers over Christmas 2023.¹¹¹

The Commission heard of a positive example of an employer who is working constructively with a migrant union to protect the rights of migrant workers. This employer demonstrated a positive approach to facilitating genuine opportunities for their employees to exercise their freedom of association. This includes having employment agreements with unions covering migrant workers.

The Commission spoke to some workers in this company who spoke positively of their employment experience. They reported no request to pay an employment premium, and no issues with receiving their contracted hours and minimum entitlements such as holiday pay. They also reported receiving decent pay rates appropriate to their skills and the structure of the AEWV scheme.

The development of relationships between the business and unions that protect migrant worker rights are commendable and should be seen as an example of how parties can meaningfully respect human rights and give effect to the UN Guiding Principles.

Problem: Workers are being pressured to not exercise their right to freedom of association, for example being pressured to not join a union or cancel their membership.

Opportunity: Aotearoa has unions who specialise in assisting migrant workers and which provide good services. Additionally, we have an example of an accredited employer working constructively with a migrant union to provide a positive framework for migrant worker protection.

Recommendations:

- **Government:** Explore opportunities to work closer with migrant worker unions as an effective means of support and prevention of migrant exploitation. Encourage business to form constructive relationships with migrant unions.
- **Business:** If your business does not have a current union relationship consider forming relationships with migrant worker unions and present membership as an option for migrant workers.
- **Community organisations:** Provide information to workers about migrant worker unions and ensure that workers feel confident in joining and remaining members of unions if they choose to do so.

¹¹⁰See <https://www.rnz.co.nz/national/programmes/morningreport/audio/2018900742/charity-accused-of-silencing-workers>

¹¹¹See <https://www.nzherald.co.nz/business/ele-collapse-massive-foodbank-drive-for-hundreds-of-laid-off-workers/3U72QVWHRBHAVKMIYH244MPZ14/>



8.5 Right to an effective remedy and access to justice

The right to access an effective legal remedy if your human rights are violated is an important principle in human rights.¹¹² The Commission spoke with workers who had negative experiences when seeking resolution through the migrant exploitation hotline and with labour inspectors. As well as concerns with government agencies, migrant workers face other barriers, for example workers in informal employment did not think they could practically report employment issues given their immigration status and concerns about deportation. Other workers feared employer threats or potential retribution (detailed above) and some workers expressed a lack of understanding of their rights and how remedies could be accessed and/or a general lack of knowledge and support in navigating the legal system.

INZ promotes a free phone number that migrant workers can use to report migrant exploitation known as the 'migrant exploitation hotline'. Reports of migrant exploitation can make a worker eligible to receive a Migrant Exploitation

Protection Visa. This visa is valid for six months or the remaining time of the visa, whichever is shorter (with a potential for an extension).

Two workers who reported exploitation to the hotline were critical of investigations into their complaints. One worker described it as "no help" and both felt their complaints were not adequately investigated or followed up. Neither was hopeful they would receive the compensation or wage arrears they considered was owed. Both were sceptical that the employer would cease trading and one said the person that had exploited them was involved with multiple other accredited companies. Other workers told the Commission they had experienced migrant exploitation but had decided not to report it to the hotline for various reasons, including lack of confidence that they would receive support, not wanting to transition to the Migrant Exploitation Protection Visa, and fears of deportation. Some workers expressed a concern about transitioning from the multi-year AEWV visa to a six-month or the remaining time of the visa, whichever is shorter visa.

¹¹²See, for example, article 2.3 of the International Covenant on Civil and Political Rights.

The Commission did meet migrant workers who had pursued and resolved personal grievances through standard grievance mechanisms including attending mediation provided by the Ministry of Business, Innovation and Employment (MBIE). We note that in doing so, workers had been supported by migrant unions or other employment advocates. They generally had come in touch with representatives through word-of-mouth or online discussions. The workers expressed general satisfaction with the representation they had received.

There appears to be a significant amount of worker peer support. Workers from different national and ethnic backgrounds spoke of social media groups where workers share information in their first language. These groups allow them to connect with other workers on a wide range of matters including housing, immigration and work-related issues, including information (and potentially misinformation) about access to remedy.

The UN Guiding Principles on Business and Human Rights further confirm that a primary obligation is on the State to take “appropriate steps to investigate, punish and redress business-related human rights abuses”.¹¹³ This includes considering accessible avenues for redress and promoting them in ways that are practical and take into account the unique vulnerabilities and characteristics (including cultural and linguistic) of migrant workers in Aotearoa. It is also important to note that immigration policies should be designed to reduce and eliminate the vulnerability of migrant workers to human rights abuses. As well as the obligations of the State, the business community has obligations to respect human rights.

Problem: Workers report receiving inadequate support when reporting human rights violations to the government through the advertised channel. Workers in the informal economy do not consider they are able to access remedies.

Recommendations:

- **Government:** Ensure there is adequate resourcing to respond to and where appropriate investigate migrant exploitation allegations.
- Engage with migrant unions and migrant worker advocates to better understand how Government can support scaling up their work to remedy migrant exploitation.
- Consider how policy settings can be changed to ensure that workers in the informal economy can feel safe making complaints of migrant exploitation.
- **Business:** Ensure that workers are informed of how employment issues can be raised. Ensure workers have meaningful opportunity to join a union. If a business engages workers on AEWV visas not as employees, for example through subcontracting arrangements, talk to them about their rights at work, provide information on access to remedy in Aotearoa, and ensure that adequate employment standards form part of contracting arrangements.
- **Community organisations:** Provide information to workers about migrant worker unions and advocates. Provide information on employment rights and assure workers they are entitled to seek remedies for violations. Provide emotional and language interpreter support where possible.

¹¹³UN Guiding Principles, commentary relating to Principle 25, p27. see https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf



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