



**NEW ZEALAND**

Affiliated with the International Federation of Business & Professional Women

**BPW**  
**NEW ZEALAND**

New Zealand Federation of Business  
and Professional Women Incorporated

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7 February 2014

To the Committee Secretariat, Transport and Industrial Relations  
Parliament Buildings  
**Wellington**

Online:

**Re: Submission on Immigration Amendment Bill (No 2)**

**Submission:**

This submission is from the NZ Federation of Business and Professional Women (BPW NZ) Inc.

**Our Organisation**

Our organisation's aims are to link professional and business women throughout the world, to provide support, to lobby for change and to promote the ongoing advancement of women. We work for equal opportunities and status for all women in economic, civil and political life and the removal of discrimination in all countries. We promote our aims and organise our operating structure without distinction as to race, language or religion.

Our structure is comprised of a National Executive, 14 branches and a number of individual members in areas where there is no branch. We are an apolitical organization.

**International Status:**

BPW International has General Consultative Status at the United Nations through the UN Economic & Social Council (ECOSOC). This enables BPW International to appoint official representatives to UN agencies worldwide and to accredit members to attend specific UN meetings.

BPW International's President is the Gender Specialist with the International Organization of Employers (IOE) and we bring the voice of women to business as an expert resource on gender diversity.

BPW International upholds the outcomes of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee at state party level. BPW International upholds the outcome documents of the annual UN Commission on the Status of Women (CSW) which evaluates progress, identifies challenges, sets global standards and formulates policies to promote gender equality and women's empowerment worldwide.

**Our interest in this Bill is because we are committed to representing the interests of working women and advancing and empowering women in the workplace. This is reinforced by our membership of the Women’s Empowerment Principles: Equality Means Business which holds as one of its principles “ensuring the health, safety and well-being of all women and men workers”.**

**We are committed to working for women and reinforcing the need for New Zealand to implement the Concluding Observations of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) which refer to migrant women.**

## **1.0 General Comments:**

- 1.1 We congratulate the Select Committee on this Bill which our Federation believes will help prevent exploitation of migrant workers. We support the Bill in principle and would like to see it implemented as soon as possible to protect vulnerable workers.
- 1.2 We recommend that the protection available to migrants under the Bill be extended to protect both visa and income status.
- 1.3 The current Bill does not go far enough to build the trust in the legal process which is needed before vulnerable workers will report breaches of employment law. Problems with exploitation of migrant workers are often not reported because of a climate of fear about loss of income and visa. The reality is that in an employer/migrant employee situation there is a huge imbalance of power which can be turned to advantage by unscrupulous employers.
- 1.4 We welcome the tougher penalties for employers who exploit migrant workers.
- 1.5 The Bill needs to be strengthened and resources put in place to effectively monitor employers getting Approval in Principle to recruit workers from overseas to ensure they meet their obligations.
- 1.6 We note from the paper “Gender, Mobility and Migration into New Zealand: A Case Study of Asian Migration” published in the Social Policy Journal of New Zealand Te Puna Whakaaro, Issue 32 November 2007 that the 2006 Census showed that in key working-age groups there were significantly more Asian women than men living in New Zealand. The authors suggest that there have been more Asian women than men migrating to New Zealand. Further research is required to ensure gender appropriate policies are set.
- 1.7 We quote excerpts from the Concluding Observations of CEDAW, 27 July 2012:  
*“Para. 15. (Access to justice) The Committee urges the State party:  
(a) To facilitate women’s access to justice, including by providing free legal aid to women without sufficient means and to increase efforts to make sure that migrant women and Māori women are not discriminated against in the administration of justice;*  
*Para. 21 (Forced and early marriages) The Committee urges the State party:  
(c) To take all necessary measures to combat the practice of early and forced marriages within migrant communities and to introduce sensitization campaigns in this regard.*

Para. 24. (Violence) The Committee urges the State party:

(c) To provide adequate assistance and protection to women victims of violence, including Maori and migrant women, by ensuring that they receive the necessary legal and psychosocial services;

Para. 25 and 26 (Trafficking and sexual exploitation) The Committee urges the State party:

25. While the Committee appreciates the 2009 Plan of Action to Prevent People Trafficking and improvements in the protection of sex workers since the Prostitution Reform Act of 2003, the Committee regrets the absence of comprehensive information and data on trafficking in women and girls. The Committee notes that there have been no prosecutions or convictions for trafficking in women and girls and is concerned that this may be linked to insufficient knowledge and awareness of the threat of trafficking and exploitation, particularly given reports on trafficking of migrant women and girls, including “mail-order” and “Internet” brides.

26. The Committee recommends that the State party:

(a) Identify, prosecute and punish traffickers, and ensure protection of the human rights of the trafficked women and girls;

(b) Ensure that trafficked women and girls have adequate support so as to be in a position to provide testimony against their traffickers;

(c) Ensure systematic monitoring and periodic evaluation, including the collection and analysis of data on trafficking and exploitation of women in prostitution, and to include such data in its next periodic report;

(d) Raise awareness of threats of trafficking and exploitation and make efforts to proactively screen vulnerable populations, including migrant women

Para 35/36/37 and 43 (Disadvantaged groups of women includes migrant women/ethnic minorities)

Para 42 (Ratification of Other Treaties)

The Committee therefore encourages the State party to consider ratifying the treaties to which it is not yet a party, i.e. the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. (ICRMW)”

**1.8** BPW NZ notes the release of the 155 recommendations made in The Draft report of the Working Group on the Universal Periodic Review, New Zealand dated 29 January 2014. We quote recommendations pertinent to the Immigration Amendment Bill:

“128.17. Consider acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (Egypt);

128.18. Sign and ratify the United Nations ICRMW (Turkey);

128.19. Ratify the ICRMW, signed in 2007 (Algeria);

128.20. Ratify the ICRMW (Burkina Faso);

128.21. Ratify the ICRMW (Chad);

128.22. Ratify the ICRMW, the Convention Relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness (Iran (Islamic Republic of));

128.23. Ratify the ICRMW; the CPED; the 1954 Convention relating to the Status of Stateless Persons and ILO C. No.169 concerning Indigenous and Tribal Peoples in Independent Countries (Ecuador);

- 128.147. *Take measures to reduce discrimination against migrants especially those of Asian origin in the labour market (China);*
- 128.148. *Intensify efforts to combat discrimination against migrants and take measures to support their integration into the community (Sri Lanka);*
- 128.149. *Reduce to the minimum possible the administrative detention of migrants, asylum seekers and refugees and only employ such measures in exceptional cases (Mexico);*
- 128.150. *Make sure the implementation of the new legislation (the Immigration Amendment Act) will not create unfair discrimination against genuine asylum seekers (Turkey);*
- 128.151. *Take effective action, so that the Immigration Amendment Bill is fully accorded to the International Standards in the treatment of person in need of international protection and so it does not unfairly and arbitrarily discriminate against asylum seekers (Afghanistan);*
- 128.152. *Ensure that immigration legislation is in accordance with its international human rights obligations (Czech Republic);”*

**1.9** We have observed the significant improvement in the quality of immigration advice since immigration advisors have been required to be licensed and to sign up to a code of conduct under The Immigration Advisors Act 2007. However more needs to be done to ensure migrants understand their rights and the remedies available.

**1.10** BPW NZ is concerned with some aspects of the Bill and the impact on human rights. This is discussed further in Section 4. However, we would not want these concerns to override the importance of the protective work contained in this Bill.

## **2.0 Comments specific to penalties for exploitative employers**

- 2.1** Clause 43 amending section 161 of the principal Act We welcome stronger penalties against bad employers and are very aware that some recent immigrants exploit their own nationality for gain. We are pleased to see the Bill adding to the reasons listed for deportation in section 161, to include deportation for exploitation of workers if the offence is committed within ten years of the employer themselves gaining a residence visa.
- 2.2** Clause 81 amending section 355 of the principal Act. We believe the maximum penalty of seven years in prison and a fine of \$100,000 sends a clear message to employers that tougher penalties are now in force. It is really important to increase penalties. At least one of the reasons for needing to increase them is that up until now the penalties have often been less than the benefits of the exploitation, and that is clearly not going to change the culture.
- 2.3** Our Federation believes more attention is required when assessing employers at the point of accreditation and that this would stop a great deal of exploitation. There also needs to be effective monitoring of employers getting Approval in Principle to recruit workers from overseas to ensure that they meet their obligations.
- 2.4** Anecdotal evidence points to a lack of resourcing to effectively enforce legislation to prevent exploitation. Currently there are only thirty-five labour inspectors to cover the entire country and just one dedicated immigration officer in Auckland. A commitment is needed to increase the number of labour inspectors and for them to conduct random checks in areas where exploitation of migrants is likely to happen or where it has been reported by the community.
- 2.5** Employers are already subject to obligations under the Minimum Wage Act to pay the minimum wage, and under the Wages Protection Act not to make deductions from wages without the worker's agreement or as otherwise permitted. And it is already illegal under the Immigration Act for an employer to exploit somebody who is not entitled to work in New Zealand, for example by failing to pay them, or by taking their passport so they can't leave. The new penalties and the new offence (refer clause 3.1 of this submission) will heighten the risk for exploitative employers.

### 3.0 Comments specific to the protection of migrant workers

3.1 Clause 80 amending section 351 of the principal Act. The Federation welcomes this clause which gives much needed protection to temporary workers (those who hold a temporary entry class visa) and prohibits their exploitation. Previously the section applied only in relation to unlawful employees. The need for this being an offence is clearly demonstrated by the Indian restaurant chain which paid staff about \$265 a week for working up to seventy hours (less than \$4 an hour).

3.2 We quote:

The **third principle of the Women's Empowerment Principles:**

*"THAT businesses ensure the health, safety and well-being of all women and men workers"*

**Article 11f of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

*"The right to protection of health and to safety in working conditions"*

It is vital that we, as a country, follow through on our responsibility to all workers to ensure their health, safety and well-being is not in jeopardy from their employment.

3.3 BPW NZ is concerned for women workers who are subject to sexual exploitation. We have heard of many young migrant women who have been sexually harassed at their place of employment and are fearful of speaking out because of embarrassment and concern that their visa and thus their livelihood or their education could be at risk. In the worst cases there has been threats related to sexual exploitation and trafficking.

The number of women coming to New Zealand on student visas with work rights attached to those visas is growing. This is a group who are often exploited both economically and sexually by employers

We draw the select committee's attention to clause 1.7 of this submission and we recommend that consideration be given to ensuring that reports of sexual harassment and exploitation by migrant women are dealt with sensitively and effectively to end the abuse..

3.4 Our Federation is concerned that migrant workers who report exploitation are not fully protected by either the legal system or immigration department policy. We refer to paragraph 15 of the Concluding Observations of CEDAW quoted in Clause 1.7 of this submission.

3.4.1 If a migrant worker speaks out about abuse and leaves an exploitative job they lose the work visa that is tied to that job. Effectively their means to earn an income is taken away. This creates a significant barrier against speaking out.

3.4.2 A visitor visa does not give them the ability to earn and this means migrant workers either accept poor conditions or they go underground into unlawful work in order to survive.

3.4.3 BPW NZ strongly recommends that when investigation into employment matters is under way and/or a case is being heard that the affected migrant be provided with an “open” visa which allows them the opportunity to seek alternative work. Given that their situation has arisen because there was no protection from exploitation in the first place this is an important step in rectifying matters.

**3.5** BPW NZ believes that one of the keys to reducing exploitation of migrant workers lies in increasing their understanding and knowledge of the protection available to them, particularly if that protection was extended as recommended in Clause 3.3 above. There is a big lack of understanding and trust to be made up. Publicity and social media are essential tools in this process.

Many employers threaten their migrant workers by saying they might withdraw the workers’ work visa. Thus many migrants end up working under unreasonable working conditions and extremely low wages. That is why education and resourcing are important, in order that migrants know what their rights are and have confidence that their employer will be punished for breaching those rights. That means that the law needs to be enforced and violators vigorously prosecuted. Migrant’s perceptions are often that laws won’t be enforced, as in their home countries, and they may think our authorities are corrupt and will not help them.

**3.6** Policy at the Immigration Ministry which concentrates on assessing, monitoring and prosecuting the employer when necessary rather than focusing on the migrant worker is vital to changing the climate of fear.

3.6.1 We hear that often migrants who have been working illegally do not report their exploitation for fear they will be deported. Immigration Minister Michael Woodhouse has announced that he has signed a policy change at Immigration New Zealand so “in cases of serious workplace exploitation, migrants who come forward will be allowed to remain in New Zealand while they apply for a new visa”. This is a sensible step forward in encouraging the reporting of lawbreakers and needs to be widely publicized.

3.6.2 BPW NZ welcomed the news, in June 2013, that the Minister signed off on a policy change to encourage exploited workers to come forward. We understand that he has instructed officials to turn their attention to employers rather than employees.

3.6.3 We look forward to employees being able to speak up, confident that they won’t be punished, perhaps by deportation or other sanctions.

## 4.0 Comments specific to human rights issues

- 4.1 Clause 33 replacing section 111 of the principal Act and clause 67. BPW NZ is concerned about the amount of personal information which these new clauses may require from applicants. There is no safeguard on the security of their personal details and it appears that basic human rights could be overridden here.

We suggest that if biometric samples are required that there is proper justification in the context in which they are being given.

- 4.2 Clause 60-61 amending section 277 of the principal Act. These clauses extend the power of Immigration Officers to enter and search premises. In general, we are in support of these clauses to ensure unscrupulous employers can be prosecuted.

- 4.3 We draw the Select Committee's attention to the concerns about human rights raised in The Draft report of the Working Group on the Universal Periodic Review, New Zealand dated 29 January 2014 and quoted in Clause 1.8 of this submission. That this Bill meets our obligations under international human rights is vital.

- 4.4 We note the following paragraph from the dialogue during the January 2014 UPR cycle in Geneva in January 2014:

*"82 Ukraine praised efforts to implement various recommendations made during the first UPR cycle. It encouraged the Government to reinforce efforts to combat trafficking in persons and to strengthen policy and practice to prevent the sexual exploitation and abuse of migrants, especially children."*

## 5.0 Additional immigration issues needing to be addressed

- 5.1 BPW NZ looks forward to a comprehensive assessment of the 2009 Immigration Act to ensure that it will meet the needs of our country as greater reliance is placed on migrants within the economy and social networks.
- 5.2 Our Federation highlights the need for consideration of the plight of many migrant women who come to New Zealand under the immigration category “Partnership”

### We quote the BPW NZ Policy **19.16 Migrant/Immigrant Women**

*“THAT BPW NZ urges the Minister of Social Development to introduce ways to improve the support, protection and legal rights of women sponsored to come to New Zealand under the immigration category ‘Partnership’ often with the intention to marry, who are then physically, sexually and/or psychologically abused while still on a visitor’s visa.” (2008)*

#### Rationale:

*Many new migrant women move to New Zealand under the classification of Partner, being sponsored by men with the intention of a long term stable relationship including marriage. They enter New Zealand on a visitor’s visa. A proportion of these relationships break down as a result of physical, sexual or emotional abuse and threats of withdrawal of sponsorship.*

*Police or Safe Houses are dealing with those desperate enough and supported enough to seek help. However, there are those who are afraid to approach the police and do not know where and how they can get help. Instead they feel they cannot leave the abusive situation. Police records publish the type of abuse reported i.e. physical or sexual, however there is a lack of information of the total number of instances of abuse in these kinds of relationships. SHAKTI and other women’s refuges report to the Ministry of Social Development (MSD) of the number each year of those new migrants seeking help.*

*If sponsorship is withdrawn before permanent residency has been granted, the sponsored partner must return to their country of origin. Children born within these relationships are registered as New Zealand citizens and this creates huge stress on the mother if she is deported and difficulties for social services and immigration. The women have no legal rights in New Zealand, usually have no financial independence and no legal means of support. If they do not return to their country of origin, they become over-stayers. The most recent NGO’s CEDAW report expressed concern for the plight of these sponsored women and also the instances of trafficking and exploitation of women particularly from Asian countries. More could be done to assist sponsored women already in New Zealand who are suffering abuse.*

- 5.3 Our Federation urges the government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. (ICRMW) as per the Concluding Observations of CEDAW quoted in Clause 1.7 of this submission and as per the recommendations of The Draft report of the Working Group on the Universal Periodic Review, New Zealand dated 29 January 2014 quoted in Clause 1.8 of this submission.

## 6.0 Summary

6.1 BPW NZ is concerned that the current Bill does not cover all the areas needed to protect the rights of immigrant workers and their families.

6.2 We have brought attention to the draft recommendations of the Working Group on the Universal Periodic Review, New Zealand to which New Zealand will respond by June this year.

However, we are concerned about the implementation of the recommendations from the previous UPR cycle. We note that the report from the UN Office of the High Commissioner for Refugees (4 June 2009) listed as Recommendation 37:

*“Protect the interests of migrants and minority groups, including the Asian and Pacific people from all forms of racial stereotyping and derogatory treatment.”*

We welcomed the response to this recommendation in the New Zealand National Universal Periodic Review Report, 2013, clause 70:

*“70. The Government recognises that migrant workers face risks of exploitation but is confident their special needs are met by existing legislation. In June 2013, New Zealand’s Immigration Minister announced further measures to combat the exploitation of migrant workers and confirmed that unlawful, exploitative behaviour will not be tolerated in New Zealand. Proposed changes will see exploitative employers face imprisonment, fines, and in some cases deportation back to their country of origin. Changes have also been made to immigration operating practices, preserving the immigration status of victims of exploitation who come forward with complaints.”*

We are concerned that the intention behind two of the phrases in this response are not fully carried through in this Bill. These phrases are:

- *“to preserve the immigration status of victims of exploitation who come forward with complaints” and*
- *“unlawful, exploitative behaviour will not be tolerated in New Zealand “.*

6.3 BPW NZ congratulates the select committee on the work to date and requests that the following be addressed in order for our response to the UPR review report, quoted in clause 6.2, ring true.

- That the immigration status of victims of exploitation who come forward with complaints be protected including their working status by providing an open visa during investigation and closure of such complaints.
- That resourcing of labour inspectors and immigration officials be increased to allow effective inspection and enforcement against exploitative employers
- That policy be developed to sensitively handle reports of sexual exploitation by migrant women
- That Immigration Ministry policy be focussed on employer breaches and that the increased protection of migrant workers be publicised to encourage abused workers to speak out with confidence

Thank you for the opportunity to speak to our submission and we hope that our comments are of use to you.

*On behalf of*  
***New Zealand Federation of Business and Professional Women Inc.***

**Carolyn Savage**  
**President**

**Vicky Mee**  
**Vice President, Issues**