



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

SUBMISSION

by the

**New Zealand Council of Trade Unions –
Te Kauae Kaimahi**

on the

**Immigration Act Review
Discussion Paper**

June 2006

1. Introduction

- 1.1 The New Zealand Council of Trade Unions – Te Kauae Kaimahi (CTU) is the internationally recognised central trade union centre in New Zealand representing 37 affiliated unions with a membership of approximately 350,000. As such the CTU is the largest democratic organisation in Aotearoa-New Zealand. The CTU Constitution specifically recognises Te Tiriti o Waitangi as the founding document of Aotearoa-New Zealand. The CTU has an indigenous voice demonstrated in its structure and relationship with Te Runanga o Nga Kaimahi Maori o Aotearoa. Therefore it makes sense to maximise opportunities to modernise migration policy through consultation with CTU.
- 1.2 It may also be timely to remind officials that Aotearoa New Zealand is part of the Pacific and Maori, as Tangata Whenua, are critical stakeholders in the formulation of and review of the Immigration Act.
- 1.3 Unions are increasingly grappling with migration issues. On a daily basis we are trying to respond to: a major increase in employer demand for migrant labour; huge pressure to apply principles and processes previously associated with highly skilled workers to temporary, seasonal and less-skilled workers; accredited employer applications; approval in principle applications; recurrent crises in the fishing sector; employer requests in relation to the Immediate Skill Shortages List and the Long Term Skill Shortages List – the list goes on.
- 1.4 All these issues should be dealt with in the context of broader economic development and specific industry development processes so that migration policy and implementation does not conflict with other objectives (e.g. lifting GDP per capita, skills, wages and conditions and providing work for all New Zealanders).

- 1.5 The CTU is very concerned that, despite assertions that migration policy is not simply an employer pathway to access cheap labour, the deregulated labour market, absence of awards, current labour market pressures and low incidence of collective bargaining in the private sector (meaning that arriving at a 'market rate' is difficult) all add up to a perception that the immigration system is under severe pressure and that it is actually undermining efforts to address structurally low wages in New Zealand.
- 1.6 We acknowledge that migrant workers are now, and will continue to be, a vital part of our society. Greater recognition of diversity is a socially and economically valuable goal. We support a rights based approach to migration, an investment in processes that lead to good settlement outcomes and quality employment for all workers – migrant or local.
- 1.7 The use of short-term migrant labour to undermine the terms and conditions of workers who are resident in New Zealand, the treatment of migrant workers while they are in New Zealand and the failure to enforce labour laws on behalf migrant workers are key immigration issues for unions.
- 1.8 Furthermore, immigration policy cannot be viewed in isolation from wider skills and economic development. Improving the skills of New Zealand workers is a pressing policy challenge and requires industry engagement and a commitment to an overarching and comprehensive solution.
- 1.9 Any way in which immigration policy negates or undermines greater skills and training for New Zealand workers – most significantly by allowing employers to substitute already-trained migrant workers for training programmes available to local workers – must be avoided.
- 1.10 In light of these issues, the CTU is concerned by proposals in the Immigration Act Review discussion paper (the “discussion paper”) in three particular areas: delegating some immigration decision-making

to employers, its definition of New Zealand's immigration-related interests and the poor recognition of migrant workers' rights.

1.11 First, this submission will cover areas of the immigration system that have been identified by unions as problems under current legislation:

- A lack of enforcement
- Rogue employers
- Immigration substituted for training or fair pay
- Unions are not systematically involved
- Required conditions of employment for temporary migrant workers are too low
- Migrant workers do not receive information about their rights
- GATS negotiations and the Immigration Act
- New Zealand's relationship with Pacific Island nations and peoples

1.12 Then the submission will identify eight areas of concern with the discussion paper:

- Delegation of decision-making to third parties
- New Zealand's immigration-related interests
- The rights of migrant workers
- Barriers to migrant integration
- Changes to sponsorship provisions
- Enforcement of employer responsibilities
- New Zealand's commitments as an international citizen
- Balance between border security and human rights

2. Union immigration problems under current legislation

2.1 For unions there are eight main problem areas under the current migration legislation. In particular they focus on the use of temporary migrant labour.

3. Problem one: a lack of enforcement

- 3.1 Migrant workers, and especially temporary migrant workers, are vulnerable to exploitation by employers. Often they have limited knowledge of their rights, sometimes find it difficult to communicate and feel their ability to speak up is constrained because they perceive that their immigration status is precarious.
- 3.2 Examples from the fishing industry in the last year – including the Sky 75, Marinui and Malakhov Kurgan – show that, while the Department of Labour has produced flyers advising foreign fishing crews working in New Zealand waters about their rights, they are unable to enforce them. All three cases above involved wages lower than the minimum wage, unsatisfactory working conditions and an unacceptable standard of health and safety.
- 3.3 There is also evidence that employers who receive Approval in Principle (AIP) to recruit workers from overseas are not being effectively monitored to ensure they meet their obligations.
- 3.4 The discussion paper already notes, “At present, sponsor compliance is more likely to result from the perception of negative consequences for failing to meet sponsor responsibilities rather than from actual enforcement of those responsibilities”.
- 3.5 When an employer does not meet their AIP obligations it is unclear what consequences, if any, they will face. In the case of a commitment to pay market-rate wages, or any other undertakings above the minimum code, there is no evidence of any enforcement at all. Both situations are totally unacceptable and there must be increased resources to ensure effective enforcement of employer obligations and greater clarity and certainty around the requirement to pay a market rate which has been determined after thorough consultation.

4. Problem two: rogue employers

- 4.1 Some employers and industries do not appear to be penalised for allowing the exploitation of migrant labour.
- 4.2 Despite evidence of poor employer practice, the discussion paper notes that no prosecutions at all have been made since a new three-tier system of liability was introduced in June 2003.
- 4.3 However exploitation of migrant workers appears to be a regular and ongoing phenomenon. In a recent example, the Service and Food Workers Union came across a young Samoan worker who arrived in New Zealand under a seasonal work permit to pick fruit in the Hawkes Bay. When the season closed, he travelled to see family in Wellington and got an offer of permanent work as a cleaner. He used this job offer to apply for a new work permit. Unfortunately his employer took advantage of the situation and delayed completing the immigration papers while, at the same time, telling the worker that their employment had changed and the work would only be on a day to day basis. Feeling they had no choice, the worker accepted the new conditions. After further delay the worker again queried why the employer hadn't completed the necessary immigration papers. They were told not to bother coming into work tomorrow. A relative of the worker got in touch with the union and only after union intervention did the employer retract their threat and sign the appropriate documents. Similar scenarios appear to be taking place across the country.
- 4.4 Rogue employers can use migrant labour to undermine the terms and conditions of workers in a broader industry, taking advantage of the lack of enforcement (identified in 3.1-3.6) to reduce their relative labour costs.
- 4.5 There is also evidence that immigration agents and employers try to avoid responsibility and blame each other for poor treatment of migrant workers. Cases recorded by the New Zealand Nurses Organisation in relation Filipino nurses and the Indonesian crew of the

Korean-owned Sky 75 fishing vessel highlight the unscrupulous nature of some immigration agents. Joint ventures in the fishing industry are becoming notorious for their treatment of workers.

4.6 While the Immigration Advisers Licensing Bill may address some of these issues, the problem should be addressed across the whole immigration system. In the case of Filipino nurses, recruitment agents are regulated by a government body in the Philippines but there are still cases of exploitation and abuse. It underlines the vulnerability of some migrant workers and the need for New Zealand to take active responsibility for migrant workers' protection.

5. Problem three: immigration is substituted for training or fair pay

5.1 The CTU believes that a primary reason for current skill shortages has been the lack of investment in training.

5.2 Equally, labour shortages in some industries have been caused by employers who fail to offer acceptable pay and conditions that will attract workers residing in New Zealand.

5.3 Migrant labour is often cited as a solution to both these labour market problems. But in both cases it is a short-term solution that masks larger and longer-term issues in the labour market.

5.4 The number of jobless New Zealanders is currently 161,200. The unadjusted Household Labour Force Survey in March 2006 recorded 95,300 unemployed in New Zealand, with 17,700 Maori unemployed and 7,600 Pacific peoples unemployed. For Maori and Pacific peoples this represents unemployment rates of 8.7 and 7.6 per cent respectively.

5.5 In light of these numbers, there is clearly still the capacity, in terms of actual people to perform work, to meet demand for labour before additional labour supply is added through immigration.

- 5.6 Furthermore, it runs counter to a strategy of developing a high skills, high wage economy to undermine improvement in a tight labour market through the use of migrant workers.
- 5.7 Having under-invested in training and skills development in the past, employers that rely on imported labour fail to take responsibility for their under-investment.
- 5.8 Already some industries are dependent on foreign-trained workers to meet demand for trained staff. In nursing fifty-one per cent of nurses registered in New Zealand in 2005 were trained overseas. The proportion of foreign nurses as a percentage of the nursing workforce in New Zealand is almost three times higher than the United Kingdom, and almost four times higher than Canada.¹
- 5.9 At the same time, recruiting skilled workers from overseas – especially from developing countries – fuels the process of “brain drain”. As both a country affected by “brain drain” and a cause of “brain drain” in other countries, New Zealand should appreciate the implications of “brain drain” for growth and productivity. Relative to New Zealand, the impacts of a loss of skilled workers on developing countries are magnified and the New Zealand immigration system should recognise this impact.
- 5.10 When workers already resident in New Zealand will not perform work at certain levels of pay or under certain conditions – irrespective of whether they are above statutory minimum levels – there is a danger that migrant workers are being used to undermine accepted terms of employment for workers resident in New Zealand.
- 5.11 The CTU proposes a requirement that employers who are given approval to bring in migrant workers must commit to train a number of New Zealand workers at a ratio of one to five workers or as a percentage of the value of wages paid to those migrant workers.

6. Problem four: unions are not systematically involved

- 6.1 While unions do currently have some involvement in immigration processes, there is concern that these opportunities are not consistent or coordinated.
- 6.2 Unions seek a greater role advocating for the rights of migrant workers, in light of the problems identified in paragraphs 3.1-3.6.
- 6.3 At the same time, unions have been consulted as part of labour market tests and AIP applications. But contact between unions and the New Zealand Immigration Service has been ad hoc and unions are often left in the dark about the outcome of their involvement.
- 6.4 The Maritime Union of New Zealand's experience in the case of the Sky 75 and the Engineering, Printing and Manufacturing Union's experience in relation to Otis Elevators and LAN Chile demonstrate all these difficulties as both unions tried to gain official information about cases they were fundamentally involved in bringing to light.
- 6.5 The CTU and other unions prefer engagement on migration issues to be in the context of a broader industry engagement which encompasses investment in training, labour-matching, improved wages and conditions, technology, productivity and industry strategies. Unions have strong credentials for working in this manner as a result of our broad overview and monitoring role across a wide range of labour market and related issues. This perspective and experience, combined with involvement in migrant-focused projects such as the new migrant employment-related education project, make CTU, and unions in general, vitally placed to be involved in this approach.

7. Problem five: required conditions of employment for temporary migrant workers are too low

- 7.1 The obligations placed on employers when they employ temporary migrant workers are usually only statutory minimum conditions of employment, such as the minimum wage.
- 7.2 Given that many migrant jobs are dirty, dangerous and difficult, such low thresholds are unacceptable.
- 7.3 As already stated in paragraph 4.3, low thresholds also encourage the use of migrant labour as a tool to undermine terms and conditions of employment offered to employees resident in New Zealand.

8. Problem six: migrants do not receive information about their rights

- 8.1 Migrants, and particularly temporary migrants, do not have access to good information about their rights working in New Zealand
- 8.2 Equally there is nowhere identified that migrants can go to get support to uphold their rights. There should be specific instructions given to all migrants about what they should do and where they should go when an issue about their employment rights arises.
- 8.3 The Department of Labour leaflet, "Important Information for Foreign Fishing Crews Working in New Zealand Waters" provides a model that could be developed further in this area. However information needs to be not solely paper based, easier to access, more comprehensive, and universally available.
- 8.4 The New Zealand Nurses Organisation flyer "Overseas Nurses – Be Careful!" is another good example of information provided to migrant workers.
- 8.5 To complement this there needs to be a responsibility placed on the employers of temporary migrant workers to provide English language training and to have signage and key information available in different

languages. There also needs to be access to translators when required. Without these things, migrant workers are at extreme risk of exploitation and exclusion from workplace health and safety programmes, with the potential risk that this will undermine the rights and health and safety of other workers as a result.

- 8.6 At the same, English language skills should not be used as a way to discriminate against particular migrant workers.

9. Problem seven: GATS negotiations and the Immigration Act

9.1 While New Zealand's immigration law is currently ring-fenced outside the scope of GATS Mode 4 negotiations, changes to immigration legislation will change what is protected by that provision.

9.2 There needs to be an assessment of how a new Immigration Act will relate to New Zealand's GATS commitments.

9.3 In addition it is vitally important that policy space for domestic regulation on immigration is not undermined by revised GATS rules and/or commitments.

10. Problem eight: New Zealand's relationship with Pacific Island nations and peoples

10.1 The CTU recognises that New Zealand has profited from the effort of workers from the Pacific Island states in the South Pacific region. In the 1960s and 1970s this labour was vital in filling vacancies during New Zealand's industrial boom. Despite bad treatment from a "dawn raid policy" by a National government, Pacific people have continued to contribute significantly to strengthening New Zealand's sports, music, arts, dance, academic, and political fabric by introducing diverse colours, flavours, sounds and beautiful aromas to New Zealand culture today.

10.2 This unique and special relationship between New Zealand and the people of the Pacific needs to be strengthened and protected. The

CTU advocates that the government give greater attention to its international relationship with Pacific Island states in the South Pacific region. It should strengthen the Treaty of Friendship with Samoa, and increase migrant access including through the Pacific Access Category for the other island nations on family and humanitarian grounds. The CTU also advocates that the government move towards easier access between Pacific Island nations and New Zealand and with reduced conditions.

11. Concerns with the Immigration Act Review discussion paper

11.1 Reflecting many of the issues above, the CTU has identified eight aspects of the Immigration Action Review discussion paper that are of particular concern to unions.

12. Concern one: delegation of decision-making to third parties

12.1 Recognising that employers would have significant incentives to pursue delegated immigration decision-making, the discussion paper rightly identifies, "...there may be risks around employers seeking to serve the interests of their companies at the expense of wider New Zealand interest."

12.2 This underlines the need to balance the interests of employers as third parties against those of employees in the purpose of the legislation. It also underscores the dangers of delegating authority to third parties with a vested self-interest in immigration.

12.3 Given the concerns raised above about current levels of enforcement, the behaviour of some employers who employ migrant labour already, the lack of transparency around existing immigration processes and the ad hoc way in which unions are asked to engage in immigration issues, the CTU is opposed to delegating decision-making to third parties.

12.4 The discussion paper also notes that, “there are no immediate proposals to implement third-party decision-making”. Without a current need, the CTU sees even less reason to legislate for the possibility.

12.5 For similar reasons, the CTU is also concerned about the use of electronic decision making for “low-risk applications” without a clear definition of what low-risk means and why it is needed.

13. Concern two: New Zealand’s immigration-related interests

13.1 While the CTU supports the inclusion of a purpose statement in new immigration legislation, the discussion paper gives a very narrow definition of that purpose. Protecting the rights of migrant workers, avoiding the substitution of immigration for training and skills development and regulating the behaviour of employers who hire migrant workers are all aims which are not obviously apparent in the stated purpose, “to regulate the entry, stay and removal of non-New Zealand citizens, in a manner that is in New Zealand’s interests, and to provide for integrity in the immigration system”.

13.2 Underpinning this narrow purpose is a definition of New Zealand’s immigration-related interests that does not give appropriate weight to a number of areas.

13.3 First, the interests of migrants themselves are not included. Migration to New Zealand can be a first step in the transition to becoming a New Zealand citizen. It can also be a precarious time for individuals, when their rights fall between the jurisdictions of two states. New Zealand has a responsibility to protect the rights of these prospective citizens and to demonstrate its commitment to international human rights.

13.4 Secondly, those immigration-related interests only recognise the economic contribution of immigration in the context of labour market problems facing business. This lopsided assessment ignores the

interests of workers and does not allow a balanced consideration of the costs and benefits.

- 13.5 There is a similar imbalance in the weighting of other immigration-related interests in the discussion paper. Despite identifying five broad areas of interest (safety and security, economic growth, strong communities, being a good international citizen and promoting international cooperation) the discussion paper marginalises the other three and reduces the primary issue to a trade-off between New Zealand's border security and national economic growth.
- 13.6 Establishing strong communities is ranked as a key immigration-related interest, but the proposed legislative purpose, and the discussion paper in general, makes no other reference to it.
- 13.7 The identification of New Zealand's interest in fulfilling its role as a good international citizen is similarly marginalised. The legislative recognition of the Convention against Torture and the International Convention on Civil and Political Rights are presented as a compliance issue.
- 13.8 Equally, international instruments such as the ILO's Migration for Employment Convention (C97) – which New Zealand has ratified – are not recognised.
- 13.9 Lastly, the development dimension of immigration, especially in terms of New Zealand's relationship with the Pacific, is overlooked. The ILO notes that worldwide the US\$100bn sent home every year by migrant workers is a larger sum than all overseas development assistance, and is second only to the value of global petroleum exports in international commodity trade.² In terms of the Pacific, New Zealand needs to acknowledge of strong existing social, political and economic ties, the important opportunities that work in New Zealand provides and the potential impact of "brain drain" on Pacific nations. In Tonga for the financial year 2004-5, private remittances brought P\$200m into

the country, compared with P\$31m from merchandise trade and P\$52m from service trade.³

- 13.10 The CTU believes that any stated purpose in the Immigration Act, and any underlying definition of New Zealand's immigration-related interests, needs to be broadened to avoid use of immigration as a proxy for domestic training and skills development, to acknowledge the importance of a rights-based approach to migration and to recognise a wider range of international instruments (such as ILO conventions) in the area of migration.

14. Concern three: the rights of migrant workers

- 14.1 The discussion paper does not positively assert the rights of migrant workers. In light of its primary focus – the extension of New Zealand's border security – there is a need to positively define the rights of migrants to balance this extension of state authority.
- 14.2 Migrant workers are a vulnerable group. There is evidence that they already experience exploitation in New Zealand workplaces. Failure to positively state migrants' rights in the law sends the signal that these rights are not as important.
- 14.3 The CTU supports a rights-based approach to immigration issues.
- 14.4 A rights-based approach is internationally recognised in such instruments as the ILO Migration for Employment Convention - 97 (which has been ratified by New Zealand), the ILO Migrant Workers (Supplementary Provisions) Convention - 143 and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (both not yet ratified by New Zealand).
- 14.5 As the Human Rights Commission notes, "Although New Zealand has not acceded to ILO Convention 143 or the United Nations Convention on the Rights of All Migrant Workers and Their Families, the standards used in these instruments can be used as the basis for

reviewing legal provisions relating to migrant workers and their families with a view to increasing compliance”.⁴

- 14.6 Another important tool in promoting rights-based migration is the Multilateral Framework on Migration adopted by the ILO in 2005.
- 14.7 According to the ILO, “Migrant policies that are not founded on a respect for human rights can exact high costs on individual migrants and their home societies. There is evidence that 10-15 per cent of migration today involves undocumented women and men who enter or work in a host county without authorisation. Irregular migration leads to high levels of exploitation, forced labour and abuse of human rights and dignity”.⁵

15. Concern four: barriers to migrant integration

- 15.1 Unemployment rates among migrant workers are much higher than the population as a whole. For example, studies based on the Longitudinal Immigration Survey show labour participation rates of 53 per cent for migrants after six months in New Zealand, only rising to 62 per cent after 18 months. This compares with a participation rate for New Zealand as a whole of 68.5 per cent.⁶
- 15.2 While the discussion paper recognises that migrants’, “ideas and capital *can* foster industrial and technological innovation, increase labour utilisation and improve productivity [emphasis added],” it makes no recommendation about *how* these benefits can be realised.
- 15.3 Support for the National Immigration Settlement Strategy in the legislation and an emphasis on the recognition of qualifications would help to address this problem. There also needs to be a commitment to ensuring better employment outcomes for migrant workers.
- 15.4 Equally, the government needs to commit to a wider education programme about the value and benefit of migration to all New Zealanders. New Zealand is a nation of migrants and immigration is

going to be an important part of New Zealand's development for the foreseeable future. New Zealand should have strong programmes to counter discrimination against migrants. Such programmes should be widely available – including in schools, workplaces and communities.

16. Concern five: changes to sponsorship provisions

- 16.1 The CTU is concerned that changes allowing greater sponsorship of migrants by employers could lead to a situation of indenture for migrant workers. The discussion paper outlines two proposals – options A and B – both of which place migrant workers in a difficult position.
- 16.2 In Option A the discussion paper states, “It should also be possible for sponsorship obligations to be imposed on businesses and organisations including employers who make job offers as part of a potential migrant’s residence application ... The legislation could also provide for organisations and businesses to sponsor temporary visa and permit applications.” Placing these obligations directly with the employer will give them increased leverage over a migrant worker. Allowing sponsorship for temporary work permits would also represent a significant change to the current work permit system where sponsorship requirements are limited to visitor and family-sponsored permits and very specific work permits such as those covering missionaries and lay preachers.
- 16.3 As it stands, the current practice, whereby temporary migrant workers who enter New Zealand under an Approval in Principle cannot change employer without reapplying for a work permit, means they are generally denied the opportunity to move to an employer offering better terms and conditions. Measures that extend these kinds of restriction can encourage exploitative employment situations.
- 16.4 In Option B the discussion paper proposes greater emphasis on enforcement measures and the use of up-front bonds. As examples of

enforcement it suggests, “Increased monitoring and data-matching with the Ministry of Social Development and health providers.” This appears to focus on migrant workers rather than their sponsor.

16.5 In the fishing industry there is clear support for the concept of bonds as insurance so that foreign fishing crews can recoup unpaid wages when employers return them to their country of origin without delivering contractual or minimum amounts. However, it is worth acknowledging the risk that, in some situations, bonds might increase employers’ leverage over migrant workers by placing a monetary value on the migrant worker’s obligation to their boss.

17. Concern six: enforcement of employer responsibilities

17.1 The CTU agrees that there should be a stronger basis for employer responsibilities in the legislation. It notes with concern the discussion document’s finding that, “no strict liability prosecutions have been made since the provision came into effect in June 2003”.

17.2 The CTU agrees that sighting of an employee’s tax code declaration is too low a threshold to allow the defence of “reasonable excuse”.

17.3 However, the suggestion that all workers could be required to prove their immigration status in future raises equally significant issues. As the discussion paper notes, “While most citizens would easily be able to establish their entitlement to work, there could be compliance issues for some citizens who do not hold a passport or birth certificate (or do not wish to disclose details such as their date of birth)”.

17.4 The CTU also accepts the discussion paper’s observation that positive immigration status checks could be used and/or exploited by employers and result in targeting of New-Zealand citizens from ethnic communities.

17.5 The CTU suggests a differentiated approach where higher standards of proof of immigration status could be imposed for different

industries, sectors and/or employers to target specific areas where employers are not taking appropriate responsibility for the immigration status of their employees.

- 17.6 Under the three-level liability framework for employer offences, the CTU believes third-level offences (“knowingly employing an unlawful worker and exploiting that person”) need to be enforced more rigorously as well as incur strong penalties, to ensure there is equivalence with the non-migrant workforce.
- 17.7 The CTU agrees with the discussion paper when it states that differences in the treatment of migrant and non-migrant workers could, “risk of signalling that employers’ obligations to foreign workers are less than those owed to New Zealand citizens and residents.”
- 17.8 Equally, the review should consider whether increased penalties alone will act as an effective deterrent, given the current level of illegal employment activity.
- 17.9 To the extent that it currently appears to apply to talent work policy only, the CTU supports the imposition of good employer provisions on an ongoing basis, “and not simply a one-off requirement to be met at the time of obtaining (or renewing) accreditation”. It should be an underlying principle which is universally applied that all employers of migrant workers must always meet minimum good employer standards.

18. Concern seven: New Zealand’s commitments as an international citizen

- 18.1 The CTU advocates a rights-based approach to migration. On this basis there are a number of multilateral instruments that New Zealand could incorporate in its immigration law.
- 18.2 Given their recognition in immigration policy, the CTU supports the legislative recognition of Article 3 of 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

and Articles 6 and 7 of the International Covenant on Civil and Political Rights

- 18.3 The United Nations Convention on the Rights of the Child could also be incorporated since it is already being considered within immigration policy.
- 18.4 There are also migration-specific international instruments that should be recognised in immigration legislation such as the ILO Migration for Employment Convention – 97, which New Zealand has ratified.
- 18.5 While they have not yet been ratified by New Zealand, the ILO Migrant Workers (Supplementary Provisions) Convention – 143 and the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families could also be included. The governing body of the ILO has also recently approved the Multilateral Framework on Labour Migration.
- 18.6 The Code of Practice for the Pastoral Care of International Students recognised in the Education Act is also a good example of a way to recognise the rights of non-citizens in legislation.
- 18.7 There also needs to be a greater recognition of the developmental impact of drawing skilled workers from developing countries, particularly Pacific nations. The Commonwealth Code of Practice for the International Recruitment of Health Workers provides a useful model codifying the process and managing the impact of “brain drain”.

19. Concern eight: balance between border security and human rights

- 19.1 With the broad range of measures to strengthen border security that are outlined in the discussion paper, the CTU thinks it is important to balance these against the rights of individuals.

- 19.2 The use of classified information and biometric data, as well extension of detention powers, needs to be explicitly defined and the trade-off against the rights of migrants overtly acknowledged.
- 19.3 Equally, the risk posed to New Zealand's international standing by measures to heighten border security and strengthen immigration control should be recognised.
- 19.4 The CTU is particularly concerned by proposals to add strengthened health and character requirements as grounds for exclusion of migrants and is alarmed by the potential implications of an extension to include "glorification of terrorism" as grounds for refusing entry.
- 19.5 The CTU believes that the spill-over effects from the compulsory collection of biometric data – facial recognition, fingerprints and iris scanning – need very close management and a proposal with much greater detail is required.

20. Recommendations

- 20.1 The CTU has a number of concerns about current immigration practice in New Zealand. These include enforcement, use of immigration as proxy for skills development, the behaviour of rogue employers, inconsistent union involvement, undermining of domestic terms and conditions, the impact of GATS and New Zealand's relations with the Pacific.
- 20.2 Many of these issues overlap the discussion paper's distinction between a review of legislation and other policy. However it is worthwhile considering the contribution that legislation can make to solving all these issues and the CTU has intentionally included them to emphasise its support for a comprehensive and integrated consideration of immigration in relation to other social and economic policy goals.

- 20.3 The CTU has a particular concern that migration should not be at the cost of investment in training or employment of those current jobless workers in New Zealand.
- 20.4 The CTU believes that migration issues should be addressed in the context of specific industry strategies that have a broad focus including skills, productivity, labour-matching and sustainable development.
- 20.5 The CTU is generally opposed to the delegation of decision-making to third parties such as employers.
- 20.6 The CTU also does not support the discussion paper's conclusions about the defining purpose of the legislation.
- 20.7 In the opinion of the CTU, the rights of migrant workers and barriers to their effective participation do not receive adequate attention in the review.
- 20.8 The CTU feels the proposals around sponsorship of temporary migrants, the enforcement of employer responsibilities and New Zealand's role as an international citizen fail to address key issues. It is also important to balance the heightening of border security against the encroachment of individual rights.
- 20.9 Good employer provisions must be comprehensively and continuously required of employers who are recruiting and employing migrant workers. Legislation should provide a framework for a "good employer" requirement and this should be a vital feature of policy development at this time. There also needs to be a greater sense of industry ownership of "good employer" requirements rather than an enterprise focus.
- 20.10 Specifically, the CTU recommends:
- Increased resources to ensure effective enforcement of employer obligations.

- A broader commitment alongside the licensing of immigration agents to regulate employers' use of migrant labour.
- The New Zealand immigration system should take account of the impact of "brain drain" on developing countries.
- Employers seeking to bring migrant workers to New Zealand should be required to spend money on training a certain number of New Zealand workers.
- Unions are systematically engaged at an overview and industry level in addressing issues in the immigration system.
- That higher conditions than simply paying minimum wage be placed on employers who bring in temporary migrant labour and that those conditions should be comprehensively enforced.
- Employers should also be required to provide English language training, translation services and translated information and signage for temporary migrant workers that they recruit.
- GATS negotiations make allowance for regulation of immigration.
- A move towards easier access between Pacific Island nations and New Zealand with reduced conditions.
- The ILO's Migration for Employment Convention (97) be included in the Immigration Act, as well as the UN Convention on the Rights of the Child.
- Ratification of the ILO Migrant Workers (Supplementary Provisions) Convention (143) and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Endorsement of the ILO Multilateral Framework on Migration.
- Recognition of the National Settlement Strategy in the Immigration Act.
- A policy commitment to better employment outcomes for migrant workers.
- A broad public education programme about the vital contribution of migrants and migrant workers in New Zealand and the problems of discrimination against migrants.

- Some introduction of employer bonds, starting with the fishing industry.
- A targeted requirement for greater proof of immigration status before employment in those industries and sectors where the exploitation of temporary migrant workers is a particular problem.
- A framework, drawing on the models of the Code of Practice for the Pastoral Care of International Students and the Commonwealth Code of Practice for the International Recruitment of Health Workers to ensure the safety of temporary migrant workers while they are in New Zealand and recognise the impact of emigration on source countries.

21. Conclusion

- 21.1 The CTU is committed to broad social movement unionism. We aim to speak on behalf of working people and their families in New Zealand and to engage with Government, employer, and other organisations across a very broad spectrum of issues, from national legislative and policy issues, through industry and regional issues, down to the workplace itself.
- 21.2 In the context of immigration this means an integrated approach that addresses the international and national perspective, is an integrated rights-based approach and operates on the level of industries, sectors as well as specific employers. It also needs to engage and encompass the views of workers and their unions
- 21.3 The CTU supports a high wage, high skill, quality economy. We are committed to strategies that build our national wealth. We are very aware that many of the people we represent will not achieve a real lift in their earnings unless they build their knowledge and skills in the context of a national strategy directed at moving our economy up the value chain.

21.4 If we are to achieve growth and innovation, we need to invest in people, and ensure that everyone can participate, in a meaningful way, in our country's development.

¹ Aitken, Linda H (et al), "Trends in International Nurse Migration", Health Affairs 23 (3), p69-77

² International Labour Organisation, "Facts on Migrant Labour", Geneva, 2004

³ National Reserve Bank of Tonga, "Annual Report for the Year Ended 30 June 2005", Nuku'alofa, 2005

⁴ Human Rights Commission, "Human Rights Issues in the Review of the Immigration Act", Wellington, 2006

⁵ International Labour Organisation, 2004

⁶ New Zealand Department of Labour "Migrants' experiences of New Zealand: Pilot survey report." Wellington, 2004