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Immigration NZ Settlement Unit submission to the Independent Taskforce on Workplace Health and Safety

Thank you for the opportunity to make a submission on key issues facing New Zealand's workplace health and safety system.

The Settlement Unit is aware that the Ministry of Business, Employment and Innovation has presented a Ministry-wide submission, but nevertheless considers there is value in providing a specific perspective on issues facing migrant workers and their employers. In broad terms, the Settlement Unit's submission addresses the first two questions of the Taskforce's consultation document:

- *Q1. What do you think is driving the differences in workplace health and safety outcomes for different demographic groups?*
- *Q2. What changes are needed to the workplace health and safety framework to improve outcomes for demographic groups with higher than average rates of injury and illness?*

Context

There is clear evidence that health and safety outcomes are different for some demographic groups. The Taskforce's consultation document notes that, at a rate of 18 per 1,000 FTE, Māori workers are more likely to be injured at work than Pacific (15 per 1,000), Pakeha (14 per 1,000), or Asian (6 per 1,000), but that "other" workers¹ fare worst, with a rate of 33 per 1,000 FTE. (p.16)

The Taskforce notes that other sub-populations may also be disproportionately at risk of injury. For example, employees new to a position or engaged in temporary, casual or seasonal work may be particularly at risk, and other factors, including language barriers are also likely to play a role.

Whilst the Taskforce acknowledges the differences in outcomes observed across these demographic groups may, in large part, reflect their higher rates of employment in occupations that carry a higher risk of injury, the data does suggest that issues facing migrants and their employers warrant specific consideration in the Taskforce's deliberations. This will be particularly important for migrants from non-English speaking backgrounds (NESB).

A range of overseas evidence reinforces the need for a specific focus on migrants, for example:

- UK Health and Safety Executive (HSE) statistics show that migrant workers in the construction industry are more likely to be fatally injured than those native to the

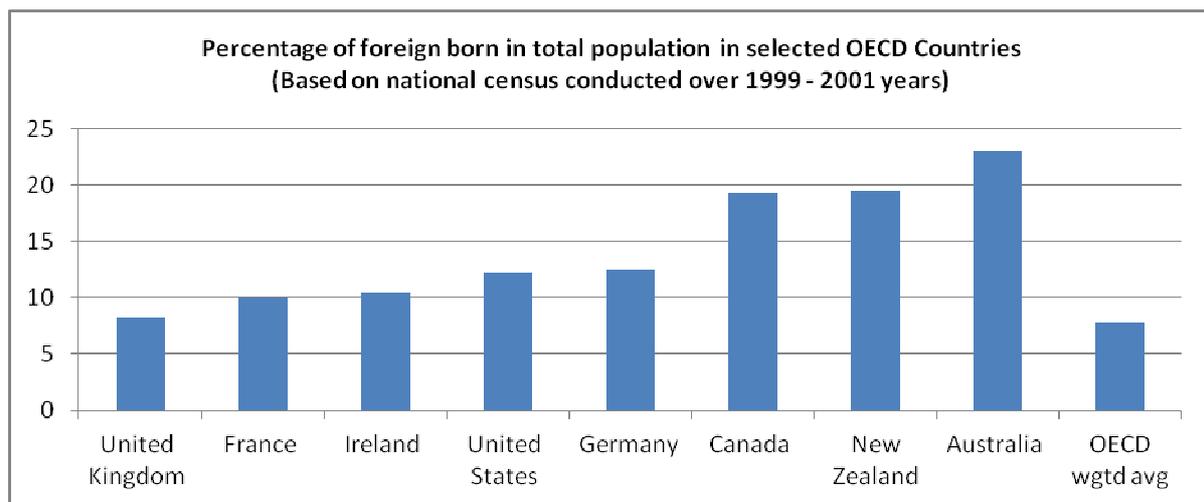
¹ "Other" workers include Middle Eastern, Latin American and other ethnic groups"

UK. Just per six per cent of Britain’s 2.3 million construction workers are migrants, yet they account for 17 per cent of work-related deaths in that sector”²

- A University of Sydney working paper on improving occupational health and safety information to immigrant workers in NSW notes that the relatively high levels of risk that non-English speaking background immigrant workers face have been documented in several pieces of research over the preceding 30 years, but also notes, with qualifications, that an Australian Bureau of Statistics Study indicated that it is *English speaking background* immigrants who are at most risk of work injury compared to Australian born-but more particularly non-English speaking background immigrants. (ABS 2000:8)
- US research found that the mortality of non-white construction workers was 27% higher than for their white counterparts.³

Notable examples of migrant workers at risk include the death of 23 Chinese cockle pickers in Morecambe Bay (UK) in 2004 and a serious 2009 accident in Ontario, when four migrant workers died and a fifth was seriously injured after their swing stage platform snapped 13 stories above ground. The latter accident was a catalyst for the ministerial appointment of an expert advisory panel on occupational safety and health.⁴

The framework must consider that New Zealand’s workforce includes one of the highest proportions of migrants in the OECD⁵:



To assist migrant dairy workers and their employers to establish successful working relationships the Settlement Unit recently promulgated guides to employing migrant

² Reported in Safety and Health Practitioner (Institution of Occupational Safety and Health UK) 02 March 2012 <http://www.shponline.co.uk/commentcommunity-content/full/a-picture-paints-a-thousand-words-for-migrant-workers-in-construction>

³ Ore T and Stout N (1997), 'Risk differences in fatal occupational injuries among contraction labourers in the United States', Journal of Occupational and Environmental Medicine , 39 (9) p. 832 – 43 – referenced in Sinclair A et al, 'Irish and non-Irish national Construction workers: Research on differences in approach to health and safety at work' p.3 Institute for Employment Studies

⁴ www.iwh.on.ca/at-work/64/ohs-information-tool-for-newcomers

⁵ <http://www.oecd.org/migration/internationalmigrationpoliciesanddata/33868740.pdf>

dairy workers and to support their living and working on a New Zealand dairy farm. Health and safety was an important element of the advice. In response to a request from the Canterbury Employers Chamber of Commerce the Settlement Unit is currently developing similar guidance for the construction industry.

Workforce demand projections show that earthquake recovery demand for some construction occupations will significantly outstrip New Zealand wide supply and that migrants will make an important contribution to addressing the shortfall. The health and safety implications of employing significant numbers of people unfamiliar with New Zealand workplace culture and practices will require careful management to minimise the possibility of adverse events.

The London Olympics construction effort provides an excellent demonstration that very large construction programmes can, with sufficient focus on health and safety, be completed without workplace fatalities. Migrant workers were a significant part of the labour force in this construction project. The range of migrant-specific research and initiatives undertaken by the British Health and Safety Executive in the five years prior to the Olympics helped to contribute to the health and safety success of the Olympic build. Examples include appointing ethnic outreach workers and providing wallet-sized information cards in migrants' own languages.

Why are migrants at greater risk?

There is a significant body of research on why immigrants are at greater health and safety risk than domestic workers.

UK Health and Safety Executive (HSE) research into incidents on construction sites identified migrant workers as particularly vulnerable. The research, carried out by Synovate, concluded that:

- Migrant workers knowledge of health and safety standards was limited
- The understandable desire by migrants to work hard and stay out of trouble can lead to employers cutting corners on health and safety without being questioned.⁶

Consistently with those findings, research conducted as part of the Secretary of State for Work and Pensions Inquiry into the Underlying Causes of Accidents in Construction is reveals that HSE inspectors repeatedly identify four reasons why foreign or migrant workers maybe more at risk than British born workers:

- Language skills
- Unscrupulous managers or employers
- Inexperience or lack of understanding of UK Health and Safety Standards
- Cultural differences.

The University of Sydney working paper, referenced above, notes the key findings of research on health and safety of NESB migrants are:

- Occupational position places NESB immigrants at risk (concentration in relatively dangerous jobs)

⁶ <http://www.hse.gov.uk/press/2009/e09077.htm>

- The structure and culture of workplaces where NESB workers are employed are other risk factors (over-representation in small and isolated workplaces, shift work and injury promoting forms of remuneration, lack of active participation in collective bodies such as unions and occupational health and safety committees)
- NESB immigrants are less likely to be aware of their rights. Recency of arrival is associated with high levels of workplace deaths. Analysis of fatality statistics showed that NESB migrants as well as, to a lesser extent, immigrants from English speaking countries, were particularly at risk in the first five years of residence in Australia.⁷

Irish research on different approaches to health and safety at work noted that the particular issues facing migrants in the construction industry include:

- "Many non-Irish national workers struggle with spoken and written English and employers are not always aware of the poor language skills of their workers. Whilst many employers offer support and translation services, some workers find it difficult to ask questions and/or raise concerns with employers. In emergency situations these workers could be at greater risk
- Many non-Irish national workers receive little formal training in health and safety beyond the Safe Pass course. A minority have managed to acquire work without undertaking Safe Pass, whilst others have not been able to access a translated course in time, and therefore have taken it in English despite low levels of English ability
- Some non-Irish national workers have little knowledge regarding workers' rights and employers' responsibilities. Rather than being concerned about their rights, workers appear grateful for the employment they have, particularly when they have had negative employment experiences in their home country
- Many workers come to Ireland to find work due to poor economic conditions and lack of job security in their home countries. This experience of job insecurity continues to influence non-Irish nationals' behaviour on sites in a way that does not influence Irish workers: they are less likely to question unsafe practices, or raise concerns with employers or colleagues and may be more likely to undertake risky jobs when asked to do so
- Non-Irish national workers are less likely to perceive some risky behaviours as high risk and are likely to engage in them more often. This stems in part from a different approach to health and safety in non-Irish nationals' home countries. In addition, some non-Irish nationals are prepared to take short cuts or work quickly in order to increase their earnings."⁸

Canadian Institute for Work and Health researchers found, amongst other things:

- Many migrant workers tended to have jobs that did not mirror the one's they left behind in terms of experience and qualifications required. Thus they ended up doing jobs they had never done before, involving manual, heavy and repetitive work, and with little knowledge of the hazards, tools or machinery associated with the work
- Because of "settlement related pressures" (i.e. the need to finance their new life in Canada and/or to send money to family in their country of origin), along with an

⁷ pp. 78 - 79

⁸ Sinclair A et al, 'Irish and non-Irish national Construction workers: Research on differences in approach to health and safety at work' p.ix Institute for Employment Studies

acute awareness of their poor position in the labour market after months of looking for a job in their field, keeping a job took on a more pressing quality

- Despite this, injured immigrant workers did tend to tell an employer or health-care provider, even if informally, of their work-related injury. However, these parties sometimes failed to report the injury in a timely or appropriate manner, as required by law. Because new immigrant workers knew little about how the system is supposed to operate, they were unlikely to complain.

The European Agency for Health and Safety at Work has identified that while there is increasing awareness of the crucial role played by migrant workers in the economic growth of countries, greater attention needs to be paid to their employment and working conditions:

“The term ‘migrant workers’ covers a wide range of people with different reasons for migration and varying skills levels. Not all migrant workers are ‘at risk’, but there are three pressing occupational safety and health issues:

- High employment in high risk sectors
- Language and cultural barriers to communication and safety and health training
- Migrant workers often work a lot of overtime and/or are in poor health and thus are more prone to occupational injuries and diseases.”⁹

What can be done to address health and safety risk associated with migrant workers?

While the Settlement Unit has not formed a view on the appropriate range of initiatives to address the health and safety risk associated with migrant workers, a number of possibilities emerge from the literature and our own initial thinking. These include:

- Explicit requirements for high risk industries to recognise and address the hazards associated with employing workers from different cultural and/or language backgrounds
- Guidance to support employers and workers, including those working alongside migrant workers, on methods to mitigate risk associated with migrant employment
- Codes of practice covering migrant health and safety management
- Enhancing our understanding of, and ability to effectively respond to, new migrant exposure to health and safety risk through improved data collection and research.

The Health and Safety in Employment Act 1992 requires employers to ensure that every employee has been given, and is provided with ready access to, information in a form and manner that they are reasonably likely to understand about emergencies, hazards and protective clothing and safety equipment (s 12).

Most Australian States require health and safety information to, as far as practicable, be provided in appropriate languages.¹⁰

The implications of new migrant health and safety will be greater in workplaces that are higher risk of death or injury, and for sectors that recruit a higher proportion of new migrants. Any redesign of New Zealand’s health and safety framework should take into

⁹ http://osha.europa.eu/en/topics/accident_prevention/risks

¹⁰ Alcorso C, 2002 Improving occupational health and safety information to immigrant workers in NSW – Research report, ACCIRT, University of Sydney, Table 28 p 83

account that the safety needs of new migrant workers can be different from those of other workers. Communication and training should not assume approaches to training and communication that work for literate New Zealand English speakers who understand New Zealand's cultural norms and respect for the rule of law will necessarily translate effectively to all new migrant audiences. For example, unpacking some of our messages where sub-text is assumed, or using pictures, or check-lists may be required. Additionally, new migrant's culture of origin may differ in regards to expectations of how regulations are enforced (or not enforced). New Zealand culture assumes that people follow the rules, and have rights and responsibilities. An employee's ability to speak up when they are not feeling safe on the worksite must also be considered. For new migrants, the act of speaking up may be outside of their cultural norms. They may also fear losing their jobs (and potentially therefore their immigration status). Lack of familiarity New Zealand English and, in particular, with workplace jargon on site can lead to misunderstandings and potential accidents.

One option to ensure employers recognise and address the hazards associated with migrant employment may be to make the legislation more explicit about the obligation to ensure workers actually understand health and safety requirements and their significance to themselves and their colleagues. This is particularly important for subcontractors and on smaller sites. UK research shows that migrants' exposure to health and safety risk in construction is a result of their position within an industry built on rules of maximum flexibility and profitability through subcontracting, and that construction workers are more at risk on small sites, where many migrant workers tend to work.¹¹ For these reasons, an education and compliance focus on sub-contractors and smaller employers in high risk industries could, indirectly, enhance migrant workers' health and safety.

The way in which health and safety information is presented can significantly impact understanding. According to research released by IOSH (carried out by Glasgow Caledonian University), deaths and injuries among migrant workers in the construction industry could be reduced if pictures were used in safety training, "Companies need to do more than just translate health and safety training into their workers' first languages. Doing this alone can actually lead companies into a false sense of security because many workers – whatever their country of origin – have literacy issues."¹²

Content developed for new migrants could also be incorporated into sector related training materials (e.g. Site Safe modules, ITO information etc.).

In one of its high priority recommendations, the 2010 Expert Advisory Panel tasked with reviewing Ontario's health and safety system found that many workers had little or no understanding of health and safety legislation, including their rights and obligations as workers or the obligations of employers and supervisors. The Report recommended that a health and safety poster be made available in multiple languages. This poster has now

¹¹ <http://www.hse.gov.uk/migrantworkers/construction.htm>

¹² Reported in Safety and Health Practitioner (Institution of Occupational Safety and Health UK) 02 March 2012 <http://www.shponline.co.uk/commentcommunity-content/full/a-picture-paints-a-thousand-words-for-migrant-workers-in-construction>

been developed and must be displayed in English and in the majority language of the workplace.¹³

Migrant health and safety could also be reinforced by either specific codes of practice for working with migrants or by including advice on migrant health and safety in existing industry codes. This would have the effect of strongly reinforcing obligations while, at the same time, providing practical information on how employers can address migrant health and safety.

Health and safety data collection could be enhanced by recording information that could allow for specific analysis of the relative health and safety risk exposure of new migrants' working in high risk industries. There may also be value in further reviewing the literature on new migrant health and safety an, if justified, specific addition research in a New Zealand context.

Conclusion

The health and safety framework should ensure that employers and sectors benefiting from migrant labour are aware that standard approaches to health and safety may require adaption for migrant workers to ensure they understand both the requirements themselves, and the expectation that these are adhered to. This should be supported by a health and safety compliance monitoring approach that recognises some new migrant groups may be at particular health and safety risk.

¹³ http://www.labour.gov.on.ca/english/hs/pubs/poster_prevention.php#download