Worker Exploitation in New Zealand: Law Reform and Enforcement

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Mauri ora kia tātou,
E te hunga mate, moi mai rā, rātou ki a rātou, tātou te hunga ora ki a tātou
Kei te manawhenua o tēnei rohe, kei te mihi
E koa ana te ngākau i tae mai ahau i tēnei rā i runga i te reo karanga o te rā.
Nō reira, ka nui te mihi ki a tātou katoa
Ko Kaiwhakawā Kathryn Beck tōku ingoa
Kei roto au i te Kōti Take Mahi o Aotearoa

I Introduction

Modern slavery and worker exploitation are serious and widespread wrongs that continue to receive attention from both the media and Government. Domestically, allegations of worker exploitation have dominated recent headlines with coverage on Gloriavale farmworkers and horticultural RSE workers. And internationally, reports of China's treatment of its Uyghur population continues to cause concern. Reports also continue to shine light on companies selling consumer products with modern slavery involved somewhere on their supply chains.

This paper focuses on Aotearoa New Zealand's response to domestic worker exploitation, but it also touches briefly on our broader response to modern slavery internationally. The first part provides an outline of worker exploitation in Aotearoa New Zealand. The second part discusses how worker exploitation is regulated by non-employment related means such as through criminal law and immigration law. The Government's proposals for modern slavery legislation are also outlined. The third part addresses employment law mechanisms of enforcement, focusing on prosecutions under pt 9A of the Employment Relations Act 2000 for serious worker exploitation. As part of this discussion, some of the cases decided under pt 9A are summarised.

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[1] I would like to record my thanks to Owen Posthuma, Judges' Clerk, for his assistance in the preparation of this paper.

The Employment Court's decision in the Gloriavale case is addressed in relation to its finding that people working in slave-like conditions can be employees for the purposes of Aotearoa New Zealand's employment law.

II Worker exploitation

A Background

Worker exploitation has been described as non-minor breaches of employment standards.[2] One of the more extreme forms of worker exploitation is slavery. However, all forms of worker exploitation are considered in this paper.

Although it is thought that the number of workers in Aotearoa New Zealand who are exploited is high, the data is not entirely clear on the nature and extent of that exploitation. Current estimates are derived from overseas experience which does not necessarily align with Aotearoa New Zealand's situation.[3] However, a number of reports have helped to describe the basic contours of the problem here.

In 2016, a report identified the following sectors as being at risk for worker exploitation:[4]

- Construction;
- dairy industry;
- fishing;
- horticulture and viticulture;
- hospitality;
- international education;
- prostitution;
- health and aged care; and
- retail.

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2 "Consultation on Modern Slavery and Worker Exploitation" (8 June 2022) Ministry of Business, Innovation and Employment <www.mbie.govt.nz>.

3 Ministry of Business, Innovation and Employment *Combatting Modern Forms of Slavery: Plan of Action Against Forced Labour, People Trafficking and Slavery* (Wellington, December 2020) at 16–17.

4 Christiana Stringer *Worker Exploitation in New Zealand: A Troubling Landscape* (University of Auckland, 2016) at 5–20.

Most of these industries are labour intensive and are heavily reliant on a migrant workforce.[5] That migrant workforce is considered inherently vulnerable as they normally have no permanent right to be in Aotearoa New Zealand.[6] Union representatives were cited in 2019 as viewing Filipinos, Indians, and Chinese as being the most vulnerable migrant populations as well as international students and Latinos on working holiday visas.[7] A 2019 report from the Ministry of Business, Innovation and Employment (MBIE) found that migrants are often exploited by people of similar ethnic or cultural backgrounds.[8]

Exploitation occurs during both recruitment and employment. Exploitation that occurs across all sectors includes excessive working hours, non-payment or underpayment of wages, non-payment of taxes, non-payment of holiday pay, failure to provide contracts, and ill-treatment of workers.[9]

During recruitment, common exploitative practices include:[10]

- excessive recruitment fees;
- deceptive recruitment fees;
- visa fraud;
- contract abuse;
- debt bondage to employer.

During employment, exploitative practices include:[11]

- excessive and unlawful wage deductions;
- excessive work hours;
- exploitative working conditions;
- withholding of documents such as passports;
- failure to pay legal entitlements/minimum standards;
- physical, sexual, and psychological abuse;
- non-payment of wages;

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5 At vi.
6 At 37–38.
7 Francis Collins and Christina Stringer *Temporary Migrant Worker Exploitation in New Zealand* (Ministry of Business, Innovation and Employment, July 2019) at 39.
8 At 29–30.
9 Stringer, above n 5, at 23–26.
10 At 21.
11 At 21.

- violations of visa conditions;
- coercion;
- surveillance practices;
- deception;
- detention at place of employment.

Other common practices include cash premiums for jobs and visas where employees pay their employers to give them jobs. Similar situations arise where migrants pay cash for residency or partners (so as to attain residency).[12]

Of course, not all employers in the cited industries exploit their employees in any of the manners cited above. However, it has been suggested that exploitation is endemic in Aotearoa New Zealand.[13]

B General enforcement

Aotearoa New Zealand has ratified a number of international treaties which address forced labour, people trafficking, and slavery.[14] In an effort to comply with these international obligations, the Government has created a *Plan of Action Against Forced Labour, People Trafficking and Slavery,* which is in effect from 2020 to 2025, the goal of which is to guide an all of government response in prevention, protection, and enforcement in respect of slavery and worker exploitation.[15]

The most serious forms of exploitation are regulated. The Crimes Act 1961 makes it a crime to deal in slaves or people under 18 for sexual exploitation, body parts or engagement in forced labour.[16] It also criminalises smuggling migrants and trafficking persons.[17] The Immigration Act 2009 makes it a crime to exploit unlawful employees and temporary workers.[18]

In recent years, a number of prosecutions have been brought under these provisions in the District Court. In *R v Matamata,* the defendant was imprisoned after being convicted of 13

12 At 35–37.
13 Collins and Stringer, above n 8, at 18.
14 Ministry of Business, Innovation and Employment, above n 4, at 7.
15 At 8.
16 Sections 98 and 98AA.
17 Section 98C and 98D.
18 Section 351.

counts of using a person as a slave and 10 counts of human trafficking.[19] In *R v Ali,* the defendant was imprisoned after having trafficked 15 victims.[20] In *R v Lata,* the defendant was convicted of dealing with a person under 18 for sexual exploitation after she sold the sexual services of her 15-year-old daughter.[21] In an older case, *R v Decha-Iamsakun,* the defendant tried selling a sex-worker he had brought over from Thailand, as a slave.[22]

When we think about exploitation, typically we think of this type of case because they are headline grabbing and obvious. We tend to think that these are rare occurrences, and that Aotearoa New Zealand does not have the same issues that other countries do. However, exploitation often takes more insidious forms. Although less obvious, the impact of other forms of exploitation is traumatic and far-reaching. It also has serious economic consequences for the victims and confers significant competitive advantage and economic benefit to the perpetrators. A number of such cases are set out below as part of the discussion on employment law regulation.

An example of tangible legislative action taken to prevent worker exploitation in Aotearoa New Zealand was to require all foreign owned vessels in our exclusive economic zone to be reflagged as Aotearoa New Zealand vessels, which means they are subject to Aotearoa New Zealand law, including minimum employment standards.[23] This requirement was in response to widespread reports of physical, sexual, and psychological abuse and exploitative slavery-like working conditions on foreign fishing vessels in Aotearoa New Zealand waters.[24]

Recently Employment New Zealand has set up a reporting portal and helpline on its website to allow migrants and their support persons to report migrant exploitation.[25] The goal of this reporting portal is to support the work of Immigration New Zealand and the Labour Inspectorate to enable them to respond effectively and quickly to migrant exploitation.[26]

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[19] *R v Matamata* [2021] NZCA 372, (2021) 29 CRNZ 980.
[20] *R v Ali* [2016] NZHC 3077.
[21] *R v Lata* [2018] NZCA 615.
[22] *R v Decha-Iamsakun* [1993] 1 NZLR 141 (CA).
[23] Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014.
[24] Stringer, above n 5, at 9–10.
[25] "Reporting migrant exploitation" Employment New Zealand <https://reportmigrantexploitation.employment.govt.nz/>.
[26] Ministry of Business, Innovation and Employment, above n 5, at 16.

In conjunction with the reporting portal, the Government has also introduced a new Migrant Exploitation Protection Work Visa.[27] This visa has been designed to allow exploited workers to remain in Aotearoa New Zealand where their employer is specified as a condition of their visa.[28] The visa lasts for the shorter of six months or the duration remaining of the applicant's work visa. Recipients can work for any employer in Aotearoa New Zealand for that period.[29] To obtain the visa, applicants must:[30]

- be in New Zealand; and
- hold a work visa that specifies their employer as a condition of their visa; and
- meet certain health and character requirements; and
- have made a report to MBIE and MBIE must have assessed it to be credible that exploitation has occurred.

However, it is important to note that those who are unlawfully in Aotearoa New Zealand will not be eligible for this visa. Only those who have a current work visa specifying their employer as a condition will be eligible. This means that although the reporting portal states that migrants reporting exploitation will be treated fairly, fair treatment may still ultimately lead to deportation for some.[31] Accordingly, there is a concern that some migrants may not report exploitation because of the worry that their report will be used against them by Immigration New Zealand.

To address some of the issues arising from the immigration aspect of worker exploitation, the Government also recently introduced the Worker Protection (Migrant and Other Employees) Bill on 29 September 2022.[32] The stated policy behind the Bill is to "improve compliance and enforcement legislation to deter employers from exploiting migrant workers".[33]

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27 "New temporary visa and reporting tools announced to combat migrant exploitation" (1 July 2021) New Zealand Immigration <www.immigration.govt.nz>.

28 Ministry of Business, Innovation and Employment, above n 3, at 16.

29 This can be contrasted with an Accredited Employer Work Visa where the visa is connected with a specific employer.

30 "WI20 Migrant Exploitation Protection work visa (MEPV) instructions" Immigration New Zealand <www.immigration.govt.nz/opsmanual/#75850.htm>.

31 "Reporting migrant exploitation" Employment New Zealand <https://reportmigrantexploitation.employment.govt.nz/>.

32 Worker Protection (Migrant and Other Employees) Bill 2022 (174-1).

33 Worker Protection (Migrant and Other Employees) Bill 2022 (174-1) (explanatory note) at 1.

The Bill proposes introducing provisions into the Immigration Act, which will: establish new immigration offences, allow immigration officers to request documentation from employers to ensure compliance, allow immigration officers and Labour Inspectors to issue infringement notices for breaches, and allow names of employers who have breached the Act to be publicised. The Bill also proposes amendments to the Companies Act 1993 to prevent employers from becoming directors or managers in companies if they have used a company to commit people trafficking offences or to exploit migrants.[34]

Although slavery and forced labour are already illegal in Aotearoa New Zealand, the Government is also assessing whether to implement legislation regulating modern slavery in domestic and international operations and supply chains. MBIE has released a discussion document making a number of proposals.[35]

Some of the preliminary definitions proposed by the discussion document are noteworthy. *Modern slavery* is defined as including situations where a person cannot leave due to threats, violence, coercion, deception, and/or abuse of power, which includes forced labour, debt bondage, forced marriage, slavery, and human trafficking. On the other hand, *worker exploitation* is defined as including non-minor breaches of Aotearoa New Zealand employment standards.[36]

The definitions are important because the responsibilities proposed in the discussion document will only extend to international operations and supply chains where a business becomes aware of modern slavery. Whereas in the case of domestic operations or supply chains obligations they will extend to situations where the business becomes aware of modern slavery or worker exploitation.

The discussion document also provides definitions of the terms "operations" and "supply chains". Operations are broadly defined as referring to all activity undertaken by an entity. This includes all material relationships of an entity, which would include investment and lending activity, material shareholdings, and contractual relationships (such as subcontracting

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34 At 1–2.

35 *Summary Discussion Document: A Legislative Response to Modern Slavery and Worker Exploitation – Towards freedom, fairness and dignity in operations and supply chains* (Ministry of Business, Innovation and Employment, 8 April 2022).

36 At 10.

and franchising relationships). Supply chains are defined as the network of organisations that work together to transform raw materials into finished goods and services.[37]

The following proposals are made in the discussion document:

1. All companies should be required to take proportionate action if they become aware of modern slavery in their international operations and supply chains. They will also be required to take action if they become aware of any worker exploitation in their domestic operations and supply chains.

2. All companies should be required to undertake due diligence to prevent worker exploitation in entities over which they have substantial control, whether through contract or ownership.

3. Medium and large companies should be required to disclose the steps they are taking to address modern slavery in their international operations and supply chains and worker exploitation in their domestic operations and supply chain.

4. Larger companies should be required to undertake due diligence to prevent, mitigate and remedy modern slavery in their international operations and supply chains and worker exploitation in their domestic operations and supply chains.

Submissions closed on the discussion document on 7 June 2022, and MBIE is currently reviewing feedback on a legislative proposal.[38]

C Enforcement under the Employment Relations Act 2000

Worker exploitation and modern slavery are also regulated by minimum standards legislation such as the Minimum Wage Act 1983, the Wages Protection Act 1983 and the Holidays Act 2003, which are enforced under the Employment Relations Act 2000.

As well as establishing further minimum standards,[39] the Employment Relations Act also establishes systems to prevent worker exploitation. The primary institutions established by the Act are of course mediation services, the Employment Relations Authority and the

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[37] At 10.
[38] "Consultation on Modern Slavery and Worker Exploitation", above n 3.
[39] Examples of minimum standards in the Employment Relations Act include ss 65 and 130.

Employment Court. Where workers have been exploited in breach of minimum employment standards, the first port of call will always be to these institutions.

In light of the inherent vulnerability of exploited workers, the Act also continues the office of Labour Inspector.[40] Labour inspectors are empowered to determine whether minimum standards legislation has been complied with, take all steps to ensure that those standards are complied with, and enforce compliance where there has been breach of standards.[41] Where a labour inspector believes on reasonable grounds that any employer is failing to meet minimum standards, they can issue improvement notices and demand notices requiring employers to comply with their obligations.[42] Labour inspectors may also commence an action on behalf of an employee to recover any wages or holiday pay owed by an employer.[43] Incidences of migrant exploitation have been an area of priority and focus for the Labour Inspectorate in recent years.[44]

The Employment Relations Act has always allowed for the imposition of a penalty for a breach of the Act or employment agreements.[45] This is $10,000 for an individual and $20,000 for a company,[46] and an employee or employer can apply for it themselves.

Part 9A was introduced in 2016 to back up the provisions relating to the enforcement of employment standards. It further empowers labour inspectors.[47] In particular, labour inspectors are able to apply for:[48]

(a) declarations of breach in relation to breaches of minimum entitlement provisions that are serious;

(b) pecuniary penalty orders for breaches of minimum entitlement provisions that are serious – $100,000 for a company and $50,000 for an individual (or three times the amount of the financial gain made from the breach);

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40 The Employment Contracts Act 1991 already provided for a Labour Inspectorate.
41 Section 223A.
42 Sections 223D and 224.
43 Section 228.
44 John Hilton “$120K fine for employer who exploited migrant workers” (22 August 2018) HRD <www.hcamag.com>.
45 Employment Relations Act 2000, ss 133–136.
46 Section 135(2).
47 Employment Relations Amendment Act 2016; see also *Lawton v Steel Pencil Holdings Ltd* [2021] NZEmpC 199, [2021] ERNZ 1164 at [30]–[33].
48 Employment Relations Act, s 142A(1)(a).

(c) compensation orders for serious breaches of minimum entitlement provisions to compensate employees who have suffered or are likely to suffer loss or damage as a result; and

(d) banning orders based on certain grounds, including persistent breach of employment standards.

Where there have been serious breaches, these powers allow labour inspectors to go to the Court to seek penalties against employers and compensation for employees.[49] They can also apply for a banning order to prevent a person from being an employer, being an officer of an employer,[50] or being involved in employing staff, for up to 10 years.[51]

To ensure that these provisions are enforceable and meaningful, the Act also provides for people who have been involved in the breach to also be subject to penalties, compensation orders and banning orders. Being "involved in a breach" includes aiding, abetting, counselling or procuring the breach; inducing the breach (through threats or promises); being directly or indirectly knowingly concerned in the breach; and conspiring with others to effect the breach.[52]

These provisions are a means of ensuring that key actors in the breach are held responsible. A person may be treated as a person involved in the breach only if that person is an "officer of the entity". As noted above[53], that has a broader meaning than being a director or partner. It extends to any other person occupying a position in the entity, if the person is in a position to exercise significant influence over the management or administration of the entity.[54]

A person involved in a breach can have penalties imposed on them personally as well as being potentially liable for any default in payment of wages or other money payable by the employer.[55]

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49 Sections 142E and 142J.

50 An officer means:

(a) a person occupying the position of a director of a company if the employer is a company:

(b) a partner if the employer is a partnership:

(c) a general partner if the employer is a limited partnership:

(d) a person occupying a position comparable with that of a director of a company if the employer is not a company, partnership, or limited partnership:

(e) *any other person occupying a position in the employer if the person is in a position to exercise significant influence over the management or administration of the employer.* (emphasis added)

51 Sections 142M and 142N.

52 Section142W(1).

53 See above, n 51.

54 Section142W(3)(e).

55 Section 142Y.

Accordingly, if employment standards have been breached, a labour inspector can pursue individuals involved even if the employing company has been liquidated. These provisions are designed to deal with phoenixing – where a business is placed into liquidation to avoid the payment of debts and where the owner then establishes a new business.[56] Their purpose is also to ensure that the actual perpetrators of the breach(es) are held accountable.

Labour inspectors have brought a number of cases to the Court under pt 9A. These are set out below.

In *Labour Inspector v Victoria 88 Ltd t/a Watershed Bar and Restaurant,* Judge Corkill considered a situation where an employer had used a forfeiture clause against multiple employees to avoid paying holiday pay.[57] The parties agreed that there had been a serious breach, and the Court ordered penalties of $20,000 and a banning order against the employer for three years. However, Judge Corkill noted that the decision was based on the agreed position of the parties and should not be used as precedent for subsequent decisions.[58]

In *Labour Inspector v Prabh Ltd,* Judge Perkins considered a situation where three individuals came from India to New Zealand to study business management and were hired as shop assistants.[59] The employer failed to provide them with employment agreements, failed to keep records, and failed to pay holiday pay and the minimum wage. Although the Court ordered substantial penalties of $132,000 for the "serious and persistent breaches over a lengthy period", no banning order was made because doing so would have put the employer out of business, which would lead to other employees being dismissed.[60] The Court also noted that while the employer and employees colluded with an immigration advisor to obtain the necessary visas for the employees, this did not absolve the employer of any wrongdoing because they took advantage of the employees' immigration vulnerabilities.[61]

In *Labour Inspector v Matangi Berry Farm Ltd,* Judge Perkins and Judge Corkill considered a situation where a labour inspector had brought a claim in respect of 207 employees. The parties had reached a settlement agreement in respect of compensation but acknowledged that only the

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56 Collins and Stringer, above n 8, at 41; and *Lawton v Steel Pencil Holdings Ltd,* above n 48, at [34].

57 *Labour Inspector v Victoria 88 Ltd t/a Watershed Bar and Restaurant* [2018] NZEmpC 26, [2018] ERNZ 88.

58 At [7].

59 *Labour Inspector v Prabh Ltd* [2018] NZEmpC 110, [2018] ERNZ 310.

60 At [77].

61 At [9]–[10]. Under the new Migrant Exploitation Protection Work Visa discussed above, the applicants would likely have been able to obtain a temporary visa to protect their immigration status.

Court could determine the issue of penalties.[62] The employer company and its owner were penalised $127,200 for failing to provide employment agreements, failing to keep records and failing to pay holiday pay and the minimum wage.[63] The Court noted that given the presence of migrant workers, there was a severe imbalance of power.[64] Judge Corkill held: "The Court needs to make it clear to all employers it will not tolerate the exploitation of migrant workers."[65]

In *Labour Inspector v NewZealand Fusion International Ltd,* Chief Judge Inglis considered a situation where an employer in New Zealand offered three individuals in China jobs in New Zealand.[66] However, the jobs were conditional on each paying about $45,000 to the employer. Once they arrived, they were not paid for any of the work they carried out. Chief Judge Inglis found that the individuals were employees because they all carried out work for the company's benefit under the close direction and control of the company's owner.[67] The Chief Judge also found the employer's breaches had been serious. The employer company and owner were required to pay large penalties of $450,000 and compensation of $230,350.

Further, although acknowledging that a banning order might prevent the employer from running their business, Chief Judge Inglis noted that in some situations it may be desirable for an employer to be unable to continue their business. Given the severity of the case and the employer's failure to express remorse or insight, the Chief Judge indicated that she had "no confidence" that the employer would not repeat their "cynical behaviour". Therefore, she made a banning order for 18 months.[68] She went on to note that should further breaches occur, a longer banning order would likely be made and that if the banning order itself was breached, serious sanctions were available to the Court.[69]

Subsequently, the employer company was liquidated and unable to pay its debts, and the labour inspector sought and obtained consequential orders against the owner (an individual) of the

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62 *Labour Inspector v Matangi Berry Farm Ltd* [2019] NZEmpC 74.
63 *Labour Inspector v Matangi Berry Farm Ltd* [2020] NZEmpC 43, [2020] ERNZ 67.
64 At [38].
65 At [71](a).
66 *Labour Inspector v NewZealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525.
67 At [16].
68 At [98]–[105].
69 At [106].

company under s 142L, which allows the Court to order persons involved in a breach to pay compensation to employees.[70]

In *Labour Inspector v Chhoir t/a Bakehouse Café,* Chief Judge Inglis considered a situation where an employer failed to provide minimum pay and holiday entitlements to two employees.[71] The defendants acknowledged that they had failed to comply with their obligations and paid their outstanding entitlements prior to the hearing. Compensation of $20,000 and penalties of $70,000 were ordered against the employer. However, the Court declined to make a banning order on the basis that the employer had illustrated remorse and did not have any record of employment breaches.[72]

In *Labour Inspector v Jeet Holdings Ltd,* Judge Smith considered a situation where a labour inspector claimed that between 2007 and 2018, the employer(s) breached the Minimum Wage Act and the Holidays Act, and that one employee paid a premium for their job. Further, the inspector claimed that the employer had not kept accurate time and wage records.[73] The Inspector's investigation showed a consistent pattern where employees were routinely instructed to show in their timesheets fewer hours than they actually worked, which led to systemic under-compensation and inaccurate time records.[74] The employee who paid a premium was required to pay $10,000 for his position as a manager.[75] One of the difficulties faced in the proceedings was the existence of multiple companies which, although jointly owned by the same owner, each employed different staff. One of the companies no longer existed, so no orders could be made against it.[76] Ultimately, however, the employer companies were identifiable and compensation was ordered. Penalty orders of $308,000 were also made against three companies and their overall owner.[77] Finally, in light of the systematic nature of the breaches, a banning order was made against the overall owner of the companies for two years.[78]

In *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre,* the Court made consent orders against a number of companies and one individual (as a person involved in a breach) in

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70 *Labour Inspector v NewZealand Fusion International Ltd* [2020] NZEmpC 202, [2020] ERNZ 473.
71 *Labour Inspector v Chhoir t/a Bakehouse Café* [2020] NZEmpC 203, [2020] ERNZ 479.
72 At [37]–[40].
73 *Labour Inspector v Jeet Holdings Ltd* [2021] NZEMPC 84, [2021] ERNZ 336 at [1].
74 At [26] and [27].
75 At [32].
76 At [22].
77 At [130]–[134].
78 At [142].

respect of payment of arrears and repayment of premiums in excess of $500,000 for five employees.[79] However, no decision was made at that point on whether any penalty or banning orders should be made. Those issues were left for a subsequent hearing.[80]

Other cases under pt 9A of the Employment Relations Act are currently being considered by the Court.

III Gloriavale

In *Courage v Attorney-General,* Chief Judge Inglis considered a situation where serious worker exploitation was alleged by three male ex-members of Gloriavale.[81] The claimants sought a declaration under s 6 of the Act that they were employees. They said they had been required to work long hours under harsh conditions from the age of six until they left the community.[82] Previous investigations by labour inspectors had led to no further action with the inspectors concluding that the members of Gloriavale were not employees.[83]

In her decision, Chief Judge Inglis discussed the intersection of slavery and employment rights. During the hearing, submissions were made that the working conditions at Gloriavale might amount to slavery or forced labour. The labour inspectors suggested that slave-like working conditions would not be a matter for the Labour Inspectorate; rather, it would be a matter for the Police or WorkSafe because slaves are not employees.[84]

Chief Judge Inglis held that there is no exception in s 6 for slaves, as that would lead to particularly vulnerable workers not receiving protection. She further noted that although Parliament expressly excluded certain workers from holding employment status, it had not excluded slaves. On the other hand, s 98(1)(b) of the Crimes Act, which criminalises slave dealing, uses the word "employ" in the context of slavery. Even though criminal law provides an offence regime for slavery, employment law and criminal law can operate in tandem in regulating slavery. Finally, she noted that it would be ironic if those suffering from the worst

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79 *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre* [2021] NZEmpC 149.
80 At [25].
81 *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746.
82 At [1].
83 At [14]–[16].
84 At [150].

workplace abuses were unable to bring their claims to the Employment Court because the seriousness of abuse prevented a finding that they were an employee.[85]

This finding of the Court means that a person working in slave-like conditions may still fall within the definition of employee under s 6. Even if a criminal prosecution was brought, a labour inspector would still be able to apply for penalties, banning orders and compensation under pt 9A of the Employment Relations Act. A conviction for slavery would likely be relevant in assessment of appropriate penalties. However, as noted by the Chief Judge, it is not for the Employment Court to make findings as to whether criminal offending such as dealing in slaves has occurred.[86]

Other parts of the judgment are also relevant to the issue of worker exploitation. The plaintiffs were found to be employees from the age of six because they worked for reward for the commercial benefit of Gloriavale under the management of Gloriavale's leadership.[87] This finding may have implications on the rights of children who have been subject to exploitation in Aotearoa New Zealand and the remedies available to them.

Further, Chief Judge Inglis concluded that the members of Gloriavale could not be volunteers because volunteers do not expect to be rewarded for work whereas members of the Gloriavale community expected to be rewarded with food, shelter and community support.[88] She said she would not have accepted that they were partners or independent contractors.[89] Ultimately, given the unique nature of Gloriavale, the findings may have limited application in subsequent cases, but the discussion on the interplay between volunteers and employees will likely be relevant in future worker exploitation cases.

IV Conclusion

This paper has discussed what worker exploitation in Aotearoa New Zealand currently looks like and the areas of law reform being considered to address the problem.

We have looked at current tools within employment legislation to deal with breaches of minimum standards including pt 9A of the Employment Relations Act.

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85 At [151]–[155].
86 At [155].
87 At [157]–[169].
88 At [185]–[191].
89 At [202].

Part 9A cases have so far been relatively rare. However, given the widespread and hidden nature of worker exploitation in Aotearoa New Zealand, it is import to be aware of these issues, the broad nature of the legal responsibilities held by employers and individuals involved in breaches and avenues of redress available.

Worker exploitation is real in Aotearoa New Zealand. Whether the tools available to deal with it currently are sufficient is a matter of discussion. Watch this space!