



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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**SCIENCE,  
SKILLS AND  
INNOVATION  
GROUP**



# International students in non-compliant employment

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## Purpose

- 1 This report outlines what is known about the extent to which international students are working in non-compliant employment, possible reasons why that is occurring and a summary of the steps being taken to address it.

## Executive Summary

- 2 Non-compliant employment in relation to international students is defined as employment where minimum employment standards are not applied or which exceed the terms of a student's visa.
- 3 Based on a recent survey, it is estimated that around nine out of ten international students who reported working for pay in the past 12 months, were being paid at or above the minimum wage (at that time \$13.50 an hour)<sup>1</sup>. This means that nearly one in ten (9.5 per cent) of those respondents<sup>2</sup> were being paid below the minimum wage (the rate for New Zealand wage earners is 4.3 per cent<sup>3</sup>). The percentage of those who reported being paid less than the minimum wage was highest for English language students (27 per cent), noting however that only a small number of such students participated in the survey, and this estimate could be unreliable as a result.
- 4 Caution needs to be applied when considering these findings, and they should be viewed as being indicative only. In addition to the low overall response rate, a quarter of participants did not respond to the questions on work. Those who did not respond are excluded from the tables, and their characteristics are assumed to be the same as those who did respond.
- 5 Factors that put some international students at risk of non-compliant employment include:
  - financial pressures, which can arise from higher than expected living costs, loan repayment obligations and lack of access to funds for living costs
  - lack of awareness of employment rights
  - reluctance to report exploitation, especially if they fear immigration consequences for themselves, and
  - the industries/sectors that many international students work in, such as the retail, hospitality and agriculture/horticulture sectors, which are the most common industries for all labour inspector investigations.

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<sup>1</sup>The students surveyed were asked to report before-tax earnings. Some respondents may not have fully understood the distinction between before and after-tax earnings and some students may have been paid in cash and not paid tax..

<sup>2</sup> In total 234 survey respondents reported they were earning less than the minimum wage.

<sup>3</sup> Wage earners aged 18 – 64 years who reported earning less than the minimum wage of \$13.75, *2013 New Zealand Income Survey*

- 6 Recent measures to crack down on exploitation of migrant workers will benefit international students. These measures include:
- changes to immigration instructions made on 10 June 2013, which mean victims of exploitation will not be disadvantaged with regard to their immigration status if they make a complaint against an employer, and
  - the introduction of the Immigration Amendment Bill (No 2), which includes provisions to:
    - extend the scope of section 351 of the Immigration Act 2009 to make exploitation of lawful temporary migrants (including international students) an offence
    - make employers who exploit migrant workers (including international students), or knowingly employ migrant workers without work rights, liable for deportation if the offence was committed within the first 10 years of their being granted a residence visa, and
    - extend the powers available to immigration officers to enter and search employers' premises and talk to people present to identify offending by employers.

7 These measures will:

- send a clear deterrence message to employers who seek to take advantage of vulnerable migrant employees and ensure that those who exploit migrant workers are held to account
- support businesses that comply with minimum employment standards against the potentially anti-competitive practices of those businesses that do not, and
- protect New Zealand's international reputation as a place, not only where international students gain a high quality education, but where those who work are treated fairly by their employers and minimum terms and conditions are met.
- Further interventions to mitigate migrant vulnerability (including that of international students), and reduce exploitation or adverse effects, may be identified through further research being undertaken by the Ministry.

## **The extent to which international students work while in New Zealand**

- 8 The ability to work part-time is important to many international students coming to New Zealand. Working while studying allows students to gain useful work experience, earn extra money to help support themselves and improve their English outside of the classroom.

- 9 Self-reported labour market participation varied from 31-49 per cent for university students, 50-67 per cent for students enrolled with polytechnics, 55-67 per cent for those at private training establishments (PTEs) and 14-19 per cent for English language students<sup>4</sup>. These participation rates are based on:
- lower range - from student responses to the i-Graduate surveys (the 2013 survey for students at universities and institutes of technology and polytechnics (ITPs) and the 2011/12 survey for PTEs), and
  - upper range - from analysis of responses to a survey of International Students' Expenditure commissioned by Education New Zealand (ENZ) for their research into the economic impact of export education in 2013<sup>5</sup>.
- 10 China and India are our largest markets for international students. A higher percentage (51 per cent of university students and 66 per cent of ITP students) from India reported working in 2013 than students from China (29 per cent of university and 56 per cent of ITPs)<sup>6</sup>.

## **The extent to which international students are working in non-compliant employment**

- 11 Non-compliant employment in relation to international students is defined as employment where minimum employment standards are not applied or which exceed the terms of a student's visa. The Ministry of Business, Innovation and Employment (the Ministry) has used information available from recent surveys to assess the extent to which international students are working in non-compliant employment.
- 12 The best estimate is that 9.5 per cent of international students who are working are being paid below the minimum wage. In the *2013 New Zealand Income Survey*, 4.3 per cent of New Zealand wage earners aged 18 – 64 years reported that they earned less than the minimum wage. A study comparing the experiences of 101 Chinese international students with 363 domestic students found a significantly higher percentage of international students being paid below the minimum wage<sup>7</sup>.
- 13 An accurate assessment of the size of the issue is difficult because of:
- the hidden nature of employment below minimum standards
  - the reluctance of those potentially in breach of their visa conditions, or unaware of their rights, to complain; and
  - the casual or part-time basis of most international students' employment.

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<sup>4</sup> The high and low range for English language students is based on inclusion and exclusion of non-responses to the question on whether they had worked in the past 12 months in the Survey of International Student Expenditure.

<sup>5</sup> Unpublished MBIE analysis of the Survey of International Student Expenditure conducted by National Research Bureau (NRB) and Infometrics (2013). At MBIE's request, ENZ agreed for some questions on work to be included in the survey.

<sup>6</sup> I-graduate International Insight, Universities and ITPs 2013, IGI Services 2013.

<sup>7</sup> *A matter of choice. Tertiary Student Term Employment: An investigation of New Zealand domestic and Chinese international students*, Xiofeng Wang; 2011.

## Small scale studies identified high levels of non-compliance

- 14 In 2012, the Auckland University of Technology (AUT) released a report on the work experiences of certain international students and recent graduates on job search visas working in the horticultural industry in Hawkes Bay<sup>8</sup>. The report found that all 93 students or recent graduates surveyed, mainly from India, were being paid below the minimum wage. Just under half the workers had no formal written employment agreement, which is a legal requirement.
- 15 Two other studies also found evidence of non-compliant employment practices experienced by the international students surveyed. A study of 74 university students working in the hospitality, service and agriculture sectors found that 38 per cent were paid below the minimum wage<sup>9</sup>. The percentage of those who reported being paid below the minimum wage was higher for those working in the agriculture and horticulture sector (75 per cent). A thesis comparing the experiences of 363 domestic and 101 Chinese international university students found that 42 per cent of the international students were paid below the minimum wage while only 7 per cent of domestic students were<sup>10</sup>.

## Results of a survey in which over 7,000 international students participated

- 16 The above studies indicate at least pockets of non-compliance, but are too small to reliably identify the extent to which international students experience non-compliant employment practices while working in New Zealand. At the request of the Ministry, Education New Zealand agreed to insert questions into a survey it had already commissioned for a report on the economic impact of international education<sup>11</sup> to find out more about non-compliant employment of international students.
- 17 Over 7,000 (7,394) international students participated in the survey. Information on the survey methodology is provided in Appendix One. Caution needs to be applied when considering the findings of the survey, and results should be considered as being indicative only. While the survey had a large sample, the response rate was low (19%), and a quarter of students did not answer the question on whether they had worked in the past 12 months. In particular, the results for English language students need to be treated with caution, since only 43 English language student participants reported working in the past 12 months. The small number of English language students answering the questions on work may be explained by the relatively few English language students at that time with work rights.

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<sup>8</sup> Anderson D., Jamieson, S., and Naidu, K (2012), *Managed Migration? The health and safety and human rights implications of student migrant labourers in the horticulture sector*, Auckland University of Technology and Sydney University.

<sup>9</sup> Danae Anderson, Krish Naidu, (2010), *The Land of Milk and Honey? The contemporary working lives of contingent labour*, AUT University.

<sup>10</sup> Wang (2011).

<sup>11</sup> NRB and Infometrics (2013).

- 18 Of the 7,394 students who responded to the survey, 2,645 reported working for pay in the past 12 months, 2,147 reported not working and 2,602 did not advise either way<sup>12</sup>. The survey asked students who had worked in the past 12 months a number of questions about their pay and working conditions, including their hourly rate of pay, entitlement to paid breaks and whether or not they perceived that their employer treated them fairly. The survey's findings are detailed below.

### Hours worked

- 19 International students are required to comply with the conditions of their visa. A student visa holder with part-time work rights would breach their visa conditions if they worked more than 20 hours a week while studying<sup>13</sup>. It is also an offence for employers to employ someone who does not hold a visa allowing them to work.
- 20 About 10 per cent of students who said they had worked for pay in the past 12 months reported that they worked more than the 20 hours a week while studying (see Table 1). The proportion of students working for more than 20 hours a week while they were studying was lowest for university students (5 per cent) and highest for English language students (31 per cent). About one in ten students studying at ITPs (11 per cent) and PTEs (13 per cent) had worked for more than 20 hours a week while studying. There was little variation between the proportion of students working more than 20 hours a week by country of origin (11 per cent from India and 9 per cent from China and other countries) (see Table 2).

*Table 1 - Hours worked by international students by main education provider\**

Hours worked	Main provider type					
	English language (%)	PTE (%)	ITP (%)	University (%)	Total (%)	Total (Count**)
0-9 hours	7.7%	8.8%	10.1%	36.9%	21.5%	2,293
10-20 hours	61.5%	78.1%	79.4%	57.8%	69.0%	7,354
21-29 hours	11.6%	5.7%	5.5%	1.3%	3.9%	411
More than 30 hours	19.1%	7.3%	5.0%	3.9%	5.6%	601
Total (%)	100.0%	100.0%	100.0%	100.0%	100.0%	
Total (Count**)	235	3,682	2,013	4,728		10,658

For students who reported having worked for pay in the last 12 months, where the job was undertaken while studying.

\*\* Counts are weighted to represent the total sample of students selected for the survey.

<sup>12</sup> These are unweighted counts and as a result do not match the numbers provided in the tables.

<sup>13</sup> Students studying for an academic year were allowed to work full-time during the summer holiday period.

Table 2 - Hours worked by international students by country of origin\*

Hours worked	Source country				
	Mainland China & HK (%)	India (%)	Other (%)	Total (%)	Total (Count**)
0-9 hours	29.6%	6.4%	25.9%	21.5%	2,293
10-20 hours	61.6%	82.6%	65.1%	69.0%	7,354
21-29 hours	3.5%	5.1%	3.4%	3.9%	411
More than 30 hours	5.4%	6.0%	5.6%	5.6%	601
Total (%)	100.0%	100.0%	100.0%	100.0%	
Total (Count**)	2,334	2,825	5,499		10,658

\*For students who reported having worked for pay in the last 12 months, where the job was undertaken while studying.

\*\* Counts are weighted to represent the total sample of students selected for the survey.

### Pay rates

- 21 Almost 10 per cent of students who had worked for pay in the past 12 months reported working for less than \$13.50 per hour<sup>14</sup> (see Table 3). The percentage of those who reported being paid less than the minimum wage was highest for English language students (27 per cent) but there was little difference between students studying at universities, ITPs or PTEs (9, 8 and 10 per cent respectively). A slightly higher proportion of students from China reported being paid less than the minimum wage (13 per cent). This compares with 9 per cent of students from India and 7 per cent of students from other countries (see Table 4).
- 22 On the other hand, 13 per cent of students reported earning \$20 an hour or more before tax (see Table 3). The proportion who reported earning \$20 an hour or more was higher for university students (23 per cent) and between 6 and 7 per cent for students of other provider types. Students from India (8 per cent) and China (9 per cent) were less likely to report earning \$20 an hour or more than students from other countries (19 per cent) (see Table 4).

<sup>14</sup> The minimum wage changed from \$13.50 per hour to \$13.75 per hour on 1 May 2013. The survey went into the field 7 May 2013 but \$13.50 was taken as the minimum wage given how recently the minimum wage had increased when the survey was taken.

Table 3 – Usual hourly pay for international students by main education provider\*

	English language (%)	PTE (%)	ITP (%)	University (%)	Total (%)	Total (Count**)
<b>Less than \$13.50</b>	27.1%	8.0%	9.8%	9.3%	9.5%	1,559
<b>\$13.50</b>	23.0%	13.5%	15.3%	13.3%	14.0%	2,314
<b>\$13.51-\$13.99</b>	7.3%	23.8%	20.2%	9.7%	16.5%	2,722
<b>\$14-\$14.50</b>	18.8%	17.1%	17.5%	10.6%	14.4%	2,380
<b>\$14.51-\$15</b>	4.6%	13.0%	13.9%	9.5%	11.4%	1,883
<b>\$15.01-\$17</b>	6.4%	10.2%	10.4%	9.7%	9.9%	1,638
<b>\$17.01-\$20</b>	3.7%	5.6%	3.3%	13.3%	8.4%	1,378
<b>\$20.01-\$25</b>	0.0%	1.3%	1.8%	12.0%	6.0%	981
<b>More than \$25</b>	5.5%	5.3%	4.7%	10.5%	7.4%	1,227
<b>Not answered</b>	3.7%	2.2%	3.1%	2.1%	2.4%	392
<b>Total (%)</b>	100.0%	100.0%	100.0%	100.0%	100.0%	
<b>Total (Count**)</b>	494	5,526	3,389	7,064		16,474

\* For students who reported having worked for pay in the last 12 months.

\*\* Counts are weighted to represent the total sample of students selected for the survey.

Table 4 – Usual hourly pay for international students by country of origin\*

	<b>Mainland China &amp; HK (%)</b>	<b>India (%)</b>	<b>Other (%)</b>	<b>Total (%)</b>	<b>Total (Count**)</b>
<b>Less than \$13.50</b>	13.2%	8.8%	7.2%	9.5%	1,559
<b>\$13.50</b>	20.4%	12.5%	10.6%	14.0%	2,314
<b>\$13.51- \$13.99</b>	14.8%	26.3%	12.2%	16.5%	2,722
<b>\$14- \$14.50</b>	13.3%	14.8%	15.0%	14.4%	2,380
<b>\$14.51- \$15</b>	11.3%	11.8%	11.3%	11.4%	1,883
<b>\$15.01- \$17</b>	8.6%	9.0%	11.4%	9.9%	1,638
<b>\$17.01- \$20</b>	7.4%	5.0%	10.9%	8.4%	1,378
<b>\$20.01- \$25</b>	4.1%	2.5%	9.1%	6.0%	981
<b>More than \$25</b>	5.2%	5.9%	9.9%	7.4%	1,227
<b>Not answered</b>	1.8%	3.3%	2.3%	2.4%	392
<b>Total (%)</b>	100.0%	100.0%	100.0%	100.0%	
<b>Total (Count**)</b>	5,015	4,151	7,308	16,474	16,474

\* For students who reported having worked for pay in the last 12 months.

\*\* Counts are weighted to represent the total sample of students selected for the survey.

### Written employment agreement

- 23 Students who had worked for pay in the last 12 months were asked whether or not they had a written employment agreement that described their work and conditions of employment. Having a written employment agreement is required under the Employment Relations Act 2000. Seventy-six per cent of students reported having a written employment agreement, 12 per cent reported they did not, and 13 per cent either did not know or did not respond. The percentage of students who reported having a written employment agreement was lowest for English language students

57 per cent). Only 60 per cent of students from China had a written employment agreement, compared with 83 per cent of students from India and 82 per cent of students from other countries.

### **Paid or unpaid breaks**

- 24 Students who had worked for pay in the last 12 months were asked whether or not they had paid or unpaid breaks during their work day which is required by the Employment Relations Act 2000 if they worked longer than four hours at a time. Sixty per cent reported they had breaks, 19 per cent reported they had not, and 19 per cent reported they did not know. Again, the percentage of students who reported they had breaks was lower for English language students (46 per cent) than students at other providers. Students from India (71 per cent) were more likely to indicate that they had a break during their work day than students from China (54 per cent) or other countries (58 per cent).

### **Perceptions of being treated fairly by their employer**

- 25 Students who had worked for pay in the last 12 months were asked if they thought their employer was treating them fairly. Eighty two per cent responded positively and only six per cent responded negatively. However, only 59 per cent of English language students thought that their employer was treating them fairly. Students from China (78 per cent) were slightly less likely than those from India (86 per cent) and other countries (84 per cent) to report that their employer treated them fairly.

## **Research on migrants as vulnerable workers**

- 26 International students in non-compliant employment need to be viewed in the wider context of migrants as workers vulnerable to exploitation. The Ministry is conducting research on people born outside New Zealand who either have a temporary right to work or no right to work in New Zealand. International students are included within the scope of that research. The research aims to find out:
- the nature and extent of migrant worker vulnerability and exploitation, including in what sectors migrant workers are affected by non-compliance with health and safety or employment relations laws and regulations
  - the experiences of vulnerable workers, including what makes them vulnerable, and
  - effective interventions, including what could be done to mitigate migrant vulnerability and reduce exploitation and/or adverse effects.
- 27 A phased approach to the research is being undertaken. The first phase includes a review of international and New Zealand literature on vulnerable migrant workers, due to be completed later in early 2014. This will help define issues and prioritise areas for future research.

## Why some students are at risk of non-compliant employment

### Financial pressures

- 28 Financial pressures on international students can lead them to accept unlawful employment with poor pay and conditions, including working longer hours than their visa conditions allow. Financial pressures can arise from higher-than-expected living costs, loan repayments and lack of access to funds for living costs.
- 29 Anecdotal evidence suggests that some offshore education agents are advising potential students that they can easily obtain high-paying jobs while they are studying. This contributes to students' financial pressures, as they have false expectations of being able to support themselves through employment rather than using their maintenance funds.
- 30 While it is a requirement in a visa application for students to show they have funds to meet their living costs, not all students have access to the funds they show as being available. This may be for the following reasons:
- It is common for students to use their families' funds as support for their visa application. It is difficult for an immigration officer to assess whether such funds are genuinely available for supporting the student when they are in New Zealand.
  - Bank loans as payment for course fees are accepted by some Immigration New Zealand branches. It is reported that around 55 per cent of students in some markets may use bank loans.
  - Some stakeholders reported that students may receive loans from money lenders to support their visa applications. The scope of this practice is unclear. Such loans are reported to incur very high interest rates.
- 31 According to a recent survey of university and ITP students<sup>15</sup>, the main sources of funding of international students were family and their own funds (see Table 5). Loans and part time work contributed a larger share of ITP students' funding than that of university students, who were more likely to be receiving a scholarship.

*Table 5: How international students were funding their studies*

Type of funding	ITP	University
Family	65%	56%
Own funds	26%	27%
Loan	16%	10%
Part-time work	14%	9%
University scholarship	1%	11%
Home or host country government scholarship	5%	14%
Other sponsored scholarship	2%	7%

<sup>15</sup> Graduate International Insight, Universities and ITPs 2013, IGI Services (2013).

- 32 A higher proportion of students from the United States of America and India than students from other countries funded their studies from loans (see Table 6).

*Table 6: How international university and ITP students are funding their studies by county of origin\**

	<b>Family</b>	<b>Own funds</b>	<b>Loan</b>	<b>Part-time work</b>	<b>Total number</b>
<b>Malaysia</b>	38%	14%	4%	6%	510
<b>USA</b>	60%	53%	38%	12%	567
<b>China</b>	76%	21%	0%	6%	1859
<b>India</b>	51%	26%	35%	15%	752
<b>Other</b>	47%	27%	7%	11%	3131
<b>Total</b>	<b>56%</b>	<b>26%</b>	<b>11%</b>	<b>10%</b>	<b>6,819</b>

\*Source – I-graduate International Insight 2013

- 33 Students who do have sufficient funds to meet immigration requirements can run out of money faster than anticipated if the amount indicated for living costs does not reflect the actual cost of living or the funds are used for other activities.

## **Lack of awareness of employment rights**

- 34 Only a small percentage of the international students (6 per cent) surveyed<sup>16</sup> who had worked in the past 12 months reported that they were unaware that there is a minimum hourly wage in New Zealand. However, 13 per cent of students underestimated what the minimum hourly rate was.
- 35 Sixty-three per cent of students reported that they knew where to go for information on employment rights. The proportion of students from China (59 per cent) who reported that they knew where to go for information on employment rights was slightly below that reported by students from India (66 per cent) and other countries (65 per cent).

## **Reluctance to report non-compliant employers**

- 36 Some students may be reluctant to report breaches of employment rights, such as underpayment, because of fear of immigration consequences. They may be working longer than the 20 hours a week their visa conditions allow them to during study, or, in the case of many English language students, they may not have work rights at all<sup>17</sup>. Some students under financial stress may be willing to accept non-compliant work conditions because they consider the job they have to be better than having no job at all.

<sup>16</sup> NRB and Infometrics (2013).

<sup>17</sup> For 2014, work rights for English language students are being expanded to those who study in courses of 14 weeks or more at high-quality education providers.

## **Working for non-compliant employers and in sectors where non-compliant work practices are more common**

- 37 International students are likely to find employment through intra-ethnic social connections<sup>18</sup>. According to anecdotal evidence from the Labour Inspectorate and Immigration New Zealand, in many cases, those who exploit migrant workers are themselves former migrants. Migrant employers may come from countries with very different business cultures and employment laws to New Zealand.
- 38 Students tend to be employed in lower skilled jobs. Low-skilled jobs generally have relatively low barriers to entry and offer relatively flexible working arrangements (such as variable hours and part-time work). The combination of casual and non-standard hours and low pay places correlate with a greater risk of non-compliant employment.
- 39 The Labour Inspectorate reports that retail, hospitality and agriculture/horticulture and fishing are the most common industries for all labour inspector investigations. The majority of labour inspector investigations (around 60 per cent) relate to possible breaches of the Holidays Act 2003. Possible breaches of the Minimum Wage Act 1983 are the next most common type. According to information on taxable income for the 2011 tax year, around 34 per cent of international students were employed in accommodation and food services, 14 per cent in retail, and 10 per cent in the category agriculture, forestry and fishing<sup>19</sup>. These may be underestimates, as some international students may be working in untaxed employment. Other sectors where international students were employed were administration and support services (12 per cent), education and training (8 per cent), and health care and social assistance (5 per cent).

## **How Government is addressing the issue of non-compliant employment of students and other migrants**

### **Actions to address financial pressures of international students**

- 40 Policy changes were made in 2011 and 2012 to strengthen student visa rules around evidence of funds. Changes included:
- strengthening financial undertaking provisions, to make formal (and enforceable<sup>20</sup>) sponsorship the main means of third party support for international students already onshore
  - specifying that an immigration officer must be satisfied that funds are from a genuine source and genuinely available for maintenance and accommodation, and
  - increasing the amount required for maintenance and accommodation from \$10,000 (or \$1,000 per month) to \$15,000 (or \$1,250 per month). This was to

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<sup>18</sup> Wang, 2011; Anderson, Jamieson and Naidu, 2012.

<sup>19</sup> Data sourced from the Integrated Data Infrastructure prototype of taxable income from wages and salaries in the 2010 tax year.

<sup>20</sup> A third party commits to provide financial support (maintenance funds and outward travel) for the student for their intended stay in New Zealand

ensure that students were better able to live on the funds available to them, reducing their vulnerability to non-compliant employment arrangements.

- 41 The funds transfer scheme (FTS) is an ANZ Bank initiative that ensures funds are transferred to and remain in New Zealand. The scheme provides a greater level of surety that the student will genuinely have funds available while in New Zealand. It allows the funds to be available to students in instalments so they cannot spend all their funds at once. The FTS was introduced in 2008 for Chinese students and later extended to other countries, including India, Sri Lanka and the Philippines. It is currently being investigated for use in Vietnam.

## **Improving awareness of employment rights**

- 42 In February 2013, Immigration New Zealand launched a web-based resource, [www.nzstudywork.com](http://www.nzstudywork.com), which includes essential information for international students and their potential employers. The resource covers:
- employment rights and law
  - health and safety requirements in the workplace
  - student visas (including conditions)
  - residence pathways to skilled employment, and
  - New Zealand workplace practices.
- 43 The resource is currently available in English, Chinese (simplified and traditional), and Korean. Work is being undertaken to identify the best mechanisms for promoting awareness of these resources to international students.
- 44 In addition, Immigration New Zealand plans this financial year to broaden its web-based resource (NZ Ready) to include a section for international students. The online tool provides migrants with tailored information to assist their pre-arrival planning and help set realistic expectations about living and working in New Zealand.

## **Protection of those who report exploitation**

- 45 A change was made to Immigration Instructions on 10 June 2013, to encourage victims of exploitation to come forward so that action can be taken against the employer. Section 351 of the Immigration Act 2009 defines exploitation of any employee as when the employer allows the employee to work for them and:
- is responsible for a serious failure to pay to the employee money payable under the Holidays Act 2003; or
  - is in serious default under the Minimum Wage Act 1983; or
  - is responsible for a serious contravention of the Wages Protection Act 1983; or

- takes an action with the intention of preventing or hindering the employee from leaving the employer's service, leaving New Zealand, ascertaining or seeking their lawful entitlements or disclosing the circumstances of their work for the employer.

46 The new policy means that victims of exploitation will not be disadvantaged (nor advantaged) with regard to future visa applications if they make a credible complaint of exploitation against an employer. Immigration officers may disregard any previous breach of the work related conditions of a visa applicant's current visa if they have cooperated with Immigration New Zealand and/or the Labour Inspectorate by providing evidence of workplace exploitation against themselves.

### **Legislative changes to combat exploitation of temporary migrants (including students) by employers**

47 On 3 October 2013, the Immigration Amendment Bill (No 2) (the Bill) was introduced. It includes measures to combat the exploitation of migrant workers. The changes include making it a specific offence to exploit migrants (including international students) who hold temporary visas with work conditions.

48 Currently, the maximum penalties under ordinary employment legislation are fines of up to \$10,000 for an individual and \$20,000 for a company. Monies can also be awarded to the exploited individual. Penalties under the Immigration Act 2009 for those who exploit unlawful migrant workers are more severe (up to seven years imprisonment, and/or a fine of up to \$100,000) for employers who seriously breach the Minimum Wage Act 1983, the Wages Protection Act 1983 or the Holidays Act 2003. The Bill provides for these more severe sanctions to apply to employers found to have exploited temporary migrants, including international students, who are working lawfully.

49 In addition, the Bill will make employers who exploit migrant workers (including international students), or who knowingly employ foreign nationals who do not have work rights, liable for deportation if the offence was committed within the first 10 years of their being granted a residence visa. (This provision had been in the Immigration Act 1987 but was not carried over to the 2009 Act). This Bill will act as a deterrent to employers who are themselves recent migrants and who exploit migrant employees.

50 The Bill will also extend the search powers of immigration officers so they can search an employer's premises and talk to the people present to identify offending by employers. The immigration officers will also be able to search for unlawful workers, check documents and ensure migrant employees (including international students) are complying with the Immigration Act 2009.

### **High risk sectors targeted and enforcement action taken**

51 The Ministry's Labour Inspectorate and Immigration New Zealand are currently undertaking joint enforcement actions targeting the hospitality, horticulture and viticulture industries, sectors where employment of international students is common.

- 52 The Employment Relations Authority (the Authority) is handling a small number of complaints from international students. In the 2002-2012 decade, only five cases (involving 15 complainants) specifically identified the complainants as international students. More complaints have been made recently following publicity about government initiatives to combat exploitation.
- 53 A recent case<sup>21</sup> involved 11 Indian students who complained to the Labour Inspectorate of having been underpaid by their employers, which shared the same sole director and owner. Ultimately eight students had their claims heard in the Authority. The students had visas permitting them to be employed for up to 20 hours per week during the term of courses they attended at institutions in Auckland.
- 54 The Authority accepted the students' claims for arrears of minimum wages and holiday pay (annual and public holidays). The employer companies were ordered to pay:
- \$96,574.33 to the Labour Inspector, as minimum wages and holiday pay owed to former employees
  - interest to be paid on \$96,574.33 at 5 per cent per annum from 5 June 2012
  - \$60,000 penalties for breaches of the Minimum Wage Act 1983 and Holidays Act 2003, and
  - \$55,000 penalties for breaches of the Employment Relations Act 2000.
- 55 Immigration New Zealand is strengthening its capacity to respond to migrant exploitation by changing the focus of its compliance activity from pursuing unlawful migrants to pursuing employers who carry out systematic exploitation as part of their business model.

## **Anticipated effect of combined measures to combat exploitation of migrant workers**

- 56 These measures are designed to:
- send a clear deterrence measures to employers who seek to take advantage of vulnerable migrant employers and ensure that those who exploit migrant workers are held to account
  - support businesses that comply with minimum employment standards against the potentially anti-competitive practices of those businesses that do not, and
  - protect New Zealand's international reputation as a place, not only where international students gain a high quality education, but those who work are treated fairly by their employers and minimum terms and conditions are met.

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<sup>21</sup> Labour Inspector (Ministry of Business, Innovation and Employment) v Civic City Ltd t/a Civic Convenience and Ors (2013) NZERA Auckland 385.

# Appendix One – Survey Methodology

## Survey of International Student Expenditure – Background

Education New Zealand commissioned National Research Bureau (NRB) and Infometrics to estimate the economic impact of the international education industry – comprising the impact of expenditure by foreign students in New Zealand and the offshore activities of New Zealand educational institutes. Expenditure by foreign students in New Zealand was obtained from an online survey. The Ministry added several questions on work to this survey.

The sample consisted of students who had applied for and been granted student visas for study in New Zealand during 2013. The sample included foreign fee-paying students in their first, second, third and subsequent years of study. The Ministry supplied the sample of 39,024 international students studying at universities, ITPs, PTEs, English Language Schools and primary/high schools (information for school students has been excluded from the analysis of the questions on work). However fewer than half these students had contactable email addresses, and those without contactable email addresses could not be sent the survey.

The survey was conducted from 7 May 2013 to 11 June 2013. Responses were received from 7,394 (40 per cent) of the students who were sent a link to the survey. Overall this equates to a response rate of 19 per cent from the total of 39,024 students who were selected for the survey. Of the 7,394 students who responded to the survey, 2,645 reported working for pay in the past 12 months, 2,147 reported not working, and 2,602 did not answer the question on whether they had worked.

The findings have been weighted up to the total sample to adjust for differences in non-response among students of different nationalities (China including Hong Kong, India and Other) and studying at different types of provider (PTEs, English Language Schools, ITPs and universities).

Where participants had attended more than one type of education provider these were coded according to the following hierarchy: university, ITP, PTE and English language.

Caution needs to be applied when considering these findings. In addition to the low response rate, a quarter of participants did not respond to the questions on work. They are excluded from the tables.

## I-Graduate survey – Background

The International Student Barometer<sup>22</sup> (2013) is an international benchmarking survey which has been running for six years. It surveys the experience of international students studying in institutions worldwide.

The New Zealand ISB 2013 is a study of international students studying at New Zealand universities and ITPs. Survey questions were sourced from the ISB but additional questions on work were added at the request of the Ministry.

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<sup>22</sup> The International Student Barometer (ISB) is also known as the I-Graduate Survey.

Seven universities and 10 ITPs participated in the survey. Participating institutions were asked to send the survey link to all international students studying at their institution. The survey was sent to a total population of 16,680 university students and 5,367 ITP students. A total of 5,627 university students and 1,192 ITP students completed the survey - this equates to a response rate of 34 per cent for universities and 22 per cent for ITPs.

The vast majority of participants in the New Zealand ISB were in New Zealand on a student visa; 95 per cent of participating students at ITPs and 99 per cent of participating students at universities were on a student visa. Other visa types included working holiday or visitor visas.

The survey live window was Monday, 15 April to Friday, 14 June 2013. Institutions were asked to select a minimum live period of four weeks within those dates.

The findings have not been weighted. Caution needs to be applied when considering these findings. While the response rate is not as low as in the Survey of International Student Expenditure, not all universities and ITPs took part in the survey, and results are not adjusted to account for non-response.