

**Understanding the Exploitation of Temporary Migrant Workers: A  
Comparison of Australia, Canada, New Zealand and the United Kingdom**

Christina Stringer and Snejina Michailova  
The University of Auckland Business School

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## Table of Contents

List of Figures .....	ii
List of Tables.....	ii
Acknowledgements.....	iii
Executive Summary.....	iv
1. Introduction .....	1
2. How the Research Was Conducted .....	3
2.1 Search methods.....	3
2.2 Key sources.....	4
3. Temporary Migrant Worker Exploitation in New Zealand .....	6
3.1 Introduction.....	6
3.2 Background.....	7
3.3 A note on the literature.....	7
3.4 Forms of exploitation .....	8
3.5 Sector-specific forms of exploitation .....	12
3.6 Drivers of exploitation.....	17
3.7 Summary.....	20
4. Temporary Migrant Worker Exploitation in Australia.....	22
4.1 Introduction.....	22
4.2 Background.....	23
4.3 Forms of exploitation .....	25
4.4 Drivers of exploitation.....	32
4.4.1 Visa conditions.....	32
4.4.2 Lack of understanding of rights and entitlements .....	33
4.4.3 Impediments to seeking redress .....	34
4.4.4 Multiple forms of fear .....	36
4.4.5 Geographic isolation.....	37
4.5 Summary.....	37
5. Temporary Migrant Worker Exploitation in Canada .....	38
5.1 Introduction.....	38
5.2 Background.....	39
5.3 Forms of exploitation .....	41
5.4 Drivers of exploitation.....	45
5.5 Summary.....	48
6. Temporary Migrant Worker Exploitation in the United Kingdom.....	50
6.1 Introduction.....	50
6.2 Background.....	50
6.2.1 The United Kingdom political setting .....	50
6.2.2 United Kingdom specificities .....	51
6.3 Forms of exploitation .....	52
6.3.1 An overview of forms of exploitation.....	53
6.3.2 Business models facilitating exploitation .....	55
6.3.3 Sector-specific exploitation .....	56
6.4 Drivers of exploitation.....	60

6.5 Summary.....	65
7. Conclusion.....	66
8. References .....	68

## List of Figures

FIGURE 2.1: Search methods: terms and locations. ....	3
FIGURE 3.1: Work, Student and residence visa approvals, 1997/98–2017/18. ....	6

## List of Tables

TABLE 5.1: Total number of TMW visas issued by province/territory for 2017.....	38
TABLE 6.1: The effects of tied visa on exploitation. ....	61

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## Executive Summary

This report examines and compares the vulnerability and subsequent exploitation of temporary migrant workers in New Zealand to those in comparable jurisdictions – Australia, Canada, and the United Kingdom. All jurisdictions are reliant on migrant workers to fill labour shortages in low-wage sectors. A temporary migrant worker is defined as a person who is granted the right to reside and work within a country for a limited period of time. Their vulnerability leads migrants to experience a continuum of exploitative employment practices within, what should be, a legal channel. Such practices range from basic non-compliance of employment standards to forced labour and modern slavery.

Our research examined the extant material from a range of relevant stakeholders. These were government agency, non-governmental organisations, and industry reports for relevant background information. International agency reports (e.g. ILO, OECD, UN) for an international perspective, and academic research for a balanced within-nation view. Lastly, we accessed news media. Our report largely refers to material published since 2015 due to an increase of coverage on the exploitation of temporary migrant workers since that year.

The report covers the forms, drivers, and specificities of temporary migrant worker exploitation in each jurisdiction, starting with New Zealand, Australia, Canada, and lastly the United Kingdom.

### New Zealand

Temporary migrant workers have become a fixture in several industries including agriculture, horticulture, hospitality, telecommunication, and construction. New Zealand employers have shifted from attracting workers from the Pacific Islands to those from India, China, and the Philippines. The exploitation of temporary migrant workers mirrors those found in other jurisdictions, and includes contractual exploitation, discrimination, and a lack of health and safety monitoring.

#### *Forms of exploitation*

Temporary migrant workers can be charged exorbitant fees by recruiters in order to obtain work, which can lead to debt bondage. They also experience contract substitution and under-payment of wages through working excessive work hours or being paid far less than the legal minimum wage. Another common form of exploitation is health and safety violations. For example, exploited migrants were not given protective gear when handling dangerous materials, such as asbestos. The 90-day work trial system or other short-term contracts also mean that exploited migrants are fearful of reporting any violations due to potential loss of employment.

#### *Sectors where exploitation occurs*

We found that particular sectors exhibited high levels of specific-forms of exploitation. In hospitality, exploitation was deliberate and sustained. The sector is not well unionised and migrant workers are, again, fearful to report violations due to the possibility of unemployment. Some operators in the agriculture, horticulture, and viticulture industries exploit temporary migrant workers through underpayment including illegal wage deductions, excessive work hours causing exhaustion, and injury. In construction, it was found that 27% of Canterbury firms did not

provide their workers (migrants and non-migrants) with written contracts, and some firms used the 90-day trial period to reclassify job contracts and dismiss workers. Migrant worker exploitation is also emerging in the telecommunications supply-chain, due to reliance on sub-contracting.

We note that international students represent a particularly vulnerable group of temporary migrant workers. Several private training establishments operate as sources of 'cheap unlawful labour' and in some cases, potentially helped facilitate the exploitation of international students in workplaces. Often the international students were lied to by immigration advisors in their home countries regarding residency pathways while incurring large amounts of debt.

### *Drivers of exploitation*

Drivers of exploitation include the vulnerability associated with employer-assisted visas that bond migrant workers to their employers. Exploited temporary migrant workers are even more fearful of reporting abuses due to fears of deportation, unemployment, or reprisal. Another driver for temporary migrants, including international students, is that they experience difficulty in finding work due to difficulties in communicating in English, or that their skills or experience are not accepted. This often forces temporary migrant workers to accept exploitative work arrangements due to a lack of choice. In addition, cultural factors play a role with migrants unwilling to report their employers who are from the same national or ethnic background. Such migrants can lack English language skills and knowledge of employment rights. This is also reflected in the other jurisdictions assessed in this report.

As enforcement agencies struggle to deal with the increase in migrant workers in New Zealand, lack of enforcement has become a significant driver. Understaffing and a lack of resources has increased employer confidence that exploitative practices will go undetected. Lastly, a significant driver is migrants' debt financing and remitting money 'back home'. Exploited migrants have often borrowed exorbitant amounts of money in their home country due to the promise of legal and fair wages in New Zealand.

### *Australia*

Australia and New Zealand exhibits similar issues with respect to temporary worker exploitation. However, Australian policy-makers has the advantage of a range of wide-scale published analyses on the treatment of migrant workers. Such reports come from a number of academics, government agencies, unions and NGOs in Australia. In addition, Australia does not have a low-skilled temporary migrant labour programme – which is often where migrants are the most vulnerable. Instead, exploited migrants are international students, working holiday makers, seasonal workers, or partners of higher-skilled workers. As a result, there is little differentiation between specific industrial sectors.

### *Forms of exploitation*

The most significant form of exploitation is wage theft, through underpayment of wages, unlawful deductions, and cash-back schemes. Over half of temporary migrant workers across Australia were found to be paid less than the minimum wage. Other significant forms are excessive working hours, substandard living conditions, and health and safety violations.

Migrants also suffer insidious cases of physical and sexual harassment. Lastly, the confiscation of personal legal documents by employers, such as passports, also serve as a form of exploitation.

### *Drivers of exploitation*

Drivers of exploitation are visa conditions, such as being bonded to an employer who put a migrant in a vulnerable position, and a lack of understanding of rights and entitlements. A significant driver is the impediment to seeking redress which includes very low union membership and the limited power of the Australian Fair Work Ombudsman. It should be noted that the very low union membership may be due to the fact that unions and other worker and political organizations were outspoken proponents of the White Australia immigration policy. Lastly, two drivers of exploitation are fear and geographic isolation. Temporary migrant workers fear job loss and deportation. Working holiday makers are often working in isolated geographic locations with a lack of access to information or community support.

### **Canada**

Canada's exploitation of migrant workers has come under significant scrutiny and is decried as systematic. The federal legal structure for labour migration is centralised and streamlined for efficiency. Similar to New Zealand and Australia, migrant workers are employed in primarily agricultural and domestic positions, and increasingly in hospitality and cleaning industries. There is, however, limited recent literature available on the treatment of migrant workers.

The more recent Temporary Foreign Worker Program led to a large increase in low-skilled migration and subsequently several changes were implemented, including caps on the number of migrants employed in low-wage positions, and bans on hiring for specific sectors, such as agriculture, where regional unemployment rate is high.

### *Forms of exploitation*

Similar, to New Zealand and Australia, wage theft is a significant form of temporary migrant exploitation. Released internal government documents showed that the Conservative government (in 2014) had knowingly used the programme to let employers underpay workers without repercussions. Other forms of exploitation include restriction of movement – even to the level of enslavement, substandard housing, and health and safety violations.

### *Drivers of exploitation*

Drivers of exploitation are similar to the other jurisdictions discussed in this report, but also highlight the particularities of the Canadian socio-political environment. These include geographic and social isolation, low unionisation, and under enforcement of legislation. Similar to New Zealand, Australia, and the United Kingdom, migrant workers are also bonded to employers through employer-sponsored visas. However, they are able to change employers without losing their visa status. Similar to Australia and New Zealand, geographic isolation leads to a lack of access to legal services and other advocacy organisations.

### **United Kingdom**

Migrant exploitation takes place across a vast array of sectors but predominantly occurs in the low-skilled and/or labour-intensive sectors. Economic and network factors are identified as factors behind migrant workers wanting to work in the United Kingdom.

### *Forms of exploitation*

Significant forms of exploitation include charging of substantial 'work-finding' fees that put migrants into debt bondage. It is also common practice for employers, employment agencies, and umbrella companies (contractors of temporary work assignments) to deduct wages under the pretense of accommodation, transport, or national insurance costs. The industries involved are often construction, care work, hand car-wash industry, nail bars, food production, and service work and cleaning.

Another form of exploitation is through the practice of manipulative contracting. Migrants are kept on flexible contracts with no guaranteed hours of work. Employers use this tactic in order to have coercive control over migrant workers through the lack of financial stability. Other coercive employment practices relate to unrealistic productivity targets and denial of legally entitled work breaks. Migrants are also exploited through being forced to live in substandard housing, and endure violations of occupational health and safety standards. A United Kingdom specific dimension of migrant exploitation is the use of employment agencies that are part of complex global supply chains. Exploitation, such as forced labour, occurs in subcontracted companies that are 'hidden' through geographic distance. This has initiated a number of provisions to the UK Modern Slavery Act to address the lack of transparency in global supply chains.

### *Sectors in which exploitation occurs*

Unlike Australia, New Zealand, and Canada, key industries involved in temporary migrant exploitation are care-work, hand-care washes, and nail bars. Nail bars in particular were found to have trafficked women and children for further sexual exploitation in addition to labour exploitation. Similar to other jurisdictions, exploitation occurs in the United Kingdom construction industry, however, there is a lack of data as employers have been using the Construction Industry Scheme to falsely register employees as self-employed contractors. This leads to migrants having significantly less pay and few protections. Exploited migrants often do not look for medical care for serious injuries as they risk being fired or deported.

Similar to the other jurisdictions, drivers of exploitation in the United Kingdom are associated with being bonded to the employer for work visas. In addition, in 2016, the United Kingdom criminalised illegal workers with the result that undocumented exploited workers fear reporting exploitation. Other drivers include ineffective sanction mechanisms, deficient support systems, lack of knowledge of rights, and social isolation.

### **Broad findings**

The report found a number of similarities across all jurisdictions. Significant forms of exploitation that migrants face are wage theft, unlawful and often significant deductions from wages, the use of recruitment fees and the imposition of debt bondage, and exploitative contracting practices.

Exploited temporary migrant workers across all jurisdictions also experienced excessive hours in unsafe jobs, and in some cases, were housed in overcrowded and unsanitary accommodation.

The drivers of migrant worker exploitation are also very similar in all jurisdictions. Exploited temporary migrant workers are vulnerable as their visa is tied to, or sponsored by, their employer. In addition, there is often a lack of effective enforcement mechanisms in each country, and many migrants report being afraid to report their experiences due to the risk of job loss, deportation, or other forms of reprisal either from their employers or the state. A significant driver is the role of debt bondage among migrant worker populations, as well as the need to remit money to family.

### **Variation in the experiences of workers between countries**

We found that variations between the experiences of exploited temporary migrant workers across the jurisdictions is based on geographic, geo-political, industry, and immigration law-level distinctions. For example, a geo-political distinction is that the United Kingdom still held EU open-border regulations which had implications for the vulnerability of migrants. Industry distinctions show that some jurisdictions have sector-specific forms of exploitation. A telling example of immigration law-level distinctions is the criminalising of illegal workers in the United Kingdom.

In each of the four countries surveyed in this research, migrant worker exploitation has been found to be widespread. Workers have faced a wide range of forms of exploitation, from unlawful deductions and poor record keeping by employers at the less severe end, to slavery, abuse, and physical and sexual exploitation at its most serious. These offences form a continuum of exploitation, and the authors of this report argue that both the comparatively minor and severe forms of migrant worker exploitation must be understood and addressed together in order to end the problem as a whole.

## 1. Introduction

This report examines the exploitation of temporary migrant workers in New Zealand, and the three jurisdictions New Zealand normally compares itself with – Australia, Canada, and the United Kingdom. Each of these jurisdictions is reliant on temporary migrant workers to fill shortages in low-wage sectors and each is grappling with similar issues pertaining to the exploitation of temporary migrant workers. It is striking to reveal the numerous forms of exploitation which occur, including unscrupulous recruitment fees, under payment of wages, excessive hours of work, cashback payments, among others. Indeed, a continuum of exploitative employment practices exists ranging from non-compliance with basic employment standards through to serious cases of forced labour and modern slavery.

A temporary migrant worker is by definition a person who has been granted the right to reside and work in a country for a limited period of time. Exploitation is occurring within this legal channel. For the purposes of this report, exploitation is understood as being when a person – typically, but not always, an employer – takes advantage of their employee through non-compliance with employment and related legislation such as immigration and taxation laws. Further, migrant workers may be exploited by others within the employment chain, for example intermediaries who facilitate their access in finding employment.

The United Kingdom government defines a vulnerable worker as “someone working in an environment where the risk of being denied employment rights are high and who does not have the capacity or means to protect themselves from abuse” (as cited in United Kingdom Parliamentary Business, 22 January 2008, column 364WH). In the New Zealand context, the exploitation of temporary workers is defined in the Immigration Act 2009 (s 351) as non-compliance with the Minimum Wage Act 1983, the Holidays Act 2003, and the Wages Protection Act 1983. The Immigration Act further defines exploitation as “preventing or hindering” the worker from leaving their employment.

Non-compliance by an employer, for example paying less than the minimal entitlement, does not necessarily occur in isolation. The Migrant Workers’ Taskforce, established by the Australian government to “identify proposals for improvements in law, law enforcement and investigation... to more quickly identify and rectify cases of migrant worker exploitation” (Commonwealth of Australia, 2019, p. 15), highlights the interconnectedness of non-compliant behaviour by the employer, who, for example, “may also engage in other undesirable practices such as avoidance of tax obligations, sham contracting, or phoenixing<sup>1</sup> to avoid employee entitlement obligations” (Commonwealth of Australia, 2019, p.13).

There are a range of structural forces which facilitate exploitation (see for example Allain, Crane, LeBaron, & Behbahani, 2013; Canadian Council for Refugees, 2018; Faraday, 2014). Many temporary migrants, particularly those who work in labour-intensive sectors, are on employer-

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<sup>1</sup> Phoenix activity refers to when a business is placed into liquidation in order to avoid payment of debts including employee wages and entitlements, and taxes.

sponsored visas, which tie an employee to a single employer, and thus are restricted by sponsorship systems. Employer-sponsored visas are seen by some to “create a prime source of insecurity that... employers exploit” (Faraday 2014, p. 38; see also Canadian Council for Refugees, 2018). Allain et al. (2013) are also critical of the United Kingdom immigration policies that create structural vulnerabilities through the tying of a migrant to a single employer. “There are broad structural conditions that give rise to vulnerabilities that can be exploited. These include immigration status, and forms of labour market inequality and immobility rooted in the government’s light-touch regulation of business” (p. 4). Further, a migrant’s vulnerability can be compounded by a lack of English language ability, cultural differences, and social exclusion in the work force.

There are also business models and practices which facilitate exploitation. In the first instance, the exploitation of migrant workers, as we will go on to discuss, largely occurs in low-wage labour-intensive sectors. In particular, labour-supply and umbrella companies are seen to facilitate the exploitation of temporary migrant workers because workers have minimal control over their work. Exploitation is also associated with subcontracting arrangements where again there is limited oversight of labour practices.

As we discuss temporary migrant workers in the four countries at the centre of this study, experience many of the same forms of exploitation. Similarly, the factors that drive exploitation are similar across the countries. We now go onto discuss exploitation in each country. We begin first by discussing how we undertook the research (Section 2) followed by a summary of the exploitation of temporary migrant workers in New Zealand (Section 3), Australia (Section 4), Canada (Section 5), and the United Kingdom (Section 6). In each of the sections, we provide a lens on exploitation, before summarizing our findings in Section 7.

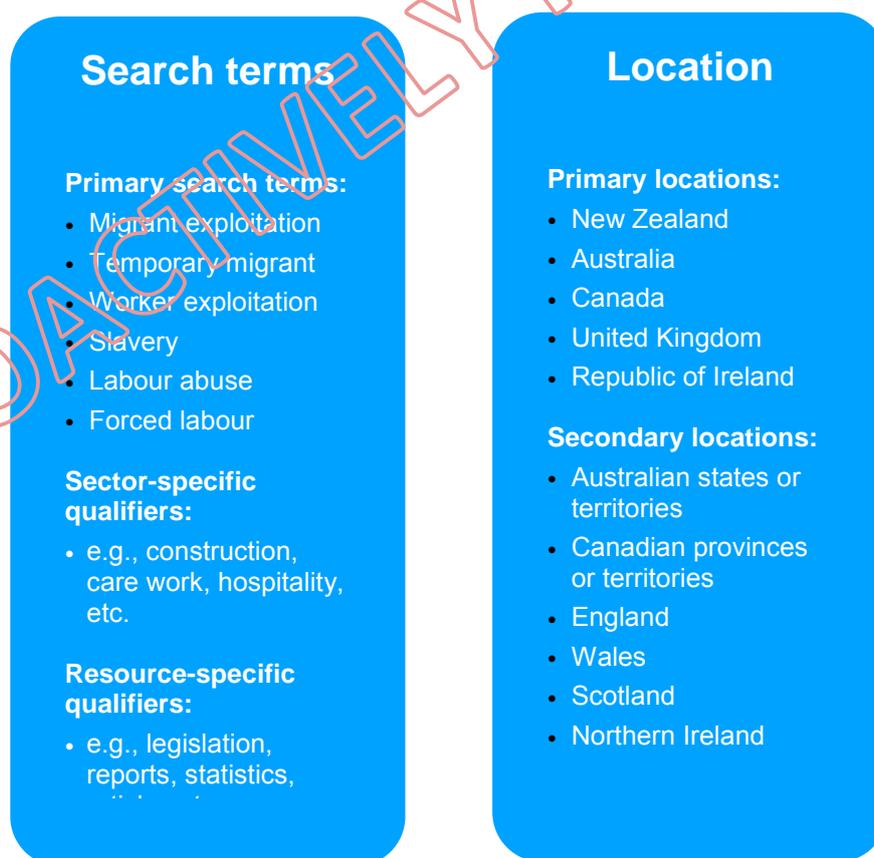
## 2. How the Research Was Conducted

This research examines local and international literature relating to the exploitation of temporary migrant workers in New Zealand, Australia, Canada and the United Kingdom. These countries have broadly similar forms of immigration and labour market regulation to New Zealand and are thus useful sites of analysis in developing an understanding of the nature, extent, drivers and consequences of temporary migrant worker exploitation. It should be acknowledged, however, that the differences in the political structures of countries means that some of the issues facing migrant workers, and responses to them, are fairly specific to the respective locations.

### 2.1 Search methods

In order to ensure both adequate breadth and depth of analysis, we employed a number of primary search terms as a guide for finding material. These were then paired with a location and any further qualifying information where required (see Figure 2.1)

**FIGURE 2.1: Search methods: terms and locations.**



These terms, and any combinations thereof, formed the basis through which relevant information was found for this report. For example, a standard search employed might have been “migrant exploitation construction United Kingdom” or “forced labour Victoria Australia legislation.”

In addition to using these search terms as a basis for finding material, we employed an extant data analysis of works cited in materials sourced by using this search method. Many of the works found using this search method included references or links to other useful material, and so this approach was used in tandem with the search method where appropriate.

## 2.2 Key sources

Within the scope of the above search terms, the research focused on finding and analysing material from the following six sources:

1. Government agency reports
2. Non-governmental organisations (NGOs)
3. Industry body reports
4. Academic research
5. International agency reports (e.g., ILO, OECD, UN reports)
6. News media

Government reports and statistics, for example those published by the Home Office in the United Kingdom or Employment and Social Development Canada or the Fair Work Ombudsman in Australia, or similar agencies, were used to provide background information and statistical analysis of the nature and extent of temporary migrant worker exploitation in each country. In many cases, such information was measured in different ways, but, wherever possible, the same or similar information was utilised.

Second and third, the research utilised reports from NGOs and industry bodies, which provided further background information, analysis of the conditions of workers and critical perspectives on government policies.

Fourth, academic material was sourced to provide analysis and further detail on specific industries or issues. The levels of academic material published in each state varies quite widely. For example, in Canada there is a great deal of academic work, but comparatively few up-to-date NGO reports. In contrast, in the United Kingdom there is a number of NGO and industry body reports, but comparatively few academic analyses. In order to provide the most balanced and accurate overview of each country, the researchers conducted and organised their literature reviews around the availability of material in each country respectively.

Fifth, international agency reports were employed where appropriate, and only focused on material involving the country in question. Mostly, they were utilised to provide an international perspective on the treatment of workers within a given country.

Lastly, we employed a wide range of news media in the course of the research. This served the dual purpose of providing available details of recent cases often not yet covered in other sources and, in some cases, providing testimony from workers and other stakeholders that was not easily available elsewhere.

To ensure the material is as current and relevant as possible, we refer largely to material published from 2015 up to the present. We found that the amount of research published in each country varies widely. Importantly, in some countries only a small amount of material has been published

since 2015. In these situations, selected resources published prior to 2015 were utilised, provided no other more recent resource was found which explored similar information.

In addition, in cases where a highly reputable report was published prior to 2015 (e.g., Fay Faraday's 2012 and 2014 reports into temporary migrant worker exploitation across Canada), they were included as well. Although they can be treated as somewhat dated now, such reports were included in this research because of the quality of their analysis and their continued relevance to this project.

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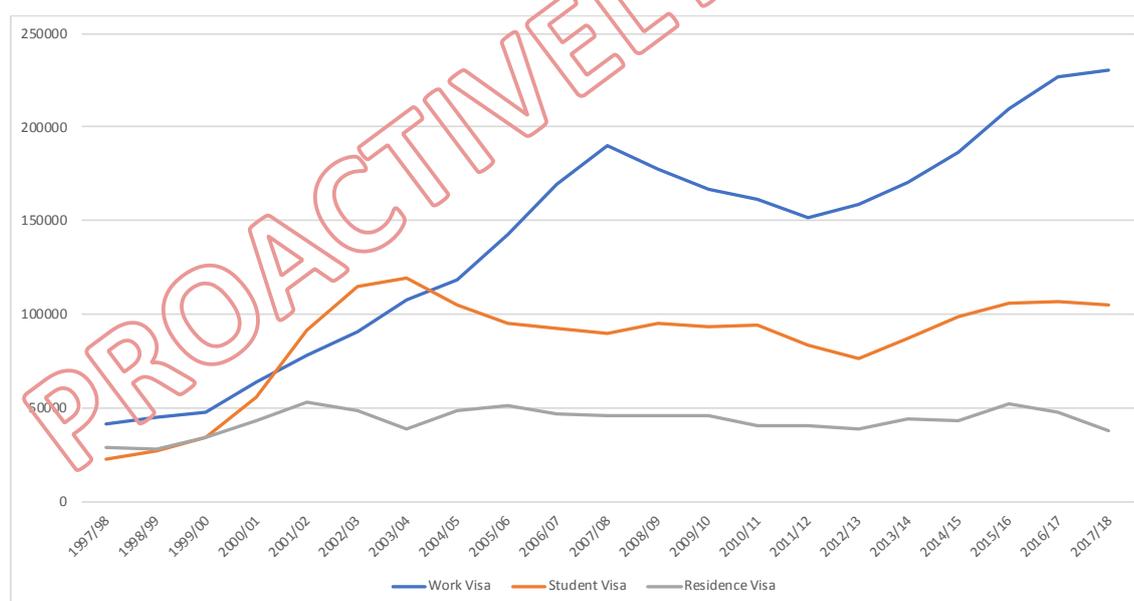
### 3. Temporary Migrant Worker Exploitation in New Zealand

#### 3.1 Introduction

In recent years, several industries, for example hospitality, horticulture, telecommunications and construction, have come to depend on migrant workers to fulfil labour shortages. Indeed, in many ways, temporary migrants have become a permanent fixture of the New Zealand labour market. Temporary migrants are classified according to the type of visa associated with their right to work in New Zealand. These visa classifications are international student, post-study work, essential skills, working holiday scheme, Recognised Seasonal Employer, family and other categories. This report focuses on the first four sectors.

As can be seen in Figure 3.1, there has been a significant increase in work visa approvals in the 10-year period 1997/98 to 2017/18. This has been accompanied by a growth, subsequent decline, and further growth in student visas. In comparison, residence visas have remained somewhat consistent. Please see *Temporary Migrant Workers in New Zealand* for an in-depth discussion on the demographic patterns of temporary migrants in New Zealand.

**FIGURE 3.1: Work, Student and residence visa approvals, 1997/98–2017/18.**



Data source: MBIE Migration Data Explorer and Migration Trends and Outlooks reports.

This section provides an overview of the current literature around temporary migrant exploitation in New Zealand. It first provides a short background as to the development of New Zealand's increasing utilisation of migrant labour both historically and recently. Following this, we discuss the forms of exploitation experienced by temporary migrant workers in New Zealand, first providing an overview of the forms of exploitation common across sectors, followed by a discussion on sectors in which exploitation has been identified as occurring. Lastly, the report details the drivers of migrant worker exploitation in this country. Throughout, we identify gaps in

the literature, both in terms of opportunities for further analysis within existing research as well as areas in which insufficient research has been conducted. Specific sectors were excluded from this research – specifically the Recognised Seasonal Employment Scheme and the sex industry – as these sectors fell outside the scope of the review.

### 3.2 Background

Since the 1950s, migration, particularly from the Pacific Islands, was encouraged as a means to fill labour shortages in manufacturing and food production, agricultural and horticultural businesses. Although New Zealand still employs a significant number of seasonal temporary migrant workers from the Pacific Islands, since the liberalisation of the immigration system in the 1990s employers have increasingly drawn on temporary labour sourced from other countries, particularly India, China and the Philippines. It is migrants from these countries who are reported as being particularly vulnerable to exploitation. In the past decade in particular, due to a shortage of workers, industry sectors have become dependent on migrant workers. The Christchurch rebuild following the 2011 earthquakes, in particular, saw a significant number of temporary migrant workers being employed in construction.

Further, there has been a marked shift in immigration policy around international students coming to New Zealand. Although New Zealand has been a largely open country to immigration since the liberalisation of its borders in the 1990s, it was not until the last decade that attempts started to be made to actively attract international students into the country. The most pertinent method of doing this was the relaxation of English language requirements. Between 2013 and 2015, the New Zealand Qualifications Authority (NZQA) permitted category 1 and 2 education providers to administer their own internal English language tests.<sup>2</sup> This led to the rapid establishment of a range of new Private Training Establishments (PTE) providers as well as an influx of international students, particularly from India and the Philippines (Education New Zealand, 2015).

### 3.3 A note on the literature

Along with the increase in number of migrant workers in New Zealand, in the past decade there has been an increase in research on the issues facing migrant workers in this country. Since 2014 in particular, there have been a number of empirical analyses of the treatment of migrant workers, as well as literature reviews published by academics, government departments and NGOs (see for example: Bi, 2016, MacLennan, 2018; Searle, McLeod, & Ellen-Eliza, 2015; Searle, McLeod, & Stichbury, 2015; Stringer, 2016; Stringer, Simmons, Coulston, & Whittaker, 2014; Yuan, Cain, & Spoonley, 2014). The empirical analyses comprise self-selected interviews with migrant workers (for example Bi, 2016; Stringer, 2016), phone surveys and focus groups with migrant workers (MacLennan, 2018); interviews with key stakeholders (but not migrant workers) (for example, Searle, McLeod, & Ellen-Eliza, 2015; Searle, McLeod, & Stichbury, 2015).

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<sup>2</sup> In 2015, internal testing was limited to countries with student visa decline rates of less than 20%. In 2018, internal testing was removed.

This research has done a great deal to help New Zealand catch up with other destination countries in terms of breadth of understanding of the issues facing migrant workers domestically. The research landscapes of the other countries surveyed in this research, most notably Australia and the United Kingdom, and reports published by organisations like Focus on Labour Exploitation in the United Kingdom, or the work of Bassina Farbenblum and Laurie Berg in Australia, tend to be methodologically more diverse than the material published thus far in and on New Zealand.

### 3.4 Forms of exploitation

The forms of exploitation that characterise the negative treatment of migrant workers in New Zealand are similar to those experienced by migrant workers in Australia, Canada and the United Kingdom, as well as elsewhere in the world. Issues around contractual exploitation, discrimination and inadequate workplace health and safety monitoring are common across New Zealand's migrant employment landscape. Most notably, migrant workers in New Zealand's hospitality, horticulture, agriculture and construction industries have been found to face specific forms of exploitation, either due to specificities of the industry, as in hospitality, or due to the labour market conditions in which the need for migrant labour developed, as in construction.

This section first provides an overview of the most common forms of exploitation facing temporary migrant workers in New Zealand, before discussing a number of sectors in which specific forms of exploitation take place. This section outlines several forms of exploitation which migrant workers experience.

#### **Fees and debt**

In some cases, migrant workers are charged exorbitant fees by recruiters in order to gain work in New Zealand. In one recent case, a number of Chinese workers were charged between NZ\$40,000 to \$57,000 for a working visa (Chiang, 2018). Recruiters in source countries prey on the vulnerability of workers, and often rely on misinformation, in order to extort as much from the workers as possible.

When seeking employment in New Zealand, employers can charge migrants from NZ\$3,000 to NZ\$15,000 for a position (Stringer, 2016). Further, employers/intermediaries can offer additional services, such as positions that could lead to residency, for significantly higher costs. Migrants have reported that the going market rate for such positions tends to be between NZ\$30,000 and NZ\$50,000 for residency (Christeller & Santos, n.d.). Stringer (2016) found that depending on the migrant group in question, some cases involved rates as high as NZ\$60,000. In some instances, migrant workers drive this process themselves.

In order to pay these fees, many migrant workers will take on large amounts of debt, and in some cases leverage family land or property as collateral. These loans are highly precarious, and often involve exorbitant interest rates, meaning that some workers have to work for years before they are able to repay their debts in order to actually begin remitting a significant amount of money.

#### **Contract substitution**

Contract substitution is another common form of exploitation experienced by migrant workers. This refers to the process by which a worker is offered one contract in their country of origin, in

many cases at a high rate of pay in a good job, but upon arrival in their destination country they are forced to sign a new contract with either a new title, lower wages, or, in many cases, both (Stringer, 2016; Stringer Simmons, Coulston, & Whittaker, 2014).

For example, in 2014, the owners of an Auckland sweet shop promised a migrant chef from Bangladesh \$17 an hour for 6 days of work a week at the commencement of his employment (Shaw, 2019). In reality, he and another chef were paid between \$7 to \$8 an hour for a 7-day work week. Hours could be as long as 21 hours a day, with no breaks. Contract substitution is a mechanism utilised by employers to facilitate other forms of exploitation. Although this is a common practice, and can occur in any industry across New Zealand's economy, Stringer et al. (2014) found that contract substitution was particularly common among foreign fishing crews.

In some cases, these substitutions are made without the worker's consent or knowledge and, conversely, there are situations where a worker knowingly signs a substituted contract. Many migrant workers are in positions where employment in any form is an absolute necessity due to the debts they have incurred in order to gain work in the first place. Issues relating to exploitation through debt bondage are discussed in more detail in the following section; however, it suffices to say for now that many workers are aware that by signing a new contract, they are likely to lose a great deal of money. Yet they do so out of a need to provide some degree of income to their families or dependants elsewhere, typically in their home countries.

### **Wage theft<sup>3</sup> and underpayment**

One of the most common forms of migrant worker exploitation in New Zealand is wage theft. Workers have been repeatedly found to have been underpaid, and in some cases unpaid, for work in industries across New Zealand. Both Bi's (2016) and Stringer's (2016) studies confirmed this and found that wage theft is the most common form of exploitation facing migrant workers. These authors also found that in many cases employers have been able to extort their employees by threatening to report them to immigration authorities and have them deported.

The real monetary impact of wage theft and underpayment varies widely among New Zealand's migrant worker population. At the least serious end of this exploitation, some migrant workers, for example those in the construction industry, have been found to be paid rates close to or above the minimum wage, but still significantly below industry standards, and less than other workers with similar levels of experience in the same jobs (Searle, McLeod, & Ellen-Eliza, 2015). At the more serious end, in her interviews with migrant workers, Stringer (2016) found that workers in the hospitality sector understood \$5 per hour to be the accepted industry norm.

Similarly, some migrant workers have been underpaid by being forced to work more hours than they are paid for. In these situations, even if a worker is contractually recognised as earning a legal

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<sup>3</sup> Wage theft occurs through the under-payment of wages, the non-payment of overtime and other benefits, or by the taking of illegal deductions. The most common form of wage theft is not paying an employee at all. Wage theft is a term that is more commonly used in Australia and the United States but has also been used in New Zealand (See MacLennan, 2018).

rate, the extra hours they work effectively lower their hourly wage. An employer might pay a worker for 20 hours, but make them work for 40, thus halving the cost of their employment while nominally abiding by the law. Several reports and media articles have found these issues are particularly prominent in the hospitality sector, and workers have reported that employers often force migrants to work longer hours than they are paid for.

The real extent and impact of wage theft for migrant workers is difficult to ascertain for a number of reasons. First, many migrant workers are paid in cash in order for the employer to avoid paying taxes, ACC levies, or other required payments. The more significant complication, however, relates to the fact that in some cases workers themselves participate in the process of their own wage theft. In some cases, workers have been found to pay employers in order to take jobs in New Zealand as a means of eventually gaining residency, and they work for nominal payment in exchange for the assent of the employer in immigration proceedings (Stringer, 2016).

Recent examples of wage theft include:

In November 2018, Jagran Property Services that operates both Crew Care Commercial Cleaning and Green Acres Mobile Care Valet, were ordered to pay \$37,500 for underpaying six members of staff. They were found to underpay six migrant workers by more than \$17,000. Further, they also failed to pay minimum wage and holiday pay (Radio New Zealand, 2018c).

In January 2019, Qin Zhang, company director of viticulture labour contracting firm Double Seven Services, was found to have failed to pay minimum wage to 21 migrant workers (New Zealand Herald, 2019).

In February 2019, a migrant worker was found to have worked for 985 hours of work for no pay in a Canterbury bakery (One News, 2019).

In March 2019, three migrants reported being underpaid by a 'Bottle O' franchiser. One worker claimed he worked an 84-hour week but was only paid 32 hours – equivalent to \$7 an hour (Radio New Zealand, 2019).

### **Excessive hours of work**

Similar to the issues of wage theft, migrant workers have been found to be regularly required to work excessive hours. This has a range of effects, ranging from exhaustion from overexertion, to social isolation stemming from having restrictions placed on a worker's capacity to move outside the workplace, and, in some cases, can lead to serious physical and mental health issues (King, Blaiklock, Stringer, Amaranathan, & McLean, 2017; Stringer et al., 2014).

In 2016, Taste of Egypt, a Richmond takeaway, was found to have exploited two of their workers. Rohit Sharma and Gurpreet Singh worked 70 hours per week and were only paid for 30 hours per week (Stringer, 2016). In a similar case, a *3rd Degree* investigation reported two Filipino workers were required to work up to 70 hours a week earning just \$250 a week (Morrah, 2015). Migrant workers reported to Stringer (2016) that they had been required to work excessive hours; for example, one had 18-hour work days while another regularly worked 12-hour days under the threat of being sent home if he complained.

Although this issue is closely linked to the issues discussed in the “Wage theft and underpayment” section above, we argue that the issues should be considered at least somewhat separate, if only to highlight the fact that excessive work hours are, in and of themselves, a form of exploitation regardless of whether a worker is paid for that work. If a worker is forced to undertake extended periods of labour without sufficient breaks or rest between shifts, their health and safety both in and out of the workplace will suffer.

### **Occupational health and safety violations**

Lastly, health and safety violations are common in many workplaces across New Zealand, but they are particularly prevalent in industries and workplaces or sites employing a large proportion of migrant workers. In Searle, McLeod, and Ellen-Eliza’s (2015) report on the construction industry, half of the informants indicated significant health and safety concerns. Some of this, the authors found, stemmed from poor practice by employers. However, these authors also found that health and safety issues on construction sites often stemmed from workers themselves not having the language skills to communicate with one another or their employers (Searle, McLeod, & Ellen-Eliza, 2015). The extent, or indeed direct effects, of these impediments is not yet fully clear; however, it is self-evident that work needs to be done to amend this (see King et al., 2017). Communication is vital in workplaces, and is especially important on hazardous worksites like those in the construction sector.

Searle, McLeod, and Ellen-Eliza (2015) also found that in some cases workers are being charged the cost of health and safety gear by their employers. If a job requires handling dangerous materials, for example asbestos removal, employers are required to provide protective gear to workers as part of their employment. A number of people reported that workers are not being provided with proper protective materials. Although this has been reported as a form of exploitation (see also MacLennan, 2018), the available literature does not yet indicate the overall prevalence of this issue.

Stringer (2016) found that accidents were often handled discretely and off the record. In 2013, the New Zealand Taskforce on Workplace Health and Safety found that from their submissions, casual workers, those on 90-day trials, on short-term contracts and seasonal workers were less likely to report injuries or voice concerns for fear of not being re-employed in the future (New Zealand Council of Trade Unions, 2013).

In addition to facing forms of exploitation around workplace health and safety, migrant workers in New Zealand have had a lower claim rate generally than non-migrants. Research thus far has attributed the cause to the lower probability of migrant workers making a claim overall (Searle, McLeod, & Ellen-Eliza, 2015). This may be due to them not having proper knowledge of the ACC<sup>4</sup> process, or not having access to public services as part of their visa. These factors likely go some way to explaining the lower claim rate among migrant workers; however, we recommend that this issue is analysed further.

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<sup>4</sup> Accident Compensation Corporation

### 3.5 Sector-specific forms of exploitation

In this section, we relate exploitation forms to some specific sectors. This is not to say that migrant worker exploitation is (exclusively) limited to these sectors and does not exist elsewhere. These sectors have traditionally been home to various exploitation forms and are where exploitation rates have been and remain relatively high.

#### Hospitality

The hospitality industry has come to employ larger numbers of migrants over the past 10 years. Although the levels of exploitation vary between individuals, jobs and groups, workplace exploitation in general is common in New Zealand's hospitality industry, to the point where it has been described as the "Wild West of workers' rights" (Walton, 2018, para. 7).

There are different visas through which temporary migrants can work in the hospitality industry. The first of these is the Essential Skills Visa. As of 2014, approximately 13% of all temporary migrants were employed in hospitality on the essential skills visa. In contrast, around 25% of migrant hospitality workers were international students, and a further 13% were employed through study to work visas. The largest proportion of migrant workers employed in hospitality, however, were employed through the Working Holiday Visa, which comprising approximately 33% of the overall workforce (Searle, McLeod, & Stichbury, 2015). As reported by Morrah (2018), government figures revealed there was a 27% increase in complaints in 2018 compared to 2017 (a surge in complaints from 247 to 315) in the hospitality sector.

Exploitation in the hospitality industry is not necessarily a one-off occurrence. For example, in one case, an employer, who was the sole director and shareholder in three Asian restaurants, was found to have exploited up to 132 employees (Employment New Zealand, 2017c). He was ordered by the Employment Relations Authority to pay \$99,000 for failing to pay the New Zealand minimum wage and holiday pay. He was also ordered to pay \$97,000 in arrears to 132 employees, the majority of whom were international students (Employment New Zealand, 2017c).

In another case, the owner of Shamiana, a chain of 22 Indian restaurants, was fined in 2018 for failing to abide by New Zealand employment law (Nadkarni, 2018a). Other businesses in the hospitality sector have been placed on MBIE's Stand Down List and are thereby not permitted to hire migrant workers for a period of time.<sup>5</sup>

Searle, McLeod, and Stichbury's (2015) study on the hospitality sector found that essential skills migrants are more likely to be paid less than a full-time minimum wage than the average Essential Skills worker and they are more likely to work without a written employment agreement. Half of the informants reported that the exploitative practices are deliberate and sustained (see also

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<sup>5</sup> The Stand Down list refers to employers who have breached employment law and who are denied the right to hire migrant workers for a period of between 6 to 24 months depending on the severity of the exploitation. See <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/employers-who-have-breached-minimum-employment-standards/>

Stringer, 2016). Furthermore, the sector is not well unionised and migrant workers are often fearful of reporting their conditions, and losing their jobs (Yuan et al., 2014),

### **Agriculture, horticulture and viticulture**

New Zealand's agriculture, horticulture and viticulture sectors have been found to have particularly high rates of migrant worker exploitation in recent years. A range of reports – in particular, media and news releases from Employment New Zealand – discuss numerous breaches of standard employment requirements. A number of those reported included the failure to keep accurate and legitimate employment records (Employment New Zealand, 2017a, 2017b, 2018; New Zealand Herald, 2019), as well as the failure to provide employment agreements (Employment New Zealand, 2017a, 2017b, 2017d, 2017e, 2018; Newshub, 2018a). Miscalculated payslips were also found to be a common practice, and many employers have been found to pay less than the minimum wage or pay piecemeal rates that fell below minimum wage (Bradford & Abel, 2017; New Zealand Herald, 2019; Stringer, 2016). In addition to this, some workers were subjected to illegal deductions from wages (Nadkarni, 2018b), and / or were charged employment premiums (New Zealand Herald, 2019; Stringer, 2016).

The kiwifruit industry is one industry which has received considerable media attention. In 2017, 53% of labour hirer companies (out of 62 companies) in the Bay of Plenty were found to have failed to meet basic employment standards (Employment New Zealand, 2017d). This included 94 breaches of minimum standards, affecting 687 employees (Employment New Zealand, 2017d). In May 2018, the kiwifruit industry reported a labour shortage – this is seen to coincide with a drop in the number of Indian students working in the industry after 150 students, with false documents, were threatened with deportation (Hutching, 2018).

In January 2019, apple growers called upon the government to declare a labour shortage, so they could hire more migrants (Skerrett, 2019b). Spokespeople from the Union Networks of Migrants, Indian Workers' Association, and First Union criticised this move calling it, instead a pay "crisis" (Bonnett, 2019; Skerrett, 2019b). The unions argue that migrants are being used to drive down the wages, as it is easy to do so because they are isolated and have a lack of access to information on employment rights (First Union, 2019).

In addition, employers in the agriculture, horticulture and viticulture sectors were found to be exploiting migrant workers through the use of piecemeal rates wherein workers are paid for the output they produce. This is particularly common in the horticulture sector, with workers paid according to the amount of fruit they pick in the course of a day. In and of itself, this is not necessarily an exploitative practice. However, some reports found that the piecemeal pay system had been abused by employers (Yuan et al., 2014), often involving setting unreasonably high targets as a norm for workers to work towards, effectively keeping wages low, and forcing workers to work excessive hours in order to make sufficient income (Yuan et al., 2014). Since these sectors involve physically demanding labour, such exploitation also risks causing exhaustion and injury in workers as well.

More recently, there have been some extreme cases of migrant worker exploitation, in some cases resulting in human trafficking and slavery charges being laid. New Zealand's first human trafficking

conviction, in 2016, involved the exploitation of workers in the horticulture sector. In this case, 15 Fijian workers were lured to New Zealand on the promise of making \$900 per week, only for them to be paid less than the minimum wage, forced to work for excessive hours, and forced to sleep on the floor of a crowded basement. A further case emerged in 2018, involving charges relating to the slavery of 10 Samoan migrants between 1994–2017 in the Hawkes Bay (Radio New Zealand, 2018d). At the time the charges emerged, a Hawkes Bay-based employer, who described that case as evidence of “labour terrorism,” said that many employers in the industry were frustrated by these actions while they made genuine attempts to improve their practices (Radio New Zealand, 2018d, para. 29). In their analysis of dairy farm workers across New Zealand, Bradford and Abel (2017) found positive evidence that suggested employer frustrations were valid, as many in the region had made efforts to improve their employment practices. However, it is abundantly clear from the available evidence that migrant exploitation is still a very serious issue in agriculture, horticulture and viticulture in New Zealand, and although there are a number of employers putting positive measures in place, there are still many who are not and many migrant workers being exploited as a result.

### **Construction**

The 2011 Christchurch earthquakes led to an increased need for skilled construction workers which the domestic market could not supply. In the time since then, the treatment of migrant construction workers has come under increasing scrutiny, with several media reports (Morrah, 2019a; Hollingworth, 2019; Newshub, 2018b) detailing instances of worker exploitation. In addition, two major reports have been published on the treatment of migrant workers in the industry (MacLennan, 2018; Searle, McLeod, & Ellen-Eliza, 2015). Both of these reports found that migrant construction workers in New Zealand commonly face a range of issues with their contracts, wages, occupational health and safety, and housing. Workers have also been found to face lower than average pay, insecure work hours (Newshub, 2018b; Hollingworth, 2019, see also Stringer, 2016), poor work conditions (Newshub, 2018b) and cramped, overpriced housing (Morrah, 2019a; Newshub, 2018b). Cleland and Burns (2015) found that 27% of firms across Canterbury did not provide employees with written contracts, 16% of workers had worked without payment, and 5% were asked to pay their own ACC levies.

The two most common concerns among Filipino construction workers are low pay rates and the expense of the migration process (MacLennan, 2018; Stringer, 2016). Migrant workers experience being excessively charged by recruitment agencies in the Philippines (charges ranged from \$8,000 to \$15,000) and their contracts’ terms and conditions were not being met (MacLennan, 2018; Searle, McLeod, & Ellen-Eliza, 2015; Stringer, 2016). Moreover, migrant workers are paid less than New Zealand workers, despite often having comparable or higher experience (Searle, McLeod, & Ellen-Eliza, 2015).

In addition to these issues, migrant construction workers face other forms of exploitation. The first relates to employers’ use of the 90-day trial period as a mechanism to exert control over migrant workers. In Searle, McLeod, and Ellen-Eliza’s (2015) report, a number of workers reported that their employers had been employing exploitative practices relating to the 90-day trial period, the most common of which involved reclassifying jobs after an employee began working in order to

pay them less, and the use of the trial period to easily dismiss workers without having to utilise standard employment practices.

Second, migrant workers in the construction industry have been found to have had deductions taken from their wages by employers, or monetary charges laid against them prior to receiving their payslips, leading to workers only receiving a fraction of the pay they should have been paid (MacLennan, 2018). In some cases, these deductions are used to cover the cost of protective gear; however, MacLennan (2018) also found that there are numerous instances in which workers faced deductions from companies for “pastoral care” services, which range from paying for use of a car, housing, and internet access, to transport from the airport to their place of residence.

### **Telecommunications**

As with the construction sector, the telecommunication industry has only recently come to employ significant numbers of temporary migrant workers. One of the most prominent, and systematic, cases of migrant worker exploitation in the New Zealand telecommunications industry in recent years emerged in 2018 around the exploitation of migrants working for Chorus subcontractors. In a wide-ranging investigation, the Labour Inspectorate found that 73 out of the 75 Chorus (97.3%) subcontractors in Auckland they investigated, the large majority of whom were employing migrant workers, had breached minimum employment standards (Radio New Zealand, 2018a).

These subcontractors had employed a number of mechanisms to avoid paying their workers, including the classification of work as periods of training, trials and volunteering. Other breaches included the use of cash-for-visa schemes. Only two of the 75 subcontractors were able to demonstrate they had clean employment records (Gallagher, 2018; Radio New Zealand, 2018a; 2018b). Joe Gallagher from E Tū said there were approximately 900 subcontractors working in Auckland, and that the problem of breaching minimum employment standards is likely to be just the tip of the iceberg (Gallagher, 2018).

Subsequently Chorus contracted MartinJenkins, a consultancy firm, to undertake an independent review of the employment practices used by their subcontractors. Their report, published in April 2019, found that there was likely further exploitation within Chorus’ supply chain, and that at least one third of the ultrafast broadband subcontractors Chorus had contracted had likely breached minimum employment standards, and possibly engaged in worker exploitation as well.

The report found that there was a large number of allegations that Chorus subcontractors had engaged in poor record keeping and underpayment as less severe forms of exploitation, and that there were a small number of reports alleging that some subcontractors had also engaged in more severe exploitative practices. These included compelling workers to undertake work without pay, requiring that employees pay a portion of their pay back to the employer or being forced to provide cash “favours” to the employer (Martin, Baddeley, Chen, & Craven, 2019).

Similar to the original investigations into the Chorus subcontracting chain, MartinJenkins reported that there were a small number of allegations of bribery and the use of cash-for-visa schemes (Martin et al., 2019, p. 24). They noted that Chorus, its service companies and its subcontractors “did not adequately anticipate the impacts of shifting to a heavily migrant workforce” (Martin et

al., 2019, p. 29); further, they did not understand the risks of migrant worker exploitation in their supply chain, and there were no adequate safeguards in place to protect against such exploitation.

### International students

Although international students do not constitute a specific sector of the workforce in and of themselves, many international students across the country face serious exploitation in workplaces as temporary migrants, and the specificities of their experiences warrant exploration in some detail.

Some PTE providers were found to be operating either fraudulent or exploitative operations. A government report from 2012, based on unannounced visits to six PTE providers, found that these providers had not only failed to meet NZQA requirements, but that they had also likely breached immigration laws and instructions, breached the code of practice for the pastoral care of international students, and, in many cases, potentially also helped facilitate the exploitation of international students<sup>6</sup> in workplaces.<sup>7</sup>

The government found that there was “reliable intelligence that... such breaches were commonplace” among PTE providers, and that many were essentially functioning as fronts to provide a source of “cheap unlawful labour”.<sup>8</sup> They were found to have compelled their students to breach the work-hour visa limits placed on all international students, and the students in question were also potentially exploited through not receiving the legal minimum wage, holiday entitlements, or the requirements of other minimum employment standards.

The forms of exploitation facing international students in New Zealand has entered the public consciousness in recent years. In 2016, Francis Collins published a major survey of nearly 900 migrant workers, of whom 457 were international students, and found that the government policies that were encouraging international students to travel to New Zealand were deceiving them with false hopes of residency (Collins, 2016). International students were incurring significant debts in order to travel to New Zealand, and when they arrived and found their schooling was being provided by fraudulent or exploitative organisations, many were forced to engage in illegal practices in order to pay off debts in the hope of staying in New Zealand (Collins, 2016).

The most prominent case of this kind took place in 2017, when nine Indian international students took up residency in a Ponsonby church after being issued with deportation notices for having fraudulent immigration documents. The case received widespread media coverage (see for example Satherley, 2017; Speedy & Bracewell-Worrall, 2017) and the students alleged that they had been misled by their immigration advisor, who had falsified visa documents without their knowledge, and had lost significant amounts of money in the process. The students stayed in the

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<sup>6</sup> International students are eligible to work a maximum of 20 hours per week, if certain requirements are met, and full-time in scheduled breaks.

<sup>7</sup> Released under the Official Information Act (OIA): MBIE and NZQA. Operation Medusa (31 August 2012).

<sup>8</sup> Released under the OIA: MBIE and NZQA. Operation Medusa (31 August 2012).

church for 2 weeks before they were eventually deported. In 2019, four of the students were granted new visas to return to New Zealand (Morrah, 2019b).

### 3.6 Drivers of exploitation

There are a wide range of factors that drive the exploitation of temporary migrant workers in New Zealand. As with the forms of exploitation discussed in section 3.4, they are largely similar to drivers of migrant worker exploitation in destination countries around the world. Aside from cultural or geopolitical specificities, Australia, Canada, New Zealand, and the United Kingdom have all pursued broadly similar policy approaches to the governance of migrant labour, and this has led to the emergence of both similar forms and drivers of exploitation. Broadly speaking, migrant worker exploitation is driven by a policy environment, a shared sense of fear of reprisal among workers, and a range of poor regulatory and enforcement practices.

However, this is not to suggest that these drivers are purely related to legislation or policy directives. In many cases, migrant worker exploitation stems partly from employer negligence, cultural or linguistic isolation, or lack of resourcing for intervention and enforcement. It must be recognised that these drivers are all closely interconnected, and any action to address migrant worker exploitation must engage with them in a systematic and holistic manner.

#### **Vulnerabilities associated with employer-assisted visas**

Perhaps the most common, and arguably most significant, driver of temporary migrant worker exploitation in New Zealand is the vulnerabilities that emerge from the widespread use of employer-assisted visas. This practice is prevalent around the world, including in New Zealand; these visas function to tie a worker to a particular employer with the aim of ensuring that they complete the job for which they migrated without taking other positions in the labour market.

While this appears to be a sound rationale, the use of employer-assisted visas has been regularly found to drive the exploitation of migrant workers in both its most mundane and extreme forms. Employer-assisted visas force the worker in question to depend on their employer to meet their visa conditions (Ernst & Young New Zealand, 2018; Searle, McLeod, & Ellen-Eliza, 2015; Stringer 2016). As a result, they have been found to directly negatively affect migrant workers' willingness to complain about their treatment or to report health and safety breaches, as well as to increase the likelihood of taking on dangerous or unsafe work (Chen, 2018).

The use of employer-assisted visas should be seen as a key driver of temporary migrant worker exploitation because they limit the capacity for governments, investigation and enforcement agencies, or community organisations, to assess the overall extent of exploitation. If workers are unwilling to speak out against their employer because their visa status is tied to them, there is risk of the level of exploitation taking place in New Zealand being greatly underestimated.

#### **Fear of deportation, unemployment or reprisal**

In a similar vein to the effects of employer-assisted visas, there is extensive evidence of workers failing to report their exploitation on the grounds that they did not want to risk being deported, losing their visa status or losing their jobs (Bi, 2016; Chen, 2018; Ernst & Young New Zealand,

2018; Searle, McLeod, & Ellen-Eliza, 2015; Searle, McLeod, & Stichbury, 2015; Stringer, 2016; Yuan et al., 2014).

In one characteristic example, Bi (2016) reported on a case in which a migrant, originally employed in New Zealand on a working holiday visa, was forced into informal work because his visa expired, but, due to financial issues in his country of origin, he was unable to return. In order to sustain himself while waiting for the issues to be resolved, he took on additional work without legal right to do so. Bi (2016, p. 36) refers to testimony from a support person on his case, who reported that:

he had to accept these very, very bad conditions. He was afraid to do anything, he was afraid to approach anyone, and he was afraid of being deported and facing the consequences of that. While working, he would be carrying hot things and he would be hit by the owner... he worked overtime, up to [a] ridiculous extent.

As yet, there is little evidence to suggest exactly how widespread this sense of fear of deportation is among New Zealand's temporary migrant worker population. The fear that workers experience is grounded on the behaviour of their employers, the experiences of people around them, and the existence of a policy environment in which such repercussions are not only possible, they are in some cases encouraged.

### **Difficulty finding work**

In their study into migrant experiences in New Zealand, MBIE (2015) found that migrants experienced particular difficulty finding work due to a lack of New Zealand experience, difficulties with communicating in English, or having skills or experience not accepted by New Zealand employers. This significantly limits the range of employers with whom one might find work, and, as a result, migrants have been found to have accepted work with exploitative employers, for wages below the national minimum or in workplaces which failed other minimum employment standards (Bi, 2016). This, Bi (2016) contended, was because they viewed it as their only option and there were employers willing to take advantage.

If a migrant is forced for whatever reason to take on informal work, they may also then be placed at risk of deportation for breaching their visa conditions by working when they may not be legally entitled to so, or for working more hours than their visa conditions allow. For example, employers have been found to openly flaunt the limits on term-time employment for international students, or, as discussed above, in some cases exploit migrant workers through low-wage work with little regard for their visa requirements.

Of course, the latter has thus far been found to only exist in a few cases, and serves more as an exemplar of severe labour exploitation than as the norm for New Zealand. However, the difficulty finding work can lead to a very wide range of less harmful, but still significant, forms of exploitation. According to MBIE (2015), approximately 3 in 10 migrants in New Zealand face difficulty finding work. This amounts to a significant number of people, and given the implications of this difficulty, it should be taken as a valuable insight into the conditions and experiences of migrants across New Zealand as a whole.

### **Cultural factors**

Migrant workers contribute significantly to the richness of New Zealand's diversity. However, in addition to drivers relating to the structure of work and employment relationships, cultural factors can also sometimes function as drivers of exploitation.

A number of reports into the experiences of migrant workers in New Zealand have found that workers often state that the cultural importance they place on respecting authority is the reason they did not report exploitation or health and safety risk (Bi, 2016; Chen, 2018; Searle, McLeod, & Ellen-Eliza, 2015). Some workers express gratitude to their employer for their job, or are hesitant to report any concerns they might have. Similarly, a number of reports have found a reluctance to report exploitation and health and safety concerns by certain migrants due to scepticism of governmental authorities and their systems (Chen, 2018; Inland Revenue, 2014; Searle, McLeod, & Ellen-Eliza, 2015; Stringer, 2016).

Culture also influences how business owners conduct their business. In Searle, McLeod, and Stichbury's (2015; see also Stringer, 2016) hospitality report, migrant business owners were commonly found to employ and exploit migrants from the same ethnic background. In many cases migrants are, indeed, employed by people with the same nationality, cultural background, or professional or familial connections. Business owners who come from a country with a dissimilar tax system to New Zealand's were found to be at greater risk of being non-compliant (notably Indian and Chinese business owners) due to differing attitudes around tax (Inland Revenue, 2014). The presence of a range of different cultures often entails the existence of a range of different expectations of employment relations (Yuan et al., 2014). The former is desirable for a thriving, varied and cosmopolitan society. The latter, however, can lead to a range of forms of exploitation, and measures to help resolve varying expectations of employment relationships should be considered.

Due to the somewhat subjective and indeterminable nature of cultural factors, it is difficult to assess with any precision the extent or effects they have as drivers of migrant worker exploitation. It is clear that many migrant workers refer to cultural factors as a reason for choosing not to report exploitation. The extent to which cultural factors serve as drivers of exploitation (in comparison with other drivers) may vary.

### **Lack of language skills and knowledge of rights**

A commonly cited driver of migrant worker exploitation, both in New Zealand and around the world, is a worker's lack of language skills and knowledge of employment rights. In New Zealand, having minimal English skills, or low confidence in one's abilities, risks acting as a driver of exploitation, at the very least for the fact that workers may be unable to articulate their experiences to appropriate enforcement officials. Bi (2016), for example, found that reporting their experiences to authority figures in English was a significant cause of stress for migrant

workers. In addition to these concerns, English language difficulties have been found to make it difficult for migrants to understand contracts, access appropriate legal protections (Yuan et al., 2014), or gain knowledge on employment rights (Searle, McLeod, & Ellen-Eliza, 2015) and health and safety regulations in New Zealand (Chen, 2018).

### **Lack of enforcement**

The capacity of enforcement agencies to investigate situations of potential labour exploitation is central to reducing instances of exploitation in both the short and long term. Unfortunately, with the increase in migrant workers in New Zealand, there has been a concomitant increase in concerns around the staffing and resourcing of the Labour Inspectorate. New Zealand has a stronger, more proactive Labour Inspectorate than Canada and the United Kingdom, but still faces issues of understaffing and inadequate resource distribution. In 2017, the number of labour inspectors amounted to approximately one inspector to every 43,000 workers (Citizens Advice Bureau, 2017). The International Labour Organisation recommends the ratio should be 1 per 10,000 workers for developed nations (Bi, 2016). Christeller and Santos (n.d.) argue that the lack of enforcement has led to employer confidence that exploitation of their workers will go undetected and unpunished. Importantly, it is seen that the penalties imposed on employers do not outweigh the liabilities if action were to be imposed (Christeller & Santos, n.d.).

### **Debt and remittances**

The last major driver of migrant worker exploitation in New Zealand is the prominence of remittances and debt in migrant workers' lives. The vast majority of temporary migrant workers in Australia, Canada, New Zealand and the United Kingdom engage in the process of labour migration because they are able to earn more than they would be able to in their home countries. As a result, migrants often face considerable pressure from family to remit money home (Bi, 2016; Yuan et al., 2014).

As discussed above, migrant workers often take on significant amounts of debt to facilitate the migration process and to help them find work, and the need to work sufficient hours to pay this debt can lead workers to accept less desirable or unsafe work (Yuan et al., 2014). Offshore education agents give international students false expectations in terms of job opportunities in New Zealand (Stringer, 2016). With higher than expected living costs, loan repayment obligations and lack of access to funds for living, financial pressure to obtain work is high (Yuan et al., 2014). Migrants take big financial risks by coming to New Zealand to work and so are unwilling to jeopardise the investment. Moreover, these financial pressures mean that they cannot afford access to legal services (Christeller & Santos, n.d.)

## **3.7 Summary**

Over the past 2 decades, New Zealand has significantly increased its employment of temporary migrant labour. As the number of workers has increased, so too have instances of exploitation, and, in recent years it has become increasingly apparent that the problem is widespread across the country. Temporary migrant workers have been found to have been exploited in a wide number of major sectors of New Zealand's economy, from hospitality, construction,

telecommunications to agriculture, horticulture and viticulture. This exploitation is driven by a range of social, structural, cultural and individual factors.

PROACTIVELY RELEASED

## 4. Temporary Migrant Worker Exploitation in Australia

### 4.1 Introduction

Over the past 2 decades, Australia has significantly expanded its use of migrant labour. According to most recent estimates, as at 30 June 2018, there were an estimated<sup>9</sup> 878,912 temporary migrants in Australia on temporary skill shortage and temporary work visas (147,309), student visas (486,934), temporary graduate visas (71,157), working holiday makers (134,909) visa holders, and other visas, comprising 29 visa subclasses (38,573) (Commonwealth of Australia, 2019).

Much like New Zealand, many of the same issues pertaining to migrant worker exploitation have been found to arise in Australia, and often those issues are driven by very similar factors. Of the countries surveyed, the situation in Australia is most comparable to and pertinent for understanding exploitation in New Zealand. In addition, Australia is a particularly useful case study for this report because there is a larger existing body of research around the treatment of migrant workers than there is in New Zealand, and more work into the issue is being undertaken regularly.

Over the past 3 years alone, a number of academics, policy-makers, unions and NGOs in Australia have published wide-scale analyses of the treatment of migrant workers across the country. Further, the government – both at the federal and state levels and, in particular, Queensland – have sought to gain a deeper understanding of exploitation – what form it takes and what can be done to address it. To name but a few, these reports include the Senate Education and Employment References Committee’s (2016) report entitled *A National Disgrace: The Exploitation of Temporary Work Visa Holders*; the Fair Work Ombudsman’s (FWO; 2016a) *A Report of the Fair Work Ombudsman’s Inquiry into 7-Eleven* as well as their *Inquiry into the Wages and Conditions of People Working Under the 417 Working Holiday Visa* (2016b). In 2019, the Commonwealth Government released the *Report of the Migrant Workers’ Taskforce*, the culmination of 3 years of work into the issue and an analysis of possible avenues for ending exploitation. Academics Laurie Berg and Bassina Farbenblum (2017) released their report into the findings of the *National Temporary Migrant Workers Survey*, a nationwide undertaking aimed at understanding exactly what workers were experiencing, how they understood those experiences, and what they felt needed to be addressed.

There are, of course, limitations to these reports. For example, the *National Temporary Migrant Workers Survey* was based on a self-selected sample of 4,322 migrant workers; the research is limited in that it may not adequately capture the population of migrant workers unwilling to speak openly about their experiences even anonymously (Berg & Farbenblum, 2017)<sup>10</sup>. Notwithstanding

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<sup>9</sup> Some visa holders may not have chosen to travel to Australia.

<sup>10</sup> Migrants self-selected to participate in the survey. There are some limitations to the data collected, for example, the participants don’t specify if the wages they recorded were gross or net or, further, what the minimum wage was at the time.

such limitations, the *National Temporary Migrant Workers Survey* has been described by the Migrant Workers' Taskforce as the "most comprehensive academic survey to date" (Commonwealth of Australia, 2019, p. 6); thus, we draw significantly on this research. Similar limitations can be found in the other reports and where the limitations are particularly pertinent, they will be discussed as is appropriate. That being said, even with such limitations, the range of research and reporting being undertaken serves to construct a broader image of the issue than is available in other countries.

In addition to these resources, several public submissions were made to the government's inquiry into the establishment of a Modern Slavery Act, which discussed and outlined the exploitation of migrant workers. These reports, as well as other sources drawn on, help paint the picture of the level of exploitation of temporary migrant workers in Australia.

## 4.2 Background

Of the countries surveyed in this report, Australia was last to implement what might be considered a contemporary labour migration system. There are a range of reasons for this and there are several broad pieces of information that are useful for developing a general understanding of the idiosyncrasies of labour migration in Australia.

The first, and perhaps most important of these, is the White Australia policy. For many years, labour migration, particularly from regions other than Europe, was strictly limited by the Australian government on the grounds that Australia should be maintained as a white European nation. By the middle of the 20th century, much of the White Australia policy had been disestablished; however, it still took time before Australia opened its borders to large numbers of non-white migrants. Indeed, it wasn't until 1996 that the country introduced a high-skilled visa programme for migrant workers. The number of migrant workers in the country has grown rapidly since 1996. As of 2018, there were an estimated 878,912 temporary migrants in Australia. This number comprises a range of different visa classes, from temporary skill shortage and temporary work visas (147,309), student visas (486,934), temporary graduate visas (71,157), working holiday makers (134,909), and other visa subclasses (38,573) (Commonwealth of Australia, 2019).

In spite of the similarities and useful comparisons to be drawn between Australia and New Zealand discussed in section 4.1, there are a number of significant differences between the two countries. Most significantly, migrant labour in Australia functions differently from New Zealand in that Australia has no low-skilled temporary migrant labour programme. As has been discussed in regard to New Zealand, and as discussed later in regard to Canada and the United Kingdom, the vast majority of migrant workers facing exploitation are employed through low-skilled migration programmes. Since Australia lacks anything of this sort, the nature of exploitation workers face is notably different by definition.

However, this does not mean that there are no migrant workers being exploited in low-skilled positions in Australia. Instead, low-skilled migrant labour into Australia is facilitated through the import of people for primary purposes other than work, for example international students, working holiday makers, the Seasonal Worker Program, or, in some cases, the spouses and partners of medium- or high-skilled workers. In their submission to the inquiry into establishing a

Modern Slavery Act, Anti-Slavery Australia (2017), and later the Migrant Workers' Taskforce, identified working holiday makers and international students as being particularly vulnerable. Further, Pacific Island workers on the Seasonal Worker Program (open to workers from participating Pacific Island countries and Timor-Leste) are identified as being vulnerable (Commonwealth of Australia, 2017).

We now go on to briefly provide background information on the international students and working holiday makers.

### **International students**

International students provide a significant labour pool for the urban labour market, particularly in the fast-food sector, convenience stores, and furniture moving operations. Australia has used the prospect of the right to work as a way to attract international students (Mares, 2018). As a result of this and a number of other policy changes, the number of international students in Australia increased nearly 800% between 1994 and 2017. In 2017, 792,422 (representing eight times as many as 1994) international students were enrolled in Australian institutions, with higher education accounting for 44% of these students (Clibborn, 2018).

### **Working holiday makers**

Since 2000, the working holiday visa scheme has expanded to 41 countries; 19 countries fall under the working holiday programme (visa subclass 417) and the other 22 countries under the work and holiday scheme (visa subclass 462) (Mares, 2018). The original purpose of the scheme was to foster tourism and closer ties between Australia and the respective countries through cultural exchange. Recently, the working holiday scheme has been used to fill crucial labour shortages in rural areas with the government extending the scheme in 2018.

Working holiday makers who have spent at least 3 months working in agriculture and related industries (referred to as the 88-day rule) under visa subclass 417 are eligible for an additional 12-month visa. In recent years, the horticulture sector has become almost entirely reliant on this labour pool to the extent that the programme is referred to as a de facto temporary labour market programme (Mares, 2018). It is argued, by backpackers who reported to *The Guardian*, that working holiday makers are willing to accept poor working conditions because of the 88-day rule (A. Davies, 2018). In 2019, the Australian government extended the working holiday visa scheme so that those on subclass 417 (Working Holiday) and 462 (Work and Holiday) visas, who complete 6 months of specified work in areas where there is a critical labour shortage, are now qualified to apply for a third visa.

Mares (2018) argues that the exploitation of those entering Australia under the Working Holiday scheme is likely to expand. Conditions which can facilitate the exploitation of working holiday makers have not gone unnoticed by government; it recognises that this segment of the population is vulnerable due to their geographic isolation and their dependency on their employer for their second-year visa and subsequently their third-year visa. The exploitation of working holiday makers has been termed "endemic and severe" (Wolfe, 2018, para. 23) and, for the backpackers themselves, a "rite of passage" (Wolfe, 2018, para. 2). The news media reports substandard living

conditions, financial exploitation, unsafe working conditions, as well as sexual harassment and rape (Daily Mail Australia, 2015; A. Davies, 2018; Wolfe, 2018).

### 4.3 Forms of exploitation

This section explores the most common forms of exploitation experienced by migrant workers across Australia generally. This largely concerns anything from wage theft, to housing conditions, to physical abuse. In the sections of this report concerning New Zealand, Canada and the United Kingdom, there is further discussion of several sector-specific forms of exploitation. Due to the nature of low-skilled labour migration into Australia, however, there is comparatively little differentiation in exploitation between specific sectors, and so this section focusses on general forms of exploitation. Wherever appropriate, examples are drawn from specific industries or sectors.

The Migrant Workers' Taskforce identified that migrant workers experience a wide range of exploitation, including:

- Wage theft or cashback arrangements
- Being required to work more hours than permitted by visa conditions
- Being forced to make a deposit or payment in order to get a job
- Lack of workplace entitlements
- Unsafe working conditions
- Unfair dismissal
- Unfair deductions from wages
- Being threatened with being reported to immigration authorities
- Having passports withheld
- Being required to stay in substandard accommodation

Source: Commonwealth of Australia, 2019

These forms of exploitation do not occur at equal levels or with equal severity. Wage theft, for example, is by far the most commonly reported, researched and publicised issue, while document confiscation and substandard accommodation appear less often. Of course, this is not to say that the level of reporting is necessarily indicative of actual rates of exploitation; however, given the nature, limitations and methodological approach taken in this research, it is beyond our scope to establish more accurate qualitative information than is provided in the literature. As a result, the level of depth and detail in this section's respective discussions of the above forms of exploitation varies according to the amount of information available. Wage theft and its related forms of exploitation are explored first and in the most detail. Following this, the section discusses exploitation relating to excessive working hours, substandard accommodation, health and safety violations, physical and sexual abuse, and document confiscation.

#### **Wage theft**

While wage theft is a prominent issue in the countries surveyed in this research, it is arguably most prominent in Australia. Wage theft takes a number of forms, including underpayment of

wages, illegal wage deductions and the use of cashback schemes, and affects migrant workers across visa classes, occupations and industries.

### *Underpayment of wages*

The first, and most common, form of wage theft experienced by migrant workers in Australia is the underpayment of wages. In 2017, the *National Temporary Migrant Workers Survey* found that as many as 52% of migrant workers across Australia were being paid less than the minimum wage<sup>11</sup> (Berg & Farbenblum, 2017). This issue was particularly prominent in the horticulture and farming sectors, where 31% of workers surveyed reported that they were paid less than AU\$10 per hour, with a further 15% reporting they were being paid less than AU\$5 per hour. Exploitation has occurred in the Seasonal Worker Program, with conditions likened to those of modern slavery (see pop-up box). In response to a number of complaints of exploitation against Pacific Islanders working on the Seasonal Worker Program, the Tonga Australia Seasonal Workers Association undertook an investigation and confirmed “the depth, severity and prevalence of these reported exploitation, abuse and modern slavery practices throughout the Seasonal Worker Program” (Commonwealth of Australia, 2017, p. 288).

In 2015, six Fijian workers were identified as victims of modern slavery (Field & Sampson, 2015). A governmental-approved labour-hire firm had been paying the workers AU\$1.20 an hour on a casual piece-work system. They were denied medical access despite having paid medical insurance. They were refused work breaks, were unable to move freely into the community or attend church, were verbally abused by their supervisors and were underfed by the labour-hire company that was required to provide food for them.

More recently, in May 2018, Fairfax Media reported on the exploitation of a group of 50 workers from Vanuatu employed by Australia’s biggest rural labour-hire provider, Agri Labour Australia (Schneiders, 2018a). The workers were misled to believe that an average worker could earn at least AU\$28 an hour for a 30-hour week. In reality, they were paid as little as AU\$8 an hour. Once payment for rent, visa fees, transport and other costs were deducted, they had very little money left for food. According to the Fair Work Commission, an average employee in the agriculture sector should earn 15% more than the minimum hourly rate for piece-work. For a casual worker, this should be more than AU\$25 an hour. As of October 2018, five of these workers had taken legal action against Agri Labour Australia and settled for a combined \$150,000 (Schneiders, 2018b). This is twice the amount they had allegedly been underpaid in their 4 months of work.

For international students and backpackers, a total of 60% of international students report that they were routinely paid below the minimum wage (Clibborn, 2018) whereas 46% of backpackers reported being paid less than \$15 per hour (Berg & Farbenblum, 2017). However, these findings need to be treated with caution. As noted earlier, there are limitations to the data, for example, the participants did not specify if the wages they were reporting were gross or net and, further, what the minimum wage was at the time.

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<sup>11</sup> At the time of publication of the 2017 report, the Australian national minimum wage was AU\$17.70.

There are additional complicating factors relating to the endemic nature of underpayment that warrant some discussion. Migrant workers are often subjected to strict visa requirements. For example, international students are only permitted to work 20 hours per week during study time, and a standard 40-hour week during break time. This rule has been exploited by employers, who pay international students the legal rate for 20 hours work, but require them to work more hours for no payment, effectively driving down their hourly wage. Because the international students affected by this practice are, on a technical level at least, still being paid a lawful wage, it is possible that some may not consider themselves to be underpaid or exploited. As has already been highlighted, the *National Temporary Migrant Worker Survey* research is not only contingent on a self-selection model, it also requires workers to both understand their exploitation and wish to speak about it. If a worker either does not consider themselves to be underpaid or is uncertain whether or not their treatment is illegal, they are less likely to indicate that they are being exploited in research concerned with such issues.

### *Unlawful deductions*

In addition to problems relating to underpayment, migrant workers often have deductions taken from their wages as a way for employers to undercut their wages. In its most simple form, this process involves workers being paid a steady, in some cases lawful, wage by their employer, but then having a series of deductions made which leads to them only receiving a very small amount of income for the period in which they worked. Before expanding on this point further, it should be noted that there are some circumstances in which an employer can legally deduct money from an employee's wages. By Australian law, an employer is able to make deductions from a worker's wages provided that the deduction is:

- for [the worker's] benefit, and [they] agree to it in writing, or;
  - authorised under a term of an award, agreement or Fair Work Commission order, or;
  - authorised under Commonwealth, State or Territory law, or by an order of a court.
- (FWO 2019)

However, the manner in which the practice is used in relation to migrant workers is often illegal.

There have been several cases of migrant worker exploitation involving wage deductions. In 2015, for example, the FWO investigated a major poultry processing plant's labour procurement practices, and uncovered a group of 30 working holiday makers who were housed in a six-bedroom house and had been subjected to deductions of AU\$100 each week for rent (FWO, 2015a). In the same year, the Australian Council of Trade Unions reported 11 instances of 457-visa holders (Temporary Work [skilled] visa class) having had up to AU\$1,000 deducted from their pay without authorisation for the cost of their travel, procuring a visa, and agent commission payments (Australia Council of Trade Unions, 2015). It is common for workers to be forced to accept deductions from their wages, and these have been found to relate to costs ranging from food and rent to petrol or protective materials (Berg & Farbenblum, 2018; Segrave, 2017). In some cases, workers have even reported that they have no idea what costs are being deducted, and instead employers simply take money away from them with the expectation that because the

worker depends on them for both employment and their visa, they will not complain (Segrave, 2017).

### *Cashback schemes*

There have been some notable cases of migrant worker exploitation in which cashback schemes have figured prominently. One of these, the 7-Eleven exploitation scandal, is perhaps the largest and most widely publicised case of migrant worker exploitation to have emerged from Australia in the past decade (see pop-up box). Multiple forms of wage theft, and indeed multiple other forms of exploitation, were at play at the same time and revolved around the widespread use of cashback schemes by franchise operators; as of January 2018, more than AU\$ 1.5 million in penalties had been issued to franchises across the country relating to cashback schemes. The Migration Act 1958 classifies the payment of money for visa sponsorship as an offence.

**7-Eleven:** The 7-Eleven case captures the potential for extreme and widespread forms of exploitation to occur in a large organisation. In 2015, Fairfax Media and *Four Corners*, an investigative journalism programme, revealed the extensive problem of underpayment of migrant workers, and in particular international students, across 626 franchisee-run 7-Eleven stores throughout Australia (Clibborn & Wright, 2018; Commonwealth of Australia, 2019; *The Sydney Morning Herald*, 2015a). They also reported that many temporary migrant workers were threatened with deportation if they complained about their employment conditions.

Four exploitative practices were found to be common across the franchisees:

1. Not paying workers for weeks or months on the basis that an employee was a trainee. One employee was paid \$325 for 691 hours of work as a “trainee.”
2. Only recording half of the hours an employee worked in the payroll system.
3. Requiring employees to pay back part of their wages in cash to the franchisee in a cashback scheme.
4. Some franchisees requested that head office pay all employees’ wages into their own bank account, so they had control over wages paid. This enabled one franchisee to pay themselves \$3.6 million into 20 of their own business accounts.

Following the *Four Corners* investigation in 2015, 7-Eleven created a wage repayment programme and, by mid-2017, it was reported that the repayments reached over AU\$150million (Berg & Farbenblum, 2018).

While 7-Eleven has subsequently taken significant steps to ensure its franchisees abide by employment legislation, the problems with the franchisees were not recent. The FWO has undertaken legal action against 11 7-Eleven franchisees; for which they were successful in eight cases with total penalties amounting to AU\$1.5 million (Commonwealth of Australia, 2019).

Recently, a 7-Eleven franchise owner was found by the FWO to have required her workers to return any money earned above \$15 per hour. Because workers were still having their taxes and other legitimate legislative deductions taken from their wages, they were reported to be actually earning as little as \$8.53 per hour, well below both the minimum wage of \$17 and even further below the award rate of \$24 for work within the industry (Toscano, 2019).

Two other high-profile cases involving wage theft are Domino's Pizza and Caltex (see pop-up boxes). All three cases highlight significant issues in the franchise business model.

**Domino's Pizza:** In 2017, Fairfax investigated the exploitation of migrant workers at Domino's Pizza (Ferguson & Christodoulou, 2017). There were hundreds of workers' claims about underpaid wages, the deliberate underpayment of penalty rates,<sup>12</sup> as well as the illegal sale of sponsorship of migrants (which reached up to AU\$150,000).

Jack Cowin, independent director of Fairfax Media as well as chairman and largest shareholder of Domino's Pizza, provided access to internal information over the period of the 6-month investigation, including access to information on Domino's spot checks on 450 stores across Queensland, New South Wales, Victoria and South Australia. Subsequently, many of these stores were audited.

Allan Fels, the chair of the Migrant Workers' Taskforce commented: "On the face of it, Domino's resembles the original 7-Eleven arrangements in the sense that it makes it seemingly impossible for a number of franchisees to survive without underpayment" (cited in Ferguson & Christodoulou, 2017).

**Caltex:** In late 2016, the FWO (2018b) investigated 25 Caltex franchisees in Brisbane, Sydney, Melbourne and Adelaide. The investigation began after the FWO received information about Caltex workers being exploited through the underpayment or non-payment of wages, unrecorded cash payments, false records and threats to staff of termination or visa cancellation if they chose to complain.

A total of 19 of the franchisees had breached employment regulations including the underpayment of wages, the non-payment of overtime, poor record keeping, failure to pay penalty rates and keep accurate pay slips. Of the 194 staff the FWO obtained records for, 60% were temporary visa holders. Employees were threatened that their visa would be cancelled or that they would be fired if they complained about their employment. The FWO noted that 17 of the 23 franchisees were from non-English speaking backgrounds and reported minimal knowledge of commonwealth laws.

### Excessive working hours

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<sup>12</sup> Penalty rates refer to additional payment for overtime, shift work, weekends, public holidays, etc.

Closely related to the issue of wage theft is the issue of migrant workers being forced to work excessive, and in some cases physically detrimental, hours by their employers. The maximum time a full-time worker can be required to work, discounting any reasonable form of overtime, is 38 hours per week (Achermann et al., 2015). However, this standard is widely ignored in industries employing migrant workers, and some reports have found that workers have been forced to work as many as 18 hours per day, 7 days a week (*The Sydney Morning Herald*, 2015b). Further, some workers have reported being denied sufficient breaks, including toilet breaks (*The Sydney Morning Herald*, 2015b).

### **Substandard living conditions**

It has been found that some migrant workers are required to live in substandard, and in some cases squalid, conditions that have been described as being tantamount to “extreme exploitation” (Locke, 2015). This mostly occurs in Australia’s rural sectors. However, there have been reports of urban migrant workers being housed in accommodation that has been likened to a “slave camp” (Doherty, 2016, para. 10). In 2016, *The Guardian* published an exposé of migrant worker exploitation in Australia, and, in interviews with key stakeholders, found that it is common for workers to be

put in a room, seven or eight people to a room, to sleep, and then they are woken up very early in the morning and driven to the building site, they don’t even know where they are, they don’t know who they are working for, and they are made to start working. These are like forced labour camps, it is like slave labour, these people aren’t free at all.... Animals should not be kept like this, let alone people. This is a cruelty, this is a brutality (Doherty, 2016, para. 10-18).

Similarly, over the past decade, a number of reports have revealed that it is common for working holiday visa holders to be required to stay in inferior accommodation (Hedwards, Andreveski, & Bricknell, 2017). In one major investigation, the FWO (2018) uncovered severe and endemic issues in accommodation practices along the “Harvest Trail,” a network of agricultural, viticulture and horticultural worksites commonly worked by itinerant migrant workers.

Although evidence suggests that most cases of migrant exploitation involve employers housing workers in exploitative conditions themselves, in this case, the FWO (2018) found that a wide array of backpacker lodges and other accommodation providers along the Harvest Trail were employing similar exploitative practices alongside employers, and, in some cases, in collaboration with them. In addition to substandard accommodation, migrants were often subject to restrictive bonds and limitations on their capacity to leave without forfeiting their deposits or bonds (FWO, 2018a).

This phenomenon is perhaps best explained through anthropologist Carolyn Nordstrom’s (2000) idea of “shadow economies”: the networks and linkages of legal and illegal business practices necessary to the logistical function of various forms of exploitation. In the case of the Harvest Trail, illegal employment practices relating to wage theft and workplace exploitation are both facilitated by and closely linked to the legitimate business practices of accommodation providers. It is important, in any analysis of migrant worker exploitation, to account for the fact that such

abuse is rarely committed by singular actors operating entirely outside the law. Instead, migrant worker exploitation is often facilitated by actors operating between legality and illegality, and any resulting regulatory responses must be carefully considered and constructed in order to properly capture and prevent the full scope of exploitative practice.

### **Health and safety violations**

Generally speaking, the health and safety violations to which migrant workers are subjected to take two forms:

- Exposure to dangerous materials or conditions (e.g., chemicals, hazardous substances, unsafe work environments);
- Inadequate provision of protective gear and equipment.

Both of these are closely related, and each reinforces the significance of the other should a dangerous situation arise.

In 2018, reports emerged that a group of around 50 workers from Vanuatu employed on an Australian farm had been exposed to dangerous chemicals and other workplace health and safety issues, eventuating, in some cases, with workers bleeding from their noses and ears. At the time the case was reported, their employer denied the accusation and instead blamed the bleeding on the workers not drinking enough water while working. The case was eventually settled out of court, with their employer paying out AU\$150,000 to five workers in relation to those and range of other charges.

Similarly, lax health and safety protections have been found to be widespread in the construction industry. In 2016, it was reported that the majority of Korean migrant workers in Australia were being employed in either construction, cleaning or hospitality, and many faced serious exploitation relating to their workplace health and safety (Doherty, 2016).

For many of those in construction, they work in jobs they are not properly trained for, and without protective equipment. Should they be injured, or seek to complain, they find themselves in a labyrinthine maze of contractors and subcontractors, an arcane chain to which there is no apparent end. (Doherty, 2016, para. 20)

### **Physical and sexual harassment and abuse**

Physical and sexual harassment or abuse is a possibility in all workplaces. Although it is not clear that migrant workers face such abuse at higher rates, or with a higher degree of severity, than any other workers, it has been found that migrant workers' experiences of harassment and abuse are shaped by a range of factors specific to their circumstances, status and experiences.

Although Australia only employs a small population of migrant domestic workers, evidence suggests that they are also susceptible to both physical and sexual abuse in their workplaces. The Walk Free Foundation (2015) recently conducted a study of migrant domestic workers in Australia, and found that between 2007–2015 the Salvation Army assisted 20 domestic workers who had experienced “degrading and humiliating conditions,” including physical and sexual abuse. On the one hand, this is a very small number of cases and thus cannot reasonably be taken as indicative of

systemic issues within the domestic work industry. However, as Walk Free's (2015) report highlights, this finding is significant, as this is occurring despite Australia's "robust labour standards" and very small population of migrant domestic workers. Unfortunately, there is a notable lack of research into the experiences of migrant domestic workers either in Australia or in any of the other countries covered here. This is most likely due to the fact that migrant domestic workers are some of the hardest people to reach, let alone maintain the level of contact required to build sufficient trust to develop thorough research.

Sexual harassment and abuse have been found to be common for migrant women working in Australia's rural industries. Workers have been found to have been raped, sexually harassed, subject to offensive or inappropriate comments, and had non-consensual pictures taken of them by various people, including both employers and fellow employees (A. Davies, 2017, 2018). Migrant victims of physical or sexual harassment or abuse are often reticent about reporting their abuse for fear of losing their jobs or visas; however, this information also suggests that there are additional problems relating to wider workplace cultures of harassment and misogyny.

### **Confiscation of documents**

Lastly, migrant workers in Australia have reported having important documents like their passports confiscated by their employers. It should be noted, however, there is a low rate of reported cases and hence it is difficult to draw conclusions. The *National Temporary Migrant Workers Survey* reported that 3% (91) of respondents had their passport confiscated by their employer and 2% by their accommodation providers. Most of these respondents were in the hospitality (28%) or horticulture industries (18%) (Berg & Farbenblum, 2017).

Other than forcing workers to undertake excessive work hours, the confiscation of documents is unique as a form of migrant worker exploitation in that it is not only a form of exploitation in and of itself, but that it also directly serves as a mechanism to facilitate employer control of workers.

## **4.4 Drivers of exploitation**

### **4.4.1 Visa conditions**

As Australia lacks a specific low-skilled work migration pathway, migrant workers and employers must navigate a range of specificities relating to various visa categories, all of which impose differing sets of restrictions on both parties. These restrictions have been found to drive the exploitation of migrant workers across Australia in a number of reports.

Hedwards et al. (2017) found that when a visa was connected to an employer, migrants were less likely to protest poor working conditions. This was because the visa conditions granted implied or perceived power to the employer, who controlled their working conditions as well as their right to remain in Australia. Many migrants do not want to risk their ability to remain in Australia and further do not want to risk damaging their path to employer-sponsored permanent residency. Hedwards et al. (2017) found that vulnerabilities associated with visa status increased the risk of exploitation more generally.

Some international students and working holiday-makers have been found to have been exploited through the use of tied visas. However, there are also a large number of cases of exploitation

relating to other restrictive visa conditions that warrant detailed discussion. In order to ensure both topics are properly addressed, this section focuses solely on visa conditions other than tied visas which have been found to drive the exploitation of migrant workers in Australia.

As discussed in section 4.2, the working holiday visas include an opportunity to work for a second and, most recently, a third year. The initial 2-year provision was seen by some as a way to drive labour exploitation, with employers and labour-hire operators having been found to use the visa extension as an incentive to impose illegal working conditions, house workers in substandard housing, and in some cases extort sexual favours from female workers (Meldrum-Hanna, Russell & Christodoulo, 2015). Workers who raised complaints with their employers have been sacked (Meldrum-Hanna et al., 2015).

It should be noted that this process was not driven solely by employers acting outside the law. In 2015, the ABC show *Four Corners* aired an episode exposing much of the abuse facing migrant workers in rural Australian workplaces (Meldrum-Hanna et al. 2015). *Four Corners* reported that major supermarkets and fast-food chains like Coles, Woolworths, KFC, Red Rooster and Subway had been actively ending their contracts with farmers employing migrants legally and paying fair wages, and instead working with employers using “grossly exploited labour” (Meldrum-Hanna et al., 2015, para. 18).

In many cases, migrant worker exploitation is constructed as the product of exploitative or greedy employers. Indeed, there are some situations in which this is the case, and a range of examples are discussed throughout this report. However, it is important to recognise that migrant worker exploitation can also be a response to external pressures placed on employers by larger organisations, or poorly regulated supply chains in which large parent companies use competing contractors, subcontractors, or in this case farmers, to drive down production costs.

#### 4.4.2 Lack of understanding of rights and entitlements

Hedwards et al. (2017) argue that a lack of written and spoken fluency in English reduced migrants' abilities to understand their employment contracts and employment rights. Even outside linguistic limitations, the *National Temporary Migrant Workers Survey* found that 42% of participants who spoke English and who were familiar with the western legal culture did not try to recover wages simply because they did not know the process (Farbenblum & Berg, 2018). Similarly, an FWO study found that international students did not report exploitation because they had incomplete knowledge about their employment rights (Reilly et al., 2017), and, in the 7-Eleven case, it was found that many temporary migrants were not aware of entitlements owed to them nor were they aware of the FWO, unions or other pathways to remedies (Berg & Farbenblum, 2018).

While these seem on a surface level to support the idea that the exploitation of migrant workers is driven by their lack of language skills and understanding of rights and entitlements, there are studies which complicate the matter somewhat. For example, in several reports, international students and backpackers reported that they expected to be underpaid given their visa status (Berg & Farbenblum, 2017; Clibborn, 2018), while some workers tend to believe that their lack of English and work experience mean that they are less likely to get a “legal” job (Clibborn, 2018). Put

another way, it did not matter that migrant workers were aware of their rights; many arrived in Australia expecting to be exploited in their work on the grounds of individual or structural impediments.

What this suggests is that there is insufficient evidence that a lack of knowledge of rights helps drive migrant worker exploitation. Although many migrants in the *National Temporary Migrant Worker Survey* reported that a lack of understanding was the primary reason they had not sought redress for their exploitation, this does not mean that it was the only thing stopping them from seeking redress, nor does it adequately suggest that improved rights education will help increase the uptake of redress services. As is discussed in the following sections, there are a number of structural issues within Australian legislation that might be argued to have a far stronger real impact as drivers of migrant worker exploitation.

#### 4.4.3 Impediments to seeking redress

One of the most common issues driving migrant workers' exploitation, in Australia and the other countries discussed in this research, is the difficulty workers face in achieving any form of redress, compensation, or even support in relation to their exploitation. The *National Temporary Migrant Workers Survey* found that 2,258 (52%) participants reported being underpaid (Berg & Farbenblum, 2018), but only 9% of this population had attempted to recover their unpaid wages (Farbenblum & Berg, 2018). As discussed in section 4.4.3, part of this reticence stems from the fact that some migrant workers simply expect to be exploited in their work due to the vulnerability of their positions. However, there are several structural impediments in place which limit the possibility of redress. These impediments drive the exploitation of migrant workers for two reasons. First, they mean that many instances of migrant exploitation either go unaddressed, unreported or remain unknown to the general public. More significantly, however, inadequate redress mechanisms contribute strongly to an employment culture in which employers feel able to exploit people without the possibility of being caught or censured for doing so. This section explores the two most prominent sources of these impediments in Australia.

##### **Low union membership**

Unions in Australia have significantly low membership rates of migrant workers, stemming in large part from decades-long cross-government anti-union policies and legislation (Clibborn & Wright, 2018; Farbenblum & Berg, 2018). Low union membership among working populations reduces the capacity of workers to improve their rights through collective action, individualises the workplace environment, and contributes to the steady deterioration of workplace conditions. In Australia specifically, Farbenblum and Berg (2017) argue that anti-union legislation introduced in the early 1990s, and the ensuing decline in union membership, has led to a concomitant rise in workplace abuses and weakened alternative oversight mechanisms across the country. Laws like the Workplace Relations Act 1996 and its 2005 amendment systematically limited the capacities of unions to take action on behalf of workers, individualised employment relationships and introduced a range of other measures, which have led to a widespread drop in union membership (Clibborn & Wright, 2018).

According to the 2017 *National Temporary Migrant Workers Survey*, only 4% of migrant workers in Australia were union members, and although this is indisputably a very low proportion of the overall workforce, this figure should be understood alongside the proportion of union members among the general population, which sat at only 9%. Without the support structures provided by union membership, access to established redress mechanisms (i.e., courts, mediation, dispute resolution etc.) have become largely inaccessible to most migrant workers in Australia, and access to alternative redress mechanisms has also been nearly completely removed (Farbenblum & Berg, 2017).

Although low rates of union membership among migrant workers do play a significant role in limiting the redress options available to them, it should be noted that unions have had a complex relationship with migrant workers. For many years, unions, workers organisations, and indeed the Australia Labor Party, were outspoken proponents of the White Australia policy, and openly and actively opposed immigration programmes on the grounds that migrant workers would be removing Australian workers from jobs. It is only fairly recently that these views have been properly challenged by the union movement, dispelling the idea that migrant workers are at fault for job loss and instead laying blame for high unemployment rates and stagnant wages on macro-level political developments and employers utilising exploitative business models.

In addition to structural explanations for low union membership, Berg and Farbenblum (2017) found that many migrant workers are unwilling to join unions either because they came from countries where being a union member was physically dangerous, or because of “a perception amongst international students that unions are markers of officialdom that they should avoid” (Berg & Farbenblum, 2018, p. 1049). This, combined with anti-union legislation and the fraught history of Australian trade union approaches to immigration, has contributed to very low rates of unionisation among migrant work populations.

### **Limitations of the Fair Work Ombudsman**

The second form of structural limitation to migrant workers’ capacity to achieve relates to the FWO. As a response to the rise in workplace exploitation of both migrants and Australian workers, in 2009 the Rudd government introduced the Fair Work Act in an attempt to improve workplace relations across the country. One of the primary outcomes of the legislation was the establishment of the Fair Work Ombudsman, an organisation whose primary directive is to detect and deter non-compliance in Australian workplaces. The Fair Work Ombudsman has proven a success in a number of areas, and takes a range of approaches to addressing exploitation, from proactive compliance measures to providing anonymous reporting mechanisms for workers to report their exploitation. The Fair Work Ombudsman was responsible for uncovering and prosecuting the 7-Eleven case, and also played a major role in the investigation of exploitation in Domino’s Pizza franchises and Caltex petrol stations (FWO, 2018a; Ferguson & Christodoulou, 2017).

In a 2019 analysis of the efficacy of redress mechanisms for migrant workers in Australia, Boucher (2019) found that both the Fair Work Ombudsman and union representation were closely correlated to successful redress. Her analysis concerns the success of court cases relating to migrant worker exploitation, and the various successes and failures of different forms of representation. Of the 90 cases they analysed that were decided in favour of the employee in

question, 60% (54) involved workers represented by the Fair Work Ombudsman, and 10% (9) involved workers represented by unions.

Nevertheless, there are a number of issues with the organisation's capacity to enact broad-scale positive changes that limit its utility to prevent migrant worker exploitation. As was stated in a 2017 submission to the federal Education and Employment Legislation Commission:

"While the [Fair Work Ombudsman] is fit-for-purpose to address accidental or negligent non-compliance, it has proven not to be fit-for-purpose when it comes to addressing the deliberate and systemic unlawfulness that some unscrupulous operators adopt as a business model. These operators... consider the likelihood of being caught or the quantum of penalties to be so low, that it is worth exploiting their workforce" (James, cited in Farbenblum & Berg, 2017, p. 315).

In addition to the problem of the inefficacy of the Fair Work Ombudsman to address more systematic cases of migrant worker exploitation, it has been reported that although migrant workers in Australia tend to have a good understanding of Australian law and their workplace rights, only a comparatively small number are aware of the Fair Work Ombudsman and how it might help them. For example, Reilly et al. (2017) found that only 26% of international students were aware of the Fair Work Ombudsman. Similarly, the most common response to the *National Temporary Migrant Worker Survey* asking workers why they had not attempted to claim back wages was that they "did not know what to do" (Farbenblum & Berg, 2018).

#### 4.4.4 Multiple forms of fear

A common driver of exploitation is fear. Fear can take many forms; here we focus on two forms which are interlinked.

First, fear of job loss. A total of 22% of temporary migrants in the *National Temporary Migrant Work Survey* did not wish to try to recover their unpaid wages because they feared losing their job (Farbenblum & Berg, 2018). However, the authors note that this amount may be underreported given that many participants in the survey had already left their job. This fear is very real for international students because they have high financial pressures due to their university fees and living expenses (Farbenblum & Berg, 2018). This fear also extended to the underreporting of health and safety violations as migrants did not want to risk losing their jobs (Chen, 2018).

Second, fear of deportation. The *National Temporary Migrant Work Survey* found that 4% (92 participants) of temporary migrants indicated that someone in their workplace, most likely their employer, threatened to report them to the immigration department (Berg & Farbenblum, 2017). The fear of deportation heightens their unwillingness to report their situation to authorities.

A total of 25% of temporary migrants reported that they did not try to recover unpaid wages because of fear of immigration consequences, with 7% reporting they were concerned in general about engaging with the government (Farbenblum & Berg, 2018). An Australian Government Senate inquiry found that chronic underreporting occurred because international students feared deportation for working more hours than their visa entitled them to (Clibborn & Wright, 2018).

#### 4.4.5 Geographic isolation

Working holiday makers on 457 visas (now called the TSS visa) tend to work in rural areas which makes it difficult to access assistance and support when their employment rights have been violated (Achermann et al., 2015). Geographic isolation can also contribute to migrants' lack of awareness about their workplace rights or availability of support in the community. Instead, it may increase their dependence on their employer as their primary source of information.

#### 4.5 Summary

The exploitation of temporary migrant workers has been a systematic problem (Commonwealth of Australia, 2019). Recent media attention, government and academic reports indicate that the exploitation of temporary migrants is prevalent among international students and working holiday makers. There are many types of exploitation that operate in Australia but the most notable is the nature and extent of wage underpayment. A key driver of labour exploitation is the requirement of an employer-sponsored visa, which works to increase the power of the employer. Reliance on an employer-sponsored visa can lead to other drivers including the fear of deportation, threats of being reported to authorities and fear of job loss.

Developing a proper understanding of migrants' rights and entitlements is an important aspect of improving the treatment of migrant workers. Improved education should serve as part of a multi-faceted approach to ending migrant worker exploitation; it should not be treated as an isolated remedy.

PROACTIVELY RELEASED

## 5. Temporary Migrant Worker Exploitation in Canada

### 5.1 Introduction

Canada has been described as being “addicted” to temporary migrant labour (CBC News, 2014). In the past decade, the country has come under significant scrutiny because of the exploitation of migrant workers. In one of the most prominent reports into the treatment of temporary migrant workers published in recent years, Faraday (2016) argued that “exploitation [in Canada] is not isolated and anecdotal. It is endemic. It is systemic. And the depths of the violations are degrading” (pp. 5–6).

Canada operates on a federal system. The federal government comprises 10 provinces, each of which retains a significant degree of sovereign control over land and legal structure, and three territories, which are not sovereign but, instead, governed entirely by the federal government. Labour migration into Canada takes place at both the federal and provincial level. There are significant variations between the number of visas issued by each province/territory; the top three provinces where migrant workers are concentrated are Ontario, British Columbia and Quebec (see Table 5.1).

**TABLE 5.1: Total number of temporary migrant worker visas issued by province/territory for 2017.**

Province/Territory	Live-In Caregivers	Seasonal Agricultural Workers	Other TFWP Workers	Total
Alberta	715	1,060	5,750	7,515
British Columbia	785	7,575	8,560	16,920
Manitoba	15	190	560	765
New Brunswick	5	115	1,205	1,325
Newfoundland and Labrador	10	20	835	865
Nova Scotia	-	905	715	1,620
Ontario	1,585	21,195	6,025	28,805
Prince Edward Island	0	55	560	615
Quebec	145	10,210	2,700	13,055
Saskatchewan	50	350	420	820
Total	3,310	41,675	27,330	72,305

Source: Canadian Council for Refugees, 2018

Unlike Australia, the federal legal structure facilitating labour migration in Canada is centralised and streamlined, and has been praised as one of the “most elaborate and efficient in the OECD” (OECD, 2016, p. 7). Changes are made to the system regularly to adjust processes and ensure the programme responds “appropriately to the needs of the labour market” (OECD, 2016, p. 5). At the federal level, labour migration is governed through the Temporary Foreign Worker Program (TFWP), which contains several pathways for migrants to enter the country. In addition, each of Canada’s provinces and territories has some control over labour migration within their borders,

how it takes place, the industries in which migrants are allowed to work, and the workplace standards to which employers are held. Because of this diffuse political structure, there have been a wide range of approaches taken to addressing temporary migrant worker exploitation across Canada.

Migrant workers are employed across Canada in several high- and low-skilled fields. In the low-skilled fields, they are employed primarily in agricultural and domestic positions. Other low-skilled industries like cleaning and hospitality, which comprise significant portions of the temporary migrant worker population in the United Kingdom, Australia and New Zealand, have historically comprised significantly smaller portions of the temporary migrant workforce in Canada. However, this number has been rising in recent years.

At this point, we note a caveat regarding the existing literature and available data. There is comparatively little accurate and up-to-date information relating to Canada currently available. In other destination countries covered in this research, primarily the United Kingdom and Australia, more extensive research has been undertaken in recent years (2015 onwards) to understand and improve the treatment of migrant workers. A number of investigations into migrant worker exploitation have been undertaken in the past in Canada; however, these are now dated and thus of less utility to our report. Even what we deem to be the key material published in recent years, for example Rodgers' (2018) report *Envisioning Justice for Migrant Workers* or Faraday's (2016) study *Canada's Choice: Decent Work or Entrenched Exploitation for Canada's Migrant Workers?*, relies on dated research. This is not a major impediment to the validity or quality of the research being reviewed, but it should be noted when reading and evaluating the material at hand.

## 5.2 Background

The employment of temporary migrant labour in Canada can be traced back to 1966 when the introduction of the Seasonal Agricultural Worker Program (SAWP) was introduced. This was a bilateral agreement with Jamaica, enabling Jamaican workers temporary access to the Canadian labour market in order to fill gaps in the workforce. Over time this was expanded through further bilateral treaties to include states in the Caribbean as well as Mexico (HUMA, 2016). The SAWP was expanded in 1973 with the introduction of the TFWP. In addition to facilitating and regulating the migration of Jamaican workers into Canada, the TFWP was meant to focus particularly on high-skilled fields like academia and engineering to fill gaps in the Canadian labour market. However, even as early as 1974 it was reported that the focus of the programme had shifted to employing more low-skilled workers. The majority of migrant workers during this period came from across the Caribbean and, until the turn of the millennium, made up the majority of the migrant workforce throughout the country.

It should be noted that temporary migrant worker programmes in Canada have been strongly, if not explicitly, gendered since their inception. The SAWP, for example, focuses on employing men nearly exclusively, and it has been reported that most employers, recruiters and Canadian provincial and federal immigration agents seek to hire married men, so as to prevent employees under the SAWP marrying Canadian women and claiming residency (Basok, 2014). Today, women only make up around 2–3% of workers admitted to the SAWP (Cohen & Caxaj, 2018). In contrast, the caregiving sector has been dominated nearly entirely by women since it was first introduced.

Faraday (2012) estimates that, historically, approximately 95% of the overall caregiving population has been made up of women. Such a gender divide is somewhat unsurprising, given the masculinisation and feminisation of the work undertaken in agriculture and domestic work.

In spite of these policy shifts and new pathways to migration into Canada, the numbers of migrant workers in the state remained at a fairly low level until 2002, when the Liberal government introduced the Low-Skill Pilot Project to the TFWP in order to facilitate greater low-skilled migration into the state. These changes led to the largest increase in the employment of temporary migrant workers in Canadian history, with the population of migrant workers increasing 148% from 101,259 to 251,235 between 2002 and 2008 (Hari, 2014; Nakache & Kinoshita, 2010). In 2007 the government ended the pilot programme and, having deemed it a success, introduced legislation to make the programme a permanent fixture of the Canadian immigration system, terming it the Stream for Lower-Skilled Occupations (Hari, 2014).

In recent years, several changes have taken place, both socially and legally, around the TFWP. In 2014, the federal government introduced a series of new restrictions on the employment and rights of temporary migrant workers in Canada. According to Faraday (2016), these included:

- placing a 10% cap on the number of migrants employed in low-wage positions in any workplace employing more than 10 people (with some exceptions, for example agriculture and caregiving);
- reducing the standard work-permit length for workers employed through the TFWP from 2 years to 1 year; and
- introducing a ban on employers applying for workers in sectors (agriculture, retail-trade and food services) where the regional unemployment rate is higher than 6%.

As part of the TFWP regulations, employers in Canada must complete a Labour Market Impact Assessment (LMIA)<sup>13</sup> before they are permitted to bring foreign workers into the country. This report must demonstrate that there are no local workers available to complete the work, and that the hiring of a foreign worker will have either a “positive or neutral impact” on the job market (Faraday, 2016, p. 19). The LMIA process in Canada is complex, and has been found to lack proper oversight, and, as we will discuss later, contributes to a range of abuses experienced by temporary migrant workers across the country (McCuaig Desrochers, 2018; Sorenson, 2017).

There has also been a significant growth of workers in sectors outside those traditionally employing temporary migrant workers in recent years. Most notably, sectors like hospitality have begun to use migrant labour on a much wider scale. In 2013, more LMIAs were submitted from the hospitality sector than from any other sector; 6 years earlier they were not even in the top 10 (CBC News, 2014). In the last decade, a wider range of industries have come to rely on migrant labour than at any previous time, and this has shaped both the status and treatment of migrant workers.

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<sup>13</sup> Until 2014, these were called “Labour Market Opinions.”

### 5.3 Forms of exploitation

Rodgers' (2018) report – which drew on a self-selected sample of migrant workers based on an online survey and focus groups – identified a wide range of abuses occurring, including:

- Payment of lower wages than agreed upon;
- Non-payment for overtime;
- Illegal deductions from workers' wages;
- Intentional misinformation to workers about entitlement to benefits and other legal rights;
- Demands for long work hours with few breaks;
- Demands for performance of duties not agreed upon in contract;
- Inadequate provision of basic facilities;
- Denial of medical care and other benefits;
- Exposure of workers to undue health and safety risks;
- Control over and restriction of movement of workers, and communication with others;
- Inadequate living conditions;
- Threats of deportation. (Rodgers, 2018, p. 10)

#### Recruitment fees and manipulative contracting

The most thorough overview of the nature and extent of recruitment fees and manipulative contracting and their impact on workers is explored by Faraday in her 2014 report *Profiting from the Precarious* which is based on interviews with nearly 200 workers.<sup>14</sup> The payment of recruitment fees in Canada is widespread across nearly all industries that employ migrant workers (Canadian Council for Refugees, 2018; Faraday, 2014). Standard recruitment fees tend to start at CA\$1,000, and it is common for workers to be required to pay between CA\$4,000 and \$10,000 in order to get a job. In some cases, workers have been found to have been required to pay as high as CA\$40,000 (approx. NZ\$44,700). Faraday (2014) found that “these fees typically represent between six months to two years' earnings in the workers' home currency and in some cases considerably more” (p. 33). The vast majority of temporary migrant workers in Canada interviewed in the course of Faraday's (2014) research had paid recruitment fees in order to get work.

As in many other countries, Canada has recently taken some steps to outlaw and eradicate the practice of recruitment fees. The most prominent of these was the introduction of the Stronger Workplaces for a Stronger Economy Act (Bill 18) (SWSEA) in Ontario in 2014. This superseded the Employment Protection for Foreign Nationals Act 2009 (EPFNA), which enacted largely the same provisions, but limited their scope solely to workers employed through the now-defunct Live-In Caregiver Programme. These two laws are positive steps forward in legal terms, as nearly 40% of Canada's temporary migrant worker population is employed in Ontario (see Table 5.1), and prior to their introduction, there was very little in place to restrict or address the widespread abuse of workers through the practice. However, they have been of only limited success. The Caregivers'

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<sup>14</sup> No details are given as to selection methods in order to protect the migrant workers.

Action Centre (2012) reports that in the 3 years following the introduction of the EPFNA, there was little change in the use of recruitment fees for LCPs, and that as many as two thirds of the workers whose employment began after the introduction of the law were still being charged excessive fees in order to work in Canada.

Fees can be considered a form of abuse because they involve the illegal extortion of vulnerable workers solely for the purpose of getting them into work. Workers are not only regularly forced to pay undisclosed and un-receipted fees in order to get work, but also are often illegally compelled by their employer or recruiter to pay for their airfare (Faraday, 2014). In some instances, workers have been forced to pay exorbitant fees for jobs they later found did not exist (Faraday, 2014). Recruitment fees can also be considered both a form and driver of abuse because of the massive debts they incur on workers and their families in their home countries. They often have significant consequences for the livelihoods, possessions and, in some cases, sustenance of their families and extended networks.

The recruitment fees charged to get work in Canada often amount to the equivalent of a year's salary in many workers' home countries. Because of this, most temporary migrant workers need to find other means of covering the cost. In some cases, workers borrow from informal lending agencies or loan sharks. For some, there is the opportunity to borrow directly from their recruiters, further embedding them in a cycle of debt. The situation is further compounded by the fact that in order to cover the collateral of such debts, many workers "sign over the deeds to their family homes or lands, or give the money lender a share of a family business. If they are unable to repay the loan, the family property is lost" (Faraday, 2014, p. 36).

### **Cash for jobs**

The media in Canada has reported that in the fast food sector, immigration consultants are charging migrants a substantial amount of money (ranging from CA\$20,000 to CA\$40,000) for a job offer that on paper, at least, will lead to permanent residency. The cash payment is split between the consultants and fast-food franchises. One operator in British Columbia had hired 20 Indian nationals. While there was only report of the cash for jobs, Tomlinson (2019) an individual interviewed said the practice is known including within government. However, in 2017 Canada's Immigration acknowledged that fraud is continuing in the Immigration Consultancy Sector (Immigration, 2017).

### **Wage theft**

As in many other destination countries, temporary migrant workers in Canada have been found to experience a wide range of abuses related to the payment of their wages and the fulfilment of their legal entitlements. It is widely reported that temporary migrant workers possess formally identical employment rights to residents and citizens in Canada; however, numerous studies have found that in practice these rights are widely disrespected or disregarded.

A 2011 survey using snowball sampling of 520 recent immigrants, temporary migrant workers and other low-wage workers in Toronto by the Workers' Action Centre<sup>15</sup> found that:

- 22% were paid less than minimum wage;
- 33% were owed wages by their employer;
- 31% reported that their pay was late;
- 17% received paycheques that bounced;
- 25% were paid in cash;
- 25% did not receive pay information that showed a record of deductions or hours worked;
- 39% who worked overtime hours never received overtime pay;
- a further 32% who worked overtime only received overtime pay "rarely" or "sometimes";
- 34% had problems receiving vacation pay;
- 36% were terminated or laid off without termination pay or notice;
- 37% did not get public holidays off with pay;
- 57% who worked on public holidays did not receive the required premium pay; and
- 17% were charged a fee for temporary work. (Faraday, 2012, p. 38)

As in Australia and New Zealand, wage theft is one of the most common forms of exploitation facing migrant workers in Canada – the range is from simple offences stemming from negligent bookkeeping or oversight, to deliberate deprivation of contractually agreed wages as a tool to exert control over migrant workers and their families.

In 2014, the Alberta Federation of Labour (AFL) released internal government documents revealing that the Conservative government at the time had knowingly been using the TFWP as a means of undercutting the minimum wage, allowing employers to underpay workers without reprisal, and disregarding the requirements of the LMIA, which stipulates that visas should only be awarded in situations where an employer was able to demonstrate a genuine lack of local labour (AFL, 2014). These issues were found to be particularly prevalent in the food-service industry, trucking, healthcare and automotive mechanics (AFL, 2014; CTV News, 2014).<sup>16</sup>

### **Restriction of movement**

Isolation is a feature of many migrant workers' lives in Canada, either as a result of controls by employers or lack of access, language skills or other means of community integration. But some temporary migrants experience far-stricter and more exploitative controls on their movement than others. In the most extreme cases, such restrictions have been found to amount to enslavement or; the equivalent of imprisonment within the workplace. Reports have repeatedly

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<sup>15</sup> The Workers' Action Centre acknowledges that the survey of 520 migrant workers, is not a representative sample but it is "rich in experiences of workers in low-wage and precarious work" (2011, p.16).

<sup>16</sup> There is very limited research in Canada that explores these issues in sectors outside the SAWP and the LCP, so it is difficult to corroborate the claims made in these reports. This is not to suggest that the information provided by the AFL is incorrect, rather that it is limited and has not been followed up by recent research.

found that the workers involved in live-in caregiving who face such conditions often experience serious detrimental effects on their mental health. In interviews undertaken by Vahabi and Wong (2017), workers described themselves as “captive labour” and “prisoners” (pp. 5–6) in their employers’ homes, and a number of workers described the stress and anxiety they experienced as a result of verbal, emotional and physical abuse in their workplaces. One worker described the TFWP as a whole as the “resurrection of slavery in the 21st century,” which the authors posited was based on “her experience of abuse and exploitation by her employers and her sense of powerlessness to resist [their demands]” (p. 6).

### **Substandard housing**

The majority of temporary migrant workers employed through low-skilled avenues of the TFWP are housed in employer-provided accommodation, which, in the case of SAWP workers, Hari (2014) describes as often being “dilapidated and overcrowded quarters with poor sanitation, poor ventilation, inadequate means to refrigerate or heat food, and insufficient hygiene facilities” (p. 41).

One of the most thorough investigations of contemporary living conditions of migrant workers in Canada can be found in Min Sook Lee’s (2018) documentary *Migrant Dreams*, which follows a small group of Indonesian women working as vegetable packers in Ontario. In the documentary, workers complain of severely overcrowded, employer-controlled housing. Workers had their documents confiscated by their employer or recruiter, were made to pay exorbitant rent and other payments for inadequate accommodation. They were also threatened with losing work or having hours cut if they protested against their conditions. In addition, the documentary found that when workers sought to leave the employer-provided accommodation, their employers increased the threats against the workers, confiscated their passports and cut their hours in attempt to remove their capacity to pay rent at their new home (Lee, 2018).

### **Health and safety violations**

Migrant workers, and in particular those employed through the SAWP, regularly face high rates of workplace injury due to employment conditions and inadequately supervised exposure to dangerous situations and materials. Many migrants in low-skilled positions are often exposed to a number of health and safety risks that can cause either rapid-onset or long-term health problems. These include exposure to dangerous chemicals, inadequate on-site safety provisions leading to single-event and musculoskeletal injuries, and poor levels of hygiene on both worksites and management-provided accommodation (Toronto City News, 2016). Issues stem in large part from the fact that many workers are not provided with the proper safety gear (gloves, masks, goggles, etc.), and are instead expected to source and pay for these themselves. While this might be argued to be a fairly benign expectation on the part of the employer, many migrants regularly face difficulties around accessing or receiving their pay, and, more significantly, the workers most in need of such protections (i.e., agricultural workers) are those most commonly reported to have no means of accessing the transport necessary to actually purchase such gear.

## 5.4 Drivers of exploitation

Although migrant workers in Canada largely experience the same forms of abuse as in the other destination countries around the world, there are several drivers of exploitation that are somewhat more specific to the socio-political environment of Canada. These are geographic and/or social isolation, low unionisation, and problems with enforcing legislation.

### **Vulnerabilities associated with tied visas**

As in Australia, New Zealand, and the United Kingdom, migrant workers in Canada can face exploitation through the power-imbalances associated with tied visas (also referred to as “employer-assisted visas” elsewhere in this report). However, there are provisions in Canada that enable some workers to move between jobs, alleviating much of the burden placed on workers that stems from tied visas.

The Canadian federal government permits migrant workers employed under the TFWP to change employers, even if their visa is restricted to a single employer. It is illegal for an employer to fire or deport a migrant worker for looking for other work. In order to make this change, the worker must find other work, their new employer must apply to the Government of Canada to employ them as a temporary foreign worker, and the worker must apply for a new work permit<sup>17</sup> (Government of Canada, 2019).

While these are positive developments in comparison with the systems used in other countries, workers still depend on the sponsorship of an employer, and there are still a number of impediments in place that limit the capacity of migrant workers to change jobs and avoid the difficulties associated with tied visas. For example, Rodgers (2018) found that employer sponsorship of visas was still one of the strongest drivers of marginalisation and exploitation in British Columbia. Unfortunately, the Canadian literature does not explore this issue in the same depth as that of the other countries covered in this research. On the one hand, it could be argued that this is because tied visas are less of an issue in Canada, and indeed it does seem that this is partly the case given the comparatively open approach to migrant worker visas employed by the Canadian government. However, given that tied visas have been identified as an ongoing issue, the only conclusion that can be drawn definitively is that there is currently insufficient information to determine their overall impact.

### **Geographic isolation**

Because of Canada’s sheer size and the high concentration of migrant workers in agricultural workplaces, many temporary migrant workers in Canada face issues related to geographic and/or social isolation. Not all forms of isolation are in and of themselves forms of abuse, and for the purposes of our report, isolation does not necessarily refer to the restriction of movement or segregation of workers from others or from their communities. However, many benign or unavoidable forms of isolation that do not amount to abuse on their own can function as drivers

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<sup>17</sup> Workers employed under the SAWP are exempted from the work permit requirement.

of abuse. They can, indeed, exacerbate issues temporary migrant workers face stemming from their experience of other forms of exploitation.

In Canada, as in the rural areas of Australia and New Zealand, some forms of isolation are simply a by-product of the nature of the work being undertaken. Many rural Canadian workplaces are geographically isolated. A survey completed by the Migrant Workers Centre in 2018 found that nearly 75% of SAWP workers surveyed considered their lack of access to transportation to be a barrier to accessing legal support and other services (Rodgers, 2018). As a result, geographic isolation becomes a driver of abuse for a number of reasons.

First, it makes it significantly more difficult for support services and other advocacy organisations to support workers. Similarly, it creates logistical issues for inspection agencies looking to carry out workplace investigations. Third, geographically isolated temporary migrant workers in Canada tend to have to live in employer-provided housing which can be significantly below legal standards for safe or healthy housing, and which has been found to have a number of significantly detrimental physical and psychological effects on workers. Lastly, geographic isolation has been found to produce or compound mental health issues in workers facing exploitation even outside of other concerns such as housing (Basok, 2004).

#### **Lack of (or minimal) knowledge of rights**

Rodgers (2018) found that many temporary migrant workers in Canada possess little to no knowledge of their rights. She further found that while there are migrant workers who do have a fairly high level of understanding of their rights, they are unwilling or afraid to assert them because of fear of job loss, debt bondage and/or deportation. Regardless of their knowledge of their employment rights, migrant workers are afraid to take action or speak out in situations of abuse because of the repercussions they might face as a result (Rodgers, 2018).

The most common repercussions that migrant workers face are job loss and subsequent deportation ("repatriation"). Regardless of whether these are likely outcomes, it has been repeatedly found that they present a significant barrier to workers' capacity to feel able to complain to authorities about the abuse they are facing. A number of services have been established to inform migrant workers of their rights both before and upon arrival in Canada. Examples include pre-departure orientation programmes for Mexican migrants in the SAWP, operated in tandem by the Mexican government and Worksafe BC, or information sessions and resources provided by the Temporary Foreign Work Advisory in Alberta.

However, these programmes have been found to be:

limited in their reach and scope, difficult to access for workers located in rural communities, confined to one population of migrant workers and/or one topic of legal information provision (i.e., occupational health and safety), or otherwise limited in distributional efforts. In addition, some research has critiqued existing information resources as inadequate and/or misleading. (Rodgers, 2018, p. 8)

Even in situations where workers know their rights and want to speak out on them, many are deterred because they do not possess sufficient knowledge of the Canadian legal or social protection systems necessary to bring claims forward (Basok, 2004).

### **Low unionisation**

As in New Zealand, Australia and the United Kingdom, migrant workers in Canada have very low rates of unionisation. This occurs for a range of reasons. First, and most commonly in destination countries, there are often low levels of knowledge of the organisations and services available to workers and few services available that might inform them of such services (Rodgers, 2018). Second, employers and recruiters have been regularly found to intimidate migrant workers into not joining unions, and to use workers' debts and social and financial vulnerabilities as mechanisms to exert control over them (Faraday, 2014).

Some provinces do permit workers to organise, and such provinces generally have much higher levels of legislative protection of workers in place as well (Canadian Council for Refugees, 2018). However, both Ontario and Quebec, the provinces which have consistently been (and continue to be) most reliant on migrant labour, still heavily restrict the freedom of association of temporary migrant workers, especially SAWP workers. As of 2018, Ontario still outlaws migrant agricultural workers from forming unions, and employs similar provisions restricting the rights of migrant caregivers as well.

Outside of Ontario and Quebec, some positive developments have occurred around migrants' right to freedom of association in recent years. In 2008, the first collective agreement between migrant agricultural workers and their employer at Mayfair Farm in Manitoba was agreed, though this has since been decertified (Choudry & Thomas, 2013). In 2015, Alberta introduced the Enhanced Protection for Farm and Ranch Workers Act, which for the first time in the province allowed migrant agriculture workers to unionise (Canadian Council for Refugees, 2018). Although there have been a number of positive developments, and a number of provinces now employ some of the best and most worker-friendly legislation in the world, often this occurs in small provinces with very small migrant populations, like Nova Scotia and Manitoba. In any case, the provinces employing the most migrant workers in Canada remain the most exploitative, and continue to place the strongest restrictions on workers' capacity to collectivise.

### **Problems with enforcing legislation**

On both a federal and provincial level, migrant worker exploitation in Canada is driven by inadequate oversight into employer compliance and irregular inspections of offending employers.

In the time period 2012–2017, the Canadian federal government reported receiving more than 5,000 reports of fraud or exploitation on worksites across the country, and these led to 640 inspections or referrals to authorities. On the one hand, these numbers seem to indicate a discouragingly low proportion of responses. This is not necessarily the case. Many cases may be reported multiple times, many are dealt with independently of official intervention, and many further are deemed frivolous or unrelated to the operations of the department.

A 2017 report by the Canadian Auditor General found that 173 labour inspections were planned for 2016, but only 13 were completed (Sorenson, 2017). No temporary migrant workers were interviewed in the course of any of the inspections. As Levin (2017) notes, there are thousands of employers registered through the TFWP programme, but only eight have been listed as non-compliant, and only one for labour abuses in spite of the widespread reporting on endemic abuses across the industrial landscape.

Such issues with enforcement (or rather lack thereof) can be found in most destination countries, and the United Kingdom, Australia and New Zealand have all experienced issues with inadequately funded, or operated, investigatory mechanisms. However, this situation is more complicated in Canada because of the higher levels of sovereignty held by provincial governments. Each province is responsible for the enforcement of its own labour and workplace safety standards, and each employs different approaches to the issues. In addition, many provincial governments have no record of the names, details or employment information of migrant workers in their territory (Levin, 2017).

In addition to these issues, several reports have found that labour inspections and oversight processes in Canada fail migrant workers because they do not proactively investigate possible instances of abuse, and instead require workers themselves to initiate a complaint process. As established in section 5.3, migrant workers have been found to be unwilling to report or lay complaints about their abuse or exploitation for fear that it may lead to job loss or deportation (Rodgers, 2018). Passive labour inspectorates are highly unlikely to uncover or adequately address temporary migrant worker abuse – the structural barriers to workers' engagement with such services means inspectorates are likely to simply never hear about much of the abuse that takes place.

This point is perhaps best evidenced by the fact that, in two periods over the past 5 years, the Ontario labour inspectorate has conducted "proactive blitzes" into workplaces employing significant numbers of migrant workers. In the first, from September to November 2014, 50 workplaces were inspected, of which 27 (54%) were found to be non-compliant with the Ontario Employment Standards Act in regard to their treatment of migrant workers. A similar blitz from May to July 2016 inspected 64 workplaces, of which 40 (62.5%) were found to be non-compliant (Faraday, 2016, p. 51). As Faraday puts it, although these are statistics they should not be taken as representative of anything more than a microscopic proportion of migrant employers across Canada, that abuse is likely much more prevalent than even these statistics, suggest. In turn, she found that these blitzes may even have underestimated the levels of temporary migrant exploitation in the workplaces they investigated, because employers were given advance notice that they would be inspected, giving them time to temporarily adjust their practices to give the impression of compliance (Faraday, 2016).

## 5.5 Summary

This section has looked into and summarised available information and research on the prevalence of temporary migrant worker exploitation in Canada. The evidence suggests that exploitation is systematic. Migrant workers have been subjected to one or several forms of exploitation and abuse. Their abuse is driven by a range of factors, from tied visas, geographic isolation, low

knowledge of rights, low levels of unionisation, and poor oversight systems and deficient enforcement mechanisms.

The opening passage of this section referred to Fay Faraday's (2016) charge that the abuse of temporary migrant workers within Canada is neither "isolated [nor] anecdotal. It is endemic. It is systemic. And the depths of the violations are degrading" (pp. 5–6). On both a federal and provincial level, many temporary migrant workers across Canada are exploited, and there is much work to be done to adequately address the issue.

For the purposes of this report, it should be noted that there are several significant differences between New Zealand and Canada. Much of Canada's migrant worker population has historically been comprised of domestic workers, where in New Zealand there is nearly no market for such work. Canada's TMW regulatory system is also a significantly different political structure, and this should be accounted for in any analysis and potential future recommendations and decisions. That being said, there are a number of important lessons to be learned from the Canadian situation.

PROACTIVELY RELEASED

## 6. Temporary Migrant Worker Exploitation in the United Kingdom

### 6.1 Introduction

For the period July to September 2018, the Office for National Statistics (2018b) estimates that there were approximately 2.25 million EU national and 1.24 million non-EU national workers in the United Kingdom. Establishing the exact numbers of temporary migrant workers in the United Kingdom at any one time is difficult, as there is a combination of regular and irregular migrants in the country at any one time, and, for a range of reasons, migrants can move from positions of regularity to irregularity with relative ease.

Some of the United Kingdom's migrant labour programmes, such as those facilitated by the EU's free movement policies, have no direct comparison to New Zealand. However, the United Kingdom also employs a number of other programmes that enable migrants from various countries to enter into the United Kingdom primarily to perform low-skilled work. Migrant exploitation takes place across a vast array of sectors but predominately occurs in the low-skilled and/or labour-intensive sectors. Forms of exploitation common to most industries employing temporary migrant workers have been found in contracting practices, health and safety practices, the use of recruitment fees, wage theft, confiscation of documents and the widespread use of substandard accommodations.

Economic and network factors are identified as factors behind migrants wanting to work in the United Kingdom. Tied visas, lack of information about rights, isolation, the impact of umbrella companies and supply chains, substandard regulatory mechanisms and other support mechanisms are identified as drivers of exploitation.

### 6.2 Background

#### 6.2.1 The United Kingdom political setting

In the late 1990s, following the election of Tony Blair's Labour government, the United Kingdom liberalised its immigration system and established a number of visa categories that would enable labour migration into specific sectors, and encourage the employment of migrant labour across the country. Workers from both within and outside the EU began moving into the United Kingdom in greater numbers than previously. Although these changes did not give access to British citizenship in the manner the British Nationality Act 1948<sup>18</sup> had, they did facilitate the migration of more than 2.5 million people into the United Kingdom for temporary work for the period Labour was in power. In recent years, under a Conservative government, the United Kingdom has taken a number of steps towards limiting migration again, most prominently through the Immigration Act 2016, as well as seeking to address increasing levels of migrant exploitation. In the same period,

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<sup>18</sup> The British Nationality Act 1948 was introduced for a brief period of time and enabled British subjects from across the Commonwealth to travel to the United Kingdom for work without a visa.

the United Kingdom has become one of the primary destinations for trafficked peoples and workers across Europe, and in 2016 and 2017 labour exploitation was the most reported trafficking-related offence in the National Referral Mechanism (NRM) (Gangmasters and Labour Abuse Authority (GLAA), 2018).

The United Kingdom's exit from the EU will end freedom of movement into or out of the United Kingdom from Europe. Because the United Kingdom depends so heavily on migrant labour from within the EU, particularly in construction, care work and agriculture, it has been suggested that any change to employment practice around the use of temporary migrant labour could lead to staffing shortages in a number of core sectors of the British economy. Much of the debate around what is to be done about temporary labour migration into the United Kingdom post-Brexit has thus far neglected to discuss the exploitation of workers.

### 6.2.2 United Kingdom specificities

Key pull factors that attract migrant workers include higher minimum wages and the existence of established minority ethnic communities to ease the difficulties of immigration. Although there is some literature discussing the drivers of movement into the United Kingdom of EU and non-EU workers, such drivers can vary greatly between groups or are specific to the social and political environment in the United Kingdom. The most thorough recent overview of the drivers of migrant worker movement into the United Kingdom can be found in the Migration Advisory Committee's (MAC) 2014 report *Migrants in Low-Skilled Work: The Growth of EU and Non-EU Labour in Low-Skilled Jobs and Its Impact on the UK*. The authors of the report found that there were primarily two broad-scale reasons for migration into the United Kingdom "economic and labour market factors, and network effects" (MAC, 2014, p. 50).

Economic and labour market factors generally relate to wage and income differentials between the source and destination country. However, the conditions many migrants face in the United Kingdom are often not conducive to improving their family's livelihood. In many cases, this occurs because migrants are deceived by agents and recruiters in their home countries into believing that they will receive good working conditions and fair payment in the United Kingdom (MAC, 2014). When they arrive in the United Kingdom, many end up working in abusive conditions because they made significant financial sacrifices in order for them to move in the first place. They can easily become trapped in a cycle of poverty and are thus highly vulnerable to other forms of trafficking and exploitation (Crane, LeBaron, Allain, & Behbahani, 2017; Kalayaan, 2018).

While this situation is the case for many migrants, it is not a universal one. Even among those working in abusive or exploitative conditions, the MAC found that for some migrants the low-paid, abusive workplaces in the United Kingdom offered better outcomes than would have been attainable at home. They were fully aware of their treatment and conditions, but actively chose to remain in such work because it was more economically beneficial for them to do so. The proportion of migrants in such positions in the United Kingdom is not clear due to difficulties in obtaining accurate information; however, it is likely that many migrants who move for economic reasons to both the United Kingdom and New Zealand do so for similar reasons.

In addition to economic and labour market drivers, the MAC found that there were a number of network effects driving immigration into the United Kingdom. They found that many migrants chose the United Kingdom as a destination because of existing diaspora communities. As Bruder (2003) put it, “Only the first migrant has to pay the full migration costs. Every following migrant benefits from the experiences of those who are already living there” (p. 7). It is easier and cheaper for migrants to travel to places with existing diaspora communities because they provide a source of information and support, and they reduce the costs and risks associated with other forms of immigration.

### 6.3 Forms of exploitation

In the United Kingdom, two terms – *modern slavery* and *labour exploitation* – are used to describe the phenomena discussed throughout this report. Modern slavery refers to a wide set of practices relating to particularly egregious forms of labour or sexual exploitation. Labour exploitation, on the other hand, encompasses both these extreme forms of exploitation and, as some authors have put it, “routine” forms of exploitation (J. Davies, 2018; Michailova & Stringer, 2018; Stringer & Michailova, 2018).

Although there is a wide range of information around the various forms of exploitation experienced by migrants in the United Kingdom, there is comparatively little around the extent of such abuses. It is often estimated that the kinds of abuses and exploitation experienced and reported by migrants are endemic to their respective sectors and the United Kingdom economy as a whole. However, because migrant workers are often unwilling to speak out about their abuses for fear of jeopardising their immigration status, it is difficult to assess the total scale of their exploitation.

The most recent Home Office figures estimate that in 2014 at least 13,000 people across the United Kingdom were in some form of enslavement (Home Office, 2017b). This was dismissed in 2017 as only “the tip of the iceberg” (BBC, 2017). It should be noted that this figure includes labour exploitation, sexual exploitation and forced marriage. In addition to Home Office estimates, the National Crime Agency publishes quarterly reports into the levels of modern slavery and human trafficking across the United Kingdom as reported through the NRM. These statistics have been published since 2012. Due to the difficulties of establishing exact numbers of victims or offending, it is likely these figures only represent a portion of actual levels of abuse.

The National Crime Agency quarterly reports include a number of important pieces of information:<sup>19</sup>

The use of the NRM is increasing significantly each year. There was an increase from 3,266 reports of potential victims in 2015 to 5,145 in 2017. At the time of writing, only the figures for the first three quarters of 2018 were available; however, there have already been reports of 5,039

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<sup>19</sup> This information is drawn from analysis of statistics and information available through the National Crime Agency (2018) reference provided in the bibliography.

potential victims to the NRM. It is not clear whether this is because of an increase in the amount of abuse taking place or because of wider awareness of the NRM.

Nationals from Albania, Vietnam, the United Kingdom, China, Nigeria and Romania are consistently the most reported potential victims across the years since referrals have been active.

Adult and minor labour exploitation (including criminal exploitation but not including domestic servitude) is consistently the most reported form of exploitation. In 2017, there were 920 referrals for labour exploitation, 486 for sexual exploitation and 120 for domestic servitude.

The vast majority of labour exploitation in the United Kingdom takes place in England. In 2017, 207 potential victims were detected in Scotland, 193 in Wales and 31 in Northern Ireland. The remaining 4,714 were identified in England.

Migrant workers are employed in a wide range of industries across the British economy. The most significant of these for the purposes of this report are construction (Focus on Labour Exploitation [FLEX], 2017), care work (Kingsmill, 2014), the hand car-wash industry (University of Nottingham Rights Lab, 2018), nail bars (Independent Anti-Slavery Commissioner, 2017), food production (J. Davies, 2018; Lever & Milbourne, 2016), and service work and cleaning (Equality and Human Rights Commission, 2014; Joseph Rowntree Foundation, 2012; MAC, 2014).

### 6.3.1 An overview of forms of exploitation

This section outlines several forms of exploitation which migrant workers experience. Forms include manipulative contracting, recruitment fees, confiscation of documents, coercive employment practices, wage theft, substandard housing, and health and safety violations. In this section, we also put forward a number of issues specific to the care work and construction sectors. Although workers in these sectors experience many of the same forms of exploitation as workers in other sectors, they also face a series of sector-specific forms of exploitation worth exploring in greater detail.

#### **Charging of fees**

It is normal practice for recruiters in source countries, as well as employers and employment agencies in the United Kingdom, to impose substantial “work-finding fees” onto prospective employees (FLEX, 2017; GLAA, 2018; Harris, Sheehan, Toft, & Weatherburn, 2014; MAC, 2014). These fees can amount to thousands of pounds, and, more often than not, place workers into substantial debt.

Further, it is common practice for employers, employment agencies and umbrella<sup>20</sup> companies in the United Kingdom to deduct money from workers’ wages and salaries under the guise of charging them for accommodation costs, transport or national insurance contributions. It has been found that the fees simply return to the employer (GLAA, 2018; Taylor, 2017). In many cases, these fees leave workers with substantially less income than they expected to be earning. As a

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<sup>20</sup> An umbrella company is a company that employs contractors to work on temporary assignments.

result, they are often unable to maintain a stable standard of living without entering into debt (Crane et al., 2017). Hestia (2018) found that, when faced with this problem, many migrant men working across the United Kingdom were forced into homelessness and in some cases petty crime in order to continue to meet their family obligations.

### **Manipulative contracting**

In several sectors, particularly those that routinely rely on umbrella companies and employment agencies to source and coordinate labour such as cleaning, construction and aged care, workers are kept on flexible contracts, often with no guaranteed hours of work per week. Although flexible contracts are not an illegal practice in the United Kingdom, numerous reports have found that employers use this as a means of exerting coercive control over migrant workers, limiting their hours of work and their access to financial stability in order to ensure compliance with other exploitative practices within the workplace (MAC, 2014).

Similarly, some employers have been found to coerce employees to work up to 12 hours per day for 7 days in a row, then not give them any work at all for extended periods of time in order to exercise control or, in situations of modern slavery, “subjugate workers and engender dependence on the employer” (Lever & Milbourne, 2016, p. 314).

In addition to issues with contracts, many temporary migrant workers face exploitation stemming from the fact that they do not have an employment contract. In their analysis of migrant construction workers in London in 2018, FLEX (2018) found that all the workers they interviewed who were being paid below the minimum wage were not on any form of contract. Within this population, “the majority of respondents also reported being paid cash-in-hand and having been made to work in dangerous working conditions” (p. 3).

### **Coercive employment practices**

In addition to issues relating to contracting, migrant workers are often subject to coercive employment practices within their workplaces, namely having to meet unrealistic productivity targets and being denied their legally entitled breaks. These issues have been found in the food-preparation, production, agriculture, cleaning and construction sectors, and largely function as a means for management to exert control over an employee’s movement or to engender fear and obedience in their workforce.

J. Davies (2017) found that workers felt the productivity targets were used to push them to work harder than was reasonable, and that employers imposed financial penalties onto workers if they were deemed to have failed to meet the target. In some cases, workers reported that their employers lied to them that they had failed to meet their target and imposed a penalty on their payslip as a result (J. Davies, 2017).

J. Davies (2017) also found that in many workplaces, workers experienced coercive employment practices relating to the provision of breaks and rest periods. This included practices like

monitoring or restricting toilet breaks, strictly limiting the number of rest breaks employees can take during the day, and imposing penalties if workers took longer than their allocated break time. In some cases, this was found to lead to stress injuries, and was often found to leave workers exhausted (J. Davies, 2017).

### **Substandard housing**

The living conditions of migrant workers, particularly those provided by their employer or employment agency, are consistently below legal requirements for accommodation and can lead to the deterioration of workers' physical and mental health. Many migrant workers in the United Kingdom stay in employer-owned accommodation, or accommodation owned by someone connected to the employer. In a significant number of cases, workers have been found to have had no running water, electricity, or adequate sanitation in their accommodation. Even in situations where workers have raised concerns with their supervisors or employers, little or no attempt is made to correct the issues at hand (J. Davies, 2018).

Migrant worker housing is also often dangerously overcrowded, and in some cases this overcrowding takes place in non-standard accommodations such as sheds, garages, shipping containers, or, like in the case of hand car washes, even customer waiting areas (J. Davies, 2018; GLAA, 2018). Some reports have found that migrants are willing to sacrifice safe or comfortable living conditions in order to live cheaply so that they can send more money back home (MAC, 2014).

### **Violation of occupational health and safety standards**

Many workplaces employ weak or questionable health and safety standards, and, as a result, they are a primary concern for migrant workers. In a number of industries, workers experience severe injuries that have effects on both their employment and their visa status. In industries like cleaning and hand car washes, workers can be forced to handle dangerous chemicals without sufficient protective gear, leading to poisoning, burns and other skin damage (J. Davies, 2017; University of Nottingham Rights Lab, 2018). Similarly, workers in the construction sector have been found to be expected to work without adequate safety gear, in some cases leading to serious physical injuries.

### **6.3.2 Business models facilitating exploitation**

One of the more complex drivers of the exploitation of temporary migrant workers in the United Kingdom is the widespread use of flexible labour practices such as umbrella companies. In industries like construction, cleaning and some areas of hospitality, workplaces are populated by workers employed through employment agencies which guide when, where and in what conditions they will work on any given day. Forced labour regularly takes place in these environments. One reason is that there is little oversight into the operations of umbrella companies, allowing them to charge large weekly fees to workers and use coercive employment practices against them. Another reason is the complex nature of labour-supply chains in the United Kingdom which makes it inordinately difficult for compliance and enforcement agencies to access worksites and establish the information they need in order to produce a conviction (FLEX, 2018).

In 2017, the *Taylor Review of Modern Working Practices* found that there were 1.2 million working people in the United Kingdom employed through umbrella companies and employment agencies (Taylor, 2017). At the time, this was the highest such proportion in Europe and included both local workers and migrants. Smaller labour-supply operations conduct their business outside the law and employ higher proportions of vulnerable migrants, targeting their minimal rights in the United Kingdom and exploiting such vulnerabilities to force them into cheap labour.

As with many of the other issues discussed in our report, we emphasise that this practice is not exclusive to migrant workers. However, the effects of exploitation through umbrella agencies are more serious for migrant workers than they are for locals. Migrants have fewer rights in the United Kingdom, and the legislative link between their employment and immigration status means they are more willing to enter coercive or abusive employment situations such as these. Although there are no current figures as to how many migrant workers are employed through labour-supply or umbrella companies in the United Kingdom, largely due to the irregular practices employed by many companies, it is known that many employers in the industry target and employ migrants in high proportions (Allain et al., 2013; Crane et al., 2017; FLEX, 2017).

In addition to the widespread use of flexible labour through employment agencies, temporary migrant worker exploitation in the United Kingdom is driven by the complexity of labour-supply chains. Unlike product supply chains, which normally only comprise a small number of straightforward links, labour-supply chains in the United Kingdom are often lengthy and highly complex. The most thorough overview of these practices can be found in Allain et al.'s (2013) report into the manner in which supply chains and particular business models function to legitimate and promote the use of forced labour. The authors found that, in the United Kingdom, forced labour most often takes place far down subcontracting or labour-supply chains, and often in such a manner that the key organisation has no knowledge of the labour practices employed further down.

However, this lack of knowledge is not based entirely on an inability to find out what is happening. More often than not, companies have been found to simply ignore, or not properly investigate, accusations of forced labour or modern slavery in their supply chains (FLEX, 2017). As stated previously, because of the supply chain complexity, workers, their advocates and enforcement agencies have expressed difficulty in understanding what is taking place in such supply chains. Even when they have been able to establish that a particular practice is illegal, it has proven very difficult to establish how to proceed with criminal or civil action (FLEX, 2017). The United Kingdom recently introduced a number of provisions aimed to address the lack of transparency through the Modern Slavery Act 2015.

### 6.3.3 Sector-specific exploitation

The forms of exploitation discussed above appear to some degree in nearly all sectors of the United Kingdom economy that rely on significant numbers of migrant workers. In addition to these general factors, there are a number of sector-specific forms of exploitation worth highlighting.

**Care work:** Workers from EU countries in particular make up a significant proportion of the care-sector workforce. There have been two major reviews that discuss the treatment of migrant

workers in the care sector published in recent years: the *Kingsmill Review* (Kingsmill, 2014) and the *Independent Review of the Overseas Domestic Worker Visa* (Ewins 2015). Both found widespread abuse of migrant workers in the care sector. Kingsmill (2014) found that the majority of workers within the sector were either older women or migrants, and most were employed there because they were unable to find better or alternative work elsewhere. Both of these groups are highly vulnerable because of their limited upward economic mobility and are thus easily susceptible to forms of exploitation like zero-hour contracts.

There are approximately 700,000 workers in the care sector in the United Kingdom. Many care workers in the United Kingdom no longer work in care homes; instead, they work for agencies whose clients live and are cared for within their own homes. This may include private elder care, care for people with disabilities, or the provision of particular services to children in need. Workers in the sector hold appointments with these clients, and there is often a great deal of travel time in between. Many employers in the care sector only pay workers for the time they are in appointments; it is common for them to not be reimbursed for any of the costs of travel. This implies they are likely to lose a significant portion of the small income they make on a given day just to cover the cost of getting to work (FLEX, 2017; Kingsmill, 2014; Osborne, 2016). Although this is not an illegal practice, it is endemic to the industry, and leads to a range of problems for workers.

Kingsmill (2014) found that between 160,000 to 220,000 care workers, out of a total workforce of 700,000, were receiving less than minimum wage. In addition, an HM Revenue and Customs (2013) report found that 48% of employers in the care sector were regularly failing to pay the minimum wage to their employees. In 2017, the work force employed 1.6 million people, of whom 20% were migrants. Although up-to-date figures on the extent of wage underpayment and exploitative contracting are not available, there has not been a great deal of legislative or regulatory development around the sector and so it is probable that the figures are, at very least, similar today to what they were in 2011.

In addition to abuse in traditional employment in the care sector, there is a wide range of abuse reported in domestic work. This has been found to take a number of forms. Most often, migrants involved in domestic work report abuses relating to physical, psychological and occasionally sexual abuse from their employers. Further, as Kalayaan (2015) put it, migrant domestic workers in the United Kingdom can be considered “forgotten slaves.” They are largely invisible due to their confinement in a domestic setting.

### **Construction**

Workers throughout the construction sector have been found to have been exploited through the Construction Industry Scheme (CIS), a national programme that enables employers to register self-employed contractors as such in law. This was originally introduced in 1999 with the purpose of recognising the changing employment landscape within the industry. The scheme enabled

employers to provide work to contractors but did not require them to pay standard tax rates or wages, and removed them from their responsibility to pay into the National Insurance Scheme.

Since its introduction, studies have repeatedly found that employers are using the CIS scheme to exploit workers (FLEX, 2017; Seely, 2018). Primarily, employers have been found to be falsely registering standard employees as self-employed contractors in order to cut the costs of production across supply chains, leaving workers with significantly less pay and few if any protections. In many cases, workers are still expected to perform the responsibilities required by an industry-standard employment contract, but are offered few, if any, of the protections such a contract would normally offer.

Estimates of the exact number of workers being falsely registered as self-employed have varied over time. In 2008, a report commissioned by the Union of Construction, Allied Trades and Technicians estimated that around 30% of the workforce (375,000–425,000 people) were falsely registered as self-employed (Seely, 2018). In 2013, the estimate was lowered to 200,000 (FLEX, 2017). There are no current estimates of the number of people currently under false self-employment.

In 2014, the government introduced regulations pushing the industry to alter its employment practices (The Construction Index, 2018). In response, many workers in the construction industry have now moved to being employed by umbrella companies. In 2015 between 300,000 and 400,000 construction workers were employed by umbrella organisations and employment agencies (FLEX, 2017). Although this is a different form of employment relationship, this does not mean workers in the sector are free from abuse. Umbrella companies have been routinely found to exploit workers in their own ways.

Migrant workers have been estimated to make up approximately 8% of the overall construction workforce in the United Kingdom as of 2016, and 40% of the construction workforce in London (Office for National Statistics, 2018a). If migrants employed under the CIS suffer an injury while at work, they not only risk being fired, they may be unable to access medical services. This could be due to prohibitive cost, lack of awareness or language skills, or in some cases limited access to the public health system. For example, in 2017 legislation was passed allowing the Home Office to use information from hospitals as a means of finding and deporting migrants. As a result, many migrants stopped seeking care, and nurses and doctors reported a rise in pregnancy complications and even instances of deaths because migrants were afraid to seek medical care (Hiam, 2018).

### **Hand car washes**

Prior to 2004, there is little evidence of any hand car washes operating; however, since then, an estimated 10,000 to 20,000 operations have been established, the vast majority within England. A hand car wash is most likely to be a small, roadside business that provides a cheap alternative to machine car washes. The University of Nottingham Rights Lab (2018) reports that many hand car washes have been set up and operate on “roadsides, petrol stations, disused forecourts, former public carparks and supermarket car parks” (p. 6). They are predominantly staffed by Romanian and Albanian migrant workers.

Exploitation is widespread within the hand car-wash industry, and many of the forms of exploitation workers face are consistent with other forms of exploitation discussed throughout this report. As of 2017, 27% of the cases of labour exploitation reported to the Modern Slavery Helpline (Addressing Migrant Worker Exploitation report) were directly related to the hand car-wash industry (House of Commons Environmental Audit Committee, 2017). A 2017 report to the House of Commons Environmental Audit Committee found the following forms of exploitation were common:

- Being paid little to nothing;
- Illegal deductions from wages;
- Having identity documents confiscated;
- Being verbally abused or degraded on the job;
- Being assaulted and threatened with violence, arrest or deportation;
- Working long hours with few or no breaks;
- Overcrowded or substandard accommodation.

These forms of exploitation are common to the experiences of many migrant workers, and while the practices are widespread and exceedingly severe within the hand car-wash industry, this information is primarily useful to this report in that it demonstrates the wide extent, and often extreme nature, of even routine forms of labour exploitation in the United Kingdom.

Further, not being provided proper protective equipment and work clothes, is a dangerous practice in the industry, and is widely reported as one of the most common and serious forms of abuse found in this sector. Because of the nature of hand car washing, workers often spend entire days coming into regular contact with caustic and dangerous chemicals. As they are not being provided proper gear, this can lead to severe chemical and acid burns to the arms and hands.

In 2017, *The Independent* and *Evening Standard* newspapers undertook an investigation into hand car washes across London, in attempt to gauge the extent of exploitation. They found “obvious indicators of exploitation” (Rose, 2017, para. 8) at each of the sites they investigated, and reported that many workers were wearing casual clothes while handling dangerous chemicals, and that some reported working for as little as GBP5 per hour. One worker described the nature of their abuse as follows:

Have you seen the movie Ben Hur, when one of the women had leprosy and her hands were destroyed? That’s how the guys’ hands were – burned by the shampoo and acid. (quoted in Rose, 2017, para. 19)

Though this is only anecdotal evidence, the reports that have been undertaken thus far suggest that similar patterns of abuse are not only common, but widespread (see for example House of Commons Environmental Audit Committee, 2017; University of Nottingham Rights Lab, 2017).

### **Nail bars**

The nail bar industry is one of the sectors most commonly found to be exploiting migrant workers. For the most part, employers operating nail bars have been found to exploit workers in similar, albeit comparatively extreme, manners to those discussed throughout this report. Wage theft is

common; workers are often provided with substandard accommodation; and many workers operate without contracts (Independent Anti-Slavery Commissioner, 2017). However, it is important to note that the exploitation that takes place in the nail bar industry is markedly different to that in other sectors, largely because it takes place nearly exclusively within Vietnamese migrant communities.

In the largest study undertaken into the specific forms of exploitation taking place within nail bars, the Independent Anti-Slavery Commissioner (2017) found that workers within the industry were there because they had been trafficked into the United Kingdom from Vietnam specifically to work for free in dangerous, substandard environments on the promise of eventually receiving a visa enabling them to stay in the country for doing so. Some reported cases have involved the trafficking of women and children for the purposes of sexual exploitation in addition to labour exploitation, and while sex trafficking can be a form of labour exploitation, it is outside the scope of this research and so will not be discussed in detail here.

In recent years, there have been a number of notable raids undertaken of nail bars and convictions laid against owners (see for example Morris, 2018). A nationwide campaign to raise awareness of slavery and labour exploitation within the industry was launched. The issue of exploitation, however, is somewhat more complex in nail bars than it is in other industries. The Independent Anti-Slavery Commissioner (2017) found that in some cases migrant workers had participated in their own trafficking. These cases involved migrant workers attempting to be smuggled into the United Kingdom to find work, and then being tricked by traffickers into severe exploitation (Independent Anti-Slavery Commissioner, 2017).

Regardless of their knowledge or understanding of their trafficking, the participation of workers in the process has raised problems for the responses that have been taken to address the issue. In some situations where workers have been removed from situations of exploitation or slavery and moved into care, operated either through government systems or those of independent organisations, they have been found to later return to their previous employers despite knowing they will be exploited (Morris, 2018). A police officer interviewed in the wake of a major conviction of employers in the nail bar industry attributed this to the psychological effects of trafficking itself, saying that workers fled care and returned to their employers because they had been “conditioned to feel reliant on those controlling them” (Morris, 2018, para. 16). As discussed in the previous section, similar phenomena have been observed in the hand car-wash industry. Although there is as yet little research in this area, it is likely that the same patterns of behaviour exist in other sectors as well.

The next section discusses the drivers of this exploitation, many of which are closely related to the drivers of exploitation in New Zealand.

## 6.4 Drivers of exploitation

Factors which drive the exploitation of workers are multiple and complex. We discuss several drivers and elaborate on them in the subsequent subsections.

### **Vulnerabilities associated with tied visas**

One of the most commonly discussed drivers of exploitation is the use of tied visas. If a worker is employed on a tied visa, they are only able to work for one employer throughout the entire time that visa is active. This leads to the worker depending on the employer not only for work, but their legal status within the country. Many employers have been found to use tied visas as a means of economically, physically or, in some cases, sexually exploiting their workers. In cases across the world they have been found to be one of the strongest predictors and drivers of the exploitation of temporary migrant workers (Labour Exploitation Advisory Group [LEAG], 2016). The effect of tied visas is illustrated in Table 6.1, which shows that for each of the forms of abuse, the incidents are higher for those on tied visas than non-tied visas.

**TABLE 6.2: The effects of tied visa on exploitation.**

Form of abuse	Original ODW <sup>21</sup> visa (1998–2012)	Tied visa (2012–2016)	Post-April 2016
Physical abuse	1 (n = 29) 3%	6 (n = 14) 42%	4 (n = 15) 26%
Psychological abuse	12 (n = 30) 40%	17 (n = 19) 89%	12 (n = 14) 85%
Sexual abuse	0 (n = 20) 0%	1 (n = 9) 11%	1 (n = 14) 7%
No day off	11 (n = 33) 33%	11 (n = 16) 69%	9 (n = 14) 64%
Worked over 15 hours a day	7 (n = 29) 24%	12 (n = 18) 67%	11 (n = 13) 85%
On call	9 (n = 26) 35%	10 (n = 14) 71%	7 (n = 10) 70%
Not allowed out	13 (n = 35) 37%	14 (n = 21) 67%	13 (n = 16) 81%
Passport kept from worker	22 (n = 34) 35%	12 (n = 17) 71%	15 (n = 18) 83%
Presence of trafficking indicators	13 (n = 37) 35%	15 (n = 22) 68%	12 (n = 18) 67%

Source: Kalayaan, 2018, p. 9

It is indisputable that the survey populations for each category are somewhat small and thus it is difficult to establish patterns of genuine statistical significance. However, the broad trends suggested by this information support well-established evidence of the effects of tied visas on the treatment of migrant workers (see FLEX 2017; Kingsmill, 2014; LEAG, 2016 for more information).

### **Precarious migration status**

In recent years, the temporary status of migrant workers has been repeatedly found to be a major contributing factor to their exploitation. Both documented and undocumented workers have been reported to fear speaking to authorities in case their information is passed on to immigration officials. This leads to the creation of an employment environment easily amenable to abuse and exploitation because workers are afraid to speak out (Mantouvalou, 2016).

In 2016, the United Kingdom criminalised “illegal working” in the Immigration Act, and introduced a series of policies intended to encourage irregular migrants within the United Kingdom to leave,

<sup>21</sup> Overseas domestic workers

and to deter any new migrants from arriving. These policies were termed the “hostile environment” policies, and involved denying undocumented migrants access to a wide range of services, including healthcare, education, housing, work, benefits, and bank accounts (Åhlberg, 2018). In addition to cutting their access, a House of Commons Home Affairs Committee report (2017) found that migrants were now even more afraid to talk to officials for fear that their details might be passed on to immigration officers. This has meant that migrants are no longer willing to talk to the police, leading to more crimes going unreported. Although this may lead to a formal reduction in crime statistics, any change should be analysed criminologically to thoroughly understand how the hostile environment policies have affected migrants’ relationships with the police.

FLEX has reported that not only have these policies failed to cut down on exploitation in the United Kingdom, they have increased exploitation by pushing migrants into more precarious employment. This state of affairs has seriously undermined the efforts made by the government in the Modern Slavery Act 2016 to end such exploitative practices in the United Kingdom (Åhlberg, 2018).

In spite of only formally targeting undocumented workers, these policies have had a wider effect. Documented EU migrants have been found to have faced discrimination in housing and employment, and many landlords and employers have been found to openly advertise work and housing with explicit provisions barring EU migrants from applying (Kentish, 2017; Travis, 2017).

#### **Ineffective sanction mechanisms**

The United Kingdom possesses weak enforcement and punishment mechanisms for abuses against migrant workers (FLEX, 2017; MAC, 2014). Prosecutions for labour exploitation and related offences, that stem from investigations undertaken by labour inspectors, occur at a very slow rate, and the vast majority of cases brought to court do not end in conviction (MAC, 2014).

The United Kingdom has a number of enforcement mechanisms, for example the GLAA (the governmental agency responsible for enforcing labour rights in sectors like construction), the Advisory, Conciliation and Arbitration Service (Acas) and the Employment Agency Standards Inspectorate. Most of these mechanisms, despite having some scope to investigate and undertake criminal prosecutions, have been found to be significantly under-resourced. Citizen’s Advice found that in recent years the enforcement processes offered by these organisations had become less accessible because of increases in fees as well as confusion around the appropriate body to contact. They found that this was deterring workers from taking action in situations of abuse, and that many were “unaware of, unsure about, or unable to enforce their rights” (Citizen’s Advice, 2017, p.5).

The Civil Penalty Scheme for Employers, an enforcement mechanism, was introduced in 2014. It establishes a series of penalties for employers found to be employing illegal workers, and stipulates punishment of up to GBP20,000 for doing so (Home Office, 2014). However, the scheme includes a provision which removes the fine if an employer reports an illegal worker to the authorities and cooperates with the ensuing investigation. Effectively, this practice enables employers to maximise their profit margins by exploiting undocumented workers, then absolving

themselves of any culpability for their exploitation by facilitating their deportation. As Åhlberg (2018) reports, employers are thus able to use the threat of reporting a worker to the Home Office to ensure that workers do not attempt to improve their working conditions.

One such case came to particular prominence across the United Kingdom in 2016. Two Byron Burger restaurants carried out a sting operation against their own undocumented workers, luring them to a purported health and safety meeting only to have Home Office officials arrest and deport 35 people from Albania, Brazil, Nepal and Egypt for immigration offences. Numerous articles and analyses have been published of the incident, and the company was alleged to have used the above provisions to protect itself from prosecution for illegal labour practices (see for example Jones, 2016; O'Carroll, 2016; Slawson, 2016).

In addition to the regulatory enforcement structure, in this instance functioning to criminalise rather than protect vulnerable migrant workers, even the provisions intended to punish employers have been found to be poorly enforced. Since 2008, 30% of all civil penalty notices issued to employers have not been properly paid (Åhlberg, 2018).

Several organisations have contended that the lack of enforcement is one of the primary drivers of exploitation, simply because employers know that they have wide scope to abuse workers with minimal chance of any consequences. In addition, many workers know that the likelihood of prosecution is low. Even in instances of prosecution, they themselves are not guaranteed to receive any support or long-term benefits, and so the costs of reporting their abuse far outweigh the benefits (FLEX, 2017; MAC, 2014; National Audit Office, 2017).

### **Deficient support systems**

Lastly, migrant exploitation in the United Kingdom has been found to have been driven by deficiencies in support services offered for workers who enter the NRM. The NRM was established in 2009 for potential trafficking victims, migrant workers, their advocates and the public to report. Although its overall efficacy in terms of addressing migrant exploitation across the United Kingdom has yet to be established, there have been issues in terms of how workers have been supported once they have completed NRM processes.

As noted in the hand car-wash section, the 2018 report from the University of Nottingham Rights Lab found that many people who went through the support mechanisms offered by the NRM returned to exploitative workplaces in the period immediately after being taken into safe houses or entering other support systems. They did so even while they knew they would be exploited because they wanted to continue to make money. The motivations of workers beyond this are not clear from the research, and it should not be assumed that they are simple. However, it is clear that post-care mechanisms within the NRM are currently insufficient to ensure previously exploited workers do not return to exploitative workplaces.

### **Lack of knowledge of rights**

Many migrant workers have little to no knowledge of their situation in the United Kingdom, their legal status, responsibilities or rights. Mantouvalou (2016) found that even at sites where it was

compulsory by law for migrants to receive information about their rights, for example at customs upon arrival in the country, such information was either non-existent or ineffective in practice.

Further, many migrant workers do not understand the rights they have access to because United Kingdom employment law has become diffuse and complicated in recent years. Particularly in sectors like construction, where there can be multiple subcontractors employing different groups of people under different contractual terms on the same site, it can be inordinately difficult to understand what rights one possesses, regardless of whether or not the worker in question has the language skills to read them. FLEX (2017) has found that, as a result of this complexity, not only do workers lack an understanding of their rights in their workplace, many enforcement organisations do not have an adequate understanding of them either. Both workers and stakeholders expressed concern that even the GLAA has neither the capacity nor the understanding to be able to adequately enforce labour standards on sites involving complex employment arrangements. This assertion is supported by the fact that many migrant advocacy organisations as well as workers and stakeholders feel the lack of enforcement of labour standards is a key barrier to remedying the abuse of migrant workers in the construction sector (FLEX, 2018).

Some migrants have been further exploited in situations where they have attempted to assert the rights they were aware they possessed. For example, the Trade Union Congress (TUC, 2015) has found that many migrant workers were not aware they were able to join a union, and that some migrants who attempted to unionise or exercise collective bargaining have been intimidated by agencies connected to their employers in order to prevent unionisation. Similarly, Lever and Milbourne (2016) found that when a group of Portuguese workers attempted to unionise and strike for better conditions in a Welsh meat-production factory they were fired and replaced by more compliant workers.

The lack of knowledge of rights extends to those who lack English proficiency and hence may not understand the terms of their employment. The Equality and Human Rights Commission (2014) has found that it is common for workers in the cleaning sector to not know their pay, terms, or entitlements to breaks and holidays. Workers reported that some employers exploited non-English speakers more severely. They were denied holiday and sick pay and “experienced problems receiving their pay” (Equality and Human Rights Commission 2014, p. 61).

Insufficient English language skills have also been found to impede migrant workers’ abilities to access important information and helplines. Most notably, the LEAG has found that migrants have expressed significant difficulty in accessing the Acas helpline, which FLEX (2017) describes as being “generally considered the main gateway for advice on labour rights in the UK” (p. 26). Workers who call this helpline are greeted in English, and are then asked to hold the line for an average period of approximately ten minutes. If a worker is unable to understand what they are being told when they begin a phone call, they are unlikely to understand the purpose of being put on hold for such an extended time.

### **Social isolation**

On a logistical level, one of the most common drivers of exploitation experienced by migrant workers is isolation. This functions on two levels. In the first instance, migrant workers in sectors

such as cleaning, hospitality or domestic work spend many of their working hours alone, at “unsocial hours,” and sometimes with the sole presence of a supervisor (FLEX, 2016; Kalayaan, 2018; LEAG, 2016). LEAG has found that in such conditions the likelihood of abuse taking place increases significantly, and numerous migrant workers have reported that they have been exploited or abused because their isolation made the abuse invisible to other people. The sectors in which this kind of isolation is common are highly feminised (except for supervisors and management), and the most common form of abuse in these situations is sexual harassment.

In addition to facilitating forms of physical abuse, isolation drives the exploitation of temporary migrant workers because it prevents them from talking to other workers about their abuse. This impedes the possibility of information about support networks or unions being spread to enable workers to learn their rights and improve their conditions. In many cases, migrant workers do not know whom they should contact or how to go about reaching out to support agencies (LEAG, 2016). That being said, since the Brexit vote there has been a surge in migrant workers seeking immigration and employment advice. FLEX reports that one agency has experienced a 734% increase in demand for its services in the wake of the vote, and is operating far beyond its capacity (FLEX, 2017).

## 6.5 Summary

Migrant workers in the United Kingdom experience a wide range of forms of exploitation. These include manipulative contracting, recruitment fees, document confiscation, coercive employment practices, wage theft, substandard accommodation and health and safety violations. These are very similar to the kinds of exploitation migrant workers experience in New Zealand, Australia and Canada, as well as in many other prominent destination countries across the world.

In the United Kingdom, temporary migrant worker exploitation is driven by the use of tied visas, lack of legal standing of migrants, limited English language skills, low knowledge of rights, isolation, abuse in supply chains, poor sanction mechanisms and deficient support systems.

It is common for migrants to experience multiple forms of exploitation and to be subject to several drivers at any one time. As with the situations in Australia and Canada, the treatment and situation of migrant workers in the United Kingdom warrants considerable analysis, and should be taken as a very useful comparison to the situation in New Zealand in order to develop the best possible approaches to improving the conditions of temporary migrant workers.

## 7. Conclusion

In each of the four countries at the centre of this research, migrant worker exploitation has been found to be widespread. Workers have faced a wide range of forms of exploitation, from unlawful deductions and poor record keeping by employers at the less severe end, to abuse, physical and sexual exploitation, and slavery at its most serious. These offences form a continuum of exploitation, and thus it is essential that both the comparatively minor and severe forms of migrant worker exploitation be understood and addressed together in order to end the problem as a whole.

In regard to the goals and outcomes established at the outset of this research, this report has identified a number of important broad findings. First, there are a number of similarities between the forms of temporary migrant worker exploitation present in Australia, Canada, New Zealand, and the United Kingdom. In each country, migrant worker exploitation commonly involves wage theft, unlawful and often significant deductions from wages, the use of recruitment fees, and exploitative contracting practices. Although rates vary between the countries discussed in this report, migrant workers were also found to be required to work excessive hours in unsafe jobs, and in some cases were housed in overcrowded and unsanitary accommodation.

Second, the drivers of migrant worker exploitation are also similar among each of the countries surveyed here. Many migrants in each country face exploitation due to their vulnerability from their visa being tied to, or sponsored by, their employer. Similarly, there is a lack of effective enforcement mechanisms in each country, and many migrants report being afraid to report their experiences due to the risk of job loss, deportation, or other forms of reprisal either from their employers or the state. It is common for migrant workers to lack the language skills or knowledge of their employment rights in their host country, and in some cases specific cultural practices or factors have been found to contribute to forms and rates of exploitation. Exploitation is also driven by the widespread presence of debt bondage among migrant worker populations, as well as the need to remit money to family.

Third, where there is variation in the experiences of workers between countries, it has been found to stem largely from a small number of factors. In most cases, variation can be attributed to either *geographic distinctions* (e.g., in Canada and Australia, both of which employ large numbers of migrant workers in remote rural areas), *geopolitical distinctions* (e.g., the EU open-border regulations to which the United Kingdom is still held at the time of writing), *industry distinctions* (e.g., the range of sector-specific forms of exploitation discussed throughout), and *immigration law-level distinctions* (e.g., the harsher nature of current approaches in the United Kingdom or the lack of a low-skilled migrant worker visa class in Australia). Despite there often being significant legal, political, social, or cultural differences between the countries at hand and the migrant populations therein, this report found that there are still strong similarities between the forms and drivers of temporary migrant worker exploitation across the countries.

It is difficult to draw conclusions as to the extent of exploitation in each of the four countries due to the limited data available and by extension the inherent difficulties in measuring the extent of

exploitation. This is a major gap in any research into the exploitation of temporary migrant workers. Nevertheless, we know that those most subject to exploitation are a vulnerable and marginalised population. Many are fearful, as discussed above, of reporting exploitation as this would potentially increase their vulnerability. In each of the four countries, those most at risk of exploitation are employed in low-skilled, labour intensive jobs, or in small businesses including franchise and sub-contracting operations.

It must be noted that the forms of exploitation discussed in this report are not exclusive to migrant workers, and further noted that they stem from unfair and exploitative employment relations, not the immigration status of an individual. We emphasise though that migrants are generally subjected to these forms of exploitation at far higher rates because of the increased vulnerability they experience due to their immigration status. This is an important distinction and should not be disregarded or underestimated.

The information included in this component lays the groundwork for the material explored in the Addressing Migrant Worker Exploitation report, which discusses the range, nature, and efficacy of a number of approaches that have been taken to address migrant worker exploitation in Australia, Canada and the United Kingdom.

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## FINAL REPORT - NOT GOVERNMENT POLICY

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