



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

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# Temporary Migrants as Vulnerable Workers: A literature review

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March 2014

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## **Ministry of Business, Innovation and Employment (MBIE)** Hīkina Whakatutuki Lifting to make successful

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## **Executive summary**

The vulnerability of temporary migrants in the labour market is a policy issue that has received attention from a mix of international agencies (eg, the International Labour Organization (ILO), United Nations (UN) and European Union) and those responsible for migrant welfare locally (governments and non-governmental organisations).

This report reviews the available international and New Zealand research on temporary migrants' vulnerability and exploitation in the workplace. In particular, the review highlights research gaps and whether there are effective interventions that mitigate the vulnerability of temporary migrant workers.

### ***Temporary migration needs more research attention***

There is considerable and growing literature on immigration to New Zealand on the nature of labour market flow composition through to the process of settlement and labour market outcomes for a variety of migrant groups. In the wake of the 1986/87 changes to immigration policy and another round of changes just after 2000, immigration has become a significant contributor to labour supply. However, much of the focus has been on permanent migration and its outcomes. As this review makes clear, temporary migration – which has become a much more substantial characteristic of the New Zealand migration system, including labour supply – has received much less attention.

### ***Groups of migrant workers particularly vulnerable to exploitation***

This report discusses the issue of vulnerability in terms of labour market engagement and whether some migrant workers are especially vulnerable in terms of their work situation or experiences.

Vulnerability is especially connected to the precariousness of employment, although not all temporary migrant workers are vulnerable and not all suffer from disadvantages in the workplace. That said, literature shows that low skill and education levels contribute to vulnerability in the workplace and that being a migrant exacerbates this vulnerability.

International and local evidence shows that certain groups of migrant workers are particularly vulnerable to exploitation in the workplace:

- migrants who are not native English speakers
- migrants who are low-skilled or unskilled workers
- migrants from low-income source countries
- remittance workers
- women (especially those in the sex industry or domestic service)
- young adults (including international students and working holidaymakers)
- workers with precarious migrant status and

- undocumented or trafficked labourers.

### ***Forms of employee vulnerability***

Employee vulnerability commonly manifests in:

- contractual issues (eg, not receiving a contract or contract substitution),
- payment of wages (eg, no payment, late payment, underpayment, and no provision of holiday or sickness payments)
- hours of work (eg, excessive hours, unsociable hours and non-guaranteed hours)
- lack of job security (eg, no provision of termination notice)
- concerns around occupational safety and health (OSH) (eg, high injury rates and fatalities in the workplace and lack of adequate workplace training)
- work-family relations (eg, lacking quality family time, transnational motherhood and separation from adult children).

### ***Visa category under which temporary migrants arrive***

The extent of vulnerability is difficult to establish although the size of the temporary migrant populations in a country like New Zealand are more easily identified. The number of temporary migrants in New Zealand increased in the period up to 2011. However, the visa category under which temporary migrants typically arrive has changed; the number arriving under skilled worker categories has fallen, largely due to the impact of the global financial crisis in New Zealand and the concomitant decline in skilled labour demand.

The main categories available to those wishing to come to New Zealand are for international students, those who can fill labour market shortages through the Essential Skills Policy, those on Working Holiday Schemes, and those who come through the Family Stream, the Recognised Seasonal Employer scheme and a range of 'other' categories.

### ***Policy recommendations to mitigate vulnerability***

Overall, responses to temporary migrant workers' vulnerability and exploitation are varied and encompass responses at both central and local government level, responses from employer organisations and employers, as well as temporary migrants themselves. While there is a body of literature that provides a range of policy recommendations to mitigate the vulnerability of temporary migrants, only limited evidence could be found of successful initiatives that address the exploitation of temporary migrant workers.

At the transnational level, the ILO and UN have released a series of declarations, covenants, conventions, recommendations and frameworks promoting the welfare of migrant workers on a global scale. Guidelines have also been developed for source countries to protect and promote

emigrants' well-being and to maximise the developmental impact of labour migration. New Zealand's Recognised Seasonal Employer Scheme would be one example.

Policy recommendations for host countries, largely provided by international agencies, cover:

- the design and implementation of immigration policies
- OSH support and training
- labour regulation and enforcement
- regulating transnational recruitment agencies
- worker empowerment.

Educational programmes go some way to educating migrants on their rights and responsibilities with regard to labour market engagement and helplines provide a valuable tool for migrants who require advice.

A multi-pronged approach to programme development is recommended whereby migrant groups, union representatives, employer organisations and policy makers work together to develop suitable strategies for dealing with temporary migrant worker exploitation and vulnerability.

### ***Areas for future study***

Overall, we found little comprehensive New Zealand-based research on the exploitation and vulnerability of temporary migrant workers in the labour market. Some of the research is dated, is very small in scale or relies heavily on self-selecting samples. Although inferences can be made from such research, they have limited reliability and the findings cannot be assumed to apply to all temporary migrant workers. That said, the literature collated for this research reveals gaps or limitations in the New Zealand-based literature, and these limitations raise possibilities for future study.

Areas of future study include:

- the experiences and potential vulnerability of the international student population, working holidaymakers and lower skilled temporary work visa holders
- the industries that have growing numbers of both migrant and temporary migrant workers such as the cleaning and hospitality industries, information technology and dairy farming
- gender-specific elements of migration and associated workplace exploitation and vulnerability.

A mixed-method approach to studying this far-reaching topic is suggested. However, we acknowledge the difficulties of carrying out both quantitative and qualitative research in this area.

Collecting high quality quantitative data can be difficult. Temporary migrants are not always separately identified in large quantitative data sets and, indeed, in some cases, responses from temporary migrants are not intentionally sought. Where temporary migrants are included,

undercounting can easily occur because workers might be employed in the 'hidden' or 'shadow' economy (and, therefore, not paying tax on their earnings). Although it is impossible to know the extent to which this occurs, it would be reasonable to assume that it is most likely to occur in short-term or transitional work.

Particular concerns for qualitative studies are the small sample sizes that render the results problematic when generalising to the greater population of temporary migrant workers. Particular attention needs to be paid to community-driven, culturally appropriate research methods and approaches that will engage migrant groups. Participatory Action Research provides a possible inclusive and collective framework for conducting research in a way that can create positive social change for migrant communities. Q Methodology using images rather than text could also provide a useful quantitatively oriented solution to concerns around research participation rates and English language proficiency.

# 1. Introduction

Although New Zealand has long depended on immigrant settlers to supplement the national supply of labour, there has been a substantial increase recently in the number of *temporary* migrants arriving. Temporary migrants play an important role in the labour market, participating in both skilled and unskilled work. However, the vulnerability of this workforce has received increasing attention recently as concerns are raised about the potential exploitation they face and the vulnerable position in which their migrant status leaves them. These concerns have been documented in the media. For example, in November 2013, an Auckland-based Korean food-preparation factory was alleged to have exploited migrant workers with 16-hour working days with few or no breaks, paying below minimum wage with no employment contract (*Scoop*, 2013).

The New Zealand Government has also raised concerns about the vulnerability of temporary migrant workers, taking seriously its responsibility to ensure migrants are lawfully employed and not exposed to workplace exploitation. For example, at the 103rd session of the International Organization for Migration Council, held in Geneva in November 2013, Davis (2013) pointed to the expansion of legal penalties established to deter employers from exploiting migrant labour. Migrants are legally protected with regard to their labour market engagement, and it is a crime for any employer to exploit a migrant worker. The Immigration Amendment Bill (No 2) contains amendments to protect migrant workers from exploitation. The proposals will make it a specific offence to exploit migrants who hold temporary work visas. In addition, the Bill will enable immigration officers to enter and search a workplace, without notice, to determine whether an employer is complying with the *Immigration Act 2009* and employees are complying with the work-related conditions of their visa. Policy settings have been introduced that are designed to directly protect the immigration status of those migrants who have experienced exploitation and reported it. Concerted efforts are also being made to appropriately and effectively communicate worker rights, including the new changes, to migrant workers.

It is with this policy setting in mind that this review is carried out. The aim of this literature review is to provide a comprehensive understanding of international and New Zealand literature on vulnerable temporary migrant workers. Such an understanding will enable policy makers and researchers to consider what policy responses are required and identify specific areas for future research. Key areas of enquiry include the following:

- What is the nature and extent of migrant worker vulnerability and exploitation?
- What are the experiences of vulnerable migrant workers?
- What are effective interventions to mitigate migrant vulnerability and reduce exploitation?
- What are some 'best practice' methodological approaches when undertaking research related to vulnerable migrant workers?

The report is organised in the following way.

- Chapter 2 outlines the methodology of this review, including the scope of literature searched and definitions of key terms.
- Chapter 3 provides an overview of temporary migrants in New Zealand. A brief description of each visa category is provided, along with international equivalents where appropriate. Demographic characteristics of this mobile population are outlined, particularly with regard to occupational concentration, geographical distribution, birthplace composition as well as age and gender patterns.
- Chapter 4 reviews international and local evidence regarding groups of migrant workers who are particularly vulnerable as they participate in the labour market: non-native English language speakers, low-skilled or unskilled workers, those arriving from low-income source countries, remittance workers, women and international students. The second part of this section concerns particular migrant statuses and their associated vulnerability.
- Chapter 5 examines those industries that have particularly large numbers of temporary migrant workers and the specific challenges those migrants face working in these industries.
- Chapter 6 is broad and concerns international and local literature regarding specific vulnerabilities as well as issues associated with subcontracting and self-employment; occupational, safety and health; and migrant responses to tenuous work environments (work–life balance and resistance and coping strategies).
- Chapter 7 turns to the international and domestic policy recommendations as outlined in the literature.
- Chapter 8, identifies the gaps and policy challenges evident from the literature and makes suggestions for future study.
- The final section, Chapter 9, contains conclusions.

## 2. Methodology

This section aims to do three things. First, it establishes the scope of the review, pointing – where relevant – to the areas that fall outside the scope of the review. Second, it defines key terms used throughout the report. Third, it describes the specific search methods employed to generate relevant international and local material.

### ***Scope of the review***

This review examines international as well as local research on temporary migrants in vulnerable employment. The review focuses mainly on those countries that are part of the Five Country Conference (FCC), that is, the United Kingdom (UK), the United States of America (USA), Canada, Australia and New Zealand. These countries are deemed particularly appropriate for inclusion due to their shared involvement with the FCC and its focus on immigration and border security and due to their relative similarity to New Zealand with respect to immigration and labour market regulations. Where information is considered particularly relevant to the review’s focus, data from international organisations or research with a more European focus is also presented.

The review focuses on three broad migrant categories: temporary migrants with work rights, including essential skills workers, students and family members; temporary migrants without work rights or who are working outside the work rights they have; and, where relevant, migrants who are in New Zealand illegally. Permanent residents and citizens are not discussed as part of this review.

### ***Definitions of key terms***

Definitions of key terms used in the immigration literature vary between scholars and policy analysts and between countries. Usage can also be framed in accordance with an intended purpose. Moreover, categories of migrants and forms of vulnerability are not mutually exclusive and often overlap. In the academic and policy literature, some writers use “migrant” and “immigrant” interchangeably,<sup>1</sup> while others use the phrase “foreign-born” to distinguish a group from the “local-born”. This report focuses on temporary migrant workers, defined as non-permanent residents in the host country, ranging from short-term to long-term visa holders and including both legal and illegalised<sup>2</sup> workers. Some migrant groups are explicitly excluded (eg, expatriates, returnees, internal migrants, and second generation migrants) as these groups fall outside the scope of the review.

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<sup>1</sup> Some scholars define migrants as “temporary workers” and immigrants as “permanent settlers” (eg, Sargeant and Tucker, 2009, p. 51).

<sup>2</sup> Throughout the review, we refer to “illegalised” rather than illegal workers to stress that a *person* cannot be illegal, only their behaviour can “contravene existing laws” (Bauder, 2013, p 2).

“Vulnerability” and “precariousness”<sup>3</sup> are often used interchangeably in academic and policy documents.<sup>4</sup> For example, the Trades Union Congress Commission on Vulnerable Employment (UK) defines vulnerable employment as “precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship” (TUC, 2008, p 11). The Department of Trade and Industry (UK) uses a similar definition without employing the word “precarious”: a vulnerable worker is “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” (DTI, 2006, p 25). A New Zealand Department of Labour report uses a broader definition of precariousness: “employment that is low quality and which puts workers at risk of injury, illness, and/or poverty” (Tucker, 2002, p 5).

The international and local literature also draws on a broad range of definitions with regard to illegal work performed by temporary migrant workers. Although criminal activity falls outside the scope of this review, labour market engagement that falls outside one’s visa entitlement, such as working as part of the hidden economy (eg, cash-in-hand work), have been included.

### ***Search methods***

To ensure the range of appropriate literature is represented, a broad focus was adopted throughout. Using the key words and phrases noted above as a starting point, the actual search often combined phrases from three thematic clusters (see Figure 1).

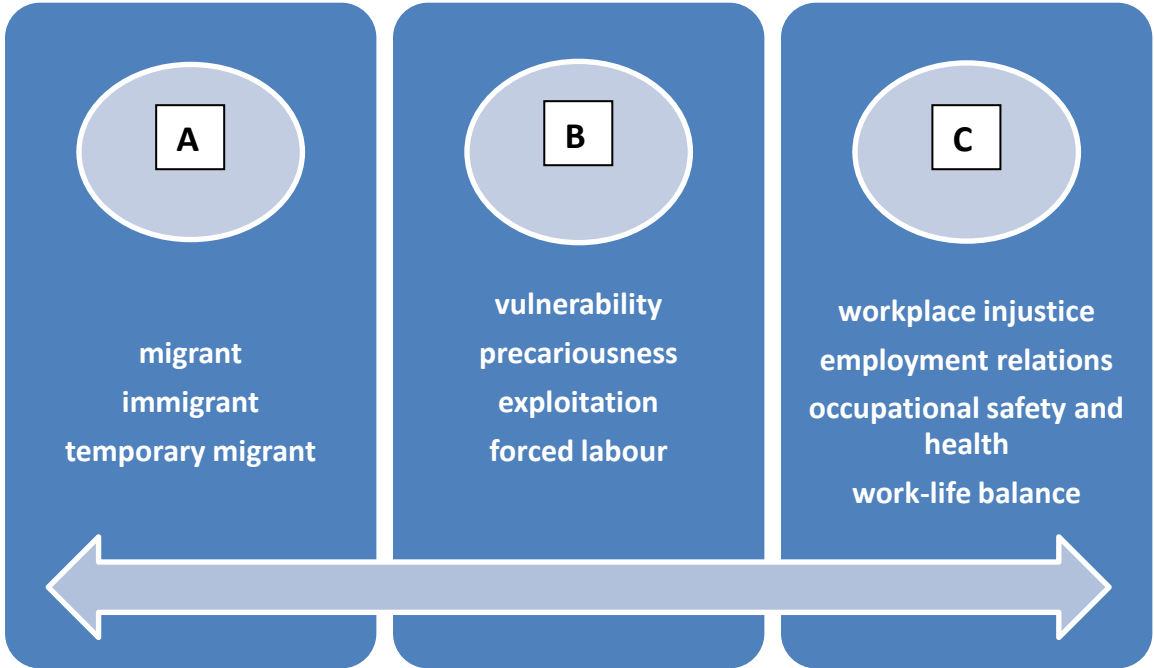
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<sup>3</sup> Bridget Anderson (2010, p 303) prefers to use “precarity” to capture both atypical and insecure migrant employment conditions. She notes that precarity is often associated with weakening social relations as a result of migrant status.

<sup>4</sup> “Exploitation” and “forced labour” are also commonly used phrases in the migration literature.



**Figure 1: Combination of search terms**



The first selection of keywords (cluster A) takes the terms (temporary) migrant or immigrant as a starting point. In additional searches, “illegal migrant/worker”, “undocumented migrant”, “seasonal worker” and/or “trafficked worker” were also used as qualifiers. The second selection of search terms (cluster B) centres on migrant vulnerability and includes vulnerability, precariousness, exploitation and forced labour. The third group of keywords (cluster C) focuses on specific aspects of workplace vulnerability including employment relations, worker rights, occupational safety and health (OSH) concerns and/or work-life balance. In certain contexts, different nationalities (eg, Filipino), industries (eg, construction) or occupations (eg, nurse) were also included to narrow the scope of the search and provide more-detailed information.

Although considerable literature is available on these topics, much of it is now somewhat dated. For this reason, the review is restricted (where possible) to work published since 2000. However, there were also occasions where literature published before 2000 was deemed worthy of inclusion. This was typically because more-recent empirical evidence was not available, the scope of a study was broad, or the findings offered a unique or an interesting perspective.

Various sources were reviewed and can be clustered into six literature categories.

First, academic literature was sourced from a range of academic databases.

Second, New Zealand-specific policy-based research reports and working papers provided current contextual information and empirical evidence with regard to migrants’ working experiences. Particular attention was given to ‘grey literature’ prepared for or by government agencies that is not necessarily available in the public domain. The New Zealand-specific sources included information and publications by Statistics New Zealand, the former Department of Labour, Immigration

New Zealand, the Ministry of Business, Innovation and Employment, and the Human Rights Commission.

Third, media releases were sourced from New Zealand and Australian media databases (eg, Australian/New Zealand Reference Centre and New Zealand Herald). This information was particularly valuable where issues and trends with regard to migrant vulnerabilities are newly emerging and, consequently, not extensively studied.

Fourth, studies undertaken by professional or industrial bodies such as the New Zealand Nurses Organisation, the Hospitality Standard Institute, the Restaurant Association and the New Zealand Prostitutes Collective were sourced to provide industry-specific information as required.<sup>5</sup>

Fifth, international research organisations, particularly those located within one of the five countries of interest, provided relevant information. These included the Centre for Migration, Policy and Society, the Trade Union Congress and the Department of Trade and Industry in the UK, the former Australian Department of Immigration and Citizenship (now the Department of Immigration and Border Protection), the USA Department of Homeland Security's Office of International Affairs and the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) member states.

Finally, working papers from international government bodies and organisations were approached with a request for relevant information. These groups were approached directly because much of the material is grey material that is not available in the public domain. This included the International Labour Organization, and the Organisation for Economic Co-operation and Development.

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<sup>5</sup> Some of these studies and reports were carried out by professional research or consulting firms. Due to the small circulation and embargos on some of these publications, full access was not always possible. Consequently, where necessary, these reports are cited as secondary resources.

### 3. Overview of temporary migrants in New Zealand

This section is in two parts. The first part overviews the kinds of visa categories and options available to temporary migrants coming to New Zealand. Where appropriate, comparisons are provided with other relevant countries. The second part of the section outlines the demographic characteristics of migrants with a particular focus on temporary migrants in New Zealand, including the number of people who have arrived using the various visa categories, their occupational and geographical distribution, as well as their nationality, gender and age proportions.

The number of temporary migrants in New Zealand increased in the period up to 2011. However, the visa category under which they typically arrive has changed; the number arriving under the skilled worker categories have fallen, largely due to the impact of the global financial crisis in New Zealand and the concomitant decline in skilled labour demand. The main categories available to those wishing to come to New Zealand are outlined in Table 1 and include International Students, Working Holiday Schemes, the Family Stream, the Recognised Seasonal Employer Scheme and a range of “other” categories.

**Table 1: Temporary migrant categories**

Category	Main policies in category
<b>Essential Skills</b>	Essential Skills Essential Skills – Skill Level 1 Approved in Principle
<b>Family Stream</b>	Family Policy
<b>Working Holiday Schemes</b>	Agreements with Argentina, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong, Ireland, Italy, Japan, Latvia, Malaysia, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Singapore, Slovenia, South Korea, Spain, Sweden, Taiwan, Thailand, the United Kingdom, the United States and Uruguay.
<b>Recognised Seasonal Employer Scheme</b>	Recognised Seasonal Employer Supplementary Seasonal Employment
<b>International student</b>	Student Policy
<b>Study to Work Policy</b>	Post-study work visa (open) Post-study work visa (employer assisted)
<b>Other categories</b>	Silver Fern Job Search Specific Purpose or Event

Source: Adapted from Table A3 in McLeod and Maré (2013, p 49).

## **Visa categories**

A work visa enables a foreign national to undertake employment in New Zealand for a limited period. In addition to stipulating an expiration date, a work visa can also include specific working conditions such as the name of an employer and the type of employment. It can also be limited to a particular location in New Zealand. Several visas are available, including visas for those who wish to work temporarily while joining their partner,<sup>6</sup> and a range of more specific work visas including the essential skills, specific purpose or event, horticulture and viticulture seasonal work, working holiday, and study to work visas (some of which are discussed in greater detail in this section). The range of visas categories is reflected in Table 2.

**Table 2: Breakdown of visa categories by work visa holders, 2011/12**

<b>Visa category</b>	<b>Percentage of visa holders (%)</b>
<b>Working holiday schemes</b>	31
<b>Family policy</b>	18
<b>Essential skills</b>	16
<b>Study to work</b>	10
<b>Specific purposes or event</b>	10
<b>Horticulture and viticulture seasonal work*</b>	7
<b>Work to residence</b>	2
<b>Other</b>	7
<b>Total</b>	101 <sup>#</sup>

Notes: \* The source report does not specify a particular visa but one can assume it is the recognised seasonal employer visa.

# The total percentage adds up to more than 100 per cent because a person is counted for every different work visa held within a financial year.

Source: Figure 4.5 in MBIE (2013a, p 37).

The number of temporary migrants arriving to New Zealand for work or study fluctuates across the year with the arrival of international students coinciding with the start of the academic year and the arrival of temporary workers being higher in the summer months (MBIE, 2013a). In 2012/13, 144,978 people were approved for a temporary work visa, an increase of 5 per cent on the previous year (MBIE, 2013b). This was largely due to increases in the number of working holidaymakers (13 per cent), horticulture and viticulture seasonal workers (6 per cent), international students arriving on study to work visas (5 per cent), and Essential Skills workers (2 per cent). The main source countries of temporary workers during this period were the UK (13 per cent), India (12 per cent), China (9 per cent), Germany (8 per cent) and the USA (6 per cent) (MBIE, 2013b).

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<sup>6</sup> For further details, see INZ (2013d).

## Essential Skills Policy

The Essential Skills Policy aims to facilitate the entry into New Zealand of those migrant workers who are able to fill labour market shortages. Applicants must be able to demonstrate they are suitably qualified and experienced to fill the position. They must also meet one of the following criteria:

- have a job offer for a position that is listed on one of the Essential Skills in Demand lists (currently skewed towards professional, health and trade-qualified workers)
- have a job offer from an employer who has received approval for the migrant's recruitment
- satisfy Immigration New Zealand that no suitable New Zealand residents are available or readily trainable to fill the position.

Overall, the demand for Essential Skills workers has slowed since the onset of the global financial crisis in 2008. In 2012/13, the main source countries for Essential Skills workers were the UK (16 per cent), the Philippines (14 per cent), India (12 per cent) and Fiji (7 per cent). Eighty per cent of Essential Skills workers were earning wages or salaries as at 31 March 2011 (McLeod and Maré, 2013). The distribution of Essential Skills workers has changed as a result of the Christchurch earthquake. In 2012/13, 4,733 people were approved for an Essential Skills work visa in the Canterbury region. This reflects an increase of 40 per cent on the previous year. Twenty per cent of these workers were in construction and trades (MBIE, 2013b).

Other countries have similar policies. For example, since the mid-1990s, Australia has offered the Subclass 457 Visa Program, which allows employer sponsorship of migrant workers for periods from four weeks to four years. The attractiveness of this programme lies in its pathway to residence as 457 visa holders can apply for permanent residency after two years of employment.

The A8<sup>7</sup> and A2<sup>8</sup> policies in the UK provide an interesting comparison to these Australasian settings, offering two distinct categories with very different rights. A8 nationals who intend to work in the UK for one month or more are required to register with the Workers' Registration Scheme. After one year under this scheme, workers are eligible to apply for a European Economic Area Residence Permit. After five years of residence while working, the permit-holder can apply for permanent residency. In comparison, A2 nationals have very limited rights to live and work in the UK.

## Recognised Seasonal Employer Scheme

First introduced in April 2007, the Recognised Seasonal Employer (RSE) Scheme enables New Zealand employers in the horticulture and viticulture sectors to employ foreign labourers for up to seven months where a shortage of seasonable labour is identified. Three government agencies were

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<sup>7</sup> 'A' stands for 'Accession (to the EU)'. A8 refers to the eight countries that became members of the European Union (EU) in 2004: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

<sup>8</sup> A2 refers to the two countries that became members of the EU in January 2007: Bulgaria and Romania.

involved in implementing and managing the scheme: the Ministry of Social Development, Department of Labour, and New Zealand Agency of International Development (Bedford, 2008). In 2009, there were 143 accredited employers operating under the scheme (DoL, 2010a, p 60), and, in 2011/12, RSE visa holders increased 7 per cent in the horticulture and viticulture industries (MBIE, 2013a, p v). As at the end of March 2011, around 80 per cent of those in New Zealand as part of the RSE Scheme were earning salaries or wages (McLeod and Maré, 2013). Also in the 2011 tax year, almost all of the hours worked by RSE Scheme migrants were worked in packaging services (29 per cent), agriculture and fishing support services (24 per cent), fruit and tree nut growing (25 per cent) and employment services (12 per cent) (McLeod and Maré, 2013).

### **Working Holiday Scheme**

New Zealand offers several Working Holiday Scheme (WHS) visas. Although some of these schemes are uncapped with regard to the numbers of people who will be accepted, most allow a limited number of people from a range of countries<sup>9</sup> aged between 18 and 30<sup>10</sup> to come to New Zealand to travel, study and undertake temporary work, for a maximum of 12 months.<sup>11</sup> Although the conditions are restrictive (eg, the visa conditions generally allow an individual to work for the same employer for up to three months only), the number of working holidaymakers has increased steadily over the last decade as the number of schemes and available places in New Zealand has increased.<sup>12</sup> In 2011/12, there were 43,032 young adults approved to work in New Zealand across the 38 WHSs, around half arriving from the UK, Germany or France (MBIE, 2013a). The proportion of working holiday makers in paid work as at the end of March 2011 was 57 per cent (McLeod and Maré, 2013). Measured as months worked by working holidaymakers in the 2011 tax year, most were in food and beverage services (19 per cent), horticulture-related industries of agriculture and fishing support services (10 per cent) and fruit and tree nut growing (8 per cent), and in employment services (12 per cent) (McLeod and Maré, 2013).

The WHS Extension Policy, the Supplementary Seasonable Employment Scheme, the Seasonal Labour Pilot Scheme, and transitional RSE policies also facilitate migrant labour for the horticulture and viticulture industries.<sup>13</sup>

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<sup>9</sup> The UK, Germany, France, the USA and Ireland are the top five source countries.

<sup>10</sup> Some schemes (eg, those with Argentina, Canada and Chile) extend this age range to 35.

<sup>11</sup> For further details, see INZ (2013a).

<sup>12</sup> Seasonal work by holidaymakers is largely seen as a lifestyle choice, motivated by consumption-related goals in the form of tourism. Indeed, some researchers describe a “harvest trail” that is important for working holidaymakers’ decision making with regard to location and route choice while in New Zealand (Hanson and Bell, 2007, p 108).

<sup>13</sup> For further details, see INZ (2011).

Many other countries offer similar temporary worker schemes and have done so for some time. For example, Canada offers the Seasonal Agricultural Worker Program, which is an intergovernmental arrangement first initiated in 1966 granting up to eight months stay for migrants arriving from Latin America or the Caribbean. Canada also offers the Agricultural Stream of the Pilot Project for Occupations Requiring Lower Levels of Formal Training. First introduced in 2002, this scheme is employer-driven and allows for 24-month contracts with migrant workers from Latin American and Asian countries. Spain, Germany and the UK also have long traditions of guest worker schemes. Australia did not introduce the similarly focused Pacific Seasonal Workers Pilot scheme until 2008.

### **International students**

Overseas study can be seen as a pathway to residency by international students (in certain countries) while many countries see international students as an important source of labour. The main purpose of a student visa is to enable the bearer to undertake studies of approved courses of three months and longer. However, a student visa allows most international full-time students in New Zealand to work up to 20 hours per week (and full time during end-of-year study breaks). From January 2014 these work rights were expanded, increasing the number of international students eligible to work while studying.<sup>14</sup> These new entitlements:

- allowed English language students who were studying a course of 14 weeks or more (with a provider who holds Category One status under the New Zealand Qualifications Authority External Evaluation and Review quality assurance system) to work part time
- provided full-time work rights during all scheduled holidays for students enrolled for one year or more (minimum 120 credits)
- provided unlimited work rights to international doctoral and master's research students.

Evidence from the Integrated Data Infrastructure shows that the proportion of international students in paid employment ranged from 20 per cent to 30 per cent between 2007 and 2011, peaking in the December quarter each year (Merwood, 2013, cited in McLeod and Maré, 2013).

On graduation, a student may apply for one of two visas. The post-study work visa (employer assisted) enables those students with an offer of employment relevant to their qualification to work for up to three years. The alternative option is a post-study work visa (open) that enables students to seek work and obtain a job offer for up to 12 months following graduation.<sup>15</sup>

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<sup>14</sup> For further details, see INZ (2014a).

<sup>15</sup> For further details, see INZ (2013b).

In 2011/12, visa approvals through the Study to Work Category increased 21 per cent, and 38 per cent of skilled principal migrants during this time were former international students.<sup>16</sup> Over the last decade, one in five international students gained permanent residence in New Zealand within five years of being issued their first student visa (MBIE, 2013a, p 30). These figures indicate a high level of engagement in the local labour market by international students or former students.

In 2012/13, student visas in New Zealand were held by 76,811 foreign nationals through various categories, with full-fee paying students the largest group (MBIE, 2013d, p 3).<sup>17</sup> Despite these numbers, however, Table 3 shows a gradual decline of student visa applicants and visa holders between 2008/09 and 2012/13.

**Table 3: People included on student visa applications, 2008/09 to 2012/13**

	2008/09	2009/10	2010/2011	2011/12	2012/13
<b>Approved</b>	95,356	93,766	93,920	83,825	76,811

Source: Adopted from People Included on Student Visa Applications Decided, by Financial Year of Decision and Decision Type (MBIE, 2013d, p 3).

**Family Stream**

Temporary work visas under the Family Stream are available for those people who want to join their partner in New Zealand. Success depends on applicants demonstrating a “genuine and stable relationship”, providing evidence of a partner’s support for the application, as well as providing evidence of their good character. The applicants themselves must also meet certain health and character requirements.

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<sup>16</sup> In an Australian setting, by 2007, two-thirds of skilled migrants to Australia were former international students (Hawthorne, 2010).

<sup>17</sup> The report shows that the number of full fee-paying applicants for the student visa was 61,809 for the same year, the largest cohort among 21 criteria categories. However, there is no further breakdown of approved and declined applications, so it is difficult to establish the exact proportion of full fee-paying students in relation to the total number of approved applicants.



## **Work to Residence Policy**

The Work to Residence Policy enables applicants for the Skilled Migrant Category, Long Term Skill Shortage List Occupation Policy to undertake employment in New Zealand. It also includes a small number of Talent (Accredited Employers) Work Policy and Talent (Arts, Culture, and Sports) Work Policy applicants. Other categories for migrant labour may also have implications for employment conditions and opportunities. For example, the Silver Fern Job Search Policy, which came into effect on 29 March 2010, offers a maximum of 300 Silver Fern Job Search visas annually. The Silver Fern Job Search visa was created for highly skilled people with recognised qualifications and provides for a nine-month stay in New Zealand to allow holders to search for skilled work in New Zealand. Only 300 people worldwide can be granted a Silver Fern Job Search visa each year. India (20 per cent), China (18 per cent) and the Philippines (17 per cent) are the top three source countries in terms of this new category (MBIE, 2013b, p 44). In addition, the China Free Trade Agreement (that includes both Special Work and Skilled Work Categories),<sup>18</sup> allows Filipino, Vietnamese and Indonesian nationals to work in New Zealand.<sup>19</sup> Ninety per cent of those arriving on a work to residence visa are in paid employment (McLeod and Maré, 2013).

## ***Demographic characteristics***

The following section provides an overview of the occupational distribution of temporary workers in New Zealand, along with some demographic characteristics such as nationality, geographical distribution, age and gender.

### **Occupational distribution**

The presence of temporary migrant workers constitutes an important aspect in the contemporary labour market. The occupational distribution of these workers, however, is difficult to ascertain with any certainty because most applications do not record occupation (eg, WHSs, the RSE Scheme and Family Stream categories).<sup>20</sup> Given that the Essential Skills and Specific Purposes or Events applications do record the occupations of applicants, the following information is skewed toward skilled work, so is not representative of work visa holders generally.

Based on the information that is available, the largest recorded occupational groups among work visa holders have consistently been professionals (73,454 or 9 per cent), followed by technicians and trades workers (45,823 or 6 per cent), and community and personal service workers (43,799 or 5 per cent) (MBIE, 2013b). Table 4 summarises the top 20 recorded occupations of successful work

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<sup>18</sup> For further details, see INZ (2012a).

<sup>19</sup> For further details, see INZ (2012b).

<sup>20</sup> Over two-thirds (ie, 106,728 out of 157,187) of applicants' occupations are not recorded.

visa applicants. Tour guides and chefs are the top two occupations, followed by dairy cattle workers and café/restaurant managers.

**Table 4: Top 20 recorded occupations of work visa principal applicants, by occupation standard, 2008/09 to 2012/13**

	Occupation (ANZSCO)	2008/09	2009/10	2010/11	2011/12	2012/13
<b>1</b>	Tour guide	3,411	3,695	4,101	3,629	3,992
<b>2</b>	Chef	3,769	3,709	3,527	3,496	3,495
<b>3</b>	Dairy cattle farmer	1,022	1,423	1,466	1,492	1,572
<b>4</b>	Café/restaurant manager	1,241	1,277	1,315	1,347	1,710
<b>5</b>	Retail manager	782	875	970	1,149	1,652
<b>6</b>	Aged/disabled carer	1,472	1,021	956	830	817
<b>7</b>	Musician (instrumental)	672	891	947	885	735
<b>8</b>	Entertainer or variety artist	575	604	711	936	1113
<b>9</b>	Resident medical officer	563	662	718	532	588
<b>10</b>	Deck hand	490	734	729	611	465
<b>11</b>	Software engineer	691	667	599	567	509
<b>12</b>	Retail supervisor	339	379	475	709	895
<b>13</b>	Minister of religion	650	750	678	428	195
<b>14</b>	Truck driver	585	506	569	513	511
<b>15</b>	Personal care assistant	500	727	522	525	293
<b>16</b>	Dairy cattle farm worker	922	366	304	402	562
<b>17</b>	Student	147	263	294	681	1110
<b>18</b>	Registered nurse (aged care)	167	468	629	521	465
<b>19</b>	University lecturer	451	426	428	333	449
<b>20</b>	Sales assistant	514	436	441	339	273

Note: ANZSCO = Australia and New Zealand Standard Classification of Occupations.

Source: Adopted from the table 'occupation and region of employment for approved work visa principal applicants' (MBIE, 2013b, pp 5–21).

With regard to the Essential Skills Category, some occupational groups dominate. For example, in 2011/12, one-quarter of recipients were technician and trades workers and another quarter were professionals. The most common occupations were chef (9 per cent), dairy cattle worker (5 per cent), café/restaurant manager (3 per cent) and aged/disabled carer (3 per cent) (MBIE, 2013a, p 40).

## Geographical distribution

The choice of residential and workplace location of temporary migrant workers is difficult to trace due to the mobile nature of temporary migration. That said, according to the Ministry of Business Innovation and Employment (MBIE, 2013b), of those work visa principal applicants whose location was known, the top five regions for residency were Auckland, Canterbury, Wellington, Otago and Waikato (see Table 5).<sup>21</sup>

**Table 5: Top five regions of employment for work visa principal applicants, 2008/09 to 2012/13**

	Region	2008/09	2009/10	2010/11	2011/12	2012/13
1	Auckland	21,979	17,660	17,487	15,043	13,661
2	Canterbury	6,936	5,525	4,319	5,192	7,144
3	Wellington	6,343	4,897	4,299	3,872	3,872
4	Otago	6,042	4,800	3,804	3,208	3,463
5	Waikato	2,551	2,001	1,676	1,672	1,600
	Unknown	120,865	121,572	120,328	114,257	120,382

Source: Adapted from Occupation and Region of Employment for Approved Work Visa Principal Applicants (MBIE, 2013b, pp 24–26).

Table 6 draws on data from the Integrated Data Infrastructure and shows the geographical distribution of temporary migrant employment and international students as a percentage of total employment in a given region. As might be expected, Auckland features strongly. However, other areas, particularly provincial areas, are also recipients of significant numbers of temporary migrant workers. This is especially the case in regions that have large tourism and horticultural sectors such as Otago (which includes Queenstown), the Bay of Plenty, and the combined areas of Tasman, Nelson, Marlborough and the West Coast. Some regions have experienced greater growth than others with regard to temporary migrant employment. For example, from 2005 to 2009, growth was centred on horticulture and viticulture regions such as the Bay of Plenty, the combined areas of Tasman, Nelson, Marlborough and West Coast, and Gisborne and Hawke’s Bay. All steadily increased (each growing by around 150 per cent). In the period to 2011, most areas declined while Southland and the Bay of Plenty continued to experience growth.

<sup>21</sup> Note that nearly three-quarters of the applicants were unknown, so these figures are potentially misleading.

**Table 6: Relative changes in temporary migrant employment by region, 2001 to 2011**

Region	Change 2001–2005 (%)	Change 2005–2009 (%)	Change 2009–2011 (%)	Months employed 2011	% of all months worked in the region, 2011
<b>Northland</b>	171	80	-7*	18,700	3
<b>Auckland</b>	184	79	-18	409,100	5
<b>Waikato</b>	269*	57	-8*	56,700	3
<b>Bay of Plenty</b>	232	160*	18*	73,800	5
<b>Gisborne and Hawke's Bay</b>	253*	142*	3*	46,700	4
<b>Taranaki</b>	235	112*	-7*	11,200	2
<b>Manawatu- Wanganui</b>	292*	36	-4*	25,100	2
<b>Wellington</b>	218	48	-15	87,200	3
<b>Tasman, Nelson, Marlborough, and West Coast</b>	353*	175*	-9	53,600	6
<b>Canterbury</b>	295*	55	-9	112,100	4
<b>Otago</b>	296*	69	1*	77,700	7
<b>Southland</b>	279*	104*	22*	18,000	3
<b>Overall</b>	222	78	-10	989,900	4

Note: Percentages marked with an asterisk (\*) are significantly greater the national average (ie, over 10 per cent).

Source: Adopted from Figure 1 (p 16) and Table 1 (p 17) in McLeod and Mare (2013).

Certainly, the labour demands of the horticulture industry vary throughout the year. In Table 7, the variable demand for seasonal workers is obvious. Although these figures represent demand and not necessarily the geographical spread of temporary migrant workers, a degree of convergence with regard to RSE workers and working holidaymakers is likely.

**Table 7: Demand for seasonal workers in different New Zealand regions**

Month	North-land	Auckland	Bay of Plenty	Hawkes Bay	Nelson	Marlborough	Central Otago
<b>Jan</b>	1,100	1,280	1,300	4,500	250	1,800	5,000
<b>Feb</b>	800	1,390	800	12,500	4,800	1,400	4,500
<b>Mar</b>	-	1,150	5,000	12,500	6,000	1,570	2,200
<b>Apr</b>	1,000	740	12,000	12,500	6,000	1,300	1,800
<b>May</b>	1,000	400	12,000	10,700	600	1,600	1,250
<b>Jun</b>	1,000	350	5,000	5,100	150	2,500	750
<b>Jul</b>	1,000	300	5,000	1,100	150	2,500	700
<b>Aug</b>	-	340	3,000	1,000	140	2,300	700
<b>Sep</b>	500	170	850	800	20	320	700
<b>Oct</b>	700	540	1,650	900	40	580	1,100
<b>Nov</b>	700	1,170	1,650	9,100	70	1,100	1,000
<b>Dec</b>	700	980	1,550	9,000	180	1,800	3,000

Note: Only regions with medium (1,000–5,000) to extremely high (more than 10,000) labour demand during parts of a year are included in this table. Therefore, the demand for seasonal labour in the Waikato, East Coast, Horowhenua, Wairarapa, and Canterbury regions is not included here. (Each of these regions fall well below a labour demand of 1,000 in all seasons.)

Source: Horticulture New Zealand (2009, para 2), adapted as Figure 3.1 in Cameron (2011, p 59).

The Canterbury region is also experiencing a dramatic increase in the number of migrants as the post-earthquake rebuild begins. The Minister of Immigration has predicted that around half of the 35,000 workers required for the rebuild will arrive from overseas.

### Source country

Source countries of temporary migrants have also changed in recent years. In the early part of this decade, Great Britain and Ireland provided most temporary workers. However, China was most dominant in the period from 2006 to 2008 and, more recently (in 2011), India emerged as the main source of temporary migrant workers (MBIE, 2013a).

Certain nationalities are often associated with particular visa categories or occupational groups. For example, China was the largest source country for Specific Purpose or Event Policy visas in 2011/12 (2,300 people or 23 per cent of visas issued), followed by the USA (18 per cent of visas issued)<sup>22</sup> (MBIE, 2013a, p 42). About three-quarters of the Chinese approvals worked as tour guides, and

<sup>22</sup> Over 700 entertainers and variety artists and over 600 musicians from the USA worked in New Zealand during this period.

significant proportions of those arriving from America worked as entertainers and variety artists (29 per cent) and musicians (26 per cent).<sup>23</sup> India was the largest source country for both the Graduate Job Search Visa (52 per cent) and the Graduate Work Experience Visa (61 per cent), followed by China (21 per cent and 18 per cent respectively) (MBIE, 2013a, p 43). The Pacific nations dominated the RSE scheme.

Table 8 shows the top 10 source countries for work visa approvals overall between 2003/04 and 2011/12. The number of visa holders from all of these nations increased during this time with the exception of the UK which declined by 6 per cent.<sup>24</sup> The greatest increase can be found in the Filipino migrant workforce (587 per cent), followed by those from India (346 per cent), France (239 per cent) and China (218 per cent).

**Table 8: Number and change of work visa approvals of the top 10 source countries, 2003/04 to 2011/12**

	Source country	2003/04	2005/06	2007/08	2009/10	2011/12	+/- (%)
1	United Kingdom	19,215	18,775	20,483	18,170	18,112	-6
2	India	3,649	4,907	7,118	11,617	16,274	346
3	China	4,008	12,350	14,968	10,626	12,760	218
4	Germany	3,534	6,247	8,022	8,823	9,710	175
5	United States	4,515	6,453	7,860	7,821	7,917	75
6	Philippines	912	2,453	6,112	5,642	6,261	587
7	France	1,469	2,136	2,876	4,243	4,987	239
8	South Korea	3,313	4,077	4,989	4,615	4,920	49
9	Fiji	1,673	3,273	5,577	5,432	4,720	182
10	Ireland	2,618	2,928	2,785	3,353	4,188	60

Source: Adapted from Appendix J in MBIE (2013a, p 112).

Table 9 lists the top 10 nationalities of the working holiday scheme approvals from 2009/10 to 2011/12. European and North American nationals have unlimited annual places in the New Zealand WHS, so make up the majority of approvals. Within this group, the numbers of people arriving from the UK and Germany have been consistently much higher than for other countries. With regard to Asia, South Korea, Japan and Malaysia are the biggest source countries. The number of approvals

<sup>23</sup> Calculation based on information in MBIE (2013a, p 42).

<sup>24</sup> Although no longer in the top 10 source countries, Japan is another country whose work visa holders have decreased (from 7,008 in 2003/04 to 3,706 in 2011/12, a decrease of 47 per cent). This decrease results in Japan moving from the 10th source country (in 2010/11) to the 11th in 2011/12.

from China has steadily increased from 592 in 2009/10 to 1,158 in 2011/12, although the number of places offered annually is capped at 1,000.

**Table 9: Number of top 10 Working Holiday Scheme approvals, 2009/10 and 2011/12**

	Working Holiday Scheme	2009/10	2010/11	2011/12
1	United Kingdom <sup>#</sup>	9,608	9,772	9,342
2	Germany <sup>#</sup>	7,026	7,811	8,143
3	France <sup>#</sup>	3,200	3,937	3,768
4	United States <sup>#</sup>	2,607	2,676	2,562
5	Ireland <sup>#</sup>	2,231	2,694	2,401
6	South Korea (1,800)	1,770	1,551	1,991
7	Japan <sup>#</sup>	1,747	1,810	1,603
8	Czech Republic (1,200)	1,094	1,157	1,599
9	Canada <sup>#</sup>	1,620	1,759	1,477
10	Malaysia (1,150)	1,374	1,424	1,160

Notes: # = unlimited annual places. The number in brackets is the number of annual places available in the scheme.

Source: Adapted from Appendix L in DoL (2010b, p 110); Appendix L in DoL (2011a, p 99); and Appendix L in MBIE (2013a, p 114).

The RSE Scheme gives priority access to Pacific workers and allows for up to 5,000 workers to be employed in New Zealand at any one time. Initially, the scheme focused on workers from five Pacific nations: Vanuatu, Tonga, Samoa, Kiribati and Tuvalu. In the 2007/08 season, workers from these five preferred nations comprised 83 per cent of the RSE workforce (total approvals being 2,882). This proportion dropped to 78 per cent in the following season (DoL, 2009, p 4). Table 10 lists the top five source countries of workers who entered New Zealand under the RSE Scheme between 2009 and 2012. Vanuatu, Tonga and Samoa combined now comprised 65 per cent of this workforce while Malaysia and Thailand together made up 16 per cent.

**Table 10: Proportion of the top five source countries for Recognised Seasonal Employer Scheme workers, 2009/10 to 2011/12**

Source country	2009/10 (%)	2010/11 (%)	2011/12 (%)
Vanuatu	26	27	27
Tonga	14	16	16
Samoa	13	14	13
Malaysia	-	10	9
Thailand	-	9	7
<b>Total annual approvals</b>	<b>8,323</b>	<b>8,469</b>	<b>9,103</b>

Source: DoL (2010b, p 40); DoL (2011a, p 33); MBIE (2013a, p 41).

New Zealand is the eight largest recipient of international students with over 2 per cent of foreign students who are enrolled in tertiary study worldwide studying in the country (relative to the population and size of the country and the size of the student population, New Zealand has the highest proportion of international students in the OECD) (Wilkinson, Merwood and Masgoret, 2010). Private tertiary providers account for 50 per cent of enrolments, while 20 per cent of international students attend university (Masgoret, 2013). Already substantial, New Zealand aims to double the economic value of international education to \$5 billion over the next 15 years.<sup>25</sup>

Students arrive in New Zealand from an increasingly diverse range of countries. For example, in the period from 2002 to 2007, study visas were granted to people from more than 180 different nationalities and the top 10 source countries account for over 80 per cent of all international students (Merwood, 2007). That said, most students currently arrive from Asia. Table 11 lists the top 10 nationalities of international students. China is the biggest source country, almost double the number of students from the second largest source country. The number of students from South Korea declined nearly 40 per cent between 2007/08 and 2011/12. There was also a steady decline in the number of students from Fiji (-22 per cent), Germany (-17 per cent) and Japan (-11 per cent) while the number of students from India (59 per cent) and Saudi Arabia (71 per cent) have increased significantly over the same period.

**Table 11: Number of student visa approvals by source country, 2007/08 to 2011/12**

Source country	2007/08	2008/09	2009/10	2010/11	2011/2012	+/- (%)
<b>China</b>	16,360	14,983	14,917	16,550	17,565	7
<b>India</b>	5,688	7,938	8,778	10,189	9,039	59
<b>South Korea</b>	11,024	10,683	10,131	8,953	6,776	-39
<b>Japan</b>	3,459	3,289	3,336	2,981	3,079	-11
<b>United States</b>	2,728	2,795	2,903	2,896	2,680	-2
<b>Saudi Arabia</b>	1,386	2,071	2,190	2,609	2,368	71
<b>Philippines</b>	1,783	2,232	2,055	2,332	2,234	25
<b>Germany</b>	2,692	3,225	3,239	2,576	2,225	-17
<b>Fiji</b>	2,758	3,239	2,969	2,679	2,146	-22
<b>Thailand</b>	1,998	2,142	2,335	2,171	1,889	-5
<b>Total</b>	<b>69,106</b>	<b>73,108</b>	<b>72,759</b>	<b>74,097</b>	<b>68,980</b>	<b>-13</b>

Source: Adapted from Appendix H in MBIE (2013a, p 110)

<sup>25</sup> This includes increasing transition rates from study to residency.



The Ministry of Education estimated that in 2005, 9 per cent of all students enrolled in formal tertiary education were international students. Table 12 shows the source country of university students between 2006 and 2011. Although China still dominates, the number of university students arriving from China has declined by more than half. At the same time, there are significant increases in students arriving from some other countries (notably India and Saudi Arabia).

**Table 12: Key source countries of international students enrolled in university, 2006 to 2011**

Source country	2006	2007	2008	2009	2010	2011	+/- (%)
<b>China</b>	13,202	9,648	7,066	6,092	5,864	6,199	-53
<b>United States</b>	1,983	1,994	1,947	1,989	2,115	1,945	-2
<b>Malaysia</b>	1,238	1,539	1,627	1,656	1,717	1,702	37
<b>Saudi Arabia</b>	201	421	814	1,220	1,245	1,121	458
<b>India</b>	640	768	946	1,126	1,240	1,104	73
<b>South Korea</b>	1,104	1,252	1,213	1,268	1,279	1,055	-4
<b>Others</b>	5,921	5,514	5,595	5,519	5,890	5,792	-2
<b>Total</b>	24,289	21,136	19,208	18,870	19,350	18,918	-22

Note: The annual total of students differs from the total of enrolments because a small number of students enrol more than once each year.

Source: Export Education Levy, cited in MoE (2012, p 4).

As noted earlier, work rights are granted to most international students (including some students who attend secondary school where permission has been granted from guardians). Thirty-one per cent of international students remain in New Zealand after study, as either temporary workers or permanent residents. Indeed, one in five gain permanent residency post-study, mostly as skilled workers.

### Age and gender

Migrant workers in New Zealand are younger than the overall national workforce. Several visa classes have age restrictions. For example, the WHS is available only to young adults aged between 18 and 30. Nearly 60 per cent of work visa holders are aged 30–39, and over 80 per cent are under the age of 40 (see Table 13). Likewise, nearly half of the student visa holders are aged 20–29, and over 90 per cent are younger than 30 (see Table 14).

**Table 13: Number and proportion of work visa holders, 2011/12**

Age group	≤19	20–29	30–39	40–44	45–49	≥ 50	Total
<b>Number</b>	7,642	78,327	32,839	8,320	5,208	5,868	138,204
<b>Percentage (%)</b>	0.07	57	24	6	4	4	100

Source: Appendix K, MBIE (2013a, p 113).

**Table 14: Number and proportion of student visa holders, 2011/12**

Age group	Under 16	16–19	20–29	30–39	≥ 40	Total
<b>Number</b>	13,840	16,475	33,096	4,156	1,396	68,963
<b>Percentage (%)</b>	20	24	48	6	2	100

Source: Appendix I, MBIE (2013a, p 111).

Gender patterns of migrant workers vary between different visa categories. In 2011/12, the overall proportion of female work visa holders was 44 per cent. Women are most likely to arrive in New Zealand on family-related work visa policies (women comprise 64 per cent of these applications) and are least likely to arrive on an RSE visa (women make up just 27 per cent of RSE visa holders).<sup>26</sup> With regard to the WHS and those specifically arriving from Japan, Taiwan, Thailand and Hong Kong, approvals for women were more than double those of men in 2009/10 while The number of males approved under the Uruguay and Mexico Working Holiday Schemes was more than double the number of females (DoL, 2010b, p 40).

Gender patterns can also vary between different occupations for temporary migrants of the same nationality. A typical case can be seen in different streams of migration from the Philippines, where men dominate in dairy farming, while women dominate in health care, particularly caregiving and nursing roles.

Table 15 shows that overall, there are slightly fewer female work visa holders (44 per cent). However, women from China (53 per cent), Germany (55 per cent), South Korea (54 per cent) and Japan (62 per cent) outnumbered male work visa holders from those countries. Women from India (29 per cent) and Ireland (38 per cent) are significantly under-represented. The number of female work permit holders increased nearly five-fold for those from the Philippines between 2003/04 and 2007/08, and three-fold for those from China. During the same period, the numbers arriving from the UK dropped 2 per cent (Badkar, Callister and Didham, 2008, p 5).

In 2011/12, the overall proportion of female student visa holders was 45 per cent. However, the gender difference was not evenly divided when specific countries were considered (see Table 15). Of particular note is the fact women outnumbered men in the American (59 per cent), Japanese (58 per cent), German (58 per cent) and Filipino (55 per cent) student bodies. In contrast, women were disproportionately under-represented in the Saudi Arabian (14 per cent) and Indian (24 per cent) student bodies.

Interesting patterns emerge when gender, nationality and age are considered together. The highest female proportion of students is among those who are aged 40 and over and arrive in New Zealand to study from Thailand (90 per cent). The lowest proportion of female students (by age and

<sup>26</sup> In the same financial year, 57 per cent of work visa holders were aged 20–29 (43 per cent of whom were working holidaymakers), and 24 per cent were aged 30–39 (MBIE, 2013a, p 36).

nationality) are those aged 20–29 arriving from Saudi Arabia (12 per cent) and 16–19-year-olds arriving from India (14 per cent).

**Table 15: Proportion of female work visa and student visa holders from main source countries, 2011/12**

Source country	Proportion of female work visa holders (%)	Proportion of female student visa holders (%)
<b>1</b> United Kingdom	41	46
<b>2</b> India	29	24
<b>3</b> China	53	48
<b>4</b> Germany	55	58
<b>5</b> United States	41	59
<b>6</b> Philippines	50	55
<b>7</b> France	43	52
<b>8</b> South Korea	54	49
<b>9</b> Fiji	49	48
<b>10</b> Ireland	38	-
<b>11</b> Japan	62	58
<b>12</b> Saudi Arabia	-	14
<b>13</b> Thailand	50	49
<b>Overall</b>	<b>44</b>	<b>45</b>

Source: Adapted from Appendices J (p 111) and K (p 113) in MBIE (2013a).

## **Summary**

Over the last three to four years, there has been a decline in some temporary visa categories (work and student visas), but this has been counterbalanced by the establishment of new temporary work schemes (eg, the RSE Scheme) and the expansion of existing schemes (eg, the WHS). Further, most students have been allowed to undertake temporary work (the limitations of which are about to be extended). The result is a complex set of temporary work options that is further complicated by country preferences in some cases (eg, the RSE Scheme) and the compositional characteristics of those taking up these options (in particular, by gender).

There is less variability in terms of age, with most being confined to certain age bands (20s and 30s). However, further variability is introduced when industries and sectors are considered, so Filipinos are to be found in the dairy work force in Southland or the eldercare/healthcare workforce around the country.

Finally, there is considerable churn as some temporary work visas last from three months to three years, and temporary migrant workers are quite rapidly cycled through the New Zealand labour force. Some are able to proceed to permanent residence but large numbers are in the country temporarily. It is a complex, vibrant and constantly changing situation (in terms of the workers themselves), and it is now a major characteristic of New Zealand's migration landscape.

## 4. Particularly vulnerable migrant groups

We now turn to examine the local and international literature on the issues that arise with temporary migrant workers. The first is the issue of vulnerability in terms of labour market engagement and whether some migrant workers are especially vulnerable in terms of their work situation or experiences. Vulnerability is especially connected to the precariousness of employment, although not all temporary migrant workers are vulnerable and not all suffer from disadvantages in the workplace. That said, both the international and local literatures show that precarious workers are more likely to be women, young, from an ethnic minority, lower-skilled and less-educated and that being a migrant exacerbates this vulnerability. This section identifies those characteristics that the literature identifies as being particularly associated with the vulnerability of temporary migrant workers.

### *Personal characteristics*

#### **Non-native English speakers**

A number of studies and reports single out the capacity to speak and communicate in English (in an English-speaking country such as New Zealand) as a significant factor that contributes to worker vulnerability (eg, Anda and Bachmeier, 2008; Buchan et al, 2005; Capps et al, 2003; Devlin, 2009; Dixon, 2009; Dustmann et al, 2003; Ehrenreich and Hochschild, 2004; Fairey et al, 2008; Gammage, 2008; Heald, 2007; Higginbottom, 2011; Hunt, 2007; Kagan et al, 2011; Meares et al, 2010a, 2010b). The implications of poor English language skills are far-reaching. Of particular concern is the inability of migrants to understand employment contracts, follow instructions and read warning signs in the workplace, to communicate with fellow workers and management, and to communicate workplace concerns or access appropriate legal protections. This is mirrored by employer concerns or discrimination towards those migrants who do not speak English or do not have English as their first language (Spoonley and Bedford, 2012). Although some employers might ensure English language training is made available to their staff, long work hours often mean migrants are unwilling or unable to take advantage of such programmes (Dustmann et al, 2003).<sup>27</sup> A related concern is the extent to which those who do not speak English as a first language share (or do not share) the same cultural expectations with regard to employment relations. For example, compared with a comparatively relaxed work setting in New Zealand, some national groups have more hierarchical employment expectations of employer-employee relations (see, for example, Hofstede, 2001). Immigration New Zealand has produced valuable multilingual industry-specific brochures to help new arrivals to understand these cultural differences (see Chapter 7 for details).

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<sup>27</sup> Although not the specific purpose of this review, the English language skills of migrant employers could potentially create poor (and possibly illegal) working conditions for employees where employers are unaware of New Zealand employment laws. However, we have not found specific literature in this area.

## Low-skilled

Several countries have intentionally introduced schemes that recruit lower-skilled workers. For example, nearly half of the temporary work visa holders in Canada were identified as possessing low skill levels (Conference Board of Canada, cited in Sargeant and Tucker, 2009, p 6). Similarly, in the UK, about 40 per cent of A8<sup>28</sup> workers were employed in “elementary” occupations compared with just over 10 per cent of the UK-born labour force (Dickinson et al, 2008). In an OECD study of low-skilled migration (defined as holding less than upper-secondary school qualifications), South Europe and the USA rely disproportionately on immigrants for low-skilled work.

One category of young foreign temporary low-skilled workers in many OECD countries is working holidaymakers. An Australian study of a random sample of 1,001 working holidaymakers showed that 78 per cent of those who had engaged in paid employment had worked in a field that required low skill levels. The main occupations cited comprised fruit-picking, waiting, elementary service work, office secretarial work, and labouring and related work.<sup>29</sup> Some participants received payment ‘in kind’ such as board and lodging. The research found that working holidaymakers were typically able to find work at the same time as local youth remained unemployed. Employers interviewed in this study believed that the former were more motivated, more prepared to relocate for work and more likely to make themselves available (Harding and Webster, 2002).

A New Zealand study based on 218 self-selected participants revealed similar findings (Newlands, 2003; DoL, 2004b).<sup>30</sup> On average, half of the participants spent more than 60 per cent of their time working. The top areas of paid employment were hospitality (17 per cent), agriculture other than fruit-picking (14 per cent), fruit-picking (7 per cent), sales (7 per cent), and backpacker or hostel worker (5 per cent). Most were likely to work in Auckland, the Bay of Islands, Hawke’s Bay, Otago (including Queenstown), Canterbury and Nelson. The hourly rates of pay that participants received ranged widely from \$3 to \$75 with an average hourly “take home pay” of \$12.06 (calculated to include eight unpaid volunteers). Fifteen per cent of the 198 participants reported being paid \$8 or less per hour (at the edge of the minimum wage at that time) and most worked 31–40 hours per week. A further 15 per cent were paid in cash, and presumably paid no tax, and about one-fifth did not receive a payslip. A low skill level and migrant status intersect to exacerbate vulnerability in the workplace.

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<sup>28</sup> Refer to footnote 7 for an explanation of “A8”.

<sup>29</sup> There are some interesting national patterns with regard to occupation: Canadians are more likely to find waiter/waitressing jobs; Dutch are more likely to become fruit-pickers; and the Irish are more likely to be labourers.

<sup>30</sup> Due to the non-random nature of the survey, British were over-represented and Japanese were under-represented compared with the WHS approvals for the same year.

## **Low-income source countries**

Drawing on international and New Zealand-specific literature, research indicates that economic disparities between source country and host country can be a strong incentive for migration. Asian migrant workers in dairy farms reveal that wages can be one-tenth to one-third more than those in their home country (McFarlane, Ramos, and von Randow, 2008). However, highly skilled migrant workers from low-income source countries are often likely to accept potentially vulnerable forms of employment once in the host country. Nurses from the Philippines and information technology professionals from India (discussed in greater detail in the following chapter) are two examples.

## **Remittance workers**

Family responsibilities are often associated with the migration journey and migration from many low-income source countries is often a family 'project'. Indeed, enhancing the family's economic situation is often a strong push factor for many migrants, including among temporary migrant workforces (often combined with low-skilled workers). This can involve ongoing expectations concerning remittances to support immediate and extended family back home, and some countries' economies are reliant on these remittances. For example, remittances to the Pacific region are estimated by the World Bank to be worth over US\$470 million annually, not accounting for an estimated 50 per cent of payments that are made through informal channels (Abel and Hailwood, 2012). Remittances from emigrant workers contribute 12 per cent of gross domestic product on average for Pacific Island countries (Abel and Hailwood, 2012). Table 16 shows the percentage toward total gross domestic product that remittances contribute, revealing that some countries are more dependent than others. Temporary migrants remit greater portions of their earnings than permanent migrants do (Faist, 2008; Portes, 2007). The average net remittance return for Recognised Seasonal Employer (RSE) workers from New Zealand between September 2007 and July 2008 ranged from \$1,704 to \$16,413 with an average of \$6,079 (DoL, 2008a). Of the countries noted, Samoa and Tonga are among the top 10 remittance-receiving countries worldwide.<sup>31</sup> The combination of expectations that income will be remitted and low skilled, temporary work places considerable pressure on migrant workers, resulting in migrants considering undertaking work that is less than desirable in terms of workplace conditions and safety.

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<sup>31</sup> The top 10 remittance recipients worldwide are: Tajikistan, Tonga, Moldova, Lesotho, Samoa, Lebanon, Kyrgyz Republic, Gyana, Nepal and Honduras (Singh, 2012).

**Table 16: Percentage of remittances in gross domestic product in selected Pacific Island countries, 2005–2009**

Country	2005 (%)	2006 (%)	2007 (%)	2008 (%)	2009 (%)
<b>Fiji</b>	6.2	5.2	4.8	4.7	3.9
<b>Kiribati</b>	11.4	11.3	9	10.7	6.7
<b>Papua New Guinea</b>	0.3	0.2	0.2	0.2	0.2
<b>Samoa</b>	25.9	24	22.9	24	26.5
<b>Solomon Islands</b>	2.4	6	5.1	4.8	0.4
<b>Tonga</b>	30.6	30.5	39.6	36.9	29.1
<b>Vanuatu</b>	1.4	1.2	1.1	1.2	1.1

Source: World Bank (2009).

Apart from remittance obligations, debt bondage is another reported factor that can create economic obligations to the country of origin. Debt bondage can take the form of a ‘deployment fee’ charged by a recruitment agency or loans drawn down by the family. Indeed, transnational debt circuits, pooling resources or rotating credit are not uncommon. Where families pay an agent and/or passage fees to migrate, migrant workers, particularly those of Indian background, often feel obliged to assist with dowry for younger sisters, education fees for siblings, or living costs for parents. In countries where such cultural expectations are normative, migrants can experience guilt or shame when unable to fulfil these obligations (Biao, 2005; Velayutham, 2013). The role of immigration recruitment agencies is discussed in greater detail in chapter 6.

## **Women**

Women are often identified as a particularly vulnerable migrant group. Many factors contribute to the ‘feminisation’ of migration: the feminisation of the workforce overall; the increasing number of independently migrating women; a general shift toward service industries; and the economic disparity between developed and developing countries (Piper, 2005). The immigration industry often targets women to meet particular needs in the labour market, and when gender intersects with nationalities and occupations, complex patterns of female migration are created.<sup>32</sup>

The increasing involvement of women as overseas contract workers in areas such as domestic help, aged caregiving and nursing provides a case in point. The main source countries for such workers are the Philippines, Indonesia, Sri Lanka, Thailand and Bangladesh (Hugo, 2000). Although male migrant workers can be subject to exploitation, a “triple discrimination” often results for migrant women as

<sup>32</sup> Examples include Filipina housemaids in Switzerland, Sri Lankan housemaids in Singapore, Indonesian housemaids in Middle East, Thai sex workers in Japan and Australia, and Filipina mail-order brides arriving in Korea, Germany and Australia.



their role as migrants, as women, and as precarious workers intersects (Piper, 2005, p 2). Migrant women may face a labour market segregated on gendered and racial grounds, and often find themselves in the bottom occupational strata.

Hugo's (2000) study of gendered migration patterns shows that migration can result in difficulties for women but can also serve as an external change agent, serving as a catalyst for empowerment. The social consequences of migration from patriarchal societies to industrial countries (eg, from Mexico to the USA or from the rest of the Pacific to New Zealand) are different for men and women. In some cases, a woman's status can be lifted as a consequence of engaging in waged work outside the home for the first time. However, the flip side of this is facing new challenges and difficulties, such as double-shifts (paid work and unpaid domestic work in one's own home). For example, Larner's (1991) study of Samoan migrant women found that when both husband and wife are in paid work, it is usually women who work night shifts so they can attend to children and household chores during the day. Although this study was carried out over two decades ago, the additional expectations placed on female temporary migrant workers (in terms of domestic responsibilities) are unlikely to have changed.

There is also a rich body of literature arguing that female migrants are more vulnerable than their male counterparts when considering the same ethnic group or occupation. A Canadian study demonstrates the vulnerability of female migrant workers in a male-oriented and employer-driven seasonal scheme (Grez, 2011). The Canadian Seasonal Agricultural Worker Program began with the gendered assumptions that men contribute most to the family income, that they can do arduous farm work, and that it is socially acceptable for men to work abroad. However, the number of women on these programmes has increased in recent years, especially single mothers from impoverished rural communities. Government-regulated 'guest' worker programmes offer a legal avenue to a secure income and protect women migrants to an extent. However, to keep their job and renew their contract each year, women must often outperform their male counterparts (possibly at the cost of their health and well-being), and are sometimes exposed to exploitative and substandard working conditions. The threat of repatriation for these women is ever-present and can occur, for example, as a result of becoming pregnant, having a relationship with a male worker, or simply leaving work premises without permission (FOCAL, 2011).

Gendered discrimination in the sending countries also means that women can be required to contractually agree that they will not engage in intimate relationships while in Canada and will not seek support from advocacy groups. When combined with commonplace sexual harassment by male co-workers, supervisors and employers at work, women workers often have little legal recourse. An additional concern for women (more so than men) is the renegotiation of their roles as primary caregivers and economic providers from a distance, which heightens the emotional strain of working away from home. Children remaining in the home country, combined with the requirement that remittances be sent home to financially support those children, all increase the pressures faced by migrant women. These combined circumstances render an already vulnerable migrant labour force virtually invisible and voiceless. To date, no empirical investigation of the gendered outcomes of the

New Zealand RSE Scheme has been carried out to establish the extent to which this scenario applies in a local setting.

The sex industry is another area of work that migrant women may enter (either voluntarily or involuntarily) and become extremely vulnerable to exploitation as a result. A small number of studies of sex workers in Australasia have been carried out (Brockett, 1996; Menasveta, 2002; Abel, Fitzgerald and Brunton, 2007; PLRC, 2008). In theory, sex work does not apply to temporary migrant workers in New Zealand as their work visa status forbids them to work in this industry (and section 19 of the *Prostitution Reform Act 2003* states that people cannot come to New Zealand with the intention of working as a sex worker or owning or operating a brothel). However, these exclusions serve to illegalise those who do work in sex industry, which potentially exposes them to exploitative and vulnerable working conditions. This is despite the decriminalisation of the sex industry in New Zealand in 2003. In other words, the protection of sex workers granted by the law change is not extended to international sex workers who are primarily of East and Southeast Asian origin (NZPC, 2009; Noonan, 2009).

In 2012, Immigration New Zealand found 25 brothels were employing sex workers who were on temporary visas (Tan, 2013b).<sup>33</sup> Although firm numbers are difficult to obtain due to the transient and illegal nature of the work, Menasveta (2002) estimated that 5 per cent of Thai women living in New Zealand in the late 1990s and early 2000s<sup>34</sup> worked in the sex industry (two-thirds in Auckland and one-tenth each in Wellington and Christchurch). Although Manasveta's doctoral work was qualitative and, consequently, small in scale (she interviewed just 12 Thai sex workers), it provides valuable insights into the lives of female Thai sex workers. All of the women she interviewed had been trafficked to New Zealand, some came as mail-order brides while others worked in massage parlours or overstayed their visas. Although the Prostitution Law Review Committee points out that trafficking and organised crime are not "significant features" of New Zealand's sex industry (PLRC, 2008, p 129, fn 58), the New Zealand Prostitutes Collective has called for additional independent research on sex workers' employment conditions due to ongoing concerns (NZPC, 2009).

### **International students**

There is an interesting and growing literature on the situation faced by international students and the nature of any work in which they might be engaged. While there is extensive research on migrant workers generally, very few studies consider international students as young workers who are exposed to exploitative or even illegal work practices. Generally speaking, most international

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<sup>33</sup> Under the *Immigration Act 1987*, Immigration New Zealand officers may enter any brothels in the course of investigating offences based on information and intelligence received, aiming to detect any evidence of trafficking in persons.

<sup>34</sup> Before the decriminalisation of prostitution.

students are relatively inexperienced young adults,<sup>35</sup> so they have limited bargaining power in employment relationships and are more likely to tolerate instability and unpredictability in their working lives. Some Australasian scholars have empirically demonstrated that international students are often compelled to accept poor employment conditions (Anderson, Lamare and Hannif, 2011; Anderson, Jamieson and Naidu, 2012; Merwood, 2007; Nyland et al, 2009; Rodan, 2009). The following section provides an indication of the largely international research literature on international students and employment.

In the New Zealand setting, international students are required to have a certain level of funds. For example, those who are studying 36 weeks or longer must have \$15,000 per year available to maintain themselves during their stay (less prepaid living expenses). That said, certain groups of international students face financial hardship. Although some are undoubtedly from financially comfortable families who can afford tertiary education fees in developed countries, this is not always the case. For some students, the payment of fees is viewed as an investment by a family member that must be 'paid back' in the future. These financial demands, along with any debt accrued throughout the course of study, places a significant financial burden on young students. As a result, there is a strong imperative to work while studying, but often under less than favourable conditions. For example, in Australia, a significant proportion of international students earn less than half the Henderson Poverty Line<sup>36</sup> (Forbes-Mewett et al, 2009).

The UK Council for International Student Affairs' 2004 survey showed that just over half of the international students who participated were in paid employment of some kind and that postgraduates were more likely to be employed than undergraduates (UKCISA, 2004).<sup>37</sup> A follow-up survey showed that international students generally worked more hours than domestic students (UKCISA, 2006). The extent of work engagement and the nature of financial pressure is a neglected area of study regarding the international student body in New Zealand and should be considered for future research. The financial hardship of international students means engagement in the labour market is crucial for many.

Migrant students in the UK, Australia and New Zealand are currently restricted by their visa conditions with respect to the amount of work in which they can engage. The rationale for imposing restrictions is to ensure international students make study their primary focus.<sup>38</sup> However, those

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<sup>35</sup> Seventy-two per cent of international students in New Zealand in 2011/12 were aged 16–29, with a median age of 20 (MBIE, 2013a).

<sup>36</sup> The poverty line in Australia was established by the Henderson Poverty Inquiry in 1973. The poverty line for the 2012 June quarter was AU\$384.51 for a single person who is not in workforce (Melbourne Institute of Applied Economic and Social Research, 2012).

<sup>37</sup> This survey covered students across 20 UK universities. The exact size of the sample is unclear.

<sup>38</sup> Fifteen hours of work is defined by some researchers as a critical point beyond which "there may be detrimental effect on academic performance" (Neill et al, 2004, p 136).

international students who undertake additional working hours to supplement their income beyond the maximum allocation, place themselves in an inherently vulnerable position because their actions are rendered illegal. There is some evidence to suggest that some employers willingly take advantage of students' vulnerability. For example, in 2011 in Australia, two retail operators were found to be deliberately exploiting six international students and were subsequently ordered to pay back-pay to the sum of AUS\$90,000 in wages. The case called for the fast food and retail union to call once more for changes to the working restrictions on international students (Scarton and Purnama, 2011). Those working illegally have little legal recourse.

An interview-based study of 200 international student-workers from nine universities in Australia provides some in-depth understanding of students' working lives (Nyland et al, 2009).<sup>39</sup> About 70 per cent of the respondents worked at some stage during their studies. Universities were the biggest employer (31 per cent), followed by the hospitality industry (26 per cent) and professional industries (16 per cent). Nearly 60 per cent of the interviewees earned between AU\$7 and AU\$15, well below the legal minimum wage.<sup>40</sup> Only four participants reported working beyond the number of hours legally permitted under their visa conditions. However, it is quite possible that this is under-reported due to a fear of being reported to immigration authorities (see also McInnis and Hartley, 2002).<sup>41</sup> Although only a small number reported overt discrimination in the workplace, many found it difficult to find suitable work, and many also reported facing difficulties in the workplace itself due to a language deficit and their non-residential status.

Another Australian study published by Victorian TAFE International and United Voice finds that international students are bearing the brunt of industrial restructuring in the cleaning industry (VTI and UV, 2012). Hired by contractors who secure contracts by bidding at the lowest price, many young workers face extreme workloads with reduced pay levels and less time available to carry out the expected workload (one-third worked additional time without recompense). Some of the participants were also asked to violate their visa conditions by working beyond the imposed 20-hour limit. Neilson's (2009) work on Indian migrant student taxi-drivers reveals the precarious working conditions in a highly decentralised and deregulated occupation. Taxi companies in Melbourne advertise extensively at universities and colleges to attract international students, many of whom are Indian males. While some taxi drivers split a percentage of the metered fare with the operator, many

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<sup>39</sup> No reference is made to the recruitment methods of the sample. It is unclear whether the participants are self-selected.

<sup>40</sup> The legal minimum wages for a casual waiter and a casual shop assistant were AU\$16.08 and AU\$17.97 respectively.

<sup>41</sup> To address this problem, one UK study carefully timed its survey to be shortly before the students' country of origin became a member state of the European Union. Therefore, the students were more likely to admit working excessive hours without fear of deportation. As a result, three-quarters of Eastern European student workers surveyed admitted they worked more than the stipulated 20 hours per week, and just over two-thirds admitted working more than 30 hours each week (Anderson et al, 2006).

more rented the taxi from the operator who has taken out a lease from a license holder. Twelve-hour shifts are common and many partner with co-workers to keep taxis on the road for 24 hours; those working night shifts are more likely to be exposed to assault while at work.<sup>42</sup>

The 2007 National Survey of International Students echoed the international evidence in many ways. Over one-third (3 per cent) of the 2,677 respondents indicated that they were currently in part-time employment, mainly in the hospitality and retail sectors (Deloitte, 2008). According to a survey of 74 international students and 10 in-depth interviews with international students studying in New Zealand universities, over half of the respondents worked in peripheral positions within the hospitality and service sector, and a smaller portion (1 per cent) worked in agriculture. Equally, nearly 40 per cent overall reported having been paid below the statutory minimum New Zealand wage (Anderson et al, 2011). When considering only those students working in agriculture and horticulture, the rate of those paid below the minimum wage increased to 91 per cent. Nearly 40 per cent acknowledged that they worked over what was then the student visa limit of 20 hours per week. One-third of the respondents reported feeling unsafe in the course of their work, and around 10 per cent mentioned having an accident at work. No participants reported belonging to a relevant union.

Although Anderson and her associates' (2012) research comprised a self-selected sample, the results are nevertheless interesting and concerning, revealing as it does, the particular vulnerabilities of migrant students in some industries. The growth of the horticulture (and agriculture) industry, combined with the perception among domestic students that the work offered is undesirable, appears to lead employers to employ international students as a source of labour. A Bay of Plenty-based survey of 93<sup>43</sup> migrant student workers across five work sites in 2010/11, followed by semi-structured interviews of 12 India-born respondents,<sup>44</sup> provide a case study of seasonal labourers in the New Zealand horticulture industry. All survey respondents reported working more than the legal number of hours (an average of 29 hours per week, ranging from 16 to 55 hours). Fewer than half had a written employment contract, and all of the students surveyed were paid below the minimum

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<sup>42</sup> An Indian migrant student driver, Rajneesh Joga, was attacked and killed on 8 August 2006 (A. Petrie and J. Holroyd (2006) Cabbie in 'wrong place at wrong time', *The Age*, 10 August, cited in Neilson, 2009). Another Indian migrant student driver, Jalvinder Singh, was stabbed at 3am on 29 April 2008 in the Melbourne suburb of Clifton, and survived the assault (Neilson, 2009).

<sup>43</sup> The proportion of male participants (83 per cent) reflects the gendered pattern of the Indian student body working in the industry and reflects the industry itself.

<sup>44</sup> Limitations of the survey lie in the homogeneous sample: almost all were Indian (96 per cent), with only three Chinese and one Korean. The reasons given for interviewing primarily Indians was that "Asian students declined to be interviewed". It would seem that the researchers see 'Asian' and 'Indian' as two mutually exclusive terms.

wage (\$12.75 at the time of interviewing), receiving between \$8 and \$11 per hour.<sup>45</sup> However, many respondents welcomed this rate of remuneration because it was reportedly higher than that offered in the hospitality and service sectors. That said, no respondents had sick leave entitlements or accrued holiday pay. Over 80 per cent of respondents said they felt unsafe at work, and stress, fatigue and working in the heat for long hours were common complaints. Only 3 out of 12 interviewees had received any formal training (only one received training on health and safety procedures), and none reported being bold enough to report workplace injuries. Although concerning, it is important to bear in mind that collecting valid and reliable qualitative evidence in this field is difficult. With this in mind, a larger study would be valuable to assess the extent or size of these issues.

There can be considerable power imbalances between student-workers and some labour-hire contractors. The latter set the wages and conditions of work, and can potentially take advantage of vulnerable migrant student workers who fear being discovered working beyond their visa entitlements. Non-payment, underpayment, irregular payment, and inaccurate completion of timesheets were reported to be commonplace (Anderson et al, 2012). Anderson and colleagues' study demonstrates the ways in which a cycle of vulnerability can emerge for migrant student workers. First, the needs (especially financial) of international students drive them to work in precarious jobs with rates of pay that are insufficient to adequately support them. As a result, they often must work excessive hours to generate an adequate income, possibly under pressure in unstable seasonal employment, and they sometimes must work beyond their visa entitlements. This makes them financially vulnerable but also legally vulnerable as their migrant status becomes more precarious. In response to the needs of migrant student workers and to increase their awareness of employment regulations in New Zealand, Immigration New Zealand has provided some guidelines for this target group.<sup>46</sup>

The above sections have identified some of the key demographic or socio-economic characteristics of temporary migrant workers, notably the fact that they might be low skilled or from low-income countries, that they might not be an English speaker, their gender, and that they might be international students. We now turn to the issue of the visa or migration status of migrant workers and ask the question: is migration status linked to issues of vulnerability?

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<sup>45</sup> By comparison, only 4.2 per cent of working-age people in the 2009 New Zealand Income Survey reported being paid below the adult minimum wage.

<sup>46</sup> INZ (2014b).

## ***Migrant status and vulnerability***

Is the simple fact that migrants arrive and work on a temporary visa connected to vulnerability and precarious employment? The next section discusses literature on this necessarily broad issue before we proceed to consider the additional issue of non-legal status. Here, we want to acknowledge the difficult issue of irregular and illegal migration that results in the presence of undocumented migrants and possibly even the presence (in New Zealand) of those who have been trafficked.

### **Nature of immigration visas**

The nature and administration of visa categories can contribute to the vulnerability of temporary migrant workers. The conditions attached to certain visas from some countries inadvertently puts migrant workers in a vulnerable position. Anderson (2010) argues that the institutionalisation of vulnerability in the labour market together with the creation of precarious migratory processes, produce “precarious workers” over whom employers can yield control. For example, a study of hotel workers in London shows that those on one-year SBS (Sectors Based Scheme) visas (usually Vietnamese, Thai and Russian) were more dependent on their employer than were other migrant workers (usually A8 nationals) as they were unable to seek alternative employment in the UK (Dyer, McDowell and Batnitzky, 2010).

The lock-in nature of many temporary worker programmes in the agriculture and domestic care industries also renders employment relations restrictive, leaving workers vulnerable. For example, allowing Canadian employers to request Seasonal Agricultural Worker Program workers by name<sup>47</sup> has been identified as a source of vulnerability for those workers (Basok, 2002; Fairey et al, 2008). Fairey and his colleagues (2008) point out that under such a structural power imbalance, many foreign workers are willing to accept various forms of abuse in exchange for a positive reference from employers and the opportunity of re-employment the following year. Employees working under these conditions are often unwilling to object to unsafe practices, continue working when injured or unwell, and do not demand holiday and vacation pay. Likewise, the restrictions imposed by the Canadian Live-in Care Program opens up possibilities for abuse, and caregivers who live in their employers’ home have few legal avenues to contest their working and living conditions (Santos, 2000).

Concerns have also been raised with regard to the transition from a student visa to a study-to-work or residency visa. During this time, international students fall into what Goldring and Landolt (2012) call a “precarious migration status”. An Australian study reports examples of graduate students paying employers large sums of money (one example cited claims of a payment of AU\$40,000) to gain work that could lead to skilled migration and residential status. Arrangements could involve

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<sup>47</sup> Between 70 per cent and 80 per cent of Seasonal Agricultural Worker Program migrants are rehired by name (Sargeant and Tucker, 2009).

paying for employer sponsorships, paying the tax on their own remuneration, and working for free (while at the same time working in other jobs to maintain living costs) (Hall and Partners, Open Mind, 2012a). Given many students view study as a pathway to permanent residency,<sup>48</sup> further research is warranted.

### **Precarious migrant status**

Legal residency or citizenship has long reflected a significant power differential between migrant workers and employers, and migrant and national workers (Capps et al, 2003; Kossoudji and Cobb-Clark, 2002; Levinson, 2005; McKay et al, 2009; Sunderhaus, 2007). While it is generally agreed that an illegal migrant status is associated with negative employment outcomes, it is often assumed that a change of migrant status<sup>49</sup> will rectify the problems. However, Goldring and Landolt (2012) explored the relationship between “precarious employment” and “precarious migrant status” and concluded that precarious migrant status has a long-lasting negative effect on job precariousness. The notion of precarious migrant status captures the multiple and variable forms of “less than full status”, including temporary workers, international students and refugee claimants. Such a status is marked by any of the following: no permanent residence authorisation, lack of permanent work authorisation, dependence on a third party for residence or employment rights, restricted or no access to public services and protections available to permanent residents, and deportability.

Likewise, Ruhs (2003, pp 15–17) uses the term “bloating” to refer to the unforeseen prolongation of a temporary migrant status. Issuances of temporary visas are often backed up with “expectations of permanency” (eg, the formerly named graduate job search work visa or graduate work experience visa in New Zealand,<sup>50</sup> A8 workers in the UK, the H-1B programme in the USA,<sup>51</sup> and the subclass 475 visa in Australia).<sup>52</sup> Bloating can be migrant-initiated or employer-initiated, or a result of a complex interplay of both.

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<sup>48</sup> According to the 2007 National Survey of International Students, students from China (42 per cent) were the largest national group and were the most likely to want to stay in New Zealand and find employment post-study. Over half stated that their immediate intention was to find a job in New Zealand and about three-quarters explained that they intended to apply for permanent residence (Deloitte, 2008).

<sup>49</sup> Migrant status refers to formal visa entitlement, including provisions and restrictions regarding residency, employment and settlement rights and other considerations such as length of time spent in the host country.

<sup>50</sup> Over the last decade, one in five international students gained permanent residence in New Zealand within five years of being issued their first student visa (MBIE, 2013a).

<sup>51</sup> It is estimated that 47 per cent of the H-1B cohort entering in 1993 have adjusted to permanent status (Lowell, 2000).

<sup>52</sup> One study shows that 64 per cent of 457 visa holders had either applied or intended to apply for permanent residency status. This figure increased to 89 per cent among those from South Asia, particularly India (Khoo, Hugo and McDonald, 2008).



## **Irregular, illegal, undocumented or trafficked**

Estimations of the number of illegal immigrants in New Zealand are high, varying between 16,000 and 20,000.<sup>53</sup> The definition of illegal migration and illegal work varies from country to country. Although many undocumented workers are indeed over-stayers or trafficked persons, many have entered the country legally on student visas or WHS permits. With regard to employment for international students, illegal activity includes working in the hidden economy (eg, cash-in-hand work), as well as working in excess of visa entitlements and claiming false job offers as a migration pathway. Migrant labour, particularly when it is legally unprotected, renders it an attractive option for some employers and industries.

The United Nations has observed that “trafficking in persons has reached epidemic proportions” over the past decade, and that “no country is immune” (cited in Watson, 2009). The Protocol to the United Nations Convention against Transnational Organised Crime specifies three dimensions involved in trafficking.

- ✓ The *activities* involve: recruitment, transportation, transfer, harbouring or receipt of persons
- ✓ The *means* include: threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of other giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- ✓ The *purpose* must be for exploitation, which must include: forms of sexual exploitation, forced labour or services, slavery or servitude.

## **Summary**

This section signals that there are several demographic and socio-economic characteristics of temporary migrant workers that the local and international literature suggests are associated with vulnerability. These characteristics include:

- gender
- low skill levels
- being a non-native English language speaker
- being a migrant from a low-income country
- being an international student.

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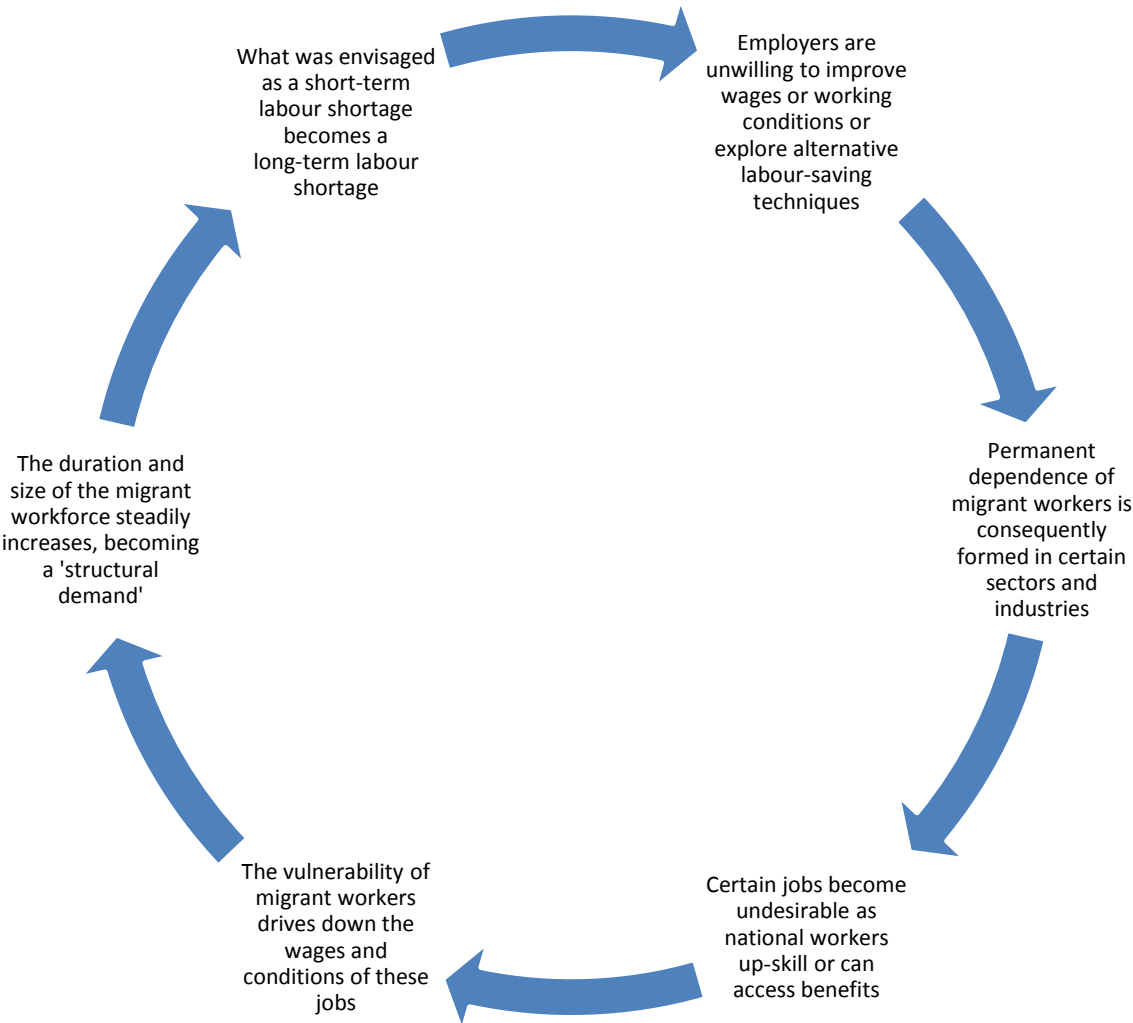
<sup>53</sup> The Human Rights Commission estimated that there were about 17,350 illegal migrants in New Zealand (HRC, 1990) and an estimated 20,000 the following year (HRC, 1991). The horticulture industry estimated that there were 17,000 illegal workers in 2002 (Courtney, 2008, p 73). Immigration New Zealand estimates that in 2009, there were about 16,000 foreign nationals who do not hold a valid visa (Watson, 2009).

We also wanted, in an additional section, to point to the possibility that migrant status itself could also be associated with vulnerability. There is evidence to indicate that the precariousness of employment is related to the precariousness of a migration status (Goldring and Landolt, 2012). We suggest that the temporality of migrant status, especially if prolonged, can be associated with particular labour market outcomes. This provides a contextual issue for policy research and discussion in New Zealand. We highlight the issues of illegal status for vulnerability and the possibility that trafficking could be an issue.

# 5. Industries or occupations with large numbers of migrant workers

In this section, we shift focus to identify those industries that rely on some degree of temporary migrant workers. The data is not always clear on the extent of this reliance – or on the nature of labour market engagement or the conditions found by these migrant workers. That said, migrant workers arriving in a country on low-skilled labour streams can often be found in “Dirty, Dangerous and Difficult” jobs (commonly referred to as 3D jobs) that locals have deserted. In addition, scholars have noted that there is a tendency to perpetuate an “immigration sector” of the labour market (see Figure 2).

Figure 2: Circle of perpetuation of immigrant sectors



Using both international and local material, this section signals some of the issues that arise in particular industries and the use of temporary migrant workers. These issues are then related to issues of vulnerability.

In New Zealand, there is a high level of migrant participation in the workforce. In 2012, around one-quarter of the workforce was born overseas and around one in five was a recent migrant (SNZ, 2013). Although these figures include all migrants, including permanent settlers, they paint a picture of high levels of migrant labour market participation. Considering only temporary migrant workers, the share of months worked increased from around 1 per cent in 2001 to 4.3 per cent in 2011 in New Zealand (McLeod and Maré, 2013), concentrated primarily in the hospitality and primary sectors (including agriculture, horticulture, viticulture and dairy farming).

The largest proportions (22 per cent) of recent migrants in the Labour Force Survey (UK) were in elementary occupations, with this figure increasing to 37 per cent for A8 workers<sup>54</sup> (Jayaweera and Anderson, 2008). The top five sectors for workers who registered under the Workers' Registration Scheme in the UK between 2004 and 2008 were business and management (39 per cent), hospitality and catering (19 per cent), agriculture (10 per cent), manufacturing (7 per cent), and food, fish and meat processing (5 per cent). The largest occupation registered with the Workers' Registration Scheme was process operatives (28 per cent), followed by warehouse operatives (8 per cent) and packers (6 per cent) (Sargeant and Tucker, 2009). In an Australian setting, the top two industries for the "457 visa"<sup>55</sup> grants in 2012/13 were construction (12 per cent) and health care and social assistance (12 per cent). Cooks were the number one ranked occupation, followed by programme or project administrators and developer/programmers (DIBP, 2013). An Australian study identified the following industries as having a high risk of employing illegal migrant workers (Hall and Partners, Open Mind, 2012b): construction, manufacturing; food services, hospitality/accommodation, agriculture (especially horticulture), retail and the sex industry. Once again, the gendered pattern is more evident for some industries than for others; male migrants were working primarily in construction, machinery manufacturing and marine industries while female migrants were more likely to be working in the garment industry, cleaning, and service and care sectors. The agriculture and hospitality sectors were more mixed.

Table 17 shows that migrants are consistently over-represented in elementary occupations in European countries while over-represented among professionals in Australasia. The most commonly under-represented occupations in Australasian countries are *skilled* agricultural and fishery workers, although *unskilled* migrant workers are commonly found in these primary industries.

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<sup>54</sup> Refer to footnote 7 for an explanation of "A8".

<sup>55</sup> The 457 visa allows employer sponsorship of migrant workers for periods from four weeks to four years. Visa holders can apply for permanent residency after two years of employment.

**Table 17: Occupations over-represented and under-represented by migrants, by country**

Country	Over-represented	Under-represented
Australia	Professionals	Skilled agricultural and fishery workers
Belgium	Elementary occupations	Skilled agricultural and fishery workers
Canada	Plant and machine operators and assemblers	Skilled agricultural and fishery workers
France	Elementary occupations	Skilled agricultural and fishery workers
Germany	Elementary occupations	Skilled agricultural and fishery workers
Ireland	Elementary occupations	Skilled agricultural and fishery workers
Netherlands	Elementary occupations	Professionals
New Zealand	Professionals	Skilled agricultural and fishery workers
Spain	Elementary occupations	Clerks
Switzerland	Elementary occupations	Skilled agricultural and fishery workers
United Kingdom	Elementary occupations	Clerks

Source: Database on immigrants in OECD countries:<[www.oecd.org/els/mig/dioc.htm](http://www.oecd.org/els/mig/dioc.htm)>; Table 2 (Chen and Ward, 2013, p 24).

The industry distribution of temporary migrant employment in New Zealand is described by McLeod and Maré (2013) using data from the Integrated Data Infrastructure (managed by Statistics New Zealand). Table 18 shows the relative changes in migrant engagements in different industries during the decade leading to 2011. The rates of changes should be interpreted with the understanding that the three intervals (2001–2005, 2005–2009 and 2009–2011) are not equally spanned.

**Table 18: Relative changes in temporary migrant employment by industry to 2011**

Industry	Change 2001–2005 (%)	Change 2005–2009 (%)	Change 2009–2011 (%)	Total number of months worked in 2011
Fruit and tree nut growing	207	130*	9*	31,500
Dairy cattle farming	169	169*	14*	26,300
Agriculture and fishing support services	510*	269*	20*	53,900
Other agriculture, forestry and fishing	151	82	6*	20,900
Manufacturing	185	62	-25	66,100
Construction	290*	108*	-34	31,100
Wholesale trade	205	55	-16	29,800

Supermarket and grocery stores	408*	107*	-10	35,800
Other retail trade	281*	54	-7*	61,100
Accommodation	327*	60	-4*	51,600
Food and beverage services	235	110*	-20	171,300
Professional, scientific and technical services	182	54	-21	52,100
Employment services	232	59	-1*	54,500
Building cleaning, pest control and gardening services	351*	32	14*	23,800
Packaging services	432*	456*	2*	23,300
Other admin and support services	161	37	-11	15,600
Tertiary education	215	5	1*	20,400
Other education and training	131	14	-2*	23,900
Residential care services	336*	179*	16*	35,300
Other health care and social assistance	112	23	-11	38,200
Other industries	239	73	-14	122,800
<b>Overall</b>	<b>222</b>	<b>78</b>	<b>-10</b>	<b>989,300</b>

Note: \* Indicates the increase is significantly above average change (ie, over 10 per cent).

Source: Table 2 in McLeod and Maré (2013, pp 19–20).

Table 19 provides the same industry classifications but breaks down total employment to reflect the percentage share of participation by different groups.

**Table 19: Share of months worked in each industry by population group, 2011 tax year**

Industry	New Zealand youth (%)	Other New Zealanders (%)	Temporary migrants (%)	Percentage of total months worked (%)
Fruit and tree nut growing	17	65	18*	1
Dairy cattle farming	27	64	9*	1
Agriculture and fishing support services	17	60	23*	1

Industry	New Zealand youth (%)	Other New Zealanders (%)	Temporary migrants (%)	Percentage of total months worked (%)
Other agriculture, forestry and fishing	19	77	4	2
Manufacturing	12	86	3	11
Construction	17	81	2	6
Wholesale trade	10	88	2	5
Supermarket and Grocery Stores	38	56	6*	3
Other retail trade	27	70	4	7
Accommodation	19	66	14*	2
Food and beverage services	39	46	14*	5
Professional, scientific and technical services	10	87	3	8
Employment services	22	65	13*	2
Building cleaning, pest control and gardening services	12	79	9*	1
Packaging services	15	62	23*	0
Other admin and support services	14	81	5*	1
Tertiary education	11	86	3	2
Other education and training	6	92	1	7
Residential care services	8	86	6*	2
Other health care and social assistance	5	93	2	7
Other industries	12	86	2	24
<b>Overall</b>	<b>15**</b>	<b>81**</b>	<b>4</b>	<b>100</b>

Notes: 'Youth workers' are New Zealanders aged 16–24. 'Other New Zealanders' as New Zealanders aged 25 and over.

\* Indicates the share is above the average. \*\* These figures include permanent migrants.

Source: Table 3 in McLeod and Maré (2013, p 21).

We now turn to explore particular sectors and their reliance on temporary migrant workers. Primary production has long been reliant on temporary labour, and there is a long history of temporary migrant involvement in industries such as scrub clearance on New Zealand farms. However, recent decades have seen a major expansion of this reliance, aided by schemes such as the Recognised Seasonal Employer (RSE) Scheme.

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

Agriculture is a traditional sector for guest workers in many countries; about 90 per cent of farming migrants who work seasonally in developed countries were born abroad. The share of workers who occupy an irregular migrant status among all hired crop workers is estimated to have risen from less than 10 per cent to over 50 per cent during the 1990s across the globe (Martin, 2004). In New Zealand, Lamm and colleagues (n.d.) estimate that overall, there are 40,000 seasonal jobs per year nationwide with three-quarters located in the forestry and horticultural sectors and one-quarter in the sheep-shearing industry. A wide range of temporary visa holders are undertaking seasonal work in the primary sectors, including RSE workers, international students, working holidaymakers and, sometimes, visitors. The dominance of migrant workers in horticulture and viticulture is clearly indicated by their share of months worked (McLeod and Maré, 2013). The share of months worked by migrants in fruit and tree nut growing (18 per cent) and agriculture and fishing support services (23 per cent) was greater than that of youth workers (17 per cent in both industries) (see Table 19). However, migrant engagement in these industries could be still greater than these official figures indicate since some migrants are likely to be employed in the hidden economy, particularly those who are unskilled labourers.

The RSE Scheme is designed to fill labour shortages in the horticulture and viticulture industries (with limited displacement of New Zealand workers) providing opportunities for short-term and/or circular migration; it is not designed to provide a pathway to permanent residence. Before the RSE Scheme, the use of undocumented workers, especially those on visitor visas, was prevalent in the sector (Prochazkova, 2012). By and large, the RSE Scheme is a regulated scheme that imposes restrictions on not only migrant workers, but also on employers. To be accredited as an RSE employer, the following obligations must be met: high standard of human resource policies and practices, evidence of having attempted to recruit and train New Zealand workers, paying market rates, meeting the pastoral care needs of employees, supplying a minimum of 240 hours of work, and paying half of the migrant worker's airfare (DoL, 2009, 2010a). The dismissal of an RSE worker is also quite costly in terms of the proper documentation required and initial expenses.

An evaluation of the RSE Scheme was published in 2009 (DoL, 2009). The evaluation showed that in the RSE Scheme's first full season, 126 employers employed 2,883 overseas workers, most of whom (2,247) arrived from Tonga, Samoa and Vanuatu. From an employer's perspective, most found the RSE Scheme successful and appreciated that workers' productivity would improve only as they returned for subsequent seasons.<sup>56</sup> The evaluation showed that although most workers were pleased they had participated in the scheme (going home with savings that would benefit their family and their community), others were not as satisfied. These workers expected that they would earn and save more money and appeared to have underestimated the high cost of living in New Zealand. Arguably, this was the result of short training times that were inadequate for explaining in detail

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<sup>56</sup> In the second seasons of the scheme, the return rate of workers was 51 per cent (DoL, 2010a).



what to expect on arriving in New Zealand (pre-departure briefings were reportedly improved in subsequent seasons – DoL, 2010a). The qualitative components of the evaluation also showed that some workers “had issues related to variation in quality and cost [of housing] and overcrowding” (DoL, 2009, p 7). Again, however, subsequent seasons appear to have improved performance and expectations. Overall, the evaluation of the subsequent seasons has shown positive results and mutually beneficial outcomes (for employers, workers and nation states). That said, some unintended outcomes did eventuate. Not all workers benefited financially from the scheme once all costs had been deducted. This was especially the case for those from Kiribati and Tuvalu (DoL, 2010a).

Overall, it does not appear that the RSE Scheme creates an environment that leads to worker exploitation or vulnerability. However, as noted in the final evaluation report of the scheme for 2007–2009 (DoL, 2010a), employers noted several factors that contributed to the productivity of RSE workers that could potentially lead to exploitative workplace practices. Arguably, Pacific workers are “more likely to be able to cope with the physically demanding work involved in harvesting crops (such as apples or asparagus) in very hot, cold, or windy conditions [and] they are more willing to work long hours, weekends, and night shifts than New Zealand workers” (DoL, 2010a, p 56). Other local research has also pointed to potential concerns for temporary (seasonal) workers in horticulture and viticulture industries.

Two theses have investigated the topic of seasonal workers in New Zealand and came to quite different conclusions. First, based on findings from semi-structured interviews and focus group discussions<sup>57</sup> with Blenheim vineyard workers (as well as workers in Vanuatu), Cameron (2011) argues that the RSE Scheme is delivering social and economic benefits to participating ni-Vanuatu migrants and their communities, including improved management of time and money. He largely agrees that the RSE Scheme has met its goal of delivering a “triple win”<sup>58</sup> for the New Zealand primary sectors, the participating countries and the participating workers. However, Cameron raises concerns that the domination of returning experienced migrant workers<sup>59</sup> could reduce opportunities for first-time migrants to gain work experience and may result in inequitable development outcomes in the sending countries. Other issues identified include a lack of engagement with unions, concerns about the local community and the Pacific diaspora community, the need for better pastoral care, the need to strengthen the link between the scheme and broader development of objectives and foreign policy in the Pacific, the need to maximise the effectiveness of remittance transfers, and the deterioration in social cohesion in sending countries (Cameron, 2011, p 45).

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<sup>57</sup> The participants of semi-structured interview include seven Ni-Vanuatu RSE workers, three pastoral care workers, three RSE employers, three RSE workers’ wives, and four other government and community members.

<sup>58</sup> For arguments for and against the “triple win model”, see Martin, Abella and Kuptsch, 2006; Vertovec, 2007; and Ramasamy et al, 2008.

<sup>59</sup> Some employers argue that the return rate should be 80 per cent to justify training costs invested. The actual return rate over 2008/09 for Vanuatu RSE workers was 49 per cent (DoL, 2010a).

The second thesis was carried out by Prochazkova (2012), who appears to have a more critical view of employment practices with regard to foreign seasonal workers in the New Zealand horticulture industry. Her ethnographic fieldwork included participant observation and interviews of 24 foreign workers who were also her colleagues.<sup>60</sup> Presenting her thesis as an “insider study”, Prochazkova identified issues for those migrants working in the industry, including visa-dependency, the misuse of the piece-rate system (as noted below), racial assumptions, and stereotyped gendered divisions of labour. Prochazkova describes exploitation or deception of foreign workers through the manipulation of “piece-rate” practices of payment whereby a worker is paid for each “piece” of work carried out (rather than an hourly rate) (Prochazkova, 2012, pp 146-149). Targets are established as “norms” that are often unrealistic to achieve within normal working hours, compelling a new worker to work longer hours to achieve sufficient income. In addition, more intentional fraudulent practices occur such as misinforming employees of the cubic content of a fruit bin, for example, so more fruit is required to fill the bin than what the employees were led to believe. Similarly, miscalculated payslips were also found to be commonplace. The high mobility and diversity of working holidaymakers and other seasonal workers make them unwilling to complain or they have no time to complain, to investigate or to cooperate in terms of an inquiry. Lack of communication between foreign and local workers also helps to perpetuate these workplace patterns.

Prochazkova (2012) notes that although RSE workers generally fared better than their non-RSE counterparts, the restrictions of the RSE scheme work largely in the employers’ favour. RSE workers are required to remain with their original employer during their stay in New Zealand or they must apply for another type of work permit, while their employers can transfer them to other accredited RSE employers at their discretion.<sup>61</sup> This power imbalance creates a degree of dependency by the employee and exploitative employment conditions and relations. The RSE workers in Prochazkova’s study were forbidden to visit local bars, they were expected to work long hours with very short breaks and, less tangible but nonetheless contributing to their vulnerability, they received paternalistic treatment from employers. For example, the bulk of workers’ earnings was locked in a bank account that could be accessed only at the end of the workers’ stay. This ensured they could pay off the initiation loan from the Growers’ Association, Seasonal Solutions Cooperative Ltd., and send remittance home. Shouting at workers and “talking down” to workers were common practices of orchard managers. The “no drinking policy” was supported by Pacific state officials and pastoral care workers, and those caught drinking could be sent home, despite this rule being a violation of

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<sup>60</sup> The ethnic breakdown of these interviewees is Ni-Vanuatu (6), Asian (4), African (1), American (1), Chilean (1), and European descent (11). The interviewees arrived in New Zealand on a range of visas including Working Holidaymaker Scheme visas and work permits while some were RSE workers. (6), and others are manager, orchard owner and labour coordinator.

<sup>61</sup> Under the Australian scheme, workers are tied to a labour hire company rather than a single employer (MacDermott and Opeskin, 2010).

employment regulations in New Zealand, which do not allow workers to be dismissed for drinking outside their work hours (DoL, 2010a, p xiv).

With regard to policy development, the Canadian Seasonal Agricultural Worker Program is closest to the New Zealand RSE Scheme in its provisions. Modest reviews have been carried out on these programmes that provide a fair picture for comparison. Although the Seasonal Agricultural Worker Program is generally considered a model that exemplifies best practice with regard to treatment of seasonal workers, it has also been criticised as “a shameful dirty secret” (Martin, Abella, and Kuptsch, 2006, p 113) where workers are “mobile bodies” secured through a network of violence (Gogia, 2006, pp 362–363). The most frequently challenged aspect of the programme is the tight employment bond that renders workers as “unfree labour” (eg, Basok, 2002; Gogia, 2006; Sharma, 2001). “Unfree” entails a number of implications, including tying the workers’ contract to one employer, no allowance for changing jobs, and an obligation to provide labour whenever required. Another issue identified was workers being charged fees such as unemployment insurance without being able to obtain associated unemployment benefits (Martin, Abella, and Kuptsch, 2006).

***Dairy farming***

Another area of the primary sector that is increasingly dependent on migrant workers is dairy farming (Tipples, Trafford and Callister, 2010). The dairy industry has experienced unprecedented growth in land area, number of cows, milk production and dairy exports in the last five years. There are 4.4 million dairy cows in New Zealand. The average dairy farm has 380 cows, and a substantial number have more than 1,500 cows (INZ, 2012c). Many small, family-owned and family-managed farms (particularly in the Waikato and Taranaki) are being replaced by large-scale corporate farms often now located in the South Island (particularly in Canterbury, North Otago, Southland and the West Coast) where traditional sources of (local) labour are inadequate. Estimates of the shortage of skilled dairy workers vary, ranging from 2,000 (Career Services Rapuara, 2010) to 12,000 (Williams, 2009). The problem of understaffing will be exacerbated as the national herd is predicted to double within the next five to seven years (MAF Caring Dairy Project, 2010, cited in Tipples, Trafford and Callister, 2010). Table 20 shows that the number of temporary work permits issued for dairy farm workers nearly quadrupled between the 2003/04 and 2008/09 seasons. McLeod and Maré’s (2013) recent report shows that the increase in the number of months worked by migrants in dairy cattle farming has been steady: a 169 per cent increase from 2001 to 2005 and a further increase of 169 per cent from 2005 to 2009. Although this increase slowed to 14 per cent from 2009 to 2011, it is still significant for the industry. The share of months worked by migrant dairy farmers was 9 per cent in the 2011 tax year compared with 27 per cent and 64 per cent for youth workers and other New Zealanders respectively.

**Table 20: Number of temporary work permits issued for dairy farm workers, 2003/04 to 2008/09**

	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
<b>Permits</b>	516	650	641	880	1,741	1,957
<b>+/- (%)</b>	-	26	-1	37	98	12

Source: Adapted from Table 5 in Tipples, Trafford and Callister (2010, p 7).

Table 21 shows the nationalities of dairy workers (predominantly males)<sup>62</sup> issued with temporary work permits between 2003 and 2009. According to Tipples, Trafford and Callister's (2010) analysis of census and Linked Employee-Employer Data data sets,<sup>63</sup> one-quarter to one-fifth of dairy workers were born overseas in 2006 and they were generally considered better qualified than the local workforce.

**Table 21: Nationalities of dairy workers issued with temporary work permits, 2003/04 to 2008/09**

	Nationality	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	+/-
1	Philippines	16	40	74	278	806	896	5,500
2	South Africa	75	114	100	89	139	166	121
3	Fiji	1	3	18	22	75	130	12,900
4	Brazil	3	7	41	45	105	128	4,167
5	Chile	7	21	15	24	45	100	1,329
6	UK	126	111	97	74	111	96	-24
7	India	16	21	28	42	70	72	350
8	Sri Lanka	7	20	21	21	30	43	514
9	Uruguay	12	25	23	31	47	42	250
10	Nepal	7	7	2	8	13	13	86
11	Argentina	20	12	13	21	31	26	30
12	Ireland	39	26	28	24	16	26	-33
13	Germany	8	9	10	14	27	20	200

Source: Adapted from Table 6 in Tipples, Trafford and Callister (2010, p 8).

Increases are most notable in the numbers of Filipino, Fijian and South American (predominantly Brazilian and Chilean) workers while the traditional sources (UK and Ireland) of dairy workers have seen some declines over these years. Unpublished research (authors' unpublished research proposal, cited in Tipples, Trafford and Callister, 2010) indicates that the former are largely economic migrants, their social lives constrained in order to meet financial goals and family responsibilities while the latter are more attracted by the opportunities to learn new skills and gain experience. Both groups found dairy farm working conditions very hard, involving long hours, a seemingly endless stream of jobs, unpleasant climates, little free time, and working with complex farm systems and machinery.

<sup>62</sup> The gender ratio of Filipino visa holders is 831:896, or 93 per cent male.

<sup>63</sup> The limitations of these data sets, as noted by the authors, are that census data excludes many temporary workers as it excludes overseas visitors who live in New Zealand for less than 12 months, while Linked Employee-Employer Data does not record ethnicity or country of origin.

Some of the negative experiences of migrant dairy workers have attracted media interest recently, highlighting unlawful recruitment practices, the poor social integration of employees, and abusive employment relations (eg, Cropp, 2010). This suggests some issues in relation to vulnerability although there is limited research evidence concerning these issues. With four categories of dairying skills formally recognised in the Immediate Skill Shortage List from September 2010, the welfare of migrant dairy farming workers will require more attention from policy makers.

In response to the needs of migrant workers and to increase their awareness of living and working conditions in New Zealand, Immigration New Zealand has developed multilingual guides for migrant workers and employers in the dairy farm sector (INZ, 2012c, 2014d). With regard to employers, these guidelines provide information about the specific responsibilities employers have toward migrant staff as well as advice about how to make new arrivals feel more welcome, making clear that doing so can help to improve productivity. The migrant-focused information provides details about New Zealand employment law and employment rights and issues around safety and health in the workplace as well as information about New Zealand culture, the cost of living and English language information (including farming-specific jargon). The information available to both parties is an important step toward circumventing migrants' exposure to vulnerability or exploitation in the workplace. However, further research is needed to better understand migrant experiences in the dairy sector.

## ***Construction***

Overall, the construction industry has not been particularly reliant on immigrant labour in the New Zealand context (McLeod and Maré, 2013). Although there was a 290 per cent increase in the number of months worked by migrants from 2001 to 2005, the rate of increase slowed to 108 per cent from 2005 to 2009, and decreased 34 per cent from 2009 to 2011, which was the largest decline across all industries (see Table 18). The share of months worked by migrants was only 2 per cent in construction in the 2011 tax year (compared with 17 per cent for youth workers and 81 per cent for other New Zealanders) (see Table 19). That said, these official figures may be undercounting migrant participation as some migrant workers are undoubtedly employed in the industry's hidden economy (especially as unskilled, "cash-in-hand" labourers for residential building projects).

There are developments that might change the presence of temporary labour in this industry. The need for migrant participation in the construction industry is likely to increase as the Christchurch rebuild gains momentum and the increasing demand for housing in Auckland continues. In response to the needs of migrant workers and to increase their awareness of living and working conditions in New Zealand, Immigration New Zealand has developed multilingual guides for migrant workers and employers in the construction industry (INZ, 2013c, 2014c). This information includes details about employment rights and responsibilities, occupation safety and health, migrant visa categories, as well as information about the cultural specificities of the New Zealand labour market. The information is designed to make the transition to working life in New Zealand easier. Similar pamphlets are available for industry employers. This information outlines employers' options for employing migrant

workers, as well as important legal and socio-cultural factors to consider before recruiting migrant employees. The information informs employers about their rights and responsibilities, including information about relevant employment laws and health and safety issues. The information also includes a special section on the Christchurch rebuild, reinforcing health and safety issues and promoting a free job-matching service – the Canterbury Skills and Employment Hub.

The New Zealand construction industry includes commercial building, roading and network services as well as residential building. Certain construction-related occupations (eg, architect, electrical service technician, electrician, line mechanic, plumber, gasfitter and drain layer, cadastral surveyor, licensed building practitioner and engineer) require professional registration in New Zealand. Apart from re-registration, migrant workers can face challenges working with different materials, building methods and standards, occupational safety and health (OSH) regulations, and informal communication styles (INZ, 2013c). Further research is needed for a better understanding of migrant experiences in this sector.

Although not the case in New Zealand, some countries have a long tradition of employing migrant labour from lower-wage economies (eg, Malaysia, Singapore, Israel and Kuwait) to assist in the construction industry. Indeed, the construction industry worldwide has undergone a profound transformation as subcontracting and industry privatisation have increased the demand for (cheaper) migrant construction workers. Casual and temporary employment have become an industry norm and workers' protection has been eroded. Young native workers are being increasingly replaced by migrant workers without adequate protection and training. In 2004, the proportion of native-born workers who were working in construction in the USA was 7 per cent, while the proportion was 11 per cent for all foreign-born workers and 17 per cent for Hispanic foreign-born in the same industry (Gammage, 2008, p 139, Table 1). In 2010, an estimated 11 million illegal immigrants were residing in the US and approximately one-fifth worked in the construction industry, comprising around 14 per cent of all construction labour forces. In the Washington DC metropolitan region, the lower-skilled trades such as concrete, masonry, drywall, painting, flooring and roofing are largely performed by illegal immigrants (Passel, 2006).

The international literature highlights some of the issues of temporary migrant labour and construction. There is little information to suggest these same issues are to be found in the New Zealand construction industry, but there is also little relevant research. The growing presence of temporary migrants (particularly in Canterbury as part of the Christchurch rebuild) in this industry makes this an important area warranting further research.

## ***Manufacturing***

Manufacturing is another sector where migrant workers might find precarious employment. Internationally, sweatshops have re-emerged in developed countries with the use of cheap migrant labour. For example, more than 50,000 young migrant women from Bangladesh, China, the Philippines and Thailand were found working as prisoners, forced to work up to 15 hours a day, 7 days a week in the USA territory of Saipan. In America in 2003, the USA Department of Labour collected USA\$213 million in back wages for 342,000 migrant workers who were working in low-

wage industries, particularly garment manufacturing (USA Department of Labour, 2003, cited in ILO, 2010). The garment industry in the USA (particularly in New York)<sup>64</sup> is now dominated by Chinese migrants, and immigrant women are most likely to be working in the industry (Zhou and Nordquist, 1994).

Employment in the clothing industry does not always involve factory work; some, especially immigrant women working in developed countries, carry out piecework from home. Again, however, there is little evidence of labour market protection, with employees paid low wages for long hours and few applicable labour laws. For example, the outwork workforce in Australia largely comprises recently arrived immigrant women who are isolated and relatively powerless to protect themselves from exploitative work arrangements. It is estimated that up to 300,000 workers in the Australian clothing industry are migrant women (eg, *Sydney Telegraph Mirror*, 17 March 1995, cited in Hugo, 2000), a pattern that continues in the 21st century. Overall, piece-rate payment in the garment industry is often associated with poor safety standards and poor work methods. Garment outworkers reported over three times the number of injuries (overuse injuries) as their factory-based counterparts, a direct consequence of longer hours of work and short production deadlines (Johnstone, Mayhew, and Quinlan, 2005).

In the New Zealand context, there is no evidence to show that a significant immigrant workforce (including temporary migrant workers) has developed within the manufacturing industry. Although there has been a 185 per cent increase in the number of months worked by migrants in manufacturing from 2001 to 2005, the rate of the increase slowed to 62 per cent from 2005 to 2009, and decreased 25 per cent from 2009 to 2011 (see Table 18). The share of months worked by migrants was only 3 per cent in manufacturing in the 2011 tax year, while the share was 12 per cent for youth workers and 86 per cent for other New Zealanders (see Table 19) (McLeod and Maré, 2013). It is also possible that some migrant labour participation takes place in the hidden economy.

## **Services**

The services sector has become an important employer of foreign-born workers internationally in the past few years. In many developed countries, wholesale and retail trade, hotels and restaurants, health and social work, and building and household services (including commercial and residential cleaning) appear to be the most important sectors within this category (ILO, 2010). Since domestic care, health care and hospitality are discussed in separate sections, this section focuses on other areas of the services sector.

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<sup>64</sup> New York City's garment industry has been an immigrant trade since the early 1800s, employing German and Irish immigrants initially, followed by Polish and Russian Jews, Italians and Eastern European Jews. More recently (since the mid-1970s), these immigrants are being replaced by Chinese migrants (Zhou and Nordquist, 1994).

The 1994 New Zealand Workplace Survey shows that “community and personal services” was the fastest growing industry and had the most atypical labour force<sup>65</sup> (Anderson, Brosnan and Walsh, 1994). Although it is unlikely to still be the fastest growing sector, it remains an important industry to consider due to earlier evidence of worker vulnerability. For example, retail workers classed as permanent part-time workers were often treated as casual employees, with irregular rostered days and hours from week to week (McLaughlin and Rasmussen, 1998).<sup>66</sup> The extent to which the services sector has become a sector that is reliant on immigrant workers is unclear. The share of months worked by migrant workers in supermarket and grocery stores and packaging services had increased significantly from 2001 to 2005 (by 408 per cent and 432 per cent respectively) and from 2005 to 2009 (by 107 per cent and 456 per cent respectively), but this trend has slowed down from 2009 to 2011 (see Table 18). In the 2011 tax year, migrant workers represented a significant 23 per cent share of those working in packaging services (the only other industry with a similar share level was the established immigrant sector of agriculture and fishing support services, see Table 19). Migrant workers’ engagement in employment services ranked the second largest (13 per cent) within the service sectors.

There seems little empirical evidence regarding migrant workers’ experience in the service sector. A small number of pilot studies show how contract cleaning is often linked with informal economies through the use of false documentation. Since cleaning is often purchased as a service package rather than the labouring bodies of individual workers, the characteristics of subcontracted workers are not always stipulated. Cranford’s (2005) case study of janitors working in Los Angeles provides insights into the lives of these migrant workers. Most were undocumented immigrants who entered the industry in a highly precarious fashion. They had to accept “unpaid training” to secure a good recommendation for the position in the first instance. Once they were working, they faced dual exploitation of compressed work into shorter time-frames as well as reduced hourly rates. Many of the participants reported suffering from headaches, nervousness and stress due to the pace of work. Isolation as a result of the unsociable work hours was personally problematic but also made collective union action difficult.

An Australian study found that new contractors intensify the workloads and minimise the pay rates of their cleaners in order to maintain the small profit margins on commercial cleaning contracts. As a result, employees (often international students) had to do more work in less time, taking shortcuts that could potentially harm their health and safety. A recent Fair Work Ombudsman investigation

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<sup>65</sup> It had the smallest proportion of any sector in permanent full-time employment (less than half the labour force) and the largest proportion of its labour force in part-time permanent employment, in fixed-term employment and in casual employment (Anderson, Brosnan and Walsh, 1994).

<sup>66</sup> Larner’s (1991) study of Samoan women in New Zealand showed that Island-born Samoan women are much more likely to be production and related workers and service workers while their New Zealand counterparts are much more likely to be clerical workers. Although these findings are somewhat dated, they remain significant in their capacity to reflect the overall employment pattern for many Pacific migrant women.



into the cleaning industry in Victoria found that 44 per cent of audited employers were breaking workplace regulations (VTI and UV, 2012).

New Zealand data does not differentiate between commercial cleaning and the combined category of building cleaning, pest control and gardening services, so it is difficult to ascertain the significance of this industry for temporary migrants (or any migrants) in New Zealand (MBIE, 2013b). That said, the overall increase of this industry was 351 per cent from 2001 to 2005, and 14 per cent from 2009 to 2011 (see Table 18), and temporary migrants had a 9 per cent share of employment in this industry (more than double the temporary migrant share of the New Zealand workforce overall – 4 per cent) (see Table 19).

### ***Domestic care***

The demand for foreign domestic care workers has grown in OECD countries with rising female employment rates, changes in family structures, and an ageing population leading to higher dependency ratios. The world of domestic care is largely unregulated and informal resulting in the boundaries between work and leisure being ill-defined and, therefore, frequently violated. Even in countries where regulations are in place, domestic workers are often treated as a special category.

The International Labour Organization (ILO, 2007) has highlighted that domestic work is often the site of forced labour, child labour, abusive employment relationships and unfair working conditions across many countries. Major problems cited include long hours of work, heavy workloads, lack of privacy awarded to workers, low salaries, inadequate accommodation and food, job insecurity, absence of benefits, and exposure to violence and abuse.

Downward mobility is commonly found among migrant workers who work in domestic, health or aged care. Over 80 per cent of the Canada's Live-in Care Program caregivers are from the Philippines (PWC, 5 March 2002, cited in Rodriguez, 2009), and many are tertiary qualified.<sup>67</sup> The Live-in Care Program offers migrant women a pathway to residency and, ultimately, citizenship. Women recruited through the this programme are given temporary entry to live in with a family for 24 months and, during this time, are prohibited from applying for other forms of employment.

Turning to New Zealand, several factors have contributed to the trend toward 'importing' migrant domestic workers. These factors include the up-skilling of the national population, particularly women; the associated increase in women's employment; low fertility combined with an ageing population; the de-institutionalisation of care provision; and income differences between developed and developing countries (Callister, Tortell and Williams, 2009). The 2006 census shows 342 domestic housekeepers, 1,143 domestic cleaners and 2,702 nannies. Most (67 per cent, 74 per cent and 84 per cent respectively) were born in New Zealand, while a few were born in Asia (a traditional

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<sup>67</sup> An earlier study of Filipino women intending to emigrate as domestic servants also found that over one-third were tertiary educated (Stalker, 1994).

source country for such labour). However, there are limitations to census data in this context. In particular, undercounting due to a failure to account for 'under-the-table' work, temporary visa holders, illegalised migrants, and secondary job or multiple job holdings is likely. Burns (2005) estimated the number of home-based care workers to be between 18,000 and 20,000. A less direct measure of aged care-related domestic workers comes from the Ministry of Health; as of June 2008, about 60,000 older New Zealanders received home support services (Minister of Health, 2008).

### ***Health and aged care***

The global nursing workforce is highly mobile, and economic inequity and gender differences are factors in international nurse migration. Affluent countries such as the USA, Australia and Canada attract the majority of migrant healthcare staff but the reliance on overseas-trained health professionals is growing among all OECD countries. It is estimated that 11 per cent of employed nurses and 18 per cent of employed doctors were foreign-born in these countries, the main countries of origin being India and the Philippines (Dumont and Pascal, 2007). Developing countries such as the Philippines are training nurses with the intention of "exporting" to provide remittance income back home (Bach, 2003; Aiken et al, 2004). One estimate puts the total number of Philippine-exported nurses at 250,000 (Sison, 2002 cited in Kingma, 2006). Nurses from developing countries are primarily economic migrants who face particular vulnerability in host countries when compared with their colleagues who arrive from more-affluent countries for the purposes of adventure or mid-aged colleagues relocating for career development. Exploitation and the abuse of migrant nurses is well documented in overseas and international studies (eg, Allan and Larsen, 2003; Higginbottom, 2011; Hunt, 2007; Kingma, 2006; Nichols and Campbell, 2010; Omeri and Atkins, 2002; OECD, 2007). For example, in a UK setting, a study of the experiences of internationally recruited nurses found that those who were not directly involved in setting the terms for their employment, often reported feeling "manipulated and cheated", receiving poor receptions from their employers on arrival. The private sector was singled out as particularly problematic. These nurses reported feeling "isolated" and "stigmatised" due to language differences and being "bullied" and "policed". Some nurses reported various kinds of exploitation (eg, managers using them to cover undesirable shifts) and discrimination ranging from "crude racism" to concerns about "stereotyping" (Allan and Larsen, 2003, pp i-iv).

Only a small number of studies have been carried out in New Zealand. For example, Walker and Clendon (2012) carried out a large-scale representative survey of nurses who had joined the New Zealand Nurses Organisation within the last five years.<sup>68</sup> Some of the nurses raised concerns about recruitment processes. While those arriving from Britain (mostly recruited directly by district health boards) were satisfied with the recruitment process, those arriving from the Philippines (and

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<sup>68</sup> A subset of participants who identified as having been born and receiving their registration overseas was able to be analysed separately. Although some of these staff members will undoubtedly be permanent settlers, some will also be temporary migrants.

had typically used a recruitment agency) expressed concerns about excessive charges for services, including the international flights. Many reported that their specialised skill set and qualifications were unacknowledged and underutilised. More seriously, reports of racially charged discrimination were common, as was a less favourable workload and roster. This reflects patterns that are present in the international literature (see also Walker, 2008).

New Zealand has the highest proportion of migrant doctors and one of the highest for nurses in the OECD (Aiken et al, 2004; Zurn and Dumont, 2008). However, the overall proportion of New Zealand-born female healthcare professionals (including registered nurses, nurses and midwives, and doctors) dropped 10 per cent between 1991 and 2006. *Foreign-born* nurses made up 29 per cent of the New Zealand nursing workforce with *foreign-trained* nurses forming 24 per cent of the workforce in 2005/06 (Dumont and Pascal, 2007). Although neither “foreign-born” nor “foreign-trained” reveals the migration or citizenship status of these nurses, these figures are likely to correspond with a high presence of migrant nurses in the New Zealand health system. Nurses from the UK form the largest group of migrant nurses, followed by the Philippines. The proportion of international nursing students has also grown, from 1 per cent of total enrolments in 1995 to 7 per cent in 2006 (Badkar, Callister and Didham, 2008). The number of Chinese nursing students transitioning from student to work permits and then onto residence is also growing (Merwood, 2007).

The New Zealand healthcare system is increasingly reliant on migrant workers. Table 22 shows the change in number of health-carer applicants in skilled migrant and general work permits approved from 2002/03 to 2006/07. The number of caregivers has increased from just 50 in 2002/03 to over 900 in 2006/07, while the number of registered nurses has increased by half. There is a strong and steady increase in temporary migrant workers’ share of workload in residential care services during the decade leading to 2011 (McLeod and Maré, 2013). Migrants’ share (6 per cent) in this industry was very close to that of New Zealand youth (8 per cent) in the 2011 tax year, indicating an ageing New Zealand healthcare workforce (Table 19).

**Table 22: Temporary work applications by job title, 2002/03 to 2006/07**

NZSCO occupations	2002/03	2003/04	2004/05	2005/06	2006/07	+/-
Caregiver	50	189	257	527	901	1,702
Health assistant	11	20	33	47	98	791
Registered nurse	578	1352	1116	918	876	52

Source: Adapted from Table 1, Walker (2008, p 1).

Overall, the number of work permits issued to migrant nurses between 2003/04 and 2007/08 has also increased substantially (see Table 23). Of particular note is the substantive rise of male nurses working in the industry.

**Table 23: Number and change of work permits issued to migrant nurses, 2003/04 to 2007/08**

<b>Gender</b>	<b>2003/04</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>+/-</b>
<b>Female</b>	594	639	584	653	721	21
<b>Male</b>	73	86	101	126	178	144
<b>Total</b>	667	725	685	779	899	35

Source: Adapted from Table 4 in Badkar, Callister and Didham (2008, p 5).

Due to a mismatch between Immigration New Zealand data, census data, and Nursing Council of New Zealand data, the exact number of temporary migrant nurses is difficult to determine. However, Walker (2008) conducted an anonymous survey of (non-Pasifika) overseas-trained nurses for whom English was not their first language. Of 175 participants, 46 per cent were Filipino, 25 per cent identified as Indian, and European and African respondents represented 10 per cent each. This composition reflects the high proportions of Indians and Filipinos registering with the Nursing Council in 2007.

Concerns have been raised about the potential for abusive employment practices toward overseas-trained nurses in New Zealand (by a New Zealand Nurses Organisation representative) (Walker, 2008). Over 40 per cent of the respondents in the survey noted above arrived in New Zealand on a visitor visa, followed by student visas (about one-third) and work permits (over 10 per cent). About one-quarter of these respondents, mostly from the Philippines, used immigration agents to process their visa applications, and half of those who used an agent had to sign a bond or other legal documentation, often under duress, committing them to work for the agent for between six months and three years. Release from a contract involved a payment of, on average, NZ\$8,000. Although 136 out of the 175 respondents belonged to a union, fewer than half of those who indicated union membership were fully aware of the union's functions. Registration with the Nursing Council was identified as the biggest issue for migrant nurses. Language competency tests and accreditation of previous training (particularly for those from the Philippines) were the two main hurdles to registration. Although not an exploitative practice, the resulting underemployment could potentially leave new arrivals in vulnerable positions.

Echoing international findings, deskilling, dislocation, confinement to the aged care sector and disrupted career development are commonly cited challenges for migrants working in the health sector. A recent report by the Human Rights Commission (HRC, 2012) reveals that migrant carers often work with shorter contracts, more irregular hours (including broken shifts), for lower pay and lower classified functions than local-born carers. The same report refers to the union's claim that carers can sometimes be threatened with the withholding of their work permits in order for employers to gain compliance around working conditions. The binding of migrant health carers to one employer is restrictive, and overseas-trained nurses who are seeking registration and residency are particularly vulnerable to exploitation due to the fear of receiving a poor reference. There is also evidence of deception, abuse and racial discrimination (particularly toward Filipino nurses) in the healthcare sector in New Zealand (Manchester, 2005; O'Connor, 2005). Perceived racism, often

related to country of origin and ethnicity, occurs from both patients and colleagues (Walker and Clendon, 2012). This is also found in overseas research that suggests Filipino nurses are on the bottom rungs of a racialised work hierarchy whereby conditions of employment “vary by nationality”; nurses from non-traditional source countries are commonly placed on grades below their skill level or in “Cinderella” specialities on the basis of their skin colour (Ball, 2004).

Many migrants arrive in New Zealand without an accurate understanding of what is required to gain employment that is commensurate with their skills and qualifications. According to the informants in Walker’s (2008) study, most agents did not disclose the requirements of professional registration in New Zealand and misrepresented the living and working conditions. Many overseas-trained nurses failed registration and could work only as caregivers or care assistants for lower rates of pay. This is possibly reflected in the presence of “aged/disabled carer” and “personal care assistant” being among the top 20 occupations for work visa holders.

A UK study also shed some light on the deceptive use of overseas nurses in health care as a subtle form of exploitation: overseas-trained nurses are subject to a period of probation, adaptation or upgrading before registering with the Nursing and Midwifery Council. This period lasts between three and six months, during which time, these nurses are paid as care assistants. There are clear financial incentives for employers to delay registration, and, during this time, nurses are unable to complain (Anderson and Rogaly, 2005). The Service and Food Workers Union has raised concerns that the standard of aged care is being put at risk through low pay, limited training and high turnover (SFWU, 2007).

This section highlights the fact the healthcare system, including older adult care, is heavily reliant on immigrant workers, including temporary migrants. In many cases, there is little evidence of vulnerability, although there is research evidence that temporary migrant nurses are experiencing some vulnerability. The evidence for this is strong internationally, but there is also some limited evidence locally (mostly from a single study). This suggests there ought to be further investigation in relation to nursing overall but also the aged care sector specifically.

## ***Hospitality***

The hospitality industry is an important industry for migrant workers. Looking first at the international literature, the International Labour Office (ILO, 2010) reports that the hotel, catering and tourism industry employs a large number of low-skilled migrants and that many have irregular work status. For example, the percentage of foreign-born workers in this industry was around 30 per cent in Switzerland and Germany in 2005 (OECD, 2008). In 2004, the proportion of native-born workers in “eating, drinking and lodging services” in the USA was 6 per cent, while the proportion was 11 per cent for all foreign-born workers (Gammage, 2008, p 139, Table 1). In the UK, it is estimated that about 60 per cent of workers in the London hotel and restaurant industry were born

outside the UK (cited in Dyer, McDowell and Batnitzky, 2010).<sup>69</sup> The analysis of one hotel chain in London showed that less than one-tenth of their total staff of more than 3,000 workers was British-born (Dyer, McDowell and Batnitzky, 2010).<sup>70</sup>

Somewhat surprisingly, in New Zealand, there has been a sharp decline in temporary migrants' involvement in food and beverage services (by 20 per cent between 2009 and 2011) (McLeod and Maré, 2013). In absolute terms, migrant workers were employed for 42,000 fewer months. Despite such a decline, temporary migrant workers still represented 14 per cent of total workers employed in both accommodation, and food and beverage services (see Table 19), the third-highest share after the horticulture and agriculture industries and packaging services.

In Australia, the under-reporting of working hours, cash payments and the use of undeclared labour are common practices in this industry (eg, Rothengatter, 2005). The vulnerability of restaurant workers sometimes arises from their isolation. Long work hours at unsociable times result in little time to access support networks beyond the workplace. The sector is also not well unionised, and migrant workers are often fearful of reporting their working conditions to government authorities for fear of losing their job and subsequently being deported. Velayutham's (2013) study of Indian "457 visa" workers in Australia also showed that restaurant owners (especially those who are co-ethnics) are skilful at using "divide and rule" tactics with staff to ensure that a single unified voice among workers is never attained.

A UK study of a West London hotel shows that different contractual arrangements are negotiated with migrant workers to ensure the flexible use of labour (McDowell, Batnitzky, and Dyer, 2009). For example, room attendants are paid on a piece rate (ie, a standard amount for each room) and agency workers can be called in or laid off on a whim, depending on the occupancy rate of the hotel.<sup>71</sup> It was also common for the hotel to arrange with an overseas employment agency to recruit India-born young men as trainees. Entering the UK on student visas, they undertook an initial period at a hospitality training school, before being sent to hotels across the UK as management trainees on small stipends. At the end of their two-year traineeship, a small number were offered permanent positions while others had to seek alternative employment or return home.

There seems to be little policy-based research on migrant engagement in the hospitality sector in the New Zealand context, so little to suggest issues of vulnerability. However, material available in the media suggests the industry is becoming increasingly migrant-reliant, so the level of exploitation is

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<sup>69</sup> This estimation is taken from Greater London Authority (2005).

<sup>70</sup> The data does not differentiate foreign-born workers from British minority worker or workers with a migrant status.

<sup>71</sup> One earlier New Zealand study also shows that businesses that provide accommodation services have fewer guarantees of working hours and greater pressure for staff to be available to work on call (Whatman, Harvey, and Hill, 1999).

likely to increase. The Hospitality Standards Institute reports that the industry has experienced an unprecedented growth in recent years, with 20 per cent more people employed in the sector than five years ago. A 2007 survey showed that restaurants and bars had one in three workers born overseas, up from one-quarter of all workers in a similar study carried out in 2001 (*New Zealand Herald*, 2007).<sup>72</sup> In 2012, 230 of the 498 businesses (ie, 46 per cent) that obtained approval to bring in foreign workers were in the hospitality sector (*Nelson Mail*, 2012). Exploitative working conditions in the hospitality industry frequently receive media attention, and these allegations resonate with international findings. For example, an Auckland restaurant chain (recently under investigation by the Ministry of Business, Innovation and Employment) is said to be paying an “Indian salary” of \$265 a week for up to 70 hours’ work, not granting holiday pay or sick leave, charging their migrant staff between \$10,000 and \$20,000 to secure their jobs while obtaining residence, and keeping them in overcrowded accommodation for which money is deducted from their wages (Jones, 2013).

### ***Information technology***

Evidence shows that even highly skilled migrants (working in information technology (IT), for example) can become vulnerable in the workplace as the nature of employment in these spheres has become increasingly vulnerable across the globe. Biao’s (2007) ethnography of Indian labour systems in the global IT industry provides an illustration. “Body shopping” emerges as a solution to America’s reported labour shortage and the substantial laying off of IT workers. A group of “body shops” farms out workers, sometimes from overseas, to clients’ companies as project-based labour. On completion of a given project, they either place the workers with a different client or “bench” them, without pay, to await the next placement. Thus, labour is managed globally to serve volatile capital movement, and it is usually the workers who must bear the financial and social costs of this employer-driven flexibility. Although accurate estimates of the extent of this global business model are difficult to determine, Biao estimates that in 2000/01 there were over 1,000 such companies in the USA and hundreds in northern California alone, managing as many as 20,000 temporary Indian IT workers.<sup>73</sup>

Most of Biao’s Australia-based informants estimated that no fewer than 35 body shops were managing more than 1,000 Indian IT workers in Sydney in 2000. These workers were usually placed in the monotonous and low-paying “donkey work” of programming and software development. Although Australian state regulation stipulates against sponsoring the entry of foreign workers without confirming job openings and against not paying workers when work is unavailable, body shopping circumvents these laws through the “benching” practice. Biao highlights the racialised

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<sup>72</sup> The source of the survey was unspecified.

<sup>73</sup> Well over half of the H-1B visa holders in the USA are IT professionals (Biao, 2007).

aspect of this business practice as an “Indian” phenomenon, pointing to its contribution of unequal politico-economic power between developed and developing countries.<sup>74</sup>

This sector is also highly individualised, so workers are reluctant to share concerns over pay and working conditions and lack the capacity to form a united front. Benched workers have little bargaining power with their body-shop sponsors who stand to make considerable profit; a worker with fewer than three years’ experience must pay his or her agent a commission that can be as high as 50–60 per cent (before tax).<sup>75</sup> The fear of dismissal or losing sponsorship and facing subsequent deportation prevents workers from making complaints to the relevant authorities. According to Biao, threats to inform immigration authorities and to defame a worker’s reputation in the IT industry are tactics commonly used by body-shop owners. In addition, the informants in Biao’s study had invariably been informed that Australian law required them to stay with the same sponsors. Some had to surrender passports or degree certificates and most had to sign substandard “agreements” or “mutual understandings” to overwrite any formal contracts.

Velayutham’s (2013) three-year qualitative study on the experiences of Indian 457 IT professionals in Australia echoes Biao’s (2007) work. Much of the vulnerability of the employment of these IT professionals relates to the ambiguous triadic relationship between the labour hire firm, the employee and the day-to-day workplace environment determined by the contract or project-based employment. In one example, what was thought to be a long-term placement was cancelled after a few months and the worker consequently faced an unpaid period “on the bench” until he could be allocated work on another project. This has clear implications for career development. Most respondents reported horizontal movement from one company to another rather than vertical promotion within an organisation. The client companies viewed these workers as consultants, so had little interest in their professional development, and labour hire firms do not typically invest in staff development. ‘Passing the buck’ with regard to employment conditions, including settlement issues, was also commonly reported. Although it could be argued that this is a feature of contract or project-based work, Velayutham explained, the workers involved experienced these practices as exploitative and, as such, contributed to their workplace vulnerability. The workplace experiences of migrant IT professionals in New Zealand have not been well researched. It is uncertain to what extent the problems identified in Biao’s work applies in this country.

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<sup>74</sup> About three-quarters of all IT-related H-1B visa holders in the US in 1998/99 and foreign IT professionals in the UK in 2002 were India-born (INS, 2000; Clarke and Salt, 2003).

<sup>75</sup> One case that deserves special mention is the case of a client company paid a monthly “service fee” of AUS6,800 while the worker received just AUS1,200 (Biao, 2007, p 81).



## ***Fisheries***

The fishing industry in many developed countries is increasingly hiring migrant labour from underdeveloped and developing countries (Bloor and Sampson, 2009). In a global study, The International Commission on Shipping(2000) found widespread human rights abuse on foreign-crewed fishing vessels, including fraudulent documentation, exploitation, intimidation, coercion, blacklisting, inhumane working conditions, beatings, sexual assault and even murder. Likewise, the Environmental Justice Foundation (UK) concludes that this global industry is “home to some of the worst examples of abuse in the workplace” (EJF, 2010, p 6).

New Zealand government policy requires that crew on foreign charter vessels receive the same terms and conditions, receive the same protection from mistreatment and exploitation, and be paid the same remuneration rates as New Zealand crew. However, despite this, there have been numerous documented cases of foreign crew working on foreign charter vessels, under contract to New Zealand companies, suffering from various forms of exploitation and abuse (Minister of Immigration, 2006; Devlin, 2009; DoL, 2004a). Indeed, between 1994 and 2011, 551 deserters jumped ship in New Zealand waters (Stringer, Simmons and Coulston, 2011, Table 3). Although violation of OSH standards and human rights is commonly associated with illegal fishing vessels, violations also occur in foreign charter vessels that are fishing legally. In 2011, 27 foreign charter vessels were operating in New Zealand’s exclusive economic zone under charter arrangement with New Zealand companies. These vessels were usually staffed through ‘Manning’ agents, who typically target naive and marginalised individuals from the lowest socio-economic areas in developing countries. Labour and human rights abuses identified in Stringer, Simmons and Coulston’s report included substandard accommodation, inadequate food and water supply, inhumane working conditions, forced labour up to 24-hour shifts (fatigue was reported to be a common cause of accidents), lack of treatment for injuries, relentless verbal and physical abuse, sexual harassment, signing of two different contracts, underpayment and unlawful wage deductions. The industry is underpinned by a climate of fear and secrecy, encapsulated in one interviewee’s statement: “what happens at sea stays at sea” (Stringer, Simmons and Coulston, 2011, p 14).

## ***Summary***

Several industries in New Zealand have been reliant on migrant workers for some time while others have only recently become more reliant on migrant workers, especially those with a temporary work status. There are many reasons for this increasing reliance, including:

- cost (especially labour costs)
- the lack of local labour supply
- cultural factors (eg, the global growth in Filipino workers in the care industry as part of an internationalised labour force who are skilled in this work).

Temporary migrant workers often occupy the peripheral positions in a bifurcated workforce (they fill temporary, precarious and less well paid niches).<sup>76</sup> The demand for these workers – and the reliance of some industries – has grown considerably in recent decades. Horticulture, viticulture and dairy farming employ significantly greater numbers of temporary migrant workers now than they did a few decades ago. Some of this increase is a result of sponsored labour schemes (eg, RSE Scheme) while further growth is a result of unmet local demand (eg, dairy workers in Southland).

Unfortunately, the evidence base for understanding both the extent and the size of this workforce or the nature of employment is uneven. Here, we have interspersed international material (which is also uneven) with the relatively small amount of locally focused, industry-specific research. It does confirm that some industries are very immigrant-dependent, and there is potential for temporary migrant exploitation.

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<sup>76</sup> These jobs are sometimes described as 3D jobs – dirty, dangerous and difficult.

## 6. Temporary migrant employment and outcomes

Work is generally becoming more precarious across a range of jobs, sectors, countries, skill levels and income levels. Permanent jobs are often replaced by temporary contracts, and the standard employment relationship based on full-time, permanent work with a single employer is now less evident with distinctions between formal and informal work arrangements becoming increasingly blurred. The proliferation of precarious employment conditions in which work is unstable and insecure, offering limited rights, protections and benefits, and allowing limited autonomy, recourse, or control, is symptomatic of a global shift in the very nature of paid work (Goldring and Landolt, 2012).

International and local literature shows that migrant workers tend to be concentrated in the 'secondary' or 'peripheral' labour market and that these markets are often characterised by particular forms of employment relations and conditions, including business operation (subcontracting or self-employment). In some instances, this is characterised as non-standard work, which includes part-time or casual work, involving irregular hours, on-call or telework, with contracts that are often seasonal, temporary or held for fixed terms. Those who are employed on such a basis might have multiple job holdings or be self-employed, but undertake "home-work" or piecework, possibly in the "black" economy (Tucker, 2002, pp 16–17). However, the broad category of non-standard work is supplemented by particular work conditions that, while contributing to the precarious nature of contemporary work – and therefore worker vulnerability – are not easily or appropriately categorised as strictly 'non-standard'. An example is provided by 'employer-provided accommodation'. In the opening section on vulnerability, we, therefore, list a variety of issues, including the presence and nature of non-standard work.

While we recognise that many of these issues face national workers who are employed in precarious employment, including non-standard employment, these concerns can be exacerbated for migrant workers. In the following discussion, we examine the employment conditions that lead to particular vulnerabilities for temporary migrants. This includes noting the specific concerns associated with non-standard and subcontracting work as well as outlining the links between the working lives of migrants and temporary employment agencies, employer-arranged accommodation, the specific vulnerabilities this can produce and the coping strategies that some migrants develop in response.

### ***Vulnerability of employment***

Studies of vulnerability indicators generally focus on workplace issues including rates of pay, working hours, job security, working conditions, and occupational safety and health (OSH) (eg, Tucker, 2002; Jayaweera and Anderson, 2008). Tucker's (2002) framework of precarious work included the following dimensions: certainty of ongoing employment, degree of employee control, level of income and benefits, and degree of regulatory and union protection. Similarly, Goldring and Landolt (2012) used an eight-indicator Index of Precarious Work to measure the extent of precarity (or precariousness) of employment (see Table 24).

**Table 24: Index of precariousness of employment**

	Precarious	Non-precarious
<b>1 Unionisation</b>	Non-union	Unionised
<b>2 Contract type</b>	No contract; verbal contract, short-term contract	Written, long term
<b>3 Terms of employment</b>	Day labourer, home based, seasonal, temporary, casual, part-timer, hired through temp agency, unpaid family worker, self-employed	Full time
<b>4 Control or predictability of schedule</b>	Unable to plan schedule a week in advance	Can plan schedule a week in advance (always, usually or at least half of the time)
<b>5 Basis for pay</b>	Piecework, contract	Hourly wage or salary
<b>6 Benefits</b>	No deductions	Deductions from pay for benefits
<b>7 Place of work</b>	Employer's home, own home, multiple sites	Work premises, single location
<b>8 Forms payment</b>	Cash	Non-cash

Source: Adapted from Table 1 in Goldring and Landolt (2012, p 84).

An extreme form of precarious employment is forced labour. The International Labour Office stipulates six component elements to identify situations of forced labour (ILO, 2004):

- threats or actual physical harm to the worker
- restriction of movement and confinement to the workplace or to a limited area
- debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services
- withholding or expropriation of wages or excessive wage reductions
- retention of passports and identity documents
- threat of denunciation to the authorities, where the worker is in an irregular immigration status.

Other implications that result from the disempowerment of undocumented migrant labour include being denied the right to self-determination; being denied the right to medical treatment and social assistance; becoming 'stateless' and, hence, being persecuted in both the country of origin and destination country, and having children denied citizenship status. Instead of seeing varying forms of employment as discreet categories, some researchers prefer to define 'exploitation' as a continuum, with non-exploitative workplace practices at one end and forced labour at the other (Kagan et al, 2011; Skrivankova, 2010). Although it is unlikely that temporary migrant workers in New Zealand face all of the International Labour Organization's concerns noted above, there is evidence to suggest that

some of the issues noted occur in some industries or workplaces. Further research is warranted to establish the forms this takes. The following section addresses specific vulnerabilities faced by temporary migrant workers.

### **Non-standard employment**

Given the significance of non-standard forms of work in the contemporary New Zealand labour market, and the association between some forms of non-standard work and precariousness, it is important to explore the implications for temporary migrant workers. The international evidence for vulnerability and non-standard work in general is rather more compelling than anything that is available locally in terms of temporary migrants. This appears to be a gap in the local evidence base.

Migrants, both temporary and permanent, are often disproportionately employed in non-standard jobs including those that are temporary and/or precarious. In the UK, among those who registered in the Workers' Registration Scheme in the 12 months to June 2008, over half were in temporary employment, with agricultural workers showing an even higher proportion (74 per cent) (Sargeant and Tucker, 2009). In New Zealand, there is also an overlap in occupations in which a temporary workforce and migrant workers have a strong co-presence. The Survey of Working Life shows that in the first quarter of 2008, temporary workers were more likely to be found in service and sales, agriculture and fishery work, plant and machine operations and assembly, and in more elementary occupations, all of which are typical "immigration sectors" (Dixon, 2009, p 27).

Based on an extensive range of international and New Zealand literature, Tucker (2002) identified some policy concerns for those in "lower end" non-standard work.<sup>77</sup> Firstly, earning differentials for temporary workers are significantly lower than for those in standard employment. Secondly, temporary employees generally fare worse than standard employees in the negotiation of employment contracts and usually have lower awareness of wage conditions and holiday provisions. Thirdly, temporary workers are more exposed to physical work hazards, more likely to experience stress from job insecurity, and may be more difficult to reach to provide OSH services to compared with permanent workers.<sup>78</sup> Finally, temporary workers are less likely to receive external employer-supported training, in-house training courses and informal on-the-job training.

Similarly, the Department of Labour's (DoL, 2008b) report on the employment outcomes of temporary workers confirms that up to one-fifth of temporary workers were usually told of their days or times to be worked only one day in advance (sometimes even a matter of hours). It was also

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<sup>77</sup> Although Tucker's target group includes local workers, it could be argued that the observations apply equally and that the implications might be worse for temporary migrant workers because of their doubly precarious migrant status.

<sup>78</sup> Studies of recruitment agencies indicate a transferral of work-related risks to non-permanent employees and subcontractors.

found that in the March 2008 quarter the average hourly earnings of temporary employees were about 80 per cent that of permanent employees, that they have much lower participation rates in structured training than permanent workers, and that they are much less likely to be aware of their paid annual leave provisions and other statutory entitlements than permanent workers.

Generally, employers deploy a non-standard workforce to increase operational flexibility when faced with uncertain workflows and to reduce overtime and other costs of permanent employment. This puts casual staff in a position where they must negotiate weekly, if not daily, over the conditions of their employment, including the number of hours worked. Multiple job holdings often result as a coping strategy for underemployment, low wages and a lack of job security in the labour market (May et al, 2007). Some of these issues are discussed in greater detail in the following text.

### **Temporary employment agencies**

Employment agencies are often used to assist migrants to find suitable work. Indeed, in the West Midlands (UK) migrant worker survey, 38 per cent of A8 nationals<sup>79</sup> were shown to have obtained their current job through a recruitment or an employment agency. This figure increased to 68 per cent for A2 nationals (Jayaweera and Anderson, 2008). It was estimated that more than half the new jobs created in the UK in the second half of 2007 were for agency employees, and agency work is perhaps the most precarious and exploitative category (McDowell, Batnitzky, and Dyer, 2009). Such agencies present potential vulnerabilities for migrants. The fees charged for placing or reserving a job are often excessive, and there are many reports of various unspecified additional 'service fees' or 'administration charges'. These practices occur despite the fact the *Employment Agencies Act 1973* (UK) declares it illegal for agencies to charge workers for finding them employment. Yet such charges (often substantial sums between £50 and £100 for hospitality work), appear to be a common practice (Anderson and Rogaly, 2005).

The UK-based "gangmasters" is an example of an organisation that matches migrants with the labour market. Such an organisation often obtains contracts across several sectors, resulting in a forced flexibility for the migrant workforce on their books. In practice, this means migrants are expected to move between a range of industries such as agriculture, construction and hospitality. Workers employed through gangmasters or other labour hire firms can be fired for taking sick leave even though they are legal migrants (TUC, 2004).

The extent to which temporary recruitment agencies are involved in migrant recruitment and placement is not well researched in New Zealand. The Survey of Working Life<sup>80</sup> shows that about 5 per cent of all employees were employed on a casual basis, among which less than 1 per cent worked for a temporary employment agency. A quarter of the agency workers were employed in

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<sup>79</sup> Refer to footnote 7 for an explanation of "A8".

<sup>80</sup> This survey is a supplementary survey attached to the March 2008 quarterly Household Labour Force Survey.

clerical jobs, while the rest worked in jobs requiring a wide range of skills from professional to elementary (Dixon, 2009). There is evidence that some overseas employment agencies contribute to the vulnerability of some temporary migrant workers, especially in relation to the recruitment of nursing professionals and crews on foreign charter vessels (see relevant subsections in section V). This is an area worthy of future research.

### **Employer-arranged accommodation**

Some employment conditions leave migrants in a particularly vulnerable position. One such case is where employees live on-site, whether on land as domestic caregivers or farm workers or at sea as crew on ships. Living on-site in this way often results in excessive controls over working conditions, such as an expectation that employees work excessively long hours. Moreover, employer-provided accommodation is often reported to be overcrowded and charged to the worker at excessively high rates.

Critics of the Canadian Live-in Care Program single out the “live-in” requirement as the one biggest factor that renders workers vulnerable (eg, Santos, 2000). However, this is the one non-negotiable element of the programme because it underpins the programme’s fundamental rationale. Evidence suggests that live-in workers may find their right to personal privacy is denied and other (private) aspects of their lives come under the regulation of their employer or home-owner (eg, access to food, personal hygiene facilities and the telephone). Close proximity to, and the resultant dependence on, employers also creates potential for emotional abuse and physical violence to occur, including sexual assault. Moreover, the nature of the “live-in” arrangement also means workers who lose their jobs also lose their accommodation. When home is where work is, it makes it extremely difficult for these workers to resist exploitation and abuse by walking out of the “workplace”.

Focusing specifically on the domestic setting (eg, those who serve as live-in domestic labour), a large-scale survey of 687 Kalayaan<sup>81</sup> workers employed in the UK showed that while employed, 84 per cent had suffered psychological duress, 54 per cent had been locked up, 38 per cent had been beaten and 10 per cent had been sexually abused (Committee on Equal Opportunities for Women and Men, 2001). Women and the children of employers were frequently the perpetrators of physical abuses. Table 25 shows the vulnerabilities of domestic staff. However, Jayaweera and Anderson (2008) note that Kalayaan’s membership reflects a specific subset of domestic workers, that is, those entering the UK on domestic worker visas. Migrants on other visas, particularly those who might be working illegally in the sector, could be treated even worse.

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<sup>81</sup> “Kalayaan” means “freedom” in Tagalog (the national language of the Philippines). Kalayaan is an association of migrant domestic workers in the UK. Its membership was over 4,000 from 29 different countries at the time of the survey.

**Table 25: Indicators of vulnerability among migrant domestic workers registered with Kalayaan between 2006 and 2008**

Indicators of vulnerable employment	Proportion of workers affected (%)
Work $\geq$ 9 hours a day	95
Earn less than £500 per month*	84
Received physical assault	23
Received psychological abuse	66
Not allowed out	60
Not getting time off	66
Not getting regular food	35
Not getting meal breaks	59
Not having own bed	36

Note: Total sample size = 687 with missing values for particular variables taken out. \* £500 is approximately half of the expected monthly pay if a maximum 48-hour week at the minimum wage of £5.35 is considered.

Source: Table 4 in Jayaweera and Anderson (2008, p 42).

A similar pattern can be found in the USA. Over half the domestic workers interviewed by Human Rights Watch had their passport confiscated by their employer, as well as their personal phone calls monitored (HRW, 2001). In a survey conducted by a USA union and a non-profit research firm, it was found that almost half of all live-in domestic workers in New York City had been abused by their employers in the previous year (Domestic Workers United and DataCenter, 2006).

Apart from having workers living on their premises, employers or recruitment agents of migrant workers sometimes arrange accommodation to justify additional charges to workers who must pay excessive rental for cramped and substandard accommodation, directly deducted from their wage. If the accommodation is located some distance from the worksite, workers are also charged for the cost of arranged transportation between home and work (eg, Velayutham, 2013; Anderson and Rogaly, 2005; Jayaweera and Anderson, 2008).

The extent and nature of live-in work – or the implications – are unclear in New Zealand due to the lack of an evidence base. This is a matter for further research, especially as some industries such as dairying (see the previous section) or schemes such as the Recognised Seasonal Employer Scheme involve on-site accommodation. The question is whether the international literature signals issues that also occur in New Zealand.

## **Wages**

Migrants are legally protected with regard to their labour market engagement, and it is a crime for any employer to exploit a migrant worker. All workers in New Zealand, irrespective of the migrant status must be paid the minimum wage. There are currently three minimum wage rates: the adult minimum wage applies to all employees aged 16 and over who are not starting-out workers or



trainees, and all employees who are involved in supervising or training other employees (currently \$13.75 per hour); the starting-out wage applies to three tiers of workers who are just starting out in the workplace (\$11.00 per hour); and the training minimum wage applies to employees aged 20 years or over who are doing recognised industry training involving at least 60 credits a year as part of their employment agreement to become qualified (\$11.00 per hour) (MBIE, n.d.).

In the New Zealand context, over 40 of approximately 180 completed investigations of alleged breaches of employment standards involving migrants from July 2012 to May 2013 were found to be in violation of the *Minimum Wage Act 1983* (MBIE, 2013c). In addition, many migrant workers still face multiple burdens of outgoings that permanent employees do not. Four broad categories of deductions can be identified: agents' fees, including travel, visa and other documentation costs; initiation debt or loan and the interest accrued; accommodation and sometimes associated transportation costs; and other work-related costs such as uniforms (Anderson and Rogaly, 2005, p 42). The extent of unfair deduction is one of the areas neglected by New Zealand researchers on migrant workers.

Despite legal protections, receiving no payment, a delayed payment or an underpayment, being paid below the minimum wage, not being given wage slips, and not receiving statutory entitlements such as holiday and sick pay are frequently reported in research involving migrant workers. Based on a review of various labour force data sets, Jayaweera and Anderson (2008) conclude that younger migrants, A8 and A2 nationals, those with lower levels of English language proficiency, women, and those who work in more "migrant dense" sectors (eg, hospitality, agriculture and construction) are more likely to be paid below the minimum wage in the UK. Other researchers observed that the project-based cyclical nature of construction work combined with a casual workforce make non-payment of wages endemic in the UK (Anderson and Rogaly, 2005).

Underpayment and overwork often go hand-in-hand. For example, some gangmasters may offer a secure payment of a fixed sum (eg, £150 per week). Migrant workers are willing to accept package deals such as these for their stability, even though it corresponds to extremely poor hourly rates (Anderson and Rogaly, 2005). Some researchers observed that earnings can take more than 10 years to increase for male migrant workers in the USA (Anda and Bachmeier, 2008).

## **Hours of work**

Employment law in New Zealand provides protection to workers with regard to the number of successive hours that can be worked without breaks, and employers are required to provide employees with paid rest breaks and unpaid meal breaks. Employees are entitled to: one paid 10-minute rest break if their work period is between two and four hours; one paid 10-minute rest break and one unpaid 30-minute meal break if their work period is between four and six hours; and two paid 10-minute rest breaks and one unpaid 30-minute meal break if their work period is between six and eight hours. If an employee works longer than an eight-hour period, these requirements automatically extend to cover the additional hours. In addition, at the end of each year of employment, an employee is entitled to four weeks' paid annual leave. Where employees leave before completing a full year, annual holiday pay is calculated at 8 per cent of the employees' gross

earnings, less any holiday pay already received. There are also 11 public holidays each year, and, if the employee would ordinarily work on this day, the employer must pay workers their relevant daily (or average daily) pay.

Temporary migrants often tend to maximise their earnings by working longer hours or holding multiple jobs. Recent migrants are significantly more likely to work non-standard hours (eg, fewer than 30 hours or more than 48 hours). However, data on hours worked needs to be interpreted with caution as working excessive hours could be evidence of exploitation; but, it could equally be a result of personal choice. In the 2007 Labour Force Survey (UK), nearly one-fifth of A8 recent migrants who worked in temporary employment worked fewer than 31 hours, compared to one-tenth of those in permanent work. Recent migrants were also more likely than the total sample to do shift work (24 per cent compared with 14 per cent), to always do nightshifts (12 per cent compared with 9 per cent), and to usually work on Saturdays (33 per cent compared with 27 per cent) and Sundays (24 per cent compared with 18 per cent)<sup>82</sup> (Jayaweera and Anderson, 2008). Clearly Identified areas of vulnerability in relation to working hours were excessive hours, problems getting time off or receiving holiday pay entitlements, the number of hours available for work each week being limited, insufficient breaks at work, the number of days holiday entitlement, and being given time off or required to work additional hours without notice (Jayaweera and Anderson, 2008).

With regard to farming, long arduous working conditions have been a disincentive for locally born workers, resulting in an increasing reliance on migrant workers in some sectors (eg, dairying). Surveys of Canadian Seasonal Agricultural Worker Program workers found that 10-hour days, 6½ days per week were not uncommon, with peak seasons calling for even longer hours (Fairey et al, 2008). In New Zealand, a sample audit of RSE workers by the Department of Labour showed that average weekly hours worked ranged from 36 to 57 hours (DoL, 2008a). It seems dairy farmers in general work particularly long hours: 40 per cent of employees, 45 per cent of employers and 49 per cent of self-employed dairy farm workers report working over 60 hours per week (compared with 10 per cent of the overall New Zealand working population) (Wilson and Tipples, 2008).<sup>83</sup> Indeed, working days of 12–16 hours and rosters of 11 days on and 3 days off or 12 on and 4 off appear to be common for farm staff (Tipples, Trafford and Callister, 2010, p 6). Given the growing presence of migrant workers in dairying, work conditions – in this case in relation to the hours worked – deserves some attention. Again, however, these figures should be treated with caution. Although they paint a picture of relative hardship, farming is seasonal with peaks and troughs with regard to labour requirements. These longer work hours during the busiest seasons could possibly be balanced by quieter off-season periods.

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<sup>82</sup> They were also least likely to receive paid holidays (3 per cent compared with 5 per cent) and be a member of a trade union (12 per cent compared with 25 per cent).

<sup>83</sup> Unfortunately, the study did not provide details about the research sample. Consequently, it is difficult to ascertain if this reflects a pattern in dairy farming in New Zealand.

In Velayutham's (2013) Australian study, manufacturing and construction workers reported that they had to work nine hours on-site, before travelling for one hour back to the factory where they were expected to work several more hours. Restaurant workers taking part in the same study typically worked a minimum of 15 hours a day, 7 days a week. In addition to the stresses of working such long hours, this is also potentially problematic for international students working in the industry who must limit their hours of work in line with their visa entitlements.

There appears to be no specific New Zealand-focused research on exploitative practices around hours worked by temporary migrant workers. Further research on this area could examine the extent to which migrants receive appropriate holiday and sick pay entitlements as well as the extent to which they receive their legal entitlements to breaks.

### **Job (in)security**

Certainly, some temporary migrant workers might be willing to accept poor working conditions because they are superior to the conditions in their home country or because they need to send remittances home, for example. However, migrant workers, especially those who are non-native speakers, living in isolation or living on an employer's premises, with a precarious (temporary) migrant status, are often not aware of their rights as employees, nor are they willing to seek assistance or support. Indeed, there are few channels through which they can seek external and independent help. These workers live in close proximity to their employers, are often dependent on their employers, and can face the threat of dismissal or deportation. In a New Zealand example, 39 crew from two shipping vessels that were accused of breaching the code of practice with regard to employment relations, pursued their entitlements for weeks in New Zealand. In the end, however, all but six crew returned home empty-handed (Stringer et al, 2011). There are also reported cases in which workers of the Canadian Seasonal Agricultural Worker Program seeking access to statutory collective bargaining had their employment terminated by their employers, ultimately resulting in their deportation (Sargeant and Tucker, 2009). In an Australian setting, Velayutham (2013) records a case in which an Indian worker's 457 visa was cancelled by his employer while he was on a business assignment in his home country. He had not been paid throughout the duration of his employment. The Department of Immigration investigated the case but took the employer's word at face value and other workers were pressured to support the employer's version of events. With no resources at his disposal, the migrant worker returned to India and a situation of poverty (see the case study of Mr Lal in Velayutham, 2013, pp 353–354).

As a generalisation, migrant workers, especially temporary migrant workers, are easier than their national counterparts to hire and fire at will; immigrants fare worse when economic times are tough and are more sensitive to cyclical economic conditions (Orrenius and Zavodny, 2009). An American study on the effect of the 2007–2009 recession confirms these hypotheses by showing that job losses for foreign-born non-citizens were nearly three times the national average. While they accounted for

less than 10 per cent of employed workers in 2007, they constituted 26 per cent of the total number of jobs lost (Cushing, 2011).<sup>84</sup> The same study also showed that the effects of the recession vary between industries and groups. Nearly two-thirds of job losses were in construction and manufacturing, while “recession-proof” sectors had net job gains. In other words, job losses were more likely to occur in industries that had significant numbers of migrant workers. Moreover, even within the construction industry, the USA-born “White” lost 313,174 fewer jobs than predicted, while foreign-born non-citizens lost 405,397 more jobs than predicted and they secured “less-than-the-expected” number of jobs in all industries except in agriculture and public administration sectors (Cushing, 2011, pp 133–135). Other researchers suggest that, apart from job losses, work intensification and increased levels of exploitation are two other consequences of the recession for those temporary migrants in insecure jobs (Rogers et al, 2009).

The increasing rates of subcontracting also mean those employers can avoid the difficulties and risks associated with firing staff members by simply failing to renew employment contracts of poor performers. The risk of a personal grievance complaint following such an incident is much lower because ‘letting a contract go’ does not amount to a ‘dismissal’. Dismissal without notice and fear of dismissal due to pregnancy or illness were prominently reported in some studies (Jayaweera and Anderson, 2008).<sup>85</sup>

Somewhat paradoxically, the increased enforcement of regulations governing migrants’ employment can make employment conditions even more precarious and less secure for those migrants with an irregular work status due to employers’ concerns that they might be fined for employing unauthorised labour.

It is interesting to note that many migrant workers appear to accept their unstable employment conditions and potentially exploitative environments, but employ other coping strategies to mitigate the emotional strain. This includes amusing themselves with games and jokes, defiance and small transgressions in the workplace designed to demonstrate their hidden power (Prochazkova, 2012), using technology (eg, the telephone or internet), kinship or friendship, employers’ networks and churches, and non-governmental organisations (Lutz, 2005), and intense transnational communication and gift-giving practices (Fresnoza-Flot, 2009). Clearly, these strategies fail to change the circumstances of employment. However, they do alleviate some of the associated emotional strain.

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<sup>84</sup> The other comparison groups were White, Black, Hispanic, Others, and Foreign-born citizens.

<sup>85</sup> Certain host countries require migrant women workers to undergo periodic pregnancy testing and will terminate their employment and deport them if the result is positive. This practice is in clear contravention of the International Labour Organization’s Maternity Protection Convention (2000, No 183).

## **Contracts**

As temporary employees, temporary migrant workers are often not aware of or not offered some of the routine conditions of employment that other employees receive. One example is the nature of their employment contract or, indeed, whether they are offered an employment contract, written statement of the job requirements or a formal job description. In a Trade Union Centre survey of Polish workers in the UK, one-quarter reported that they did not have a written contract (Jayaweera and Anderson, 2008).

Contract substitution is one practice in migrant employment whereby migrant workers are given a new contract specifying lower pay and reduced conditions of work on arrival in the receiving country, often despite having signed a legal contract before departure. Such practices are widely reported by migrant nurses (Kingma, 2006), foreign crews (Stringer, Simmons and Coulston 2011), A8 nationals in the UK (Anderson and Rogaly, 2005), and 457 visa holders in Australia (eg, Velayutham, 2013). For example, Indian restaurant workers on 457 visas reported that they signed one contract in India before departure and another on arrival in Australia. Despite less-favourable terms, they had little choice but to sign (Velayutham, 2013).

Migrant fishing crews interviewed by Stringer and her colleagues (2011) also claimed they signed two different employment contracts: one for the Indonesian manning agent and the other for the New Zealand chartered company. The Indonesian contract allowed crew members to receive only a monthly salary between USA\$230 and USA\$500, depending on their position and level of experience. This level of remuneration is well below what they are entitled to under the New Zealand minimum wage.

## ***Subcontracting and self-employment***

The growth of subcontracting and self-employment in recent decades – and the association with temporary migrants – is an important issue globally, especially (but not only) in OECD economies. There are some central questions, including the use of temporary (migrant) labour in contracting and the role of self-employment as a forced option when work cannot be obtained in the labour market.

In a UK setting, the twin processes of privatisation and subcontracting dating back to the Thatcher Government have radically changed the employment conditions of low-paid workers (McDowell, Batnitzky and Dyer, 2009). The construction industry experienced the development of a secondary labour market to cope with the fluctuating workload, known as “labour-only subcontracting”. Construction workers are hired as though they are fully independent self-employed workers or through intermediaries who are often construction workers themselves. Growth in subcontracting, long subcontracting chains (contractors hiring subcontractors who, in turn, hire subcontractors) and the shift towards greater use of labour-only subcontracting has led to a more fragmented industry.

In other sectors, many in-house services such as catering, security and cleaning have also been ‘contracted out’. The subcontracting chain in cleaning is relatively short, however, while those in agriculture and construction may be longer. As the chain lengthens, so too does the scope for

informal and exploitative labour market practices to emerge (Anderson and Rogaly, 2005) as staff who were previously employed directly are now dependent on an intermediary who holds the contract (a contract in which they have no negotiating power). A further (but related) concern with a long subcontracting chain is the confusion of employment relations: who is the 'real' employer, and where does responsibility lie with regard to employment conditions, occupation safety and health provisions, and training and skill development? These are areas requiring concentrated research in a New Zealand context.

In the 1990s, there was a global-wide switch from plantation or farm-bound workers to seasonal workers supplied by labour contractors in the agricultural industry. Such restructuring put downwards pressure on working conditions for all farm workers, particularly migrant workers. The contractors were often under extreme competitive pressure to keep wages low, resulting in a move to source the most vulnerable workers, operate without written contracts, and operate in areas with few labour inspectors. The potential exploitation of migrants working under these conditions has been noted with the International Labour Organization (ILO, 2003, p 58) concluding that "deficits in social protection for waged agricultural workers are further exacerbated through the practice of labour contracting, where abusive systems are contributing to the erosion of rights and protection".

Cranford's (2005) case study of janitors in Los Angeles illustrates the same point. Firms in competitive industries, where labour is a high proportion of total costs, externalise employment relations by subcontracting recruitment, training and management functions, usually to immigrant communities. Cleaning, garment and agriculture are the most common examples of decentralised industries. Such decentralisation leads to de-unionisation of the industry. Employers benefit from this industrial restructuring without risking the legal consequences of taking on undocumented workers through network recruitment.

The New Zealand picture reflects this global pattern. Since the 1980s and 1990s, there has been a general trend in re-categorising full-time, permanent workers as 'subcontractors'. Part 6A of the *Employment Relations Act 2000* prevents low-paid workers from having their pay and conditions reduced for the same job or being replaced by cheaper contractors. However, an exemption was granted to cleaning, catering, and orderly and laundry small businesses from having to adhere to these 'vulnerable worker provisions', an exemption granted in accordance with industry and business size. New Zealand employers are opting for contracting arrangements through two means, by contracting out to existing suppliers and by converting employees into contractors. The advantages include the transfer of risk and liability to workers and the avoidance of dismissal complexities (Greene, 2000).

It should be noted that commentators often differentiate between independent self-employed contractors and dependent self-employed contractors. The former are likely to be white, male and educated and do not suffer an earnings penalty (and may, in fact, experience an earnings premium). In contrast, the latter are largely dependent on one employer or one income source. Their occupation of the grey area between employees and independent contractors leaves them clearly disadvantaged.

A case study of the forestry industry in New Zealand further highlights the problematic nature of ‘contract’ work. Research found that the majority of existing contractors were told by independent market-driven forestry companies to establish contract businesses and were subsequently “thrown in the deep end” (Forme Consulting Group, 2001). These major contractors become ultimately responsible for new entrants into the industry, including migrants. However, while they might be good foresters, not all of them possess the skills and expertise or the knowledge of relevant employment laws to make them suitable managers or employers. The Labour Inspectorate’s investigation of about 180 complaints involving migrant workers suggests exploitation is more prevalent with business models that extensively involve labour subcontracting (MBIE, 2013c). These profit-driven subcontracting models may also lead to poor working practices, potentially putting workers’ lives at risk.<sup>86</sup>

Self-employment reflects – and generates – a different set of issues. Although self-employment is not the focus of this review, it is worth considering some of the implications. Self-employment is sometimes undertaken by migrant workers as the only alternative to unemployment or underemployment. However, self-employment can result in ‘self-exploitation’ through a loss of employment rights and social rights (Harvey, 2001). Self-exploitation can also extend to the exploitation of other family members as they are expected to work for little or no remuneration; small family businesses often rely on the unpaid labour of family members to attain smooth operation and profitability. Hidden as ‘undocumented workers’, spouses (often wives) and children (many of whom are minors) bear their share of the workload and the associated risks (eg, Dana and Dana, 2003; Min and Bozogmehr, 2003; Cain and Spoonley, 2013; Yuan, Cain and Spoonley, 2013; Meares et al, 2010a, 2010b).

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

Considerable work has been carried out on the occupation safety and health issues concerning migrant workers generally. Recognising the increasing mobility of workers and its demographic impact, the European Agency for Health and Safety at Work (Vartia-Väänänen, 2007) provided an overview of the most pressing issues relating to the OSH of migrant workers. The report of European Union member states drew attention to the fact the working conditions of migrant workers are often more physically demanding and monotonous than those for locally born workers, the working hours are longer, the wages are lower, and migrant workers are more likely to do more shift work, and, perhaps as a result, immigrants’ jobs often entail higher risks resulting in more occupational accidents. Undeclared workers faced particularly difficult workplace exploitation overall such as poor working conditions, under-reported occupational accidents and a general lack of awareness of their rights, yet, they were not easily studied (Vartia-Väänänen, 2007).

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<sup>86</sup> In 2013, ten forestry workers died while on the job leading to a call for an independent inquiry into the industry’s working practices and immediate interim regulation of the industry (Waikato Times, 2013).

There are mixed findings with regard to the association between migrant status and the risks of workplace injuries. Occupation, education level, age, work experience, gender, cultural perception, shift work, union membership, risk appetite, duration of residence and language proficiency can all influence health and safety at work. Moreover, the “healthy immigrant” effect can complicate the OSH picture in many host countries. Immigrants tend to be positively selected in terms of health attributes when they migrate, so are less likely (than ‘natives’) to become disabled or suffer serious workplace injury, despite greater exposure to risks at work (Antecol and Bedard, 2006). However, a German study suggests skilled immigrants may face a heightened risk of workplace accidents if they experience occupational downgrading or start their own business or are not accustomed to manual labour (Orrenius and Zavodny, 2012). Loh and Richardson (2004) report that the work-related fatality rate was 33 per cent higher among immigrants than among the general workforce between 1996 and 2001 in the USA, and Hao (2008) found that immigrants had a 32 per cent greater risk of non-fatal workplace injuries than those who were born locally (based on surveys over the same period). Similarly, but in a European setting, immigrants have a 34 per cent higher workplace fatality rate and a 13 per cent higher workplace injury rate than Spanish natives (cited in Orrenius and Zavodny, 2012). That said, research also shows that occupational risk generally declines as migrant workers’ perceptions of risk become more accurate over time and as the years since migration increase (eg, Wu et al, 1997; Hao, 2008; Orrenius and Zavodny, 2012). This indicates that both employers and employees play an important role with respect to workplace safety.

A UK study identifies that small businesses, the distribution and hospitality sectors, single-site operations, new operations in the private sector, and non-union workplaces are most likely to provide poor OSH provisions (Hillage, et al, 2000). There is also growing evidence that undocumented work arrangements result in higher rates of injury and illness and contribute to higher levels of work-related stress within the same labour market (ASIA-OSH, 2012, cited in Anderson et al, 2012). These concerns are further accentuated when national safety and health legislation and enforcement agencies do not extend their oversight and support services to informal and rural sectors (ASIA-OSH, 2012, cited in Anderson et al, 2012).

Following research in Canada and the UK, Sargeant and Tucker (2009) provide a four-layered model of migrant labour’s vulnerability with regard to OSH (see Table 26).



**Table 26: Layers of factors in understanding occupational safety and health well-being of migrant workers**

<b>Layer 1</b>	<b>Receiving country factors</b>	Socio-economic conditions, nature of employment, industry characteristics, robust databases, access to collective representation, access to regulatory protection, extent of social exclusion or isolation, union presence, protection schemes for migrant workers, community outreach, urban compared with rural location
<b>Layer 2</b>	<b>Migration factors</b>	Migration security, visa or non-visa status, role of recruitment agents and employers, duration and conditions of right to remain, formal entitlement to legal protection
<b>Layer 3</b>	<b>Migrant worker factors</b>	Socio-economic conditions in the home country, reasons for migration, education and skills levels, language skills, opportunity cost of giving up jobs, ability to send remittances, limited labour market opportunities and mobility
<b>Layer 4</b>	<b>Occupational safety and health (OSH) factors</b>	Management commitment to OSH and staff well-being, level of compliance, effective OSH management systems, OSH worker representatives, level of training, level of effort made to educate migrant groups in their first languages

Source: Adapted from Lamm (n.d.); Lamm et al, (n.d.); Sargeant and Tucker (2009).

Certain industries have particular OSH concerns, but the industries that migrant workers are concentrated in are often highly hazardous. For example, horticultural and agricultural workers face high exposure to dangerous elements such as pesticides, chemicals and machinery equipment as well as other risks such as heat exhaustion and heat stroke. The International Labour Organization estimates that 170,000 out of the 335,000 fatal workplace accidents each year worldwide involve agricultural workers. Between 1990 and 1995, agricultural workers in the USA made up 3 per cent of the workforce but suffered 7.4 per cent of work-related deaths (Forastieri, 2000). The UK's Health and Safety Executive reports that agriculture has the highest rate of fatal injuries of all sectors and that the physically demanding and repetitive nature of the work causes a range of health problems, including severe back pain (Anderson and Rogaly, 2005).

Similar patterns are found in New Zealand. The primary sector has the highest recorded level of occupational injuries and fatalities in New Zealand, with agriculture and fishery workers the occupation group with the highest incidence rate.<sup>87</sup> The forestry industry has also been under scrutiny recently with the death of two forestry workers in a single week. Likewise, the accident rate in dairying is the third worst in terms of injuries per person employed, with 25–50 per cent of workplace deaths occurring “on farm” (*Dairy InSight*, 2007, pp 2–3, cited in Wilson and Tipples,

<sup>87</sup> The work-related injury claim rate for this sector was 241 claims per 1,000 full-time equivalent employees in 2011 (SNZ, 2011).

2008). The OSH compliance of RSE schemes is also not promising. Between 60 and 100 injuries (out of about 6,000 RSE workers) have occurred, in part because workers transfer poor OSH practices from home countries to New Zealand (cited in Lamm et al, n.d.). Table 27 lists the four occupation groups with higher-than-average injury claim rates. Given the presence of immigrant workers (including temporary migrant workers) in these industries, and evidence of higher injury rates overall, concentrated research is warranted.

**Table 27: Injury claim rates for four top occupation groups, 2012**

Occupation group	Work-related injury claim rate per 1,000 full-time equivalent staff
Agriculture and fisheries workers	250 (approx)
Trades workers	185
Workers in elementary occupations (eg, labourers, cleaners)	158
Plant and machine operators and assemblers	153
Average claim rate	93

Source: SNZ (2013).

There are other sectors that involve temporary migrant workers and which have work-related accident and injury rates that are of concern. Construction, for example, is another dangerous sector, with two to four times the average frequency of fatal accidents (ILO, 2010). In the UK, 71 construction workers died and 4,098 suffered a major injury in 2002/03. The link between risk of accident and lack of worker protection is exacerbated when subcontracting is extensively used.

Certain groups of workers are more likely to be injured at work. For example, fatality rates were reportedly as high as 40 per cent among Mexican immigrants in the USA (Mexicans account for about 30 per cent of USA immigrants) during 1996–2000 (Loh and Richardson, 2004) and foreign-born Hispanic workers had higher fatality rates than both Hispanic and non-Hispanic native-born workers (Richardson, Ruser, and Suarez, 2003). Non-native speakers of English also tend to have higher work-related mortality rates than English-speaking immigrants in Australia, particularly in the first few years after arrival (Corvalan, Driscoll, and Harrison, 1994).

In New Zealand, Pacific people have a higher rate of injury claims (111 claims per 1,000 full-time equivalents) than Māori (90), European/Pākehā (87) and Asian (55) workers (SNZ, 2013). The highest number of accident compensation claims lodged by Pacific people comes from those involved in the manufacturing sector. This reflects a high concentration of Pacific workers in the manufacturing industry<sup>88</sup> as well as a higher risk for this migrant group. Although the data does not differentiate between temporary migrants and permanent migrants and many of the Pacific workers in

<sup>88</sup> In 2010, about one-fifth of the Pacific workforce were employed in the manufacturing industry (DoL, 2012).

New Zealand are long-term settlers or even second generation, it still provides useful baseline information on the relationship between workplace health and safety and migrant workers. The injury reporting rates of Pacific workers has been almost twice those of non-Pacific people although New Zealand Europeans/Pākehā are over-represented in the number of fatalities reported (Accident Compensation Corporation data sets, cited in DoL, 2012). Pacific workers are generally reluctant to report minor injuries, let alone 'near misses',<sup>89</sup> have less access to training, and do not fully understand health and safety messages in the workplace. These issues stem from training styles, learning preferences, language barriers, poor literacy and feelings of disempowerment as well as formal social structures within ethnic groups. Unions have an important role to play in this regard and their presence in the workforce has a two-fold influence on OSH: being a vehicle of information dissemination and promoting safer workplace practices from employers.

Migrants may appear to be 'willing' to engage in dangerous practices, or they may not refuse a dangerous work assignment for which they have not been trained. When injured or ill, they are often extremely reluctant to take time off to avoid losing wages or due to a fear of retaliation. Moreover, employers may actively discourage workers because of concerns about accident compensation premium increases. One Canadian study revealed that only 1 of 20 Seasonal Agricultural Worker Program workers who reported work injuries had received workers' compensation; only 3 were paid by their employers for missed days while 4 took unpaid days off; and 5 were sent back to Mexico because they were no longer fit to work (Basok, 2002).

This section on workplace occupation safety and health cannot be complete without some discussion of workplace bullying and harassment. Racial bullying is found to be common in the UK. Employees from ethnic minority groups including African, Caribbean, Asian (not including Chinese) and Indian, reported being bullied more often than native employees. In one study, one-quarter of the ethnic minority workers (double the proportion for those who were locally born), believed they were bullied in the workplace. Nearly 90 per cent of ethnic minority workers thought people in their organisation were treated unfairly because of their race, with nearly 60 per cent of their native colleagues also suggesting this to be the case. Racial discrimination, particularly when combined with gender discrimination, was identified as having a strong influence on work stress (Gonzalez and Irastorza, 2007). Evidence of workplace bullying and discrimination has been identified in the New Zealand setting (see McIntyre, 2008; Gardner et al, 2013). However, there is little consistency with regard to the conditions under which this might arise. Consequently, this is an area that warrants further research.

### ***Work-life balance***

Attaining a healthy work-life balance is difficult for many immigrant workers, including temporary migrant workers, because they seek to obtain and retain employment in a new and often very

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<sup>89</sup> A 'near miss' is an incident, accident or emergency that could have caused injury, but did not.

different labour market setting. Precarious employment, often interrelated with precarious migrant status, is often reported to be a continual source of anxiety and pressure. A study of Asian immigrants in New Zealand provides important insights into how work experiences can affect family well-being (Sobrun-Maharaj, Rossen and Kim, 2011). On the one hand, Southeast Asian migrants found that irregular and flexible work hours enabled them to work around their children's needs. On the other hand, many found that downward mobility and working multiple jobs or irregular hours (including shift work) disrupted familial work-life balance. A lack of extended family support in New Zealand sometimes exacerbated the problem.

The literature on the effects of vulnerable work on migrant families can typically be divided along gendered lines. The change of work-based gender dynamics often has negative outcomes for male 'heads' of households. Based on a comparison study of immigrant fathers in the USA, Anda and Bachmeier (2008) concluded that most underemployed immigrant fathers performed less favourably than native-born fathers with regard to the quality of their familial interactions. This was attributed by the authors to the consequences of underemployment and, more particularly, to the stresses of economic hardship. Research with Mexican and Polynesian migrant families came to a similar conclusion (eg, Hugo, 2000; Sobrun-Maharaj, Rosseh and Kim, 2011). When wives find paid employment more quickly than their male partners or find 'better' work, the traditional male role of man as primary breadwinner is challenged.

### ***Co-ethnic networks***

A final aspect of temporary migrant vulnerability we wish to consider is the extent to which reliance on co-ethnic networks contributes to or protects from exploitation in the workplace. It is common when people are considering migration to follow family members to a chosen destination, and these kin networks can provide pathways to employment. There is considerable research that points to the advantages of co-ethnic networks for employers who can benefit from a shared language and culture between managers and owners, workers, suppliers and customers (eg, Cain and Spoonley, 2013; Meares, Cain and Spoonley, 2011). There is also evidence that workers benefit from co-ethnic employment environments. Benefits include easy access to the labour market in the first instance, high levels of trust in the workplace and the strengthening of group values and norms (den Butter, Masurel and Mosch, 2004).

Chang (2010, p 42) explains that ethnic entrepreneurs can benefit from the vulnerability of their co-ethnic workforce but also points out that, although exploitation might occur, it is a willing self-exploitation that is "offset by gratitude for having been given employment as a co-ethnic favour". In a New Zealand setting there have been many media reports of such exploitation, mainly focused on Indian and Chinese migrants and business owners. These include claims of Indian workers being paid just \$2 per hour to work in Indian restaurants or even pay their own wages and taxes to meet their work visa requirements (Tan, 2013b), stories of Christchurch rebuild employers failing to pay migrant employees their full wages, annual leave or public holiday entitlements (Anderson, 2013), and cases of an Auckland-based Korean food preparation factory making migrant employees work 16-hour days with few or no breaks, below minimum wages and with no employment contracts (*Scoop*, 2013).

Although more and more cases are coming to light, they can easily escape detection because initial hiring often takes place within individual communities and the business involved are often small in size.

Co-ethnic networks can also be a double-edged sword with regard to intra-ethnic recruitment practices. For example, professional travel facilitators, known as snakeheads, are involved in the paid entry into the UK of irregular Chinese immigrant workers (exorbitant fees are charged, between £9,500 and £28,700) (Kagan et al, 2011). In a similar vein, and as previously discussed, body shops are an increasingly common form of exploitative recruitment for Indian information technology professionals (Biao, 2007). In a three-year qualitative study on the experiences of 40 Indian 457 visa holders in Australia, it was found that workers employed by “co-ethnics” were the most vulnerable (Velayutham, 2013). Recruitment through co-ethnic agents can be associated with debt-bondage and workplace exploitation. Substandard or even abusive employment conditions were often justified by research participants on the grounds that “this is what these workers are used to back home” or in a third country where they had worked as guest workers (eg, Singapore or the Middle East). Exploitation in these circumstances involves an additional betrayal of trust and is enacted within co-ethnic and kinship networks, resulting in many victims reporting feelings of entrapment (Velayutham and Wise, 2005).

A UK study also points out that the commodification of migrant social networks when searching for work can occur when friends and contacts start demanding money for their (sometimes informal) services or information. Migrants often find themselves at the end of long subcontracting chains, with different intermediaries needing to make a profit margin on their labour (Anderson and Rogaly, 2005). Ties to family and friends do help these workers to enter an industry, but it can be in an exploitative manner, and social networks can become mechanisms for downgrading social status rather than providing a platform for upward mobility (see also Rosales, 2013).

## ***Summary***

This section highlights some of the specific areas of vulnerability faced by temporary migrant workers. The evidence, both locally and internationally, shows that exploitative practices employed by some employers increase the breadth and depth of migrant vulnerability in the workplace. Recruitment agencies can exacerbate these concerns, and employment in co-ethnic networks does not make workers exempt from workplace vulnerability or exploitation.

Somewhat paradoxically, self-exploitation can also result for those who are self-employed or employed as a subcontractor. However, the evidence is fairly limited and the implications in terms of temporary migrant workers and vulnerability are far from clear.

# 7. International and domestic policy recommendations

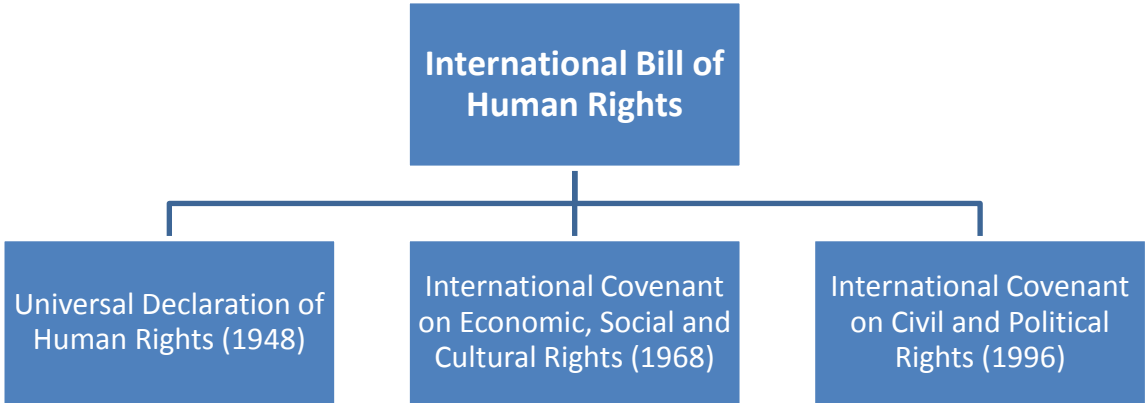
As the above sections show, a wide range of factors contribute to the disparities in working conditions between temporary migrant and other workers, including migration status, recruitment and employment conditions, workplace sector and occupation, and work status (eg, part time or full time) as well as other workplace factors such as discrimination in the workplace.

However, limited evidence could be found of successful initiatives that address the exploitation of temporary migrant workers. That said, this section looks at the limited range of policy, legislative and other initiatives available, both in New Zealand and internationally. Overall, responses to temporary migrant workers' vulnerability and exploitation is varied and encompasses responses at both central and local government levels, responses from employer organisations and employers, and responses from temporary migrants themselves.

## *Transnational agreements and cooperation*

Several sets of international standards<sup>90</sup> address the issue of rights to migrant workers, some of which are broad in focus while others are narrower. These provide a broad base or understanding of the rights of migrant workers and are the product of discussions arranged by international agencies. The discussion below highlights the extensive nature of these conversations and their recommendations. They provide a set of guidelines for policy responses. The most general provision is based around the International Bill of Human Rights (see Figure 3).

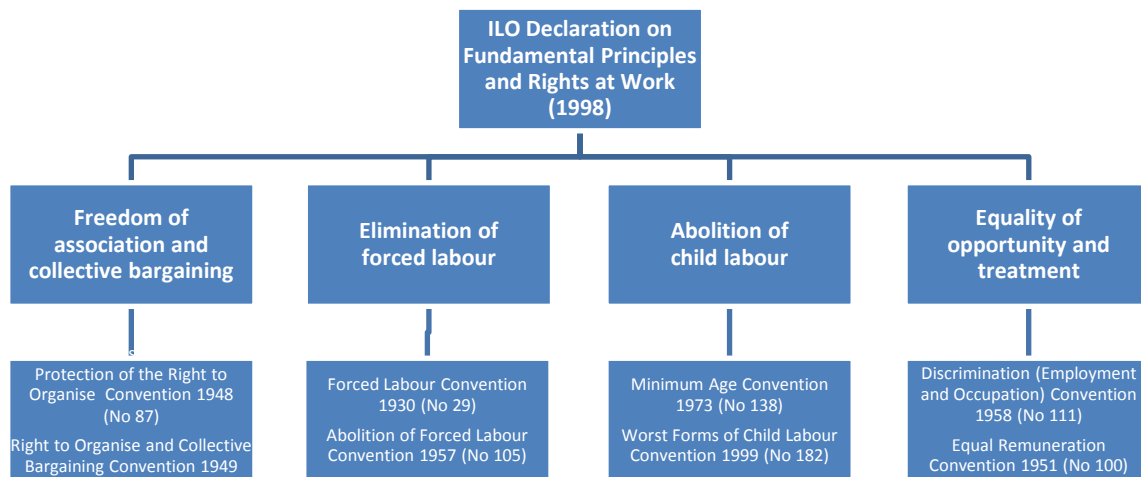
**Figure 3: International Bill of Human Rights and its three international instruments**



<sup>90</sup> For detailed descriptions of the international conventions noted in this section, see ILO (2010, p 4).

In 1998, the International Labour Organization (ILO) focused on eight Conventions in four key areas in its Declaration on Fundamental Principles and Rights at Work which apply to all workers, including migrant workers (see Figure 4).

**Figure 4: Key areas and conventions of the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, 1998**



In addition to the above eight Fundamental Conventions, other conventions are relevant to migrant workers in specific areas or industries of their employment, including the:

- Labour Inspection Convention 1947 (No 81)
- Protection of Wages Convention 1949 (No 95)
- Minimum Wage Fixing Convention 1970 (No 131)
- Plantations Convention 1958 (No 110)
- Occupational Safety and Health Convention 1981 (No 155)
- Occupational Health Services Convention 1985 (No 161)
- Safety and Health in Construction Convention 1988 (No 167)
- Safety and Health in Mines Convention 1995 (No 176)
- Safety and Health in Agriculture Convention 2001 (No 184)
- Work Conditions (Hotels and Restaurants) Convention 1991 (No 172)
- Equality of Treatment (Accident Compensation) Convention 1925 (No 19)
- Nursing Personnel Convention 1977 (No 149)
- Decent Work for Domestic Workers Convention 2011 (No 189)
- Maternity Protection Convention 2000 (No 183)
- Tripartite Consultation (International Labour Standards) Convention 1976 (No 144).

Two conventions and an accompanying recommendation on social security rights aim at equal treatment of migrants with national workers. These are the:

- Equality of Treatment (Social Security) Convention 1962 (No 118)
- Maintenance of Social Security Rights Convention 1982 (No 157)
- Maintenance of Social Security Rights Recommendation 1983 (No 167).

The Private Employment Agencies Convention, Convention 1997 (No 181), in particular, addresses the role of recruitment agencies in the transferring of workers between countries.

Two further ILO conventions and two recommendations specifically regarding migrant workers are the:

- Migration for Employment Convention 1949 (No 97)
- Migration for Employment Recommendation 1949 (No 86)
- Migrant Workers (Supplementary Provision) Convention 1975 (No 143)
- Migrant Workers Recommendation 1975 (No 151).

The United Nations (UN) also devotes several conventions to the protection of migrant workers. The International Convention on the Protection of the Rights of All Migrant Workers and the Members of the Families was introduced in 1990 but only ratified by 39 countries and signed by 14 others by late 2008 (mostly by countries with net emigration) (ILO, 2010, pp 136–137). New Zealand is not among the signatories. Two international conventions are aimed at eliminating discrimination, and both are relevant to migrant workers: the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. In 2000, the UN also introduced the Convention against Transnational Organised Crime and its two protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air).

Hackett (2009) searched for reasons to explain New Zealand's failure to sign the Convention on Migrant Workers on political and economic grounds and argued the following: the unique position of New Zealand in the transnational mapping of migration, including the size of the nation and the size of the migrant population; the economic strain of allowing migrant workers to access social security benefits and other state-allocated provisions such as education and health; and New Zealand's status as a receiving country, a transit country (for those who eventually wish to move to Australia), and also a sending country in its own right. Spoonley, Bedford and Macpherson (2003) also presented the view that, assuming that human rights are a zero-sum game, Māori would fear "losing out" should migrant workers be given preferential treatment. They suggest that one of the policy solutions is to frame migrants' rights on a continuum with Māori rights as indigenous people and thus preserve the unique position of Māori as tangata whenua, the people of the land.

Besides formal conventions, the ILO also adopted the non-binding Multilateral Framework on Labour Migration, which addresses nine major areas and is composed of 15 broad principles (see the



Appendix). These foundations are important because the criteria for good governance usually include consistency with international standards, policy coherence, gender sensitivity, transparency and flexibility, social dialogue, and evidence- or data-based policies (ILO, 2010, pp 145–152).

Global industries require international cooperation to ensure labour and human rights. In the fishing industry, for example, three main state governance jurisdictions are responsible for the maintenance of maritime standards: flag state control, coastal state control and port state control. Stringer and her colleagues (2011, p 18) lament that “the burden of implementing, monitoring, and enforcement of industry standards falls to a large degree on” first world states like New Zealand, which offers only “the last safety net” to foreign charter vessels crews (Anderson, 2002). The previous relevant code of practice covering the industry failed to prevent the abuses on board of foreign charter vessels because New Zealand as the coastal state lacked full legal jurisdiction over vessels operating in its exclusive economic zone.

The government is implementing changes with respect to foreign charter vessels and the way they are managed in New Zealand waters. The most important is the introduction of legislative changes that will require all fishing vessels operating in New Zealand’s exclusive economic zone to be flagged to New Zealand. Theoretically, this will ensure acceptable and equitable labour standards on all fishing vessels operating in New Zealand’s waters within the exclusive economic zone. The legislation was introduced as a result of allegations of mistreatment and underpayment of foreign crews working on some foreign charter vessels. As noted by the Hon Nathan Guy (Minister for Primary Industries), the decision sends a clear message that New Zealand is serious about employment relations and workplace health and safety.

### ***Source country initiatives***

Some governments have a long tradition in facilitating or monitoring the migration of its citizens based on work skills. For example, the Philippines has intentionally trained nurses to a standard acceptable in developed countries so that they can work overseas on graduation, and the Indonesian government introduced a compulsory course before issuing an exit permit for women to work as domestic servants in the Middle East. Coordinating labour emigration often involves a variety of government ministries and departments, which must regulate private agencies and negotiate with destination countries for access to job opportunities and to ensure the protection of workers. However, consular representation does not always mitigate emigrants’ vulnerability since a central government’s interests in maximising the number of migrants from their countries often conflicts with the specific interests of migrants themselves. Consular staff may also lack the resources to pursue complaints or directly connect with provincial agencies (ILO, 2010).

The ILO provides a policy model for foreign employment governments for migrant-sending countries (see Table 28).

**Table 28: Foreign employment policy instruments and measures, by objective**

<b>Objective 1: Promote employment</b>		
<b>Foreign market development</b>	<b>Labour supply management</b>	
Establishing diplomatic relations Strengthening placement services, both public and private Promotions and marketing missions Market information and research Bilateral agreements	Labour registry Corporate export of services Restrictions and policies against “brain drain”	
<b>Objective 2: Protect and promote the well-being of migrants</b>		
<b>Standard setting and enforcement</b>	<b>Supervision of private recruitment</b>	<b>Support services</b>
Minimum standards for employment contracts Exit control measures Bilateral agreements, including social security Restrictions on exits of selected categories of worker, especially minors and young women	Licensing of recruitment firms Performance guarantees and penalties Limits on recruitment fees Measures against illegal recruitment and clandestine migration	Information and counselling services before departure Labour attaché services on-site Social insurance Community facilities and centres for workers abroad Support services for families left behind Returnee training and employment assistance Emergency evacuation or repatriation
<b>Objective 3: Maximize developmental impact of labour migration</b>		
<b>Remittances</b>	<b>Migrants’ savings and investments</b>	<b>Return of talents and skills</b>
Foreign exchange market policies Remittances policies and services	Special financial instruments Information and support services to small investors Housing programmes for migrants	Special placement services and incentives Bilateral training agreements Mobilising transnational communities

Source: ILO (1997).

Intergovernmental agreements in particular industries between New Zealand and key source countries provide a good preventive strategy to ensure temporary migrant workers are not exposed to below threshold employment conditions. For example, the Recognised Seasonal Employer Scheme (RSE) has proven to be a sound programme in respect to the protection of the rights of Pacific workers, especially when compared with the less regulated employment of international students and working holidaymakers. Agreement at governmental or ministerial levels in relation to nursing, dairy farming and domestic care between New Zealand and some Southeast Asian countries such as the Philippines, the major provider of these workers, may provide one policy response. However, the

difficulty is that the migrants are temporary and often the periods of labour market engagement are relatively short and involve industries or particular groups of employers who are not especially willing to be engaged in government-initiated support or regulation. Moreover, intergovernmental schemes, such as the RSE Scheme, require considerable investment and the willingness of both temporary migrant workers and their employers to participate.

### ***Host countries***

Maximising benefits from and reducing or eliminating the negative labour market-related aspects of temporary migrant labour is an important policy outcome given the reliance on temporary migrant labour in many industries and migrants' significance to the New Zealand labour market generally. Specific areas of concern require the regulation and cooperation of stakeholders from particular sectors. These include immigration policy design and monitoring, occupational safety and health support and training, legislation and enforcement of employment relations, monitoring and regulating recruitment agencies, and the worker employment.

### **Immigration policy**

As noted in the introduction, the Immigration Amendment Bill contains amendments to further protect migrant workers from exploitation. The Bill will enable immigration officers to enter and search a workplace, without notice, to determine whether an employer is complying with the *Immigration Act 2009* and employees are complying with the work-related conditions of their visa. Policy settings have also been introduced that are designed to directly protect the immigration status of those migrants who have experienced exploitation and reported it. Concentrated efforts are also being made to effectively communicate worker rights to migrant workers so those who are affected are encouraged to come forward. This is especially important for those workers who might be working in New Zealand illegally. In such a case, exploited workers who have reported the circumstances of their exploitation may be able to remain in New Zealand while they apply for a new visa. This initiative will potentially allow the New Zealand Government to better understand the extent and nature of migrant exploitation in New Zealand.

The Immigration Amendment Bill (No 2) will make it a specific offence to exploit migrants who hold temporary work visas. For those who are convicted of such an offence, proposed penalties include lengthy prison sentences (imprisonment for up to seven years), hefty fines (up to \$100,000), or in cases where employers are themselves migrants and have held a residence class visa for fewer than 10 years, possible deportation back to their country of origin. The latter is an important step to counter situations where exploitative migrant employers take advantage of those from within their own ethnic networks.

An important part of the new initiatives is an all-of-government response that allows for inter-agency collaboration (between, for example, the Ministers of Immigration and Labour) that will allow the implementation of integrated operational and legislative mechanisms to improve enforcement of minimum employment standards. Currently, the fishing, hospitality, horticulture and viticulture

industries are primary focuses of the Ministry of Business, Innovation and Employment's Labour Inspectorate and Immigration New Zealand (Woodhouse, 2013).

Immigration New Zealand's Settlement Unit focuses on providing information to migrants and employers that will improve settlement outcomes and reduce vulnerability.

At present this information includes guides developed by Immigration New Zealand in collaboration with relevant sector stakeholders (eg, the dairy sector, construction sector, international students or aged care sector<sup>91</sup>) for recent migrants and their employers. These guides contain information about minimum employment rights in New Zealand, health and safety, improving workplace communications and where to go for further settlement support. The content has been developed based on evidence from providers of settlement services in the community, feedback from focus groups with migrants, employers and industry representatives, and from existing research.

This information also includes 'welcome to New Zealand' email messages that are sent to recently approved visa holders containing direct links to useful settlement information, where to go for more support, and links to minimum employment rights factsheets (in nine languages). Tailored email messages are sent to migrants in the construction and dairy sectors that include links to relevant industry-specific guides.

Immigration New Zealand has also worked hard to communicate effectively with migrant communities. This includes a wide variety of online information for migrants, including information about living and working in New Zealand, how to overcome social isolation, where migrants can go for settlement support, and employment rights for migrants. In addition, there is a specific page (see INZ, 2013e) for those migrants (and their advocates) who feel they are being exploited in the workplace. Using a series of questions, a pamphlet clearly articulates examples of exploitation that range in severity such as:

- Do you feel bullied, threatened or intimidated by your employer?
- Is your employer refusing to return your passport, travel tickets or money to you?
- Are you being paid less than the minimum wage?
- Do you have to work long hours without having time off for holidays?
- Does your employer restrict your freedom of movement or access to a telephone?

Those who answer positively to any of the questions are encouraged to seek advice thorough a variety of contact details (including the police if appropriate), making clear that doing so will have no impact on their migrant status. Although the initiative has yet to be evaluated, it is an important step toward communicating the rights of temporary migrant workers to migrants themselves.

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<sup>91</sup> The guides for the aged care sector have yet to be published, but will be available in early 2014.

Ruhs (2003, pp 26–31) has identified seven basic principles for making temporary worker schemes effective:

- Give migrant workers at least some freedom of movement within the host country's labour market
- Determine the number of migrant workers to be admitted by letting the labour market determine the work permit fee
- Establish clear rules and procedures for the transfer of migrant workers into programmes that grant them permanent residence or their return home
- Recognise native workers' entitlement to share in the economic benefits obtained from temporary work and, if necessary, compensate native workers for real reductions in economic opportunity as a result of the implementation of such programmes
- Legalise the status of all migrant workers who have been illegally employed in the host country for a certain number of years without being apprehended and departed by the existing measures of law enforcement
- Implement a unified work visa programme that can accommodate migrant workers of all skill-levels
- Discuss and design work visa programmes through social dialogue with all stakeholders concerned, giving voice to all sides involved and affected.

The responses of the New Zealand Government with regard to policy, its implementation, employers' compliance and migrants' knowledge address many of these issues.

In Australia, the *Migration Legislation Amendment (Worker Protection) Act 2008* was introduced to provide protection for migrant workers against exploitative workplace practices. The Act is designed to preserve the integrity of the Australian labour market and ensure the working conditions of sponsored visa holders meet Australian standards. The sponsorship framework was improved across four distinct measures: providing the structure for better-defined sponsorship obligations for employers, improved information sharing across all levels of government, expanded powers to monitor and investigate possible non-compliance by sponsors, and the introduction of meaningful penalties for sponsors found in breach of their obligations. In practice, the new legislation ensures the terms and conditions of employment for temporary workers employed under the 457 visa programme are no less favourable than those for other workers carrying out the same work, including receiving appropriate recompense for the work they do.

The *Fair Work Act 2009* (and the subsequent changes that came into effect in January 2014), outlines the responsibilities of Australian employers towards all employees (not just temporary migrant workers). The recent changes are designed to encourage positive relations in the workplace and prevent disputes and include new anti-bullying measures, expectations that employers check with employees before changing regular rosters and working hours, making arbitration for dismissal disputes available at the Fair Work Commission, and new time-frames for unlawful termination applications. The applicability of this Act to everyone in the workforce is an important step in

protecting the rights of vulnerable migrants and provides a clear and inclusive framework for protecting migrants from exploitation.

The Australia Council of Trade Unions has also introduced a confidential hotline for migrant workers (specifically those on 457 visas) to report incidences of exploitation in the workplace. The confidentiality of the hotline is key to its success given 457 visa holders rely on their employer for their visa and the opening it creates for permanent residency. The hotline also plays an education role, putting complainants in contact with union officers and government agencies who can educate them on their rights (Clancy, 2013).

Educational outreach is also behind the introduction of an information booklet designed to help migrant workers in Australia to understand their employment rights. It is hoped that arming temporary migrant workers with more information will reduce exploitation in the workplace while sending a clear message to employers that migrant workers should have the same working conditions as locally born workers. The booklet, *Your rights and obligations: Immigration facts for workers*, explains basic protections and entitlements, work rights, visa choices, employer obligations and the appropriate process involved when using a migration agent (Clancy, 2010). Relevant unions provided input into the booklet's development, it is available in seven languages, and it is distributed to large work sites as well as relevant agencies around Australia.

In a Canadian setting, a recent report (Faraday, 2012) argues that Canada's current immigration and labour laws contribute to the mistreatment of temporary migrant workers and that the exploitation of migrant workers is endemic and systemic (rather than anecdotal and isolated). Faraday urges the Canadian government to address the issues, making clear that extending protection incrementally, that is sector by sector, is inappropriate given it "causes unnecessary delay, is inconsistent with international standards, and inappropriately and incorrectly perpetuates the narrative that these [exploitative] practices are isolated rather than systemic" (p 68). Faraday (2012, p 106) makes the case for a rights-based multidimensional approach to the issues that temporary working migrants face in Canada, weaving together:

- strong, proactive government oversight and enforcement
- protection for the effective and meaningful exercise of fundamental rights, including collective representation
- substantive workplace and social rights that are responsive to migrant workers' real circumstances
- effective and accessible mechanisms for enforcing rights
- active involvement of community organisations to support migrant workers' voice.

Fairey et al's (2008) suggestions to provincial, municipal and federal government, specifically with regard to Seasonal Agricultural Worker Program workers, echo Faraday's. Their suggestions include ensuring entitlements match those of other Canadian workers; reconsidering the use of piece-rate wages strengthening inspections and monitoring systems, including those at farm sites; educating

the general population on migrant workers' rights; and enabling the permanent immigration of Seasonal Agricultural Worker Program workers.

That said, current Canadian law does protect all workers in Canada, including temporary foreign workers, and the rights and entitlements of migrant workers are clearly stated on the website of Citizenship and Immigration Canada (CIC, 2013). These include that employers must pay migrant workers for their work, including overtime; ensure the workplace is safe; provide proper breaks and time off; permit workers to retain their own passports or work permits; and not threaten a worker with deportation. Additional information is also provided on employment contracts, changing employers, issues around accommodation, what to do if employment is terminated, and issues around safety in the workplace. Contact details are provided for further advice. Although the website clearly states that migrant workers do not require their employers' permission to seek additional advice and that they cannot be punished in any way or deported for doing so, there appears to be no guarantee of confidentiality.

The Alberta Canada guide, *Temporary foreign workers: A guide for employees*, was written specifically for temporary foreign workers and provides clear and concise information on workplace regulations, rights and responsibilities and support services that are available to help new arrivals to enter the workplace (Government of Alberta, 2010). This guide includes details on a "helpline" for those who wish to discuss their workplace situation or seek further advice. The guide notes that "allegations of any mistreatment are taken very seriously and all complaints from temporary foreign workers are referred for investigation" (p 15). Unfortunately, the unintended consequences of such a guarantee might put foreign workers off making contact due to fear of deportation, punishment or other reprisals from their employers.

At a broader level, the Canadian government introduced report cards as a way to assess the ongoing needs of temporary migrant workers. The programme recognises that such workers are subject to exploitation and abuse as a result of their precarious migrant status, work permits tied to a single employer and factors such as isolation, lack of access to support services and lack of access to information on their rights. In response, the Canadian Council for Refugees (CCR) is advocating protection of migrant workers' rights, access to permanent residence and access to settlement services. The cards report on the progress of each region as they seek to introduce protection and support for migrant workers and their families. In a media release by the CCR, the report cards were described as a "useful tool for decision makers to identify areas for improvement and to raise awareness among the public and those concerned about migrant workers" (CCR, 2013).<sup>92</sup> The report

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<sup>92</sup> See: <<http://ccrweb.ca/en/bulletin/13/05/16>>. Note that the Canadian Council for Refugees (CCR) argues that government should promote policies of permanent immigration rather than temporary migration, arguably because such an approach has had negative impacts for both migrant workers and Canadian society more generally.

cards highlight the role of central government and local government working in tandem to generate a platform for identifying community needs.

### **Occupational safety and health support and training**

Given the particular vulnerability of some temporary migrant workers, occupational safety and health (OSH) training needs to be regularly administered and tailored to the specific needs of temporary migrant workers. Industry-specific training should focus on both employers and workers. Efforts can be made in the following areas to reduce health and safety risks (DoL, 2012):

- increasing frequencies of training to cater for part-time, casual and transferred workers
- translating training resources and using interpreters during training sessions and pictorial signage for non-native speakers
- using smaller groups in hands-on settings for migrants with poor literacy who are used for informal learning
- identifying target groups<sup>93</sup>
- identifying target areas.<sup>94</sup>

A UK experiment shows that picture-based visual aids improved knowledge and understanding of safety and health issues among non-native speaking migrant workers better than text-only training. This finding is based on comparable knowledge text scores and behaviour across four construction sites each with 20 migrant workers (Cameron et al, 2011). Further research on communication method, motivation, capability and other relevant factors would provide a more comprehensive understanding of migrant workers' OSH behaviours and understanding.

In a European setting, Trimpop (2013) found that countries that emphasise worker participation in health and safety also show excellent accident records. Although the author did not focus on migrants in particular, it is interesting to note that the strategies he suggests for positive health outcomes in the workplace are centred on worker engagement in the design of preventative workplace health and safety practices. An inclusive model such as this (that is also offered in languages other than English as required) would enable migrants to engage actively with their own workplace environments.

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<sup>93</sup> For example, males aged 41–65 were found to be the group with the highest claim rates among Pacific manufacturing workers (DoL, 2012).

<sup>94</sup> For example, “lifting, lowering, loading or uploading” was found to be the most common activity workers were undertaking before receiving injuries. The most common cause of injury in general was “lifting, carrying or strain” (DoL, 2012).



## Employers and unions

As discussed earlier, the Immigration Amendment Bill aims to protect migrant workers – both legal and illegal (temporary) migrant workers – who may be exposed to workplace exploitation. Aimed specifically at employers, the Bill allows significant sanctions and penalties to be imposed on any employer found to be exploiting migrant workers. However, some employers also see the benefits of ensuring their employees, irrespective of their migrant status, are well settled. For example, in the Christchurch region, the Canterbury Chamber of Commerce has a dedicated settlement support coordinator to assist newcomers as they enter the labour market. With predictions from the Minister of Immigration that as many as 17,000 of the 35,000 workers needed for the rebuild will come from overseas, this ‘pastoral care’ is no doubt crucial.

Also in Canterbury is the Christchurch Migrant Centre, which has become an important intermediary, welcoming over 400 migrant workers from 12 different countries since the Christchurch earthquake and helping new arrivals to locate suitable accommodation before commencing employment. Spokesperson Rex Gibson pointed out that, in some cases, larger employers had refurbished old forestry lodges to house their employees and hired cooks from the workers’ country of origin to provide a taste of home (Montgomery, 2013).<sup>95</sup> Although anecdotal, this kind of evidence points to the practical efforts that some employers undertake as they seek to benefit from the talent provided by migrant workers at the same time as assist workers to settle.

As noted in the discussions and illustrations in previous chapters, certain industries and sectors are particularly vulnerable with regard to temporary migrant labour relations. However, initiatives aimed toward improving working conditions for the workforce generally do not necessarily benefit ‘immigrant sectors’. Instead, industries with high risk in terms of the issues faced by a temporary migrant workforce need to be specifically targeted and industry-specific strategies need to be tailored accordingly. For example, the agricultural industry is a frequent user of the Ministry of Business, Innovation and Employment’s 150-strong Mediation Services and Labour Inspectorate. Although the industry represents only around 5.75 per cent of the workforce, it represents 10 per cent of the department’s mediation services and 18 per cent of its inspection services (SNZ, 2011), perhaps an indication of troublesome employment relations.<sup>96</sup>

An American study of dairy farming provides three suggestions for the socially effective and sustainable use of migrant workers: 1) the recruitment of capable and skilled employees; 2) sensitivity of farm management to understand and resolve cross-cultural relationship issues; and 3) workplace and community acceptance and support of migrants to integrate them into community life (Valentine, 2005). Some New Zealand commentators believe the registration of

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<sup>95</sup> Gibson also points out that migrant expectations around housing are often not as high as workers who arrive from within New Zealand. This could lead to overcrowding.

<sup>96</sup> The highest user was the accommodation, café and restaurant industry.

recruitment agents, re-unionisation of the industry, and representation of dairy workers are important steps towards better recruitment and employment of migrant workers (Tipples, Trafford and Callister, 2010). Acting as a support and advocacy group, Filipino Dairy Workers in New Zealand in Ashburton<sup>97</sup> is a good example.

This raises questions about the role of unions and collective bargaining for improving working conditions. Workers' organisations in precarious sectors are often weak or non-existent and may not even be permitted. For example, the *National Labor Relations Act (29 USC Sec 2(3))* in the US specifically excludes agricultural workers from the right to form trade unions or engage in union activity. Less than 10 per cent of the world's hired farm workers are represented by unions. Likewise, strong opposition to farm-worker organisations has left dairy workers without representation in New Zealand and, consequently, without collective bargaining rights (Callister and Tipples, 2010). Union membership is generally low in New Zealand, with only 17 per cent of the total measured employed workforce belonging to a union (DoL, 2011b). The worker organisations are usually geared towards documented and subscribed members. Union reach is weak in rural regions, and there are fewer collective activities than in urban centres where more collective employment relations can be found in service areas such as hospitality. Migrant workers, especially temporary migrant labour, often receive the lowest priority in this process.

One example of a union organisation working hard to support the needs of temporary migrant workers is the UNISON Migrant Workers Participation Project in the UK (Moore and Watson, 2009). The union-based organisation has a strong history of protecting vulnerable migrant workers. The aim of the project was to improve union membership, on the understanding that membership will enhance migrants' knowledge of their workplace rights but will also provide a platform for actively fighting for their rights to be recognised in the workplace.

The project evaluation drew attention to six organising techniques that worked with migrants:

- community engagement through migrant worker networks
- 'talent spotting' prospective members (those who they felt might become active members of the union)
- ongoing clear communication about the union's campaigns on behalf of migrant workers
- increased engagement on migrant's issues in relevant regions
- open, inclusive and informal meetings dealing with migrant-specific issues
- running Pathways into UNISON courses, specifically designed for migrant workers.

Overall, the project was successful, resulting in 70 new migrant workers being recruited. The project helped to create more informal kinds of union involvement and, most importantly, several services

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<sup>97</sup> The organisation reports a membership of 300 Filipino migrant workers.

were developed, including an immigration advice helpline and English language training. Unions could play an important role in New Zealand as migrants seek to better understand and protect their workplace rights.

Migrant workers have particular needs that differ to citizens. The Mistry of Business, Innovation and Employment identified a set of key characteristics of successful employer-focused initiatives in facilitating migrant employment (Chen and Ward, 2013, p 127):

- a comprehensive service tailored to the key barriers of migrant workers to labour force (eg, language and communication difficulties, recognition of past experiences and qualification)
- individual case management and referral services
- migrant support for searching and applying for work, as well as career advice and planning
- education and awareness-raising for employers and the media and public
- employer liaison and outreach
- migrant orientation to work culture and systems
- work and sector-specific language training
- work placements
- mentoring.

### **Recruitment agencies**

Private recruitment agencies increasingly orchestrate much of the migration process, from pre-departure to return. They provide information, assistance and even financial loans, facilitating transit to and from the destination and, in some cases, employing migrants directly. These agencies are often part of global networks, covering both formal and informal sectors. For example, Biao's (2007) research on body shops depicts a worldwide web of Indian migrants moving between India, North America and Australasia as IT professionals are sourced for specific projects, and studies of Thai sex workers suggest a regular circuit of movement between Japan, Taiwan and Australia, reflecting strong transnational networks (Brockett, 1996; Menasveta, 2002). Several of the forms of vulnerability identified in this review are associated with the operation of these private recruitment agencies (eg, Velayutham, 2013; Stringer, Simmons and Coulston, 2011; Choudry and Henaway, 2012). In the UK, 78 out of 1,201 licences of the Gangmasters Licensing Authority were revoked for breaches discovered during inspections in 2008. The most common forms of non-compliance were breaches in health and safety, along with a failure to provide statutory holiday pay while the failure to check on workers' eligibility were also commonplace (Sargeant and Tucker, 2009). These breaches are likely to be under-reported as most migrant workers lack resources to seek remedy and voice grievances.

There are few empirical studies on the role of recruitment agencies in New Zealand except some sporadic references to migrant nurses (eg, Walker, 2008). Agunias (2013) identified three areas of

weakness commonly found in existing agency regulations. Firstly, these regulations often fail to strike the right balance between too little and too much intervention. Secondly, regulations sometimes fail to address the real cause of recruitment irregularities, which can vary from the simplest to the most complicated. Thirdly, holding agencies accountable across multiple jurisdictions with differing regulatory regimes is not easy, and policy mismatches between origin and destination countries have created loopholes that allow unscrupulous agencies to 'game' the system.

The direct recruitment of migrant workers through intergovernmental agreements provides one potential solution to recruitment. For example, the Counties Manukau District Health Board signed an agreement in 2008 with the Philippines Government to bring nurses directly to New Zealand (*New Zealand Herald*, 8 March 2008, cited in Williams, 2009). However, the role of recruitment agencies in exploiting temporary migrant workers or exacerbating their vulnerability undoubtedly requires additional focused attention.

### **Worker empowerment**

There is a connection between a lack of awareness of employment rights, being a temporary employee or migrant, not being a member of a trade union, and the reluctance to report problems in the workplace. It is generally agreed that workers who are often in the greatest need of social, legal and cultural support are the least able to access them (Haley-Lock and Ford, 2007). Varying degrees of 'collusion' between employers and migrant workers also contributes to a lack of visibility and understanding when it comes to the issues of migrant labour vulnerability (eg, Anderson et al, 2012).

Worker empowerment can be both top-down and bottom-up. Milkman (2012) identified three strands of immigrant labour movement in contemporary USA. Firstly, although USA unions once supported restrictive immigration policies, several leading union federations now support and recruit Latino immigrants, particularly in cleaning, retail, hospitality, construction and manufacturing sectors. Secondly, over 100 labour-oriented non-governmental organisations, known as "worker centers", were established as advocacy groups for casualised occupations such as day labour or domestic services, and decentralised industries in which traditional forms of unionisation were difficult to establish. Thirdly, Milkman noted that there were growing examples of immigrant rights activism aimed toward legalisation.

An example of activism in Australia is seen in the 2008 protest by Indian migrant student taxi drivers in Melbourne who demanded improvements to their safety and working conditions. After the drivers had been on strike for 22 hours, the Victorian Government agreed to meet a delegation of the drivers. With more and more Indian taxi-drivers employed in a deregulated industry (in which case, union penetration can be difficult) a non-bureaucratic, ethnic-centred organisation with voluntary membership was founded – Victorian Taxi Drivers' Association (VTDA). Being an association that is independent of existing trade union structures, the VTDA is free to establish relations, conflictual as well as cooperative, with adjacent and overlapping industry bodies such as the Transport Workers Union of Australia and the Victorian Taxi Association, as well as forming ties to the Federation of Indian Students in Australia. The VTDA is but one experimental form of community and social movement unionism in different parts of the world (Neilson, 2009). In 2013, there was evidence of a

similar bottom-up movement involving taxi drivers (most of whom were Indian), protesting at Auckland airport.

Worker empowerment can be achieved through both formal and informal mechanisms initiated by different stakeholders. For example, Migrante-International is a transnational alliance of grassroots Filipino migrant workers that emphasises “extra-legal” action because, they argue, the law is often limited in protecting migrant workers’ rights (Rodriguez, 2009). In a Canadian setting, grassroots organisation Justicia for Migrant Workers is a volunteer-run, political, non-profit collective composed of activists who strive to promote the rights of migrant farmworkers (participating in the Canadian Seasonal Agricultural Worker Program and the Low-Skilled Workers Program) as well as other farm workers. A key part of the collective’s strategy is working alongside workers, collectively devising strategies for change.

Worker empowerment is often gendered. Hugo (2000, p 299) concludes that women are more likely to be empowered through migration under the following conditions:

- The migration is from rural area to urban area.
- The migration is not clandestine or undocumented.
- Women work outside the home at the destination country.
- Women move autonomously and not as part of a family group.
- Women enter formal sector occupations.
- The migration is a longer term or permanent rather than a temporary one.

Policy needs to consider the gendered nature of temporary migrant labour migration and the sorts of support mechanisms required. The complexity of available support systems can be reduced by providing both employers and migrants a ‘one-stop shop’ to channel information through one entry point (Chen and Ward, 2013).

## ***Summary***

This section reviewed the policy recommendations discussed in both the international and domestic literature as these provide a series of benchmarks for New Zealand consideration.

At the transnational level, the ILO and UN have released declarations, covenants, conventions, recommendations and frameworks that seek to promote the welfare of migrant workers on a global scale. However, ratification varies greatly, and some migrant-receiving countries are reluctant to commit to these standards.

Guidelines have also been developed for source countries to promote employment, to protect and promote emigrants’ well-being, and to maximise the developmental benefits of temporary labour migration.

The second part of the section highlighted some of the strategies employed by central and local government, employer organisations, unions and grassroots community groups. National and international responses to the exploitation of temporary migrant workers and their subsequent vulnerability need to address policy development, employer practices, and recruitment agency practices as well as providing an integrated range of resources, services and support for temporary migrant workers themselves.

## 8. Researching temporary migrants and worker vulnerability

This section has two clear purposes. The first part identifies gaps in the existing evidence base on temporary migrant workers' vulnerability, their exposure to exploitation in the labour market, and the resulting policy challenges. Suggestions and priorities for future research in the New Zealand setting are offered. The second part of the section offers suggestions on suitable methodological approaches to future studies.

It should be noted that the empirical research available on this topic was not always readily available. Some of the research was dated or too small in scale to say anything about temporary migrant workers and their vulnerability with any certainty. Similarly, there was not always clear evidence of interventions designed specifically to address the exploitation of temporary migrant workers and, where interventions were located, they typically had not been evaluated.

### *Evidence gaps and policy challenges*

Over recent decades, there has been a growth in some industries of temporary labour migrants. This is underlined by the increasing complexity of visa and work arrangements. Given the above review, what are the key gaps in terms of the evidence base and what are the major policy issues in terms of the vulnerability of this group of workers in the New Zealand labour market?

The specific questions that were the focus of this review were:

- What is the nature and extent of migrant worker vulnerability and exploitation?
- What are the experiences of vulnerable migrant workers?
- What are effective interventions to mitigate migrant vulnerability and reduce exploitation?
- What are some best practice methodological approaches when undertaking research related to vulnerable migrant workers?

With these questions in mind, it can be concluded that overall, temporary migrant worker vulnerability is an understudied area. Although studies exist in most (if not all) sector or industry areas, no sector has comprehensive studies that can adequately address each of these broad research questions. In the following, we start by addressing the first two questions around the nature and extent of migrant worker vulnerability and their experiences. We then consider possible interventions for addressing the vulnerabilities identified. We conclude by making some recommendations on methodological approach and methods employed.

This literature review is by no means exhaustive. Studies could have been included that preceded 2000 and a review of research in countries other than those specifically identified here could prove valuable. Certainly, the literature chosen for inclusion reflects the work that is most relevant to the New Zealand socio-political environment. That said, even research from those countries operating in similar policy settings (Australia and Canada in particular) have somewhat limited applicability to the New Zealand context for several reasons. Slight differences in immigration regulations, labour laws or

the composition of migrant flows each intersect to create unique nation-specific policy settings. In the European and USA settings, migrants enter into very different socio-political environments with different terms and conditions of visa entry. Moreover, source countries are also different, resulting in very different migration journeys, prospects and experiences. Consequently, although the review was comprehensive, it could be extended.

### ***Demographic and personal characteristics***

Certain temporary migrant groups, because of the size of their populations in New Zealand or because particular challenges are associated with their employment, deserve attention. We suggest attention is paid to remittance workers, women and international students.

#### **Remittance workers**

The nature of remittance (temporary) migration places considerable pressure on the migrants themselves to meet expectations around remitting income. There is some evidence that these obligations tend to be associated with a willingness to undertake work that might be dangerous or, at the very least, exposed to exploitative workplace practices. Additionally, issues of debt bondage and the role of recruitment agencies deserve some attention.

#### **Women**

We note the importance of gendered migration and the fact the feminisation of migration, including temporary migration, is associated with certain vulnerabilities, including:

- the vulnerability of women working in domestic help, elder care and nursing
- the association of temporary migrant status with domestic responsibilities, either in New Zealand or in the home country, and precarious work
- involvement in the sex industry.

#### **International students**

The challenges of funding study in New Zealand result in many international students participating in paid employment, and the conditions under which they work produce a range of vulnerabilities. There is provision for these international students to be involved in paid work but there is some local and considerable international literature that points to a variety of situations that might be problematic (eg, working long hours, sometimes for less than the minimum wage, the approach of labour-hire contractors or working for certain employers in sectors such as hospitality or food).



## ***Temporary labour migrants***

It is important to acknowledge that temporary work arrangements are now a key element of the contemporary labour market in that they meet both supply and demand requirements. In terms of employers, the flexibility of labour supply provides opportunities to adjust labour to firm or industry requirements in 'just-in-time' requirements, and temporary labour migrants are now a feature for many industries and firms. Equally, temporary migrants gain an opportunity to access employment that has personal and familial benefits. These benefits might be to align an interest in travel (holidays) with work in New Zealand, to earn income that might not be possible in an origin country, or to work to meet the requirements for staying permanently. However, the nature of temporary migration is often associated with precarious work and a degree of labour market (and non-labour forms) vulnerability. It is this latter concern that is the focus of this review and the suggestions that emerge from it. We make the following observations.

1. A lot of what is provided in this literature review concerns international research. In terms of local research and commentary, the coverage is extremely uneven so the gaps are often more obvious than what is available. In some cases, the material is dated and, given the changes that have occurred recently – both in terms of the labour market and in terms of the policy framework – the material tends to date relatively quickly. However, there are also issues with the reliability and representativeness of the research. Some of the local research reported here relies on small samples, particular regions or specific issues. As we have noted above, temporary migrant workers are understudied, much less issues of vulnerability for this group.
2. The report has indicated the various categories that encompass temporary migrant workers, from particular skill visa categories to specific schemes such as the Recognised Seasonal Employer (RSE) Scheme to those who have been granted access to New Zealand for one purpose (study) and then need employment to fund that study.
3. There are industries that are very migrant labour reliant, so the numbers of migrants in these industries are now significant. Given the figures from the latest census and the role of immigrants in labour supply, an understanding of the outcomes for these immigrants and the implications for employers is critical to successfully managing the New Zealand labour market in the interests of all. However, if there are gaps in a general understanding of the issues associated with migrant labour supply and industry or firm demand, this is exacerbated when the issue of temporary migrant workers is involved.
4. This point is emphasised by changes to the labour market. We have noted the presence of precarious work and the rise of non-standard employment options. It is not simply the number of temporary migrant workers and the variety of their situations that have changed; the nature of the local labour market has also changed. The association of temporary workers, in this case immigrants workers, and precarious or temporary work has become a much more significant part of the labour market – and it deserves much more attention if New Zealand is to monitor and manage the contemporary labour market and achieve a range of economic and social benefits.

What follows are some of the key evidence gaps and what we suggest are the priorities for future research to inform policy.

## ***Industries***

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

Those industries that have a high proportion of temporary migrant workers are a priority for further exploration, considering, where appropriate, specific occupational contexts. For example, a growth area in terms of migrant participation is the agricultural industry, particularly in the South Island. We know that many more migrants are now coming to New Zealand to work on dairy farms (often with their families). However, we know little about the experiences of those migrant workers and the extent to which their employers support them in their working lives and provide appropriate working conditions. Anecdotal evidence raises concerns about employees' rights (as well as the rights of their children when they turn 18) but little systematic evidence has been gathered.

The exception is the RSE Scheme, which has received a lot of attention and been evaluated in terms of the benefits and issues for both those temporary migrant workers from the Pacific who are part of the scheme and the employers in the horticultural industry involved. Further research might well be valuable but compared with nearly all other agricultural sectors, there is more known about migrant workers and vulnerability in relation to the RSE Scheme.

### **Hospitality and domestic, health care and elder care**

Another sector in which migrants are concentrated is hospitality and health care (McLeod and Maré, 2013). With regard to the hospitality industry, this can be particularly problematic to study due to an element of illegalised work that occurs in the informal or hidden economies. The cleaning industry also employs a flexible, mobile (often migrant) labour force. The hospitality and sex industries are two frequently identified sectors where forced labour is most likely to occur and these too require further study in a New Zealand setting. However, there have been no substantial empirical studies of the work experiences of those temporary migrants who work in these industries.

The healthcare sector, including care of the older adult, relies on a casualised workforce and increasingly on both immigrant and temporary migrant workforces. The nature of this engagement and the consequences for migrant workers is poorly understood and, given the presence of Filipino workers (for example), it is critical to understand workplace practice and to ensure flexible and casualised work is not also associated with vulnerability.

## ***Employment and work***

Ongoing changes to the nature of contemporary employment and the shape of the labour market provide an important contextual issue when considering the vulnerability of temporary migrant workers. We have highlighted two issues that deserve greater attention: non-standard work and occupational safety and health.

## **Non-standard work**

Non-standard work is not necessarily precarious or poorly paid, but there are significant issues concerning precariousness in the current labour market and some evidence that migrants, including temporary migrants, are to be found in these precarious forms of labour market engagement. We highlight specific forms or issues, including:

- temporary employment agencies
- employer arranged accommodation
- non-payment and delayed wages
- hours of work and job security
- the nature of contracts.

## **Occupational safety and health**

One particular concern is preserving the safety of temporary migrant workers in the workplace. This is in part a function of the fact migrant workers are found in industries that are more hazardous (eg, horticultural and agricultural workers) with some migrant groups (eg, Pacific peoples) having higher rates of workplace accidents than other ethnic groups.

## ***Effective interventions***

Recent changes to immigration laws in New Zealand have provided migrants, including those who are temporary, with an important foundation for ensuring they are not vulnerable in the workplace. In addition, a range of multilingual, educational pamphlets about worker rights and employer responsibilities are an important step toward ensuring temporary migrant workers live and work in New Zealand free of exploitation. Education underpins the rationale of these publications and is crucial for ensuring migrants not only understand their employment rights but also understand what they can do if those rights are ignored. Continued focused educational programmes aimed at employees and employers are important. The wider population could also benefit from understanding the rights of migrant workers and their contribution to the economic and social fabric of New Zealand.

Overseas interventions have shown that union involvement can be a useful tool for engaging migrant workers, increasing migrants' knowledge of their rights as workers in a foreign country and raising migrants' awareness of the support that unions can offer. Ideally, unions would work in tandem with employer organisations and migrants themselves to improve outcomes for (temporary) migrant workers.

Employer organisations or individual employers who are proactive in recruiting suitable temporary migrant labour, ensuring they settle into the community as well as the workplace, and offering equal (and legal) employment conditions speak of the benefits that arise from migrant labour. Arguably, job satisfaction is potentially correlated with increased productivity – a benefit for employers.

Although this is anecdotal and no systematic study has been carried out with such an employer, the assumption seems reasonable. Empirical research would be valuable to test this hypothesis.

The Canadian model of report cards provides useful region-specific information about migration in a given region, identifying key areas to be developed. This is publicly available information and identifies key areas for growth (with respect to immigrant labour but also in regard to required responses to ensure a safe work environment for migrants) so communities can use the information provided as a development tool. Given the regional differences in New Zealand and the way these differences can be exacerbated with respect to migrant labour market engagement, this could be a useful strategy.

Strategies for intervention would benefit from a multi-pronged approach whereby employers, migrant employees, community development agencies and community representatives, local council representatives and, if appropriate local police work together to create, implement and maintain new initiatives.

### ***Methodological approach***

One of the key concerns with the available research is that there is little comprehensive New Zealand-based research on the extent of the problem. Much of the research mentioned throughout this review is somewhat dated or relies on small or self-selected samples. This kind of research is useful for highlighting areas of potential concern and cannot be overlooked. However, these studies are limited in their capacity to identify the breadth of the issue. They cannot explain, for example, how many people experience exploitation in their work, they can explain only the nature of such exploitation. Although these kinds of studies are useful for highlighting the nature of exploitative work practices and raise awareness that exploitative practices are occurring, they have limited validity for generalising to the population in question as a whole.

Researching temporary migrant vulnerabilities and exposure to exploitative labour market practices is not easy and researchers face many methodological problems (Anderson et al, 2010). A key issue is the difficulty of capturing complex and meaningful data that can be generalised to a broader migrant population at the same time as capturing the range and depth of migrant work-life experiences. With this in mind, a mixed-method approach encompassing both quantitative and qualitative research methodologies is recommended. Quantitative research based on larger data sets will provide an important context for understanding the extent of the problem of temporary migrant worker vulnerability. Complimentary qualitative research will add greater depth to this contextual information, capturing the subjective migrant experiences of those who are facing exploitative workplace practices. Given the 'everyday' nature of working life, it is suggested that qualitative (and possibly creative) methodologies are used that enable the research team to capture the intersection of the temporary migration story and workplace engagement.

Given much of the evidence raised in this report is principally concerned with key human rights issues it is also appropriate to consider Participatory Action Research approaches whereby participants play a key role in carrying out the research in a way to create positive social change for

their communities. An important part of this process is ensuring the research approach is aligned with the philosophy of the communities concerned. This is likely to mean inclusive and collective research approaches are preferred. Table 29 outlines more-inclusive research methods based on Māori and Pasifika epistemologies (Mertens, 2009).

**Table 29: Research principles based on Māori and Pasifika epistemology**

	Principle	Description
1	Aroha kit e tangata	Have respect for people Allow people to define their own space Meet people on their own terms
2	He kanohi kitea	Meet people face to face Be a face that is known to and seen in a community
3	Titiro, whakarongo rero	Look and listen (and then maybe speak) Develop understanding to find a place from which to speak
4	Kia tupato	Be cautious Be politically astute Be culturally safe Be reflective about insider–outsider status
5	Kaua e takahia te mana o te tangata	Do not trample on the mana or dignity of a person
6	Kia mahaki	Be humble Do not flaunt your knowledge Find ways to share knowledge

Source: Adapted from Mertens (2009).

Qualitative methodologies would help to get prospective participants engaged with the research process. Research methods to consider include creating video diaries, drawing or performing experiences of exploitation in the workplace, focus groups and photo elicitation whereby participants are asked to take photographs of their (working) lives and talk to the researcher about the images they capture. Each of these methods has a strong history in community-based research.

With regard to more quantitatively oriented research methodologies, Q Methodology could prove a useful tool. Designed to bridge the gap between quantitative and qualitative research, the method captures a range of viewpoints (or in this case experiences) about a given topic. Participants are asked to sort a series of cards, each of which contains a statement about exploitation in the labour market, in accordance with some predetermined criteria. One benefit of this approach is that the statements could easily be depicted using pictures instead of words. This would help to circumvent concerns around participants' English language proficiency.

A key difficulty that researchers face is trying to locate willing participants from a migrant workforce population that is often contingent, mobile and 'hidden'. Once located, migrant workers, especially those for whom English is a second language, can be unwilling to share their experiences with researchers for several reasons, including poor English language skills, involvement in illegal activities, uncertainty around what will happen to the information provided and whether there will be any personal implications, and a lack of time and resources. To counter these concerns, the use of co-ethnic researchers is vital. It is often the case that bilingual interviewers are used to carry out face-to-face interviews and this is important. However, to ensure an appropriate research design is created, co-ethnic researchers should be involved in the project's development from the ground up. Informal networks and community groups should also be consulted. Doing so will ensure the approach resonates with the participant group and will assist in securing greater participation. The gender of research interviewers might also need to be considered.

Employers can also be hostile toward what can be perceived as unnecessary intrusions from researchers. Particular reasons for not participating might include concern about their own business practices and systems as employers, especially where they might reside on the edge of legality, or they might simply be too busy. Again, however, participatory or community-based approaches to the research design could help to overcome these issues. Where access does become problematic (to those, for example, who intentionally employ dishonest or exploitative business practices), a possible alternative might be to identify employers considered exemplars of best business practice in their industry. These employers might be able to shed light on the extent of the issues in their industry.<sup>98</sup>

Any study of illegal or undocumented migrants' working experiences will require ethical sensitivity with regard to participant engagement. However, it is also important to consider future dissemination of the research findings to avoid negative public sentiment. This is especially the case with regard to illegalised migrant workers.

## ***Summary***

This section has pointed to some of the gaps in the existing literature with regard to temporary migrant worker exploitation and vulnerability. Although a lot of material is available on the topic, some is not relevant to the New Zealand context.

This section also briefly outlined some methodological approaches to carrying out future research endeavours and emphasised the importance of an integrated community-based research approach using both quantitative and qualitative methodologies.

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<sup>98</sup> There are concerns with this suggestion, however, because it is not necessarily true that exemplars within an industry employ best practice when it comes to employment conditions for workers.

## 9. Conclusion

This review has presented several challenges, including the:

- coincidence of major changes to the composition of migration flows, specifically the increase in temporary migrants, with the development of what has been described as non-standard employment
- highly variable nature of the material available both locally and internationally on the issues of temporary migration and vulnerability
- lack of information on some temporary migration in New Zealand (while there is excellent data on some temporary migrants, it is hard to identify the size of the temporary migrant labour component of some sectors, for example)
- lack of information on vulnerability in the New Zealand labour market generally (there are important exceptions) and on migrant labour vulnerability specifically.

We were charged with addressing particular questions, around which this conclusion is structured. The report provides an indication of the presence of temporary migrant labour in terms of specific industries and regions, both in terms of where the migrants are from and where they are likely to be located in New Zealand. The authors were then asked to indicate the nature and extent of migrant worker vulnerability and exploitation, and to report on anything that detailed the experiences of vulnerable migrant workers.

We have highlighted those industries where there is both a substantial temporary migrant worker presence and some evidence there is worker vulnerability (supported by local research, although this is scarce in most cases) or an indication that there might be an issue. The latter tended to be supported by international evidence. The result is that we suggest a focus on:

- particular industries:
  - horticulture, viticulture and dairying
  - health care, elder care, domestic work or hospitality
- particular demographic and personal characteristics:
  - women
  - remittance workers
  - international students
- employment and work:
  - non-standard work
  - health and safety.

Each of these aspects produces particular challenges for temporary workers in terms of being put in situations where they are more at risk of exploitation by their employers. They can be placed in invidious and difficult circumstances, in part because they seek work at any cost because of the need to meet expectations (eg, remittances) or they need some form of income to simply survive in New Zealand (perhaps as international students) or because the nature of work in that industry relies on flexible and low-cost labour.

Often, personal as well as external factors contribute to vulnerability, so that domestic commitments and expectations are reinforced by a work situation that might be hazardous or unpleasant, resulting in temporary migrants becoming doubly (or even triply) vulnerable. This is underpinned by the fact temporary migration often coincides with temporary work, which, by its very nature, can be unstable and offer little financial security to workers. The temporality of both migrant status and work means there are few protections from any quarter.

The result is that the vulnerability of temporary migrant workers involves a range of issues, including:

- the nature of the employment contract
- remuneration
- hours of work
- occupational safety and health provisions
- job security
- payment for agent's fees or debt bondage
- onsite accommodation.

Our assessment would be that on the limited material and sparse evidence base available there is not a sound understanding of the issues faced by temporary migrant workers, and that despite the growth in numbers of these workers as an important aspect of contemporary labour supply, there has been a lag in terms of policy or research attention.

A further question that we were asked to provide a response to was what interventions mitigate migrant vulnerability and reduce exploitation. Although attention has been paid to the issues faced by immigrants in New Zealand, local examples or evaluations of successful interventions are limited. Some of the best guidance comes from a substantial range of international declarations, covenants, conventions and recommendations that indicate both the issues and what ought to be done with them. However, these do not always translate into adequate protective measures in particular constituencies, including New Zealand. We found limited evidence of interventions that currently operate, much less are successful.

By providing a comprehensive review of the relevant material, this report serves as a basis for future research that employs an integrated community-based approach using both quantitative and qualitative research methodologies. It is hoped that the research will inform government's policy and operational interventions to reduce the vulnerability of temporary migrant workers in New Zealand.



# Appendix: Key elements of the International Labour Organization Multilateral Framework on Labour Migration

## *Nine areas of concerns*

1. Decent work
2. Means for international cooperation on labour migration
3. A global knowledge base
4. Effective management of labour
5. Protection of migrant workers
6. Prevention of and protection against abusing migration practices
7. The migration process
8. Social integration and inclusion
9. Migration and development

## *Fifteen broad principles*

- 1 a) Opportunities for all men and women of working age, including migrant workers, to obtain decent and productive work in conditions of freedom, equity, security and human dignity should be promoted.  
  
b) The ILO Decent Work Agenda promotes access for all to freely chosen employment, the recognition of fundamental rights at work, an income to enable people to meet their basic economic, social and family needs and responsibilities and an adequate level of social protection for the workers and family members.
- 2 Governments, in consultation with employers' and workers' organizations, should engage in international cooperation to promote managed migration for employment purposes.<sup>1</sup> Governments and employers' and workers' organizations should work with the ILO to promote coherence of labour migration policies at the international and regional levels based on the guidelines set out below. The ILO should promote dialogue with other relevant international organizations with a view to developing a coordinated approach on labour migration based on the non-binding ILO Multilateral Framework on Labour Migration.
- 3 Knowledge and information are critical to formulate, implement and evaluate labour migration policy and practice, and therefore its collection and application should be given priority.

- 4 All States have the sovereign right to develop their own policies to manage labour migration. International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair.
- 5 Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends.
- 6 Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented.
- 7 Governments and social partners should consult with civil society and migrant associations on labour migration policy.
- 8 The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are reflected in the eight fundamental ILO Conventions,<sup>5</sup> and the relevant United Nations human rights Conventions.
- 9
  - a) All international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by relevant international labour standards and other relevant international and regional instruments.
  - b) The protection of migrant workers requires a sound legal foundation based on international law. In formulating national law and policies concerning the protection of migrant workers, governments should be guided by the underlying principles of the Migration for Employment Convention (Revised), 1949 (No 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No 143), and their accompanying Recommendations Nos. 86 and 151, particularly those concerning equality of treatment between nationals and migrant workers in a regular situation and minimum standards of protection for all migrant workers. The principles contained in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should also be taken into account. If these Conventions have been ratified, they should be fully implemented.
  - c) National law and policies should also be guided by other relevant ILO standards in the areas of employment, labour inspection, Protection of migrant workers social security, maternity protection, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction and hotels and restaurants.
- 10 The rights of all migrant workers which are referred to in Principles 8 and 9 of this Framework should be protected by the effective application and enforcement of national laws and regulations in accordance with international labour standards and applicable regional instruments.

- 11 Governments should formulate and implement, in consultation with the social partners, measures to prevent abusive practices, migrant smuggling and trafficking in persons; they should also work towards preventing irregular labour migration.
- 12 An orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration.
- 13 Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No 181), and its Recommendation (No 188).
- 14 Governments and social partners, in consultation, should promote social integration and inclusion, while respecting cultural diversity, preventing discrimination against migrant workers and taking measures to combat racism and xenophobia.
- 15 The contribution of labour migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries.

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