

**Addressing the Exploitation of Temporary Migrant Workers:  
Developments in Australia, Canada, and the United Kingdom**

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## Executive Summary

Many developed countries in the world depend on temporary migrants to fulfil labour shortages. Migrant workers, especially vulnerable ones, are in many instances not protected from exploitation. Exploitation is associated with basic rights and entitlements being denied.

Migrant worker exploitation is a multifaceted issue, encompassing employment, immigration, and other laws. This report addresses several key issues of and potential solutions to the exploitation of temporary migrant workers, with a focus on jurisdictions with which New Zealand normally compares itself – Australia, Canada, and the United Kingdom. The research was conducted using secondary sources, and in particular, government agency reports, non-governmental reports, academic research, and media reports.

### Key legislative developments

#### Australia

Both the Australian federal and state governments have introduced legislation to protect workers. At the federal level, the government implemented the Fair Work Amendment (Protecting Vulnerable Workers Act) and granted the Fair Work Ombudsman greater power, in response to high profile cases of exploitation. The Act increased penalties although these only apply to an employer knowingly exploiting their workers, or in the case of franchisors if they have a degree of influence over the franchisee, and that they knew or could have known that exploitation would occur.

Other initiatives include changes to temporary work visas. The Temporary Work (Skilled) visa subclass was replaced by the Temporary Skills Shortage visa, comprising two streams: 1) a short-term stream and, 2) a medium-term stream. Under both streams migrant workers depend on their employer for their right to work in Australia. The new visa category is seen as making it more difficult for skilled workers to obtain residency. Further, migrants have to have a higher standard of English-language competency. Changes were also made to working holiday visas. In an effort to address wage theft, working holiday makers have to prove they were paid in compliance with wage laws. This move, however, places the onus of proof onto the migrant worker. The government has also extended the right, when conditions are met, for working holiday makers to work in Australia in areas of critical labour shortages.

At the state level, New South Wales has introduced a Modern Slavery Act, but as of June 2019, the Act has been referred back to committee. Queensland, South Australia and Victoria have introduced legislation requiring tougher standards for labour hire operations. The Queensland government is also considering a proposed wage theft law.

#### Canada

A key development at the federal level is the Amendments to the Immigration and Refugee Protection Regulation that came into effect in June 2019. What the Amendment does is give migrant workers who have been abused the right to apply for an open work visa.

At the provisional level, approaches to address the issue of migrant worker exploitation vary. Three provinces, in particular, are seen as taking “significant and innovative action” to address exploitation: Manitoba, Nova Scotia, and Saskatchewan. For example, each province requires employers to register before they can employ temporary migrant workers in order to increase transparency.

## **United Kingdom**

In 2015, the UK Modern Slavery Act came into effect. The Act criminalised individuals who commit severe labour exploitation. There are, however, a number of weaknesses associated with the Act and in 2018 the Modern Slavery (Victim Support) Bill was introduced as a private members bill to address some of the perceived failings. The Bill is currently before the House of Commons.

The following year, the Government introduced the Immigration Act 2016, which is seen by many to ideologically oppose the Modern Slavery Act as it criminalises illegal workers. Hence, it is seen by some, to undermine the government’s attempts to address modern slavery.

At the local level, the Local Government Authority is encouraging councils to mobilise communities and raise awareness of modern slavery. The Authority has published a guide on the statutory obligations of councils. To-date there is little information available on the effectiveness of initiatives introduced by the Local Government Authority,

## **Other key initiatives**

The Australian government established a Migrant Workers’ Taskforce, the purpose of which is to identify ways in which the government can address migrant worker exploitation. In 2019, the Taskforce proposed 22 reforms including changes to legislation, increased penalties, and the introduction of criminal sanctions. The government also established an Inter-agency Assurance Protocol to support and encourage migrant workers to report exploitation without the fear that their visa would be cancelled. However, it has been found that such assurances are based on an informal agreement and that they could be exposed to the risk of deportation.

In 2018, the Canadian government launched a Migrant Worker Support Network in British Columbia. This is a pilot programme, bringing together a range of stakeholders including migrant workers, to work together on ways to enhance the protection of migrant workers. The pilot is scheduled for completion in March 2020 after which it may be expanded to other provinces.

The key developments in the United Kingdom are the establishment of an Independent Anti-Slavery Commissioner role and a Director of Labour Market Enforcement. The Anti-Slavery Commissioner is responsible for undertaking initiatives to end modern slavery in the United Kingdom. The Director of Labour Market Enforcement is also tasked with tackling modern slavery, as well as regulating the licensing of labour providers and recruitment agencies.

## Mechanisms Supporting Migrants Coming Forward

A range of mechanisms and tools has been developed to encourage migrant workers to come forward and speak about their abuses. Some of the tools operate directly by facilitating migrant workers' contact with relevant authorities, whereas others work indirectly by encouraging public awareness of modern slavery. These include helplines, online reporting tools, and apps.

Helplines and tip lines range from offering advice to workers to reporting services. For example, the Modern Slavery Helpline in the United Kingdom can be used by migrant workers to request support from relevant authorities.

Australia and Canada utilise online reporting tools more so than helplines. These largely operate on an anonymous basis. In Australia, an online Anonymous Report tool was introduced in 2016 and by early 2018, had been used more than 200,000 times (the tool is not only for migrant workers).

A particularly useful technological development is the introduction of mobile phone apps. Some apps focus on migrant workers whereas others are designed for consumers and the public with the purpose of educating and reporting exploitation. The apps range from being general to focusing on a specific industry or for a specific purpose such as reporting and tracking. Criticism has been made about the use of apps as it has been found that the information reported via the apps did not lead to any significant action. Another criticism has been the level of surveillance involved in the use of apps. For example, one app is designed to use the geo-location services on a worker's cell phone to track where they are at a job site.

There have been several campaigns operating in the United Kingdom to raise awareness as to the prevalence of modern slavery. While the campaigns are a component of a multi-platform to address modern slavery, alone, they have not appeared to have led to a quantifiable reduction in modern slavery.

While immigration firewalls are seen to protect temporary migrant workers, none of the three countries employ firewalls to prevent interaction between immigration enforcement and labour inspectorates. An immigration firewall is a form of protection wherein information gathered by social services, for example, is not used for immigration enforcement purposes. Australia requires linkages between immigration enforcement and other public services; these linkages are seen to operate in favour of the employer at the expense of migrant workers. Canada has a complex and negative history with firewalls, but in recent years has implemented sanctuary city policies. In the United Kingdom, there have been reports that data sharing between government agencies was undermining public safety and public services.

## Employer sanctions

Under the Australian Migration Act 1958, the government can impose sanctions against employers who exploit migrant workers. In 2018, the Migration and Other Legislation (Enhanced Integrity) Act was passed – the amendments require the minister to publish information on a sponsor who has failed to meet their Sponsorship Obligations. There are limitations associated with both in that they only apply to sponsored migrants and thus exclude international students. The Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 also introduced provisions that increase sanctions for employers exploiting their workers. The Migrant Workers’ Taskforce sees the penalty levels as being insufficient to deter wrongdoing.

In Canada, effective 1 December 2015, employers who exploit migrant workers are subject to stricter penalties including stand-down periods and financial penalties.

The UK Modern Slavery Act 2015 goes some way to sanctioning employers for serious offences but does little to address minor forms of exploitation. This is because the United Kingdom government frames the issue as modern slavery with a competing emphasis on criminalising illegal workers.

### Summary

Many of the initiatives introduced in the three countries are relatively new and hence, it would be premature to try to assess their effectiveness or lack thereof. Nevertheless, it is important to investigate the existing international approaches, levers, and tools that can and should potentially be considered in order to address migrant worker exploitation in New Zealand. Notwithstanding, as most initiatives are recent, their impact and subsequent evaluation is limited.



## 1. Introduction

Migrant worker exploitation is a multifaceted issue, encompassing employment, immigration and other laws. This report examines how jurisdictions with which New Zealand normally compares itself – Australia, Canada, and the United Kingdom – are addressing the exploitation of temporary migrant workers. Each of these countries is reliant on temporary migrant workers to supplement their labour market. In Australia, for example, temporary migrant workers (excluding New Zealanders) make up around 6% of the labour market (Commonwealth of Australia, 2019). Across all three countries, temporary migrant workers fill gaps in the low-wage sectors, and it is in these sectors where deliberate and systematic exploitation is most common.

Exploitation is associated with basic rights and entitlements being denied. Even when such rights and entitlements are specified in written contracts, they are not always enacted, enforced and/or protected. When these are not isolated instances and when exploitation becomes deliberate and systematic, society has a serious problem.

In this report, we seek to understand the effectiveness of the policies, frameworks, and initiatives each government has implemented to support migrant workers, as well as the enforcement and compliance mechanisms in place to address employer behaviour. Of importance is what international best-practice approaches, levers, and tools can and should be considered in order to address migrant worker exploitation in New Zealand. From the onset, it should be noted that the initiatives that each government is introducing are all relatively new.

While our focus is on temporary migrant worker exploitation, we also discuss the introduction and implementation of a Modern Slavery Act in Australia and the United Kingdom, and the proposal for such in Canada. The proposal to introduce a Modern Slavery Act in the United Kingdom was fundamentally concerned with an attempt to address labour exploitation. Over time, the dominant narrative has turned to issues with transparency in supply chains. Issues relating to transparency in supply chains fall outside the scope of this report and will only be discussed where they are relevant to migrant worker exploitation. The United Kingdom Modern Slavery Act is one of the most prominent measures that the British government has taken to address labour exploitation, and so warrants detailed discussion.

The report structure is as follows. In section 2, we discuss how we conducted the research. Section 3 presents the key legislative responses to the exploitation of temporary migrant workers in Australia, Canada, and the United Kingdom. Section 4 discusses other key initiatives that are not encompassed by legislative developments. Section 5 is devoted to the mechanisms, which support migrants coming forward including the legal principle of immigration firewalls as a specific form of pursuing and protecting basic human rights without fear, for immigrants, apprehension and/or deportation. The 6th section discusses sanctions imposed on employers who exploit migrant workers. The final section, section 7, provides a summary of issues covered in the report.

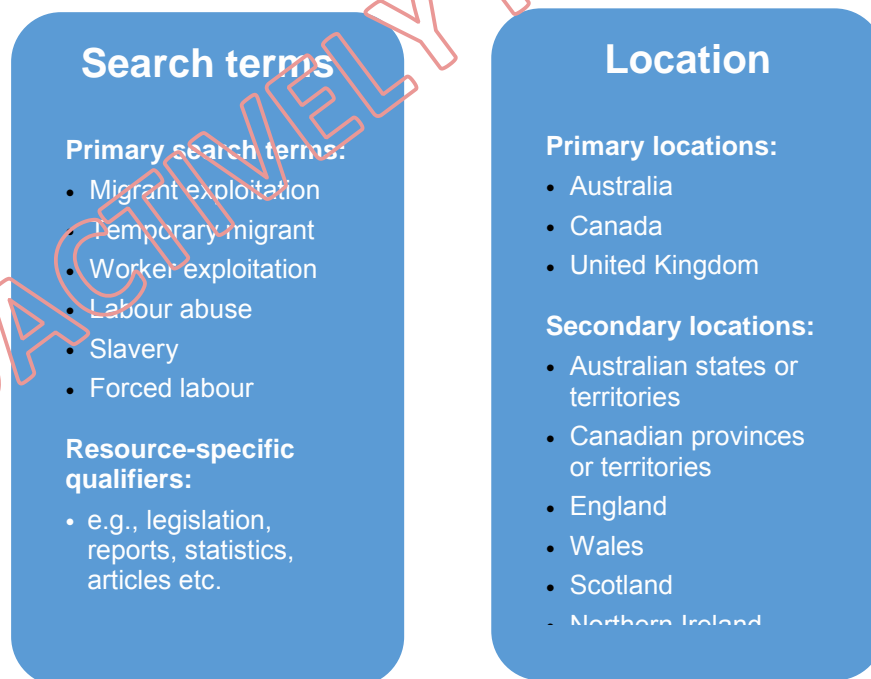
## 2. How the Research was Conducted

Australia, Canada and the United Kingdom each have a form of immigration and labour market regulation that is broadly similar to New Zealand. These three countries provide a useful site of analysis in: 1) examining the responses by the respective governments, as well as non-governmental organisations, unions and others, in addressing exploitation; and 2) evaluating the effectiveness of initiatives introduced. This research was conducted in conjunction with research into the nature, extent, drivers, and consequences of migrant worker exploitation in these three countries, as well as in New Zealand, and thus we employed the same research approach.

### 2.1 Search Methods

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

**FIGURE 2.1: Search methods: Terms and locations**



These terms, and various combinations of terms, formed the basis through which relevant information was identified.

The research focused on finding and analysing material from the following four types of sources:

1. Government agency reports
2. Non-governmental organisations (NGOs)
3. Academic research

#### 4. News media

First, government reports (for example those published by the Home Office in the United Kingdom, Employment and Social Development Canada, or agencies with specific purposes like the Fair Work Ombudsman in Australia) were used to gather information on policy changes and other initiatives.

Second, the research utilised reports from NGOs, which provided further background information and critical perspectives on government policies.

Third, academic research was sourced to provide analysis and further detail on government responses and initiatives. It should be noted that there is limited academic research to date due to how recent some of the initiatives have been implemented.

Lastly, we searched media publications, which served the dual purpose of providing available details of recent initiatives often not yet fully covered in other sources and, in some cases, providing testimonies from stakeholders that were not easily accessible elsewhere.

Throughout the report, we use boxes to provide factual information on initiatives or to further highlight material. We now go on to discuss key legislative developments, which is the fundamental framework in addressing migrant worker exploitation.

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### 3. Key Legislative Developments

As temporary migrant worker exploitation has become widespread in Australia, Canada and the United Kingdom, their respective governments have taken legislative steps to address the issue. The legislative initiatives vary between countries, and so this section is divided accordingly. Because the status and treatment of temporary migrant workers are influenced by employment, immigration and, in some cases, criminal law, this section engages with a wide number of initiatives. Although no single approach has emerged as a remedy to the issues around temporary migrant worker exploitation, there have been some positive developments, while other approaches have led to unintended consequences.

#### 3.1 Australia

In recent years, the Australian federal and state governments have introduced legislation that aims to protect workers – both domestic and migrant. Legislative changes have coincided with increased media attention on the exploitation of temporary migrants (Clibborn & Wright, 2018). In what follows next, we discuss legislative changes the Australian Government has introduced in order to address issues related to migrant worker exploitation. Table 3.1 provides a summary of key initiatives and their main outcomes, and the subsequent text elaborates on them.

**TABLE 3.1:** Key initiatives to address exploitation

	Key initiatives	Main outcomes
Federal legislation	Introduction of the Modern Slavery Act 2018	Companies required to release a public statement on the risks of slavery in their supply chains.
	Fair Work Amendment (Protecting Vulnerable Workers) Act	Increased penalties for non-compliance with minimum wage requirements.
	Introduction of Temporary Skill Shortage Visa	Applicants must meet higher standards Visas tied to employers.
	Changes to requirements for Working Holiday Makers program	Onus is placed on migrant workers to prove they are paid in compliance with wage laws.
State legislation	Labour hire legislation	Introduces tougher requirements for labour hire companies.
	Proposed wage theft law (Queensland)	The Queensland Government proposes making wage theft a criminal offence. Recommends that changes must be implemented by the Federal Government.

### 3.1.1 Legislative initiatives at the federal level

#### **The Fair Work Amendment (Protecting Vulnerable Workers) Act**

The Fair Work Act 2009 is the key legislation in Australia governing employee–employer relationships. It provides minimum entitlements and ensures fairness at work.

In response to high-profile cases of the exploitation of vulnerable workers (including migrants), such as the 7-Eleven case, the Australian Federal Government sought to increase protection for all workers. In the 7-Eleven case, migrant workers were being systematically underpaid, wage and timesheet records falsified, with some workers required to return a proportion of their wage in cash under a “cashback” scheme. The Fair Work Amendment (Protecting Vulnerable Workers) Act, which came into effect in August 2017, increased maximum penalties for non-compliance with minimum wage requirements (Clibborn & Wright, 2018). The liability for underpayment of wages was extended to include franchisors, holding companies and their officers, whereby, under certain circumstances, they are liable for breaches of employment regulations.

#### **FAIR WORK AMENDMENT (PROTECTING VULNERABLE WORKERS) ACT**

The Amendment Act made the following key changes to the Fair Work Act 2009:

- increased penalties for “serious contraventions” of workplace laws including asking employees for cashback;
- increased penalties for non-compliance by employers in regard to record keeping and providing pay slips;
- introduced penalties for providing incorrect information or hindering investigations by the Fair Work Ombudsman.

An individual can be fined up to AU\$12,600 per contravention and a company up to AU\$63,000 per contravention (Fair Work Ombudsman, 2019). In cases of “serious contravention” an individual can be fined up to AU\$146,000 per contravention and a company up to AU\$630,000.

In 2016–17, over AU\$4.8 million was imposed by the courts against “businesses, directors and accessories [for example HR managers]. This is a 66% increase on total penalties ordered in 2015–16 (\$2.9 million)” (Workforce Guardian, 2019, para. 1).

The Fair Work Ombudsman was granted greater evidence-gathering powers, with the onus of proof placed on employers to provide the required documentation.

However, the new maximum fine only applies if an employer knowingly and systematically underpays their workers (Clibborn & Wright, 2018) and is likely to require the Fair Work Ombudsman to investigate an employer on more than one occasion. Moreover, the liability of a franchisor and holding companies will only occur if they have a significant degree of influence over the franchisee, and they knew or could have reasonably known that the exploitation would occur. Franchisors can escape liability if they have taken “reasonable steps” to prevent the incident from occurring. Clibborn and Wright (2018) argue that the government acted like it is doing something without truly doing so, and in particular that

initiatives are “inadequate because the policy measures are targeted at a very narrow group of highly visible organisations without systematically addressing the causes and prevalence of underpayment of temporary migrants” (p. 16). In regard to cashback schemes, the Act also prohibits employers from “unreasonably requiring employees to make payment” (Commonwealth of Australia, 2019, p. 63).

The Australian Council of Trade Unions argued that many workers rely on the narrow protections of universal law (Australian Senate, 2018). The binary employer–employee relationship that the Fair Work Act 2009 protects means that few workers are being covered. The employment landscape in Australia consists of continually changing complex labour management structures (gig work, labour hires, outsourcing, and franchising). Gig work, for example, is regulated by commercial law, which carries no minimum pay or employment safety nets (Australian Senate, 2018).

### **Introduction of the Australian Modern Slavery Act (2018)**

Following the establishment of the United Kingdom’s Modern Slavery Act 2015, and with reference to the Commonwealth of Australia’s Joint Standing Committee on Foreign Affairs, Defence and Trade’s 2013 report, *Trading Lives: Modern Day Human Trafficking*, the Australian Federal Government in 2017 launched an inquiry into establishing a Modern Slavery Act. During the inquiry process, the committee “heard particular concerns about the risks of labour exploitation, particularly among migrant workers in Australia... [and] heard evidence linking visa conditions, leveraged by unscrupulous employers to exert control, to an increased likelihood of vulnerability to modern slavery offences and exploitation” (Commonwealth of Australia, 2018a). The findings of the inquiry – *Hidden in Plain Sight* – set out the final recommendations for an Australian Modern Slavery Act (Commonwealth of Australia, 2017). It was based on 225 submissions from a range of domestic and international stakeholders and from 10 public hearings. The Modern Slavery Act was passed on 10 December 2018 and came into effect on 1 January 2019 (Armstrong, 2018; Business & Human Rights Resource Centre, n.d.).

The Australia Modern Slavery Act 2018 applies to companies with an annual revenue over AU\$100 million, approximately 3,000 entities across the country (Commonwealth of Australia, 2018). The Act makes it mandatory for companies to release a publicly available statement every 12 months, beginning from 2020, on the risks of modern slavery occurring within their supply chains and the actions the company has taken to assess those risks (Commonwealth of Australia, 2018a; Ernst & Young, 2018).

### **Introduction of a Temporary Skills Shortage visa**

In March 2018, the Temporary Work (Skilled) visa subclass 457 was replaced by the Temporary Skills Shortage visa (TSS visa) (subclass 482) (Mares, 2018). Increasingly, the 457 visa was seen as “a proxy pathway to permanent residency” and the introduction of the TSS visa was seen as a way to revert “back to its fundamental purpose, short-term needs” (Mares, 2018, p. 4).

The Temporary Work visa allowed migrant workers to work in Australia for up to 4 years for their approved sponsor. The TSS, in contrast, comprises two streams: 1) a short-term

stream, which grants migrants a 2-year visa which can be renewed once; and 2) a medium-term stream under which migrants can gain a 4-year visa with a potential pathway to permanent residency. Applicants for both streams must have at least 2 years' full-time work experience that is relevant to the job. Migrants in both streams depend on an employer for their right to work in Australia. The medium-term TSS visa holders are potentially vulnerable, as migrants now have to work for an employer for 3 years, as opposed to 2 years, in order to apply for permanent residency.

In comparison to the 457 visa, applicants for the TSS visa must meet a greater standard of English-language competence – under the International English Language Testing System (IELTS), applicants must achieve a status of “competent” English in speaking, reading, listening and writing (a minimum score of 6 in each component of IELTS) (Mares, 2018). These changes make it more difficult for skilled workers on temporary visas to obtain residency (Mares, 2018). While introduction of the TSS visa was not a direct consequence of the exploitation of migrants, Mares (2018) argues that the changes were created to extract more value from migrants rather than making changes that would benefit them.

### **Addressing wage theft for working holiday makers**

In a step to address wage theft, those working holiday makers wanting to extend their visas for a second year under the 88-day-rule<sup>1</sup> have to prove they were paid in compliance with wage laws for work performed after 1 December 2015 (Clibborn & Wright, 2018). Following findings from governmental inquiries and academic research on wage theft, the change was enacted to help prevent temporary migrant exploitation (Cash, 2015; Clibborn & Wright, 2018). In May 2015, then-Assistant Minister for Immigration and Border Protection, Senator Michaelia Cash, argued that the existing arrangements between backpackers and their employers created a perverse motivation for visa holders to agree to poor working conditions in order to secure a second visa (Cash, 2015). Under this new rule, it is suggested that working holiday makers will no longer be incentivised to accept substandard conditions.

Clibborn and Wright (2018) argue that the change places the onus of proof onto the temporary migrant and thus creates a penalty for them if they fail to do so. Consequently, this could create a situation where workers who are underpaid will be denied a second-year visa. According to Safe Work Australia (2017), backpackers who are working in rural areas in order to obtain a second working holiday visa (88-day rule) are most vulnerable to unsafe working conditions.

In 2019, the Australian Government announced further changes to the working holiday visa scheme. From 1 July 2019, those on subclass 417 (Working Holiday) and 462 (Work and Holiday) visas, who complete 6 months of specified work in areas where there is a critical labour shortage, will be qualified to apply for a third visa. In short, those seeking a third visa must have undertaken 3 months of specified work in their first year and 6 months in the second year.

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<sup>1</sup> The 88-day-rule refers to working holiday makers who have worked for at least 3 months in agriculture and related industries (visa subclass 418).



### 3.1.2 Legislative and other developments at the state level

#### **The New South Wales Modern Slavery Act**

The New South Wales Modern Slavery Act was passed into law in June 2018 by the New South Wales State Parliament (Ernst & Young, 2018) and was to take effect 1 July 2019. The Act applies to entities with employees in New South Wales, which are not reporting under the Federal Act and which have an annual revenue over \$50 million (Ernst & Young, 2018), and thus this Act has a much lower threshold. Entities are required to disclose the organisational structure and the due diligence processes they have undertaken to assess and manage the risk of modern slavery in their supply chain. Penalties of up to AU\$1.1 million apply for businesses that do not comply with the Act (Redmond, 2018). However, in June 2019 it was announced that the Act was referred back to committee for review due to defects.

#### **Tougher standards for labour hire operators**

The Queensland, South Australian, and Victorian state parliaments have introduced legislation that requires tougher standards for labour hire operations (Clibborn & Wright, 2018). In 2017, legislation was passed in both the Queensland and South Australian parliaments that took effect in early 2018. In Victoria, the legislation passed in June 2018 and is due to commence no later than November 2019 (Coors Chambers Westgarth, 2018). One of the 22 recommendations made by the Migrant Workers' Taskforce was that the Australian Government establish a National Labour Hire Registration Scheme (Commonwealth of Australia, 2019).

Under the Queensland Labour Hire Licensing Act 2017, employers are required to use licensed labour hire services which have demonstrated compliance with regulatory requirements. Failure to uphold the requirements of the Act will result in employers being stripped of their ability to operate. Similarly, the Victorian and South Australian legislation also requires that labour providers operate with a licence and that the users of labour providers only deal with registered providers (Coors Chambers Westgarth, 2018). The licences are valid for 1 year in Queensland, 3 years in South Australia and indefinitely in Victoria. Operators who provide labour without a license will be subject to financial penalties (individual penalties of up to AU\$140,000 [Victoria] or body corporate penalties of up to AU\$507,000 [South Australia]) and, in South Australia and Queensland, are also subject to imprisonment.

Nevertheless, unions argue that labour hire companies will continue to ignore workplace laws because they are confident that their workers do not know the law or are too intimidated to fight for their rights (Clibborn & Wright, 2018).

#### **Proposed wage theft law (Queensland)**

A Queensland parliamentary inquiry estimated that more than one-in-five Queensland workers were paid less than they were entitled to, and, as a consequence, the cost to the Queensland economy from the wage underpayment could be more than AU\$2.1 billion annually (Education, Employment and Small Business Committee, 2018; Queensland



Government, 2019). In February 2019, the Queensland Government responded to one of the 17 recommendations made within the report and announced its support for making wage theft a criminal offence (Queensland Government, 2019). The government will work alongside stakeholders in order to determine the best way to act on the recommendations. Further, Industrial Relations Minister, The Honourable Grace, stated that 12 of the 17 recommendations needed to be considered by the Federal Government: “It’s time for Scott Morrison to show some leadership and take action” (Palaszczuk & Grace, 2018).

Currently, the non-payment of wages is considered a civil offence under the Industrial Relations Act 2016 (Qld) (IR Act) (Education, Employment and Small Business Committee, 2018). The IR Act has established baseline employment conditions and set out bargaining-process requirements to ensure Queensland workers have protections of wages and conditions. The IR Act applies to the employers and employees to whom the Fair Work Act 2009 does not apply. In June 2018, the Office of Industrial Relations estimated that approximately 250,000 workers are covered by the industrial relations system. The maximum fine for non-payment of wages is AU\$25,230 and for sham contracting up to AU\$11,750. When the employer is a corporation, these maximum penalties can increase five-fold.

### 3.1.3 Summary

The focus on addressing migrant worker exploitation in Australia at the provincial level has largely occurred in Queensland where the government has initiated several changes. In particular, Queensland is a key employment location for working holiday makers. The Queensland Government is putting forward recommendations to the Federal Government from the inquiry they undertook into wage theft in Queensland. For changes to be effective, both in terms of content and for enforcement purposes, changes need to be introduced at both federal and state level.

At the federal level, several of the initiatives introduced are recent and hence it is difficult to judge their effectiveness. Along these lines, the Salvation Army-Freedom Partnership (2017), in their submission to the inquiry to establish a Modern Slavery Act, stated: “efforts undertaken to protect vulnerable workers thus far are positive steps, but they do not go far enough to establish adequate protections for individuals who are vulnerable to all forms of labour exploitation, including modern slavery” (p. 53).

## 3.2 Canada

Temporary labour migration into Canada falls under the Temporary Foreign Worker (TFW) Program. Work visas issued under this programme are employer-sponsored visas. In 2017, approximately 79,000 visas were issued (Government of Canada, 2018).

The TFW Program has been in place for over 50 years and in the past 2 decades it has been restructured several times to limit permanent migration and encourage temporary movement. (See: Understanding the Exploitation of Temporary Migrant Workers for information on the history and current structure of the TFW Program.) According to the OECD (2016), the TFW Program is renowned for its flexibility and constant reshaping to match the needs of the Canadian labour market. Although this can undoubtedly be taken as

a measure of success in terms of government responsiveness to employers, most often such changes either have negative, or at best neutral, effects on workers themselves. The TFW Program has been described as having “racist foundations” (Ramsaroop & Smith, 2014, para. 2), and being, at best, a “necessary evil” (Alberta Federation of Labour, 2012, para. 1); it has even been described as “broken” by Justin Trudeau (2014, para. 16), then leader of the Liberal Party.

In recent years, there have been several initiatives introduced to address issues with the TFW Program and labour migration generally (see Table 3.2). The most recent was a proposal for an open work permit programme for migrants who have been exploited. Initiatives have also been introduced at the provincial level; these tend to revolve around improved workplace legislation.

This section documents and describes the most prominent developments that have taken place and discusses where legislative developments have been most positive.

**TABLE 3.2:** Key initiatives to address exploitation

	Key initiatives	Main outcomes
Federal legislation	Amendment to the Immigration and Refugee Protection Regulation	Open work visas will be granted to migrants who can prove they have been exploited by their employer.
	Proposal for a Modern Slavery Act	Proposal for companies to release a public statement on the risks of slavery in their supply chains.
Provincial legislation	Worker Recruitment and Protection Act (Manitoba)	Employers and recruiters are required to register with the provincial government, recruitment fees are banned and financial penalties introduced.
	Worker Recruitment and Protection Act (Nova Scotia)	Employers and recruiters are required to be licensed by the provincial government, recruiters pay a bond and recruitment fees are banned.
	Foreign Worker Recruitment and Immigration Services Act (Saskatchewan)	Contains strong worker-protection and anti-exploitation provisions.

### 3.2.1 Legislative changes at the federal level

Developments at the federal level include the introduction of open work permits for vulnerable workers and the proposal for the introduction of a Modern Slavery Act.

#### Amendments to the Immigration and Refugee Protection Regulation

The Canadian government recognises that employer-linked work visas can lead to power imbalances, and by extension they can create “conditions under which risks of abuse could be higher. Among these conditions are the structural and financial barriers to mobility for migrant workers experiencing abuse, or at risk of abuse, related to their employment” (Government of Canada, 2018, para. 2). Amendments to the Immigration and Refugee Protection Regulations (Section 207.1), which took effect in June 2019, provide migrant workers who are being physically, sexually, financially, or psychologically abused the right to apply, through a designated agency, to Immigration, Refugees and Citizenship Canada for an open work visa.

The amendments also seek to reduce the risk of those being exploited finding a new job without authorisation, i.e., working illegally, and to “facilitate the participation of migrant workers experiencing abuse, or at risk of abuse, in any relevant inspection of their former employer and/or recruiter, or otherwise assisting authorities (noting that this would not be required) by reducing the perceived risk and fear of work permit revocation and removal from Canada” (Government of Canada, 2018, para. 15). The amendments were first piloted in British Columbia in 2016; up until November 2018, 51 authorisations were granted. In addition, the migrant workers are exempt from the permit-processing fee and are not required to have a job offer.

There is, however, concern that migrants will still experience exploitative conditions before they can apply for an open work permit and that the burden of proof pertaining to their exploitative conditions remains on them. The government estimates that they will receive around 500 applications from migrants each year.

### **Consideration of a Modern Slavery Act**

In December 2018, Canada made its first move towards the introduction of a Modern Slavery Act via instigating into federal parliament Bill C-423, described as “an Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff” (Bill C-423). At the time of writing, the Bill is still only at the introduction and first reading stage,<sup>2</sup> and so it is unclear whether it will pass and what it will look like if it does.

In its current form, Bill C-423 largely resembles the modern slavery acts currently in place in Australia and the United Kingdom, as well as the California Transparency in Supply Chains Act. Thus, it too appears to focus more on supply-chain transparency as opposed to directly addressing exploitation within its domestic borders. Although the future of Bill C-423 is unclear, the changes suggested in the text at the time of writing are positive, although, as with the UK Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018, the Canadian government could introduce stronger measures and explore approaches other than a soft-law disclosure regime.

### **3.2.2 Developments at the provincial level**

Although several provinces in Canada have taken positive steps to improving the treatment of migrant workers, success has been limited for two reasons. The first is that even though provincial measures have gone some way to improving outcomes for and treatment of temporary migrant workers, those measures still operate within the federal governing structure of the TFW Program. The second major limitation results from the fact that the provinces that have the highest standards for treatment of temporary migrant workers are mostly those that employ the fewest migrant workers year on year. As a result of their limited size, it is not possible to straightforwardly extrapolate successful programmes there into possible policy approaches to addressing exploitation of temporary migrant workers in New Zealand. That being said, as will be discussed in this section, the actual changes that

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<sup>2</sup> More information on the detail and progress of the Bill can be found [here](#).

have taken place are not idiosyncratic nor do they diverge from established best-practice literature.

The approaches utilised to address migrant worker exploitation vary between Canada's provinces and territories. Some provinces have implemented some forward-thinking legislation currently in place to address migrant worker legislation, whereas others have given no recognition to the specific issues facing migrant workers. The most recent overview of these developments can be found in the Canadian Council for Refugees (2018) report *Evaluating Migrant Worker Rights in Canada 2018*. This report details the developments in each province and territory, and awards a grade for the progress and success of their treatment of migrant workers. The council awarded A grades to three of Canada's provinces and territories: Manitoba, Nova Scotia and Saskatchewan. An A grade is defined in the report as meaning that state has taken "significant and innovative action" to address the exploitation and treatment of migrant workers in their territory (Canadian Council for Refugees, 2018, p. 3).

**Manitoba**, in 2009, became the first province in Canada to enact legislation that explicitly sought to protect and improve the rights of temporary migrant workers. The Worker Recruitment and Protection Act (WRPA), included provisions requiring employers and recruiters to register with the province before being allowed to employ temporary migrant workers. It banned the use of recruitment fees, and instituted "stiff penalties" for violations (Canadian Council for Refugees, 2018, p. 13). Significantly, the Manitoba Provincial Government also negotiated with the Federal Government to change the manner in which Labour Market Impact Assessments (LMIAs) function for workers in Manitoba. Instead of functioning as they do in other provinces, where employers submit LMIAs and negotiate directly with the Federal Government to bring temporary migrant workers into jobs, the Manitoba Government has the power to vet employers and recruiters prior to them being awarded LMIAs. This increases checks on employers and provides an extra level of coordination between provincial and federal authorities. The lack of coordination between the provinces and Federal Government has caused several problems in the regulation and enforcement of laws intended to assist migrant workers, and thus Manitoba's legislation has helped to counteract such issues.

**Nova Scotia's** WRPA requires employers and recruiters to register and obtain licences before employing temporary migrant workers and requires recruiters to pay a CA\$5,000 bond similar in function to the system used in Saskatchewan. The WRPA prohibits the use of recruitment fees; all licensed recruiters must be listed online in a publicly accessible database (Canadian Council for Refugees, 2018). As the Canadian Council for Refugees reports, however, Nova Scotia's approach to temporary migrant worker protection is limited by the lack of information being published by the provincial government on the efficacy of its enforcement mechanisms.

**Saskatchewan's** Foreign Worker Recruitment and Immigration Services Act (FWRISA) contains strong worker-protection and anti-exploitation provisions. The Canadian Council for Refugees (2018) describes the legislation as "the most comprehensive legislation in Canada to counteract the vulnerabilities that migrant workers face" (p. 12). The FWRISA

requires employers to register with the province, and recruiters to obtain a licence. Further, a licensee is required to post a CA\$20,000 (approx. NZ\$22,020) bond, which can be used to compensate workers if they have been exploited. Recruitment fees have been expressly outlawed in the province, and recruiters are required to sign “transparent” contracts with both employers and employees (Canadian Council for Refugees, 2018, p. 11). Saskatchewan is unique in that it provides fully funded access to services to all migrants, regardless of their status. This includes “information and referrals, counselling, interpretation, and employment services” (Canadian Council for Refugees, 2018, p. 12). As yet, this funding does not cover immigration services. This is arguably a significant oversight in any system aiming to protect and improve the rights of migrant workers; however, the Canadian Council for Refugees still views the system favourably.

**Ontario:** A key example of a positive measure is the Ontario Worker Safety and Insurance Board, a provincial governmental organisation that aims to ensure “migrant workers with work-related injuries and illness have access to care and benefits both in Manitoba and when they return to their home country” (Canadian Council for Refugees, 2018, p. 14).

Ontario introduced legislation in 2009 that offered some improved protections for workers employed through the now defunct Live-in Caregivers Program. “Bill 210,” or the Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009, instituted a blanket ban on recruitment fees for the hiring of live-in caregivers. It also prohibited employers from forcing workers to repay them for costs “incurred by the employer in the course of arranging to employ the foreign national,” illegalised the practice of passport confiscation, and prohibited employers from taking any possessions from workers in their employ (Faraday, 2012, p. 66). Although these were positive steps, they only applied to a specific subset of workers, and as Faraday (2012, pp. 66–67) discusses in detail, were dependent on reactive, not proactive, enforcement and so only uncovered very small amounts of abuse. Faraday contends that proactive enforcement of both the provisions of Bill 210 and any other similar legislation is necessary for adequate enforcement to take place.

### 3.2.3 Summary

Canada is taking fewer steps than Australia to address migrant worker exploitation at a legislative level, but the developments it has made thus far do suggest improvements in the treatment of migrant workers are likely in the near future. The introduction of open work permits for vulnerable workers is particularly promising and will have a significant net positive effect on the treatment of migrant workers across the country. Similarly, increased funding and support for community organisations will undoubtedly have net positive impacts for migrant workers; however, their exact form and effectiveness is as yet unknown.

The federal developments currently taking place in Canada should be closely monitored. If they are successful and properly implemented, they may prove useful models. Similarly, the approaches taken in Manitoba, Nova Scotia and Saskatchewan should be engaged with in

greater detail to see what is useful, what is not, and what New Zealand can adopt to improve the rights, protections, and experience of employment for temporary migrants.

While these developments represent significant positive movement towards better protection of migrant workers, it should be noted that the three provinces that have the highest standards of migrant worker protection in the country employ some of the smallest numbers of temporary migrant workers. In 2017, the temporary migrant worker population of Manitoba, Nova Scotia, and Saskatchewan combined amounted to just 4.4% of the overall temporary migrant worker population in Canada (Canadian Council for Refugees, 2018). These measures have been highly successful in some senses; however, their applicability to the New Zealand context may be limited due to their narrow scope.

This is not to say that such policies could or should not be adapted to New Zealand. Indeed, the majority of policies employed in these jurisdictions, which are not currently in place in New Zealand, could be beneficial to improving the rights and protections of migrant workers in New Zealand. It is merely to say that they cannot be straightforwardly adopted without acknowledging their limitations.

### 3.3 United Kingdom

#### 3.3.1 Legislative developments

Legislative developments that have occurred in the United Kingdom in recent years are focused on reducing exploitation and slavery. There are two major pieces of legislation relevant to this discussion: The Modern Slavery Act 2015 and the Immigration Act 2016. Both of these Acts have changed the position of temporary migrant workers in the United Kingdom. We now go on to discuss both pieces of legislation as well as the Modern Slavery (Victim Support) Bill which has been introduced to address weaknesses in the Modern Slavery Act (see Table 3.3). We also address local government initiatives.

**TABLE 3.3:** Key initiatives to address exploitation

	Key initiatives	Main outcomes
Federal legislation	Modern Slavery Act 2015	Companies required to release a public statement on the risks of slavery in their supply chains.
	Modern Slavery (Victim Support) Bill	A private members' bill awaiting its second reading. Seeks to address weaknesses in the Modern Slavery Act and in particular the status and support offered to victims.
	Immigration Act 2016	If a migrant is working illegally there is a restriction on their rights.
Local government	Local Government Association	Increased awareness of how local government can help reduce slavery.

#### Modern Slavery Act



In 2015, the United Kingdom introduced legislation aimed at addressing and preventing modern slavery. Its passage was described as a “historic milestone” by then Home Secretary Theresa May, and, at the time, she argued that it was a vital step in the government’s plan to rid the United Kingdom of all forms of modern slavery and similar exploitation (May, 2016).

It should be noted that the Modern Slavery Act 2015 did not actually contain any new offences for the main issues it addresses. Offences such as slavery, servitude, forced and compulsory labour, and human trafficking have been treated as criminal offences in the United Kingdom for many years. However, the Modern Slavery Act 2015 increased punishments for these crimes and introduced a number of new legislative and governmental mechanisms for understanding and addressing the kinds of abuses associated with modern forms of slavery (Mantouvalou, 2018).

Since the passage of the Act, there has been a steady upward trend in the number of prosecutions for crimes relating to and involving modern slavery, the most common prosecutions being for labour exploitation. Although it has not been long enough to establish a strong trend, the jump from 80 prosecutions between 2016 and 2017 to 239 prosecutions between 2017 and 2018 suggests positive developments. However, there is a significant mismatch between the number of convictions taking place and the number of crimes being reported to the National Referral Mechanism<sup>3</sup>. For the 80 prosecutions between 2016 and 2017, there were 3,146 referrals, and for the 239 prosecutions between 2017 and 2018 there were 5,145 referrals.

Source: National Crime Agency, 2018.

One of the most important provisions of the Modern Slavery Act 2015 is the establishment of mechanisms which enable victims of modern slavery to be awarded reparations from their employers for the harm they have experienced. Specifically, the law includes provisions allowing the courts to make “reparation orders” to employers and other people convicted of offences under the Act. The government views this as a vital component of its policy platform and there have been a number of cases where workers have been able to receive reparation for their exploitation (Focus on Labour Exploitation, 2016).

In order to receive reparations, however, the employer in question must first have been convicted of an offence under the Modern Slavery Act and have had a reparation order laid against them. The Act requires a high standard of proof, and as a result, very few cases end in conviction. As of November 2017, the most recent period of data at the time of writing the current report, there had been no successful reparation orders made under the Modern Slavery Act.<sup>4</sup> This means that even in rare situations of conviction, victims have thus far been unable to receive any of the money owed to them.

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<sup>3</sup> The National Referral Mechanism is the system by which victims of human trafficking are identified and support provided.

<sup>4</sup> This information can be found in [this](#) link to parliamentary written answers and questions dated 19 November 2018.

The Modern Slavery Act also introduced several provisions to improve oversight and compliance within domestic supply chains. These are soft-law provisions which require businesses earning more than GBP36 million per year to publish reports on their actions to eradicate slavery from their supply chains. Labour supply chains are one of the primary, and most complex, drivers of temporary migrant worker exploitation in the United Kingdom. The government estimates that between 9,000 and 11,000 companies should be reporting under the Act.

The *Modern Slavery Act* has faced criticism for the manner in which it frames the problem of modern slavery. The Act focuses primarily on severe forms of exploitation, and this has been argued to risk “obscuring the moral wrong of labour exploitation” (Mantouvalou, 2018), turning the focus away from all forms of exploitation in order to place focus only on the most severe forms.

Mantouvalou (2018) argues:

A worker’s vulnerability may be due to individual or structural factors. However, the MSA [Modern Slavery Act] and the surrounding political debate turn a blind eye to the structural factors that create vulnerability to exploitation. This also obscures the fact that there are sometimes *legal* [emphasis in original] structures that create vulnerability to exploitation. (para. 11)

Mantouvalou commends the Modern Slavery Act for criminalising individuals who commit acts of severe labour exploitation; but since it has not been paired with an attempt to address the structural factors which produce migrant vulnerability in the first place, she finds that the Act is not useful in addressing the issues of modern slavery and labour exploitation in the United Kingdom.

### **Modern Slavery (Victim Support) Bill**

In 2018, the Modern Slavery (Victim Support) Bill was introduced as a private members’ bill to the House of Lords. The Bill aims to address perceived failings within the Modern Slavery Act, particularly focused on the status and support offered to victims of modern slavery.

The Bill proposes three broad changes to the Modern Slavery Act. First, it extends the period of guaranteed support for victims from 45 days to 410 days. Second, the Bill introduces a range of minimum standards for victim support ranging from accommodation assistance to medical care. Lastly, it grants victims the right to remain in the United Kingdom for the period of their recovery, if they choose to do so.

The Bill has moved through the House of Lords (at the time of writing this report) and is currently awaiting its second reading in the House of Commons. As a private members’ bill, it is not government policy; however, it has received wide support in both houses of parliament (Adams, 2018). It has been remarked that if the government were willing to guarantee their support for the Bill, it would “get cross-party support and [likely] be one of the fastest pieces of legislation to pass the House of Commons” (Adams, 2018, para. 3).

### **Immigration Act 2016**



The Immigration Act 2016 introduced several provisions, which either undermined or seemed to ideologically oppose the aims of the Modern Slavery Act. The most significant of these was the criminalisation of illegal workers. The Immigration Act stipulates that if a worker is found to be working illegally their wages can be confiscated as proceeds of criminal activity (Fudge, 2018; Mantouvalou, 2018). There has been comparatively little analysis of this development thus far; however, both Fudge and Mantouvalou argue that it demonstrates the United Kingdom government's lack of interest in addressing labour exploitation, preferring instead to criminalise migrants and enact strict immigration controls.

It has been argued that the criminalisation of illegal workers not only misattributes a labour market issue to immigration problems, but also undermines the government's own attempts to address modern slavery. Criminalising workers in such a manner drives people into more vulnerable positions and increases rates of irregular work and trafficking rather than reducing it. As it is put by Focus on Labour Exploitation (2017), being a migrant is not a guarantee of vulnerability to exploitative work. Instead, migrant workers are made vulnerable by the network of laws and enforcement practices which restrict their rights. It is this approach, not the act of immigration, which leads to migrant exploitation in the United Kingdom and in destination countries across the world.

### **Local government initiatives**

Because Canada and Australia's political systems are built around a division of sovereignty between federal and state governments, there are a wider range of initiatives being employed on a smaller scale in both countries than in the United Kingdom. Like New Zealand, the United Kingdom operates with only a central government, and local bodies have less capacity to design policies entirely on their own. Gardner (2018) summarises the local government response to modern slavery as such:

In contrast to the attention paid to national action, local implementation of policy surrounding the Modern Slavery Act has until recently received little support or resources. This is a problem because action at a local level contributes to the prevention of slavery, the discovery of victims, supporting recovery, and creating communities that are sustainably resilient against slavery. Yet to date, local action in the UK has been substantially dependent on the proactive efforts of local policy entrepreneurs. The multiple streams approach helps us in analysing why this is the case. (p. 471)

There have, however, been a small number of positive changes at a local governmental level particularly in relation to the local implementation of modern slavery legislation. In 2017, the Local Government Association, in partnership with the Independent Anti-Slavery Commissioner, published *Tackling Modern Slavery: A Council Guide*, which discussed the statutory obligations, opportunities, and threats councils must deal with in the national effort to end modern slavery.

The Local Government Association has also encouraged councils across the United Kingdom to appoint a modern slavery representative, tasked with the primary goal of implementing

the Modern Slavery Act and the aforementioned council guide in an effort to mobilise communities and raise awareness of the issues at a local level. Unfortunately, there is little information available on the extent or efficacy of this approach.

Lastly, in her 2018 overview of the current status of efforts to reduce modern slavery across the United Kingdom, Gardner found that 42 multi-agency partnerships had been established across the United Kingdom working towards ending modern slavery in their constituencies. These approaches varied widely across the country, but there were several areas where successful and active partnerships had been built, most prominently in Wales and West Yorkshire. Due to the lack of adequate governmental direction on these issues, combined with a lack of funding, these successful partnerships were largely sequestered to areas with a population invested in the issue, combined with the efforts of local policy entrepreneurs. In areas that lacked these factors, there was little to no measurable success in building local anti-slavery or anti-exploitation efforts (Gardner, 2018).

### 3.3.2 Summary

The Modern Slavery Act 2015, while well-intentioned, has weak enforcement mechanisms and does not seem to offer any significant improvements in support or protections for migrant workers in the United Kingdom. Although the number of prosecutions under the Act is steadily increasing, which is encouraging; the Act only deals with the most serious of abuses, so it fails to legislate for many of the harms migrant workers experience.

In addition, some of the positive effects of the Modern Slavery Act have been diminished by the “hostile environment” provisions of the Immigration Act 2016 which is both explicitly and implicitly anti-migrant. The consensus among migrant advocates and researchers is that the recent legislative provisions and policies introduced by the government have been informed by a desire to cut immigration rather than to prevent labour exploitation (Åhlberg, 2018; Mantouvalou, 2018). Policies such as the targeting of “illegal working” and attempting to push irregular migrants out of the United Kingdom by creating an undesirable environment for them have not been vindicated in evidence. Instead, they have made irregularity a significantly more dangerous issue for migrant workers and driven some further underground into positions of greater vulnerability. Moreover, policies put forward by the United Kingdom government in an attempt to address modern slavery have done a great deal to address the issue on an immigration level, and very little to address the labour market-level causes of such exploitation (see Davies, 2018; Fudge, 2018; Lever & Milbourne, 2016).

As these flaws are being acknowledged, there is some movement both on a national and local level in the United Kingdom to improve services for victims of exploitation and to better address the existence of modern slavery. Although there is little evidence of the efficacy of the Local Government Association’s efforts to increase awareness of modern slavery, and there has been an implementation gap between the government’s intent and the capacity of local authorities to enact new policies, the material they have produced is positive. There is evidence of a wide array of multi-agency partnerships being developed between stakeholders, local authorities, and councils across the United Kingdom.

PROACTIVELY RELEASED

## 4. Other Key Initiatives

In this section, we discuss key initiatives, outside of legislative changes, that each jurisdiction is introducing to address exploitation. Initiatives range from taskforces to support networks established to unpack and address the exploitation of migrant workers.

### 4.1 Australia

#### Establishment of a Migrant Workers' Taskforce

In October 2016, the Federal Government established the Migrant Workers' Taskforce. The series of underpayment scandals, including the 7-Eleven and Domino's Pizza cases (Ferguson, 2019), revealed gaps in the Australian legal system, wherein workers were not all treated equally. The aim of the taskforce was to "identify proposals for improvements in law, law enforcement and investigation, and other practical measures to more quickly identify and rectify cases of migrant worker exploitation" (Commonwealth of Australia, 2019, p. 15).

#### MIGRANT WORKERS' TASKFORCE

The taskforce focused on four key areas:

1. improve communication with visa holders;
2. boost enforcement of regulators to ensure compliance;
3. increase prevention and redress of exploitation; and
4. address the effectiveness of policy frameworks and regulatory settings.

Source: Commonwealth of Australia, 2019.

The final report, released in March 2019, contained 22 proposed reforms. One recommendation is that legislation needs to be amended to ensure temporary migrant workers are protected by the Fair Work Act 2009 at all times (Commonwealth of Australia, 2019). The taskforce recommended that penalties related to breaches of wage exploitation under the provisions of the Fair Work Act 2009 be increased and aligned to other business laws, particularly consumer laws. Furthermore, the taskforce recommended that criminal sanctions be introduced for the most serious forms of exploitative conduct – exploitation which is clear, deliberate, and systematic.

The taskforce calls for the government to create a national registration scheme to track labour hire firms across Australia (Commonwealth of Australia, 2019). In particular, the scheme should focus on labour hire operators and hosts in four high-risk sectors – horticulture, meat processing, security, and cleaning. Another recommendation was that employers be banned from employing those on visas for a specified amount of time if they have previously been convicted of underpaying migrant workers (Commonwealth of Australia, 2019).

Allan Fels, head of the taskforce, argued that the Fair Work Ombudsman itself is not well known or understood by many people, claiming that it was designed as an ombudsman when it needs to be an enforcement agency (Ferguson, 2019). In its recommendations, the taskforce recommends that the Fair Work Ombudsman be provided with the same

evidence-gathering powers as other business regulators and with greater resourcing, tools, and powers to undertake its function under the Fair Work Act 2009 (Commonwealth of Australia, 2019).

### **Establishment of an Inter-agency Assurance Protocol**

In September 2017, the taskforce announced the development of a new inter-agency reporting protocol involving the Department of Home Affairs and the Fair Work Ombudsman (Cash & Laundry, 2018; Commonwealth of Australia, 2019). The purpose of the protocol is to support and encourage migrant workers to report workplace exploitation without the fear of their visa being cancelled (Commonwealth of Australia, 2019). Under the new protocol, migrant workers who have breached work-related visa conditions will not have their visas cancelled if the Department of Home Affairs believes they have been exploited; and if the migrant worker reports the case to the Fair Work Ombudsman, actively assists in the Fair Work Ombudsman investigation, and commits to the visa conditions in the future; and there are no other grounds for cancellation.

In April 2018, the *Sydney Morning Herald* reported that the assurances made to migrant workers under this protocol were actually founded on an informal agreement between the Fair Work Ombudsman and the Department of Home Affairs, and that migrant workers who had sought protection under the Assurance Protocol were actually being exposed to a risk of deportation as a result (Gartrell, 2018). On the one hand, this is not definitive proof that the Fair Work Ombudsman has acted in bad faith at any point, and indeed the Ombudsman has demonstrated the efficacy of the protocol by claiming that none of the 35 migrant workers for whom it had been utilised had been deported for work-related visa breaches (Australian Government, 2018). However, as Unions NSW secretary Mark Morey stated, “if [migrant workers] are going to come forward and expose workplace fraud, they need an iron-clad guarantee of support from authorities” (Gartrell, 2018, para. 9), and an informal agreement such as that currently in place will likely not suffice to encourage migrant workers to speak out.

## **4.2 Canada**

### **Migrant Worker Support Network (Pilot)**

The Migrant Worker Support Network is a recent initiative introduced by the Canadian Federal Government, to address a wide range of issues facing migrant workers. The establishment of the network was based on the recognition that many migrant workers across Canada have not received the support they needed in a number of key areas, namely, access to services in isolated regions; and access to services, education, and info-sharing.

The Support Network, proposed in 2016 by Employment and Social Development Canada (ESDC), a Federal Government department, was launched in British Columbia in October 2018 (Government of Canada, 2018). The pilot programme is scheduled to be completed in March 2020. The outcome of the pilot will inform the government’s decision to expand the initiative to other provinces/territories. The initiative brings together a wide spectrum of stakeholders, including domestic and foreign government officials, along with migrant

workers to collaborate on enhancing the protection of migrant workers. The Federal Government designated CA\$3.4 million over a 2-year period to the Migrant Worker Support Network.

#### **MIGRANT WORKER SUPPORT NETWORK**

The ESDC has defined four primary goals for the Migrant Worker Support Network:

1. addressing education, support and outreach needs;
2. building trust, collaboration and harmonisation of services;
3. networking and information sharing; and
4. recommending policy and funding changes.

Source: Kleuskens, 2018.

Much of the material published thus far on the Support Network emphasises its capacity for the education of migrant workers. While it is true that many migrant workers do not possess adequate understanding of their rights in Canada, it is unclear whether improved knowledge of rights is the only key path towards improving outcomes. As Rodgers (2018) and Faraday (2012) acknowledge, significant legal change is required to allow workers to take action to improve their position and treatment while in Canada.

However, at the time of writing this report, positive non-educational developments have already resulted from the Migrant Workers Support Network pilot programme. The most valuable of these is the opportunity for migrant workers, employers, advocacy organisations and other stakeholders to offer feedback on the then-proposed introduction of an open visa for vulnerable workers (see Section 3.2.1).

In addition to providing funding for the Migrant Worker Support Network, in 2017, the Federal Government announced that it would provide a grant of more than CA\$93,000 to the Migrant Workers' Dignity Association to help migrant workers become better informed about their rights as workers in Canada. This funding will be used to develop "workshops, information tools, and materials aimed at informing temporary foreign workers on topics such as housing, health care, access to special benefits, and other rights" (Economic and Social Development Canada, 2017, para. 2).

### **4.3 United Kingdom**

#### **Establishment of the Independent Anti-Slavery Commissioner role**

One of the most prominent non-legislative measures the United Kingdom has taken in the push to reduce migrant worker exploitation has been the creation of the role of Independent Anti-Slavery Commissioner. The role was developed through the Modern Slavery Act 2015, and is currently held by Sara Thornton, the former chair of the National Police Chiefs' Council.

The Independent Anti-Slavery Commissioner's responsibilities are "to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human

trafficking offences, as well as in the identification of victims” (Independent Anti-Slavery Commissioner, n.d., para. 2). Primarily, this involves undertaking research and analysis, producing strategic documents and legislative commentary, and bringing together a range of organisations to tackle and end modern slavery in the United Kingdom.

In recent years, the commissioner’s position has attracted some degree of controversy, with the first commissioner, Kevin Hyland, resigning on the grounds that he felt unable to adequately perform his duties due to interference from the government and that the independence proclaimed in his title was “discretionary from the Home Office, rather than legally bestowed” (McVeigh, 2018, para. 4).

This controversy aside, the Anti-Slavery Commissioner has been responsible for several positive developments in the United Kingdom’s attempt to tackle modern slavery and labour exploitation. These developments include producing evidence and recommendations that led to an overhaul of the National Referral Mechanism, working with local councils to produce material on tackling modern slavery, and providing training for members of the judiciary on issues around modern slavery.

### **Establishment of the Labour Market Enforcement Strategy**

As part of the Immigration Act 2016, the United Kingdom has established the position of Director of Labour Market Enforcement, bringing together three major regulatory bodies – National Minimum/Living Wage Enforcement teams in HM Revenue and Customs, the Gangmasters & Labour Abuse Authority, and the Employment Agency Standards Inspectorate – in order to produce cohesive and shared enforcement policy.

The exploitation of migrant workers is within the remit of the responsibilities of the Director of Labour Market Enforcement. Tackling modern slavery is listed as one of three primary focuses for the role, alongside regulating the licensing of labour providers and the operation of recruitment agencies (Metcalf, 2017).

In relation to migrant workers, the work of the director has thus far focused on issues around how the agencies within his remit might go about conducting investigations. The 2018/2019 Labour Market Enforcement Strategy includes discussion on how to address migrant workers being hesitant or fearful of speaking out about their abuses, due to the risk of losing their jobs or being turned over to immigration officials (Metcalf, 2018). The report details little progress in addressing the issues facing migrant workers through the Enforcement Strategy; however, future reports and developments should be closely monitored as the position holds significant authority to develop useful and positive policies for migrants.



## 5. Mechanisms Supporting Migrants Coming Forward

Along with the development of government initiatives to reduce migrant worker exploitation, a wide range of mechanisms and tools have been developed with the purpose of helping migrant workers come forward and speak about their abuse. Some of these tools operate on a direct level, by facilitating migrant workers' contact with relevant authorities. Others work indirectly, by encouraging public awareness of migrant exploitation and modern slavery. Lastly, there are tools which function to limit the capacity of government agencies to access information about vulnerable or irregular migrants.

### 5.1 Reporting Exploitation

The facilitation of the reporting of exploitation is a vital aspect of any policy approach seriously invested in reducing the exploitation of migrant workers. In Australia, Canada, and the United Kingdom, these mechanisms take several forms and have developed significantly in recent years as technology has proliferated and technological developments have changed the ways in which reporting can take place.

This section analyses three types of reporting mechanisms: helplines and tiplines, online reporting tools, and mobile apps.

#### 5.1.1 Helplines and tiplines

Several helplines have been established to provide migrant workers and the general public a way to report perceived exploitation, or to provide assistance and advice. The most prominent of these are currently operating in the United Kingdom, with Canada and Australia both generally prioritising online tools over helplines.

Migrant worker exploitation-related helplines in the United Kingdom take two main forms. First, there are helplines which offer advice to workers. The Acas helpline, for example, provides multilingual support to all workers, employers, and representatives, and primarily works to provide appropriate information to concerned parties on issues that occur in workplaces. Second, there are a number of reporting services which can be contacted by exploited workers or concerned members of the public to draw attention to their experiences or those of others, to request support from relevant authorities, and to receive advice specific to their circumstances on how to proceed. Both the Modern Slavery Helpline and the Gangmasters and Labour Abuse Authority (GLAA) helpline primarily function in this regard. The Modern Slavery Helpline, in particular, has, since its establishment, become a vital source in the United Kingdom for workers and the public to report exploitation, and it is briefly discussed in more detail below.

Outside of the United Kingdom, the few helplines that do exist function in largely the same ways. In Alberta, Canada, the Temporary Foreign Worker Helpline and Advisory Office functions both as an information hub and as a reporting tool. This helpline has been



operating since 2007, and there is evidence that it was receiving between 400 and 500 calls per month within the first 2 years of its operation (Fudge & MacPhail, 2009).<sup>5</sup>

### **UK Modern Slavery Helpline**

The Modern Slavery Helpline was established in 2016 by Unseen, an NGO focused on providing support services to victims of modern slavery.<sup>6</sup> Its primary purpose is to help victims and survivors of modern slavery learn about their rights and options, and have contact with relevant support services. It is a 24/7, free, confidential service funded by a mixture of private and governmental funding and is run independently by Unseen.

In 2017, 3710 calls were received from across the United Kingdom and internationally, with the organisation reporting that 4,886 victims were identified as a result. For 2018, Unseen reported experiencing a 62% increase in phone calls. They also reported a 49% increase from 2017 to 2018 in the number of members of the general public contacting the helpline (854 in 2017 to 1,276 in 2018), and a 71% increase in the number of “potential victims/survivors” (136 in 2017 to 232 in 2018) (Unseen, 2019, p. 12). Although the helpline is still being used primarily by the public rather than potential victims of modern slavery, it is clear that it is being utilised by concerned people. Most importantly, the rate at which it is being used by potential victims themselves is increasing, which suggests that knowledge of the service is increasing in at least some migrant communities, and that the service is seen as a useful, or at least trustworthy, point of contact.

#### **5.1.2 Online reporting tools**

In addition to the introduction of helplines and hotlines aimed at providing workers and the public a means of reporting exploitation, online reporting tools have emerged in recent years. Although a significant portion of reporting in the United Kingdom is still done through the Modern Slavery Helpline, both Canada and Australia utilise online reporting more prominently than they do helplines. This section will give a brief overview of the major characteristics of these reporting tools, before exploring the Anonymous Report tool in Australia.

The online reporting tools currently available to migrant workers in Australia, Canada and the United Kingdom largely operate on an anonymous basis. The Australian Anonymous Report tool, for example, was – as the name of the tool suggest – established to be anonymous, whereas the Canadian Online Fraud Reporting Tool operates anonymously. The latter is due to the Privacy Act requirement that anyone who reports an instance of fraud must remain anonymous during an investigation. In contrast to these approaches, the Modern Slavery Helpline online reporting form operates anonymously simply by making the inclusion of a name optional, and by explicitly stating that pseudonyms will be accepted. The other major tool in the United Kingdom that offers an online reporting mechanism is that offered by the GLAA. Whereas each of the other organisations offer webforms for workers to complete, the GLAA provides an email address for workers to contact. There is little

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<sup>5</sup> There is no updated information on the use of this service.

<sup>6</sup> Statistical breakdowns of both helpline calls and app submissions can be found [here](#).

evidence that providing an email is sufficient to deal with the nature and variance of the reporting that takes place through these tools, and we recommend that if the government seeks to establish an online reporting tool, it should not consider the GLAA's approach as a useful guide.

Aside from the GLAA system, the online reporting tools available to workers in the three countries operate in largely the same ways. They ask workers to provide information about what they have experienced, in what context they experienced it, and details of the business in which the exploitation took place. Both the Australian Anonymous Report tool and the Canadian Online Fraud Reporting Tool accomplish this by providing a series of questions for those using the form to answer, whereas the Modern Slavery Helpline simply asks workers to give as much information as they can or feel safe in disclosing.

### **Australia's Anonymous Report tool**

In 2016, the Migrant Workers' Taskforce and the Fair Work Ombudsman introduced an online Anonymous Report tool<sup>7</sup> which was created to encourage and support migrant workers in the Australian workforce (Commonwealth of Australia, 2019). The tool is available in 16 languages<sup>8</sup> and enables anyone under conditions of anonymity to notify the Fair Work Ombudsman of potential non-compliance with workplace laws. The tool also supports new migrant workers who may be reluctant to speak to public officials about their visa concerns and assists those who do not have baseline knowledge of Australia's workplace rights and entitlements.

The reported information is used, along with other data and research by the Fair Work Ombudsman, to focus on areas – whether geographical or industry sector – where systematic problems may be occurring.

As of early 2018, the Anonymous Report tool had been used more than 20,000 times, of which 800 were in a language other than English (Triscari, 2018). This does not necessarily mean that only 800 of the submissions were made by migrant workers. Given the anonymity of the tool, it is ultimately unclear exactly how popular the tool has been with migrant workers. However, the uptake as of 2018 suggests that it has been successful, and there have been reports of major investigations and successful convictions made on the basis of anonymous tips (Podinic, 2019).

#### **5.1.3 Apps**

One of the most useful developments in assisting migrant workers to come forward about their treatment has been the introduction of a range of mobile phone applications aimed at the specific needs of workers and migrant groups. Many such apps have been developed worldwide, but the most pertinent for this research have been developed in Australia and the United Kingdom, with Canada notably lacking any major initiatives in the field.

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<sup>7</sup> See <https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-tipoff>

<sup>8</sup> The 16 languages are: Arabic, simplified Chinese, traditional Chinese, Filipino, French, German, Hindi, Indonesian, Italian, Japanese, Korean, Nepali, Portuguese, Spanish, Thai, Vietnamese.

## Information tools

Most apps aimed at temporary migrant workers place at least some emphasis on providing information to workers. Often, apps that employ these tools have simple user interfaces, and focus on assisting migrant workers with knowledge of labour rights, local customs and practices, common phrases, and maybe useful services. Although many apps incorporate such information, very few are focused solely on information tools, and instead emphasise one or more of the tools discussed further below.

In addition to apps that provide information targeted at workers, there are apps designed for consumers and the general public. In some cases, these are quite general, such as the Unseen app, which aims to provide a wide range of information on the issues of exploitation and modern slavery in the United Kingdom, and, in some cases, they target a very specific industry or form of exploitation. One example of the latter is the Safe Car Wash app, which provides a checklist for members of the public to use in hand car washes to determine whether workers might be at risk of exploitation. This app is discussed in more detail later in this section.

## Reporting tools

Many apps that focus on issues facing migrant workers provide some mechanisms for workers to report their experience of exploitation or allow the general public to report concerns they may have. The Unseen and Safe Car Wash apps, for example, provide both extensive information about migrant exploitation and a direct means of reporting mechanisms like the Modern Slavery Helpline and the National Referral Mechanism. The Clewer Initiative<sup>9</sup> (2019) found that the Safe Car Wash app was directly linked to more than 900 reports of modern slavery in hand car washes across the United Kingdom.

There are, however, several limitations of reporting tools that should be noted. Farbenblum, Berg, and Kintominas (2018) found that in many cases, reporting labour exploitation or breaches of labour standards did not lead to any action. Ostensibly, these apps exist to cut down on the difficulties government agencies face in identifying and acting on labour exploitation. If, however, there are other limitations such as staffing shortages, under-resourcing, or an unwillingness to address the issue, then the apps' utility is diminished.

## Recording and tracking tools

A small number of apps offer a range of specific tools that assist workers in tracking or recording their hours, wages, and conditions. Some apps allow workers to input this information manually into the app, effectively functioning as a work diary. While this is a good initiative, Farbenblum et al. (2018) found that recording tools that took this form were

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<sup>9</sup> The Clewer Initiative is a faith-based 3-year initiative affiliated with the Church of England aimed at reducing modern slavery across the UK. According to [this](#) resource, they define themselves as “enabling Church of England dioceses and wider Church networks to develop strategies to detect modern slavery in their communities and help provide victim support and care” (para. 2).

often limited because they were of little more use than testimony, as proof, and so in disputes or situations of exploitation such information was not particularly useful.

In addition to manual recording apps, apps have been developed that employ a range of more advanced mobile tools that help counteract these limitations. Record My Hours, an Australian app developed by the Fair Work Ombudsman and the union United Voice, uses the geo-location service on a worker's cell phone to track when they are at their job site. Workers are able to set a location as their workplace, and every time they enter or exit that area their phone logs it. Workers are then sent a notification to verify their hours or adjust them if necessary. The information is stored on the worker's phone, and no data is shared with the Fair Work Ombudsman (Farbenblum et al., 2018). Importantly, the app detects the user's chosen language settings and displays information accordingly, making it easily accessible for migrant workers as well. However, one may question the level of surveillance that such apps introduce.

### **Social tools**

Many migrant workers interact with one another via social media websites and apps, and there are often region-specific groups established on such websites that enable workers to join a community of similarly positioned people and seek help where needed. Social media websites and apps, for example Facebook and WhatsApp, while widely used by migrant workers, do not target migrant workers specifically, or tailor to their needs in any deliberate manner, and so are of little use to this report. There are, however, social tools and apps that have been developed that target workers specifically and provide a range of means for them to resist exploitation without having to contact authorities.

Hospo Voice is an online tool developed by United Voice in 2017, which incorporates a tool called Fair Plate that enables workers to grade their bosses according to several categories, including respect for staff and correct pay. Job seekers using the app can search employers, rank them according to location or aggregate rating, and thus use the service to find both good employers and avoid bad ones (Farbenblum et al., 2018). United Voice has also developed a forum called Hospo Help which is aimed at bringing hospitality workers across Australia together for assistance and advice on their rights in the workplace (Farbenblum et al., 2018).

### **Other tools**

In addition to these developments, there have been tools and apps set up by workers themselves to address specific needs.

OFW (Overseas Filipino Worker) Watch is a Filipino migrant worker support app currently available on the Google Play Store. It employs a geo-location tracking service similar to that offered in the Record My Hours app, but uses it as a means of connecting migrant workers with others close by. If a worker is in distress for any reason, they are able to use an emergency SOS button within the app, which alerts other workers around them, their nearest embassy and other services close by that they are in need. It also connects workers with nearby social networks and Facebook groups, and can be set up to automatically

contact other workers if a user goes a long time without using social media. As of 2014, OFW Watch had more than 100,000 users (Sorsano, 2014).

Shuvayatra – Safe Migration provides a different range of services to Nepali workers around the world. Whereas OFW Watch is focused on connecting workers with one another, Shuvayatra focuses on providing information about workers’ rights, local culture, and the services temporary migrant workers will need in their destination countries (Lokshin & Theunissen, 2016). It also provides radio and podcast access to Nepali stations and shows in order to help workers feel connected to Nepal. Recently, Shuvayatra introduced an online course system aimed at improving the skills and knowledge of Nepali migrant workers and partnered with digital wallet app Khalti to implement a system that would monetarily reward workers for completing courses (Khadgi, 2019). At present, the Google Play Store page for Shuvayatra states that the app has been downloaded more than 50,000 times, and has a high average rating and very favourable reviews.<sup>10</sup>

### **Safe Car Wash app**

In June 2018, The Clewer Initiative, in partnership with law enforcement agencies and the Catholic church, launched the Safe Car Wash app. The app aims to provide the public with a means of understanding and reporting the kinds of exploitation taking place in hand car washes across the United Kingdom.

The car wash industry has become a focal point for understanding and reporting on labour exploitation and modern slavery in recent years (University of Nottingham Rights Lab, 2018). This is largely because hand car wash workers work directly with members of the public. The government estimates that there are “at least several thousand” hand car washes now operating across the United Kingdom, though this is likely a conservative estimate (House of Commons Environmental Audit Committee, 2018, p. 5).

Users of the Safe Car Wash app are advised on its Apple Store page to: “Download the Safe Car Wash app onto your phone and use it every time you go to a hand car wash. The app will take you through the most obvious indicators of modern slavery, asking you questions to determine whether those signs are present or not. If there is a high likelihood of modern slavery in the car wash, you will be prompted to call the Modern Slavery Helpline on 08000 121 700.”<sup>11</sup>

The Clewer Initiative published early figures and data around the app’s usage in late-July 2018, approximately six weeks after its launch. They reported that in that time nearly 7,000 people downloaded the app, 1,300 reports were made to the National Referral Mechanism, 69 potential victims were identified, and 11 cases of potential labour exploitation were opened as a result. In April 2019, The Clewer Initiative found that since its release, the Safe Car Wash app has led to more than 900 reports of potential modern slavery in hand car washes. While it is still unclear whether the app will be of continued utility for addressing labour exploitation in hand car washes, these figures do suggest a positively engaged public

<sup>10</sup> This information can be found [here](#).

<sup>11</sup> More information on the app can be found on the Apple Store in [this](#) link.

and that such apps and information can serve, at the very least, to improve public understanding of the issues at hand.

#### 5.1.4 Campaigns

Campaigns operating in the United Kingdom seek to raise awareness of the prevalence of modern slavery. They attempt to identify instances of slavery and to provide employment for victims of slavery. The Fair Work Ombudsman in Australia, in contrast, runs campaigns to educate employers as to basic employment rights. These are targeted programmes which they refer to as campaigns. There is limited information available on campaigns in Canada. We now go on to provide some examples of campaigns.

##### **Let's Nail It**

In 2017, Unseen, along with the British Association of Beauty Therapy and Cosmetology (BABTAC), launched a campaign entitled Let's Nail It, intended to raise awareness of modern slavery and forced labour within the nail bar industry (Unseen, 2017). The nail bar industry, along with hospitality, agriculture, and food processing, has one of the highest rates of migrant exploitation. There are serious issues of trafficking, exploitation, and enslavement of migrants in nail bars, nearly exclusively among Vietnamese migrants (GLAA, 2018).

One week in October 2017, nail salons across the country agreed to disseminate leaflets and other materials and to speak with customers about the issues of modern slavery in the industry. BABTAC encouraged salons to donate GBP1 from every manicure or pedicure performed to go towards supporting victims of modern slavery, and the police agreed to participate in the campaign by allowing officers to have their fingernails painted.

There is little information published on the outcome of the campaign, though it did reach national news and may have had a positive impact on raising awareness of the issues in question as a result. The campaign appeared on the front pages of *The Sun* and *The Daily Mail*, who criticised the police's involvement on the grounds that having their nails painted distracted from actual police work (Rudolph, 2017). Since this criticism has little to do with the actual issue of modern slavery, it is possible that it derailed the campaign's focus. However, it isn't possible to determine its success with the information given, and, at the very least, it can be seen as an achievement in cross-institutional cooperation in raising awareness of serious issues relating to modern slavery.

##### **"Slavery is Closer Than You Think" campaign**

In 2014, the British government developed a GBP2.3 million TV, online, and poster advertising campaign aimed at raising awareness of modern slavery (BBC, 2014). Specifically, the campaign highlights that slavery takes place in locations people might not normally consider, or which may be hidden in plain sight. The advert depicted a range of scenarios, from domestic servitude to the exploitation of agricultural workers, with a primary focus on exploitation rather than supply-chain transparency.

In 2015, the Home Office published an evaluation of the campaign, and found that it had reached an estimated 93% of adults in the United Kingdom, and seen a significant increase



in the number of people who agreed with the statement “modern slavery exists in the UK” (from 50% to 61%) (Home Office, 2015). Although these developments do not amount to quantifiable reductions in modern slavery as a phenomenon, they do serve as a useful component of a multi-platform attempt to address the issue as a whole.

### **Co-Op Bright Future initiative**

As of 2017, the British consumer cooperative The Cooperative Group (hereafter the Co-Op) launched its Bright Future initiative, which provides 30 survivors of modern slavery with “a four-week paid work placement followed by a non-competitive interview” which, if successful and a position is available, will lead to a guaranteed job with either the Co-Op or one of its suppliers.

Since its launch, 17 other companies, including major retailers The Body Shop and John Lewis, have signed on to the initiative, and the Co-Op estimates that by 2020 more than 300 survivors of modern slavery will have moved through the programme and into work. The 2018 report into the Co-Op’s ethical and sustainability practices found that 72% (18 participants) had successfully moved into permanent roles as a result of the programme (Cooperative Group, 2019).

### **The Dark Figure\***

Perhaps one of the most prominent United Kingdom campaigns of recent years is an ongoing photography series, Dark Figure\*, by Amy Romer.<sup>12</sup> The campaign combines three primary elements: testimony from survivors, geo-location of the site of modern slavery on Google Maps, and photographs of the area in which the slavery occurred. The Dark Figure\* website reports that it has been utilised as a training resource for government employees and those employed in enforcement to help identify the signs of modern slavery (The Dark Figure\* n.d.).

Similar to the Slavery is Closer Than You Think campaign, The Dark Figure\* aims to challenge the idea that modern slavery is a distant phenomenon. As a result, the work largely captures landscape images of streets and other familiar images of Britain, with the view that “By photographing the neighbourhoods where we know trafficking has taken place, I hope to undo such assumptions because it is only through mass public awareness that any long term change can happen” (Romer, n.d., para. 9). Although this campaign does not directly assist migrant workers reporting exploitation, Romer argues that the Modern Slavery Act has had particularly strong effects on Britain’s migrant worker population, and so aims to raise awareness within the British public that slavery and exploitation often take place very close to them.

### **The Fair Work Ombudsman workplace campaigns**

Australia’s Fair Work Ombudsman runs campaigns to educate employers on the basics of employment legislation. As part of their campaign, they randomly select businesses to participate and educate employers on pay rates, effective record keeping, and the necessity

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<sup>12</sup> Details of the project are available [here](#).

of providing pay slips, in order to prevent the employer being penalised. In addition, the Fair Work Ombudsman runs campaigns targeting particular industry sectors, for example, their Fast Food, Restaurants and Cafes Campaign. The Fair Work Ombudsman will also revisit businesses who have been identified through previous campaigns as being non-compliant with employment law.

## 5.2 Immigration Firewalls

The legal principle of a firewall as a form of protection “seeks to establish that no information gathered by those responsible for protecting and realizing basic human rights can be used for immigration enforcement purposes so that people will be able to pursue their basic rights without exposing themselves to apprehension and deportation” (Crépeau & Hastie, 2015, p. 166).

### IMMIGRATION FIREWALLS

Immigration firewalls are needed to protect migrants’ access to basic rights and social services on four primary grounds:

1. Knowledge of the existence of a firewall increases migrants’ use of social services such as healthcare, police, legal aid, education, among others, thus creating safer and healthier communities;
2. Many irregular migrants become regular over time, and even if they don’t, they may reside in the country for a prolonged period, during which time access to social services is vital for community wellbeing;
3. Firewalls allow public services to perform their mandates at full capacity. Immigration enforcement interference with public services can cause significant delays and impediments to the provision of proper services (e.g., situations where irregular migrants are witnesses to crime, or for the reduction of contagious diseases in the general population);
4. If migrants are willing to speak out about labour abuses, this could contribute to preventing the further erosion of workplace conditions and wages.

Source: Crépeau and Hastie, 2015.

When migrants become illegal, accessing public services becomes difficult to the point of being dangerous to their livelihoods if there is a risk their information will be shared with immigration agencies. The most pertinent form of firewall for this research relates to that between labour inspectorates and immigration enforcement agencies; however, since migrants encounter a wide array of public services over their time in a given country, this section has a broad focus on firewall provisions in general.

Although firewalls would create a range of social benefits for migrants and would likely contribute to diminishing migrant worker exploitation in any country, there are legitimate concerns about their implementation that should be considered. Most significantly, the introduction of a firewall between government agencies risks hampering the ability of the agencies in question to carry out their work. Inter-agency communication is important in the event that illegal activity is taking place that requires cooperation between multiple



agencies and organisations. However, this does not invalidate the utility of a firewall, it merely calls for it to be appropriately balanced.

None of the countries surveyed in this research currently employ firewalls to prevent interaction between immigration enforcement and labour inspectorates. Firewalls have been suggested by several organisations, but they are yet to be adopted in any of the jurisdictions covered here. This section will provide a brief overview of the current status of firewall provisions in each country, and information on why they are being suggested to address migrant exploitation.

### 5.2.1 Australia

Australia “requires administrative linkages” between immigration enforcement and other public services (Berg, 2015, p. 284); these linkages function strongly in favour of employers at the expense of migrants. For example, Berg (2015) found that workers within the Fair Work Ombudsman were reporting migrants to the Department of Home Affairs (at the time the Department of Immigration and Border Protection), but that Home Affairs employees were not investigating, or even documenting, breaches of employment law by employers. Much as is the case in the United Kingdom, advocates have argued that the only way to adequately address this problem, and engender trust in public services among vulnerable migrants, is to institute a strict firewall between government agencies.

In March 2018, the Migrant Workers’ Taskforce took action to ensure that cross-agency data sharing is improved by developing a Data Analytics Working group, led by the Australian Taxation Office (Cash & Laundry, 2018; Commonwealth of Australia, 2019). The main focus of the group is to ensure that data-sharing capabilities and intelligence-gathering capabilities are improved among governmental agencies (Commonwealth of Australia, 2019).

According to the Migrant Workers’ Taskforce (Commonwealth of Australia, 2019), the Fair Work Ombudsman, the Australian Border Force, and the Department of Home Affairs “have a joint role in monitoring employer compliance with sponsorship obligations and employment conditions for particular visa subclasses” and that a firewall could impinge on the “effectiveness of investigations and enforcement” (p. 52). Hence, the taskforce considers the Assurance Protocol as an effective tool with which temporary migrant workers can report exploitation.

### 5.2.2 Canada

Canada has a complex history with immigration firewalls. The country has employed data-sharing practices similar to Australia and the United Kingdom, in some cases even when they have legislated or stated otherwise. For example, for many years, it has been legislated that children in Toronto have been able to attend school regardless of their parents’ immigration status (Crépeau & Hastie, 2015). However, in a recent analysis, it was found that the policy had not been properly implemented and children of irregular migrants were facing criminalisation as a result of their relationship with the school system (Villegas, 2018).

Similarly, for a brief period in 2014, the Ontario Ministry of Transportation and the Canadian Border Services Agency (CBSA) established data-sharing provisions with one another, but

this ended following public uproar over a CBSA “blitz” during a routine day-long traffic stop that led to the arrest of 21 undocumented migrants. As a result, Steven Del Duca, then Minister for Transportation in Ontario, cut all data-sharing ties between the two agencies (Brennan, 2014). Although this does not technically constitute a firewall, since it is only taking away an existing linkage rather than establishing an actual block between the agencies, it is still a stronger step than has been taken in either Australia or the United Kingdom to address such matters.

Contrary to these negative developments, Canada has also implemented several positive “sanctuary city” policies in a number of locations across the country. These guarantee “access to municipal services without fear of detection, detention or deportation, for residents without full immigration status and/or without full status documents from the federal government” (Canadian Labour Congress, n.d.). According to CBC News (2018), in 2018, Toronto, Vancouver, Montreal and Edmonton held sanctuary city status.<sup>13</sup>

### 5.2.3 United Kingdom

As discussed in section 3.3.1, the United Kingdom actively encourages immigration authorities to undertake checks in a number of public institutions, most significantly hospitals, and this has been recognised to have seriously affected the health, safety, and regularity of migrants across the country. In addition to the Immigration Act 2016, the Data Protection Act 2018 contains provisions which allow data processors to “set aside a person’s data protection rights under the EU General Data Protection Regulation where fulfilling those rights would prejudice the maintenance of effective immigration control” (Liberty, 2018, pp. 70–71). Liberty, a United Kingdom-based NGO aimed at improving access to human rights for people across the country, argues that this has undermined the provision of public services, driven many migrants into further vulnerability, and has had a net negative effect on social wellbeing (Liberty, 2018).

In 2018, Liberty published a report entitled *Care Don’t Share*, which detailed evidence that the British police were “handing over” victims of crime to immigration authorities for deportation, and that the data sharing taking place between government agencies was undermining public services and public safety. Liberty argued that this was “[undermining] the police response to crime, which endangers us all by allowing criminals to act with near impunity” (Townsend, 2018, para. 7). This report produced the first “super-complaint” to be filed against the police. In proposing a method of addressing the issues stemming from data sharing among government agencies, Liberty stated that “the only acceptable solution is the formal creation of a firewall” (Townsend, 2018, para. 10).

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<sup>13</sup> It should be noted that both Sheffield and Glasgow also claim sanctuary city status; however, in the United Kingdom this refers only to asylum seekers. They do not provide services to other undocumented or irregular migrants.

## 6. Employer Sanctions

This section transitions from outlining mechanisms which support migrants coming forward to discussing sanctions, introduced in Australia, Canada, and the United Kingdom, against employers who exploit their workers. Wherever appropriate, an assessment of such sanctions is offered. In addressing migrant worker exploitation, both bottom-up and top-down responses are essential.

### 6.1 Australia

The Australian Government outlines the sanctions it can take against employers of migrant workers (“sponsors” as per the legislation) in section 140K of the Migration Act 1958.

#### SANCTIONS THE MINISTER CAN IMPOSE:

- Restrict the sponsor’s capacity to “do certain things”;
- Not approve any future sponsorship applications;
- Cancel the person in question’s capacity to act as a sponsor;
- Cancel all other existing sponsorship approvals;
- Apply for a civil penalty order (up to AUS\$63,000 for a corporation and AU\$12,600 for an individual);
- Issue the sponsor with an infringement notice (up to AU\$12,600 for a body corporate and AU\$2,520 for an individual)

Source: Department of Home Affairs, 2019

These sanctions are broad, and it should be noted that, at present, only civil actions can be taken. There are as yet no specific criminal sanctions legislated in Australian federal law for the exploitation of migrant workers. That said, the civil provisions have led to some significant action, and the Fair Work Ombudsman regularly publishes press releases detailing actions it has taken against offending employers.<sup>14</sup>

In December 2018, the government passed the Migration and Other Legislation Amendment (Enhanced Integrity) Act, which altered the operation of sanctions taken against offending sponsors. The amendments introduce a requirement for the minister to publish information about the sponsor and the case in question, as well as the sponsorship obligations they have failed to meet, and the sanctions taken against them.

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<sup>14</sup> FWO press releases for 2019 are available [here](#); each details the specifics of the case at hand and often the sanctions taken.

As per S140HA of the Migration Act, sponsorship obligations include:

- Paying a market wage (either according to the national minimum wage or the relevant award);
- Paying prescribed costs relating to the departure of an employee upon the completion of their contract to both the commonwealth and the employee;
- Maintaining accurate records;
- Complying with any inspections conducted by the government;
- Ensuring the visa holder completes the work for which they are contractually obliged, and not any other work.

Source: Department of Home Affairs, 2019

Notably, the provisions of the Migration and Other Legislation Amendment (Enhanced Integrity) Act are retrospective and apply to all sanctions undertaken from 18 March 2015 onwards. While this is a positive step, it is important to note that the provisions of the Migrant Act 1958 and its subsequent amendments apply only to sponsored migrants. This excludes those migrant workers employed on non-sponsored visas, most importantly international students, who make up the large majority of both the migrant worker population and those facing most pronounced exploitation. The Migrant Workers' Taskforce also found that there is currently no authority to "sanction employers who extract additional benefits from non-sponsored migrant workers, such as a one-off lump sum payment, wage deductions or free labour" (Commonwealth of Australia, 2019, p. 68).

Limitations notwithstanding, there is little evidence of the efficacy of the Migration Act amendments. However, this report recommends that they are monitored to see whether a public register of offences and sanctions might serve as an effective deterrent to the exploitation of migrant workers.

In addition to the changes made to the Migration Act, it should be noted that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 also introduced provisions which increase the penalties for employers exploiting their workers. Nevertheless, the Migrant Workers' Taskforce suggested that "penalty levels for underpayments are insufficient to deter wrongdoing or drive behavioural change" (Commonwealth of Australia, 2019, p. 86). In response, the Australian Government announced it would consider introducing criminal penalties into the Fair Work Act for those employers who systemically exploit migrant workers (Smyth, 2019). At the time of writing, the government has endorsed the findings of the Migrant Workers' Taskforce report but has yet to act on any of its 22 findings.

## 6.2 Canada

Effective 1 December 2015, employers who violate the conditions of the TFW Program are subject to stricter penalties, including a stand-down period from hiring migrant workers, and financial penalties.

Employers can be subject to a 1-, 2-, 5-, or 10-year ban from employing migrant workers. They are also subject to a financial penalty of CA\$500 to CA\$100,000 per violation depending on the severity of the violation and the employer's history of violations. The

financial penalty is cumulative, with a cap of CA\$1 million per year per employer. The ban on employment is not cumulative; instead, the longest time ban is enforced. The financial penalty is determined by the severity (type) of the violation, the size of the business, and the employer's history of violations.

#### SEVERITY OF VIOLATIONS

**Type A** includes: "failure to demonstrate that any information provided in a work permit application, such as proposed salary, proposed job title, proposed job duties, employee's educational background, or employee's professional experience, was accurate, and failure to provide documents required for a compliance review."

**Type B** includes: "failure to comply with federal and provincial laws relating to the employment or recruitment of employees; and failure to fulfil obligations that led to the issuance of the work permit, including hiring, retaining or training of Canadians or permanent residents, transferring skills and knowledge to Canadians or permanent residents and creating jobs for Canadians or permanent residents."

**Type C** includes: "failure to make a reasonable effort to provide a workplace that is free of abuse and failure to establish that the company is actively engaged in the business in which the offer of employment was made."

Source: McInnes Cooper, 2015, para. 5.

Similar to the system introduced in Australia with the Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018, the Canadian government publishes a list of employers who have breached the conditions of the TFW Program.<sup>15</sup> Currently, the repository holds information on 155 employers, 59 of whom currently have some form of ban in place on employing workers through the TFW Program. While this is an encouraging development, and might suggest that the government is undertaking positive, if not proactive, efforts to sanction offending employers, only seven of the 59 (12%) employers currently barred from employing migrants have been sanctioned for offences that took place after these regulations were introduced in December 2015. The remaining 52 employers (88%) were sanctioned for activities before the new regulations were introduced in 2015.

### 6.3 United Kingdom

In contrast to the approach taken by Australia and Canada, the United Kingdom does not currently have any specific regulations or legislative measures in place aimed at sanctioning employers exploiting migrant workers. There are two primary reasons for this.

First, the United Kingdom government constructs the issue somewhat differently to the Australian and Canadian governments, where instead of framing the issue as migrant

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<sup>15</sup> This information is publicly available [here](#), and is regularly updated. At the time of writing there were 155 recorded instances of employer sanctions on the site.

worker exploitation it is framed as modern slavery. As discussed above, although modern slavery refers to largely the same broad issues as migrant worker exploitation, its construction both in legislation and popular discourse tends to focus solely on the most serious offences against workers, whereas exploitation also includes more minor offences like failure to maintain proper records. The UK Modern Slavery Act 2015 goes some way to addressing the need to sanction employers for very serious offences, but it does little to address more minor forms of exploitation.

Secondly, the United Kingdom's response to migrant exploitation differs to that of Canada and Australia because of the emphasis the government places on illegal work. In 2014, the government introduced a range of new measures aimed at sanctioning employers involved in the exploitation of migrants engaged in illegal work. Most significantly, for this research, these changes focused on the implementation of an enforcement approach that encouraged, rather than compelled, employer compliance with the law.

Government changes to sanction employers took two primary forms.

- Undertaking increased crackdowns and raids on businesses suspected of employing undocumented migrants, and deporting workers found to be working without a visa;
- Employing an education-based, rather than punitive, approach to improving employer compliance with immigration laws.

Source: Bloch, Kumarappan, and McKay, 2015.

In an analysis of the effects of these changes on workers and employers, Bloch et al. (2015) reported that both workers and employers were strongly affected, albeit not necessarily as the government intended. Migrants felt that the changes made their lives harder, and the prospect of being targeted by immigration figured heavily in both the way they conducted their work as well as their lives more generally. Similarly, employers, many of whom were migrants themselves, reported frustrations with increased immigration raids because of the effects they were having on their capacity to hire skilled staff and to run a viable business. In turn, Bloch et al. (2015) found that the changes had little effect on the rates at which undocumented migrants were being employed and had not reduced rates of exploitation. In actuality, the authors cautioned that such measures may actually contribute to the deeper entrenchment of migrant worker exploitation within the United Kingdom economy (p. 148).



## 7. Summary

This review has identified how the Australian, Canadian, and United Kingdom governments are seeking to address the exploitation of temporary migrant workers in their jurisdictions. As stated in the introduction, migrant worker exploitation is a multifaceted issue and addressing exploitation, as shown in this report, is not straightforward. There is not one solution.

The review offers insights into the policies, frameworks, and initiatives each government has implemented, or is implementing, to support migrant workers, as well as the enforcement and compliance mechanisms in place to address employer behaviour. For example, the Canadian and Australian governments have both increased sanctions against employers who exploit migrant workers.

Notwithstanding, as most initiatives are relatively recent, evaluations have not yet taken place and hence insight into their impact is limited. Hence, it would be premature to try to assess their effectiveness or lack thereof. Nevertheless, it is important to investigate the existing international approaches, levers, and tools that can and should potentially be considered in order to address migrant worker exploitation in New Zealand.

Perhaps the most significant developments applicable to New Zealand are Canada's introduction of an open work permit programme and the Australian Government's establishment of a Migrant Workers' Taskforce. The provision of an open work visa for temporary migrant workers who have been exploited reduces the power imbalance situation that temporary migrants can find themselves in and goes some way to address why the exploited remain in exploitative conditions. A clear message in the Australian research was that employer-sponsored visas should be eliminated for certain temporary visa categories; but, as yet, the Australian Government has not moved to do so. The Migrant Workers' Taskforce found that aspects of exploitation have become entrenched over time and outlined 22 key recommendations to the government. The way in which the Australian Government responds to the recommendations of the Migrant Workers' Taskforce should be closely monitored, as several of the recommendations have applicability to New Zealand.

Outside of governmental initiatives, helplines and smart phone applications have been found to reach a wide audience and provide a service to both the general public and migrant workers. On one hand, it is clear from the discussion that levels of engagement are not necessarily leading to a significant number of formal investigations. On the other hand, the applications provide an option for migrant workers to report exploitation in a safe environment. In some instances, geo-location services are being used to monitor the location of migrants. The utilisation of such services, however, speaks to unintended consequences and emerging tensions in addressing exploitation.

While the focus is on temporary migrant worker exploitation, the review also discussed the introduction and implementation of a Modern Slavery Act in Australia and the United Kingdom, and the proposal for such in Canada. Importantly, scale and transferability need to be considered. For example, if a Modern Slavery Act is to be considered for New Zealand,



such an Act should look different from the Acts in both the United Kingdom and Australia in order to capture small and medium-sized businesses wherein the majority of exploitation in New Zealand is occurring.

In conclusion, the developments identified in this report can inform a wider understanding of how to address temporary migrant worker exploitation in New Zealand. Notwithstanding, the recent initiatives should be monitored to see if they can produce useful policy material and whether similar initiatives might be introduced in New Zealand.

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