

TEMPORARY MIGRANT WORKER EXPLOITATION IN NEW ZEALAND

Francis Collins

The University of Waikato

and

Christina Stringer

The University of Auckland Business School

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Executive Summary

Introduction

Migrant exploitation is the unjust and often illegal utilisation of migrants for the extraction of profit in a range of circumstances including in labour, accommodation, provision of migration services, and education, amongst others. For this research, we were tasked with providing an understanding of what the exploitation of temporary migrant workers looks like in New Zealand. In particular, we were asked to explore the nature, drivers and consequences of exploitation from the perspective of migrants and other key stakeholders. We were also tasked with identifying effective interventions to mitigate the vulnerability of temporary migrant workers. We explored exploitation, firstly from the migrant's perspective, and secondly, from the perspective of key stakeholders, including unions, community leaders, migrant representatives, and lawyers. We refer to this group as the "supply side", meaning those who provide support to migrant workers. While migrants themselves form part of the "supply side", we separate them out as a focal actor surrounded by support networks. Thirdly, we explored these same issues from the "demand side", referring to those who are in the business of employing or facilitating the employment of migrant workers, including employers, business/industry representatives and immigration advisors.

How the Research was Conducted

Semi-structured interviews were undertaken with temporary migrant workers who have been exploited as well as stakeholders with key insights into the exploitation of temporary migrant workers in New Zealand. In total, 131 interviews were conducted.

Contextual Background

An increasing awareness of cases of migrant exploitation in New Zealand has occurred in parallel with substantial changes in immigration policy and patterns over the last two decades. In order to understand recent migration and its relationship to exploitation, we zoom in on the demographic patterns of people arriving within three key temporary migration schemes: essential skills work visas, student and post-study work visas, and working holiday visas. These schemes all carry quite different rights in relation to the labour market: essential skills work visas are tied to specific employers, regions and occupations; student visas allow work for a maximum of 20 hours per week for any employer during term time; post-study work visas have varied in conditions over recent years but currently allow work for any employer; and working holiday visa holders can work in any occupation and region but are sometimes limited to three months in each job.

The Migrant Workers' Experience

There are two visa types where exploitation occurs most frequently: student visas and employer-assisted visas, including both essential skills and post-study work visas (prior to

the November 2018 changes).¹ For those on student visas, exploitation can begin in their home country where immigration agents sell them a dream of obtaining permanent residency in New Zealand. They do this through the promise of jobs which will lead to permanent residency. The reality is different and many find it difficult to obtain a job and thus they become vulnerable to exploitation. Further, some private training establishments (PTEs) have been complicit in concentrating full-time study courses across two days a week that allow students to work full time, in breach of their visa regulations. Employer-assisted visas are the second pathway to migrant worker exploitation we have observed. Those on employer-assisted visas are vulnerable due to their dependency on their employer. In some instances, the employer leverages this vulnerability.

Types of exploitation

It was suggested by a number of informants in this study that exploitation is “endemic” in New Zealand and migrants often reported multiple types and instances of exploitation. Exploitation varies in terms of the extent to which it is systematic and the purported level of intentionality on the part of employers. On the one hand, some employers undertake to exploit migrant workers intentionally and systematically through knowledge of vulnerabilities and pressure points within the migration system. On the other hand, there also appear to be situations whereby employers may well be aware that they are taking advantage of these workers but have not built their business around exploitation in a systematic manner.

The key types of exploitation identified in this research include the underpayment or non-payment of wages, non-compliance on behalf of the employers with employment contracts, the non-payment of PAYE taxes, denial of leave and the non-payment of holiday pay. Employers will also promise assistance with immigration requirements — this serves as a mechanism to exploit workers because some migrant workers will accept wages and/or conditions below minimum standards in order to gain the perceived benefits of another work visa or support for a residence application. Migrant workers can feel a sense of obligation in situations wherein they were initially befriended by their employer.

The personal impact of exploitation

There was a personal cost for the migrant workers of being exploited. Some felt trapped in an exploitative situation because they saw they had no other option — whether this was because of a lack of opportunity, fear, the need to stay with an employer in order to obtain a reference or other reasons. For others there was an emotional toll; participants discussed depression, weight loss, lack of sleep and exhaustion, with some participants having contemplated suicide.

¹ Prior to November 2018 post-study work visas were issued for 12 months as “job search visas” with no restrictions on occupation, employer or region of employment or for two years as “employer assisted” when applicants had employment in an area related to their field of study. Since November 2018 all post-study work visas are issued for 1, 2 or 3 years without any restrictions on employment.

The Creation of Vulnerability

The primary way in which employers have exploited migrants is by taking advantage of their immigration status in order to secure their acceptance of exploitative employment conditions. In most cases participants reported that they were not aware they would be exploited when they accepted the job. Indeed, some employers initially presented themselves as “friendly” during recruitment and once the job started or a new visa was obtained employers changed both employment conditions and their treatment of the employee. When migrants questioned exploitation, the threat of a visa being cancelled unilaterally was often used in order to maintain control of them.

Control mechanisms

Vulnerability to exploitation is also actively created and maintained by employers through the use of control mechanisms which came in three broad types: spatial control (living in provided housing; being subject to surveillance through CCTV systems), disempowerment (employers would highlight their influence in society and hence claim that Immigration NZ would not listen to the migrant worker) and intimidation (assault or verbal abuse). These control mechanisms enhance the ability for employers to exploit migrants at work but also have an effect in terms of migrants’ willingness to report exploitation to relevant authorities.

Exacerbating factors

There are also exacerbating factors that play a significant role in creating vulnerability to exploitation. This included bureaucratic delays at Immigration New Zealand; the need to repay significant levels of debt which have been taken out for the purpose of moving to New Zealand; and a lack of family and social connections in New Zealand. Debt was a particularly salient factor in this research that interacted with a range of other circumstances that led to exploitation. Many participants who enter New Zealand initially as international students have taken on significant debt, either directly or via their families, on the basis that study will lead to work opportunities after graduation and opportunities to gain long term residence. Such debt places substantial pressure of people as they seek work opportunities and need to balance finding the right job with the pressure to service payments. Debt, and even substantial payments that come from personal or family savings, also increase the pressure on migrants to succeed in getting jobs and visas given that not doing so comes at a significant financial cost.

Business models, immigration settings and cultural and linguistic familiarity

There is evidence that exploitation commonly occurs between employers and workers who share ethnicity or nationality. While co-ethnicity/nationality sometimes correlates with exploitation, our research suggests that it is not universal but rather is more common in businesses relying on very low wages and poor conditions in order to make a profit. There are two means by which employers exploit people of similar backgrounds to themselves. Firstly, some co-ethnic/national employers are very aware of current immigration policy settings and the disadvantageous position it places temporary migrant workers in. Secondly, such employers use their cultural and linguistic familiarity to a) access migrant workers from similar backgrounds who can be exploited; b) establish trust with these workers through

cultural norms around friendliness, obligation and reciprocity; and c) utilise this same cultural/linguistic familiarity to maintain control through the mechanisms described above. In this regard, it is the link between the business model, immigration settings and cultural/linguistic familiarity that makes exploitation more common within co-ethnic/national networks, rather than a particular community predisposition to exploitation.

Responding to Exploitation

There were three ways in which temporary migrants respond to exploitation, with varying impacts: 1) approaching official organisations; 2) taking action against employers; and, 3) exiting employment. Temporary migrant workers have varying degrees of success in approaching official organisations due in part to a lack of knowledge about the support non-governmental organisations offer and a lack of trust in government agencies. It is rare for participants to take action against their employer and if they do so they engage the help of lawyers or go through mediation. Many fear loss of immigration status in coming forward. The research has shown that the primary way in which migrant workers address exploitation is by exiting the workplace rather than taking action against their employers. Some exit when they reach a threshold of exploitation that they can no longer tolerate while others resign under normal circumstances, or they receive a visa that is not connected to their employer, or their employment is terminated or the business is closed. In a small number of cases, temporary migrants exited through interventions by the Labour Inspectorate and the Police or because they have reached the point that they are worn down and choose to leave New Zealand.

The Perspective of Key Stakeholders (Supply Side)

Stakeholders — community organisations, union representatives and lawyers — provided key insights into the type of exploitation migrant workers were encountering. They felt that exploitation was more widespread than is acknowledged by government or in the media. Each echoed the findings from interviews with temporary migrant workers as to the particular industries exploitation takes place in and the form exploitation can take.

As our research identified, community participants and union representatives reported that exploitation was most commonly experienced by international students or those holding post-study work visas. Union representatives viewed Filipinos, Indians, and Chinese on essential skills or post-study work visas as the most vulnerable migrant population as well as international students and Latinos on working holiday visas.

The examples the participants shared about exploitation highlight the unequal power dynamics between employers and their migrant workers. Employers were reported to intimidate migrant workers through subtle or explicit threats, including against family members both in New Zealand and in the migrants' home country. Illegal phoenixing²

² Phoenix activity is referred to in this report as when a business is placed into liquidation in order to avoid payment of debts including employee wages and entitlements, and taxes. The business owner then goes on to establish a new business. We note that this is a broader interpretation than phoenixing as defined under section 386B of the Companies Act 1993.

activity was identified as a key concern (as it was for the demand side stakeholders). Participants also noted the paying of premiums in order to obtain jobs that led to permanent residency.

Factors that create conditions for exploitation

A wide range of factors were identified by the key stakeholders as creating the conditions for exploitation, including the co-ethnic/national dimension,³ marginalisation in the workforce, employer-assisted visas, the promise of residency, and the lack of knowledge of employment rights amongst temporary migrants. Another factor in exploitation identified by the stakeholders was the role of education and migration agents and advisors in encouraging migrants to undertake migration with the expectation of positive outcomes in work opportunities and access to residence status that was difficult to attain. They also identified issues in the immigration system that mean that exploitation is almost an inherent part of New Zealand's immigration system. Here they reflected on unnecessary bureaucracy, inconsistent decisions and strict visa regulations as well as visa policies themselves. The Labour Inspectorate was seen as not working in the best interests of temporary migrant workers.

The Perspective of Key Stakeholders (Demand Side)

Demand side stakeholders included employers, industry groups and immigration advisors, and those who are in the business of employing or facilitating the employment of migrant workers.

Employers and industry groups

Employers shared anecdotal information as to the exploitation of migrant workers in their communities and/or within competitor firms. Several had been directly impacted by competitors exploiting their workers. Two of the employer participants had been offered premiums of up to \$50,000 by intermediaries to employ migrant workers. Both have been called "a fool" or similar for refusing to take the money offered. Some saw that migrants themselves drive exploitation by making requests for jobs that sacrifice minimum rights in order to gain later benefits. Employers also talked about labour shortages and the need to be able to employ migrant workers but they indicated that Immigration New Zealand is increasingly making this difficult through complex procedures for recruiting migrants and the impact of short-term visas that necessitate more immigration bureaucracy.

Business representatives provided a mixed view of the extent of exploitation in New Zealand. Some felt that there was relatively little migrant exploitation occurring. One potential explanation offered for this possibility was that businesses/employers who voluntarily become members of business or industry associations are the least likely to engage in exploitative practices at work. Other business representatives, on the other hand,

³ We use the term co-ethnics/nationals to encompass people who share either ethnicity or nationality. The term encompasses people who are New Zealand citizens (both New Zealand-born and overseas born) who share an ethnicity with temporary migrant workers, as well as people who hold New Zealand Permanent Residence or another status and share the same nationality as temporary migrant workers.

acknowledged that migrant exploitation is widespread both in the areas that they work and in other industries, including in those industries where representatives had denied this was occurring.

What are employers and industry groups doing to reduce exploitation?

At the employer level, a range of initiatives have been introduced to ensure employees are protected, including random audits of their employees, the introduction of technology linking ID cards to timesheets, and fingerprint sign-in systems which record hours worked. Some industry organisations have developed resources to address workplace practices, including exploitation, which range from standardised employment agreements through to guidelines on disciplinary procedures. One organisation has instituted a code of practice that members must uphold in order to retain their status. This partly came about as a result of concerns about migrant exploitation. Other organisations had also instituted a “proactive audit of employment relationships” as a means to help employers voluntarily and safely identify if they were meeting minimum employment standards.

Immigration advisors

Immigration advisors provided considerable insight into the mechanics of migrant exploitation which were focused on three broad issues: co-ethnicity/nationality and exploitation, the pathways of international students, and employer-assisted visas. Their insights echoed those of other demand and supply side stakeholders and many temporary migrant workers in identifying the linkages between immigration systems, particular business models and the motivations of temporary migrants.

How to Address Exploitation?

Key for the migrant participants was a transparent system and an environment where they could work hard and be rewarded for their work. Several noted that migrants are scared to seek help because they are fearful of being deported, with one participant going as far to say he did not think exploitation could be stopped because everything is “under the table”. Six key themes were identified: 1) need for an education and awareness campaign for migrants and employers, 2) support for those who have been exploited, 3) government agencies, referring specifically to Immigration New Zealand and the Employment Relations Authority, need to be more proactive, 4) the visa process needs to be simplified, 5) the PTE sector needs to more closely monitored, and 6) the introduction of harsher penalties for employers.

The other supply-side stakeholders were of the view that the Government can do five key things to address exploitation: 1) increase education and support for both migrants and employers, 2) review the role of immigration policies and systems in creating conditions for exploitation, 3) establish a dedicated unit to monitor exploitation and support exploited migrants, 4) introduce harsher penalties for employers who exploit their workers, and 5) there is scope for industry to take a stronger role in stamping out exploitation.

Those on the demand side seconded these recommendations, with the exception of establishing a dedicated unit. They also added that the PTE sector needs to be tightened up and highlighted that the overall experience of migrant workers needs to be improved.

Key Interventions

There are six key interventions that emerged from the research: 1) review employer-assisted visas and low-skilled visa restrictions, 2) introduce stronger enforcement mechanisms while also putting into place better victim support mechanisms, 3) provide more coherent and simplified immigration/employment information, 4) support Immigration New Zealand through the provision of more resources to reduce the bureaucratic load so that cases are dealt with appropriately, 5) review the international education sector and in particular the PTEs sector, and 6) government departments to collaborate with industry groups and community organisations (including unions) to address migrant worker exploitation.

Conclusion

Our report has highlighted that current approaches to migration policy have a significant role in creating opportunities for the exploitation of people holding temporary visas for study or work. Visa conditions have been consistently identified as a key lever for exploitation that enhances employers' power by giving them influence over both employment and immigration status of their employees. Similarly, there are shortcomings in enforcement, particularly in terms of the resourcing of Immigration New Zealand and the Labour Inspectorate.

There is a need for the government to review the business model of international education and its role in creating conditions for exploitation in the workplace. Many of the people whose stories of exploitation have been documented in this report entered New Zealand through an international student pathway into relatively low quality PTE courses with the view, cultivated by agents, education providers and the government, that they could expect access to work visas and residence visas at some point after study. The New Zealand government has a duty of care to current and future international students as well as to those who are now on post-study work visas.

The research shows that the exploitation of migrant workers is a serious issue in New Zealand and that effective multi-sector intervention is needed. The primary responsibility to address exploitation is on the government but it is also clear that effective responses will only come from collaboration with other groups. Employers, industry organisations, unions, migrant and other community organisations, education providers and others all have a role to play in identifying and responding to the exploitation of migrant workers in New Zealand. The research highlights the need for a higher level of collaboration between different organisations, a focus on working with communities who are involved in and suffer from exploitation, and a focus on achieving the highest possible employment standards for migrant workers and everyone else who works in New Zealand.

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1. Introduction

Over the last two decades, several industries in New Zealand have come to rely on temporary migrant workers to fulfil crucial labour shortages. This trend has resulted in a substantial increase in migrants coming to New Zealand. Congruently, there has also been an increase in media and other reports of the exploitation of migrant workers. Recent headlines highlighting the exploitation of migrant workers in New Zealand include “Canterbury bakers who didn't pay employee for 985 hours work fined 115K” (One News 14 February 2019), “Migrant workers allegedly exploited by Bottle O Store” (Radio New Zealand, 5 March 2019). In March 2019, an Auckland couple were found guilty on several accounts of exploiting migrant workers (McCulloch & Satherley, 2019).⁴

Migrant exploitation is a complex phenomenon that takes different forms, involves different actors and is influenced by the different vulnerabilities of migrants. This complexity is particularly apparent in New Zealand because of changes over the last two decades in the migration system and the growing diversity in the nationalities, skill levels and occupations of migrants. These changes have been accompanied by new patterns of arrival and conditions of stay for migrants on temporary permits.

In New Zealand the exploitation of temporary workers is defined in the Immigration Act 2009 (Section 351) as non-compliance with the Minimum Wage Act 1983, the Holidays Act 2003, and the Wages Protection Act 1983. The Immigration Act further defines exploitation as “preventing or hindering” the worker from leaving their employment. For the purposes of this report, migrant exploitation is the unjust and often illegal utilisation of migrants for the extraction of profit in a range of circumstances, including in labour, accommodation, provision of migration services, and education, amongst others. In these circumstances, migrant exploitation either takes the model of cost-minimisation (minimisation of operating costs through, for example, paying below the minimum wage) or the revenue-generating model (such as through the provision of ancillary services, e.g. visa brokerage and accommodation).

As part of their coalition agreement, the current Government is committed to addressing temporary migrant exploitation, including of international students, some of who are a particularly vulnerable population. The Ministry of Business, Innovation and Employment (MBIE) is undertaking policy work to address the exploitation of temporary migrant workers in New Zealand as part of the delivery of this Government commitment. For this research, we were tasked with providing an understanding of what the exploitation of temporary migrant workers looks like in New Zealand. In particular, the nature, drivers and

⁴ McCulloch, J. & Satherley, D. (2019) Sweet-making business owners convicted of immigration offences; One News. (2019, February, 14). Canterbury bakers who didn't pay employee for 985 hours work fined \$115k; Radio New Zealand. (2019, March 5). Migrant workers allegedly exploited by Bottle O store.

consequences of exploitation from the perspective of migrants themselves as well as other key stakeholders. We were also tasked with gaining insight into stakeholders' perspectives on how well the systems for reporting migrant exploitation and supporting victims are working and what the stakeholders consider to be effective interventions to mitigate the vulnerability of temporary migrant workers. This research is intended to inform part of MBIE's policy work.

In this research we explore the nature, drivers and consequences of exploitation, firstly from the migrant's perspective, and secondly, from the perspective of key stakeholders, including unions, community leaders, migrant representatives, and lawyers. We refer to this group as the "supply side", meaning those who provide support to migrant workers. We acknowledge that migrants themselves form part of the "supply side" but we separate them out as a focal actor surrounded by support networks. Thirdly, we explored these same issues from the "demand side", referring to those who are in the business of employing or facilitating the employment of migrant workers, including employers, business/industry representatives and immigration advisors. The purpose being to gain insight from the key stakeholders into migrant exploitation in New Zealand as well as their recommendations as to what is needed to mitigate vulnerability and to reduce the exploitation of temporary migrant workers.

The report is structured as follows. We begin by outlining how we undertook the research and a breakdown of the characteristics of the participants. Section 3 provides contextual information on immigration patterns and the types of visa categories wherein migrants are most vulnerable. In the next three sections, we report on the findings of our interviews with migrant workers. In section 4 we discuss, in detail, the types of exploitation our participants have experienced as well as the impact of exploitation on them. Vulnerability to exploitation is created in different ways and discussed in section 5. Vulnerability can occur through the immigration process as well as the actions of employers and temporary migrants themselves. We then go on to talk, in section 6, about how our participants have responded to being exploited — whether they chose to take action or not — before discussing how those who have exited their exploitative situation, have done so. In sections 7 and 8, we discuss our findings with key stakeholders from the supply and demand side, respectively. The stakeholders reflect on the extent of exploitation they have seen (or not seen) and the impact of the exploitation. In section 9 we discuss all stakeholders' suggestions (including migrant workers) to the New Zealand government as to how to address exploitation. We provide a summary of key findings in section 10 and offer recommendations and some concluding thoughts in section 11.

2. How the Research was Conducted

Semi-structured interviews were undertaken with temporary migrant workers⁵ who have been exploited as well as stakeholders with key insights into the exploitation of temporary migrant workers in New Zealand. We classified our stakeholder participants into two groups: supply and demand. Supply side stakeholders are those who provide support to migrant workers. Demand side stakeholders are those who are in the business of employing or facilitating the employment of migrant workers. The two groups are summarised as follows:

- 1) Supply side: migrant workers who have experienced exploitation at work, union representatives, community organisations, migrant representatives, lawyers
- 2) Demand side: employers, business/industry representatives (i.e. industry groups), immigration advisors.

Recruitment of migrant workers

We recruited temporary migrant workers through targeted paid social media advertising on Facebook and WeChat, supported by judicious use of snowball techniques (or chain referral method). In addition, we also posted details of the research on targeted closed group Facebook pages dedicated to migrant communities in New Zealand and, where possible, translated to the language of the recipients.

A snowball strategy has been used with success in researching vulnerable or hidden populations — groups of “individuals for whom the size and boundaries are unknown and for whom no sampling frame exists” (Tyldum and Brunovskis, 2005, 18).⁶ Participants were asked if they would be willing to encourage other migrants to make contact if they were interested in participating in the research. A snowballing technique was successfully used and increased the number of participants. In total, 64 migrant workers were interviewed.

This is a self-selected study comprising migrant workers who voluntarily answered the advertisements and participated in the study. As noted above, this is a population for which there is no sampling frame. Thus, the study does not measure the overall extent of migrant worker exploitation in New Zealand. What it does, instead, is discuss participants’ experiences as well as their perceptions of exploitation, including those of key stakeholders, into the wider extent of temporary migrant worker exploitation in New Zealand.

Table 2.1 outlines the current sample of migrant workers who participated in this research in terms of nationality, gender, visa type, industry and region of residence/employment.

⁵ From here on out we use the terms “temporary migrant workers” and “migrant workers” interchangeably to mean the same.

⁶ Tyldum, G. & Brunovskis, A. (2005). Describing the unobserved: Methodological challenges in empirical studies on human trafficking. *International Migration*, 43(1-2), 17-34.

TABLE 2.1: Breakdown of interviews. N.b. counts for visa type, industry and region are cumulative instances rather than individual participants as the vast majority of temporary migrant workers interviewed in this research had multiple jobs, visas and lived in different regions.

Nationality														
	India	China	Philippines	Other Asia	Pacific	Latin America	Other							Total
Number	34	8	7	6	3	5	1							64
Gender														
	Male	Female												
Number	44	20												64
Visa Type														
	Working Holiday	Student	Essential Skills	Open work	Post-study	Residence	Partnership	Religious	Post-study Employer assisted	Tourist/ Visitor	Other Work Visa			
Number	2	51	34	11	40	11	10	2	3	12	3			179
Industry														
	Horticulture	Hospitality	Building and Construction	IT/Tele communication	Cleaning	Security	Retail	Dairy Farming	Sales	Beauty	Courier	Forestry	Other	
Number	15	54	4	7	8	5	28	18	3	4	2	4	13	165
Region														
	Auckland	Waikato	Wellington	Hawkes Bay	Bay of Plenty	Gisborne	Canterbury	Otago	Southland					
Number	74	25	8	4	28	2	14	7	5					167

Migrant workers, typically, are in a number of different situations during their time in New Zealand, meaning that there is no simple way of summarising migrants according to a single visa, region or industry. Indeed, exploitation often occurs in multiple situations and at multiple times for workers. Amongst the 64 temporary migrant workers interviewed in this research, 48 held student visas at some point during their time in New Zealand, 32 held post-study work visas and 32 held essential skills visa holders as well as a range of other categories. We were only able to recruit 2 participants who held working holiday visas. Our interactions with key stakeholders suggest that because of their short period of residence in New Zealand, mobility working holiday visa holders are less likely to want to spend their time reporting exploitation. And because they have more freedom to leave employers than other work visa holders, they are less likely to be trapped in exploitative situations. In some instances, exploitation has occurred recently (or is occurring currently) for migrants on their current visa status while in other cases exploitation has occurred in the past on a different visa status (e.g. an essential skills visa holder might have been exploited on a student visa), or exploitation has occurred multiple times on different visa statuses for the same participant.

We achieved a good sample of different occupations and industries. There were 54 instances of people working in hospitality, 28 in retail, 18 in farming, 15 in horticulture and 8 in cleaning — as well as a range of other industries. In terms of region, many of the participants had worked in jobs in multiple regions or had held many positions in the same region; half of the participants have been in Auckland (33/64) at some point. Participants from 12 different nationalities have participated; the largest nationality group are Indians ($n=34$), followed by Chinese ($n=8$) and the Philippines ($n=7$).

Generally, the patterns in the sample reflect what has been reported about exploitation in past research and media accounts — that exploitation has been experienced by particular nationalities more than others, in certain visa categories and is particularly apparent in the hospitality sector; the regional bias to Auckland largely reflects the number of migrant workers in that city in comparison to other areas.

Recruitment of key stakeholders

The total number of key stakeholders includes a wide range of individuals from different organisations, regions and sectors:

- 1) Supply side: Unions ($n=9$), community organisations and migrant representatives ($n=18$), lawyers ($n=10$)
- 2) Demand side: Employers ($n=14$), industry representatives ($n=6$), immigration advisors ($n=10$).

On the supply side, we targeted those who actively support migrant workers. On the demand side, we interviewed 14 employers who employ migrant workers, 13 who did so legitimately and 1 who described their exploitation of migrant workers. In particular, we looked for their insight into the nature of, and drivers behind, the exploitation of migrant workers. A number of these employers saw the impact of migrant worker exploitation within their industry. Interestingly, a former employer who had previously exploited his

employees volunteered to take part in the research and offered insight into what they saw as the reasons why exploitation occurs. We also sought to gain insight into the degree of exploitation from industry representatives. For confidentiality reasons we do not provide details on the industries or sectors these individuals represent, as in some cases that would make them identifiable.

Key stakeholders on the supply side also shared details of the research on their Facebook pages encouraging migrants to participate. Stakeholders and supporters discussed the research on Facebook Live sessions as well as a talkback session on Humm 106.2FM, an Indian radio station in Auckland. In one instance, an employer encouraged one of his migrant workers to participate in this research. In turn, this worker reached out to his networks to encourage them to participate.

The interview process

We undertook semi-structured interviews with participants between January and May 2019. The majority of interviews were face-to-face, and in total 131 people (64 migrant workers and 67 stakeholders) were interviewed. The interviews were conducted under the University of Auckland Ethics Approval Ref 022370 and the University of Waikato Ethics Approval Ref FS2018-40.

We asked migrant workers questions pertaining to their background, their employment history in New Zealand, the type of exploitation they have experienced or are experiencing in New Zealand, as well as what, if anything, they did to try and address the issue. We also sought to gain insight into how their experiences of exploitation have affected them and why they think exploitation is occurring. Further, we sought their insights as to what the government can do to address the issue.

For a number of migrant workers, reflecting on their experience to-date was not an easy process. Some became quite emotional during the interview. The majority of those interviewed expressed feelings ranging from hopelessness and sadness to fear to frustration and anger at the way they had been treated. Underpinning these emotions for many was the sense of the loss of hope and the realisation that false promises had led to unfulfilled dreams.

The majority of interviews with temporary migrant workers were carried out in English with a small number carried out in Hindi, Mandarin and Spanish using interpreters. In some instances, we were asked to be selective in our selection of interpreters in order to protect their identity and/or reputation within ethno-national communities. Some participants were concerned about negative repercussions from their employer (whether past or present) from participating in the research. Some felt that through their participation in this research, they had an opportunity, indeed their only opportunity, to have a voice.

Interviews with key stakeholders focused on their experience of engaging with temporary migrant workers, or their knowledge of the employment of temporary migrant workers. In particular, we sought insight into their perceptions of the extent of migrant worker

exploitation, the systems that make exploitation more or less likely, and the consequences of exploitation for migrants, employers, industries or communities as a whole.

We now go on to provide contextual background on the demographic patterns of migration and the temporary migration schemes in which exploitation is most common. In the remainder of this report, we provide an overview of the key findings from interviews carried out with temporary migrant workers followed by a discussion of findings from each main group of key stakeholders.

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3. Contextual Background

The increasing awareness of cases of migrant exploitation in New Zealand has occurred in parallel with substantial changes in immigration policy and patterns over the last two decades. In this section we outline the broad contours of migration patterns that have occurred as successive New Zealand governments have increasingly permitted and sought to manage temporary arrivals for work and study while retaining relatively stable residence approvals. We also zoom in to the demographic patterns of people arriving within three key temporary migration schemes: essential skills work visas, student and post-study work visas, and working holiday visas. It is amongst migrants within these three schemes that migrant exploitation has been most prominent and that we focus on in this report, although exploitation has also been reported in the Recognised Seasonal Employer (RSE) scheme,⁷ amongst people holding partner work visas⁸ and undocumented migrants.⁹



FIGURE 3.1: Work, Student and Residence Visa Approvals, 1997/98–2018/19. Data source: MBIE Migration Data Explorer and Migration Trends and Outlooks reports. Chart prepared by authors.

Over the last two decades, a significant feature of migration patterns in New Zealand has been a growing policy focus on managing temporary arrivals for work and study. Figure 3.1 presents the number of work, study and residence visas approved from 1997/98 to 2017/18. This chart reveals that while approvals¹⁰ of residence class visas have remained relatively

⁷ Van Well, A. (2009). Migrant Labour. *The Press*. (2009, 5 June).

⁸ Tan, L. (2018). Human trafficking: Lured migrants face dark reality. *New Zealand Herald*. (2018, 16 April).

⁹ NZ Herald (2018). Illegal workers: Man arrested for human trafficking, slavery. *New Zealand Herald*. (2018, 17 December).

¹⁰ Approvals are not a complete measure of the number of people entering New Zealand or renewing visas as some people can have multiple visa approvals in the same year or can be approved for a visa offshore and not enter New Zealand.

stable (usually between 40,000 and 50,000 annually and have fallen to 34,476 in 2018/19), the number of work visas approved annually has grown from 41,044 in 1997/98 to 242,388 in 2018/19 alongside a growth, decline and then further growth of student visas to 103,899 in 2018/19. The work visa category includes a range of different visas from the RSE scheme to working holidays, essential skills work visas and post-study work visas; this category also includes work visas issued to partners of work visa holders, residents and citizens. Our focus in this research is on four categories:

Essential Skills Work Visas allow the holder to work for a specified employer, in a specified region and in a specified occupation. Since August 2017, when the essential skills work visa policy was revised, visas have been issued for one, three or five years with different conditions depending on skill level and remuneration. Individuals whose employment was deemed to be “low-skilled” in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) are almost always limited to one-year visas, can only renew three times, have limited access to public services as a result and are not permitted to sponsor family. For more information see: <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/essential-skills-work-visa>

Student Visas are issued to people who enrol in approved education providers. Student visas can be issued to people enrolling in all levels of New Zealand education, but for the purposes of this research, our focus is on individuals studying in private training establishments (PTEs), polytechnics and universities. Student visas are issued for the duration of the course of study (up to four years, or five years for courses that together constitute a “pathway”). While studying, student visa holders can work in any occupation up to 20 hours per week; during holidays they are permitted to work up to 40 hours per week. Depending on their level of study, some international students are able to sponsor partners and children for visas that allow access to work or study. For more information see: <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/full-fee-paying-student-visa>

Post-study Work Visas are issued to international students who have completed courses of study at approved providers and New Zealand Qualifications Authority (NZQA) levels. Prior to November 2018, post-study work visas were issued for 12 months as “job search visas” with no restrictions on occupation, employer or region of employment or for two years as “employer-assisted” when applicants had employment in an area related to their field of study. Since November 2018 all post-study work visas are issued without any restrictions on the region or occupation of employment and no employer assistance is required. Post-study work visas are now issued for one, two or three years depending on the course of study that has been completed and region. Visa holders can also sponsor their partners and children for the duration of their visa. For more information see: <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/post-study-work-visa>

Working Holiday Visas are granted to citizens of 45 countries with whom the New Zealand government has established bilateral working holiday schemes. These working holiday schemes have age restrictions so that individuals have to be between 18 and 30 years of age

in most cases or in a few schemes between 18 and 35 years of age. Most working holiday visas are issued for 12 months but some are as short as six months and a few, such as the scheme with the United Kingdom, allow applications for up to 23 months. Working holiday visa holders can work in any occupation and region but are sometimes limited to three months in each job. Working holiday visa holders cannot sponsor family and because of time limits on visas have no access to public services such as health care. For more information see: <https://www.immigration.govt.nz/new-zealand-visas/options/work/thinking-about-coming-to-new-zealand-to-work/working-holiday-visa>

Essential skills work visas (and before 2011/12 the general work visa category) constitute a substantial proportion of overall work visas throughout this period. Figure 3.2 presents information on annual essential skills and general work visa approvals from 2009/2010 to 2018/19. While there was a sharp decline in work visa approval numbers as part of the global financial crisis, since 2011/12 essential skills work visas issued annually have increased from 23,364 to 44,598 by 2018/19.

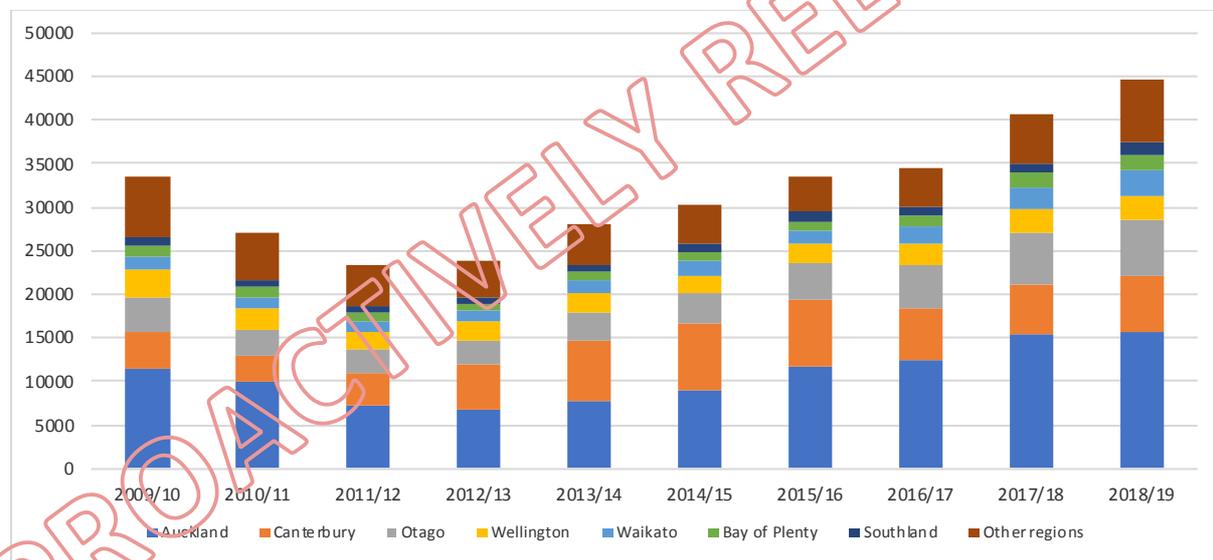


FIGURE 3.2: Essential skills and general work visa approvals, total and by region 2009/10–2018/19. Data source: MBIE Migration Data Explorer. Chart prepared by authors.

Although we do not present this data here, it is also notable that the population count¹¹ of people holding essential skills work visas in New Zealand has increased consistently throughout this period, from 17,130 on 30 June 2011 to 52,713 on 30 June 2019, reflecting the fact that many people are issued essential skills work visas for more than one year. Figure 3.2 also presents information on the regions of employment for essential skills work visa holders. Since 2011/12 Auckland, Canterbury and Otago have hosted the greatest number of essential skills work visa holders (63.1% in 2018/2019); Auckland growing from 7,317 to 15,564 in 2018/19, Canterbury from 3,609 to 6,507 and Otago from 2,691 to 6,348.

¹¹ Population counts are used in this report to refer to the actual number of persons present in New Zealand on a particular visa status and at a particular time. For further information see MBIE’s Migration Data Explorer: https://mbienz.shinyapps.io/migration_data_explorer/

Other regions that have experienced notable growth are Waikato (growing from 1,284 to 3,057) and Bay of Plenty (870 to 1,755); Wellington and Southland, by contrast, have had only moderate growth in essential skills work visa approvals from 2,115 to 2,781 and 786 to 1,356, respectively, between 2011/12 and 2018/19.

Table 3.1 presents essential skills work visa approval data in relation to the six largest nationalities between 2008/09 and 2018/19. The figures presented are total number of visas approved over this period. The table provides an indication of the overall number of visas issued for different nationalities, with the Philippines, UK and India having particularly substantial numbers.

It also illustrates substantial occupational differences. Of note for this research is the substantial number of people from the Philippines employed as farm and construction workers as well as people from India and China in various hospitality, food trade and retail occupations. Each of these nationalities and occupations appear as areas where exploitation has been reported both in media accounts (see *Understanding the Exploitation of Temporary Migrant Workers* report) as well as in our interviews with temporary migrant workers and stakeholders.

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TABLE 3.1: Cumulative total of essential skills and general work visa approvals from 2008/9–2018/19, top six nationalities by occupation. Data source: MBIE Migration Data Explorer. Table prepared by authors.

Philippines		United Kingdom		India	
Total	59,682	Total	46,698	Total	47,085
Carers and Aides	8,688	Health Professionals	7,740	Hospitality, Retail and Service Managers	9,192
Construction Trades Workers	7,776	Sports and Personal Service Workers	3,270	Food Trades Workers	6,291
Farm, Forestry and Garden Workers	7,713	Hospitality, Retail and Service Managers	3,168	Sales Assistants and Salespersons	3,948
Farmers and Farm Managers	6,912	Construction Trades Workers	2,607	Health Professionals	3,636
Health Professionals	4,854	Design, Engineering, Science and Transport Professionals	2,364	Carers and Aides	2,553
Other	23,739	Other	27,549	Other	21,465
Fiji		China		South Africa	
Total	23,886	Total	22,086	Total	16,632
Road and Rail Drivers	3,111	Food Trades Workers	5,094	Automotive and Engineering Trades Workers	2,409
Automotive and Engineering Trades Workers	3,054	Hospitality, Retail and Service Managers	2,964	Specialist Managers	1,224
Carers and Aides	2,169	Construction Trades Workers	1,794	Business, Human Resources and Marketing Professionals	1,038
Farm, Forestry and Garden Workers	1,647	Automotive and Engineering Trades Workers	1,299	ICT Professionals	867
Factory Process Workers	1,482	Business, Human Resources and Marketing Professionals	1,044	Electrotechnology and Telecommunications Trades Workers	861
Other	12,423	Other	9,891	Other	10,683

Another population of temporary visa holders discussed in this report and who have been identified as particularly vulnerable to exploitation are international students. Figure 3.3 presents the population count of international students at 30 June annually from 2009 to 2019 as well as differences by nationality. As the chart shows, following relatively stable overall student numbers until 2013 (52,788), the population of student visa holders has continued to increase to a current high of 76,989 in June 2019. The increase in student numbers has been largely influenced by the incremental increase of students from China since 2009 (10,620) to a peak of 22,053 in 2017 as well as the rapid increase in students from India between 2013 (7,434) and 2016 (18,894), although the number of students from India has now declined considerably to 12,333 in 2019 (many of these students are now

likely to be on post-study work visas — see below). Amongst the largest nationalities, the Philippines is the only other group to have grown substantially, from 1,812 in 2009 to 4,899 in 2018, while students from South Korea and Fiji have declined and those from Japan have remained relatively stable over this time period.

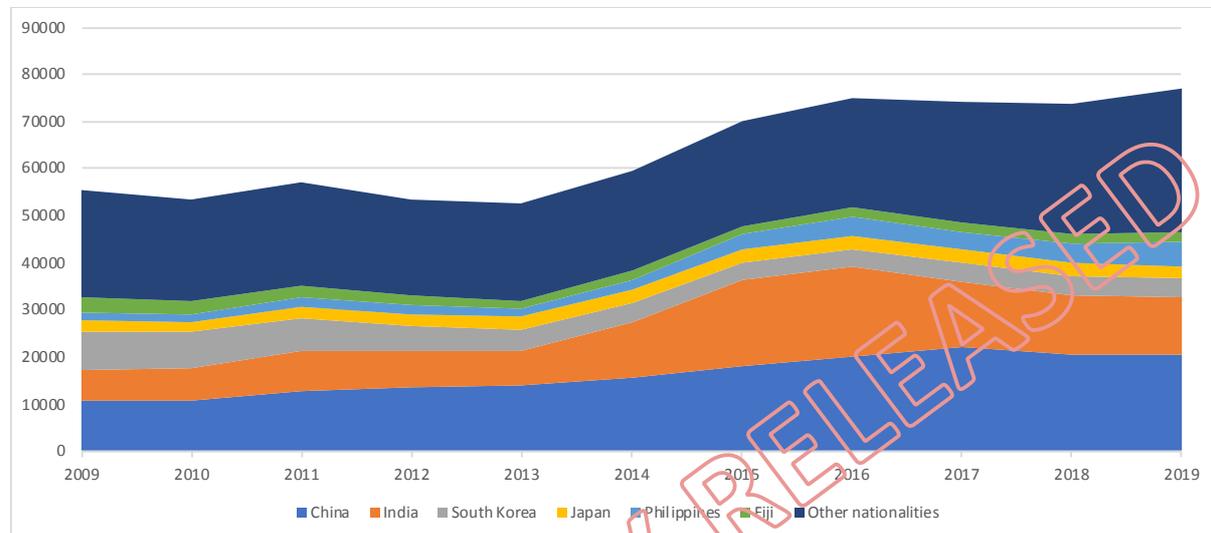


FIGURE 3.3: Student visa population counts at 30 June 2009–30 June 2019 by nationality. Data source: MBIE Migration Data Explorer. Table prepared by authors.

Figure 3.4 looks at the breakdown of international student visa approvals by institution type. The three primary groups that are the focus of this research are students enrolled in PTEs, universities and polytechnics. Over the last 10 years, it has been the number of students in PTEs that have fluctuated most notably, increasing substantially between 2012/13 (20,856) and 2015/16 (36,861) when the government reduced English language requirements for admission.¹² By 2018/19 the number of students gaining visas for PTEs had reduced to 24,528. University student visa approvals have grown incrementally from 23,463 in 2012/13 to 30,993 in 2018/19 and students in polytechnics have grown from 8,943 to 13,122 over the same period. While all students who have the right to work, or are employed beyond the conditions of their visas, can be vulnerable to exploitation, our research has found that it is those enrolled in PTEs who are particularly at risk of exploitation and especially those that arrived during the period of significant growth in PTE numbers between 2012 and 2016.

¹² Between 2013 and 2015, the NZQA framework for accreditation permitted category 1 and 2 educational institutions to administer their own internal English language tests rather than apply international tests such as the International English Language Testing System (IELTS). In 2015 the ability to carry out internal tests was restricted to countries with student visa decline rates less than 20% and in 2018 the ability to test internally was removed. See: <https://www.nzqa.govt.nz/assets/About-us/News/Changes-to-New-Zealand-Qualifications-Authority-Rules.pdf>

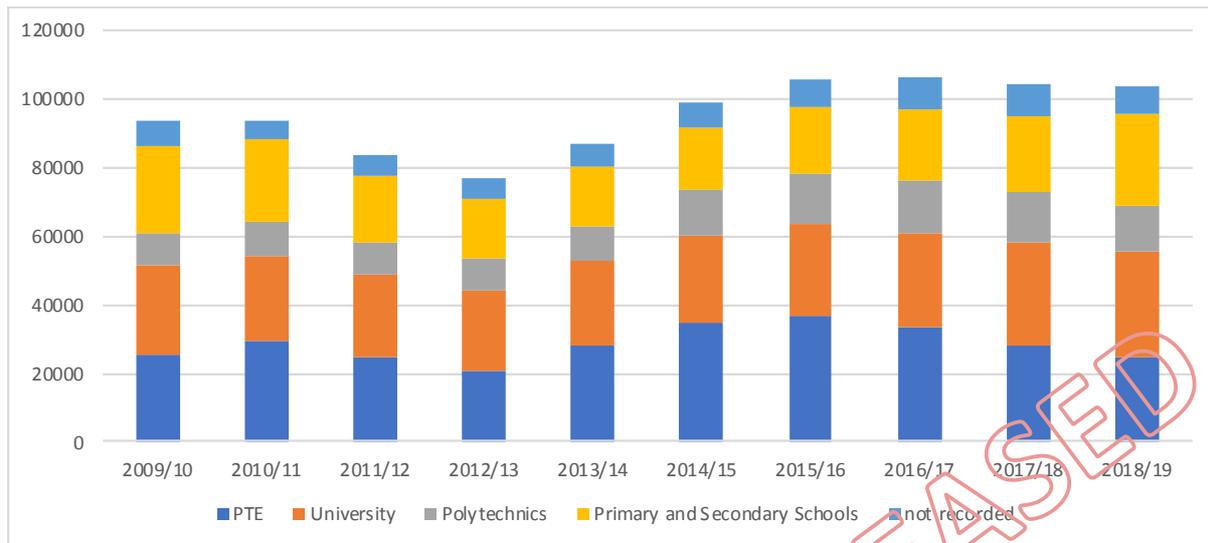


FIGURE 3.4: Student visa approvals 2009/10 to 2018/19 by institution type. Data source: MBIE Migration Data Explorer. Chart prepared by authors.

Over the course of the last decade, a substantial number of international students have been eligible to apply for a post-study work visa at the end of their course of study. Until November 2018, post-study work visas were divided between open visas that allowed students to search for employment and work for any employer and those that were employer-assisted, which, like essential skills work visas, limited workers to one employer unless they applied for a variation of conditions. Since November 2018, all post-study work visas have been “open” or non-employer-assisted and have been issued for between one and three years, depending on the course of study and region a student was seeking employment.

Figure 3.5 presents population count data on the nationality of post-study work visas. As this figure demonstrates, there has been substantial overall growth in the number of people holding post-study work visas, especially between 2014 and 2017 when this population increased from 13,338 to 28,944. It is likely that this increase relates to the substantial growth in PTE students that occurred between 2012 and 2016 (see Figure 3.4). It is also notable that people from India have made up more than half of all post-study work visa holders since 2010 and in 2018 represented 58.2% despite making up a much smaller proportion of international students (see Figure 3.3). By contrast, there have been fewer post-study work visa holders from China despite Chinese making up the largest nationality of international students (see Figure 3.3).

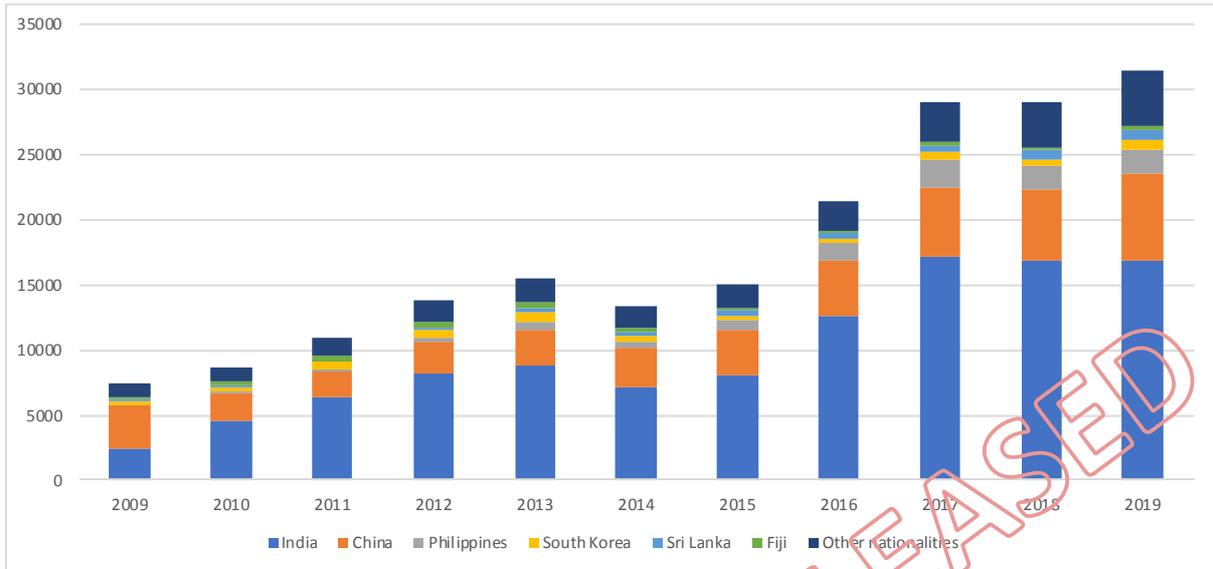


FIGURE 3.5: Post-study work visa population counts at 30 June 2009–30 June 2019 by nationality. Data source: MBIE Migration Data Explorer. Chart prepared by authors.

The fourth category of temporary migrants that are addressed in this report are working holiday visa holders; although we were only able to recruit two participants who had been on working holiday visas. There are now 45 working holiday schemes established on a bilateral basis with other national governments and which provide different eligibility and conditions for working holiday visa holders. Figure 3.6 presents information on the nationalities of working holiday visa approvals between 2009/10 and 2018/19.

Overall there has been a growth in working holiday visas issued from 41,217 in 2009/10 to 70,125 in 2016/17, declining to 63,162 in 2018/19. The most substantial growth has been amongst countries such as the UK, Germany and France that have unlimited numbers of applicants; by contrast, several other countries not shown on this chart, such as Brazil, Chile and Argentina, have quotas of 300, 940 and 1,000 per year, respectively, and approvals have been stable at or just below quota levels for all of the past decade.

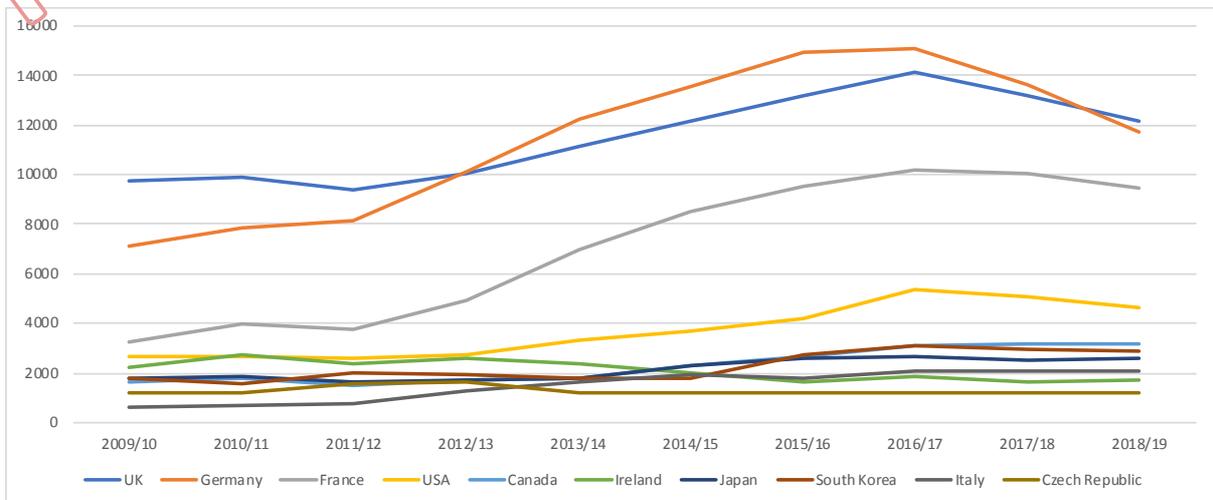


FIGURE 3.6: Working holiday visa approvals by nationality, 2009/10 to 2018/19. Data source: MBIE Migration Data Explorer. Chart prepared by authors.

Lastly, there is significant information on the gender of different temporary migrant populations presented in Figure 3.7. The figures relate to the total population count for different visa types on 30 June 2018. The chart demonstrates that there is a relatively balanced gender profile amongst international students and working holiday visa holders. By contrast, only 24.2% of essential skills work visa holders and 39.7% of post-study work visa holders are female. While we don't present the data to account for these gendered patterns here, they are likely to be primarily related to the gendered dimensions of some of the major occupational categories that work visa holders are employed in (Collins, 2019)¹³ as well as the gendered flows into particular sectors of international education. The gendered patterns in these two visa categories are also reflected in the research sample that was discussed in the previous section.



FIGURE 3.7: Visa type population count and gender, 30 June 2019. Data source: MBIE Migration Data Explorer. Chart prepared by authors.

¹³ Collins, F.L. (2019). Legislated Inequality: Provisional Migration and the Stratification of Migrant Lives. In Simon-Kumar, R., Collins, F.L. and Friesen, W. (Eds.) *Intersections of Inequality, Migration and Diversification* (pp. 65-86). Palgrave.

4. The Migrant Workers' Experience

This section considers the perceptions of those temporary migrant workers who participated in this research. It explores the pathways to exploitation as well as the types of exploitation that temporary migrant workers in New Zealand have experienced, before reflecting on how exploitation has affected the workers.

4.1 Pathways to exploitation

We found that there are two visa types where exploitation occurs most frequently: student visas and employer-assisted visas.

There were several key points on the student visa pathway where exploitation occurred:

1. engaging with education agents in the migrant's home country,
2. difficulty in obtaining employment in New Zealand in order to support themselves as well as service their debts,
3. the way in which PTEs structure courses to allow for full-time work, and
4. the potential for exploitation on post-work study visas.

First, seven participants described how exploitation began in India where education agents sold "a dream" of permanent residency in New Zealand. While one participant acknowledged "the dream eventually happened", he was not told, or prepared for, what he needed to go through in order to realise the dream. He described his education agent as marketing New Zealand on the basis of a one-year degree followed seamlessly by obtaining permanent residency. Another participant stated that agents frequently reassure potential students "don't worry we have contacts in New Zealand, we will give you a job with a possibility for PR".

Second, after their arrival in New Zealand, many of those interviewed found it difficult to obtain part-time employment. Eleven participants had borrowed heavily in order to finance their education and thus needed to work in order to support themselves as well as to service their debt. Their ability to find employment was hampered by their limited employment experience and a lack of a "Kiwi" accent. Nine participants recounted walking the streets daily, dropping off CVs, desperately trying to find employment. Out of desperation, several (16) accepted exploitative conditions. As some 28 participants recounted, there are employers who will specifically target Indian students, as they know they are vulnerable to exploitation.

Third, the complicity of some PTEs in concentrating full-time study courses across two days a week that allows students to work full time. This pattern emerged in the interviews of four participants. These participants had worked full time in the horticulture industry in parts of the Bay of Plenty, returning to Auckland for two days a week for study. This approach to education provision by PTEs that only enrol international students is at variance with the Code of Pastoral care of International Students, which specifically requires signatories to assure international students are aware of the maximum number of hours they can legally

work, and indeed minimum wages and labour conditions. Arranging courses so students can work full time effectively undermines any information such providers give to students.

Fourth, when students were on a post-study employer-assisted visa they were subject to power imbalances. The exploitation they encountered here is very similar to those who were on an employer-assisted visa.

Employer-assisted visas are seen as the second pathway to migrant worker exploitation. As we subsequently discuss throughout the report, those on employer assisted visas felt particularly vulnerable due to their dependency on their employer. In some instances, their employers leveraged their vulnerability to their own advantage. One participant commented that as their “visa was attached to an employer, exploitation was their ‘destiny’”.

Underpinning each of these pathways is family obligations and, for several (14), the need to pay back debts they had borrowed either before they arrived in New Zealand or since being in New Zealand.

4.2 Types of exploitation

Combined, the interviews paint a picture of significant non-compliance with New Zealand employment law. Not only did some migrants experience multiple forms of exploitation, it was suggested that a number of forms of exploitation are “endemic”, a claim that was backed up by different groups of key stakeholders involved in both the supply side and demand side activity. We also note, however, that exploitation varies in terms of the extent to which it is systematic and the purported level of intentionality on the part of employers. On the one hand, some employers undertake to exploit migrant workers intentionally and systematically through knowledge of vulnerabilities and pressure points within the migration system. These employers have often intentionally built their business model around exploitation. On the other hand, there also appears to be situations whereby employers exploit migrant workers, and may well be aware that they are taking advantage of these workers, but have not built their business around exploitation in a systematic manner. Some of these employers may be ignorant of their obligations or may claim to be ignorant. While the cases discussed in this report vary considerably, more extreme types of exploitation tend to be associated with systematic development of business models based on the exploitation of migrant workers.

This section summarises the key types of exploitation identified, including non-compliance by their employers with employment law and promises of assistance with visas.

4.2.1 Underpayment or non-payment of wages

The majority of those interviewed (some 46 out of 64) were paid less than the minimum wage in at least one of their jobs. Sub-minimum wage rates ranged from \$3 an hour (in 2012) to \$12 an hour and in a number of cases (16) occurred when employers demanded cash back from wages. One participant, for example, initially earned \$17.50 as per his employment contract, which was later increased to \$21.50 per hour, but in actuality was paid \$8 per hour. He was required to pay the difference between the contractual amount

and \$8 per hour, back in cash to his employer as well as the difference in PAYE taxes for \$8.00 an hour versus his contracted amount. This approach is indicative of a systematic approach to exploitation that allows the employer to maintain legitimate records. In other cases, participants were simply paid below minimum wage rates directly. One participant, for example, was paid \$10 an hour and told if he didn't accept this rate there was "no job" and another participant regularly worked 70 hours a week and in an extreme case 90 hours a week earning just \$8 an hour.

Over half of participants (36) worked excessive hours. While they were paid the correct hourly rate, they were only paid for the maximum hours outlined on their employment contract and not the actual hours worked, thereby negating the wage rate. The most extreme cases involved non-payment of wages at all, such as one participant who remained unpaid for five months before being assaulted by the employer and deceived into leaving the country by a lawyer who was actually working for the employer.

In the dairy sector, migrant workers were typically contracted to work 55 hours a week.¹⁴ They were all regularly asked to work many more hours than the contracted amount and were not, usually, paid any extra salary. Long working hours occurred through both a lack of rostered days off (one participant at one stage worked 32 days with no day off allowed) as well as working shifts of up to 14 hours.

Several (9) participants were paid by the shift as opposed to hours worked. For example, one participant worked between 6 and 8 hours per shift and was paid only \$30. Another was paid \$80 for a 10-hour shift while another \$50 for a 7-hour shift. When the latter asked if his wages could be paid into his bank account, he was fired and didn't receive any payment. Another participant also reported questioning his method of payment and was fired.

Those on a student visa were often required to work more than the 20 hours they were legally entitled to work. If they did not agree to work the extra hours, some were told they would lose their job. For hours worked in excess of 20 hours a week, students were typically paid \$10 an hour in cash.

4.2.2 Non-compliance with employment contracts and other documentation

Job descriptions were often inflated in terms of expected tasks and wages, in order to meet Immigration NZ requirements. Around one-third of participants (21) reported being employed on at least one occasion without an employment contract and seven participants stated that they were not aware of the requirement for a contract. One was not paid, at all, for several days work because his employer said, "you didn't sign a contract".

Likewise, eight of those interviewed were not given payslips. At the other extreme, one individual was given two payslips: one his legal entitlement and the second, showing what he was actually receiving. Along similar lines, another recalled his employer preparing two employment rosters: one for Immigration New Zealand and the second, again, the actual

¹⁴ DairyNZ recommends a maximum of 50 hours per week for dairy workers.

roster. One described how a horticulture employer would bring payslips and wages into the orchard while staff were working, quickly showing workers their payslips but without letting them check or retain payslips.

4.2.3 Non-payment of PAYE taxes

Another finding amongst nine participants was that PAYE (pay as you earn) taxes were not paid to the Inland Revenue Department (IRD) by employers. One employee had worked for his employer for a year before discovering that PAYE had not been paid to the IRD. One participant contacted the IRD to query why no PAYE taxes were recorded against their account. The IRD asked this person to contact their employer. Despite doing so, the employer still did not make payment to the IRD. The participant again contacted the IRD who said to contact their employer again thus placing them in a precarious position.

One migrant worker was contracted to work 32 hours a week at \$19 an hour earning a gross income of \$608 a week. In reality, they worked in excess of 50 hours a week receiving just \$500 net. In preparing to apply for an extension to their work visa, they discovered the employer had not paid PAYE taxes to the IRD (over \$100 per week). Moving forward, the employer informed them that they needed to pay him (the employer) cash each week for PAYE taxes. When the migrant queried this, the employer responded, "What I am doing for you is a big thing ... if you want to be here, this is what it is." There was no adjustment to wages and, in effect, the migrant was losing the PAYE being deducted automatically from their wages whilst also having to pay the employer the same amount in cash each week.

4.2.4 Denial of leave and non-payment of holiday pay

Several participants (14) were denied holiday leave or given conditions around their leave i.e. they had to be on call to return to work if needed. Leave was denied for some despite there being compassionate grounds i.e. sick parents or pregnancy complications. One participant "begged" for over two months to be able to take leave. The employer required him/her to show their airline tickets as proof of travel. One employer used emotional blackmail of not being able to cope without the worker to stop them taking leave and further did not recognise the need to pay holiday pay owing at the end of the contract. Two migrant workers were not paid their holiday pay. While records showed one employer paying holiday pay, the migrant worker denied ever receiving the money.

4.2.5 Promises of assistance with immigration requirements

Fourteen migrant workers were required to pay their employer for the "privilege" of working for them and/or for the promise of employment that would qualify them for an essential skills visa and/or residency.

Some employers required the payment to be made on the day the migrant worker received their wages. For others, at a later date with cash withdrawals for different amounts so payments could not be easily traced. Not all were told of the requirement to make a payment upfront; some were informed of this requirement after they began working. One participant had text message exchanges from their employer reminding him/her that the cash payment was due. In another case, the employee was visited weekly by middlemen

working for the employer who would intimidate the employee into returning wages in a manner that is akin to organised crime.

The promise of assistance with work visas was used by employers to exploit workers. For example, one worker was told that if they wanted the employer's support, they would be required to work 50 or more hours a week but would only be paid for 40 hours. The alternative was to "withdraw your visa application". Another was paid less than their contracted rate — this was justified by the employer as "I help you guys get a visa here". Yet another was told by their employer that if they asked for their legal entitlement "I will decline your visa". Six participants commented that it was very common for employers to threaten the cancellation of a work visa when workers questioned the conditions they were under. Two participants were asked to pay for jobs that would qualify them to apply for residency — \$40,000 and \$60,000 respectively.

Often employers were "creative" in extracting money from the migrant workers. One participant had been unemployed for several months before being successful in obtaining a new job. In order to obtain employment, their future employer instructed the migrant worker that they needed to back pay PAYE taxes for the period of time they had been unemployed so Immigration New Zealand would not know of the circumstances: "If you pay PAYE I will help you get a visa." The migrant paid the employer a large sum of money only to later find out that the money had never been paid to the IRD. Furthermore, the employer insisted on a deposit — an equally significant sum of money — which would be repaid once the employee received a work visa. Months later after receiving a visa, they have not received the deposit back. Other creative approaches that were reported to us included tying visas to investment in a business and employing couples where only one was correctly paid.

4.2.6 Power imbalances

Two participants were each under considerable pressure to support their employers who were opening new businesses. Both had previously been befriended by their employers and considered themselves to be part of their employers' families. As one employer frequently commented, "You are like my son." Both were well treated until they began working for their employer. One borrowed money from family and friends in order to help the employer. In doing so, they went against the advice of family. They loaned the employer a considerable amount of money with the promise that when the employer was eligible for a bank loan they would pay the money back. The demands for money kept coming. In the new business, the employee was required to work 80-hour weeks and was paid \$8 an hour (according to his contract he should have been paid \$17.50 an hour). The employer threatened to report them to Immigration NZ if they complained: "We are the citizens here, you can't touch us." The business was not successful, and the employer sold up and relocated without paying back the loan or wages owed to his employee.

4.3 The personal impact of exploitation

In discussing ways in which the participants were exploited, they also discussed the impact on their lives. Some felt trapped in an exploitative situation because they saw they had no

other option — whether this was because of a lack of opportunity, fear, the need to stay with an employer in order to obtain a reference or other reasons. Others talked about the emotional toll on their lives.

4.3.1 Feeling trapped

A majority of participants (34) interviewed in this research described situations where they accepted exploitative conditions because they felt they had no other option. Other participants were not necessarily “free” to avoid exploitation but they did not expressly describe situations of feeling trapped. Situations where participants felt trapped in exploitative employment included a range of pressures: dependency on employer for visa (6) or fear of losing visa if employer is questioned (11), which was particularly salient for those seeking residence; needing the money from employment (5); employers claiming to have influence to punish worker if they leave (4); fear of the reach of employer after leaving (3); direct threats to cancel visas from employers (3); needing a reference from the employer (2); and reputational risk (1).

What was apparent in our interviews was that the feeling of being trapped emerged over time and appeared to increase through the course of employment. Migrants might, for example, feel that they should remain with an employer in case the situation improved, and employers sometimes promise as much. By the time of the interview, however, participants often regretted the sometimes years spent in this cycle of exploitation, as they have not been able to progress their careers. Reflecting back on the outcome of his experience, one stated, “My career was finished” because of the difficulty of securing successful employment after leaving exploitative employers who then provided no support for future job applications. Another commented, “My skills are wasted” as they were not able to pursue their chosen career path. One participant described a feeling of “lost youth” after spending four years studying for a PTE diploma that had no value in New Zealand or elsewhere, working for wages that did not provide enough money to survive, and incurring substantial debt for their parents who had provided support during this period.

While one participant had the freedom to find another job — based on their visa status — they did not have the time to do so, due to the excessive number of hours worked each week (59 hours typically with an extreme of 91 hours one week). Importantly, the participant’s family financially depends on them. The migrant has not reported their situation, and is not willing to do so, because of the fear that they and others will lose their jobs. Three other participants felt they could not leave their employment, as they needed a reference in order to find a new job.

4.3.2 The emotional toll

Thirty-six participants talked of experiencing emotional and physical stress. Indeed, some became emotional during the interview as they reflected on their experience. Many have found it hard to keep their morale up and to stay motivated while being exploited, thus enhancing their vulnerability. Seven complained of sheer exhaustion. When employers threatened to report their employees to Immigration New Zealand, this heightened their fear and anxiety. Some participants seriously contemplated suicide, a point that was also made by lawyers interviewed for this research. Others expressed that they suffered from

depression and anxiety. One participant felt guilty as they went against the family's wishes in lending their employer money. The father died at a relatively young age and the participant felt this was karma for going against family's wishes.

Some participants (4) remain fearful of the reach of their former employers. Two participants both have residency but as part of an ongoing dispute process, their employer subsequently notified Immigration New Zealand that they had committed fraud. Likewise, another employer reported his migrant employee to Immigration New Zealand for committing fraud. Some are scared to return home because of the reach each of their respective employers has.

4.4 Advice to potential migrants

As part of the interview process, we asked the migrant participants what advice they would give to other migrants considering relocating to New Zealand for work or study. Their advice ranged from assertions that there are many opportunities available in New Zealand to suggesting that other people do not come to New Zealand at all, or if they are set on coming, avoid Auckland. The key pieces of advice they would offer are:

Do your homework

Thirteen participants recommended that migrants do their homework about immigration policies and employment law in New Zealand. Before accepting a job, a migrant needs to make sure they have a legal employment contract and that everything is in order (6), that they retain a copy of the contract after signing (1), that they do not accept less than the minimum wage (1), importantly do not pay for a job (1), check out PAYE obligations (1), seek legitimate agent/advisor (4). Three participants suggested researching the company they will be working for before they start. One mentioned to be prepared for workplace and cultural differences.

Do not work for co-ethnics/nationals¹⁵

Six participants emphatically stated that new migrant workers should not work for businesses run by co-ethnics/nationals. This recommendation was not constrained to one ethnic community. Three stressed the importance of finding a good employer while at the same time acknowledging that "desirable" jobs — where they refer to working for an employer who was not of the same ethnicity or nationality (often referred to as a 'Kiwi employer') — can be difficult to obtain.

There is a strong chance you will be exploited

Five participants specifically felt that fellow migrants would be exploited. One participant cautioned, "If you come here you will have to please someone. You will need to bend

¹⁵ We use the term co-ethnics/nationals to encompass people who share either ethnicity or nationality. The term encompasses people who are New Zealand citizens (both New Zealand-born and overseas born) who share an ethnicity with temporary migrant workers, as well as people who hold New Zealand Permanent Residence or another status and share the same nationality as temporary migrant workers.

yourself to your employer.” While another commented, “If your visa is connected to your employer then you will have a burden on your shoulders. How long can you bear it for?” Another participant stressed the difficulty of obtaining employment with employers they described as “Kiwi”¹⁶ employers. “Everyone says you need experience. But where to get experience.” He continued, “I will get experience when I get exploited. Without exploitation I won’t get experience.” Two participants cautioned to stay away from Auckland, another said do not work for small companies. For the five participants, there was an inevitability of exploitation for those arriving in New Zealand.

Do something about it

Seven participants stated that if a migrant is being exploited, they should speak up. However, one participant thought that 99% of those being exploited do not report their situation while another would advise only speaking up if their status is safe, thereby acknowledging the vulnerability those on temporary visas can find themselves in. Another advised that instead of speaking up, the migrant should look for a new job. Two would advise migrants to gather as much evidence as possible before reporting exploitation, and if being exploited, start to keep records of exploitation.

Other pieces of advice included ‘be flexible’ (2), referring specifically to finding employment but also more broadly to life in New Zealand; one participant, reflecting on his own path, would advise new migrants to “appreciate open work visas”.

In the next section, we go on to discuss how vulnerability in migrant workers can be fostered.

¹⁶ We are using the term “Kiwi” in the manner it is used by participants rather than to make a distinction around the citizenship of employers. It is likely that, following the usage of “Kiwi” in common parlance in New Zealand, the term is a racialised marker for white or Pākehā New Zealanders. As Turner (2007) notes, the term “Kiwi” is widely used to mark out white national subjects from Māori and “aliens in our midst”. Turner, S. (2007). 'Inclusive Exclusion': Managing Identity for the Nation's Sake in Aotearoa/New Zealand. *Arena Journal*, (28), 87.

5. Creation of Vulnerability

Vulnerability to exploitation is created due to immigration processes, the practices of employers, and the knowledge and attitudes of temporary migrants themselves. We go on to discuss each of these.

5.1 Immigration status

The primary way in which employers have exploited migrants is by taking advantage of their immigration status in order to secure their dependence and their acceptance of exploitative employment conditions. This is not a quantifiable finding reported by individual participants but rather reflects our analysis of the relationship between immigration status and the conditions under which individuals are employed. We have observed that immigration status creates vulnerability for temporary migrant workers both in cases where there is clearly intentional and systematic exploitation as well as in instances where exploitation appears to be non-systematic on the part of employers.

In cases of systematic exploitation, immigration status, and in particular employer-assisted work visas (essential skills work visas and post-study work visas under the pre-November 2018 settings), there has been a widespread theme in interviews with temporary migrant workers in this research. Participants reported that employers justified practices, such as paying below minimum wage, demands for the return of wages or employee self-payment of taxes, and demands for money in return for jobs or visas, on the basis that the employer was “helping” the migrant worker with their immigration status.

A key feature of this mechanism for creating vulnerability was its *timing*. Aside from two individuals, participants reported *not being aware* that they would be exploited at work when they took up employment — that is, they took up employment with a particular employer on the understanding that it was a legitimate job. Exploitation typically occurred after employment started and in 10 cases some time after an employment relationship was established. In the case of participants who were on post-study job search visas, for example, the initial period of employment on a job search visa was often paid at an appropriate rate (although at times the job was a lower specification than the employer-assisted job that followed). Exploitation in the form of no pay, lower pay, demand for return of wages etc took place either as the temporary migrant’s visa was approaching expiry or just following the acceptance of an employer-assisted work visa. In the case of individuals taking up essential skills visas in the context of systematic exploitation, a similar scenario emerged wherein exploitation was not apparent prior to employment but occurred as soon as an employer-assisted visa was secured.

Timing also entered into exploitation in more subtle ways. Six participants described how employers initially presented themselves as “gentle”, “kind” or “friendly” during recruitment; when a job started or a new visa was obtained employers would then change both employment conditions and their treatment of the employee. In a similar way, four participants described the incremental introduction of exploitation practices into the

workplace. Rather than outright exploitation from the first day of work, participants described changes over time, requests for increased hours but without additional pay, requests for money to be paid back to the employer and in 10 cases requests for large sums of money in return for past or future support for visas. When temporary migrants questioned these arrangements the threat of a visa being cancelled unilaterally was often used in order to maintain control of temporary migrants. Fear associated with loss of migration status was common and six participants made the point very clearly that they remained in situations of exploitation because they feared the cancellation of their visa, usually because the employer had threatened this. The fear of visa cancellation extended to non-systematic cases of exploitation, not because employers threatened visa cancellation but because temporary migrants themselves were uncertain about their prospects of securing another employer willing to support a visa application if they questioned their current employer's practices. One dairy farm worker, for example, who was expected to work longer than contracted hours for no extra pay and was given few days off (but otherwise experienced relatively less exploitation) informed us that it was better to tolerate exploitation than question it because of the risk of not securing subsequent employment and visa cancellation.

5.2 Control mechanisms

Vulnerability to exploitation is also actively created and maintained by employers through the use of *control mechanisms*. By control mechanisms we refer to intentional techniques that are used by employers to discourage reporting, to disempower migrant workers inside or outside work or to mentally or physically intimidate migrant workers. Control mechanisms came in three broad types: spatial control, disempowerment and intimidation.

Spatial control mechanisms took the form of employers trying to shape migrant workers' behaviour in ways that reduced workers' ability to leave the workplace or to contact other people. Twelve participants reported being asked or required to stay in employer-provided housing with other workers; other instances of standard housing provision, such as on dairy farms, are distinct from these scenarios. In one case, such housing was claimed to be of value to the employee because it was freely provided along with food (although in exchange for no or very low pay). Within this kind of accommodation, migrant workers can be under strict forms of control, and those who were in this situation described being asked to work at any time on the basis that they were not doing anything else. A migrant was compulsorily housed in a large house with other temporary migrant workers employed by an owner with multiple franchises; this migrant and other workers were required to work seven days a week and at home were forced to cook, clean and do laundry for the area manager who also lived in the house.

Another mechanism for spatial control was modes of surveillance. Six participants working in retail or hospitality described the way in which employers would watch them through CCTV systems to make sure that they were always active at work – i.e. if there were no customers in a shop then they should be doing other tasks, enforced through phone calls. One migrant worked 14 hour days by themselves, receiving just \$8 an hour. The employee had no organised breaks and further, was not allowed a chair in the store as the employer

claimed his employee would “fall asleep”. The employer monitored what was happening in the store from home and continually called the employee to query what they were doing. Another participant was also monitored by CCTV cameras. If they spent too long in the bathroom, or was away from their desk, another employee would be sent to find the migrant worker.

There were nine instances of employers fabricating crimes against employees, a technique that was used by employers to threaten workers with consequences if they resigned or reported situations at work. In six cases employers accused migrants of stealing from the cash till, from a donation box and loyalty cards — all of the participants told us these crimes were false. In another two instances, employers that were exploiting migrants reported to a lawyer or threatened to report migrants for committing fraud in the business. Another participant was falsely accused of damaging the employer’s vehicle.

Some surveillance was also reported outside of the workplace with employers or their family/employees following participants when they were suspected of talking to people about exploitation. In one case a participant reported having their passport held by the employer against their will until they agreed to exploitative terms, although this was much less common than has been reported in previous research (Stringer, 2016¹⁷).

Disempowering control mechanisms involved cases where employers would highlight their own influence in society, which was described explicitly in three cases. Some participants reported that when they questioned employers about exploitative conditions of employment, they were told that they would not be able to complain because the employer was a resident or citizen and the worker was only on a temporary visa. Migrant workers were told by their employers that Immigration New Zealand or the Labour Inspectorate would not listen to them and any complaints were likely to lead to deportation. In a smaller number of cases, employers made claims to having power or influence in society sometimes backed up with assertions about connections to influential members of New Zealand society or proof about what had happened to other workers who had questioned them. Even for participants who were not directly informed of these matters by their employers, some expressed concern that they would not be able to get another job within industries with a small number of local employers because they would have a bad reputation from complaining about their former employer. Dairy farmers, for example, reported that all the farmers in a particular area knew each other so it was better to simply leave a workplace rather than complain and make themselves unemployable.

Lastly, temporary migrant workers also experienced forms of intimidation that enhanced vulnerability that compounded the effects of exploitation. In the most extreme cases, such intimidation involved minor physical assaults (6 cases), one where the police were called to the scene and one where a protection order was put in place. In another case, an employer who demanded that a percentage of wages were returned each week used middlemen to demand payment and threaten the migrant worker in a manner akin to organised crime.

¹⁷ Stringer, C. (2016). *Worker Exploitation in New Zealand: A Troubling Landscape*. Retrieved from https://docs.wixstatic.com/ugd/2ffdf5_28e9975b6be2454f8f823c60d1bfdba0.pdf

More generally, intimidation took the form of threats to cancel visas or to report migrant workers to the police for fabricated crimes, such as stealing or damaging an employer's property (claims about migrant status and whether police would believe temporary migrants were made in such instances). Twelve participants also described verbal abuse that while not involving specific threats did exacerbate feelings of powerlessness in the workplace. Two participants reported forms of sexual harassment. One female participant left a job where she was paid below the minimum wage because a manager said she would only get a better paying job if she dated him. One male participant described how a female employer sought intimate relations with him while drunk and emotionally pressured him into remaining in his overworked and underpaid job because she could not keep the operation going without him. These forms of intimidation and harassment are part of the process of exploiting migrant workers because they have the effect of disempowering workers in relation to their employers and controlling workers' actions in response to exploitation.

5.3 Exacerbating factors

There are also exacerbating factors that do not emerge from employment situations themselves but nonetheless play a significant role in creating vulnerability to exploitation.

5.3.1 Bureaucratic delays

Thirteen participants on employer-assisted visas (post-study and essential skills) sometimes discussed bureaucratic delays at Immigration New Zealand in processing Variations of Conditions¹⁸ applications. This meant that they had to either keep working for an exploitative employer for protracted periods of time or were discouraged from seeking variations because of anticipated delays. One participant, who had been on an essential skills visa for several years, reported waiting several months for each variation of conditions and as a result accepted substandard and abusive employment conditions because they did not want to have another period without pay. Another matter raised by five participants on essential skills visas was the one-year visa length for those deemed "low-skilled". This visa meant that exploited migrants had to rely heavily on their employers for support and also had to constantly prepare themselves for visa applications. Other participants reported not knowing how to manage with giving notice to resign while also applying for a Variation of Conditions that would allow them to work for another employer. There are risks for the migrants in terms of fear of employers cancelling their visa and the possibility that the application to a Variation of Conditions is not approved after they have given notice.

5.3.2 High debt

Another set of exacerbating factors related to the personal circumstances of participants. The majority of participants had migrated to New Zealand with their own or their family's

¹⁸ A Variation of Conditions refers to a visa holder seeking to amend the conditions of their visa. For example, their visa may require them to study at a particular education provider or work for a particular employer. If the visa holder wants to study at another institution or work for another employer, they have to apply to Immigration New Zealand for a Variation of Conditions.

savings. However, there were instances where participants had incurred debt through migration and felt tied to their employer to service their debts and living costs. Even for those who used their own or their families' savings the level of personal and financial investment in migration created significant pressure on participants. One participant, for example, had funded their study and living costs through the withdrawal of their father's pension savings and a debt to family members; they sought work as soon as arriving in New Zealand and like some other student participants attended a PTE in Auckland two days a week and then worked five days in horticultural work in another region to service their debt. The presence of high debt in this and other cases increased the stakes of migration and made it more likely for these participants to accept exploitative employment or to accept it for longer periods of time.

5.3.3 Lack of social connections

A lack of social connections also seemed to exacerbate exposure to exploitation. The vast majority of participants were living without family, sometimes for the first time in their lives, and due to conditions of study or employment only had contact with very small social circles. Three participants reported discussing their experiences with co-workers or other international students but noted that such people either did not know what to do or sometimes advised against action because of reports or rumours of negative implications for workers.

In contrast, in some of the cases where individuals were more forthright with employers they also had wider social networks that provided them with support and information that they could trust. Three participants had entered into relationships with New Zealanders and as a result had become more aware of their rights in the workplace or the available avenues for challenging employers.

Without these connections many participants expressed a lack of awareness with regard to organisations like the Citizens Advice Bureau (CAB) or Community Law and a lack of trust in New Zealand institutions, Immigration New Zealand, the Labour Inspectorate or the Police. As we discuss in section 6, only some temporary migrant workers in this research were aware of appropriate organisations to seek advice or report exploitation, and even amongst these participants, an even smaller number trusted these organisations would work in their interests.

5.4 Business models, immigration settings and cultural and linguistic familiarity

It is often claimed that a key characteristic of migrant exploitation is that migrants are exploited by people of similar or proximate ethno-national backgrounds. In the New Zealand media, this has been particularly prominent in accounts of Indian international students and post-study work visa holders being exploited by employers of Indian ethnicity/nationality. We have observed in this research that many migrant workers (34 out of 64 participants), and this is particularly but not exclusively the case for Indians, are exploited by employers of the same ethnicity/nationality. There are many such participants who themselves blame *all* employers of the same ethnicity/nationality for *all* exploitation. What we have also found, however, is that many of these same migrant workers have had experiences being

employed in compliant and supportive workplaces by employers of the same ethnicity/nationality. Care is needed, then, in interpreting the prevalence of co-ethnic/national exploitation.

What we have observed in this research is that there are employers who operate a particular business model that relies on very low-wage and poor-condition employment in order to make a profit or in order to enhance profit to desired levels. There is a clear pattern of some of these employers using two things in order to exploit people of similar backgrounds to themselves. Firstly, these employers are very aware of current immigration policy settings and the disadvantageous position it places temporary migrant workers in, much more so than many employers. Many work with immigration lawyers or advisors to maintain a strong understanding of changes in policy and the pinch points where vulnerability, as described in this section, can be created and maintained. Secondly, these employers also use their cultural and linguistic familiarity to a) access migrant workers from similar backgrounds who can be exploited, b) establish trust with these workers through cultural norms around friendliness, obligation and reciprocity, and, c) utilise these same cultural/linguistic familiarity to maintain control through the mechanisms described above. In this regard, it is the link between the business model, immigration settings and cultural/linguistic familiarity that makes exploitation more common within co-ethnic/national networks, rather than a particular community predisposition to exploitation. We now go on to discuss how migrant workers have responded to exploitation.

6. Responding to Exploitation

As we have noted above, it has been common for temporary migrant workers to accept situations of exploitation, sometimes for protracted periods of time. When temporary migrants do respond to exploitation it takes a particular form that varies considerably from case to case. We now go on to discuss two broad strategies that have varying impacts: approaching official organisations and taking action against employers, before then discussing exit strategies. The research has shown that the primary way in which migrant workers address exploitation is by exiting the workplace rather than taking any informal or formal action against their employers. This response is unsurprising given the points that we have already made about the extent to which migrants feel trapped or are vulnerable in employment relationships, especially amongst those who are tied to an employer through employer-assisted visas or require employer support for a future visa application.

6.1 Approaching official organisations

A majority of (39) participants were unwilling or unable to approach official organisations, such as the New Zealand Police, CAB, Community Law or the Labour Inspectorate, about their experiences of exploitation. There were two principle reasons why people did not approach these organisations: 1) because they were not aware of the existence of non-government organisations, such as CAB or Community Law, or did not understand that as migrants they could also seek help and advice there, and 2) especially in relation to the Labour Inspectorate and Immigration New Zealand, there was a lack of trust that these government agencies would support migrants — a view that is manipulated by employers as we have highlighted previously.

Three participants made complaints to the Police. One migrant worker made complaints through the Crimestoppers phone line more than once about his experiences of exploitation but did so anonymously and so does not know the result. Another participant called Police in relation to an immediate threat of physical violence by the employer at the migrant worker's residence; the employer received a restraining order as a result. In this latter case, the Police were also told about the exploitation and advised the migrant worker to seek legal advice; no further action or follow up occurred. A third participant was punched in the face by his employer; he called Police who did not come and eventually was told 111 was only for emergencies and eventually had to go to his local police station to file a report.

The five participants who contacted the CAB gave mixed reviews of their interactions. One participant described how CAB staff looked over a contract they were offered, identifying in detail the flaws with the agreement and providing a basis for the participant to go back to the employer (although it should be noted this was a very minor case of non-compliance). Another participant spoke to a CAB staff member but was concerned about the staff member's attitude. The participant felt like the staff member was a police officer and that they discouraged the migrant worker from filing a protection order. One participant went to two different CAB offices where they were advised not to pursue a lawsuit against the

employer as the employer would likely win due to a lack of evidence and that this would negatively impact on the participant's visa.

Three participants were directed to a Community Law Centre as a result of contacting CAB, and another two approached Community Law without a CAB recommendation — the results were again mixed. Two participants were told they were not eligible for advice from Community Law because of previous income while another who earned a much higher salary was given clear legal advice over their position that provided reassurance that they were in the right, although that participant nonetheless decided not to file a case because of concerns doing so would cause problems for future applications for work and residency visas. In the other two cases, Community Law advised participants to find another job first before pursuing any action, one of those participants faced further intimidation from their employer who was following them outside of work (see section 5.2 for a discussion of spatial control mechanisms).

Thirteen participants discussed the Labour Inspectorate in the research, seven of whom had approached the Labour Inspectorate, three whom spoke about reasons why they did not approach the Labour Inspectorate and two others who knew of other people who had approached but did not do so themselves. Amongst participants who approached the Labour Inspectorate, one participant said that they eventually received a new visa and did not pursue the case, one participant was a witness in a case brought against the employer that ended in a \$40,000 fine, and two participants had no resolution through approaching the Labour Inspectorate. In the latter two cases, one was told to see a lawyer because the employer disappeared and the inspector was unable to trace their information, and the other participant was told a case would take two years and would require all employees to cooperate with the Labour Inspectorate. Amongst those who discussed but did not approach the Labour Inspectorate, there was a view amongst them that no action would be taken if they complained or they would not be believed if they did. As noted above, this was often reinforced by employer threats, and one participant specifically noted how his employer told him, "If you go to the Labour Inspectorate I will sue your ass off so bad you won't be able to get a job." In contrast, in two other cases of relatively less extreme exploitation, participants used the threat of reporting to the Labour Inspectorate as a mechanism to gain money owed (final pay and holiday pay) by an employer.

6.2 Taking action against employers

It has been quite rare for participants in the research to discuss taking action against employers. As noted above, some have done so through complaints to the Labour Inspectorate, although that remains uncommon because of a lack of certainty that action will be taken, the speed of action or the implications that such complaints will have for migrants themselves. Indeed, some who had approached the Labour Inspectorate and/or Immigration New Zealand felt the onus of proof was on them and that the employer was automatically believed. One participant reported their exploitative conditions to MBIE, who in turn contacted the employer. The owner was able to identify the worker.

Six participants also described working with lawyers to go into mediation with their former employers, a seventh participant was undertaking mediation at the time of the interview. For those who had completed mediation, there were cases where participants received all of their money back from the employer and others where only some of the money that was owed was returned. In these cases, participants felt that mediation was the best option because while it protected the identity of employers it also meant that they were not at risk of losing their visas or being excluded from future employment by other employers. Indeed, the participant who was currently in mediation described how their current exploitative employer found out about their case against the former employer and threatened to cancel their visa immediately if they tried to do something similar with him.

A number of other participants also spoke about wanting to take cases against their current or former employers but had no confidence that they could do so without risk until they had both exited the employment situation and secured a more stable immigration status as a resident. One participant commented that as soon as they are able to obtain an open work visa or residency, they would be at the Employment Relations Authority office with documentation to prove the extent to which exploitation was occurring.

Where exploited migrant workers sought help from unions, they spoke very positively about their experience working with the union representative as well as the outcome of intervention.

6.3 Hesitation in coming forward

These responses to exploitation suggest that current configurations make it very difficult for migrants to come forward and discuss their exploitation. The most pressing concern is risk of loss of immigration status or reduced ability to get employment because of reputational risk. These are significant concerns given the financial and personal lifetime investment that many temporary migrants have made to be in New Zealand. Where participants have sought assistance from official organisations this has not usually led to meaningful action against the employers and many more participants reported not being aware of or willing to contact official organisations *because* they had heard of the ineffectiveness of doing so. In cases where temporary migrants take their own legal action, the typical route is through mediation. While useful for resolving some issues, mediation has the effect of keeping evidence of exploitation hidden as it always includes confidentiality agreements.

6.4 Exiting exploitation

The research to date has shown that the primary method in which migrant workers address exploitation is by exiting the workplace completely. This is unsurprising given the points that we have already made about the extent to which migrants feel trapped in employment relationships, especially amongst those who are tied to an employer through employer-assisted visas or require employer support for a future visa application.

- Unable to leave

Four participants remained in the exploitative employment situation at the time of the interviews. In all of these cases, the participants made it clear that they could not leave

these situations because they have no other job possibilities and fear losing their immigration status or because their family was financially dependent on their low wages. The very low number of people still in exploitative situations highlights the fear that migrants have reporting their exploitation — many are only willing to do so when they are in safe legal and social situations.

- Reaching a threshold of exploitation

Exploitation is not often experienced as a one-off event but rather as an incremental series of occurrences wherein the recognition of exploitation only occurs after a particular threshold is reached. For individuals in this research the threshold of recognising exploitation, and the extent to which this leads them to leave employment, varied enormously by individuals. A total of 26 participants described 37 instances where they left an exploitative employer because they simply reached a point where they could no longer tolerate circumstances (note that because many participants had more than one experience of exploitation the total number of cases outnumbers the participants involved). For some, the threshold for toleration was quite low and they left an employer within weeks or months of being underpaid, overworked or mistreated. Those who left very quickly from exploitative situations often appeared to be both more aware of their own rights as workers and also more able to gain alternative employment because of skills, qualifications or access to social contacts. In other cases, participants remained in exploitative situations for years. The latter situation was particularly common for individuals on the constrained student-post-study-work or employer-assisted pathways that were outlined above as employers leveraged off the migrant's interest in remaining in New Zealand. It was only after exploitation had significant financial, physical and emotional impacts that these individuals crossed the threshold that led them to leave the employer. In the most extreme cases, participants left their workplaces only after being subject to physical assaults.

- Resigning under normal circumstances

While the above participants almost always left their employment situation at short notice and without prior communication with their employer, another group of seven participants (in nine cases) resigned from what were ordinarily more mild cases of exploitation without raising concerns with employers. In these cases, migrant workers often expressed that they did not want to cause any concerns for future job or visa applications and simply wished to move on from a situation that they recognised was unfair to them. Resigning in an orderly fashion from an abusive/exploitative employer was quite common for participants in the dairy farming sector who indicated that they did not want to risk their reputation amongst the relatively small community of employers in dairy farming. In some cases, participants actively looked for an alternative job and then resigned when that option became available.

- Receiving residency, open work, or partnership visas

Another four participants described scenarios where they were finally able to leave their employer when they received a work visa or residency visa that was not tied to their employer. This included two cases of participants receiving a partnership visa and one case of an individual receiving residency.

A number of those we interviewed, in reference to the introduction of the open post-study work visa category, wished to “thank the government for changing the lives of migrants”. An open work visa has provided more opportunities for them and importantly the freedom to exit an exploitative employment situation.

- Business closure

In three cases participants reported that the exploitation came to an end when the business they were working for closed, at least apparently. In one case an owner and all of their property disappeared overnight once a labour inspector became involved. Another participant described how their employer sold the business and the subsequent employer did not want this migrant worker to keep working there. In a third case, when a participant had kept questioning the employer about their rights, the employer said they were selling the business and that the migrant worker should find a new job. After the employee left they found that the business remained open and was still owned by the same employer. In another case, however, the exploitation worsened under a new business owner.

- Employment terminated

Three participants described that their employment had been terminated: one participant was accused of stealing money, another breached safety rules they were never informed about, and a third took money from the business in order to pay rent after not being paid proper wages.

- Visa requirements

In four cases participants left their employment situation because of visa requirements. In three cases this was because it became clear that the employer could not successfully support an application for a subsequent work visa that would allow them to remain in New Zealand. In the fourth case, the work visa expired while the migrant worker was still working for the employer who had promised to help with a subsequent application.

- Interventions

Two participants described how interventions by the Labour Inspectorate and the Police led them to leave exploitative situations. In both cases the participant themselves had not arranged the intervention: in the first instance a worker in a neighbouring business reported to the Labour Inspectorate and in the second the police had carried out a raid for undocumented migrants working at the same workplace.

- Leaving New Zealand

One participant engaged a lawyer who has taken the case to meditation. We interviewed this participant a few days before they left New Zealand. In effect, they stated they were worn down, had given up and were returning home: “There is a cost of being exploited. There is also a cost involved in dealing with Immigration New Zealand. It takes a lot of mental ability to cope and to speak up.” Another was not paid for five months and deceived by a lawyer who worked for the employer into leaving New Zealand (see section 4.2.1). This case

of exploitation was extreme and while the participant would like to pursue a case against the employer, they have been told they need to be in New Zealand to do so. A third, here on a partnership visa, faced the situation wherein their partner was approved annual leave and returned home for a short period. While the partner was away, their visa was cancelled.

Alongside the points we have made above about the kinds of actions that migrants feel they can take, these forms of exit demonstrate that for the majority of participants in this research departure from exploitative employment occurs in situations beyond their control. We include both situations of reaching a threshold of tolerance as well as those situations whereby participants are fired, face business closure or lose their migration status. It is much less common for participants to have control over their own choices in leaving exploitative workplaces. However, where that does occur, it is because they are provided with the extra protections and rights of non-employer assisted immigration status or where intervention by authorities occurs. Put otherwise, migrants leave exploitative employment of their own volition when they are empowered to do so; when employers, social and economic expectations and migration regulations disempower migrants they have much less ability to change their circumstances.

PROACTIVELY RELEASED

7. Key Stakeholders (Supply Side)

This section discusses the findings from our interviews with community organisations and migrant representatives, union representatives and lawyers. These stakeholders provided key insights into the type of exploitation migrant workers were encountering.

7.1 Community organisations and migrant representatives

Stakeholders representing community organisations identified issues of migrant exploitation in the support work that they provided to migrants. Our sample of 18 community participants included organisations that are funded and have a formal role in settlement support and ethnic community groups and advocates who are placed outside the settlement support system. Participants in this group had considerable insight into the factors or conditions that lead to migrant vulnerability, the barriers to seeking help and reporting exploitation, including those that exist within official channels. Community participants also identify types of exploitation and the industry that it took place in, although this group of participants were generally not able to describe the machinations of exploitation or the business structures that exist around systematic intentional forms of exploitation.

Community participants echoed our own findings with temporary migrant workers that exploitation takes place within particular industries. Hospitality (7), horticulture (4) and retail (3) were identified most often as industries where they had received reports of exploitation; other areas mentioned included hair and nail salons (2), forestry (1), tourism (1), construction (1), cleaning (1) and massage (1). Some participants did not feel confident identifying industries where temporary migrant workers were more likely to be exploited. While little commentary was offered on business types, small businesses (2) and subcontractors (1) were noted by three participants as more likely sites for exploitation. See Table 7.1 for the types of exploitation community participants identified as being aware of.

TABLE 7.1 Types of exploitation identified

Type of exploitation	Number of cases	Type of exploitation	Number of cases
Being paid below minimum wage	9	No leave entitlements	5
Working long hours	5	Not being paid overtime	4
No contract	4	Being required to pay back wages	3
Not being provided breaks	2	No roster	2
Volunteer work	2	Cost and quality of accommodation	2
Contract marriage	2	Physical abuse	2

Other types of exploitation identified included unpaid training, extra tax, no Kiwisaver, passport confiscation, paying for visas, and health and safety issues.

The issue of volunteer work only emerged in two interviews but was discussed in detail by those participants and was an issue that was apparent in interviews with some temporary migrant workers as well. Volunteer work is sometimes recommended to temporary migrant workers by community organisations as well as education providers and friends as a means to develop work experience in order to improve prospects for gaining a desirable job. The problem with volunteer work emerges when it comes to identifying when it becomes unpaid employment either because of the time requirements, relationship to paid employment or the type of work that was being undertaken. In one case a community participant reported that a temporary migrant worker was encouraged to work voluntarily for 10 hours per week for an accounting firm. Subsequently, the temporary migrant worker was employed on a paid basis for the 10 hours but was then asked to work another 30 hours on a “voluntary basis”. Another community participant reported a case where a woman had been asked to volunteer for six months on the promise of a job. The issue of volunteering was reported by one temporary migrant worker as well. They noted that when they were employed by a community organisation for 30 hours their contract also clearly stated that they had to do additional volunteer work as part of their employment, which in some cases amounted to an excess of 20 hours unpaid work per week.

Community participants reported that exploitation was most commonly experienced by international students or those holding post-study work visas. There were mixed accounts of why these groups were vulnerable to exploitation that reflected the different regions and communities represented. For example, it was reported by two community participants that Chinese international students tend not to have concerns about money and living costs but rather take any job they are offered (including exploitative ones) because they want to build up local experience. By contrast, other participants noted that international students from India were more likely to take jobs while students because they needed money to support themselves or in some cases to send home and/or pay back debt.

Amongst post-study work visa holders community participants identified vulnerability to exploitation as something that emerged because temporary migrant workers were seeking residence and would take any job to extend their time in New Zealand. Five community participants noted that exploitation sometimes occurs when international students and post-study work visa holders take jobs below their level of skill because they want to feel like they are progressing in their migration and career pathways, rather than waiting for the right kind of job. Several of the community participants noted that the new open post-study visa was a positive change but none had specific evidence that it had reduced exploitation. Other issues leading to vulnerability identified by community participants were temporary migrant workers having limited education prior to coming to New Zealand and studying in low-level courses and limited levels of English language ability; both of these factors were reported to hinder employment by good employers and left temporary migrant workers vulnerable to the most marginal parts of the labour market. One participant mentioned that in contexts where work was seasonal (such as tourist towns) the down season was a time

when exploitation was more common because employers had less work and workers (especially students) were desperate to take any work that was available.

7.2 Union representatives

We interviewed nine union representatives. Their observations and insights are based primarily on the industries and the migrant populations they represent. As union representatives, they have in-depth insight into the types of exploitation their migrant clients have experienced, their vulnerability, as well as barriers the migrant workers face in seeking redress.

Some (4) felt that the extent, and public awareness, of migrant exploitation is more open than it was a few years ago. However, they were uncertain as to whether incidents of exploitation have increased, or migrants have become more confident in speaking out about their exploitation. Four participants view the extent of exploitation in New Zealand as “huge” and, for one, “we’re only scratching the surface”.

Union representatives identified exploitation occurring in several key sectors, which echo our own findings: construction (with the expectation that KiwiBuild will lead to more cases of exploitation); liquor stores, dairies and retail businesses in general; tourism and hospitality; cleaning; couriers; agriculture in general and specifically horticulture.

In particular, participants viewed Filipinos, Indians and Chinese as the most vulnerable migrant population as well as international students and Latinos on working holiday visas. In regard to international students, there is no particular type of student (whether undergraduate or postgraduate, gender, or nationality) seen as more vulnerable to exploitation.

Participants all noted that many sectors have become dependent on migrant labour due to labour shortages. Further, one union representative discussed how employers use migrant labour to reduce costs with the overall effect being that it drives down overall conditions of work. An example given was that of the fast-food sector and a decline in wage comparable rates for managers compared to previous years. Table 7.2 provides an overview of the types of exploitation union representatives discussed.

TABLE 7.2 Types of exploitation identified

Type of exploitation	Number of cases	Type of exploitation	Number of cases
Non-payment of minimal wage entitlements	5	Non-payment of holiday pay	5
Not being paid the correct hours worked	5	Premiums for jobs	4
Intimidation	3	Psychological and physical abuse	2
Denied sick leave/sick pay and holiday pay	2	Manipulation	1
PAYE taxes deducted but not paid to the IRD	1		

The examples the participants shared about exploitation highlights the unequal power dynamics between employers and their migrant workers. Employers were seen to intimidate the migrant workers through subtle or explicit threats, including against family members both here in New Zealand and in the migrants' home country. A common form of intimidation discussed in depth by one union representative was the threat of reporting the migrant to Immigration New Zealand and subsequent deportation if they do not do certain things the employer required or if they attempted to speak out about their working conditions. In one instance, the employer accused his migrant worker of theft, wherein the employer himself had committed fraud in order to manufacture evidence.

Some employers operate under the mind-set that they have "ten other migrant workers in the queue, ready to be exploited" if they lose an employee. Two union participants recounted how workers were threatened if they tried to take sick leave. One employer told his employee "you can't pretend to be sick" and went on to tell them what he would do to them if they do not turn up to work.

Two union participants gave the example of a migrant worker on an employer-assisted visa who was continually exploited by their employer. This resulted in the migrant worker finding another job, but the employer refused to sign a release paper so their visa could be transferred. Another migrant was required to attend work-related meetings for up to two hours. He was not paid to attend these meetings or at the very least given refreshments. If he did not turn up, the employer would query as to why not. Or, if there is not enough work, the employee would be told not to come into work and at the end of the month would only be paid for the hours worked and not for the contractual amount as per the employment contract and conditions of the visa. If workers complained, their hours would be further cut.

Illegal phoenixing¹⁹ activity was of key concern for three union representatives, one who noted it is easy for “businesses to just liquidate themselves and absolve themselves of all responsibility towards the staff they’ve exploited”. There is no requirement for the liquidator to be registered and, in fact, the liquidator can be a family friend and hence the scales tilted in favour of the employer.

One participant commented on the complicity of workers in their own exploitation but saw for some that it was “their desperation that drives them to accept the exploitation”. Some workers will go as far as to steal from their employer in order to survive. Four participants commented on the paying of premiums in order to obtain employment, of amounts being up to \$40,000. The money is paid to the employer, or in some cases a friend of the employer. If migrants cannot pay, or are slow in doing so, pressure will be placed on their families in their home country. Another scheme, according to one participant, occurs when an employer hires a husband and wife. One is offered a proper job and paid according to employment regulations while the other is made to work for free. In effect, “they get two for the price of one”. In our interviews with temporary migrant workers, we came across one case of this kind.

7.3 Lawyers

The 10 lawyers involved in this research included those working within publicly funded legal services and those operating or working within private legal firms. All but one lawyer had significant experience working with people on temporary study and work visas and provided extensive insights into the extent of exploitation, mechanisms employers use to exploit, and the circumstances around speaking up and reporting exploitation. The role of all of these lawyers in relation to migrant exploitation was in providing advice or supporting exploited migrants in taking action against employers.

Several of the lawyers who were interviewed for this research expressed a view that exploitation was far more widespread than is regularly acknowledged. While they, like all other participants in this research, could not be certain about levels of exploitation amongst temporary migrant workers or in the wider labour market, some made comments that “I could right now, probably within a stone’s throw, pick about four businesses which I think are exploiting migrants”, or “there are whole streets you can walk down where you just know that no one is getting the minimum entitlements”.

The most common types of exploitation identified by lawyers are shown in Table 7.3.

¹⁹ Phoenix activity is referred to in this report as when a business is placed into liquidation in order to avoid payment of debts including employee wages and entitlements, and taxes. The business owner then goes on to establish a new business. We note that this is a broader interpretation than phoenixing as defined under section 386B of the Companies Act 1993.

TABLE 7.3 Types of exploitation identified

Type of exploitation	Number of cases	Type of exploitation	Number of cases
Non-payment of minimal wage entitlements	5	Working excessive hours without pay	4
Working excessive hours beyond contractual amount	4	Fraud	4
Not being paid holiday pay	3	Employers avoiding tax payments	3
Cash for jobs	3	Payments for visas	1

In the most extreme case, one of the lawyers had also worked on behalf of an individual who had essentially been in a slave-like situation at work. Another lawyer reported a trafficking case where temporary migrant workers had been sponsored to come and then had their passport taken, were not paid or allowed to leave the house they were living in. Two lawyers also reported physical assault cases that emerged from exploitation. Other issues identified in interviews with lawyers included overcrowded and overcharged accommodation, being fired without good cause and being employed in a higher-skilled position (chef) in order to get a visa but then being told to work as a kitchenhand.

In terms of industry and the types of migrants most likely to be, exploited lawyers' responses were similar to those of other participants. Named industries included hospitality (7), dairy farming (3), retail (3), construction (3), horticulture (1), accommodation (1) and cleaning (1). Several participants believed that exploitation typically, but not always, occurred in smaller businesses that were less sophisticated in their operations where there might be less awareness of labour laws. In terms of vulnerability, most lawyers identified international students as a particularly vulnerable group. The vulnerability of international students, especially those at PTEs, relates to the aspirations they have for residence but the difficulty some have in transitioning to residence rights and the avoidance of going home for fear of abuse or stigma. Two lawyers named isolated farm workers and working holidaymakers respectively as vulnerable groups; one other lawyer believed "lower-skilled" workers were most vulnerable. In terms of nationalities, lawyers named groups that are generally similar to those identified in other parts of this research: Indians (6), Chinese (4), Filipino (4), Japanese (2), Koreans, South Americans and Pacific people.

7.4 Factors that create conditions for exploitation

A wide range of factors were identified by the key stakeholders as creating the conditions for exploitation. Table 7.4 provides a summary of the factors which we go on to discuss.

TABLE 7.4 Factors that create exploitation

Community	Unions	Lawyers
Co-ethnic dimension	Co-ethnic dimension	Co-ethnic dimension
Marginalisation in the labour market	Visas and in particular employer-assisted visas	Employer-assisted visas
Role of agents and advisors	Promise of residency	Promise of residency
Lack of knowledge of employment law	Lack of knowledge of employment rights	Lack of knowledge of employment law
Immigration processes		Benefits outweigh the risks

Co-ethnic/national dimension

All three stakeholder groups identified the co-ethnic dimension as being a key factor leading to exploitation. The union representatives saw this as a key issue within certain communities — as opposed to all migrant communities. While attention needs to be paid to the co-ethnic/national dimension, one participant in particular cautioned against retaliatory action towards migrants from particular countries.

All of the lawyers who identified co-ethnic/national exploitation argued that this pattern related to the kinds of cultural obligations that exist within communities and the knowledge that co-ethnic/national employers have about how to exploit people from the same or similar culture. These “layers of cultural expectations” also extended to the inability to leave employers in the view of lawyers. One noted that it “does make it more difficult for people to leave if they’re feeling kind of cultural obligations or expectations or kind of priorities within people’s culture”. Another participant commented on the “power” held by employers in the community, which “allows for exploitative behaviour which is readily accepted by the employee; this could be happening to a larger degree than we may think”.

Community participants suggested that there were cultural variations in perceptions of power, such that there was a view that people with money, or with influence, ordinarily get their own way. Participants (community and union, 2 each) drew attention to the ways in which temporary migrant workers look for jobs and suggested that the focus on finding jobs through social networks, social media or ethnic media tended to expose them to employers who were recruiting outside of the mainstream labour market, or where the employer may be intentionally looking for more vulnerable workers. Two union participants see the lack of English language ability as a key reason why migrant workers seek employment within co-ethnic communities. Another view expressed by only one community participant (and echoed by the one exploiting employer that we interviewed) was that exploitation occurs within co-ethnic networks because both workers and employers understood it was a “win-win” and “mutually beneficial”, allowing access to cheap labour while providing an avenue

for workers to remain in New Zealand. A similar view was also expressed by a union participant who commented that there is a “certain inevitability about that, you can’t stop people wanting to improve their status in life”. Lastly, one community participant noted that families, especially parents-in-law of partnership work visa holders, sometimes pressure them into taking jobs with co-ethnic/national friends or business contacts.

Marginalisation in the labour market

Workplace exploitation was also associated with broader exclusion from or marginalisation in the labour market evident in the difficulties that temporary migrant workers face securing employment with compliant employers. This is a theme that emerged in the interviews with temporary migrant workers where it was reported by a number of participants who spoke about the difficulties of finding employment with good employers while on a work visa or because of differences in work experiences, language and qualifications.

Four community participants noted that employers they communicated with viewed migrants as too difficult to hire because of the bureaucracy associated with work visas. Past experiences seem to endure as post-study work visa holders now have access to non-employer specific work visas but this has not changed the perception of employers that employing migrants is difficult. The other factor identified by two community participants was discrimination in the labour market. Discrimination was evident in attitudes of employers who did not want to employ workers from different backgrounds or who had not grown up in New Zealand. It was also reported that mainstream recruitment firms now regularly use algorithms in order to shortlist applicants for jobs; these programmes are often designed with employers preferences, including avoiding work visa holders or identifying applications that have patterns of text associated with people for whom English is a second language. Internationally, the use of algorithms in recruitment processes has been identified as leading to sexist, racist and otherwise prejudiced employment outcomes (Higginbottom 2018).²⁰

Employer assisted visas

Many of the union representatives (6) and lawyers (8) identified employer-assisted visas as the key flaw in the immigration system, which are fraught with the inevitability of exploitation. Both union representatives and lawyers had dealt with cases where temporary migrant workers had lost visa status because of their employer or they had been unable to leave their employer because of the difficulty in attaining another visa with another employer.

Employer assisted visas also mean that temporary migrant workers have to take seriously threats by employers that they will cancel a visa; a factor that can be exacerbated in cases where migrants have accommodation provided by their employer as well. As one lawyer put it, “They [employers] could just contact Immigration without even talking to you about it

²⁰ Higginbottom, K. (2018). The Pros and Cons of Algorithms in Recruitment. *Forbes*, available online: <https://www.forbes.com/sites/karenhigginbottom/2018/10/19/the-pros-and-cons-of-algorithms-in-recruitment/#631a555e7340>

and just say, 'It is not working out, cancel the visa' and Immigration is really heartless too, they will just kick that person out really quickly." In this situation, Immigration becomes "the 'hook' to keep them".

Four lawyers also named the promise of residency as significant, seeing this as an extension of the power that can be leveraged by employers. Indeed, one lawyer noted that exploitation would continue to be substantial so long as there are widespread aspirations for residence that were tied to work and relatively limited opportunities to achieve this status. One lawyer went further to suggest that the government was well aware that the employer-assisted system creates exploitation: "I think the government's quite aware that tying people to employers, you know, having those visa conditions that you can only work for a certain employer in a certain job results, increases the opportunities for exploitation because they're bound to them." This lawyer argued that it is possible to remove these conditions where the political will exists and identified the special instructions for essential skills workers in Canterbury²¹ that were established between 2015 and 2016 as an example (they actually referred to the South Island contribution visa²² but based on their description we believe this was a misattribution).

Role of agents and advisors

Another factor in exploitation identified by the stakeholders was the role of education and migration agents and advisors. Six community participants mentioned issues around intermediaries and made particular reference to international education and the role that agents/advisors play in creating and promoting what are often unachievable pathways to study, work and residency in New Zealand. Three participants pointed out that educational providers, especially PTEs, were a significant part of the problem because of the way that they work with agents to enhance international student numbers by "over-promising" the

²¹ Between 01 July 2015 and 31st December 2016 three special conditions were established for people gaining essential skills work visas in the Canterbury region: the maximum duration for lower skilled visas was increased from one to three years; essential skills work visas were issued with conditions allowing holders to work for any employer within the same occupation; accreditation policy was introduced for labour hire companies, essential skills work visas could be issued for three years for lower skilled workers employed by labour hire companies, and accreditation was made compulsory for labour hire firms seeking to employ essential skills workers from January 2016. These changes were explicitly made "in support of the Canterbury rebuild and to mitigate the risk of exploitation of lower skilled workers". See: <https://www.immigration.govt.nz/documents/visa-paks/2015-jun-26-essential-skills-instructions-changes-2013-canterbury-rebuild>

²² The South Island Contribution Work Visa was established in August 2017 alongside revisions to the essential skills work visa policy. The policy allowed people who had held an essential skills work visa for the five years prior to 22 May 2017 and been in full time work to gain a work visa for 30 months that would then provide a pathway to the South Island Contribution Resident Visa. The visa made an exception to the strict conditions applied at that time to lower skilled essential skills work visas, which had particularly deleterious effects for dairy farm workers. See: <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/south-island-contribution-work-visa>

opportunities available after completing qualifications. These concerns were also expressed by three union representatives. One community participant noted that agents commonly tell students that their services are free as a means to enhance trust in the outcome but that regardless of where money comes from agents are working to enhance profits by increasing student/worker numbers.

One lawyer noted that some temporary migrant workers they had worked on behalf of were in significant debt because of the costs of migration and the migration agent used this debt in order to insist that the temporary migrant workers continued working for an employer who was exploiting them (it was not clear if the agent was operating on-shore or off-shore). Another lawyer made a similar point although not in relation to debt to a specific agent, rather that the costs of migration that are created by migration agents make people more vulnerable to exploitation in general and less willing to take risks that question their employment or migration status. In non-financial ways too, agents can act as a social form of policing: “If they upset their employer, then this news could be sent back to the agent and then that could have negative future consequences [...] they are blacklisted by an agent that may mean there may be no further work for them here, in other countries, or when they return home.” One lawyer noted that they had come across cases where employers themselves were acting as or collaborating with immigration advisors in order to arrange the status and conditions of temporary migrant workers in ways that suit them. Lastly, one employer noted that PTEs seemed to also have a questionable role in employment processes, encouraging graduating students to undertake “internships” that are little more than exploitative.

Lack of knowledge of employment law

Limited knowledge of New Zealand employment laws was reported by stakeholders as common amongst migrants who are exploited, ranging from not being aware of the need for a contract, the existence of a minimum wage and its level, or the requirements around holiday leave and pay, breaks and rostering; a related lack of knowledge was not being aware of the cost of living in New Zealand relative to wages. Without knowledge of employment laws, workers are unlikely to even recognise that they are being exploited until their situation becomes detrimental. Lawyers (3) noted that employers have often taken advantage of this lack of knowledge through active misinformation, such as saying things like “I can pay you \$2 an hour” or “telling workers that if they don’t comply then I will go to Immigration New Zealand — you’ll go to jail or be deported”.

Community participants suggested that there was varying awareness of employment laws amongst employers, especially those from migrant backgrounds. One participant suggested that this lack of awareness means that some exploitation is unintentional and that after community organisations contact non-compliant employers they agree to change their practices. Another participant, however, argued that employers also claim to not know employment law as a way to explain exploitation while it was also noted that some employers tell workers that New Zealand law does not apply to them because they are not New Zealanders. This view was also expressed by union representatives.

Immigration processes

Issues associated with immigration processes were raised by the three stakeholder groups. These participants highlighted how delays, unnecessary bureaucracy, inconsistent decisions and strict visa regulations all exacerbated issues of exploitation by making migrants more vulnerable.

Visa processing was identified by 10 community participants as having an impact on the likelihood of exploitation. Four participants noted that many of the exploited migrants they encountered had faced delays in immigration processing lasting months that placed them in precarious situations in relation to employment and income and future prospects. The claim was made that while in precarious positions temporary migrant workers are more likely to accept sub-standard employment or to tolerate exploitative or disadvantageous positions in order to maintain their status or finances.

Community participants also noted problems associated with one-year visas, historically in relation to the post-study work visa and currently in relation to the need for lower-skilled essential skills work visa holders to renew their visa annually. Constantly needing to renew a visa was reported to add additional pressure to migrant lives that make it difficult for them to consider other options and adds risk in terms of finding an employer to support their application. One union representative was also of the view that one-year visas have increased the potential for exploitation. Further, two community participants were of the opinion that Immigration New Zealand decline to renew visas without good reason, despite the fact the temporary migrant workers are currently working for the employers they apply with. Four participants commented that dairy workers are looking for opportunities in Australia and Canada where they are not constrained by a three-year visa limit. They noted that employers are also concerned about the three-year limit and that there could be a massive labour shortage next year when temporary migrant workers are stood down at the end of their three-year visa (this concern was also expressed by employers). In relation to post-study work visa holders, it was reported that the shift to three-year visas relieved pressure on these workers, which reinforces findings from interviews with temporary migrant workers.

A number of community participants identified wider systemic issues that mean that exploitation is almost an inherent part of New Zealand's immigration system. One participant argued that everyone involved in the immigration system is dishonest: employers are dishonest in terms of the conditions they offer and the support they provide to employees; employees are dishonest about their skills and abilities as well as their intention to remain in New Zealand; and the New Zealand government is dishonest because it creates and promotes immigration opportunities, particularly associated with international education, that are actually very hard to achieve. Another participant argued that "as a nation we exploit migrants" by attracting them for their skills and tuition fee monies but not providing support services to them, especially students and workers in

lower-skilled occupations. While not as baldly stated, other community participants highlighted the earlier policy of letting students come to New Zealand without IELTS²³ and the promotion of the study-work-residence pathway as evidence of the way that consecutive governments have tolerated exploitation in order to retain export education revenue, which reached \$5.1 billion in 2018.²⁴ The pathway to residence and the difficulties that migrants face seeking to progress through this pathway was seen to form the basis of most exploitation. Another representative of a community organisation questioned decisions made, and by extension the lack of consistency, by Immigration New Zealand. The example given was of two temporary migrant workers, both employed in the same role, but one with a higher salary. Both were applying for their visas to be renewed. One was given a three-year mid-skill visa while the second worker, the one earning a higher salary, was issued with a one-year low-skilled visa.

Lawyers also identified Immigration New Zealand and the Labour Inspectorate as playing a role in migrant exploitation because their systems, regulations and attitude made exploitation more likely. Two lawyers reported extensively on the difficulties that they have had with Immigration New Zealand in trying to deal with cases of exploitation. Most notable amongst these issues was the bureaucratic delays that were experienced by temporary migrant workers seeking changes to visa conditions, including in cases of exploitation. Bureaucratic delays can mean temporary migrant workers who have no status end up working for very low wages (illegally) because they simply have no choice because they needed to continue paying their own costs in New Zealand.

Even in cases where a temporary migrant worker was willing to take a case against an exploiting employer, one lawyer noted that a significant hurdle came in having sufficient information to make a case. While people could be required to work very long hours, not be provided sick leave, annual leave and other basic benefits, it is often very hard to provide proof for this kind of non-compliance. This is partly because the exploitation does not occur from the outset, as we also noted in our analysis of temporary migrant workers' interviews, but often increases incrementally. This lawyer believed these were clearly planned and intentional strategies on the part of employers who were well aware of the difficulties that temporary migrant workers have in proving exploitation took place. The same lawyer, who has acted on behalf of numerous temporary migrant workers, noted that even if you have the information to make an allegation, "the employer also makes up lies and they will just suddenly say this employee was stealing or this employee was drunk at work — it's usually

²³ Between 2013 and 2015, the NZQA framework for accreditation permitted category 1 and 2 educational institutions to administer their own internal English language tests rather than apply international tests such as the International English Language Testing System (IELTS). In 2015 the ability to carry out internal tests was restricted to countries with student visa decline rates less than 20% and in 2018 the ability to test internally was removed. See: <https://www.nzqa.govt.nz/assets/About-us/News/Changes-to-New-Zealand-Qualifications-Authority-Rules.pdf>

²⁴ Hipkins, C. (2018). International education contributes \$5.1 billion to New Zealand economy. Press release available at: <https://www.beehive.govt.nz/release/international-education-contributes-51-billion-new-zealand-economy>

the same thing — it's either they were a thief or they were a drunk or high at work". One response to this issue that was discussed in some interviews was developing mobile computing applications that can be used to record key information about pay, time worked and other matters that could help temporary migrant workers and others keep track and to provide more evidence for reporting purposes.

Another related concern was about the variability in decision making at Immigration New Zealand, either resulting from quite different practices amongst staff or because there were constant changes in staff working on cases. In some cases, documents are lost by Immigration New Zealand or because migrants live in temporary accommodation and move on the documents are sent to the wrong address and migrants who need to receive them promptly do not receive them at all. One of these lawyers was particularly concerned about the quality of decision making at Immigration New Zealand, noting an instance where a new junior immigration officer had disagreed without basis about an interpretation of immigration instructions with a trained immigration lawyer. The lawyer noted, "Immigration Officers don't get enough training and they have very high case loads, so it takes them a long time to process visa applications." The other lawyer who commented on Immigration New Zealand was concerned about the discrepancy between the very difficult cases of getting a fair outcome for their clients while "employers or the advisors who work for them are able to get certain kinds of occupations listed for work visas that would seem to be impossible". Immigration New Zealand, these lawyers argued, needed a more humane and consistent approach to its core business.

Three lawyers also named the Labour Inspectorate as an organisation that was not working in the best interests of temporary migrant workers. One union representative described the Labour Inspectorate as being "very passive". While another stated, "I don't think they investigate cases very thoroughly." As with Immigration New Zealand staff, the concerns expressed by lawyers about the Labour Inspectorate included comments about the training of staff. One lawyer recalled an incident where a labour inspector, who did not have any specific training, was "having a go at one of our clients", and when the lawyer raised a question about a piece of legislation the inspector commented, "I didn't see that bit." The same lawyer felt that the inspectors they had interacted with did not have an interest in actually going after employers because of the level of work involved and the limited likelihood of success, commenting, "I don't quite know what labour inspectors spend their days doing." One union representative commented that once the Labour Inspectorate finds out that exploitation is cash-based "they shy away from the case". Several lawyers noted that they felt the Labour Inspectorate was understaffed and under-resourced and this contributed to the current lack of oversight of poor employment practices. The response from the Labour Inspectorate, as a result, is often for temporary migrant workers to go to mediation except in a very small number of cases where that is wholly inappropriate — e.g. domestic violence or physical assault. One lawyer noted, though, that rather than communicating this lack of resource to complainants, the typical response to temporary migrant workers and their representatives has been that the Labour Inspectorate was just dealing with worse cases and the complainant's case was not a priority. This kind of

response, the lawyer felt, “makes people feel like the system is kind of broken” and a more honest response about limited resources would be better.

Lastly, one lawyer, who had been extensively involved in dealing with cases of migrant exploitation, commented on some of the problems that have emerged around migrant exploitation in the process of mediation. This lawyer noted that they had observed a pattern whereby mediators are increasingly signing off on agreements that are “clearly unlawful because they know that the person hasn’t got the minimum, but they are signing a thing saying that they have”. The same lawyer also noted a more systemic problem in that mediators can come across the same employer multiple times but not be able to take that into account or would have to find a different mediator such that the mediation appeared to be impartial. More broadly, this lawyer argued that the common exploitation cases shouldn’t even go to mediation as they are crimes; mediation and the confidentiality agreements that are used play a part in continuing the cover-up of extensive migrant exploitation.

7.5 Speaking up and reporting exploitation

Supply-side stakeholders provided insight into the issues associated with temporary migrant workers speaking up and reporting exploitation. While the majority of community participants reported that exploitation was quite extensive amongst the migrant communities or regions they work in, they also noted that a considerable amount of exploitation is unreported because temporary migrant workers are unlikely to report their experiences, formally or informally. This view was seconded by union representatives and lawyers. The reasons why speaking up was unlikely fell into three broad categories: the specific conditions of migrants in New Zealand, concerns about reprisal from employers, and a lack of trust in New Zealand institutions.

Firstly, a number of community participants reported that many of the migrants who are subject to exploitation come from cultures where it is not common to speak up about problems. East Asian and South Asian cultures were notably named as having particular concerns about the shame that might be associated with reporting, either for being a victim or because exploitation would be perceived as a mark of failure or weakness. The result, as one community participant described, is that some migrants can struggle through exploitation at work that increases over many years before they seek assistance only when their situation becomes very desperate. A majority of community participants also noted that the migrants who seek help about exploitation actually often want to keep the job even if it is exploitative. Keeping an exploitative job can be important for several reasons: temporary migrant workers need the money provided in order to cover their basic costs of living; the conditions, while poor, are better than what they have experienced in their home country; they are uncertain as to whether they will get another job or if they do whether that job will be any better; or they want to remain in New Zealand and losing a job is associated with losing status. This view was also supported by union representatives with one representative adding that migrants accept exploitation as part of their New Zealand experience.

One union representative also highlighted that some migrants working for very small companies, particularly owner-operators, have sympathy for their employers because they see the business is struggling and hence will tolerate the exploitation. Alternatively, as another union representative put it, migrants view their employer as being kind or a “family member” who is willing to help them, though as migrant participants themselves have highlighted, this help often never eventuates. Four participants acknowledged that migrant workers, albeit a small minority, are beginning to have the confidence to speak up for their rights.

Secondly, more than half of the community participants reported that the temporary migrant workers who come seeking support or advice are afraid of the consequences of reporting their experiences. The primary fear that community participants observed related to losing employment and the difficulty of gaining subsequent employment, or as noted above employment that was any better than current circumstances. As a result, it was noted that temporary migrant workers are only likely to report exploitation after they have left the exploitative employer. One participant saw this as problematic and believed that temporary migrant workers should not be allowed to complain about their employers after they have resigned because this allows them to exploit employers’ goodwill (no other participants agreed with this sentiment). Other participants noted that temporary migrant workers fear retribution in the workplace, or sometimes even after they have left employment, including physical, legal or financial retribution for them or their families. Some participants felt that employers were aware of and actively cultivated fear amongst their employees in order to maintain control in the workplace, a point that reinforces findings from the interviews with temporary migrant workers about control mechanisms.

Thirdly, it was reported by several stakeholder participants that temporary migrant workers are unaware of key institutions for support and reporting and that when they are, many have very little trust in these institutions. This finding aligns with the point made earlier about the lack of knowledge about employment rights. Other participants, however, also noted that temporary migrant workers have perceptions of institutions that they bring from their home countries where public agencies are perceived to be corrupt, or where organisations, such as the Police, are deemed unhelpful. In specific relation to Immigration New Zealand and MBIE, participants reported that temporary migrant workers are unlikely to speak to these institutions about exploitation because of a fear of losing their visa. In cases where individual temporary migrant workers had approached Immigration New Zealand, even with the assistance of a community organisation, participants reported that Immigration New Zealand could be “rude” and “unhelpful” and tended not to have responses that encouraged trust in temporary migrant workers. Other participants commented on the online system and the absence of face-to-face opportunities to discuss complex issues, such as those associated with exploitation. Some participants felt that MBIE and Immigration New Zealand could make better use of community organisations in order to encourage people to report in a more informal environment.

Community participants were also asked about the kinds of advice that they offered to temporary migrant workers who sought support in cases of exploitation. Most referred

migrants to either Citizen's Advice Bureau (3), Community Law (5) or Employment or Immigration Lawyers (2), although one participant also noted advising a temporary migrant worker to meet the local MP. In one case a community participant reported that, with the migrant's permission, they would sometimes contact the employer directly in cases where the exploitation appeared to be non-intentional or resulting from a lack of knowledge about employment laws. In other cases, participants would contact Immigration New Zealand or the Labour Inspectorate on behalf of, or with the migrant, although as noted above there were mixed results. The majority of community participants were aware of and named the regional labour inspector. Some participants felt that they received very good responses from regional inspectors while others felt that inspectors were hard to engage; sometimes these contradictory comments were about the same named inspector. Overall, community participants felt that Immigration New Zealand and the Labour Inspectorate were understaffed, underresourced and too business-like and compliance-oriented in their approach to dealing with issues of exploitation. The findings from temporary migrant workers documented earlier suggest that these experiences are shared by those people who experience exploitation and reduce the likelihood of exploitation being reported and resolved.

There was a general sense amongst lawyers interviewed in this research that they were the "end of the line for those who need help". Unlike Community Organisations, and even immigration advisors who can seek advice from lawyers to assist in the most complex cases, lawyers are often facing the most complex or extreme migrant exploitation cases. The advice that lawyers gave to temporary migrant workers who came seeking advice obviously varied by case but usually entailed a process of giving legal advice about rights, potentially communicating with the employer about their obligations (if appropriate), advising workers on the likelihood of getting another visa if they report their case to Immigration New Zealand or the Labour Inspectorate, reporting the case to the Labour Inspectorate, referral to another legal expert, or a recommendation that the migrant look for other work as a first step to switching visas and reporting exploitation at a later date.

The lawyers we interviewed all noted that their encounters with people experiencing exploitation tended to be relatively extreme, and people only came to speak to lawyers (even those who were free) when their situation became very dire. As one lawyer put it, "We don't very often see people come in just because they're not getting holiday pay." For one lawyer the length of time people had been in New Zealand influences their willingness to speak up. In other cases, however, the lawyers in this research highlighted the gravity of people's situations: a client who came in after police found them trying to commit suicide because of work conditions, domestic violence issues that emerged in relation to a lack of money while on a work visa and her partner's difficulties on a partnership visa, people completely running out of money or getting into debt. As we have already noted above, lawyers also highlighted that it was fear around loss of immigration status that hindered reporting. Migrant worker exploitation hence often remains a "hidden shame".

Another issue identified by lawyers related to the availability of legal services. The cost of access to private lawyers was a huge deterrent at \$3,000–\$4,000 for an initial

consultation, not least given the pattern that workers usually only come forward when they have no other options. Community Law remains an option for some, but lawyers involved in our research (including those who work for Community Law) noted that there were issues in terms of expertise and accessibility. Some Community Law organisations have specialist immigration lawyers, while others have to refer clients to the private sector in some cases. There is also the issue of Community Law's funding model which relates to the number of clients attended to rather than an assessment of the complexity of a case or the amount of time that needs to be spent on it. One participant highlighted to us that "Immigration New Zealand and MBIE employment websites both refer to Community Law, but they receive no funding from them". Lastly, there are variations in the way that Community Law offices operate in different parts of New Zealand. Some will provide advice and support to most if not all people who come seeking help whereas others more strictly follow the income guidelines for serving clients.

A further hindrance to reporting that was identified by lawyers relates to the aforementioned concerns about the resources and approach that Immigration New Zealand and the Labour Inspectorate take to cases of migrant exploitation. The general feeling amongst lawyers was that they could not rely on Immigration New Zealand or the Labour Inspectorate to act on migrants' behalf. One lawyer reported their disappointment when they dealt with a client where "the employer was withholding his passport and he hadn't paid him for ages and we were trying to reassure him if you report it, Immigration NZ will help you get a new visa etc and actually it was really difficult to get any assistance or get anyone to follow up on the complaint". Such experiences by legal professionals compound the already existing sense amongst temporary migrant workers that they cannot trust authorities, both reported in temporary migrant workers' interviews but also reinforced by lawyers who highlighted a lack of trust amongst their clients of Immigration New Zealand, MBIE and the Police. Other lawyers noted that the closing of Immigration New Zealand offices and the shift to online processing has reduced opportunities for building trust, as does the non-committal nature of comments on the Immigration New Zealand website about consequences of reporting exploitation. All of these factors mean that individuals who may already be uncertain as to whether they can trust authorities are even less likely to go ahead with reporting their experiences.

8. Key Stakeholders (Demand Side)

Demand side stakeholders are those who are in the business of employing or facilitating the employment of migrant workers. This section discusses the findings from our interviews with employers, employer representative and immigration agents.

8.1 Employers

We interviewed 14 employers, or their representatives, from several different industry sectors: agriculture and horticulture, building and construction, cleaning, retail, and tourism and hospitality. All of these employers employ temporary migrant workers and spoke of the value migrant workers bring to their operations. They also discuss the experiences that some of their workers had at the hands of previous employers.

8.1.1 Extent of migrant exploitation

The majority of employers (12) shared anecdotal information as to the exploitation of migrant workers in their communities and/or within competitor firms. Several had been directly impacted by competitors exploiting their workers. Further, one company identified exploitation occurring within their own operation and discussed how it occurred and how they were able to address the issue. One participant acknowledged that previously he had helped migrants apply for work visas and in doing so, falsified their position in order for them to qualify for a visa. He did so because he was desperately in need of workers. When he voluntarily stopped this practice, he lost not only his workers but also his business. One questioned whether we might look at exploitation slightly different. If a migrant is unemployed and not earning anything and is subsequently offered a job for \$10 an hour, is this exploitation?

In the view of the participants, those subject to exploitation included international students, working holidaymakers and those on employer-assisted visas. Two participants commented that while working holidaymakers are an essential workforce, there is no direct support system for them. Further, many are over-qualified and end up working for minimum wage or in situations where they were exploited.

Table 8.1 lists the types of exploitation identified with non-compliance, with employment law the most common form of exploitation identified. One participant spoke of one of his current employees and how their previous employer, initially unbeknown to the migrant worker, had used their IRD number for multiple employees. Part of the problem, according to one participant, is that migrant workers do not always know what they are entitled to and employers do not volunteer this information.

TABLE 8.1 Types of exploitation identified

Type of exploitation	Number of cases	Type of exploitation	Number of cases
Paying below minimum wage or contractual amount	4	Manipulating timesheets	4
Paying workers for less hours than worked	3	No payment for public holidays	3
Not providing timesheets	3	Paying workers in cash	2
No employment contracts	2	Employing those not legally entitled to work	2
Not being paid at all	1		

In addition, four participants noted the paying of premiums for a job that would qualify migrant workers for permanent residency. Indeed, two of the participants themselves had been offered premiums of up to \$50,000 to employ migrant workers. Both participants highlighted the emergence of intermediaries in the offering of premiums. The intermediaries could be, for example, immigration consultants or others within the co-ethnic/national community. At times, there can be emotional pleas put forward, such as the threat of suicide by a family member if a migrant is unable to find work. Both participants have been called “a fool” or similar for refusing to take the money offered. As one commented, “They tell me I am not a good businessman.” He continued, “If I take that sort of money today, I can’t make that worker perform on his KPIs (key performance indicators) because I am for sale, and I am not for sale!” Indeed, both see the selling of jobs has become a business and occurs in more than one community.

Two participants commented that migrant workers themselves drive exploitation. One gave examples of migrant workers requesting that their wages are paid in cash and hence under the table. Another example was how those on student visas will ask employers for more than the 20 hours they were legally entitled to work. Yet another example was that of a student bargaining with their employer for an increase in wages in exchange for them providing a ready stream of migrant workers. Another two participants also noted that employees could be complicit in their own exploitation. These participants, former migrants themselves and now employers, felt that because they were from co-ethnic/national groups, that it was automatically assumed they would be open to exploitation. Another commented that some migrants are so vulnerable, and in a dire state, that they will try to extort their employers.

Another participant commented on the exploitation of migrants by an immigration consultant who wanted to charge migrants several thousands of dollars for assisting them with the visa renewal process. The company advised the migrant workers not to use an immigration consultant and they themselves assisted their employees.

Two participants attributed the exploitation to the government and the immigration system that is currently in place. In particular, they suggested the government (including the education sector) is overselling New Zealand in order to make money from migrants.

8.1.2 Impact on business

There are labour shortages in many sectors in New Zealand. The building and construction, horticulture, and hospitality and tourism sectors, in particular, face crucial labour shortages, and the shortage is expected to increase over the next few years. While acknowledging that migrant workers are subject to exploitation, all employers spoke positively of the value migrant workers bring to their business. Key for many was how to ensure, in light of increasing labour shortages, they can employ migrant workers. They summarised their concerns as follows:

- One queried how growers in the horticulture sector, who are already constrained by labour shortages, will respond to increased labour shortages (1).
- Due to difficulties in recruiting (and retaining) local workers, four companies employ temporary migrant workers to fill crucial labour shortages (4). For one company, their use of migrant workers has grown organically. They hired a migrant who had recently obtained permanent residency through his wife. Through this employee's connections in the community, the company has employed several temporary migrant workers. Typically, these are workers who were not treated as well as they should have been by previous employers. The participant described their migrant workforce as hardworking and reliable. They just "get the job done". He further noted that their business has been able to grow in comparison to competitors because competitors "haven't been able to get workers". Indeed, some within the industry have asked this firm to refer workers on to them.
- Immigration New Zealand is making it increasingly difficult to recruit specialised staff from overseas (1). Instead, the focus is on training locally, even though this particular role requires three years of training. This participant feels he is being punished by government agencies for not being able to find and train someone in New Zealand and is worried for the future of his business.
- There are spill-over effects from employing migrants who are on a one-year visa (4). One participant noted that if their migrant workers have a forced stand-down period, they will have to employ stop-gap workers, or if this is not possible, then pressure is placed on the remaining workers to fill the gap, which ultimately compromises their well-being.
- Several (5) commented on the compliance cost involved in helping their migrant workers to obtain residency. For this reason, two participants noted they only employ migrant workers at the start of their visa. One, in particular, commented that the Variation of Conditions process is very drawn out and is critical of Immigration New Zealand's handling of the process. Some of their employees have had to wait for months for their Variation of Conditions to be approved.

Two employers acknowledged there is a cost associated with hiring new employees, and companies need to manage succession planning carefully. Hence, for two participants, there

was a preference to hire permanent residents and citizens as opposed to those on temporary work visas. For others, a significant issue is that once workers get permanent residency, they leave the employer.

When asked about the impact of other businesses that are likely exploiting their workers, on their own business, one participant referred to the price items were being sold for and commented, “I can’t even produce for that”. He, instead, focuses on quality and service in order to attract customers. Another noted that a competitor was undercutting him with the “irking thing”, being that some of his competitors’ workers approached him asking if they could come and work for him.

8.2 Business/industry representatives

Six representatives of five different business or industry membership associations were interviewed for this research. These representatives covered a number of the key industries identified as key sites for exploitation, although we cannot name those industries because of the commitment to guarantee confidentiality to the persons interviewed and the organisations they work for.

8.2.1 Extent of exploitation

Business representatives provided a mixed view of the extent of exploitation in New Zealand. Three of the participants, including those representing industries that are often associated with migrant exploitation, felt that there was relatively little migrant exploitation and that they had not witnessed this in their work directly. Indeed, when pressed for examples of migrant exploitation, these participants drew on either second- or third-hand accounts of exploitation or general narratives within the media. One potential explanation offered by one of the participants for this possibility was that businesses/employers who voluntarily become members of business or industry associations are the least likely to engage in exploitative practices at work; “generally members want to do the right thing”. Another participant expressed the view that their industry had been a “whipping boy” for exploitation issues but that they were not aware of evidence that there was much exploitation taking place.

The other three business representatives interviewed for this research acknowledged that migrant exploitation is widespread both in the areas that they work and in other industries, including in those industries where representatives had denied this was occurring. Indeed, one participant thought exploitation was so common that when the Labour Inspectorate does investigate an employer the “Labour Inspectorates commonly hear ‘I’m not the only one; everybody does it.’ ‘Who’s everybody?’ ‘Well, him, and him and him and him.’” Many of the types of exploitation identified by participants aligned with those discussed by other participants in this research. These participants identified agriculture, horticulture, hospitality and construction as being the key industries where exploitation takes place. In terms of migrant visa types, participants who recognised the extent of exploitation felt that international students and post-study work visa holders were most vulnerable. Although it was noted there is a lot of non-compliance with working holiday visa holders, and participants also highlighted that they have the freedom to move on or are not as

vulnerable to the worst practices. For the participants familiar with the horticulture industry they noted that RSE workers are less likely to be exploited because of the strict auditing around RSE accreditation, which then also means that businesses who are not RSE accredited are more likely to be taking advantage of or exploiting other types of migrant workers. Types of exploitation included those noted by other participants: paid below the minimum wage; being required to pay wages back; substandard, overcrowded and/or overcharged accommodation; health and safety issues; passport confiscation; exploitation by migration or education agents via debt and interest and/or false promises.

Some commentary was also offered on the concentration of exploitation in different business types or models. One participant discussed hospitality and suggested that there are two typical business types that involved exploitation: an employer of the same ethnic/national group as the employee undertaking intentional and systematic exploitation, and the genuine or feigned ignorance of New Zealand employment law by other employers. This participant thought that the former systematic/intentional approach was more common in hospitality where workers are often from similar backgrounds and have similar migration status and that the genuine/feigned ignorance was more common in areas like horticulture where migrant workers were more diverse. Another participant drew attention to the “layers of exploitation, of contracting and sub-contracting” that exist in larger companies where “what was happening at the shop floor level, was beyond the sight of the headline contractor”.

Lastly, one of the participants who had familiarity with Christchurch and the Canterbury region felt that exploitation had declined significantly in recent years. In the past, exploitation had been widespread, not least because of the pace of the earthquake rebuild but also because of the lack of familiarity that employers had with sourcing labour through migration. Between 2012 and 2016, exploitation encompassed low wages, overcharging for accommodation, unjustified fees for basic work equipment, people being charged for their jobs in their home country and not being paid for overtime. According to this participant, companies at the time were simply not aware that they were exploiting but were rather trying to get away with whatever they could in order to improve their bottom line. This same participant believed that the situation in Christchurch/Canterbury had improved significantly, and that the pockets of exploitation that still exist were not regionally specific but rather about industries such as retail and were associated with particular migrant status issues such as around post-study work visas and those seeking a pathway to residence that was not likely to be successful.

8.2.2 Impact on business

There was a similar division of participants’ responses to questions about the impact of exploitation on industries; those who acknowledged widespread exploitation saw it having a significant impact and those who did not were dismissive. In terms of the latter, one business representative acknowledged that employers would see exploitation as “not right” but also stated that “I don’t think it’s seen as something that tilts the playing field because it’s not seen to be something that is hugely material” because “we just don’t see that it’s endemic across the sector”. For these participants, greater concerns existed around the

complexity and regulation of immigration and the potential impacts on employers' activities. For example, another participant thought labour market tests, advertising requirements, ANZSCO (Australian and New Zealand Standard Classification of Occupations) occupations and changing Immigration NZ expectations just did not match the needs of businesses (see sections 9.1 and 9.3). Put more broadly, another participant thought that "tightening of regulations can make a good member into a non-compliant employer".

For those who were aware of exploitation in their or in related industries, concerns about the impact of these practices were twofold. On the one hand, there was a concern that exploitation creates an uneven playing field where businesses can both struggle to compete and also where the standards associated with products or services decline because competition becomes a race to the bottom. Another concern for industries with an export face was the potential risks associated with loss of market access overseas because of associations with exploitation, a point that is particularly relevant in parts of the horticulture industry who have, in the past, faced exclusion from key markets. In this regard, exploitation matters in multiple ways for compliant employers who are both competing with lower-cost operators while also facing risks associated with reduced revenue from the damage those same low-cost operators can do to reputation. Even beyond the industry level, another participant felt that particular cities like Christchurch have an interest in not allowing exploitation in order to maintain an image that they are welcoming to migrants. Business representatives who expressed these views felt that the members they represented would welcome interventions by the government that would create an even playing field, especially those related to more monitoring, because good employers would not feel the impact.

8.3 What are employers and industry groups doing to reduce exploitation?

At the company level, a number have undertaken a range of initiatives to ensure employers are protected, including random audits of their employees (1), the introduction of technology linking ID cards to timesheets (1), fingerprint sign-in systems which record hours worked (1), provision of materials on employment rights to migrant workers in their own language (1), and a tightening up of overall employment procedures (3). One company discovered exploitation was happening in their own company without them knowing. While the company was compliant in terms of their employment process, exploitation was occurring at the middle manager and supervisory levels amongst co-ethnic/nationalities with migrant workers being required to pay their supervisors, for example, positions within the company or favourable working conditions. Further, the company discovered that a middleman had been using the company's letterhead to create job profiles for employees. The migrant workers submitted the job profiles as part of their application for visas/residency. The company has subsequently put into place stricter systems as well as a programme to educate workers as to their rights.

At the industry level, there was varying acknowledgement of the extent of exploitation amongst business representatives; however, all participants were able to identify ways in which their organisations take an active role in mitigating migrant exploitation alongside other kinds of non-compliance. Participants from two organisations discussed how they had

intentionally shifted from a passive to an active role with one stating that “in the past it may have been that we were the ambulance at the bottom of the cliff, now [we] are trying to be more active to avoid problematic situations in the first place and cultivate a better image for the industry”. Both of these organisations had developed a variety of resources that ranged from standardised employment agreements through to guidelines on disciplinary procedures. Members seeking these resources are also triaged by key staff who provide advice before accessing resources that may relate to more complex or delicate employment or business matters. One of the organisations has instituted a code of practice members must uphold in order to retain their status, and it was stated by participants that this partly came about as a result of concerns about migrant exploitation (although these same participants had been of the view that there was little migrant exploitation). The other organisations had also instituted a “proactive audit of employment relationships” as a means to help employers voluntarily and safely identify if they were meeting minimum employment standards. Another example given by these groups was having training programmes, annual awards and a conference that helps with information dissemination and celebrates best practice. Participants representing these organisations described these initiatives as mechanisms for enabling their members to reach higher standards when it came to issues like employment.

Other employers and business representatives interviewed identified a range of other measures for mitigating migrant exploitation. For example, one company acts as an intermediary providing employment opportunities for working holidaymakers. At the end of the employment period, the company surveys the workers to see if there had been any issues, and if there had been, the participant will not place future workers there. Those who had familiarity with the horticulture sector — both employers and business representatives — placed particular significance on two issues: RSE accreditation and global branding. In terms of the former, participants made it clear that the value of RSE accreditation has made all of those employers who have this status improve their practices immensely because the risks of losing that status during an audit or inspection were too great. Even where RSE employers engage with sub-contractors it was noted that a similar response exists to reduce risk by making sure that employment matters throughout the supply chain were compliant. The other mitigation measure that was reported to be particularly impactful in horticulture was the demands of the global market for products, where the GlobalGAP certification process has been very effective in encouraging compliance, particularly for areas where the key markets are in Europe. Media attention, more generally, was also seen as an effective measure; in terms of both identifying problematic business types and providing a tool for migrants to know which employers to avoid (e.g. one participant noted that they were aware of Facebook pages that named non-compliant employers). While one business representative noted that while employers were willing to report non-compliant employers they were aware of, they did not believe this was a particularly effective form of mitigation because MBIE does not respond to such information even when it involves serious matters, such as undocumented workers. Their view was that “as an employer, knowing that somebody else is exploiting is really difficult, and the only tool you really have is to throw the book at them; we can’t throw the book, only government can”.

An employer stressed the importance of building strong relationships with their employees while two participants commented on the importance of migrants knowing their rights. One employer sends his migrant staff to English languages courses — they are paid for their time while attending the classes. The company also sends a local worker along, so they get a “feel for where these guys are coming from ... and how difficult it is to try to speak English”. Three participants noted they go the extra mile for their employees; for example, helping with accommodation costs and providing ad hoc meals to ensure they retain their workers. One participant, in particular, felt that other employers should be doing more for their workers.

8.4 Immigration advisors

As part of this research, we undertook interviews and had communication with 10 licenced immigration advisors. These individuals were based in four different regions. Auckland, Christchurch, Hamilton and Wellington. Three interviews were undertaken face to face, and seven comments were provided by email in response to the questions that we provided.

8.4.1 Extent of exploitation

Immigration advisors echoed other participants in this research in identifying a diverse range of recurring types of exploitation that they have witnessed in their work (see Table 8.2).

TABLE 8.2 Types of exploitation identified

Type of exploitation	Number of cases	Type of exploitation	Number of cases
Paying workers for less hours than worked	2	Paying below contractual amount	2
Not being paid for overtime	3	Required to pay own PAYE	2
Employers not paying PAYE to IRD	2	Not providing timesheets or rosters	2
Overcharging for accommodation	1	Not allowing staff to take annual leave or not paying holiday pay owed at time of resignation	1
Long hours which reduces the hourly rate to below minimum wage	1		

As shown in Table 8.2, most commonly (8), advisors identified issues associated with pay as the key form of exploitation. Further, one advisor reported that they had seen multiple cases where migrants were asked to pay for their jobs and/or cover their own wages in order to secure a visa. Another participant also repeated the point made by community participants that some employers use “volunteering”, often for long periods of time, as a means to employ people with no pay.

A small number of fraudulent practices were also identified in relation to exploitation/non-compliance. For example, an advisor working in the dairy farming area noted that some farmers would pay agents/advisors to arrange migration and then once a migrant arrives would recoup the costs through salary deductions, even though this was not agreed. As shown in the table, two advisors reported cases where employers simply did not pay PAYE at all and another had come across a case where an employer had provided fake IRD documents and payments for staff who never worked, facilitating non-compliant payment of real staff who may not be documented. Lastly, in relation to immigration applications, one advisor reported instances where employers refuse to sign supplementary forms or withhold support for a visa application unless the migrant does what they want (e.g. payment to employer for job or working longer/without pay).

In relation to the industries that were identified as most likely to have exploitation, advisors repeated a number that has already been identified in this report: restaurants, retail, liquor shops, horticulture, petrol stations and dairy farming. Three respondents also noted the racing industry as a site of particular exploitation, which has not been mentioned by any other participants. One advisor was of the view that "nearly every employee in the horse racing industry is exploited". Similarities were drawn with the dairy farming industry: because work in the racing industry is very demanding (early starts, long days, health and safety issues) there are few local workers willing to take up these positions; racing has a lot of small-scale trainers who employ small numbers of staff and do not necessarily have the awareness of employment law or human resources advice and as a result such employers tend to have less familiarity with employment law.

There were different views expressed by advisors about which groups of migrants were most vulnerable, which appeared to reflect their area of expertise and experience. Advisors who had worked in the dairy farming sector believed that dairy farm workers were most vulnerable because of the nature of the work, hours they are expected to work and the health and safety risks in the industry. While it was noted that there was less outright exploitation in dairy farming than in the past, new arrivals were particularly vulnerable to disadvantageous conditions or sometimes exploitation at work because they had no basis for comparison with other workers. Other advisors placed particular emphasis on the student-work-residence pathway as the key site of exploitation, with Indian students and those from Punjab state in particular identified as most vulnerable to exploitation. The view from many advisors was that these individuals are vulnerable because of the level of individual and family investment (financial, social and moral) in the outcomes of migration: e.g. families selling land or taking out debt to come to New Zealand and gain residence, needing work as soon as study is completed (or during study) in order to pay debts and support family, and having everything resting on the acquisition of residence. Some advisors also identified Chinese students as vulnerable but noted that these students appear to have more resources and are less likely to have debt or to need work to send money to families; residence is a strong aspiration but the sacrifices and risks do not appear as great. One advisor felt that for students coming from China there was more exploitation in terms of personal relationships and partnership visas than there was in relation to employment.

8.4.2 Factors that generate exploitation

Interviews with immigration advisors provided considerable insight into the mechanics of migrant exploitation. While the comments and opinions about exploitation from advisors varied depending on their expertise and experience, they tended to focus on three broad issues: co-ethnicity/nationality and exploitation, the pathways of international students, and employer-assisted visas.

Co-ethnicity/nationality

Co-ethnicity/nationality was described as a common feature of migrant worker exploitation by half of all advisors, a point that reinforces findings across this study. In short, in many instances employers who exploit temporary migrant workers share nationality, ethnicity, language and/or culture with the workers. However, supporting our findings drawn from interviews with temporary migrant workers, advisors did not see co-ethnicity/nationality as an independent explanatory factor for exploitation. Rather, it was observed that exploitation has tended to become endemic in some industries rather than others because of the particular conditions in those industries and in some cases because of their reliance on employing international students while they study and post-study work visa holders, in particular those graduating from PTEs. Some of these industries, such as retail, horticulture and hospitality, are highly competitive and areas where wages are the most substantial cost that employers incur in their business activities. These industries also now have a substantial number of employers from the same ethnicity as temporary migrant workers and *some* of these employers are willing and able to exploit workers in order to increase profits and/or reduce costs in order to be more successful. In some cases, advisors reported that exploitation has become so common amongst these industry-specific co-ethnic employment niches that employers are very happy to simply ask job applicants for money back before they are even employed (although we rarely heard this in interviews with temporary migrant workers). In short, exploitation has become normal business practice.

Some advisors were at pains to emphasise that exploitation is not limited to such co-ethnic/industry niches and that other employers (they used the moniker “Kiwi”),²⁵ even reputable ones, engage in both intentional and unintentional forms of exploitation that leverage off the same inequities that temporary migrant workers face in the labour market. Employers in the dairy farming sector, for instance, are predominantly Pākehā New Zealand citizens and yet this industry was associated with considerable amounts of exploitation, as was the racing industry, which is not associated with recent migrant employers; it was similarly noted that what advisors described as “Kiwi” employers in the hospitality industry also take advantage of or exploit temporary migrant workers. Like their migrant counterparts, such employers are able to employ temporary migrant workers on wages

²⁵ We are using the term “Kiwi” in the manner it is used by participants rather than to make a distinction around the citizenship of employers. See footnote 12.

lower than they would workers who are New Zealand citizens and permanent residents, which often end up being below minimum wage because of long hours. Examples included a quantity surveyor on a minimum wage salary for 40 hours who worked more than 50 hours most weeks, paying temporary migrant worker chefs the same wage as kitchen hands because they were migrants and wouldn't complain, not paying for overtime on salaried positions in dairy farming and then asking for very long hours. One advisor summed matters up by saying that while these employers are "not as ridiculous as Indian employers" in their exploitation, temporary migrant workers are actually less likely to complain because of the reputation of the employers and because they are actually thankful to be exploited in relatively mild ways. In other words, for different reasons from co-ethnic/national employers the social position of non-migrant employers and the perceived value they offer to temporary migrant workers inhibits these workers from either reporting their exploitation or seeking other employment.

International education sector

The majority of immigration advisors identified the international education sector as a key feature of temporary migrant worker exploitation. Their views were very consistent and emphasised the linkage between the activities of education advisors offshore, low-quality courses, high costs and debt, the ability to work during and after study and the promise of residence as mechanisms for exploitation. The low quality of courses offered at many PTEs was the key problem identified by many immigration advisors. Students who are not capable of enrolling in universities and polytechnics are encouraged to take courses of study that have little or no recognition inside or outside New Zealand and who, as a result, have few options available to them upon graduation. In some cases observed by immigration advisors, these migrations are financed through the use of life savings, pensions, sale of land and loans for students and their families on the promise that becoming an international student then a worker and resident will provide opportunities to pay back debt and support families: "False dreams, false hope of better life, all they need to do is mortgage the house or land to pay for the studies then they will easily get a job and pay back the loan." In many cases, however, there are relatively few opportunities for graduating international students (from PTEs especially) to gain appropriate employment in the mainstream labour market, either because they are ill-prepared, their qualifications are not suitable, or they face discrimination. Consequently, post-study temporary migrant workers are much more vulnerable to exploitation by malicious employers or by employers simply seeking the cheapest available source of labour. Indeed, while the student-worker pathway often led to hospitality and retail jobs, it was also noted by one advisor that there are an increasing number of students studying agriculture in order to gain employment in dairy farming; the view of this advisor was that these workers were more vulnerable to exploitation because of the money and time they had invested in study and post-study opportunities.

It was immigration advisors' view that PTEs play a key role in encouraging students into inappropriate courses and promoting the courses as a pathway to residency when that is not realistic, and that this message is amplified by licenced and non-licenced education advisors in the countries that students come from, especially India. One advisor reported

that education advisors can earn as much as 25% of tuition fees from PTE students and noted that even a small number of such commissions would constitute a significant income in countries like India. Education advisors are not working in students' best interests in other words, but rather directing students towards courses where commission levels are higher. One participant reported an experienced teacher doing a post-graduate course because the education advisor said it would make getting residency easier, when in fact a graduate diploma in teaching would have been a more affordable and secure route for the client; the postgraduate course had a higher commission. Another immigration advisor summed up the role of education agents by stating that they "are not too dissimilar to human traffickers, they are exploiting desperate people, but they do it through 'legal channels'".

Employer-assisted visas

The final mechanism of exploitation that immigration advisors discussed was the role of employer-assisted visas, both in relation to essential skills visas and in relation to the change in November 2018 to remove employer assistance from post-study work visas. It is important to highlight that there were three broad views amongst immigration advisors as to the effects of employer-assisted visas in exploitation.

On the one hand, four participants made the claim that employer-assisted visas were the basis of migrant exploitation; migrants will be more likely to be exploited if an employer has to do more for their visa applications. The reasons that immigration advisors gave was that only some employers are willing to go through the process of supporting migrants and a proportion of these employers are likely to exploit workers because they see that opportunity, or because exploitation is legitimate given the hassle of dealing with immigration bureaucracy on behalf of the migrant. Advisors reported that workers are than more willing to accept sub-standard conditions because they feel that they owe their employer, and may literally owe the employer money, as well as needing to maintain good relationships in order for the employer to support them for a subsequent work visa. In some cases, advisors reported that the power wielded over visas by employers extended to threatening to cancel visas, not supporting residence applications and/or, as we have noted earlier, reporting temporary migrant workers for fabricated or real infractions, such as workplace theft or damaging property. According to advisors, the complicity of temporary migrant workers to their own exploitation occurs in relation to employers' power over visas: the worker agrees to non-compliant work because not doing so would mean failure in migration and/or would have significant personal and financial implications.

There were no immigration advisors who disagreed with this diagnosis of employer-assisted visas. However, four advisors who contributed to this research made the claim that the removal of employer-assisted visas would not actually resolve the problem of temporary migrant worker exploitation. There were two rationales for this. Firstly, while employer-specific work visas create many problems because they place significant power with the employer, the scenario of open work visas would mean there would be "no checks and balances which promulgates even greater opportunity for exploitation". Without adequate information on the workplaces of temporary migrant workers, Immigration New Zealand

and the Labour Inspectorate would have a reduced ability to detect migrant exploitation and would have fewer tools to police non-compliant employers (e.g. blacklisting employers from recruiting work visa holders would become more difficult). The other reservation that advisors expressed in relation to the removal of employer-assisted visas was discussed in relation to the 2018 changes to post-study work visas. These participants felt that those changes would lead to more exploitation because the loss of employer-assisted visas only shifted the power imbalance between workers and employers to the higher-stakes application for a residence visa. While the participants did not yet have evidence for these claims (because the changes are so recent) they felt that the post-study work visa changes were going to have polarising effects — potentially increasing the quality of students and courses they study while later leading to either another residence visa spike or growing exploitation for those who are unable to take this step. One advisor summed up this broad position as follows: “Where there is a residence pathway there will be the opportunity of fraud and exploitation.”

Lastly, two immigration advisors, who primarily work with essential skills work visa applicants, rather than students and post-study work visa holders, were of the view that it is not employer specification but the restricted rights and the bureaucratic complexity of work visas that was the main problem. These participants argued that the shift to one-year visas and a three-year maximum for lower-skilled workers in 2017 had disadvantaged temporary migrant workers and incentivised employers towards maintaining a low-skill, low-wage and low-status migrant workforce that at times led to exploitation. While advisors working for migrants want to see them have a career pathway, employers (both were speaking about dairy farmers) do not want to work hard to raise the skill level, productivity and wages of migrant workers when the workers will have to return home in a matter of months or years when their visa expires. Moreover, these advisors argued that the cost and time involved in gaining a one year work visa creates a “vicious cycle” for these workers and their employers; they are constantly focused on the next visa and unable to develop their skills and responsibility in the workplace and the uncertainty and confusion associated with visa applications minimises the agency workers feel to negotiate with their employers or to question the conditions they have at work. This disadvantageous position is the foundation for exploitation at work.

9. How to Address Exploitation?

As part of the interview process, we asked all our participants what advice they would offer to government as to what can be done to address the exploitation of temporary migrant workers in New Zealand. We firstly address the advice offered by temporary migrant workers before discussing the advice offered by key stakeholders. Their insights are summarised in Table 9.1.

It should be noted that it is not possible to “weight” these responses because the research was focused on exploring the advice or suggestions that participants gave in relation to a range of different issues that related to their specific experiences. Some individuals, such as temporary migrant workers, have specific practical experiences of exploitation whereas others, such as migration advisors, may have become aware of multiple cases of exploitation through their work. The advice offered by such individuals cannot be weighted in comparison to each other but rather reflects differing viewpoints and types of expertise. Moreover, as this research was based on a semi-structured interview method the aim was not to seek a representative survey of views or quantify recommendations but rather to elicit different views that could contribute to a deeper understanding of exploitation from multiple perspectives. The themes identified below all constitute substantive points made by participants.

9.1 Migrant workers

Key for the migrant participants was a transparent system and an environment where they could work hard and be rewarded for their work. Several noted that migrants are scared to seek help because they are fearful of being deported, with one participant going as far to say he did not think exploitation could be stopped because everything is “under the table”. Seven key themes were identified, which we now go on to discuss.

Education and awareness campaign

Migrant participants saw the need for the government to provide better education not just for migrants themselves but also employers, particularly those new — or relatively so — to employment law in New Zealand. Three participants articulated that the government should run awareness campaigns and workshops to educate both employers and migrant workers. In particular, there is a need for clearer information as to migrant workers’ rights and that this information should be presented in a way that is accessible to all migrants (4).

Three participants felt that employers also need to be better educated both in regard to employment law as well as the contribution migrant workers can make to their businesses and the wider community. Along these lines, several expressed the difficulty in obtaining a “mainstream” job with some feeling they were discriminated against in the labour market.

Support for those who have been exploited

Of key importance to seven participants was the establishment of a safe and supportive environment for those who report their employer and the exploitation they have experienced without fear of repercussions. This could include protection for migrants' visas if they are exploited (1). As part of providing a supportive environment, the government should clearly articulate a pathway for those being exploited to seek help and resolution (1).

Currently, Immigration New Zealand is seen to take the side of the employer (2), particularly when Immigration New Zealand's staff member is from the same country as the employer (1). One participant proposed that the government needs to clarify under what circumstances exploitation should be reported and by what means. Another proposed that a new unit be created which would take migrants' concerns seriously (see Section 9.2).

PROACTIVELY RELEASED

TABLE 9.1 How to address exploitation? Insights offered by the stakeholders

	Key Stakeholders (Supply)				Key Stakeholders (Demand)		
	Migrants	Community Organisations	Unions	Lawyers	Business Representatives	Immigration Advisors	Employers
Education and awareness	Awareness campaigns to educate both employers and migrants	Provision of timely information Introduce a Migration Passport or similar Provide more funding and resources	Provide better information to migrant workers Educate employers Educate international students at orientation Introduce a Migration Passport or similar	Provide an information pack to migrants when they arrive at the airport. Awareness campaign dedicated at migrants	Provide better access for migrants to information about employment regulations Educate the general public	Educating employers as to employment law	Cultural education needed for both migrants and employers
Support for migrants	Provide a supportive environment for the exploited Establish a new unit dedicated to supporting migrant workers		Establish a one-stop-shop to support migrant workers	Provide a safe haven for migrant workers who have been exploited			INZ needs to show they care
Immigration policies and system	INZ needs to undertake systematic investigations INZ should monitor small ethnic businesses	Support for employer accreditation system	Provision of an open work visa for regions and industries	INZ staff need better training	INZ takes too much of a formulaic approach to responding to exploitation – need to be more proactive	INZ need better industry knowledge INZ needs to be more publicly facing	
Simplify visa processes	Reduce the waiting time for a VoC	Remove employer-assisted dimension	Remove employer-assisted visas or	Remove employer-assisted visas	Support the removal of	Flexibility in regard to visas is needed in	One-year visa is problematic

	Simplify the visa renewal process Remove employer-assisted dimension of essential skills visas	of essential skills visas	alternatively link visas to occupation Extend one-year visa to three years	Provision of an open work visa for victims of exploitation	employer-assisted post-study visas Extend the RSE scheme Revamp the working holiday scheme; allow for more visas from more nationalities, longer visas	key areas Extend the working holiday scheme in terms of length of possible visa	Migrants need to stay with employer for two years after receiving PR
Enforcement	Harsher penalties needed Address phoenix activity ERA needs to be more proactive	Stricter penalties needed More resources for INZ	More resources for the Labour Inspectorate Stricter penalties needed Stand down period is too lenient	Remove the mediation stage. Exploitation is a crime and cases should go directly to the ERA (which needs to be replaced with a more investigative mechanism) INZ needs to be more questioning and sceptical where employers are concerned	Labour Inspectorate is under-resourced “Lift the corporate veil” on phoenix and related activities	Punishments could be harsher Need to investigate complaints more promptly	More resources for the Labour Inspectorate Send a clear and hard-hitting message to employers Get rid of phoenix activity Introduce jail time
International education sector	This sector needs attention as PTEs are “visa factories”			Pastoral care for students needed		NZQA should only register PTEs that also enrol NZ students	Needs to be tightened up
Other	ANZSCO not seen to be applicable to NZ context	Potential for industry to take a stronger role		Settlement services have deteriorated CAB	Potential for industry to take a stronger role		ANZSCO is problematic

Government agencies need to be more proactive

A substantial minority (19) of participants saw the need for increased efforts by government agencies to prevent the exploitation of temporary migrant workers. Eight participants were of the view that Immigration New Zealand should undertake systematic checks of businesses employing migrant workers. The systematic checks should include physical checks of businesses as opposed to just asking for documentation (8). Expanding on this, one participant was of the view that educating migrants about their employment conditions will only work to an extent as many are desperate for a job and hence open to exploitation. Hence, the government needs to observe what is happening by actually talking to migrants and undertaking 'proper investigations' in the workplace. Along these same lines, one participant proposed the government spend more money on investigating exploitation while it was the opinion of another that MBIE was under-resourced.

Four participants saw the need for Immigration New Zealand to target small businesses within ethnic communities, and that Immigration New Zealand should employ staff who will blend in, so they can see what the situation is really like. One participant suggested that the government randomly select employers for auditing as such an approach would do "migrants a huge favour". Another commented that if a migrant has been exploited on an employer-assisted visa, then the government should grant them an open work visa or, in their words, a "special leeway to get out of misery".

There was also the view by one person that Immigration New Zealand should pay more attention to the complaints migrants have made. As in some instances, little appears to have been done. Another commented that Immigration New Zealand should stop acting like a "robot" while yet another's opinion was that Immigration New Zealand needs to "act quickly".

Two participants suggested that the Employment Relations Authority (ERA) should be proactive and not deal with cases in isolation; for example, if more than one case pertaining to the same employer comes before ERA then these cases should be linked. It was the view of one participant that if the employer wins the ERA case, that the case should be kept open and the ERA "silently continue to investigate the employer".

Simplify the visa process

Eighteen participants expressed the strong view that employer-assisted visas are a primary mechanism through which exploitation occurs. As we have discussed throughout this report, employer-assisted visas have the effect of disempowering migrants by giving employers leverage over both their employment and migration status. Indeed, one described his experience on this class of visa as a time of "fear"; while others commented that employers recognise, and act on, their vulnerability.

A number of those interviewed expressed their appreciation to the government for replacing the employer-assisted post-study visa with a post-study open work visa. However, three participants were of the opinion that the open work visa will only delay exploitation, as migrants will most likely face exploitation when applying for a skilled visa.

One participant was critical of recent policy changes for employer-assisted essential skills visas wherein those in lower-skilled roles are granted a one-year visa (renewable up to a maximum of three years). In their view, this means “people are treated as workers, not humans”.

The visa renewal process was also raised in two ways. First, the length of time it takes to apply for and receive a Variation of Conditions. Two participants felt that this should be a more straightforward process. One participant commented that sometimes a prospective employer will withdraw the job offer because he is not prepared to wait for the Variation of Conditions to be approved. Second, some commented that renewing a visa could be a complex process. For one participant, each time they apply to renew their visa, they have to obtain a police clearance document from their country of residence prior to coming to New Zealand. This process costs \$500 and can take up to four months, yet Immigration New Zealand has the police clearance document that was submitted for their original application.

The international education sector needs attention

The education sector and, in particular, PTEs were singled out by four participants as needing government attention. One participant commented that PTEs do not teach anything; instead, they are “visa factories”. Another was also of the view that the Ministry of Education needs to undertake more scrutiny of this sector. Yet another described PTEs as “hungry education institutions” and that through their agents offshore, lay the foundation for exploitation in New Zealand. Along these same lines, according to another participant, offshore immigration advisors “who sell New Zealand as a dream” need to be controlled.

Imposing harsher penalties for employers

Eight participants called for harsher penalties for employers exploiting migrant workers. One participant felt that government agencies place too much focus on regulating the migrant workers instead of focusing on employers as the exploiters. It was their view that harsher penalties need to be introduced and enforced in order to change the behaviour of employers.

Three participants strongly felt that the government needs to address phoenix activity whereby an operator will deliberately liquidate their business thus avoiding the non-payment of wages and other obligations (see section 7.2). The operator will then set up a new operation, sometimes under a family member’s name. Others, while not explicitly identifying phoenix activity as a strategy for government, did talk about how their former employers had closed down their business and opened another, leaving them with limited or no recourse.

One participant saw the stand-down period²⁶ for those employers who are non-compliant with employment standards as being too lenient. Another commented that the stand-down

²⁶ The stand-down period refers to employers who have breached employment law and who have been caught are denied the right to hire migrant workers for a period of between 6 to 24 months depending on the severity of the exploitation. They are placed on the Stand Down list. See <https://www.employment.govt.nz/resolving->

period does not apply to employers who exploit those working for them on a student visa, and hence there is no punishment for them.

Other

The ANZSCO qualifications were viewed by two participants as being out of date/not applicable in the New Zealand context (see section 8.2.2 and 9.3). Further, one participant was of the view that ANZSCO skill levels can be manipulated by employers to the disadvantage of workers. Such manipulation could involve workers getting lower-skilled visas that give fewer rights for family and access to social resources when employers wish to maintain a low-status and compliant workforce.

9.2 Key stakeholders (supply side)

The key stakeholders on the supply side recognise that New Zealand needs a system that supports good employment outcomes, where skills are valued and rewarded, and where exploitation is not tolerated. They did not necessarily see that government, by itself, could do this and that unions, governments and employers need to work together. In response to the question of what the Government can do to address exploitation, five key themes emerged.

Education and support

Community organisations, migrant and union representatives as well the lawyers were all of the view that more needs to be done through education and support to reduce levels of exploitation. These comments included reference to information on employment rights and appropriate ways of reporting abuses, although did not extend to specific statements about the actual information that is provided. Seven community and migrant representatives felt it important that more timely and clear information is provided to migrants in their own languages. One participant specifically mentioned a “Migration Passport” that all migrants could receive with simplified and relevant information about employment rights, and another three participants mentioned similar initiatives. Two lawyers saw the need for information to be more readily available in the language of migrants. One example given for alternative approaches to information delivery was how the Australian government promotes the rights of migrants on a TV channel in languages other than English.

One participant specifically mentioned that migrants need to be made aware of the value of other ways of gaining experience as a form of education — volunteering, participating in classes for improving communication — and that there needs to be further funding for this. (Note the concerns expressed earlier about volunteering as a form of exploitation in section 7.1.1.)

A common theme was that the responsibility for communicating information to migrants cannot rest only with government; rather participants advocated for more funding for community organisations (4) and educational providers (3) to take a lead in informing and supporting migrant workers about their rights.

In addition to the need for more education for migrant workers, union participants also saw the need for employers to be educated. This was reinforced by two community organisation and migrant representatives. Union representatives saw there is scope in small businesses for active ignorance wherein while employers do not know about employment regulations they do not care to find out. There need to be regular reminders to employers of their obligations under employment law, as well as health and safety regulations. Specific to the education sector, one union representative saw an opportunity to educate international students at orientation or on the education provider's website. Many education providers run careers and CV workshops, but not a "know your employment rights" workshop (1). Such a workshop could help prevent exploitation.

Immigration policy and systems

A number (11) of community and migrant representatives, as well as the lawyers, placed emphasis on immigration policy and systems as a site for addressing migrant exploitation.

Two community representatives were of the view that essential skills visas should be altered so that they were not tied to employers. Along these lines, six union representatives acknowledged that while the government has made some positive changes towards addressing migrant worker exploitation, for example, the change to post-study work visas, they questioned whether the changes have gone far enough. Amongst the union participants, there was also a strong consensus that the government needs to remove employer-assisted visas entirely. Their view was that as long as these visas were in play, there would be exploitative behaviour. One possible solution they proposed was that the government should consider linking visas to a profession/occupation as opposed to an individual employer. This view was also supported by a lawyer participant, who went further and proposed if a migrant worker is exploited then they be granted an open work visa for the duration of their visa.

At a minimum, according to one union representative, the one-year visa should be extended to three years, as a one-year visa causes an extraordinary amount of stress for migrant employees, particularly in instances where the employer does not issue a new contract until the very last minute. Two community representatives thought that student visa holders should not be able to bring family with them because this creates unrealistic pressures and expectations on the migrant. Another participant thought that the recently proposed accreditation scheme²⁷ would be good as it would set high expectations for employers seeking to employ migrants.

²⁷ See <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/consultation-on-proposed-changes-to-employer-assisted-temporary-work-visa>

Union representatives reflected on the lack of funding for the Labour Inspectorate. One stated, “We’ve had nine years of underfunding, and we create this great new big Ministry and we’ve got a Labour Inspectorate with one inspector for 30 thousand workers ... It is just ridiculous.” There need to be more labour inspectors and they need to undertake random visits. Importantly, there needs to be a shift in culture. Employers should be treating their workers better “as though the labour inspector is behind their shoulder watching them”. One union representative, in particular, viewed the labour inspectors as being too passive, suggesting there needs to be “a mystery shopper” type model in the employment space.

More generally there were comments the Immigration New Zealand website is too complicated (2), there are not enough Immigration New Zealand staff (3), there need to be more opportunities for migrants to engage face-to-face with Immigration New Zealand (1), Immigration New Zealand needs better community outreach initiatives (1) and, significantly, Immigration New Zealand needs to be more questioning and sceptical when it comes to employers (2).

Establishing a dedicated unit for exploited migrants

Several union representatives saw the need for a dedicated unit within MBIE, which focuses on supporting the migrant workers who are experiencing difficulties or who are victims of exploitation (see section 9.1). The unit should be a one-stop-shop comprising experienced immigration, employment services and IRD staff as well as labour inspectors. This would be of key benefit, for example, as immigration staff are not trained in analysing employment agreements or providing employment relations advice. Further, two participants viewed a one-stop-shop as helping to address conflicting advice given by different immigration offices. While not specifically identifying a dedicated unit, two lawyers saw the need for a third party that migrant workers can report exploitation.

Enforcement and harsher penalties

Several community organisation participants raised enforcement as an important part of the broad approach that needs to be taken to address migrant exploitation. Generally, participants thought that enforcement needs to be stronger and that there needs to be more staffing and resources available for Immigration New Zealand and the Labour Inspectorate to monitor for compliance.

Three union participants viewed the current stand-down period as hurting migrant workers, more so than employers. Further, the stand-down penalty does not apply to those who employ international students, who are considered a pool of workers unscrupulous employers can exploit. The stand-down period also does not capture employers who pay workers’ cash. Union participants advocated for an increased stand-down period (2) or increased financial penalties (3): “Employers end up earning way more than by exploiting migrants as to what they actually get punished for.” One union representative recalled a migrant commenting that when he sees his employer financially benefiting from exploitation: when “we get permanent residency ... why can’t we do the same using the same practices?”

In contrast, amongst the community organisation representatives, two participants thought a stand-down period worked quite well, while another participant placed emphasis on contractors as a group that needed greater scrutiny. One participant took a very different view. Having said that exploitation is “mutually beneficial” to employers and migrant workers, this participant claimed that the government cannot prevent exploitation so should not waste money policing it, undocumented workers should be allowed to work legally but with a 70–80% tax on their income, and employees should have fewer rights to make claims against their employers, especially after they leave New Zealand.

The role of industry

Some community organisation and migrant representatives saw the scope for industry to take a stronger role. As one participant reflected, complaints within the dairy farming sector were now less common and less severe than in the past and thought that Federated Farmers and other industry groups had taken a positive role in improving conditions and that other industry groups should do the same. Another participant also identified a key role for industry groups and a third noted that the government should identify and promote businesses with good employment and diversity policies as models for best practice.

Broad issues

Beyond these specific recommendations, several of the participants identified broader issues related to the way in which New Zealand approaches migration and work that needs to be addressed. Primary amongst these were a series of concerns expressed by five participants that New Zealand’s approach to immigration amongst the government, businesses and wider public prioritises economics too much, and there needs to be a focus on the basic welfare of people migrating and their rights within society over economic gains and productivity. One participant argued that there was a need for societal solutions and identified how migrant exploitation is part of bigger issues of racism and discrimination because of the way it relates to exclusion from other parts of the labour market and the predatory behaviour of education providers.

Three participants were of the view that MBIE is too business-like in their engagement with migrants; they demonstrate no empathy or compassion and as a result have lost trust and have not taken into account the challenges that migrants face in work and migration. For some groups it was reported that people would go to the media before approaching authorities. One participant noting that “Latinos are scared of Immigration New Zealand”. One participant advocated for a remedial rather than a punitive approach by government, especially with regard to migrants themselves, and gave the example of amnesty periods as one way to generate trust and to resolve entrenched issues around undocumented migrants and widespread exploitation.

Two participants were particularly critical of MBIEs “complicity” in the exploitation of migrant workers. They saw this occurring through the advertising pathways to permanent

residency in New Zealand through work visas and by extension the selling of false dreams. One example given was the promotion of a pathway to residency in the opening sentence in the description for a religious worker work visa: “This visa is a great pathway for residence for people who are experienced or trained in religious work.”

Lastly, one participant thought that there was scope for better communication of key issues through media reporting of exploitation cases and their outcomes, which would ideally encourage exploited workers to speak up and provide a warning to non-compliant employers.

9.3 Key stakeholders (demand side)

There were commonalities in the themes across the three groups of demand side stakeholders as well as distinct recommendations, particularly from the employer group. We now go on to discuss the recommendations, starting with the common recommendations before addressing recommendations from particular groups.

Immigration policies

Five of the six business representatives felt that further changes can and should be made to New Zealand’s immigration policies and systems in order to address exploitation. Immigration advisors, in particular, placed significant emphasis on issues they saw within the system: “The immigration system is broken, there are heaps of problems, but [it is] so hard to fix.”

There was strong support for what one business representative participant described as “a more relaxed immigration regime where people who want to work are able to be facilitated into work in New Zealand”. This recommendation took two forms: support for the removal of employer-assisted post-study visas and the argument that there should be similar changes to essential skills visas (3), and a view that the RSE scheme should be increased alongside a reworked working holiday scheme that allowed a greater number of workers to remain for longer periods of time.

Two immigration advisors understood the argument made by some people that there is a need for non-employer-assisted visas for essential skills workers. However, they also felt that the removal of employer-assisted visas was unrealistic because there was no effective way to test the skills of people applying for occupations at the lowest skill level. Another participant proposed that there was a need for more flexibility in relation to visas, such as the introduction of longer work visas for level 5 workers in key areas like dairy farming, or alternative approaches such as creating a longer-term working holiday visa for these industry areas. Another specific suggestion was for some jobs where hours vary enormously between employers and over the course of a year, such as farming, that hourly wage rates should be insisted upon in contracts that go forward for visa approvals.

Another business representative placed emphasis on the value of a regional dimension in immigration policy in terms of assessment of skills shortages and migrant integration. They proposed having “regional hubs” and noted that it would be “nice to have one or two

Immigration NZ support people in each regional hub” to provide “advice that is specific to your region and personalised to your needs”.

The proposed move to accreditation of all employers was seen as a positive step by 4 of the 10 immigration advisors, although there was also concern that the process would be a “logistical nightmare” and that it would only reach the lawful operators who are not currently the problem. Moreover, as one immigration advisor noted, only 20% of work visas are employer-assisted so accreditation will not address the widespread character of exploitation. From the employer representative perspective there was a concern that the proposed shift to “accreditation” (while good in principle) should not be too hard otherwise; “good employers” will have to struggle more.

More generally, immigration advisors thought that Immigration New Zealand takes too much of a formulaic approach to managing migration and does not take responsibility for outcomes or allow for flexibility in relation to changing conditions. In making this claim, immigration advisors were of the view that Immigration New Zealand needed to be more aware of conditions on the ground and proactive in responding to migrants and their representatives. One immigration advisor was of the opinion that Immigration New Zealand staff needed better industry knowledge and criticised the fact that case officers often had no knowledge of even basic features of the industries they were granting visas for. Another advisor felt that MBIE and Immigration New Zealand need to be much more active and publicly facing in their activities — work with industry partners and with communities and ethnic business groups to get their messages across. Their aim should be to “try and develop more collective responsibility and lawfulness”.

Better enforcement

All three key demand side stakeholder groups asserted that the government should focus on better enforcement of employment standards; they should do this through increasing resources for the Labour Inspectorate and by introducing harsher penalties.

Four business representatives repeated points made by the other stakeholder groups that the Labour Inspectorate is under-resourced, needs more officers, more investigations and more enforcement with harsher penalties. This was also reinforced by an employer who felt that if the Labour Inspectorate was resourced correctly, they could respond more quickly to an issue. One employer criticised the current Labour Inspectorate approach as “useless because they will ask for so much documentation, then there is the processing time, and by then the worker has already left to go home”. Another employee participant highlighted the need to communicate what the Labour Inspectorate is doing. They felt that there was more enforcement but because it will always be impossible to police all non-compliant employers, it was necessary to communicate the increased risks and penalties to discourage non-compliant activities. Three employers saw the need for more labour inspectors on the ground where they can develop relationships with support groups such as the CAB and the Salvation Army.

One employer representative felt there was a need to “lift the corporate veil” where businesses were being recycled through family members after cases of exploitation have

been uncovered that then allow either the same owner to remain involved or at least to sustain the same business model. Another employer participant said the law needs to be changed so phoenix activity cannot occur (see section 7.2). According to another employer, it is common knowledge amongst growers which labour contractors are engaging in phoenix activity and why. Hence, the government should not just punish the contractor for exploiting their workers but should “smash the grower” as well. By doing so, the government will send a clear and hard-hitting message. Yet another employer felt that imposing fines was not enough and that those who exploit need to do jail time.

The general view amongst immigration advisors was also that punishment for exploitation could be harsher, that there was a need to investigate complaints more promptly and effectively, and that MBIE should be working to incentivise whistle-blowers while recognising that many are complicit in some way. One advisor elaborated by suggesting that the Labour Inspectorate needed to “significantly increase its profile and resourcing: should include substantial and targeted education of businesses who employ migrant workers — ideally when a work visa is approved direct contact is made with the employer to ‘educate’ them” including through proactive collaboration with ethnic business associations who will have the best connections to non-compliant employers.

Another advisor highlighted the importance of MBIE not only being more effective in its actions but to also to publicise that exploitation is not okay, to demonstrate what exploitation is and to provide information on what appropriate employer practice looks like. Similarly, another advisor recommended a “ground level campaign directed at both migrants and employers”; one advocated an “employer-led effort” and a third highlighted the importance of “educating employers” rather than scaring them as key to enhancing collaboration to reduce exploitation. All of these suggestions highlight the importance of being more proactive, which is a theme that has emerged in other parts of the research as well.

International education sector

Two immigration advisors commented specifically on the international education sector as an area to address exploitation issues. One advisor recommended that NZQA should only be registering PTEs that also enrol New Zealand students. If education providers cannot successfully enrol local students then serious questions should be asked about the quality of education they are providing. Another advisor suggested that the issues identified in this research on migrant exploitation, particularly the role taken by education providers, should be incorporated into the review of vocational training and the proposed centralisation of IPTs. Two employer participants were in agreement that the government needs to tighten up the international education sector.

The role of industry

A major recommendation identified by business representatives related to the role of industry, as well as the sorts of things that government could encourage businesses to do. There was a general view amongst most business representatives that government can only do so much and that industry needs to take responsibility for its own issues.

Business representatives discussed the approaches their industry was taking to respond to exploitation but identified their limited reach as an issue — only members are directly influenced by their activities (one participant commented in jest that maybe the government could compel all employers to join industry groups). More specifically, two participants noted that their industry needed to take more responsibility for developing staff, and that liberalising immigration policies (as outlined above) is good but only if those individuals then have a pathway for career development and success as workers.

Another business representative noted that they hoped to be able to develop more engagement with employers/business owners from different cultural and linguistic backgrounds — a suggestion that they felt could be relevant to many industry groups. They suggested that industry organisations could do more work to have multilingual staff to engage with business owners from different backgrounds and could help to broker trust issues with more face-to-face engagement where that is relevant for different communities.

One participant spoke about their efforts to develop an online platform that, when completed, will allow workers to input information about wages, working time and conditions — providing both for a self-monitoring tool where workers can be aware of their rights as well as identifying parts of industries where there are general problems (this is similar to the tool being developed by one of the lawyers interviewed for this research). The view of this participant was that the platform could be customised for different industries and transferred as a best practice model. Lastly, one participant mentioned that employers need to be provided with more pastoral care and cross-cultural training in order to be able to work more effectively with staff from different backgrounds.

Two employer participants saw the need for some large operators to take control of their value chain and eliminate exploitation. In particular, there was the view that some of the current auditing systems in place were not viewed as rigorous enough. Using the example of the New Zealand Master Contractors, one participant stated that while a member can be certified as compliant, this does not mean that their compliance is ongoing.

Improving the experience of migrant workers

Employers made a number of recommendations as to how government can improve the experience of migrant workers. One saw the need for Immigration New Zealand to change their culture. They need to show they care and recognise that migrant workers are “part of the fabric” and not an annoying “add on” that migrants need to feel safe. One went as far as to say that Immigration New Zealand’s website is a “piece of crap” which needs to be redesigned with the end users — migrant workers — in mind. In short, Immigration New Zealand needs to change their communication in order to be welcoming to migrants. Mention was also made by one participant of the Inland Revenue Department with the view the Department needs to be more proactive and undertake random checks on GST and PAYE taxes in order to address wage exploitation.

One employer noted the need for cultural education for both migrant workers and employers. As this participant noted, small and medium-sized enterprises do not have the resources for leadership and cultural training. Another commented the need for a

redirection of migrant labour out of Auckland to the regions where there are ongoing crucial labour shortages. Along these lines, another suggested raising the cap on the RSE scheme as the RSE scheme has an auditing structure in place.

Three employer participants commented on the one-year visa policy and the need for it to be renewed each year up to a maximum of three years. The one-year visa was seen to create uncertainty for both employers and migrant workers. Further, it is a costly process for migrant workers, plus the one-year visa structure creates uncertainty in regions where there are crucial labour shortages. In some regions where the cost of living is very high, migrants should be allowed to work more than 40 hours in order to be able to financially survive.

Employers highlighted the importance of recognising the cost to an employer of supporting a migrant in their application process for a residence visa, and that potentially migrants can often move on at this point. The recommendation from one participant is those who have been granted a residence visa are required to stay with the same employer for two years.

Three business representatives mentioned education and information as a key feature of any response to migrant exploitation. Two participants repeated comments made elsewhere in this report that migrants need more and better access to information about New Zealand employment frameworks and what is acceptable in the workplace. Another participant took a broader view that it is the general public who also need to be educated and be encouraged to have an attitude of cultural curiosity. A more aware public who is caring in their outlook towards temporary migrant workers, rather than seeing them only as temporary labour, will be more likely to identify situations where workers are being exploited and to either help those workers or to report those situations.

Two other suggestions were made. One participant suggested that any approach to dealing with migrant exploitation needs to occur in cooperation with those communities where exploitation is more common. They suggested that MBIE should be engaging more actively with some ethnic communities and their business associations rather than trying to operate through a one size fits all model. The participant gave an example of a member from a particular ethnic background who had been pivotal in increasing membership amongst others in their community, simply by letting them know about the activities of this industry association. One participant also asked whether the government was going to consider implementing Modern Day Slavery legislations. Their view was that rights to employees are already sufficient and what is needed is tools to address the worst cases of non-compliance.

Other

The ANZSCO system is limiting and not applicable to New Zealand (3 employer participants) (see sections 8.2.2 and 9.3). While the New Zealand government has accepted the Australian job descriptions, one employer queried “can you really compare the Australian dairy industry to New Zealand’s dairy industry?” The Australian system does not understand the role of a herd manager or 2IC in New Zealand or their level of responsibility.

PROACTIVELY RELEASED

10. Summary

There are several key findings that have emerged from this research that provide important insights into the drivers of migrant exploitation in New Zealand. These findings relate to the vulnerability created by employer-assisted work visas, particular business models and practices, the student-work-residence pathway, exclusion from the mainstream labour market, immigration bureaucracy, lack of knowledge and awareness and enforcement. We outline these key findings separately below. As we have noted throughout this report, however, none of these factors drive exploitation together, rather it is the way in which these factors *work together* in order to create conditions of vulnerability and opportunities for the exploitation of people holding temporary work and study visas.

Employer-assisted visas

Amongst both temporary migrant workers and key stakeholders, employer-assisted visas were identified as the key mechanism for establishing and maintaining exploitation in the workplace. Employer-assisted work visas accentuate the power imbalance that exists in all employer-employee relationships, making the migrant worker dependent on their employer for their legal status in New Zealand as well as employment. At the time this research was carried out it was only participants holding essential skills work visas who were currently affected by employer-assisted visas but many participants in this research had also held post-study (employer-assisted) work visas prior to the change in regulations in November 2018. In both cases, migrant workers reported that their visa status made them less likely to question breaches of employment rights in the workplace because of the impact that they believed it would have on their status in New Zealand.

Employers who were systematically exploiting workers took advantage of this situation by threatening workers with visa cancellation; in many instances, exploitation was timed to occur in relation to the acquisition of employer-assisted visas when workers had no other option but to remain with the employer. Even when exploitation was not systematic, the bureaucratic delays associated with seeking a Variation of Conditions or applying for a new visa from Immigration New Zealand disincentivised or precluded migrant workers from securing their legal rights in the workplace. Stakeholders observed this pattern, particularly lawyers and immigration advisors who both confirmed the central role of employer-assisted visas as a mechanism for suppressing migrant worker rights. While lawyers strongly advocated for the removal of employer-assisted visas, immigration advisors were more ambivalent with some arguing that exploitation would occur in different ways if Immigration New Zealand no longer had the oversight provided by employer-assisted visas.

Business models and practices

A second key finding in this research is the significance of particular business models and practices in migrant worker exploitation. Throughout this research, migrant worker exploitation has been associated with smaller businesses and, in particular, those operating under sub-contracting and franchise arrangements where the main contractor or franchisee

has little oversight of labour practices. Amongst temporary migrant workers, it was common for our participants to be working in businesses with a small number of employees and where there were not clear human resources processes in place. Some worked for franchise holders who operated multiple franchises in a particular area and who had built a low-cost business model on the recruitment and exploitation of a migrant workforce. In the case of sub-contractors, it was clear in both migrant worker interviews and amongst key stakeholders that subcontracting made it possible for practices on the “shop floor” to be beyond the sight of the main contractor. The pattern of exploitation occurring in small businesses extended to instances where exploitation appeared to be less systematic as business owners appeared to either not be aware of employment rights or were willing to ignore rules that they perceived to be too cumbersome on the business.

It was also clear throughout this research that many but by no means all cases of exploitation occurred in situations where the employer and employee had shared ethnicity and/or language. Co-ethnicity constituted an added layer of exploitation for a number of reasons: co-ethnic employers were aware of the presence and aspirations of migrant workers, especially those seeking residence status; co-ethnic employers had often negotiated the migration system in the past or were connected to lawyers and advisors who could advise them on immigration processes, and so were much more aware of the needs and limitations of migrant workers; and lastly, co-ethnic employers were able and willing to take advantage of the trust they could establish with migrant workers in order to create conditions for exploitation and stop migrant workers from reporting abuse.

Student-work-residence pathway

While exploitation occurs for migrants in a wide range of situations, we have found that it is those people on the migration pathway from international study, to post-study work and with aspirations to gaining residence rights who are most vulnerable to exploitation in the workplace. People who study at PTEs are particularly vulnerable along this pathway, although there are also students at universities and polytechnics who are exploited as they seek work and residence opportunities after completing courses of study. This pathway is particularly ripe for exploitation because of the way in which individual student-migrants and their families have invested financially and personally in the prospect of gaining work and residence rights in New Zealand.²⁸ This promise has been actively sold to people in particular countries and, as we noted, in the context section earlier there is an especially large number of people from India who currently hold post-study work visas in New Zealand.

²⁸ See the recent case, where a former student from India was granted a temporary work visa by the Immigration and Protection Tribunal, to stay in New Zealand for a year to be able to earn enough money to help repay his father’s debt to money lenders. The father had borrowed the money to finance his son’s education and the family was being threatened by the money lenders (Singh, 2019). https://www.newsviews.co.nz/indian-deportee-gets-visa-to-earn-repay-money-lenders/?fbclid=IwAR1kR5-mJnaqq41CduOkIIAaGFgwmhVxP0XHf9Tv2I_ZU12UIMu3paYn3k

Having invested financially, and sometimes through debt, in international study, people on this pathway face considerable losses if they do not succeed in their aspirations. Participants in this research reported being willing to take sub-standard jobs in order to achieve the next step in their plans, or simply to keep up with costs, including debt servicing. Amongst those who studied at PTEs, few saw value in their courses of study and there was a clear sense that being an international student was about access to a work visa, which participants noted is the way it has been promoted by the New Zealand government, by education providers themselves and by education and immigration advisors. These findings were confirmed by a wide range of stakeholders who not only observed that student migrants were most vulnerable to exploitation but also identified the private education sector and education advisors as key actors in migrant exploitation.

Exclusion from mainstream labour market

The exploitation reported in this research usually occurred in businesses that were not the first choice of many temporary migrant workers. Participants commonly provided accounts of the ways in which they were not able to access the mainstream labour market, by which we mean the vast majority of employment opportunities that are compliant rather than exploitative. Instead, many temporary migrant worker participants, especially those transitioning from student to work visa status, reported substantial difficulties obtaining employment even when they applied for a large numbers of jobs. Issues such as language and cultural differences, not having local work experience or the limited value given to qualifications, including those from New Zealand PTEs, were all identified as reasons why participants were not able to obtain work from reputable employers. It is likely that in many cases participants also faced discrimination because they were migrants or because they were on temporary work visas specifically, a factor that was identified by community organisations and migrant representatives in particular. Exclusion from the mainstream labour market created the conditions where exploitation was more likely because over time participants felt that they had no choice but to take whatever employment they were offered, either in order to get some kind of work experience to apply for subsequent jobs or in order to pay costs, including servicing debt. A substantial number of temporary migrant workers reported that exploitative employers were aware of the difficulties that workers faced getting mainstream jobs and targeted people who were in the most precarious situations in order to sustain their business models.

Immigration bureaucracy

Immigration bureaucracy plays an important role in creating conditions for migrant worker exploitation, particularly in terms of compliance and delays. Migrant worker interviews highlighted delays in the processing of Variations of Conditions or new visa applications as particularly problematic, creating situations whereby migrant workers are forced to continue working for an exploitative employer while they wait potentially months for an application to be returned by Immigration New Zealand. The considerable uncertainty in the time involved in making such an application or in the outcome that would result also discouraged participants in this research from finding ways out of exploitative employment situations. Migrant workers also generally felt that Immigration New Zealand was more

likely to act on employers wishes than their own and there was a pervasive fear that visas could be cancelled unilaterally. Key stakeholders were even more specific about the problems associated with bureaucratic complexity and delays. Immigration advisors and community organisations involved in employment matters reported that good employers were often hesitant to deal with people who did not have secure migration status. As a result, some migrant workers, as noted above, were only able to gain employment with those employers who knew how to negotiate immigration settings, in some cases in non-compliant ways. Lawyers acting on behalf of migrants reported inconsistency in immigration decision making and the applications of rules as well as significant delays in processing applications and/or having to deal with constantly changing new staff at Immigration New Zealand. A large number of participants in this research advocated for a simplified and streamlined immigration processing system that made it easier for migrants to make changes to their status and employers in a timely fashion.

Lack of information and awareness

A large number of stakeholders reported that many migrant workers are not sufficiently aware of their rights, appropriate workplace conditions or the avenues for reporting exploitation or other issues they face at work. Amongst those stakeholders who worked directly supporting migrant workers, it was common to report that the information provided to workers was too complex and inaccessible and that even professionals working in these areas struggled to navigate the migration system. The Immigration New Zealand website was highlighted as particularly problematic by a number of stakeholders; it was too complicated and at times sent mixed messages about what people's rights were. Other stakeholders commented on the closure of Immigration New Zealand offices and reductions in staff as reducing scope for in-person or even phone conversations, which were particularly important for migrants seeking to discuss and report complex issues such as exploitation at work or other concerns related to visa status. Several stakeholders also highlighted the importance of information and awareness amongst employers, especially those who have previously operated businesses in other countries. Some industry organisations were providing such information, but there was a feeling that the government needed to be more proactive in informing employers of their obligations and consequences for non-compliance.

Our interviews with temporary migrant workers reinforced this point. Indeed, many participants reported only becoming aware of their rights and of organisations they could approach once exploitation became so extreme they could not tolerate it any more. Only a minority were willing to approach official organisations, including government agencies and community organisations such as CAB and Community Law, either because they were not aware of the existence of these organisations and their role or did not trust these organisations. Temporary migrant workers overwhelmingly stated that people coming to New Zealand needed more information and that this needed to be provided in more systematic and appropriate ways — in educational settings, for new arrivals when they started work, and in the (simplified) languages of the migrants who come to New Zealand. While information for migrants is provided in many locations, temporary migrant workers

and stakeholders interviewed in this project felt that it was complex and inaccessible. Very few participants thought that information by itself would resolve issues of exploitation but would provide some avenues for workers to seek help and find ways out of difficult situations.

Enforcement

This research has also highlighted widespread concerns about the level and character or style of enforcement undertaken by Immigration New Zealand and the Labour Inspectorate. Amongst temporary migrant workers, it was common for participants to report that they were not aware of who to report workplace exploitation. Many of the workers who were aware of the role of the Labour Inspectorate, or Immigration New Zealand's responsibilities, expressed a lack of trust in these organisations or recounted problematic experiences in seeking to report exploitation. Examples of these experiences included being told that they needed to arrange for other workers to report exploitation, that there would be significant delays before any case proceeded, or simply that the Labour Inspectorate would not investigate their case. Interactions with Immigration New Zealand were also challenging for workers, with significant bureaucratic delays reported, Immigration New Zealand contacting an employer after a complaint or cancelling visas at employers' request without any communication with the worker themselves. These encounters with government agencies, which are regularly shared amongst temporary migrant workers, increase the perception that there are no safe avenues for reporting migrant worker exploitation.

The interviews with key stakeholders generally supported this finding that there were shortcomings in the enforcement of migrant worker exploitation. Community and migrant representatives, lawyers and unions, in particular, reported that they had directly observed difficulties that migrant workers had faced interacting with government agencies. In some cases, key stakeholders reported that labour inspectors were doing their best but it was also commonly asserted that there was simply not enough resources and staff available to address the extent of exploitation. Some lawyers held the view that staff in these agencies, including labour inspectors and immigration officers, were not sufficiently knowledgeable about basic features of the law or sensitive to the circumstances of migrant workers to effectively address cases of exploitation. It was also reported that even when cases are investigated the penalties are not sufficient to deter employers from building exploitation into their business models.

11. Conclusion

As discussed in the introduction, we were tasked with understanding what the exploitation of temporary migrant workers looks like in New Zealand. In particular, the nature, drivers and consequences of exploitation from the perspective of migrants themselves, as well as other key stakeholders as detailed in the report. We were also tasked with gaining insight into stakeholders' perspectives on how well the systems for reporting migrant exploitation and supporting victims are working and what effective interventions there are to mitigate the vulnerability of temporary migrant workers. In this section, we firstly provide the interventions that emerged from our interviews with all stakeholders. We then make some concluding comments.

11.1 Key interventions

There are six key interventions that emerged from the research.

1. Employer-assisted visas and low-skilled visa restrictions

Commentary:

This research has confirmed that there are power-imbalances associated with employer-assisted visas and that this visa category, in particular, is a mechanism for suppressing migrant workers' rights. While several stakeholders recommended that employer-assisted visas be removed, some recognised that, in reality, this may not be feasible for a number of reasons. Nevertheless, they still recommended a review of the employer-assisted visas and that a different model be considered; for example, removing one-year visas, or taking an occupational approach or similar.

Another related intervention that emerges from this report is the need to review the strict distinctions between skill levels for essential skills work visas and their implications for migrant rights. In particular, it was suggested that the one-year visa limit and three-year maximum duration for lower-skilled workers need to be reconsidered.

2. Introduce stronger enforcement mechanisms and put better victim support mechanisms in place

Commentary:

The recommendation from all the stakeholder groups was that enforcement needs to be enhanced such that the Labour Inspectorate actually has the capacity and will to investigate exploitation cases that are reported to them. And, further, that stricter and/or harsher penalties for employers exploiting their migrant workers be implemented. The majority of stakeholder groups suggested that the Labour Inspectorate needs more funding in order to be more effective in these areas.

There was also the recommendation that mechanisms to support victims need to be introduced. This could be, for example, the establishment of a dedicated unit to support migrant workers.

3. More coherent and simplified immigration/employment information

The research found that migrant workers sometimes did not understand their employment rights. Further, there was the acknowledgement that some employers did not actively seek to know their employment obligations. The research suggests the need for the provision of better and more accessible and linguistically appropriate baseline information for migrants and employers pertaining to employment regulations.

4. Support Immigration New Zealand through the provision of more resources to reduce the bureaucratic load so that cases are dealt with appropriately

Commentary:

Overall there was consensus as to the magnitude of the extent of migrant worker exploitation in New Zealand and the burden this places on authorities. In particular, a number of recommendations were made in regard to Immigration New Zealand. The recommendations can be summed up as more resources needed for Immigration New Zealand, a less bureaucratic approach taken by the department in order that they become more “friendly” and a department that is proactive in its dealings with migrant workers.

5. Review the international education sector and in particular the PTEs sector

Commentary:

The research found that students who are studying at PTEs are particularly vulnerable to exploitation in the workforce, although students at universities and polytechnics can also be vulnerable to exploitation. In this research, this vulnerability emerged, in part, because a number of PTE students and their families have invested financially in the prospect of obtaining residency rights in New Zealand and the student needs to service debts while progression to residency is unlikely because of the quality of their qualifications. Our research suggests that, from the perspective of both migrants and stakeholders, this pathway to residency has been sold to prospective students by agents, education providers and the New Zealand government. Further, there was concern expressed about the lack of educational value obtained through studying at some PTEs. In addition to the migrants themselves, a wide range of stakeholders expressed concerns that PTEs were often key actors in the exploitation of migrants, supported by education advisors and government efforts to promote education for profit in a way that is tied to immigration.

6. Government departments to collaborate with industry groups and community organisations (including unions) to address migrant worker exploitation

Commentary:

There was a strong view that the responsibility for communicating information to migrants is not just the responsibility of the government. Rather, community organisations and education providers can also play a key role. The view that the government can only do so much was also supported by business representatives who saw that there is a role for industry to play in addressing migrant worker exploitation. Stakeholders indicated that they

would welcome greater collaboration with government departments in order to address migrant worker exploitation.

11.2 Concluding comments

As shown in this report, temporary migrant exploitation occurs when a person — typically, but not always, an employer — takes advantage of their temporary migrant employee through non-compliance with employment and related legislation such as immigration and taxation laws. There are different pathways (for example, study and temporary work visas) by which temporary migrants enter New Zealand. For some temporary migrants there is another pathway which emerges once they are in New Zealand, that of the pathway of seeking residency. This pathway typically follows on from study and work visas. A migrant's vulnerabilities can vary according to the pathway by which they enter New Zealand, as well as a range of other factors including, but not limited to, occupation, industry, region, nationality, ethnic/national affiliation and cultural norms. Indeed, as the report has shown, there are a number of complexities pertaining to the nature, drivers and consequences of migrant exploitation.

Migrant exploitation is not an isolated phenomenon but rather is cumulative as one form of exploitation; for example, debts incurred in order to travel to New Zealand can leave a migrant vulnerable to wage exploitation in order to pay back debts. The workplace, as a specific site, needs to be recognised as a chain of instances of exploitation: recruitment, contracting, pay, work hours, working conditions, resignation. Further, those studying at PTEs are particularly vulnerable. Students (and their families) have incurred huge debt, have been sold education through the immigration opportunities it brings, with a number of expectations placed on them which leaves them vulnerable to exploitation when the quality and outcomes of education do not match their expectations.

This report has highlighted that current approaches to migration policy have a significant role in creating opportunities for the exploitation of people holding temporary visas for study or work. Visa conditions, and the use of employer-assisted visas, in particular, have been consistently identified as a key lever for exploitation that enhances employers' power by giving them influence over both employment and immigration status of their employees. The removal of employer assistance from post-study work visas has been observed by people we interviewed as effective in terms of enhancing the labour market freedoms of temporary migrants, although this research suggests that this change may have simply postponed the pressure points that create exploitation to the higher stakes application for residence visas. In contrast, the restriction of lower-skilled essential skills work visas to one year with only two renewals appears to have exacerbated the vulnerability of people who hold these visas by increasing the bureaucratic complexity of migration and uncertainty of their present and future emigration status. The majority of interviewees, migrants and stakeholders, asserted that if the government wishes to reduce exploitation it must address these policy settings.

Similarly, the research has shown that there are shortcomings in enforcement, particularly in terms of the resourcing of Immigration New Zealand and the Labour Inspectorate. While

only some temporary migrants who have been exploited are aware of avenues for reporting, most of those have little confidence in the willingness or ability of government authorities to deal with exploitation. Alongside stakeholders of all kinds, we have been consistently told that the government needs to take a more human-centred approach to managing migration and enforcing non-compliance in the labour market.

Lastly, the report demonstrates that there is a need for the government to review the business model of international education and its role in creating conditions for exploitation in the workplace. Many of the people whose stories of exploitation have been documented in this report entered New Zealand through an international student pathway into relatively low-quality PTE courses with the view, cultivated by agents, education providers and the government, that they could expect access to work visas and residence visas at some point after study. Participants in this research who discussed international education were of the view that the New Zealand government needed to do more to assure the quality of education offered to international students and protect the work situations of post-study work visas. A number of participants highlighted the need for a serious review of the quality and purpose of international education, especially in the private sector.

What the research shows is that the exploitation of migrant workers is a serious issue in New Zealand and that effective multi-sector intervention is needed. The primary responsibility to address exploitation is on the government but it is also clear from our research that effective responses will only come from collaboration with other groups. Employers, industry organisations, unions, migrant and other community organisations, education providers and others all have a role to play in identifying and responding to the exploitation of migrant workers in New Zealand. The research suggests that reducing exploitation cannot be achieved by more enforcement alone but rather a higher level of collaboration between different organisations, a focus on working with communities who are involved in and suffer from exploitation, and a focus on achieving the highest possible employment standards for migrant workers and everyone else who works in New Zealand. We hope the findings of this research will contribute to government initiatives to effectively address migrant worker exploitation.