

# Worker Exploitation in New Zealand: A Troubling Landscape

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## Executive Summary

In recent years, there have been several media accounts of the exploitation of workers and in particular, the exploitation of migrant workers, in New Zealand. Workplace exploitation ranges from instances of wage abuse through to forced labour. In 2016, there was the first human trafficking conviction in New Zealand. Faroz Ali was convicted of 15 human trafficking charges in the Auckland High Court. This has been described as the 'tip of the iceberg'.

The purpose of this study is to investigate worker exploitation in New Zealand. This project comprised two stages. The first stage was a desk review of secondary sources to understand what we know (2005 to 2015) about worker exploitation in New Zealand. The second stage involved 105 semi-structured interviews with workers – predominantly temporary migrant workers - from a range of industries.

### Desk review: what do we know?

Cases of worker exploitation were identified in several key industry sectors and predominantly labour-intensive industries. This is in line with international research, which has identified exploitation is most often associated with labour intensive industries, including agriculture, construction, manufacturing, and fisheries. New Zealand's primary industry sectors are increasingly experiencing labour shortages particularly those industries where much employment is seasonal in nature. Six key industry sectors were identified in the initial desk review: construction, dairy, fishing, horticulture and viticulture, hospitality, and prostitution. In addition, a review of the international education sector was undertaken as media reports were focusing on the vulnerability of international students.

### Construction

Accounts of worker exploitation in the construction sector have emerged since the Christchurch earthquake rebuild began. In 2011, it was estimated that between 30,000 to 35,000 workers would be needed over a 5 to 10 year period for the reconstruction of Christchurch with 50 percent of the workers being migrant workers. Filipino's are the number one source of labour. Accounts have emerged of Filipino workers paying exorbitant recruitment fees (between \$3,000 to \$15,000 each) to immigration agencies in the Philippines to obtain work in Christchurch. The promise of employment in Christchurch and relatively high wages of between \$18 to \$25 an hour are seen by many to be life changing and subsequently many entered into debt bondage in order to obtain employment. The reality for some is that they end up being exploited by recruitment agents and/or their employers in New Zealand.

### Dairy industry

The dairy industry is increasingly dependent on migrant workers and in particular Filipino, South American, Fijian and Indian workers. Media accounts have identified different degrees of exploitation, ranging from allegations of poor treatment through to full exploitation. At the extreme, Fijian workers in the Waikato each paid up to \$12,000 to a New Zealand recruitment company to obtain work visas. Their visa applications were forged and the workers received little or no money. Starving Fijian workers foraged for maize for food. Other accounts suggest that treatment towards Filipino migrants in the dairy industry - while revealing in terms of the haphazard nature of some employee safety practices are – was not actually 'exploitative' or 'abusive' but was more illustrative of poor employment practices.

### *Fishing*

Widespread labour and human rights abuses were identified in the foreign charter vessel sector. The abuses occurred on board a number of South Korean vessels with South Korean officers physically, mentally and sexually abusing the largely Indonesian migrant. The crew worked excessive hours and were often not paid their full wage entitlement. The New Zealand government launched a Ministerial Inquiry and in 2014, the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill was passed in Parliament. The outcome of this bill was that, as of 1 May 2016, all foreign vessels must be reflagged as New Zealand vessels.

### *Horticulture and viticulture*

The horticulture and viticulture sectors have undergone significant growth resulting in labour shortages. Margins are slim, with growers and producers under constant pressure from retailers to reduce prices. Because of the seasonal nature of the industry, growers and pack houses contract to labour intermediaries in order to source workers. This arrangement can lead to exploitation. There have been a number of cases where workers have been exploited with deception beginning at the recruitment stage. Prosecutions have occurred under the Immigration Act 1987.

### *Hospitality*

The hospitality industry is a significant employer of temporary migrant workers with the working holiday visa scheme providing an available source of workers. Some disturbing accounts of exploitation, including cases of forced labour and debt bondage, have occurred. In one restaurant chain workers were paid as little as \$4 an hour. In another restaurant two brothers – working to pay off the debt their mother owed their employer (her cousin) – worked on average 66.5 hours a week, 7 days a week. One brother worked for 5 years and the other for 2 years.

### *International education*

The international student industry is New Zealand's fifth largest export earner with more than half of all international students coming from China, India and South Korea. Following the relaxation of English language requirements, there was a sharp increase in the number of international students, particularly those from India in private training establishments (PTEs). In 2015 and 2016, a range of media reports highlighted the exploitation of international students including accounts of misleading and fraudulent agents and exploitative employers in the workplace. Predominately the reports have focused on Indian students. In response, the New Zealand Government has sought to address fraudulent and exploitative behaviour to ensure the integrity of the market is upheld.

### *Prostitution*

Under the Prostitution Reform Act 2003, only New Zealand citizens and residents are permitted to work in the sex industry. There have been reports of migrant workers who have come to New Zealand with the promise of employment in venues such as restaurants and beauty parlours and then forced to repay the costs of relocation to New Zealand by working in brothels.

### *Other*

Worker exploitation is also occurring in a range of other occupations: the service sector, health and aged care, and retail.



## Empirical findings: “We are exploited”

### *Forms of exploitation*

The types of exploitation experienced by workers, and in particular temporary migrant workers, are experiencing in New Zealand are varied and include:

- Excessive working hours without breaks. One interviewee reported working 18 hour shifts, another 12 hours shifts;
- Non-payment or underpayment of wages with temporary migrants not being paid for hours worked or earning as little as \$4 to \$5 an hour. Temporary migrants are often controlled by threats of being reported to Immigration New Zealand if they complain;
- Deduction of income taxes from wages but the taxes not being paid to the Inland Revenue. Some interviewees had been employed using another person’s IRD numbers;
- Non-payment of holiday pay;
- No formal employment contracts, which allowed employers to take advantage of workers;
- Degrading treatment: workers were subject to degrading language; denied bathroom breaks; subject to verbal and physical abuse or threats thereof; restriction of movement.

### *Construction*

Filipino workers obtained employment in the industry through employment agents in their home countries. Total recruitment fees – charges by their recruitment agent in the Philippines as well as charges by an immigration adviser in New Zealand – was around \$NZ10,000 each. Some of the itemised charges were excessively high, for example, \$US500 for photocopy fees. Many entered into debt bondage in order to pay the recruitment fees and were required by their agents to sign blank cheques before leaving the Philippines. On their arrival in New Zealand, their work experience documents and passports were held by the immigration advisor, until the money owed to the advisor had been paid.

### *Dairy*

Some Filipino dairy farm workers spoke positively about their experience working on New Zealand dairy farms saying “life is easier” than a few years ago. Nevertheless, claims of poor employment practices remain. Some interviewees were critical about their experiences working on dairy farms in New Zealand, in terms of abuse, working conditions, lack of pay or other incentives as well as the treatment of animals. There was concern about the lack of systems in place to monitor and support employees.

### *Horticulture*

Many temporary migrant workers, particularly those on student visas, regularly receive less than the minimum wage with some being paid as little as \$5 an hour. It is common knowledge in the industry that it is easy to get a job if one is willing to accept less than the minimum wage. Temporary migrant workers consider themselves to be viewed as “prey” particularly by some contractors.

### *Hospitality*

A common finding was the differences in the number of hours worked compared to the number of hours the workers is paid for – for example, one interviewee worked 90 hour weeks but was only paid for 45 hours. Some temporary migrants work for as little as \$4 an hour with the promise of residency. Further, some workers are not paid during their trial period. There is no guarantee that at the end of the trial period, the worker will be paid.

### *International education sector*

There are questionable practices by some PTEs in terms of education standards. At one PTE, students could pay money and be marked as attending class or for handing in assignments. A number of international students work in excess of the number of hours permitted under the conditions of their visa. Some will work 40 to 60 hours a week and are paid less than the minimum wage. Prior to coming to New Zealand, prospective students from India and the Philippines were informed that the student visa is a pathway to residency.

### *Prostitution*

It is unlawful for non-New Zealand citizens and residents to provide commercial sex services, and demands by employers for them to do so places them in an extremely vulnerable position. Temporary migrants who were hired to provide cosmetic services and therapeutic health massages have, during the course of their employment, been expected to provide sexual services.

### *Other*

Workers are vulnerable when the hours they work and the pay they receive is dependent on the number of clients. Others who are vulnerable include those who are employed under a triangular relationship wherein they are employed by one employer to work for another commercial entity. For example, contractors servicing food companies, grocery stores and into work streams of similar structure.

Worker exploitation has occurred in the inshore fisheries sector. In March 2015, two Indonesians fishers walked off the company's vessels claiming they each had not received their correct wage entitlements and were owed in the vicinity of \$20,000. On board the vessels they worked 12 hour days, 7 days a week. Over a 10-month period they had each been paid less than \$8,000. According to the terms of their contract they would receive \$16.75 per hour for a minimum of 42 hours. After an investigation by MBIE, months later they received a settlement for unpaid wages. However, this payment was based on the guarantee of 42 hours a week and not necessarily the actual hours worked.

### *Pathways to residency*

Some migrants are being charged fees by other migrants for the opportunity to work. There are networks in some migrant communities whereby migrants will pay their employer for a job. They pay their employer cash and the money is then paid back through formal channels as a wage. In some cases, the employer will make a nominal contribution of \$5 an hour with the cash provided by the employee making up the difference. This system is viewed by some as being normalised. There is also a cash for partner visa scheme whereby migrants will pay New Zealand citizens/residents to be in a partner relationship in order to obtain residency.

### *Vulnerability of migrant workers*

Temporary migrant workers depend on their employer for their work visas and hence some feel they are unable to complain to authorities about their treatment. This is particularly the case for those seeking permanent residency. Some employers threaten workers with dismissal or that they will report them to Immigration New Zealand in order to control them. Some migrants feel disconnected from family support and will turn to their migrant communities for help only to become vulnerable to exploitation within their communities. A number of migrants feel trapped by the lack of job opportunities in New Zealand, particularly in regards to what was promised them by agents in their

home country. Concern was expressed that some young female Indian students may have few options available to them and they turn to prostitution.

## **Discussion and Conclusion**

This research found that non-compliance with employment legislation was common particularly in the horticulture and hospitality industries. Further there were troubling accounts of poor treatment of employees. While many of the empirical findings have focused on the experience of temporary migrants, non-compliance is not just restricted to migrant workers, as New Zealand born citizens are also subject to exploitation. Many temporary migrants tolerate exploitation so they can qualify for permanent residency or because they were coerced and/or deceived by their employer. They may also tolerate the situation because of power imbalances (perceived or actual) or because of limited options available to them. Some pay their own salaries to obtain residency. Worker exploitation is widespread in terms of industry sectors and/or visa categories, with much of it remaining hidden. The findings of this report, which highlight and uncover areas of significant concern, deserve urgent attention. The industries and sectors mentioned here contribute significantly to the New Zealand economy – some might say they are its lifeblood - so findings of migrant worker exploitation in these areas puts New Zealand’s international reputation at risk. The contribution of migrant workers to the New Zealand economy must be valued and their vulnerabilities addressed.



# Recommendations from the Human Trafficking Research Coalition

## Background on the Human Trafficking Research Coalition

In 2013, the Human Trafficking Research Coalition (Coalition) was formed out of concern that there was no evidence-based research regarding human trafficking in New Zealand. Initial members were ECPAT NZ, Hagar NZ, Justice Acts NZ, The Préscha Initiative, Raising Hope and Stand Against Slavery. The Coalition commissioned Dr. Christina Stringer and Dr. Glenn Simmons of the University of Auckland Business School to ascertain the extent of human trafficking in New Zealand because they had previously uncovered slavery on New Zealand's foreign flagged vessels and thus had credibility within this field. Since then, Raising Hope and Justice Acts NZ have concluded operations and Dr. Glenn Simmons withdrew from the research due to other commitments.

While the original purpose of the Coalition was to research the extent of human trafficking in New Zealand, the research took an exploratory journey of its own due to the people who came forward for interview. Consequently, the end result of this research focuses on the issue of worker exploitation, which forms part of the legal definition of human trafficking but does not amount to trafficking in persons per se.

The Coalition acknowledges that issues of labour exploitation and human trafficking are complex, often intertwined and still being defined in New Zealand. s98D of the Crimes Act 1961 regarding Trafficking in Persons was amended in November 2015 and as a result, New Zealand's first human trafficking conviction took place in September 2016.

The Coalition is proud to present empirical research that contributes to New Zealand's understanding of exploitation and human trafficking. The recommendations provided below have been developed independently from the researcher by the Coalition consisting of ECPAT NZ, Hagar NZ, The Préscha Initiative and Stand Against Slavery (see [Appendix 1](#)). The Coalition acknowledges that the recommendations do not cover all issues identified in this report and encourages the New Zealand Government to be proactive in addressing the issues raised.

The Coalition commends this research and recommendations to New Zealand as part of our national and international commitment to ending labour exploitation, human trafficking and slavery.

## Structure of Recommendations

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime ("Trafficking Protocol") establishes a three-tiered strategy to combat human trafficking: the prevention of human trafficking; the prosecution of traffickers and the protection of victims. For the prosecution of human trafficking to be effective, prevention and protection objectives must be fully functioning. The Coalition has made broad recommendations under the headings of Prevention, Protection and Prosecution. A brief preamble of each tier is outlined preceding the recommendations.

## Prevention

Article 9 of Trafficking Protocol outlines that states have an obligation to prevent and combat human trafficking. It further outlines that states should undertake research into the issue of human trafficking, strengthen legislative, educational, social and cultural measures to discourage the exploitation of people and amend or adopt the necessary legislative measures and establish comprehensive policies and programmes to prevent trafficking in persons. Article 10(2) outlines that law enforcement, immigration and other officials should be trained in identifying victims of human trafficking and prosecuting perpetrators of this crime.

- 1. The New Zealand Government should create and resource a specific human trafficking office, in alignment with international best practice, that actively coordinates an interagency government and civil society response to human trafficking and labour exploitation.**

Commentary:

*The priority of combating people trafficking in New Zealand should be held at the very highest level of the New Zealand Government and a designated office that coordinates an inter-agency cross-government response to human trafficking should be implemented to show visibility. This office would have the responsibility of developing tools and guidelines to facilitate human trafficking investigation, coordinating national awareness and anti-trafficking initiatives, being a first port of call for victims who need assistance, coordinating intelligence and developing and maintaining international partnerships. It is imperative that New Zealand's response is jointly shared between government and civil society.*

- 2. The New Zealand Government should actively commit to funding further research into vulnerable demographics identified in this report.**

Commentary:

*This research has confirmed that there are vulnerable ethnic groups and specific demographics with elevated levels of exploitation. The New Zealand Government should commit to further in-depth research into the vulnerable demographics identified in order to understand and address the specific and unique issues they present. Further research suggestions could also include:*

- *Expand the current research to continue to build a better picture of the level of exploitation in New Zealand over the next five years;*
- *A longitudinal study, from 2013 to 2030 of labour practices, migration movement and reports of exploitation including the New Zealand government's response, monitoring and reporting of this issue;*
- *More research into particular visa categories such as working holiday makers, seasonal workers, and post-study work visas which can facilitate the exploitation of people in New Zealand.*

- 3. The New Zealand Government should actively commit to monitoring industrial sectors where labour exploitation is taking place and regularly publish the results of this monitoring in order to measure and quantify this issue.**

Commentary:

*This research has confirmed that specific industry sectors within New Zealand have elevated levels of labour exploitation. The New Zealand Government should actively monitor these sectors, set out industry specific guidelines, collect quantifiable data regarding labour practices and publish this annually highlighting best practice where appropriate.*

- 4. The private sector should establish a fund to complement government resourcing for continued human trafficking research, policy and law formation, education and frontline training, victim identification and victim support. The governance and management of this fund should be managed by a selected group of people from government and civil society in an intentional, collaborative exercise.**

Commentary:

*Combating exploitation in New Zealand requires a collaborative effort from both the public and private sector. As labour exploitation and human trafficking is a human rights offence involving the private sector, it is imperative that the philanthropic and commercial sectors of New Zealand take responsibility in addressing this alongside the New Zealand Government.*

- 5. The New Zealand Government should adapt MOU's with other countries (where recruitment agencies are involved with migrant workers) to include; a standard contract between a migrant worker and the recruitment agency, a standard employment contract, a limit set on recruitment fees, ensuring the worker has at least one day off per week,**

**ensuring no passports are confiscated, requiring all migrant workers to do an in country induction into New Zealand shortly after arrival.**

Commentary:

*The research has clearly revealed that recruiters are playing a role in the New Zealand migrant job scene by at times charging exorbitant fees at high interest rates. This leads to indebtedness and vulnerability to exploitation and potential trafficking. Adapting best practice examples and forming MOU's with partner countries could assist in reducing exploitation, abuse and human trafficking.*

- 6. The New Zealand Government should establish a New Zealand Labour Code/ red flag system for human trafficking and labour exploitation, with relevant staff trained to identify these and take appropriate action. Red flags would include deception over employment terms and conditions, illegal or excessive placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency and passport retention.**

Commentary:

*This code should be aligned with international best practice examples from the International Labour Organisation and take into account industry specific red flags, where possible.*

## Protection

The Preamble of the Trafficking Protocol outlines that state parties have an obligation to protect the human rights of victims of human trafficking. Article 6 of the Trafficking Protocol outlines that states should protect victims by providing them with information and services including information regarding court and administrative proceedings, physical, psychological and social recovery services that include medical care, counselling, a safe place to live and employment. The UN Office of Drugs and Crime, International Framework for Action to Implement the Trafficking in Persons Protocol (2009) ("UNDOC Framework") outlines that states should develop and strengthen victim identification procedures and ensure that these procedures have a human-rights based approach to the protection of victims "regardless of their cooperation with law enforcement." The framework also outlines that victims should be referred to the asylum system where appropriate.

- 7. The New Zealand Government should expedite current efforts to update the New Zealand 'Plan of Action to prevent People Trafficking' and provide a deliverable timeframe for completion of this. The update should take place through active participation with appropriate stakeholders in government and civil society.**

Commentary:

*The New Zealand Plan of Action to Prevent People Trafficking hasn't been updated since 2009. There have been a lot of developments in law and policy since then and a new Plan of Action should reflect this.*

- 8. New Zealand Customs officers, Immigration Officers, Refugee and Protection Officers, Members of the Immigration and Protection Tribunal and all other frontline staff that interact with potential victims of human trafficking should be given mandatory training to assist with victim identification.**

Commentary:

*While it is acknowledged that training of some frontline staff currently takes place, this should be rolled out to all frontline staff to assist with identification of victims of human trafficking and labour exploitation.*

- 9. A curriculum covering basic New Zealand employment and immigration law should be developed for new migrant workers to New Zealand in conjunction with an organisation, such as the Citizens Advice Bureau, who are often front footing migrant work related issues. The curriculum could form part of an induction course where migrant workers are taught**

**about New Zealand law regarding decent work, employment, what to expect in an employment contract, tax requirements and holiday pay, pathways to residency etc.**

Commentary:

*The report identified worker exploitation often took place when workers did not understand their employment or immigration rights in the context of their employment agreement. A baseline understanding of employment and immigration rights would clarify expectations in employment and empower workers to know when they were being exploited or taken advantage of. It would also act as a deterrent to employers exploiting workers.*

Prosecution

Article 5(1) of the Trafficking Protocol states that state parties should adopt legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the definition of human trafficking. The European Court of Human Rights states that “the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of human trafficking.” The UNTOC framework encourages states to strengthen legislation in compliance with the Trafficking Protocol and criminalise crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group. Section V of the Trafficking Protocol states that law enforcement entities should develop intelligence led investigations that do not necessarily rely on the testimony of victims.

- 10. The New Zealand Government should analyse the two human trafficking prosecutions that have recently taken place in New Zealand (one successful, one unsuccessful) and ascertain whether current New Zealand law allows for effective prosecution to take place within the current legal framework.**

Commentary:

*New Zealand has had two human trafficking prosecutions take place under the amended Crimes Act with vastly different outcomes. Comparative analysis of the two decisions would be helpful in ascertaining factors that contributed and hindered successful prosecution, especially as the legal definition of human trafficking is being tested for the first time. The focus of this exercise should be on ensuring that human rights based, victim centric procedures take place in prosecution.*

- 11. The New Zealand Government should review the UK Modern Slavery Act 2015 (and other similar, emerging international law) to ascertain whether New Zealand should be implementing similar legislation that makes it unlawful for companies with slavery in their supply chain to operate in New Zealand.**

Commentary:

*The UK Modern Slavery Act 2015 consolidated slavery and human trafficking offences, set a strong international message that slavery and human trafficking would not be tolerated in the UK and required businesses with an annual turnover of GBP 36 million to report on steps they have taken to ensure slavery and human trafficking are not taking place in their business and supply chain. The New Zealand Government should consider implementing similar legislation which makes it clear that human trafficking and modern slavery attached to any business operations in New Zealand, will not be tolerated.*



## 1. Introduction

In recent years, there has been an increase in media accounts of worker exploitation, particularly among temporary migrant workers, in New Zealand (see for example, Field, 2011a; Field, 2011b; Donnell, 2012a; Donnell, 2012b; Robinson, 2012; Thomson, 2013). Those who are most vulnerable include: workers often from low-income countries; English as a second language migrants; working holiday makers; and international students. It must be noted, however, that exploitative practices in the workplace are not just confined to temporary migrant workers, as New Zealand born citizens can also experience exploitation. Worker exploitation ranges from instances of wage abuse through to forced labour. Some examples of exploitation include Filipino nurses “being forced to sign a form on the tarmac and being bonded for up to two years... tales of exploitation among the Filipino community are rife” (Robinson, 2012); exploitation of student migrant labourers to pick fruit “a game of exploitation” (Laxon, 2012a), and Asian fishing crews forced into slavery (Stringer & Simmons, 2013). Most recently in September 2016, Faroz Ali was charged and convicted of 15 human trafficking charges in the Auckland High Court for enticing Fijians to work in the horticulture industry. He was also convicted of a number of other offenses – aiding and abetting migrant workers to enter or remain in New Zealand illegally - under the Immigration Act 2009. This is the first human trafficking conviction in New Zealand and has been described as the ‘tip of the iceberg’ (Small, September 16, 2016).

The New Zealand government is increasingly concerned about the extent of workplace abuse with significant efforts undertaken by the Labour Inspectorate to identify and crack-down on such practices. Ministry of Business, Innovation and Employment (MBIE) reports (see for example, MBIE, 2014a; Searle, McLeod & Stichbury, 2015; Searle, McLeod & Ellen-Eliza, 2015) provide anecdotal evidence of exploitation. In December 2015, a new task force was established in South Auckland, a place where exploitation has been identified as concentrated. South Auckland is seen as “a hotbed of red flags because of its high numbers of young and migrant workers working in target industries including hospitality, retail and horticulture” (Nichol, 2015). General Manager of the Labour Inspectorate, George Mason (Radio New Zealand, 2015a, December 21), commented:

Our concern is that this kind of conduct [not paying the minimum wage] is fairly widespread. It is very difficult to uncover because, you can understand, people are not coming forward to tell us about it... It affects a particular section of the labour market... there is a significant and fairly contained set of employers who are engaging in these kinds of practices and in particular taking advantage of young migrant workers.

In 2015, the New Zealand Government passed the Immigration Amendment Act (2015) (see [Appendix 2](#)). Under this piece of legislation, which sets out a range of penalties (including a maximum fine of \$NZ100,000 and/ or up to 7 years jail time), exploitative employers who have been granted New Zealand residency within the past 10 years may face deportation (Woodhouse, 2015a). The Immigration Amendment Act (2015) also works to encourage victims of exploitation to come forward to Immigration New Zealand, as it grants immigration officers discretionary powers to ensure that victims may be protected from facing criminal charges or sanctions.

Despite an increasing number of media reports of temporary migrant worker exploitation in New Zealand, and the increasing focus by the New Zealand Government on this matter, according to the International Labour Organization (ILO, 2013) “no independent research has been conducted to

determine the full extent of any trafficking problem” in New Zealand. In 2013, a group of New Zealand-based non-governmental organisations (NGOs) formed the Human Trafficking Research Coalition (“the Coalition”) to commission in depth empirical research into worker exploitation in New Zealand. The Coalition commissioned this exploratory research for the purpose of obtaining empirical insight into the extent that worker exploitation is occurring in New Zealand. Through this research, the Coalition seeks to create a platform to inform policy makers, and in doing this, underpin policy initiatives through recommendations made under the three-tiered strategy to combat human trafficking.

This report is divided into Sections and structured as follows: Section 2 outlines the methods. Section 3, entitled ‘What We Know’, discusses specific cases of worker exploitation identified through a review of media articles and published reports. Section 4 presents the empirical findings of the research. In total, 105 semi-structured interviews were undertaken, the majority with migrant workers. Section 5 provides a discussion and conclusions.

## 2. Methods

As noted in Section 1 the Coalition was interested in understanding the extent to which worker exploitation is occurring in New Zealand. When designing this project, the scope was left broad in terms of industry sectors to avoid any bias towards pre-determination. Although media reports had given us an idea of the industry sectors where exploitation was being reported, we wanted to understand the extent that exploitation may be occurring in other sectors. The research project was designed and initially undertaken with a co-investigator who left the project due to other commitments. The research was conducted under the University of Auckland Ethics Approval Ref 012440.

The research was undertaken over a two-year period from August 2014 to November 2016 and was conducted in two stages:

### Stage One: Desk review of secondary sources

A desk review of secondary sources discussing worker exploitation in New Zealand was undertaken to understand more fully what we know about worker exploitation in New Zealand. In the review, a combination of the following search terms and strings was used: 'New Zealand' 'migrant exploitation' 'worker exploitation' 'slavery', 'trafficking', 'human trafficking', 'labour abuse', 'servitude', 'forced labour' as well as 'migrant sexual exploitation', 'sexual exploitation in labour' and 'abuse'. The search terms were subsequently expanded as needed. Search tools included Google search, Google Scholar, and a range of academic and industry databases accessed through the online library of the University of Auckland. Most of the sources found were media sources, with a limited number of academic articles. Further policy-based research reports, government reports, industry-specific reports and speech notes were accessed and the reference lists of articles and reports were mined for further New Zealand-specific information.

### Stage Two: Semi-structured interviews

The Coalition established a website [www.workerexploitation.co.nz](http://www.workerexploitation.co.nz) which introduced the project and provided translations about the project in 11 different languages. An advertisement was designed inviting those who view themselves as being exploited to contact the researcher. The advertisement cards were initially distributed through the Coalition's networks as well as posted on a number of closed group Facebook pages dedicated to migrant communities in New Zealand as well as personal Facebook pages and other forms of social media. Further, advertisement cards were distributed to Citizens Advice Bureau, Community Law Centres, and to other organisations providing support to workers and in particular migrant workers. Importantly, ongoing media reports on labour exploitation helped to keep a spotlight on the issue, resulting in people making contact with members of the Coalition or the researcher.

Between September 2014 and November 2016, semi-structured interviews were conducted with workers from a range of industry sectors. While the majority of interviews were undertaken with migrant workers, interviews were also undertaken with New Zealand born workers. Additionally, interviews were conducted with key people in NGOs including community advocates. A snowball recruitment strategy (or chain referral method) was adopted to increase the number of participants. Interviewees were asked to talk to others about the project and encourage them to make contact if

they wished to participate. This recruitment method has been used with success in researching vulnerable or hidden populations (Liamputtong, 2007) and in this research, was effective particularly amongst the migrant groups. The term hidden populations refers to “a group of individuals for whom the size and boundaries are unknown, and for whom no sampling frame exists” (Tyldum and Brunovskis, 2005, 18).

In total 105 people were interviewed. Follow-up interviews were undertaken with some of these interviewees. The majority of interviews were carried out in English with a small number conducted in Hindi, Indonesian, Russian and Spanish using interpreters. In some cases the empirical findings pertain to the interviewee’s previous employment as opposed to their current employment.

Reflecting on their experiences was difficult for some interviewees, particularly migrant workers. Some became emotional and shed tears. Overall, a range of emotions were expressed: anger, disappointment, fear, frustration, sadness, and, for some, hope. Some were concerned that their participation in this research would have negative consequences on other migrants. Conversely, one interviewee, on a working holiday visa, was so disgusted by his treatment by one employer that he didn’t want what happened to him to happen to others. Some expressed their frustration that they had sought help from New Zealand government departments but for various reasons, assistance wasn’t provided and they felt there was nowhere for them to turn to. Some felt hope that through their participation in this research they would have a voice. Some potential interviewees – including New Zealand citizens and permanent residents – would not participate in this research because of fear of losing their jobs, or for some in the sex industry, fear of gang retaliation.

The next section provides a summary of what we know about worker exploitation in New Zealand based on secondary sources. This is followed by the findings of this research.

## 3. Worker Exploitation in New Zealand: What Do We Know?

### 3.1 Introduction

A review of published sources from 2005 to 2015 was undertaken to identify the types of worker exploitation occurring in New Zealand. International research highlights that labour exploitation most often occurs in labour intensive industries, including agriculture, construction, manufacturing, and fisheries (Bakirci, 2009). This search identified cases of worker exploitation in key industry sectors. Particularly vulnerable are migrant workers in New Zealand on temporary work visas from low-income source countries working in the primary sector. Examples of exploitation included contractual issues and non-payment of wage entitlements through to forced labour. Two key areas of exploitation were identified in the review: 1) the recruitment stage; and 2) the employment stage itself.

Specific examples of exploitation in six key industry sectors in New Zealand – sectors which emerged from the review<sup>1</sup> are discussed. Background information on the industry sector which has led to an increase in (mostly) migrant workers is provided, followed by specific examples of worker exploitation. The international education sector is also included in this review because of increasing accounts of the vulnerability of international students working in a number of these industry sectors.

### 3.2 Key industry sectors as identified in the review

#### 3.2.1 Construction

##### *Background*

Accounts of worker exploitation in the construction sector have emerged since the Christchurch earthquake rebuild began. In 2011, it was estimated that between 30,000 and 35,000 workers would be needed over a 5 to 10 year period for the reconstruction of Christchurch. Immigration Minister Michael Woodhouse estimated that close to 17,000 would be migrant workers who, with appropriate skills, could apply for a temporary work visa, an essential skills or work to residence (long term skill shortage list) instructions. In highest demand are construction workers, engineers and other tradespeople, with the government fast tracking visa regulations for those working in Christchurch.

##### *Exploitation in the industry*

Accounts have emerged of Filipino workers paying exorbitant recruitment fees (between \$3,000 and \$15,000 each) to immigration agencies in the Philippines in order to obtain work in Christchurch. The promise of employment in Christchurch, and relatively high wages of between \$18 and \$25 an hour, is seen by many to be life-changing, and many have subsequently entered into debt bondage in order to obtain employment. The reality for some is that they will be exploited.

In 2013, Michael Morrah (2013), as part of TV3's (former) 3<sup>rd</sup> Degree series, investigated accounts of oppressive contracts, loss of jobs and the non-payment of wages. He identified workers living in overcrowded living conditions and paying excessive rents – in one such case eight people in a converted garage paid \$155 per week each for accommodation. Further, some Filipino migrants, employed by Tech5, encountered a contract situation wherein the contract they were shown in New Zealand

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<sup>1</sup> This review *should not be seen as all-encompassing* but indicative of the extent of the problems in the various industry sectors.

differed from the contract they had signed in the Philippines. A key difference was the schedule of costs workers were liable for – in the vicinity of \$NZ7,700 to cover airfares, tool kits, insurance etc. If employees failed to complete their contract of three years, they would be required to pay a bond of \$10,729. Paul Brown, Employment Lawyer, referred to this “as an attempt at bondage servitude” (interviewed in Morrah, 2013).

In 2014, MBIE undertook an audit of 40 Christchurch recruitment and construction companies and found 16 to be in breach of employment laws. The audit programme was undertaken due to the increasing number of complaints around employment practices in the rebuilding of Christchurch. It was said that “Many of the breaches relate to incomplete employment agreements, unlawful deductions from wages and insufficient records” (MBIE, 2014b). As Anthony Leighs of Leighs Construction in Christchurch so aptly put it: “A job in New Zealand is almost like considered winning the lotto and as a result it makes them quite open them for exploitation, and I have concerns about that” (Leigh, interviewed in Morrah, 2013).

### 3.2.2 Dairy

#### *Background*

The dairy industry, New Zealand’s largest export earner, is worth 37 percent of New Zealand’s merchandise exports (2013/14 year) (DairyNZ, 2014). The industry has been characterised by a shift from traditional family farms to the consolidation of dairy farms, as well as the conversion of sheep to dairy farms - particularly in the South Island. Increases in herd size coupled with changing demographics and employment patterns from a traditional family labour supply has meant the industry has faced severe labour shortages. Increasingly, the industry is dependent on migrant workers; particularly Filipino, South American, Fijian and Indian workers, on temporary work visas.

In the vicinity of 27,800 workers (New Zealand born workers and temporary migrants alike) are employed on dairy farms throughout the country. According to Jackson (2013, 97) “the contribution of the overseas-born<sup>2</sup> to the dairy farming industry is quite substantial, ranging (in 2006) from 9.0 per cent for each of the two cohorts born 1947–61 and 1957–61, to 12.0 per cent for the cohort born between 1977 and 1981”. In more recent years still there has been a significant increase in foreign workers, and most recently Filipino workers. Table 3.1 shows the increase in temporary work permits for Filipino dairy farm workers for the period from 2006/07 to 2015/16. From the farming years 2010/2011 to 2015/2016, the number of approvals granted for migrant workers seeking employment in the dairy industry totalled 13,460 (out of a total of 14,753 applications). The majority of migrants in the 2015/16 year, were granted work permits for dairy farms in Canterbury (42 percent), Southland (17 percent), Waikato (12 percent), and Otago (9 percent) (Trafford & Tipples, 2012).

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<sup>2</sup> Note: overseas-born is a much wider category than just temporary migrant workers.

**Table 3.1: Temporary work permits granted to Filipino workers**

Farming Year	2006/07	2007/08	2008/09	2009/10	2010/11
<b>Number of permits</b>	278	806	898	861	866
<b>% of all permits granted</b>	32	46	46	48	51
Farming Year	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Number of permits</b>	979	1055	1359	1746	728
<b>% of all permits granted</b>	52	49	49	52	47

Source: Trafford & Tipples (2012) for years 2006/07 to 2010/11; Compiled from Immigration NZ for 2011/12 to 2015/16 farming years.

Former farm owner and farm management consultant Charles Nimmo, interviewed by Amanda Cropp (2010, 13) for an article published in *Your Weekend*, stated that migrants were a popular source of labour in the dairy industry because of their work ethic: “Unlike Kiwis, Filipinos understand the chain of command and in the Philippines the boss is the boss. They respect authority and that’s a breath of fresh air if you’re a manager and want to get things done. But of course that’s something that could be abused as well; it’s a double-edged sword”.

### **Exploitation in the industry**

There have been contrasting reports of worker exploitation in the dairy industry. Whilst some employers help their new employees settle in, others have been known to pay below minimum wage and provide substandard accommodation and working conditions. On some farms, Filipino dairy workers were required to work from 3 am to 8 or 9 pm (Fulton, 2012). Under New Zealand labour law, migrants working in the dairy sector must receive employment contracts, be paid at least the minimum wage and be given wet weather gear (Stone, 2014).

Cropp (2010) reported that some migrant workers were being treated like ‘muck’. They were made to purchase their own farm bikes (charged \$100 a week by the farmer) and charged for wet weather gear. Further, Cropp (2010, 14) found evidence of wage exploitation between workers completing the same job:

new Ashburton migrants told of employment contracts that included a clause expressly forbidding workers from discussing their employment conditions with other staff, and once Bruzo’s group started comparing pay rates they discovered members earning up to \$5000 less than others doing the same job.

Sam Bruzo arrived in New Zealand in 2006 from the Philippines to find a number of fellow Filipinos were poorly treated on dairy farms as well as being exploited by recruiters and ‘arrogant’ employers (Cropp, 2010). Bruzo subsequently founded Filipino Dairy Workers of New Zealand, a workers’ rights organisation (Fulton, 2012). Other support networks such as the North Island Filipino Farmers Association (NIFFA) have also been formed.

In order for their applications to be processed, Filipino workers were charged between \$NZ12,000 and \$15,000. Once they arrived in New Zealand they had to pay a further \$US2,000-\$2,500, and for some an additional \$350-\$500 to settle their families. The amount workers were being charged was significantly reduced following inquiries by the New Zealand government and the Philippine Embassy (Fulton, 2012). Workers often took out high-interest loans (up to 8 percent a month), organised

through Philippine-based agents, to pay the fees, whilst other recruiters set up direct debt payments with the New Zealand employer (Cropp, 2010; Fulton, 2012). It was not uncommon for workers to expect to work on Farm A, only to end up working on Farm B being paid less than the contract they had signed while in the Philippines (Cropp, 2010). Further, recruiters gained by transferring clients from one farm to another and charging a fee each time (Fulton, 2012). A licensed, Christchurch-based business immigration advisor reportedly held clients' passports and important personal documents (e.g. birth certificates) until the entry fee was paid.

Other accounts suggest that treatment towards Filipino migrants in the dairy industry - while revealing in terms of how haphazard some of the employee safety practices are – was not actually 'exploitative' or 'abusive', but was rather more illustrative of poor employment practices generally (Trafford & Tipples, 2012). Further, in a number of cases, Filipino workers came under-prepared to work on dairy farms, and along with different farmer-migrant expectations this proved problematic. Further, cultural differences - particularly the kiwi tendency to use obscene language, and in particular the f-word (Cropp, 2010) - played a part in the break-down of employer-employee relationships. Of course, it goes without saying, that not all Filipino dairy workers are poorly treated in New Zealand.

In 2011, journalist Nicola Boyes reported on the abuse of Fijian workers in the Waikato. They had each paid up to \$12,000 to a New Zealand recruitment company, Til Da Cows Come Home, to obtain work visas. Upon arrival they were required to complete a 12 week training programme with the promise of full-time jobs upon completion of the programme. Further their visa applications were forged and the workers received little or no wages while completing the training programme. Starving, the Fijians began to forage for maize in order to feed themselves. Michael Molan, director of Til Da Cows Come Home and a second recruitment company, Cow Tech, pled guilty to one charge of forgery and to another charge of misleading an immigration officer (Boyes, 2011). Molan was sentenced to 10 months home detention.

### *Investigations by Immigration New Zealand*

In February 2015, concerns were raised by Immigration New Zealand about work visa applications by Filipino workers for South Island jobs (3News, 2015a). Immigration New Zealand began an investigation in March, focusing on a female dual Filipino/New Zealand national. Lorraine Jayme was charged in October 2015 under the Crimes Act 1961 for fraud involving multiple work applications by Filipinos looking for work in the New Zealand dairy industry (Radio New Zealand, 2015b; 3News, 2015a; Woodhouse, 2015b). It is alleged Jayme received thousands of dollars in exchange for the fraudulent applications (Gower, 2015). It was also claimed that she had used New Zealand employers' details without their knowledge to secure work visas for the Filipino nationals (3News, 2015a).

In 2015, Immigration New Zealand commenced an investigation into the past year's visa applications of Filipino nationals looking for work in the New Zealand dairy industry (Radio New Zealand, 2015b). The investigation uncovered widespread concerns regarding the number of Filipinos who may have provided false information on their work visa applications, with estimates that up to 1,200 Filipino farm workers may be residing in the country illegally (Gower, 2015; Woodhouse, 2015b). Minister Woodhouse (2015b) commented:

Any fraud of our immigration system is a very serious matter and I am extremely concerned about the potential scale of the alleged fraud in this case ... It is absolutely imperative that the integrity of the immigration system is maintained and that visa applicants who have lied on



their application forms are not rewarded...Immigration officials have acted decisively to deal with this situation by introducing extra safeguards to ensure that all documents submitted in support of new and existing visa applications for work in the dairy industry are genuine.

Immigration New Zealand's investigation was focused on targeting those who benefited from the fraud, rather than the workers themselves (Radio New Zealand, 2015c). Nevertheless, hundreds of Filipinos faced the prospect of being sent home, with 250 visa applications put on hold in October 2015, and new applications from Filipinos delayed as a result of extra verification requirements (Gower, 2015; Tan, 2015a; Radio New Zealand, 2015c). Cristobal Espinosa was one such worker; she herself claimed that the reason the migrant workers were not able to provide factual work experience was because they had no documentation. Espinosa commented "In the Philippines you can be working in a farm all your life, like me, and still not have any documentation as proof" and "We are hired as contractors and are paid in cash. It is normal to get money in an envelope, so how can we show that we have been working at the farm?" (cited in Tan, 2015a).

Filipino migrant workers are considered crucial to both the dairy industry in Southland and the Christchurch rebuild (Marbeck, 2015; Tan, 2015a). On 3 November 2015, Minister Woodhouse (2015c) announced new rules for those who provided incorrect information pertaining to their qualifications and experience on their original work visa applications. Under the new rules, "applicants who admit to previously providing incorrect information but who are compliant in all other respects will be eligible to be granted a further work visa, as long as they meet all other Essential Skills requirements". Minister Woodhouse (2015c) stated that this approach acknowledged the significant contribution these workers made to their employers and their communities and would "minimise the disruption that would have been caused by a significant number of workers having their visas declined". However, the workers were not guaranteed that their new applications will be successful and "they may need to meet a labour market test to check whether there are any New Zealanders available to do their job" (Woodhouse, 2015c).

Returning to worker exploitation generally in the industry, in 2014 MBIE announced that 31 of 44 dairy farms they had visited (December 2013 – early April 2014) were in "breach of minimum employment standards" (MBIE 2014c). This finding is of concern.

### **3.2.3 Fishing: foreign charter vessel sector**

#### **Background**

Foreign charter vessels (FCVs) began fishing in New Zealand's exclusive economic zone (EEZ) in the 1970s. At the peak in the 1996/1997 fishing year, there were in the vicinity of 160 FCVs operating and by 2010/2011 fishing year the number had dropped to 27 vessels crewed by approximately 1,500 foreign migrant crew. Despite this drop in numbers, FCVs remained significant operators in the industry, catching in the vicinity of 51 percent of major fish species; almost all of the fish caught in the EEZ is exported (Ministry of Agriculture & Forestry<sup>3</sup>, 2012). For over three decades the exploitation of foreign fishing crew has been a feature of the New Zealand deep sea fishing industry (Simmons & Stringer, 2014). From the 1990s, debates have raged in Parliament about slave-like conditions aboard these vessels: "What has happened is that the New Zealand fishing industry is being developed on the

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<sup>3</sup> After 2012, the Ministry of Agriculture & Forestry (MAF) became part of the Ministry of Primary Industries (MPI). However, this inquiry was carried out and published by the formerly known MAF.

backs of foreign Third World exploited labour. ... We have, had accusations of people being beaten and whipped ... many of them have not been paid” (Kelly, 1996). Of particular concern were the FCVs operated by South Korean officers and crewed mostly by Indonesian migrant labourers, although Filipinos, Chinese and Burmese have also been employed.

### **Exploitation in the industry**

In August 2010, the South Korean vessel, the *Oyang 70*, sunk with a loss of six lives. Survivors described labour and human rights abuses aboard this vessel (Stringer, Simmons, Coulston, & Whittaker, 2014). Problems aboard some South Korean FCVs were further brought to light nine months later when Indonesian crew from the *Shin Ji* vessel refused to work, claiming the non-payment of wages (Bond 2011; Field, 2011b; Field, 2011c; Simmons & Stringer, 2014). They were followed a month later by crew from the *Oyang 75* vessel, who were protesting physical, mental and sexual abuse along with the non-payment of wages (Van Beynen, 2011). Over the next 20 months, Indonesian crew from other South Korean vessels also walked off citing labour and human rights abuses or withheld their labour (Stringer et al. 2014; Van Beynen, 2011).

Stringer et al. (2014) identified that the Indonesian fishers were deceived at the recruitment stage and were subject to debt bondage. Crew were employed under three different contracts, each designed to meet the regulatory requirements of the respective countries: Indonesia, New Zealand and South Korea. In practice, the crew were employed subject to the Indonesian contract and were paid far less than their entitlements as outlined in the New Zealand contract (Stringer, Whittaker, & Simmons, 2016). Once on board the vessel, they were victims of labour and human rights abuses. Workers lived in sub-standard accommodation with a lack of adequate (both quality and quantity) food and water supplies. Inhumane working conditions included shifts of 16 to 20 hours, along with repeated incidents of verbal and physical abuse. Furthermore, some crew members were also subjected to repeated sexual abuse including rape:

Suddenly [officer B] came and tried to kiss me. I tried to stop his body pushing up against mine to the point that I fell. ... [Officer B] then pushed his penis on my body just like he was having sexual intercourse. It didn't stop here. When I tried standing up, [officer B] hugged me quickly from behind and again pushing his penis onto my bottom. I couldn't stand it and I felt repulsed and disgusted ... and he kept pushing it onto me (cited in Stringer et al. 2016).

In 2011, the spotlight shone on the extent of the abuses – by media, by academic research, by trade unions and activists – meant the abuses could no longer be ignored. The New Zealand government launched a Ministerial Inquiry and in 2014, the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill was passed in Parliament. The outcome of this bill is that, as of 1 May 2016, all foreign vessels must be reflagged as New Zealand vessels.

### **3.2.4 Horticulture and viticulture**

#### **Background**

The New Zealand horticulture and viticulture sector is a significant employer of temporary migrants. Growth in the industry has meant that demand for labour is continually increasing, with some areas of the country still experiencing significant seasonal labour shortages. Horticulture is New Zealand's 6<sup>th</sup> largest export industry. In 2013, total merchandise exports worth over \$3.6 billion represented 8 percent of New Zealand's overall merchandise exports (Aitken & Hewett, 2013). The top export

products were wine, kiwifruit and apples. Traditionally the industry was based on family-owned and operated units with family labour supplemented by seasonal labour. However, significant growth in the industry, coupled with changing demographics has since led to labour shortages. In the early- to mid-2000s the sector was beset by severe shortages, leading to an increase in the employment of illegal workers, with an estimated “17,000 illegal workers across the H/V [horticulture/viticulture] industries as a whole” (Bedford, 2013).

The government considered a range of options to access sufficient labour for the industry, including the working holiday scheme, variations of conditions and an approval in principle (AIP) scheme introduced for the 2004/05 season (see [Appendix 3](#) for a discussion on different visa categories). In 2007, the recognised seasonal employer (RSE) scheme was introduced; which allowed for the entry of 9,000 Pacific Island workers to work in the horticulture and viticulture industries for up to seven months within an eleven month period - the exception being workers from Kiribati and Tuvalu who were permitted to work for up to nine months due to the cost of travel. Those entering New Zealand under the working holiday scheme were also eligible to work in the industry. In the 2013/2014 year, the majority of RSE workers were from Vanuatu (39 percent) followed by Tonga (19 percent). Seventeen percent of the workers under the RSE scheme were recruited from outside of the Pacific Islands.

### *Exploitation in the industry*

While the seasonal worker legislation is seen by some to have negated most of the incentives to engage in illegal labour practices, this is not necessarily the case. According to Bedford (2013) the RSE scheme represents only a small percentage of horticulture and viticulture operations as most growers, and in particular small growing operations, access casual labour through other sources. In November 2014 there were 110 RSE approved employers – a mix of growers and contractors - who had agreed to make their contact details public. Margins are slim in the horticulture and viticulture industry, with growers and producers under constant pressure from retailers to reduce prices. Because of the seasonal nature of the industry, growers and pack houses contract to labour intermediaries in order to source needed workers.

In recent years, there have been a number of media reports highlighting the seriousness of exploitation in the industry, and particularly the questionable practices of some labour contractors. Courtney (2008) in a *North & South* article reported:

It’s common knowledge that many Kiwi growers have turned a blind eye to the activities of mainly Indian and Asian gang-masters who set themselves up as labour contractors and, as one industry insider puts it, “drive around in white vans with blacked-out windows shoving people into orchards and making a lot of money for themselves... We’ve been beholden to those guys,” says a Bay of Plenty grower. “How were we to get our work done if we didn’t have anyone else to do it?”

Courtney (2008) goes onto report:

Networks of such criminals – many of them from India and Asia – have figured cunning ways to get around our immigration rules and lax regulations... “These guys are very clever,” P [Courtney’s informant] says. “They come into New Zealand and see us as open slather. It’s rape and pillage. And it’s widespread.” Often the illegal workers enter New Zealand on visitors’ visas, having already lined up -- and frequently paid hefty “finders’ fees” for -- jobs with local gangmasters, who have links to mafias overseas. “It’s people-trafficking,” says P.

Of the growers, P stated “They just want the work done as cheaply as possible”.

In 2006, the Department of Labour undertook an investigation into the abuse of migrant workers employed in orchards in Hawkes Bay. At the centre of the investigation was Deny Setiadi, the New Zealand based contact for an Indonesian organisation, who recruited workers through deceptive means. Each worker paid \$8,000 to obtain employment with the workers believing they were legally entitled to work in New Zealand. Workers were provided with false passports and during the employment stage were exploited in terms of hours worked – 12 hour days, 7 days a week - and wages paid. Further, they were housed in substandard living accommodation (Coppedge, 2006). Setiadi, labelled “an integral part of a people smuggling racket” was charged under the Immigration Act 1987 and the Crimes Act 1961 with immigration and migrant smuggling offenses (Coppedge 2006, 34). Furthermore, the victims themselves were jailed for “offenses relating to false photo substituted passports” (Glazebrook, 2010). However, in the keynote speech given at the annual general meeting of the New Zealand Women Judges Association, Justice Susan Glazebrook (2010) stated that the victims should have been viewed as “victims of trafficking”. Further, according to Harré (2014) the “facts also appear to support a charge of human trafficking, and evidence led by the prosecution clearly supported this claim”.

This was not an isolated case of exploitation and deception wherein the evidence presented pertained to that of human trafficking and instead the defendants were charged with lesser crimes<sup>4</sup>. Vietnamese and Indonesian fishermen, who deserted a South Korean foreign charter vessel because of labour and human rights abuses, were aided and abetted by a labour supply company, Contract Labour Services, to work illegally in the horticulture industry. The fishermen had each paid money to the defendants for the job. At its peak, Contract Labour Services, had an illegal workforce - in the vicinity of 500 workers - who were over-stayers; crew who had deserted foreign fishing vessels or those working in breach of visas (Glazebrook, 2010; Sharpe, 2010). Contract Labour Services evaded paying tax (though tax was deducted from employee wages), GST and ACC, and were hence able to undercut legal contractors. The company directors, who used false sub-contractors and paid workers in cash, were prosecuted for immigration offenses. “The illegal workers, by virtue of being paid usually in cash and without payslips and being unable to complain due to their status, were vulnerable to exploitation” (Court document cited in Tan (2010)). Four men were sentenced for “conspiring to employ illegal labourers” (Sharpe, 2010). Harré (2014) however, was of the opinion that the judge showed a “disregard for the apparent seriousness of the offending. Judge Adeane took the view that the men were simply filling a niche in the market for cheap labour”. Problems in the horticulture and viticulture industries were seen to be widespread, with a Department of Labour investigation identifying that “hundreds of workers [were] paid a pittance to pick apples, grapes, and vegetables” (Sharpe, 2010).

In 2007, Immigration Minister, David Cunliffe, undertook an inquiry into claims of exploitation by eight Thai nationals working in the horticulture sector. They each paid up to \$14,000 to recruitment agents in Thailand to obtain legal work in New Zealand. The workers complained of excessive working hours (60 to 70 hour weeks), of not receiving their minimum wage entitlement and of coercion. The weekly wage for one couple was \$200 a week after tax and rent had been deducted; the couple was facing pressure from debt agencies in Thailand as they were unable to service the debts they had borrowed. The workers further claimed they were undeniably dismissed by their employer, Havenleigh Global

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<sup>4</sup> see *R v Thu Huynh and Ut Danh* held in Napier’s District Court CRI-2007-020-1460 (12 September 2007).

Services Ltd. Their temporary work visas were revoked by Immigration New Zealand and the matter taken to the Employment Relations Authority, who was unable to rule (Martin, 2007).

Specific to the viticulture sector, Beer and Lewis (2006, 99) made reference in their article to “stories of human trafficking, vineyard workers living under bridges, exploitative employment practices and violent coercion”. However, in their study of working conditions in Marlborough vineyards, while recognising there were some problems, the authors found little to support the excessive narrative. Undertaking 35 interviews and field observations over a three-week period, they found “only a handful reported being victims of the stories in circulation about illegal employment practices”.

More recently, from 2012 onwards, there have been claims that students are being exploited while working in orchards in the Bay of Plenty. International students are permitted to work for 20 hours a week. However, there have been claims that students are working 55 hour weeks and being paid \$8 an hour – well below the minimum wage of \$14.25 an hour (Laxton, 2012b). In 2015, a Tauranga based labour contractor was charged under the Immigration Act 2009 with 12 charges (out of a total of 32 charges) pertaining to the exploitation of migrant workers. Jafar Kurisi employed workers who were not legally entitled to work and did not pay them their correct wage entitlements (Immigration New Zealand, 2015).

In recent months, there have been two human trafficking trials in New Zealand - both cases involved the exploitation of migrant workers in the horticulture industry. In the first trial, three males - Kulwant Singh, Jaswinder Singh Sangha and Satnam Singh - were charged with deceiving workers in India with the promise of employment in New Zealand. The workers each paid between \$30,000 to \$40,000 for a two-year work visa and were promised permanent residency. At the departure airport in India they were informed that their visas were only for 7 months and further on arrival in New Zealand were told there was no work available. Some did obtain work but were not paid or alternatively they worked for rent and groceries. In December 2015, the three were found not guilty of the lead charge of human trafficking under the Crimes Act but Kulwant Singh and Jaswinder Singh Sangha were found guilty of making false statements to Immigration New Zealand.

In the second trial Faroz Ali was charged with enticing Fijian workers to New Zealand. The workers each paid around \$4,000 to obtain work in New Zealand. They arrived on a one month visitor visa with the promise of a work visa following their arrival. They were told they would earn \$900 per week picking fruit. Instead one worker received \$25 for three weeks work, while another at the end of three weeks was told he owed the company for rent, food and petrol. In sum, the workers each paid thousands to be exploited and were threatened with deportation if they complained about working conditions. In September 2016, Ali was charged and convicted of 15 counts of human trafficking as well as a number of other offenses under the Immigration Act 2009.

### 3.2.5 Hospitality

#### *Background*

The hospitality sector is another significant employer of temporary migrant workers, and in particular working holiday makers and international students. According to Mike Treen (2013) of Unite Union:

The fast food industry has come to depend on migrant workers. Forty to fifty percent of all workers in the industry are on temporary visas – i.e., student visas or fixed-term work visas.

Management in the industry is overwhelmingly migrant. The companies have used this fact to squeeze wages for managers such that that these have declined by 30-50% in real terms over recent decades.

In May 2015, Unite Union was successful in securing hours by getting rid of zero hour contracts in all the major fast food chains in New Zealand. This agreement impacted tens of thousands of workers (Treen, 2013).

### *Exploitation in the industry*

There have been a number of disturbing accounts of exploitation, including cases of forced labour, in the food and beverage sector in particular. Four examples are highlighted below:

In 2013, workers were paid \$4 an hour in an Auckland restaurant chain, well below the legal minimum wage. They “alleged they did not get holiday pay or sick leave, were required to pay between \$10,000 and \$20,000 to secure their jobs while obtaining residence, and were kept in overcrowded accommodation for which money was deducted from their wages” (Jones, 2013). This case was investigated by labour Inspectors, who filed a claim with the Employment Relations Authority after the owners refused to engage with them. While the restaurant chain was not named, there was the suggestion that it was the Masala Indian Restaurant chain. In April 2015, CK Hospitality Limited<sup>5</sup>, trading as Masala Indian Restaurant, was fined \$25,000 by the Employment Relations Authority for worker exploitation and failing to provide employment records to MBIE. The company failed to pay one worker his legal minimum wage entitlement and holiday pay and a second worker his holiday pay (Cowlshaw, 2015). This was not the first time the restaurant chain had come to the attention of the Employment Relations Authority – within the previous five months Masala had been fined a total of \$76,000 for failing to provide employment records to MBIE (\$66,000 November 2014) and for exploiting migrant workers (\$10,000 March 2015) (Cowlshaw, 2015). In 2013, reporters Tony Wall and Amy Mass reported that “an unknown number of workers allege they were not paid leave entitlements, lived in overcrowded accommodation for which their wages were deducted and received as little as \$265 a week in the hand for up to 70 hours – or \$4 an hour” (Wall & Mass, 2013). In October 2015, a director of Masala and the manager of the Buckland Beach restaurant were convicted of exploitation of four employees, with one of the employees paid \$40 for seven weeks work. The director was sentenced to 11 months home detention and 220 hours of community service, and the manager sentenced to 4.5 months home detention (3 News, 2015b). In February 2016, the High Court following an application by the New Zealand Police, froze the assets of companies linked to the Masala Restaurant Chain. The assets have an estimated value of \$34 million and were frozen due to tax evasion, immigration fraud and worker exploitation.

A disturbing case of worker exploitation occurred in Christchurch. The chef at Little Saigon, a Vietnamese restaurant, worked for five years without being paid. In 2014, Vu was awarded \$174,356 by the Employment Relations Authority for unpaid wages, compensation and penalties. His brother, Bao was awarded \$14,386. Their mother in Vietnam owed her cousin, who was also their employer, Ms Ta, around \$12,000. Vu began working for Ms Ta in 2009 in order to pay off his mother’s debt and Bao began working at the restaurant in late 2012. On average they worked 66.5 hours a week, 7 days a week. According to journalist Sophie Ryan (2014):

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<sup>5</sup> Two companies – Goldlink Enterprises and CK Hospitality – behind the Masala chain are in liquidation.

This inequality is greatly increased for workers such as Vu and Bao Ho Van Nguyen, who were very vulnerable to exploitation being able to work only under work permits specifically allowing them to work for Ms Ta, who do not speak English, who were likely unaware of their rights as employees and who were bound by complex personal and family loyalty to Ms Ta despite her illegal practices.

Most recently, Taste of Egypt Ltd – a Richmond takeaway restaurant – was ordered by the Employment Relations Authority to pay \$92,000 in back wages, penalties and other costs for failing to pay two workers their legal entitlements. Rohit Sharma and Gurpreet Singh were being paid for 30 hours per week but in actuality they were working 70 hours per week. They were coerced by the owners into signing statements that they were “happy with everything”. Further their employers monitored their performance at work through the use of security cameras which they accessed from home (*Maxwell (Labour Inspector) v Taste of Egypt Ltd*, 2016).

A TV3, *3<sup>rd</sup> Degree*, investigation into New Zealand’s vulnerable workers identified two Filipino workers who were working up to 70 hours a week for \$250 a week (\$3.57 an hour). Further, their passports were confiscated and they were required to inform their employer of their movements outside their working hours. In the documentary, Dennis Maga of First Union tellingly stated “I don't actually call this exploitation; I think this is slavery” (Morrah, 2015).

### 3.2.6 International education sector

#### *Background*

The international student industry ranks as New Zealand’s fifth largest export earner, worth approximately \$NZ3 billion per annum. The government aspires to grow the market to \$5 billion by 2025. International students are subject to regulations and conditions laid out by Immigration New Zealand. They can attend a range of institutions, including universities, polytechnics and private training establishments (PTEs), all of which are registered by the New Zealand Qualification Authority (NZQA). MBIE reports that “Just over half (55 per cent) of all students came from the top three source countries of China, India and South Korea” (MBIE, 2015). A recent article in the *New Zealand Herald* (2015b) stated that: “while Chinese students are predominantly heading to universities and polytechnics, Indian students are overwhelmingly enrolling in sub-degree independent training provider and PTE courses”.

Highlighting this trend, Mava Moayyed, from *The Wireless*, reported that in 2015 it was estimated that “there were more than 29,000 Indian students enrolled to study here [New Zealand]. That’s a 150 percent increase since 2010” (Moayyed, 2016a). To explain this increase in Indian students, a number of reports have discussed the connection with the relaxation of English language standards by the NZQA in 2013, whereby NZQA implemented a change allowing non-university tertiary education providers, such as PTEs, to carry out their own independent English language tests, instead of independent and standardized internationally recognized tests such as the International English Language Testing System (IELTS) (Moayyed, 2016a). Smellie (2016), of *The Listener*, highlighted the popularity of PTEs amongst Indian students following this relaxation of rules, reporting that Education New Zealand (ENZ) figures indicate: “53,660 of the 110,198 international students studying here in 2014 were enrolled at PTEs, with a big spike in enrolments in sub-degree Level 5 to 7 courses. Of the 13,091 increase in enrolments from all countries last year (2015), 62% were from India. That surge became a flood in 2015”.

Navneet Singh, a licensed education agent and co-founder of Go-Global Education, in an interview with Moayyed, identified that the changes by NZQA “led to a sharp increase of fraudulent activity, both by those in India and PTEs in New Zealand looking to make cash off easy-to-exploit entry requirements” (Moayyed, 2016a). Further, “before anybody could understand what happened, it went haywire. The primary responsibility [for English testing] was given to the PTEs...and who made the biggest money? The PTEs” (Singh cited in Moayyed 2016a). Moayyed (2016a) cited Licensed Immigration Adviser Munish Sekhri as stating: “I personally was approached by many PTEs who said ‘hey look, we’ll give you the login details for our English testing portal so you or your staff can sit [the test] on behalf of the students and we’ll offer an admission letter instantly’.” It is also noted that education agents in India often work closely with PTEs, from which they can receive much higher commission rates compared to rates from universities, institutes of technology and polytechnics (Moayyed, 2016a).

In 2015, the New Zealand Government re-introduced rules, whereby “education providers are no longer able to use internal testing or evidence of prior primary and secondary school study in English to assess proficiency for students from countries with a student visa decline rate of more than 20 per cent, as measured by Immigration New Zealand” (Immigration New Zealand, 2016a).

Morrah (2016) of *Newshub*, recognizes that agents don’t necessarily have to be qualified or licensed, and links this relaxed approach to regulation by Immigration New Zealand to increasingly exploitative behavior in the market. In response to this view, Minister of Immigration Michael Woodhouse, takes the position that, “It’s very, very difficult to monitor compliance [of agents] offshore, so on balance it’s been decided we don’t register them. But we are reviewing that Act now and this is part of the review” (Woodhouse, cited in Morrah, 2016). The government recently enhanced its efforts to crack down on fraudulent and exploitative behavior to ensure the integrity of the market is upheld. In an interview, Minister Joyce stated that: “ultimately, the responsibility is with the student. They have to make a declaration that all the information that they supplied to New Zealand is correct” (Joyce, cited in *National Business Review*, 2016). Immigration New Zealand is working to strengthen the market by ensuring a high percentage of fraudulent student applications are declined, and NZQA has also strengthened regulations to ensure robust and transparent operations amongst education providers. A new, strengthened Code of Practice for international students was introduced and came into effect July 2016. In addition to implementing more vigilant English language requirements for students, NZQA have also been investigating education providers who pose a risk to the reputation of New Zealand’s education sector by delivering sub-standard education programmes and qualifications.

### **Exploitation in the industry**

A range of media reports have highlighted exploitation of international students, including accounts of misleading and fraudulent agents, exploitative employers in the workplace, lack of overall support, and false hopes of a pathway to residency. Predominantly the reports focus on the experience of Indian students.

Students commonly use agents to advise them on immigration issues seeking assistance to come to New Zealand (Moayyed, 2016a; 2016b). As there are increasing accounts of misleading behavior taking place in the Indian market, students may find themselves enrolled with sub-standard education providers once they reach New Zealand. Moayyed (2016a) reported that there are “few rules and regulations that govern who can be an agent, what they can say, or how much they can get paid”



which has led to “agents giving misinformation to potential students, as well as charging high fees and falsifying documents” (Moayyed, 2016a).

Students and their families are going into debt to finance the student’s education in New Zealand. Due to this resulting financial burden, many students have found themselves in vulnerable situations. Often students are unable to gain a well-paying job in New Zealand, and with visa regulations limiting the hours of legal work (see Appendix 4), a spiral of problems for the individual, may ensue. They are thus vulnerable to exploitative employers and sub-standard working conditions (Moayyed, 2016c). In a Radio New Zealand Voices (2016) report, District Ethnic Services Coordinator Sergeant Gurpreet Arora from the New Zealand Police stated that:

The journey starts from India when they apply for their student visas. Many of the families take loans back home. It is expected from those students that once they come here they will repay their loans. So once they come here, if they are not able to find a job and they’re desperate, they resort to other means; committing crime, prostitution.

Gerritsen (2016) of Radio New Zealand found “many students, who borrow heavily to pursue international education in New Zealand, turn to prostitution when they are unable to find jobs to support them”. In an interview with Catherine Healy, the New Zealand Prostitutes' Collective national coordinator, Gerritsen (2016) reports that “students from various countries were working in New Zealand's sex industry, but there are not many of them”, and that “the women were vulnerable because immigration law forbids foreign students from working in the industry”.

Several media reports have also highlighted an increasing trend in international students who travel to New Zealand with high expectations of gaining permanent residency. These expectations are often shaped by misinformation provided by the agent or PTE. In response to this issue, Minister Woodhouse, stated that he recognizes “there are some expectations from students that they will be able to stay and gain residence. Overwhelmingly though it’s important to keep in mind that they will not gain residence” (Woodhouse, cited in TVNZ One News, 2016). Additionally, figures presented in MBIE’s (2015) *Migration Trends and Outlook 2014/15* report highlights the reality of the situation, stating that “By 30 June 2015, 17 per cent of students had transitioned to residence five years after their first student visa”, indicating that only “one in six international students gained residence” (MBIE, 2015, ii). These figures are in stark contrast to the reports of expectations set by an increasing number of agents and education providers.

While news media sources have predominantly focused on the experience of Indian students, and significant issues occurring in the Indian market. It is, however, important to note that the issue is not contained just to Indian students. Dennis Maga of the Union Network of Migrants (UNEMIG) coordinator, highlights the extent of “education trafficking” in New Zealand, by stating that “some unlicensed agents in South Asia and the Philippines claimed any tertiary course could guarantee work and permanent residency” (Weekes, 2016). Personal accounts of exploitation were also identified in non-traditional media platforms, such as blogs.

### **3.2.7 Prostitution**

#### **Background**

Under the Immigration Act 2009, those holding temporary entry class visas are not allowed to work in the sex industry in New Zealand. Recently, 42 foreign nationals were identified as working illegally in

the industry (nationals of: China 18; Hong Kong 14; Taiwan 3; Malaysia, Thailand, Fiji, France, South Korea, Japan, Brazil 1 each; visa status: visitor 25; student 8; work 7; over-stayers 2) (Tan, 2015b; 2015c)<sup>6</sup>.

The desk review identified specific cases whereby victims were either sexually abused in their place of employment by their employer or, whereupon entry into New Zealand, the job promised to the migrant turned out to be false, and the migrant was instead forced into prostitution to repay any agents costs associated with relocating to New Zealand. In cases where the job promised is replaced with forced prostitution, temporary migrants may also face exploitation in the form of rights abuse, including not being remunerated and being forced to work for an illegal duration of time. Specific examples of sexual exploitation of temporary migrant workers are outlined and a discussion surrounding the extent and form of exploitation provided.

### *Exploitation in the industry*

An investigation into sexual exploitation and forced prostitution of migrant workers revealed an incident involving a temporary migrant worker lured to New Zealand with a cash payment and paid airfares (Tan, 2011). However, on arrival in New Zealand, the migrant was forced to repay the costs associated with her relocation to New Zealand by working at a brothel. Until these costs were repaid, she did not receive any remuneration. She had her passport confiscated by the brothel owner to prevent her from leaving without paying back the 'debt' she owed. Illegally working on a visitor's visa in the same brothel, another migrant was forced into working 16-hour shifts with few breaks and also had her passport confiscated. Of concern here is the nature in which migrants are encouraged to work in New Zealand, as they are deceived into thinking they will be undertaking employment in venues such as restaurants and beauty parlours. However, as evident in this example, promised employment often did not eventuate as planned.

In 2011, a migrant in search of employment was abused by an immigration advisor who offered her work as a servant. She was not paid and was expected to undertake inappropriate tasks, including offering personal massages (Manning, 2013). The migrant worker was offered the opportunity to improve her immigration status if she engaged in sexual intercourse with the immigration advisor who was personally employing her, to which she declined. As a result, her employer informed authorities of her illegal residence within New Zealand, which resulted in her deportation (Manning, 2013).

Yet another instance in which promised employment in New Zealand, eventuated into forced prostitution, is the account of a group of Thai nationals who were told they could obtain restaurant work (Glazebrook, 2010). A \$10,000 fee was paid with a high interest rate owing and, similar to other cases, upon arrival in New Zealand the Thai national's money, return tickets and passports were confiscated. Furthermore, instead of undertaking employment in the hospitality industry, the Thai migrants were taken to a brothel where they were forced to work. They lived in cramped accommodation conditions, sleeping six to a room. Any money earned was used to repay the debt associated with bringing them to New Zealand (Glazebrook, 2010).

In April 2015, Naengnoi Sriphet, a Thai national with New Zealand citizenship, was sentenced to 27 months imprisonment for five offences under the Immigration Act 2009. Sriphet illegally recruited two

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<sup>6</sup> In one article Tan (2015b) stated that in the last 12 months 42 migrants were found to work illegally but in a later article (2015c) signals that the time period was in fact 3 years.

workers from Thailand as massage therapists encouraging at least one of the women to violate her visa requirements by becoming a sex worker. Further:

Sriphet gave her workers employment agreements written in Thai that were significantly different to the agreements she had provided to INZ in support of the applications. On top of this Sriphet made two female employees work under strict contract agreements where they could be fined if they gossiped about Sriphet, damaged Sriphet's reputation, or failed to keep the premises clean (Stuff, 2015).

In October 2015, Lincoln Tan of the *New Zealand Herald* reported that South Korean sex workers were being held against their will in an apartment in Auckland. One of the workers had passed a note to a client asking for help and stating she wanted to go home (Tan, 2015b). Initially it was reported there were five South Korean women working illegally, but a subsequent report by Tan (2015c) stated that Immigration New Zealand confirmed that there were three women working illegally and that there were no concerns for their safety.

*The New Zealand Herald* reported in 2012 that New Zealand had been shamed by the United States' annual Trafficking in Persons Report, which alleges that New Zealand is a source country for sex trafficking and additionally is a destination for forced labour (Donnell, 2012b). The same report suggested New Zealand has a small number of Maori and Pacific Island children who are trafficked domestically for prostitution, and that New Zealand is also a prominent destination for foreign women from Southeast Asia and China recruited to migrate to New Zealand to work in the sex industry. These women are usually unaware of the conditions under which they will be kept, which include debt bondage and forced labour, with reduced freedom. Natalie Thorburn, as part of her masters' research, identified under aged, New Zealand born, sex workers (between 12 and 16) selling methamphetamine and sex on the streets (*New Zealand Herald*, 2015a).

### 3.2.8 Other industries

An Equal Employment Opportunities Trust press release (2013) made reference to worker exploitation in a Korean food-preparation factory on Auckland's North Shore, but lacked details as to the degree of exploitation. In the manufacturing sector, Sopana Kirk and Sewing Together Limited, based in Auckland, hired 18 Thai women as sewing machinists. The women worked and lived in a property in New Lynn, and were forbidden to leave Mrs Kirk's "premises at any time, even in their off hours, without her permission" (cited in Coppedge, 2006, 62). One woman recounted that "during a busy period she had worked 26 hours from start to knock-off time" (cited in Coppedge, 2006, 62). The workers passports were confiscated and payments totalling \$4,000 deducted from their salaries to cover travel costs. Further "some of the workers had \$130 deducted from their pay for the use of a washing machine and \$100 for the use of an electric stove" (Coppedge, 2006, 63). The case was taken before the New Zealand Employment Tribunal who ruled in favour of the workers, and found them to be owed \$296,741.

The nursing sector is increasingly reliant on internationally qualified nurses. According to the Nursing Council's Workforce Statistics 2011, 24 percent of the nursing workforce is internationally qualified (O'Connor & Stodart, 2013). In particular, reports have emerged from the private aged-care sector about abusive and exploitation working conditions for migrant nurses and in particular Filipino nurses. In a New Zealand nurse's view "Filipino women are the world's servants and New Zealand has jumped on that bandwagon. I feel embarrassed and ashamed to be a New Zealander when I see Filipino nurses,

who are new to our country, being treated so badly” (O’Connor, 2005). After finding employment in New Zealand, some Filipino nurses were required to pay an employment agent consultancy fees of \$NZ278.14 fortnightly for one year. Further, the agency retained the nurses’ passports and other documentation (O’Connor, 2005). At \$17 an hour, Filipino nurses were being paid less than fellow nurses working alongside them. The New Zealand Nurses Organisation found that Filipino workers could be charged up to \$15,000 for recruitment fees plus an additional finders’ fee. Furthermore, such nurses would be bound to an employer for up to three years (O’Connor, 2005).

Claims of exploitation are also widespread amongst liquor stores with most accounts focused on stores owned/operated by Indians. For example, Indian students on international student visas working in Auckland liquor stores reported being paid \$4 to \$5 an hour: “In one case, the employer had an ownership interest in a private training institution where their student employees were attending courses costing tens of thousands of dollars in fees” (Treen, 2013). In the retail sector, Khoobsurat, an Indian clothing store in South Auckland, was found to be systematically underpaying employees. In July 2015, the Employment Relations Authority ordered Neelam Ahuja, the sole director of Khoobsurat, to pay \$18,515 in underpaid wages and a \$30,000 fine for breaches of employment standards (*New Zealand Herald*, 2015c).

### 3.3 Summary

In summary, the review identified disturbing cases of exploitation occurring in a range of labour-intensive sectors in New Zealand (see Table 3.2). Workers were vulnerable to exploitation at the recruitment and employment stages and international students at the recruitment stage. Many workers were charged excessive recruitment fees and were victims of deceptive recruitment practices. Some of those involved in recruiting the workers were complicit in the deception of officials. Exploitation of workers ranged from minor infractions and poor employment practices to more serious practices, including physical and sexual abuse. Some of the cases identified in this review were taken to the Employment Relations Authority. Others were not. Recognising the seriousness of the problem in New Zealand, in July 2015, a labour inspectorate task force was given an additional \$32 million funding by the government to address the issue of worker exploitation.

**Table 3.2: Summary of exploitative recruitment and employment practices**

Industry Sector	Recruitment	Employment
<b>Construction</b>	<ul style="list-style-type: none"> <li>▪ Excessive recruitment fees</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exploitative working conditions</li> <li>▪ Excessive and unlawful wage deductions</li> </ul>
<b>Dairy</b>	<ul style="list-style-type: none"> <li>▪ Excessive recruitment and processing fees</li> <li>▪ Visa fraud</li> <li>▪ Deception of officials</li> </ul>	<ul style="list-style-type: none"> <li>▪ Excessive hours of work</li> <li>▪ Excessive deductions</li> <li>▪ Withholding of documents</li> <li>▪ Poor employment practices</li> <li>▪ Failure to pay legal entitlements</li> </ul>
<b>Fishing</b>	<ul style="list-style-type: none"> <li>▪ Deceptive recruitment practices</li> <li>▪ Deception of officials</li> <li>▪ Contract abuse</li> </ul>	<ul style="list-style-type: none"> <li>▪ Physical, sexual and psychological abuse</li> <li>▪ Non-payment of wages</li> <li>▪ Excessive hours of work</li> </ul>
<b>Horticulture and viticulture</b>	<ul style="list-style-type: none"> <li>▪ Deceptive recruitment practices</li> <li>▪ Deception of officials</li> </ul>	<ul style="list-style-type: none"> <li>▪ Excessive hours of work</li> <li>▪ Failure to pay legal entitlements</li> <li>▪ Violation of visa conditions</li> </ul>
<b>Hospitality</b>		<ul style="list-style-type: none"> <li>▪ Failure to pay legal entitlements</li> <li>▪ Exploitative working conditions</li> <li>▪ Coercion</li> <li>▪ Withholding of documents</li> <li>▪ Surveillance practices</li> </ul>
<b>International education sector</b>	<ul style="list-style-type: none"> <li>▪ Fraudulent behaviour following the relaxation of English requirements</li> </ul>	<ul style="list-style-type: none"> <li>▪ Some international students are vulnerable and turn to prostitution</li> <li>▪ Expectations of obtaining permanent residency not obtained</li> </ul>
<b>Prostitution</b>	<ul style="list-style-type: none"> <li>▪ Excessive recruitment fees</li> <li>▪ Deceptive recruitment</li> <li>▪ Debt bondage to employer</li> <li>▪ Deception of officials</li> </ul>	<ul style="list-style-type: none"> <li>▪ Confiscation of documents</li> <li>▪ Deception</li> <li>▪ Coercion by employers</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ Debt bondage to employer</li> <li>▪ Excessive recruitment fees</li> </ul>	<ul style="list-style-type: none"> <li>▪ Forbidden to leave place of employment</li> <li>▪ Excessive hours of work</li> <li>▪ Confiscation of documents</li> <li>▪ Excessive deductions</li> </ul>

The next section presents the empirical findings of this research.



## **4. Empirical Findings: “We are Exploited”**

### **4.1 Introduction**

This section presents the empirical findings of the research. I firstly discuss forms of exploitation occurring in New Zealand (section 4.2) before turning to industry sectors (section 4.3) where accounts of exploitation were most common. While the industry sectors largely match those identified in the desk review, worker exploitation is not necessarily confined only to these sectors. One of the key findings of the research was the existence of schemes whereby an employee could pay an employer for the ultimate purpose of receiving permanent residency; these schemes are discussed in section 4.4. One cannot talk about the exploitation of migrant workers without discussing their vulnerability (section 4.5). While the focus of the empirical findings is largely on migrant workers, those born in New Zealand also experience exploitation in the work place, though it appears to a lesser degree than is the case for migrant workers.

### **4.2 Forms of exploitation**

The forms of exploitation workers experience in New Zealand are widespread. Exploitation is not confined to just one migrant group or visa category. Many migrant workers felt that they were, or had been, in a vulnerable situation which left them open to exploitation. Additionally, contractual issues demonstrating a disregard for New Zealand employment law were wide-spread. This section discusses the various forms of exploitation that were occurring across many sectors, without reference to a specific industry sector.

#### **4.2.1 Excessive working days or hours**

Many workers experienced excessive working hours of work, with one interviewee (46) reported having to work 18 hour days, while another worked 12 hour days and was told if he complained he would be sent home (Interviewee 9; also 48). Yet another (Interviewee 64) worked 12 hours a day, 7 days a week for 6 months earning just \$5 an hour. Another recounted that she and fellow workers had no set days off, they spoke of being always on call, and often up until 10 p.m. at night (Interviewee 19). It was not uncommon for morning tea and lunch breaks to be denied (Interviewee 19, 48, among others). One worker was required to work 12 hour shifts without a break (Interviewee 56).

#### **4.2.2 Non-payment or underpayment of wages**

Many workers reported earning less than the minimum wage. Some earned as low as \$5-\$6 an hour. Further, the underpayment of wages was common; with one employee, who worked 90 hours, being paid for only 45 hours. Some received no payment whatsoever for their labour.

Under New Zealand employment law, workers on a trial period are entitled to “all minimum employment rights and responsibilities” including receiving the minimum wage (Employment New Zealand, 2016a). In violation of workers’ minimum rights, some interviewees reported being paid less than the minimum wage during their trial period, which could be up to three months (Interviewee 2, 3, 5, 58, 64, among others). Amounts they received ranged \$0 to \$10 per hour. In addition, after their training period there was no guarantee they would be offered an employment contract.

It was not unknown for some employers to tell workers they had no money to pay them; this was particularly the case in the hospitality sector during slow periods. A number of interviewees were never paid on time, and some were told they would have to wait two to three weeks because their employer did not have money at the time to pay them (44 and 56). One interviewee worked for 5 months before getting paid – the first few months of salary were sent to his agent back home (Interviewee 46).

Unspecified deductions were frequently made from wages with a lack of transparency as to the reason for the deductions. For others, incorrect hours were recorded on their timesheets (Interviewees 16 and 17).

It appears fairly common for those on student visas working in the horticulture sector, not to get paid regularly, but instead to be given money as needed for food or rent (Interviewee 5 and 7). Two interviewees (6 and 7) recounted that they were paid their wages but then the employer would ask for money back for accommodation, food and transport, at what they perceived to be an inflated rate. They would net \$450 a week and after paying their employers back, were often left with no money. One was left with insufficient money to pay the required fees to extend his visa (Interviewee 7). He worked 12 hours a day and was told that if he complained about his working hours, or having to give money back to his employer, he would be reported to Immigration New Zealand and sent home. One interviewee (105) recounted how he/she was informed “the Department of Labour is looking at us, we will pay you what you are entitled to but you have to pay us back”.

Some employers would withhold an amount of money from employee’s wages, to be paid at the end of the contract. For those who left their employment before their contract expired never received the withheld money. One worker was threatened by her employer that she would be taken to the employment court for leaving before the completion of her contract unless she stopped asking for the withheld money (Interviewee 19).

Anecdotally, there are accounts of migrants working on roadside fruit stalls in Auckland who are paid as little as \$20 a day for 10 hours, or alternatively their income depended on the volume of their sales.

#### **4.2.3 Non-payment of taxes**

When filing for a PAYE (pay as you earn) tax refund, some interviewees discovered that the Inland Revenue Department (IRD) had no record of them paying tax, despite PAYE tax being deducted from their wages over the period of time (Interviewees 44, 56 among others). Further, a few interviewees alluded to a scam operating involving IRD numbers – where more than one employee was employed using the same IRD number (Interviewees 1, 4 and 75). According to one interview his contractor used his IRD number for other workers and “according to them I worked 36 hours a day” (Interviewee 1). Another interviewee obtained their PAYE details from IRD – the details showed earnings for October despite the fact they had not started work until a month later (Interviewee 4). Some also mentioned that the summary of earnings they received from the IRD did not align with their wage slips.



#### 4.2.4 Non-payment of holiday pay

For many their legal entitlement to receive holiday pay<sup>7</sup> was denied (e.g. Interviewee 2, 3, 7, 44, 48, 49, 56, among others). The following quotes are illustrative of what some employers were telling their employees:

“Nobody gets holiday pay”

“I can’t pay holiday pay because I don’t have enough money to pay you, do you understand?”

“I will give you holiday pay but you will lose your job”

Of concern to one interviewee was that while his employer was taken to the Employment Relations Authority (ERA) for not paying holiday pay, there was no outcome for employees. The employer shut the business down, following which he set up operation again under a new name – but the obligation to pay the outstanding holiday pay was not carried through to the new business. Other interviewees also stated that when the questionable practices or illegal behaviour of their employers came to the attention of the authorities, the employer simply closed the business and reopened under a different name. Alternatively, in the case of one employer, the GST (Goods and Services Tax) number of another operator was used to circumvent the requirements of New Zealand authorities.

Another interviewee (98) reported that he had lost his job without warning and was told by his employer that he would only receive his holiday pay if he wrote a letter of resignation. Not knowing his rights in New Zealand he complied and wrote the letter of resignation, thereby negating an unfair dismissal claim.

Some interviewees on working holiday visas, when preparing to return home, encountered the situation whereby their employer refused to pay them their outstanding wages, as well as their holiday pay. The employer knew the employees had no recourse (Interviewee 44 and 56). One particular employer was “famous for his behaviour with temporary workers” when he knows the workers are going home (Interviewee 44).

#### 4.2.5 Problems with employment contracts

A number of interviewees did not have a contract; indeed, some were also not aware of the requirement for a contract. Some employers required the employees to sign their contracts but not date them. Other employees were refused copies of their contract, or their employers would fob them off with excuses when asked for a contract or alternatively the employers, themselves, would refuse to sign the contract<sup>8</sup>.

#### 4.2.6 Ill treatment of workers

A number of interviewees recounted incidents of degrading treatment. One worker (71) told of how she had been punished for taking sick leave – her name was subsequently taken off the work roster for a time after she had returned from sick leave. Another (Interviewee 48) was refused a bathroom

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<sup>7</sup> According to Employment New Zealand “Minimum rights (such as the minimum wage and annual holidays) are legal requirements and apply even if they’re not in the employment agreement. Your employment agreement can’t reduce these or trade them off for other things” (Employment New Zealand, 2016b).

<sup>8</sup> According to Employment New Zealand “every employee must have a written employment agreement” and while the agreement “doesn’t have to be signed by the employer and employee” it should be (Employment New Zealand, 2016b).

break on more than one occasion. Some migrant workers, were subjected to degrading language and bullying by Kiwi bosses, supervisors, or fellow workers: “you are dumb”; “f\*&% you”. Interviewees commented that they hadn’t noticed similar treatment towards Kiwi workers.

Others recounted physical abuse. One interviewee (46) was assaulted by his employer and his wife. During the course of his employment, he was subject to verbal and physical abuse. He subsequently ran away from his employer and was persuaded to go to the police. He did not press charges in New Zealand because he was continually told by his employer “You don’t know my powers”. Fearful for his family, he returned home without seeking recourse. Another was threatened by a contractor who said that if he “stand against him... nobody’s gonna find your dead body in New Zealand”. Further, threats were made against family members (46 and 66).

Other forms of exploitation included: workers being under contract to rent accommodation from their employer or a related party, often at an inflated rent, or living in overcrowded conditions (sometimes 9 to a room); being asked to sign blank contracts for accommodation; having to live in dirty, overcrowded and unheated accommodation provided by their employers (many interviewees); and having their passports confiscated. One worker, working in the horticultural sector, was required to live in a house on the farm. He was not supposed to leave the farm but did so one day to travel to a place of worship for an important religious celebration. On his return he was sanctioned to two days’ work without pay for disobeying instructions not to leave the property (Interviewee 11).

I turn now to the industry sectors, wherein exploitation was most commonly reported.

### **4.3 Industry sectors**

In this section I specifically look at the findings of this research in relation to key industry sectors. From this research undertaken, it is clear that the exploitation of workers, and in particular migrant workers, is not just contained to these industry sectors. Nevertheless, these are the sectors which featured predominately in the research.

#### **4.3.1 Construction**

The exploitation that a number of Filipino workers in the Christchurch rebuild have encountered has been well documented in the media (see Section 3.2.1). Filipino workers obtained employment in the industry through employment agents in their home countries. Many were charged excessive recruitment fees (Interviewees 30 and 43). For some interviewees (30, 39 and 43), the total recruitment fees – charges by their recruitment agent in the Philippines as well as charges by an immigration adviser in New Zealand – was around \$NZ10,000 each. Some of the itemised charges were excessively high (and not seemingly justifiable), for example, \$US500 for photocopy fees. Many entered into bond bondage in order to pay the recruitment fees (at interest rates of 5 to 6 percent per month) and were required by their agents to sign blank cheques before leaving the Philippines. Further the receipts they were issued by their agent in the Philippines specified a significantly lower amount than what they paid in fees. Following their arrival in New Zealand, their work experience documents and passports were held by the immigration advisor, until the money owed to the advisor had been paid.

One such immigration adviser was Lindsay Sparks of Business Immigration (BIL). Edwin Balatbat – a Filipino construction worker – filed a complaint against Sparks with the Immigration Advisers

Complaints and Disciplinary Tribunal. In May 2016, the Tribunal found Lindsay Sparks had engaged in “dishonest and misleading behaviour” towards his Filipino client (Immigration Advisers Complaints and Disciplinary Tribunal, 2006). The Tribunal stated that Spark provided “dishonest misrepresentations to the complainant [Balatbat], they were calculated to induce him to pay substantial fees for professional assistance, which Mr Sparks neither provided nor intended to provide” (pg 26). Ruth Burgess of Lexington Legal, a Christchurch law firm acting for a number of Filipino clients reflected: “it is not the worst because if we put it in perspective, Edwin wanted a work visa and he got a work visa but he did pay too much. From that point of view, he was exploited financially ... he was looked at as a commodity and that’s just wrong” (cited in Spink, 2016).

The research into the construction industry focused predominately on the recruitment of Filipino for work in Christchurch. For a number of Filipinos, the reality is that they are still living in over-crowded conditions and paying high rents, with some not being treated well by their employers. Anecdotally there are accounts of exploitation amongst migrant working in the construction industry in Auckland, for example, Chinese and Vietnamese workers. In short, the findings relating to the migrant workers in the construction industry is inconclusive and more research is needed in this area.

#### 4.3.2 Dairy

In interviewing those who had worked, or are currently working, on dairy farms it is clear that there are fundamental differences between the expectations of different farmers as well as working conditions on the farms. One interviewee (50) reported having to milk 1,400 cows in the morning and the same in the afternoon. He did this with one other employee, stating that he “just manned up and did it”. In contrast others reported being responsible (on average) for 130 to 500 cows. Likewise, there were clear differences in the conditions workers regarded as acceptable or unacceptable.

Some interviewees were very critical about their experience working for sharemilkers. One interviewee (49) described one particular sharemilker as “treat[ing] people as slaves”. In contrast, he viewed (as did others) owner-operator farmers as “great guys, completely different, they treat workers well”. He described his experience working for an owner-operator farmer as the best whereas others “don’t care about humans”. He had experience working on dairy farms in Latin America and Australia, and commented that the time he spent on dairy farms in New Zealand was the worst ever in terms of verbal abuse, working conditions, and lack of pay and incentives.

Dairy farm workers from Latin America, in general, had prior experience working on dairy farms with some having trained as veterinarians in their home country. Many came to New Zealand to broaden their experience. However, the treatment they received, as well as the treatment of the animals, was not something they were used to. One interviewee was required to kill over 300 bull calves with a hammer, a practice that was abhorrent to him and not a practice he had encountered in his home country<sup>9</sup>. A second interviewee also commented on the appalling treatment of animals by the farmer. Yet another expressed concern that the cows on the farm were sick because of a lack of calcium, which the farmer failed to do anything about it.

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<sup>9</sup> See Human slaughter on-farm guidelines at [www.dairynz.co.nz/media/1805311/animal-pub-humane-slaughter-guidelines.pdf](http://www.dairynz.co.nz/media/1805311/animal-pub-humane-slaughter-guidelines.pdf) which states “calves must not be killed by the use of blunt force trauma caused by a blow to the head” (pg. 2).

Interviewees, particularly those working for sharemilkers, noticed a worsening of conditions when the price of milk dropped. Further, they felt there were increased expectations placed on them both in terms of hours worked and the number of cows they were responsible for. During the downturn in milk prices, a number of farmers did not have the money to undertake much needed repairs, or to hire sufficient workers.

Often the accommodation provided on farms was viewed to be below standard. Conditions such as the premises being dirty, with no furnishings, no heating, etc were mentioned. One worker employed on a dairy farm in Southland resorted to sleeping on the kitchen floor in front of the oven, which was turned on, in an effort to get warm. In addition to being charged for rent to live in accommodation on the farms, one worker described how they were “charged for power lines and everything”.

In terms of working conditions, one worker (48) was required to ask permission from the farmer to go to the toilet. This worker was subject to ongoing verbal abuse and resigned before the completion of the contract and in response, the farmer sought to impose a penalty for early termination. Another (Interviewee 60) felt that some farmers had no respect for working hours with a minimum of 12 hour days being normal. He calculated that in reality he was earning \$5 an hour. Yet another worked 18 hour days, 12 days in a row. Amongst the dairy workers interviewed, there was the recognition that farming requires more work than expected but the amount of hours they were required to work and conditions is not worth the pay.

In regards to dairy industry standards, DairyNZ and Federated Farmers of New Zealand (n.d.) have identified five pillars of people management. Two of these pillars are: 1. A balanced and productive work time which means employees normally “are not likely to work more than 10 hours a day .... Or more than 4 hours in any day before a break is taken”; and 2. A focus on the wellness and wellbeing of employees, of which the “workplace is physically safe, and emotionally secure from bullying”.

### Focus: Dairy farmers from the Philippines

Many Filipino dairy farm workers arrived in New Zealand with no idea about dairy farming in New Zealand and life on the farms came as a complete culture shock. In Canterbury, where there had previously been a number of reported cases of abuse of dairy farm workers (see Section 3.2.2), one interviewee stated that “life is easier” these days (Interviewee 73). The dissemination of information to dairy farmers has improved over time and there are a number of strong support groups and initiatives in place. One interviewee (14) noted that it is now tougher to exploit dairy farmer workers than several years ago as MBIE requires detailed employment records are kept. More importantly, Filipinos now have more courage to speak up than they did when they first began arriving.

A number of dairy farm workers in Southland spoke very positively about their experience in New Zealand. They were grateful for the opportunities provided to them here in New Zealand and for some, through hard work and opportunities provided to them, they have transitioned from dairy farm worker to herd manager, to second in charge (2IC), and to manager. One Filipino worker was encouraged by the farmer he was working for to “step up to become a shareholder”; he did this with financial assistance provided by the farmer. In return he has given other migrants an opportunity to work in the industry. When I asked him how he was able to achieve what he did, he replied “guts and a positive attitude”. As one Filipino commented, we: “never forget where we came from as dairy assistants” (Interviewee 50). Federated Farmers in Southland was seen to have taken a proactive role in improving working conditions in the region (Interviewee 73, 95).

Nevertheless, within the industry as a whole a number of concerns were expressed about the treatment of employees, who sometimes do not have their basic human rights upheld and are not viewed as being human. They have to work long hours with insufficient breaks, and are not allowed to take holidays due to a lack of staff since the decline in milk prices. As a number of the interviewees commented – while farmers are good at farming, they are not necessarily good people managers, saying that, “you have to take care of the staff, as the staff are assets”. So while there are a number of systems in place to monitor milk quality, this is not necessarily the case in terms of monitoring and supporting employees.

Most recently, Filipino workers have begun to receive offers of employment from Australia, with some moving to Australia where wages are better. Due to the resulting changes by the Philippines Overseas Employment Administration (POEA) (see Appendix 5) as well as the removal of some positions from the Immediate Skills Shortage list, it is becoming harder for Filipino dairy farm workers to come to New Zealand, and instead dairy farmers are hiring workers from India, Pakistan and Sri Lanka (Interviewee 73 and 77).

### 4.3.3 Horticulture

Several interviews were undertaken with those who had worked for, or were currently employed by, contractors in the kiwifruit industry. While it is clear that there are contractors who operate legally in terms of hiring workers (employment contracts, employee’s legal rights to work based on their visa status, payment at or above the minimum wage, PAYE etc), and who fulfil their contractual arrangements with pack houses, there are however contractors who operate in a grey area below industry standards. As one person noted “it doesn’t matter how strict the pack house is, there is scope [for abuse]”. In the kiwifruit sector, despite the fact that key industry actors set established prices for work undertaken, some private growers will seek to negotiate with the contractors to pay a lesser amount.

A number of workers in the kiwifruit industry are foreign workers, some of whom are on student visas. Some contractors hire Indian and Nepalese workers as they have been known to work for less than the minimum wage, particularly those on student visas; some will be paid as low as \$5 an hour (Interviewee 1 and 7). Some were even paid as low as \$20 a day. One interviewee (66) commented that “Indian workers will work for a pittance in horticulture, it’s an open secret. Everyone knows about it, but no one is willing to do anything”. Another commented that “anyone can easily get a job [in kiwifruit] if you are willing to work less than the minimum wage” (Interviewee 1). Others told of how workers can work as many hours as they wanted but without overtime. As noted in Section 4.2.6, a contractor threatened a worker that should he “stand against him...nobody’s gonna find your dead body in New Zealand”. This threat was sufficient to intimidate the worker.

According to some interviewees there are illegal workers in the kiwifruit industry. When asked how the contractors find illegal workers, it was said that “In Te Puke everyone knows”. Further, some contractors who provide accommodation for the illegal workers also restrict their movement, alarmingly, to the point where “they are not allowed to come to town”. It was alleged that one contractor would bring workers in from Nepal and India on tourist visas and once they are here would arrange work visas for them, or require them to work illegally. Pack houses pay the contractors in the vicinity of \$17 an hour (at the time the interviewee was working), from which the contractors take their commission before paying workers: “we don’t get the minimum wage, if someone is lucky they will get \$12 an hour”.

Some workers on student visas perceive themselves as “prey” (Interviewee 1 and 2), with some interviewees indicating that contractors actively seek out students to work in the orchards. One interviewee mentioned a contractor who he had not met before, but who “came to our house bringing something to drink” (Interviewee 2) and offering employment. Others recounted how the contractors promised them visas in order to get them to work in the horticulture sector.

Some workers on student visas didn’t get paid weekly but the contractor would give them money when they needed it for food and other necessities, with settlement occurring at the end of the season (Interviewee 2 and 3).

There was also an arrangement between some contractors and backpacker operators whereby workers were required to stay at a particular accommodation. There was the suggestion that some backpacker operators received a kickback from the contractor for every hour the backpackers worked (the suggested amount being \$0.50 per hour). One interviewee reported that he was required to stay at the backpackers for a certain amount of time, and threatened that if he left the accommodation he would lose his job. He and some other interviewees felt they were subjected to intimidation around where and for how long they stayed. At one backpacker hostel, workers rarely got their bond back. Others reported being required to pay excessive rents to live in cramped conditions in houses or sheds provided by the contractors.

In the asparagus fields, workers would work excessive hours - often 12 to 15 hour days 7 days a week – and be paid according to the weight of asparagus harvested. After deductions for accommodation and transport (5 minutes by vehicle) the maximum amount one interviewee received per week was \$300.

#### 4.3.4 Hospitality

Common amongst those interviewed who work in the hospitality industry is the difference between the actual number of hours worked and the hours they were paid for. One worker (Interviewee 7) recounted that a fellow migrant worker was promised residency by his employer. The migrant worker worked 80 (or more) hour weeks for only a small wage (some weeks earning \$350 to \$450 a week or \$4.37 to \$5.62 an hour). Another migrant (Interviewee 5) worked 12 hour days, 7 days a week receiving only \$500 a week (on average \$5.20 an hour which is well below the legal minimum wage). Yet another worked 90 hours a week and was only paid for 45 hours. Some migrant employees in the hospitality sector were provided with accommodation and not paid wages (Interviewee 14, 15, among others). The exploitation of workers is not confined just to temporary migrant workers. Some say their vulnerability is often leveraged to the benefit of the exploitative employers, stating that “they know your weaknesses” such as need for an immigration visa, lack of English or inability to move to another location in New Zealand (Interviewee 7). Students who worked cleaning tables in food courts in the malls in Auckland received less than the minimum wage (Interviewee 63)<sup>10</sup>. Some restaurants will offer customers a discount for paying cash – this gave them a cash flow to pay kitchen staff who receive \$4 to \$5 an hour (Interviewee 63).

The exploitation in the hospitality sector occurs not only in small ethnic restaurants, but also in larger franchise operations.

One worker on a three-month training period was not paid. Similarly another worker (64) worked for 7 hours a day for three weeks without pay during his training period. At the end of the training period there was no guarantee that the worker would be employed.

#### 4.3.5 International education sector

Labour Inspectorate General Manager, George Mason (cited in Moayyed, 2016c), stated that “International students work in industries that are more likely to have relatively high rates of non-compliance including retail, hospitality and horticulture”, therefore enhancing the risks of exploitation. A common finding was the apparent deception of international students, particularly those from India, attending PTEs. Prior to arriving in New Zealand, many prospective students in India were told that permanent residency is easy to obtain, and likewise jobs easy to find (large number of interviewees). Some of those interviewed already had a tertiary degree, which they obtained in India prior to studying at a PTE in New Zealand. For many, attending PTEs was their first step in obtaining residency (Interviewees 97, 65, 66, 67 among others). One interviewee (64) stated that “Education agents say it is easy to get a job, easy to get PR [permanent residency]. The reality is a different story. Companies don’t take students”.

It was suggested that some education agents in India actively make contact with some PTEs in New Zealand, especially those which are not performing well, in order to send them more students. As noted in Section 3.2.6, agents receive a higher commission from PTEs than they do from other tertiary institutions.

According to one interviewee, when NZQA relaxed the IELTS requirements for Indian students, the system became open for abuse. As one interviewee noted, it “ballooned out of proportion when

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<sup>10</sup> See also the recent case North Shore food court pays \$164k for employment law breaches (Lawton, 2016).

[NZQA] relaxed the requirements for English language proficiency” (62), while another commented (67) that it is “easy to produce certificates”. Some felt that Education New Zealand and the New Zealand Government were unduly tolerant about the situation.

Of concern to some interviewees was the lack of a quality education offered by some PTEs. On reflection, some felt they had received a better education in India (Interviewee 2, 5, 6, 64, among others. “PTEs are money making machines” (Interviewee 63). Some recounted that their institution was not strict on attendance – if they didn’t come to class, they could pay money and be marked as attending class. Similarly, instead of completing assignments they could pay money and receive a grade (Interviewee 2, 3, 4, 7, 64, among others). In contrast, other interviewees noted that their PTE (particularly the larger PTEs) was strict on both attendance and assignments.

Many Indian students come from the Punjab region, which is well known for the agricultural green revolution. It is therefore easy for students from a farming background to work in horticulture (Interviewee 62, 64, 66, and 101). Some were told by their agents that they didn’t have to worry about studying English, and were just to work once they were here (62). In the orchards, they often worked long hours – well in excess of the number of hours permitted under their student visa – up to 40 to 60 hours a week. In this situation many would be paid the legal wage for the first 20 hours and significantly less than the minimum wage for the remaining hours, which was paid in cash. A few interviewees provided context - in India, farm workers often don’t have fixed working hours and don’t get paid by the hour, so they do not know to speak up about such practices in New Zealand. As one interviewee stated “no one can throw away their cultural aspect overnight”; and then went onto state “there is no formal induction process” for workers coming to New Zealand (67).

Many from the villages in India lack a sufficient command of English. The younger students in particular found it hard to adjust as their lack of English language skills acted as a barrier to their ability to interact with others outside of their community. Desperate to get a job, but with a lack of prior work experience in New Zealand, they will often turn to fellow migrants for help. This leaves many vulnerable to exploitation. Some employers will specifically target international students due to their vulnerability, as they are often more desperate to obtain employment (Interviewee 95). It is difficult for students to question what they are told by their employer, and they are often afraid to speak up as this will put their visa into jeopardy.

#### **4.3.6 Prostitution**

Under the Immigration Act 2009, it is unlawful for temporary migrants to provide commercial sex services, and so demands and threats by their employer that they do so places them in an extremely vulnerable position. One interviewee (19) was hired to work in a spa providing cosmetic services. She was subsequently required to work in a second spa which provided commercial sexual services. The interviewee refused to provide commercial sexual services and after a series of complaints by customers and disagreements with her employer, she felt she had no course but to terminate her employment. A massage therapist was hired to provide therapeutic health massages. After a time, she was also required to work in a second spa and provide sexual services. When she refused, her employer threatened to report her to Immigration New Zealand where she would be subject to deportation. The actions by both employers are in violation of the Prostitution Reform Act (2003) which states that “No person may do anything described in subsection (2) with the intent of inducing or compelling another person (person A) to - (a) provide, or to continue to provide, commercial sexual



services to any person” (p. 9).

Further, some international female students struggling to survive economically in New Zealand turn to prostitution in order to support themselves (see Section 4.5). This makes them vulnerable to exploitation and according to Roguski (2013, V) “a fear of deportation may act to dissuade migrant workers from accessing intervention in times of need.” Anecdotally there are networks of sex workers from Asia, Eastern Europe and Latin America who enter New Zealand on visitor visas and work in the sex industry for the length of time granted under their visitor visa. For some there are operators who facilitate their entry into the New Zealand sex industry. One interviewee (57) recounted how some Asian girls would always seem to be upset, she commented: “there is a hell of an operation the Chinese have got going on in New Zealand.” More recently, there are girls from Thailand working in Auckland who entered on a tourist visa and are purported to stay for 12 months<sup>11</sup> living at their place of work. While this research was not able to determine whether or not those entering on tourist visas and working in the industry are being exploited, they are however, in violation of the entry conditions of their visa.

In regards to New Zealand citizens working in the sex industry, comment was made of poor managerial practices in some brothels and conditions that were considered fairly untenable for some workers. One interviewee (71) told of how she was not allowed to take breaks or leave the building, and that if they declined clients, it could cost them in the long term. The sex workers were not always paid money – payment could be credit notes in order to keep them coming back to work. Sometimes workers were handed an envelope of money at the end of their shift with no calculations to show how the sum of money was derived at and with no recourse. Another interviewee (57) talked of gang involvement in the sex industry while another (54) recounted how he (now a former gang member) and others in the gangs would trap girls into prostitution through drug dependency as well as threats made against their families.

In short, the findings relating to the migrant workers in the sex industry is inconclusive and more research is needed in this area.

#### **4.3.7 Other industries**

Some interviewees felt vulnerable because the work they do is dependent on clients, for example, nail technicians, hair stylists, therapeutic massagers etc. One interviewee (18) was under contract for 35 hours but if there were no clients they would be sent home and not paid; hence their contract for 35 hours did not apply. Another commented that they were only paid if they had clients and felt as though they were continually on call, even on their day off (Interviewee 19). Others who are vulnerable to exploitation include those who are employed under a triangular relationship wherein they are employed by one employer to work for another employer. For example, contractors servicing food companies, grocery stores and into work streams of similar structure (Interviewees 58, 67, 96).

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<sup>11</sup> For someone to stay in New Zealand for this length of time, they must show evidence of having sufficient funds to live on - \$NZ1,000 per month or \$NZ400 per month if accommodation has been prepaid – or if someone has agreed to sponsor them, a completed Sponsorship Form for Temporary Entry (<https://www.govt.nz/browse/immigration-and-visas/applying-for-a-visitors-visa/how-to-apply-for-a-visitors-visa/>)

Turning now to the fishing industry, while the New Zealand government has made substantial effort to improve working conditions in the deep-sea industry, exploitation has occurred in the inshore fisheries. Indonesian crew members paid in the vicinity of 20 million rupiahs (around \$NZ2,000) in recruitment fees in order to obtain employment with a New Zealand fishing company (Interviewee 16 and 17). After arriving in New Zealand, they were required to work for a time in the company's processing factory – this was not part of their contractual obligations – before beginning work on the fishing vessels. In the processing factories, kiwi workers clocked in and out of their shifts electronically, whereas in contrast the Indonesians were required to manually record their hours. They lived for part of this time in a boat shed before beginning work on the vessels. In March 2015, two Indonesians fishers walked off the company's vessels claiming they had not received their correct wage entitlements (Interviewee 16 and 17) and that each was owed in the vicinity of \$20,000 in unpaid wages. On board the vessels they sometimes worked 12 hour days, 7 days a week. Over a 10-month period they had been paid less than \$8,000. According to the terms of their contract they would receive \$3,141.66 per month "this is for 42 hours per week". They and fellow crew members had previously complained to the company about their wages only to be told if they "complain too much they will be replaced by Filipinos" (Interviewee 16). An analysis of bank records confirmed that at a minimum they had not been paid their monthly wage. The two crew members remained in New Zealand, supported by friends and advocates, fighting to obtain the wages owed them. In May 2015, following the expiration of their visa, they returned to Indonesia. Subsequently months later after an investigation by MBIE, they received a financial settlement for unpaid wages. However, the settlement was based on the contractual guarantee of a minimum of \$3,141.6 per month (42 hours a week) and not the actual hours worked.

Table 4.1 provides a summary of key findings for different industry sectors. While the industry sectors are similar to those discussed in Section 3.0, of key concern is the horticulture and hospitality sectors.

**Table 4.1 Summary of findings**

Industry Sector	Summary of findings
<b>Construction</b>	<ul style="list-style-type: none"> <li>▪ Excessive recruitment fees</li> </ul>
<b>Dairy</b>	<ul style="list-style-type: none"> <li>▪ Some workers felt they were not treated as “humans” but as “slaves”</li> <li>▪ Long hours without breaks and holidays</li> <li>▪ Lack of systems in place to monitor and support employees</li> <li>▪ Questioned the treatment of animals on some farms</li> <li>▪ Experienced a worsening of conditions following the drop in international milk prices</li> </ul>
<b>Horticulture</b>	<ul style="list-style-type: none"> <li>▪ Contractors operate in a grey area below industry standard</li> <li>▪ Workers paid less than the minimum wage or not paid regularly</li> <li>▪ Workers view themselves as “prey”</li> <li>▪ Restriction of movement</li> <li>▪ Worked for the promise of a visa</li> </ul>
<b>Hospitality</b>	<ul style="list-style-type: none"> <li>▪ Paid well below the minimum wage, some with the promise of residency</li> <li>▪ Significant difference between number of hours worked and hours paid</li> <li>▪ Not paid during trial period</li> </ul>
<b>International education sector</b>	<ul style="list-style-type: none"> <li>▪ Exploitation often begins in the home country with agents overselling opportunities in New Zealand</li> <li>▪ Studying promoted as a pathway to residency</li> <li>▪ International students attending some PTEs are vulnerable and thus more open to exploitation</li> <li>▪ Paid less than the minimum wage, worked well in excess of the number of hours they are permitted to work as a condition under their student visa</li> </ul>
<b>Prostitution</b>	<ul style="list-style-type: none"> <li>▪ International female students are seen as vulnerable</li> <li>▪ Some employers pressure migrant workers to provide commercial sex services in violation of the Prostitution Reform Act (2003)</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ Workers not guaranteed specific hours of work but on call</li> <li>▪ Those working for third party contractors vulnerable to exploitation</li> <li>▪ Indonesian fishers in the inshore fishing industry were significantly underpaid</li> </ul>

## 4.4 Purchasing a pathway to residency

A number of interviewees described a scheme whereby migrants pay money for jobs, as well as for employment that would meet the requirements to apply for permanent residency.

### 4.4.1 Cash for jobs and visas

One interviewee recounted how two people from his village in Indonesia found employment for him – he was then required to pay them \$600 each for finding him his job: “You came here to get a job, it is not free” (Interviewee 11). Another recounted paying thousands to someone who promised him a job and in the end not obtaining employment.

Some employers would offer migrant workers employment that would qualify them for a two-year employer assisted post-study work visa (see [Appendix 4](#), Table 2) for a fee of \$5,000 to \$7,000 per person. As one interviewee (58) commented: “There is a price tag for everyone”.

There was also the suggestion that employees – as opposed to owners or managers – in some large companies have asked for an upfront payment in order to offer the interviewee a job that would ensure they qualified for permanent residency (Interviewee 64). However, there was no suggestion

that this is company 'practice' as opposed to one or two people in the company engaging in opportunistic and unethical behaviour.

#### 4.4.2 Cash for residency

Some interviewees mentioned a scheme whereby migrants will pay a substantial sum of money in order to obtain a job, or at the least the appearance of a job, that will qualify them for permanent residency. The fee ranges from between \$20,000 (minimum) to \$40,000, although two interviewees suggested the amount goes as high as \$60,000. One interviewee (Interviewee 64) stated that there is "a network of people [who] will help others from their community get residency". This practice, however, is not restricted to just one migrant group, as there are schemes operating within the Chinese and Indian migrant communities, as well as for migrants from elsewhere in Asia. The Chinese scheme appears to operate under a formal structure with middlemen facilitating negotiations between an employer and employee (Interviewee 53, 97 and 102; see also MBIE 2014a).

Interviewees identified two scenarios. In the first scenario workers' will make cash payments to their employer who pays them back their own money as their formal wage. Income tax is then deducted from the money received from the employee, whilst the employer makes no contribution to the wages paid. In the second scenario, the employer pays the employee a nominal wage – \$5 an hour – with the balance of wages paid by the employees themselves. An MBIE (2014a, 11) discussion document refers to these scenarios as 'money-go-round' schemes.

While in the majority of cases, it appears that it is migrant employers who participate in the cash for residency scheme, it is not unheard of for New Zealand employers to also charge their employees (Interviewee 64). Importantly, the employer is not always the instigator of the scheme, as temporary migrants have at times approached prospective employers asking them for assistance in obtaining residency (Interviewees 66 and 99).

One interviewee was told by a prospective employer that he would create a business so the interviewee could obtain permanent residency. The worker paid money to help set up the business and for two years he received no pay or remuneration. In order to survive, he undertook secondary work on the side (Interviewee 59). He felt he had no choice as this was his only option to stay in New Zealand.

While another interviewee (64) was assisted by his employer to obtain a working visa (by providing him with a job), the business was in a poor financial state, leaving the employer with no money to pay his employee. Hence, the employee was required to pay his own wages – therefore a formal transaction took place. To cover this financial burden, he had to borrow money from friends. The interviewee stated that "He [the employer] has helped me so I have to help him". This interviewee had a number of years' experience in his home country running his own business.

The cash for residency scheme is becoming increasingly "normalised". The situation "ballooned out of proportion when [the New Zealand government] relaxed requirements for English language proficiency" (Interviewee 62) leading to a sharp increase in the number of Indian students entering New Zealand. I was told repeatedly that Indian students were willing to make sacrifices for a new life. As one interviewee (62) aptly stated that "Once [you] get PR, [your] job prospects increase exponentially". In effect, they have two lives – one before residency and one after residency, and they will do whatever they need to survive until they obtain residency. Some of those who were grossly underpaid accepted their situation at the time as a norm, because they had been promised residency.

### 4.4.3 Cash for partner visa

Another scheme by which migrants seek to obtain residency, is through a Partner of a New Zealander Residency Visa<sup>12</sup>. Some interviewees (75, 101, 104) said that migrants will pay Kiwi girls to be their 'partner' for as long as it takes to get residency (Immigration New Zealand's website states people have to be living together for 12 months or more). It was suggested that these types of relationships only last until permanent residency is obtained as, for example, "Indian males will not marry the Kiwi girls - it is not the way it is done. They will marry Indian girls" (Interviewee 104, see also 75). It was also suggested that there is a similar scheme within other communities, and in the Chinese community in particular, the arrangement was noted to be between Chinese residents and temporary migrants (Interviewee 102).

## 4.5 The vulnerability of migrant workers

Migrants from low socio-economic groups are particularly vulnerable. Most are dependent on their employers for their work visas, as the job offered is used as the foundation of the work visa meaning their visa is directly linked to their employers and thus they feel unable to complain<sup>13</sup>. Many felt vulnerable because of their desire to seek permanent residency. Two interviewees (1 and 2) described themselves as "prey", while another commented "I feel like they own me because of visas" (Interviewee 49). One interviewee who was previously working for a New Zealand employer, changed jobs to work in a restaurant because he was promised residency by his new employer. He ended up working 80 hours or more a week often with no pay, but with the promise of help getting a visa. Eight months later he was told by his employer that his visa was not going to be extended. Some interviewees stated that their employers try to control them by threatening to fire them, and/or report them to Immigration New Zealand. Chinese migrant workers are often reported to be implicitly or explicitly told if they complain about their Chinese employer they will not be able to obtain work from other Chinese employers (Interviewees 62 and 76).

Many migrants, particularly those here on student visas, feel disconnected from their family support structure. One interviewee (46), who lived on his employer's premises, was refused contact with his family. During his employment, he was not provided with sufficient food, confined to the house, and had no days off during the 5 months he worked there. With no support available to many migrants, and many under pressure because of debts their parents owe, they will accept work no matter the conditions. Some will turn to the migrant communities for assistance, and it is here that the cycle of exploitation can begin. One interviewee (75) stated that "They don't know how to avoid exploitation", adding that many migrants come "believing the [migrant] community is going to help but they are the ones exploiting". Indeed, some who were subjected to exploitation initially, but who have subsequently obtained permanent residency, go on to exploit other migrant workers. Some are aware

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<sup>12</sup> If a person is the "partner of a New Zealand citizen or resident ... [they] can apply to live in New Zealand permanently. If ... [they are] granted residence, [they] can live, work and study in New Zealand indefinitely" (Immigration New Zealand, 2016c).

<sup>13</sup> With the exception of Christchurch (see Appendix 5, Table 4), whereby the essential skills work visa (ESW) amendments (1st July 2015) mean that for migrant workers in the Canterbury region, their temporary ESW visa is not tied an employer. The visa is valid for up to 3 years. Additionally, if the occupation is on the Canterbury Skill Shortage List (CSSL), no labour market test will be required for employers to carry out. Queenstown also has a variation in its conditions.

they will be exploited in New Zealand, but come because of the huge differences in standard of living and future prospects (Interviewee 76 and 101).

### Focus: Migrants from India

*“The exploitation of the Indian migrant workers, begins with the agents in India and ends with the business owner in New Zealand”* (Interviewee 63).

Two areas in which many migrants from India were perceived to be deceived were: 1) the ease of finding work and 2) the ease of obtaining permanent residency in New Zealand. Some were promised a better future in New Zealand by agents in their home countries and were told that there is plenty of work available. Many felt that, on reflection, the recruitment or education agents did not provide sufficient details or a realistic picture of job opportunities, accommodation etc. Once in New Zealand they felt trapped by the lack of job opportunities available – particularly at their skill level - and the way they were treated by some employers (Interviewee 5). One migrant worker reflected on his experience coming to New Zealand as full of “broken promises” (Interviewee 17). A number felt they couldn’t speak to either their employers or authorities for fear of being sent home. One migrant who reported his working conditions to his agent was beaten by his employer for doing so (Interviewee 46).

Repeatedly I was told that the agents in India are “selling dreams” of a better future and that “education is simply a pathway to that dream” (Interviewees 5, 65, 66, 67). Likewise, agents in the Philippines inform Filipinos that the student pathway is the easiest way to get into New Zealand (Interviewee 77). However, the reality is that permanent residency is much harder to obtain. Many Indian agents have never been to New Zealand and have no idea of the situation here (Interviewee 66). To obtain commission, they oversell New Zealand.

One interviewee expressed concerns about young female Indian students on study visas. The interviewee felt that males have different options available to them to earn money. However, this is not always the case for female students, some of whom are then vulnerable to sexual exploitation (Interviewee 104, also 67). Another informant (88) told of how a small group of Indian girls arriving in New Zealand on student visas were put to work in a sewing factory or brothels to pay the debt they owed for their airfare.

It is important to consider the cultural context that shapes migrant workers’ perception of exploitative practices when they consider if their own situation in New Zealand is exploitative or not, as this may ultimately inform their decision to report abuse or not. As interviewee 67 aptly stated: “No one can throw away their cultural aspects overnight”. Many students working long hours for low wages don’t focus on the fact they are paid as little as a few dollars an hour, instead they see the total amount of money they earn as making economic sense. In India, workers do not have fixed hours and they are not paid by the hour (Interviewees 65, 66 and 67), so they do not see anything different when they come to New Zealand. Many lack the maturity to know and understand anything other than their past experience (Interviewee 62).

Note: During this research, I talked with a number of migrants from India who came to New Zealand on student visas and who having been aware of the vulnerability of exploitation they may face, navigated their paths carefully and made conscious choices not to become trapped in a cycle of exploitation. They have worked hard in legal employment opportunities and have obtained permanent residency successfully.

## 4.6 Summary

In summary, we see from these interviewees that temporary migrant workers are particularly vulnerable to exploitation. This is particularly the case for those workers whose visa is directly linked to their employer. In some cases, migrant workers were being exploited by employers who themselves had previously obtained permanent residency and/or citizenship. As noted, industry sectors of key concern are the horticulture and hospitality sectors. In addition, it was found that some temporary migrants pay money to obtain employment that will allow them to obtain working visas and ultimately lead to a successful application for permanent residency. In summary, worker exploitation is occurring in New Zealand and is, as Mason noted “fairly widespread” (Radio NZ, 2015, December 21).





## 5. Discussion and Conclusion

### 5.1 Discussion

While the New Zealand government has introduced and/ or strengthened initiatives to address worker exploitation, labour abuse remains an ongoing issue. While this exploratory research has identified significant accounts of exploitation, the extent of the problem in New Zealand remains unknown, as it is largely a hidden issue. As noted in Section 2, we are discussing a population “for whom the size and boundaries are unknown” (Tyldum and Brunovskis, 2005, 18). In total 105 people were interviewed for this project, many whom had experienced varying degrees of exploitation.

It was not easy for several of the interviewees to participate in this research. Of key concern for some temporary migrants was that their permanent residency would be negatively impacted by their speaking out, or alternatively there would be a negative impact for future migrants. Some interviewees feared repercussions - that they would lose their jobs and be deported. Such concerns were also expressed by Anu Kaloti, spokesperson for the Migrant Workers Association, as reported by Moayyed (2016c), “the abuse of young migrant workers is more widespread than people think, though many choose not to take action because they fear losing their jobs, being kicked out of the country, or ruining job opportunities for themselves and other international students”. According to several interviewees, workers from Bangladesh, India and Sri Lanka are especially fearful of authorities and do not speak up. One ‘whistle blower’ expressed his concerns to Immigration New Zealand about helping them, telling them what could happen to him for doing so. The response given by Immigration New Zealand was: “This is New Zealand. This is not going to happen”. Such a response did not inspire confidence in the ‘whistle blower’. Those in the country on working holiday visas were more open to speaking up about exploitative and abusive working conditions. They knew that they would not personally benefit from speaking up, but did so because they wanted to make it easier for others on working holiday visas.

Some of those interviewed had tried to seek help but experienced difficulties in doing so. Some went to MBIE but as they did not have an employment contract, MBIE was unable to assist. One worker complained several times to MBIE, but the employer denied knowing her. As she did not have a contract, she was unable to refute her employer’s allegations (Interviewee 45). Another (Interviewee 6) commented, “they always trust the employer”. One interviewee recounted: “I went to IRD, I went to Labour Department, I went to Immigration, everywhere, to complain against these guys ... but no one is doing anything”. The interviewee explained: “I go to Labour, Labour says go to IRD ... no one wants to listen to me”.

One working holiday visa holder returning to his home country found that his employer refused to pay him his outstanding wages (Interviewee 44; see also 56). To get the money owed to him, he sought help from the Police, MBIE and the IRD. All the agencies told him that they could not assist him. In the end, on the advice of the Citizens Advice Bureau, he contacted a union for assistance. Although he was not a union member, the union dealt with his case in a speedy and effective manner.

Some Latinos spoke highly of the help they received through the Citizens Advice Bureau when seeking options for recourse. One avenue identified for providing assistance for some Muslim interviewees who were exploited was their local mosques. Some found new and better employment through people they met in the mosques. Other migrants sought advice through Community Law offices. Many

though did not seek help. A key message from this research is the importance of services such as the Citizens Advice Bureau and Community Law offices as well as unions in being advocates for and supporting the rights of vulnerable workers. While many vulnerable workers are not members of unions, as the example above illustrates, a union was able to provide assistance where the IRD, Police and MBIE were not.

Exploitation is not confined to just one migrant group - it is widespread. Some of those interviewed highlighted that migrants with a better understanding of New Zealand culture, including English proficiency, and who have the opportunity to integrate into New Zealand society are less at risk of exploitation. Some interviewees questioned why Immigration New Zealand permits so many temporary migrants, particularly those coming to attend PTEs, to enter the country. They wondered whether Immigration New Zealand should be more mindful of the vulnerability that some temporary migrants can face and take a more practical approach to addressing the issue, for example, by looking at the value a person can add to society - not just their salary. The owner/operator of a small business, has a migrant employee whose visa situation is precarious, as his salary is not high enough to qualify for permanent residency. The employee offered to pay the employer the additional (not significant) sum of money to bring his salary up to the required threshold, but the employer refused because this is not an acceptable practice.

## **5.2 Future research**

This research took a broad approach in order to identify industry sectors where exploitation was occurring. Quite quickly it became apparent that temporary migrants in particular, regardless of industry sector, are vulnerable to exploitation. The conditions attached to some visas inadvertently place some migrants at risk of being employed in precarious employment situations. For some migrants, it can be difficult finding work in New Zealand and thus they are at greater risk of being exploited. Additionally, while certain key industry sectors where exploitation is occurring were identified – horticulture, hospitality and the international education sector in particular - the issue goes well beyond these particular industry sectors. Anecdotally, there were reports of abuse in a range of other industry sectors, including, but not limited to, the commercial accommodation industry, the commercial cleaning industry and the IT sector. While this research focused predominantly on the recruitment of Filipino construction workers in Christchurch anecdotally, there are accounts of Chinese and Vietnamese workers being exploited in the industry.

Research focusing specifically on particular findings from this project is needed. Further in depth research should target, for example: the international education sector, horticulture, and, as noted earlier, construction and prostitution. As well as this, research could also be carried out on particular visa categories such as working holiday schemes, the seasonal work force, and post-study work visas.

## **5.3 Conclusion**

The purpose of this exploratory research was to determine the extent to which worker exploitation is occurring in New Zealand. This research found that non-compliance with employment legislation such as the Minimum Wage Act 1983, the Holidays Act 2003, the Wages Protection Act 1983, and the Employment Relations Act 2000 was common. Further, there were troubling accounts of exploitation of employees. While many of the empirical findings have focused on the experience of temporary migrants, non-compliance is not just restricted to migrant workers, as New Zealand born citizens are

also subject to exploitation. Many temporary migrants tolerate exploitation so they can qualify for permanent residency or because they were coerced and/or deceived by their employer. They may also tolerate the situation because of power imbalances (perceived or actual) or because of limited options available to them. Some pay their own salaries to obtain residency. Worker exploitation is widespread in terms of industry sectors and/or visa categories, with much of it remaining hidden.

Reference has been made to international students being used as 'semi-slave labour' in New Zealand (Peters cited in *Newshub*, 2016). This research has clearly identified that the issue of 'semi-slave labour' affects not just international students, but also other groups of people. It is an ongoing and widespread issue. At the recent launch of the Business and Human Rights Forum<sup>14</sup>, Rachel Davis from Shift stated, "If it is labour abuse, then it is human rights abuse". In light of Rachel Davis's comment, the findings of this report, which highlight and uncover areas of significant concern, deserve urgent attention. The industries and sectors mentioned here contribute significantly to the New Zealand economy – some might say they are its lifeblood - so findings of migrant worker exploitation in these areas puts New Zealand's international reputation at risk. The contribution of migrant workers to the New Zealand economy must be valued and their vulnerabilities addressed.

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<sup>14</sup> The Launch was held at Parliament 9 August 2016.



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## Appendix 1: The Coalition

### **ECPAT**      [ecpat.org.nz](http://ecpat.org.nz)

ECPAT Child Alert began in New Zealand in 1993 and over the past 23 years of our work in the fight against commercial sex exploitation of children, we have been successful in informing youth, vulnerable communities and key stakeholders across the country. Today our scope of work covers a broader aspect of child abuse which includes, bullying, sexting online trafficking and our core focus which is the commercial sex exploitation of children. The research highlights the importance and our call to stand against the enslaving and commercial sex exploitation of children.

The ECPAT team and its Board of trustees are pleased to participate and endorse this research.

### **Hagar New Zealand**      [hagar.org.nz](http://hagar.org.nz)

Hagar is an international organisation committed to the protection, recovery and reintegration of women and children who have suffered severe human rights abuses. Hagar responds to the most severe injustice and alienation against individual women and children working particularly with survivors of human trafficking, slavery, sexual exploitation and gender based violence and providing services without discrimination on the basis of religious beliefs, race, gender, age, disability, sexual orientation, nationality or political persuasion.

Hagar began in Cambodia in 1994, is headquartered in Phnom Penh, Cambodia and has programme work in Cambodia, Vietnam, Afghanistan and Singapore with support offices in New Zealand, Singapore, Hong Kong, US, UK and Australia.

- Hagar has trained over 3300 frontline police in Singapore in TIP
- Hagar has partnered with IOM & USAID to prosecute traffickers, protect victims & improve regional coordination to combat cross border trafficking.
- Hagar has done significant research into trafficking in Afghanistan and Cambodia

We are very pleased to be part of the coalition that has funded this important exploratory research into Worker Exploitation in New Zealand.

### **Stand Against Slavery**      [standagainstsavery.com](http://standagainstsavery.com)

Stand Against Slavery (SAS) was established in 2013 as a response to the significant gap emerging between the sophistication of the human trafficking criminal network and the plethora of not for profit organisations who are gallantly, but individually, attempting to combat modern day slavery. Our unique contribution is one layer back from the frontline. If we can connect government with civil society; the general public with frontline organisations; business with enforcement agencies; NGOs with other NGOs; and survivors with support providers, we are doing our job. We achieve this through advocacy and consulting services.

SAS also discovered early on that here in New Zealand many NGOs who combat slavery tend to be focused internationally. That is, they raise awareness, funding and personnel in New Zealand, and ship it offshore. Because of that SAS decided to give primary attention to the issue in New Zealand, and that attention must begin with research. SAS is proud to be part of this research project and believes it will be a catalyst to properly uncover the extent of human exploitation, trafficking and slavery that exists in New Zealand.

For more information contact SAS CEO Peter Mihaere on [peter@standagainstsavery.com](mailto:peter@standagainstsavery.com).

## **The Préscha Initiative**     [www.prescha.org](http://www.prescha.org)

The Préscha Initiative was founded in 2010 by a group of friends at University who were compelled to take a stand against human trafficking and has since evolved to focus on the elimination of human trafficking through [research](#), [education](#) and [awareness](#). At the core of its [projects](#), The Préscha Initiative aims to eliminate the ingrained social and cultural norms that facilitate human trafficking taking place.

In 2012, The Préscha Initiative drafted an education resource on human trafficking for high school students and trialled this at schools in the Bay of Plenty and Waikato. In 2015, this was modified in collaboration with Instant Education Solutions to be NCEA accredited. In 2016, 41 high schools in New Zealand downloaded this resource reaching approximately 2000 students nationwide.

Rebekah Armstrong, Director of The Préscha Initiative, was instrumental in forming the Human Trafficking Research Coalition and has served as the Coalition Chair throughout the project. Rebekah currently works at the New Zealand Human Rights Commission leading business and human rights work.

## Appendix 2: The Immigration Amendment Act (2015)

The core focus of the Immigration Amendment Act (2015), relevant to this research, is the extended protection to migrant workers on valid temporary work visas, from exploitative employers. This is an extension of the Immigration Act (2009) that sets out provisions to protect illegal migrant workers from employer exploitation. In order to “prevent and prosecute exploitative employers”, a number of amendments have been made, including new provisions and penalties set out (Woodhouse, 2015a).

### **Penalties for exploitative employers:**

- Up to 7 years imprisonment, and/ or a fine not exceeding \$100,000;
- Up to 5 years imprisonment, and/ or a fine not exceeding \$100,000 for “employers who exploit legal temporary or unlawful workers and are reckless as to their immigration status”;
- Exploitative employers may face deportation if the offence is committed within 10 years of gaining residence in New Zealand.

### **Immigration officers have been given new powers:**

Extension of search powers:

- Power to enter and carry out search (without obtaining a warrant) at employer’s premises, including the workplace and related dwellings. Immigration Officers also have the power to talk to and seek information from the people present onsite, check documents, and search for unlawful workers.
- Power to carry out personal search at the border for all relevant information related to arriving passengers.

Discretionary powers (to protect migrant workers who report exploitation):

- For migrant workers who come forward with a complaint regarding exploitative workplace conditions, and provide information about their employer, Immigration Officers now have discretionary power to ensure victims are protected from deportation and/or criminal charges based on visa breaches. This may lead to more cases being brought forward as fear of the consequences of reporting exploitative practices to officials is often a deterrent to many migrant workers.





## Appendix 3: Visa Categories

### Recognised Seasonal Employer Scheme (RSE)

The New Zealand Recognised Seasonal Employer Scheme (RSE) came into effect in 2007 in order to meet a labour supply shortfall in the horticulture and viticulture sector. The scheme allows for workers from the Pacific Islands Forum Countries to work in New Zealand's horticulture and viticulture industries on a limited entry basis. Five countries were initially chosen to kick-start the scheme: Vanuatu, Tonga, Samoa, Kiribati and Tuvalu. The scheme now encompasses workers from the following countries: the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, the Republic of the Marshall Islands, the Solomon Islands and Fiji<sup>15</sup>. The scheme is seen as a positive as it fills gaps in New Zealand's labour pool as well as providing opportunities for Pacific Island countries with excess labour supply.

Under the RSE scheme, employers are required to:

1. Become RSE accredited and obtain an Approval to Recruit (ATR) by Immigration New Zealand. The ATR specifies how many workers the employer is eligible to recruit in a season, the nationality of the workers, timeframe and terms and conditions of employment.
2. Demonstrate they have actively sought to recruit New Zealanders before recruiting foreign workers.
3. Meet certain standards and employment practices including: paying market wages; guarantee a minimum 240 hours of work, or on average 30 hours of work a week, for workers employed for more than 6 weeks or for those employed for under 6 weeks, guarantee a minimum of 40 hours of work per week; meet the pastoral care needs of workers<sup>16</sup>; pay half of the airfare for workers<sup>17</sup>.

Workers are issued with a Seasonal Work Visa for the period of time agreed under the ATR, or for a maximum of seven months in an eleven month period. Exceptions remain for Tuvaluan and Kiribatian citizens/residents who are eligible to work for up to nine months.

Initially under the scheme, 5,000 places per annum were allocated, which was raised to 8,000 places in October 2008 and 9,000 in October 2014.

Employers may recruit from other countries – if they can provide evidence they were unsuccessful in recruiting from with the Pacific Island Forum Countries. The Pacific Island countries are: Federated States of Micronesia, Fiji, Kiribati, Nauru, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

### Working Holiday Scheme (WHS)

Under the working holiday scheme, nationals from 42 countries are eligible to work in New Zealand. An annual specified number of places is offered for nationals from a number of countries (for example 50 places for nationals from Malta and 940 for Chileans) through to unlimited spaces for nationals from 13 countries (including United Kingdom, United States and Italy). The length of time workers are eligible to work in New Zealand ranges from 6 (Austria, Malaysia and Singapore) to 12 months – the exception being nationals from the United Kingdom who are eligible to work in New Zealand for 23 months. The age bracket of workers permitted under the scheme is 18-30 years old with some schemes extending the age range to 18-35. For some countries there are additional requirements such

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<sup>15</sup> Agreement signed 11 December 2014

<sup>16</sup> Pastoral care includes finding suitable accommodation, transportation to and from work, opportunities for recreation and religious adherence.

<sup>17</sup> The exception being for workers from Kiribati and Tuvalu where the employer only has to pay half of the airfare from Fiji and not the country of origin.

as a minimum tertiary education qualification (Singapore, Peru, and Vietnam) and/or International English Language Testing System (IELTS) requirements.

In January 2014, the New Zealand government announced the introduction of the Philippines Working Holiday in New Zealand (POA) scheme, in which 100 young Indonesians – aged between 18 and 30 – are allowed to work in New Zealand annually. Under the scheme they are not allowed to take up permanent employment and as well are not allowed to work for the same employer longer than 3 months.

### **Special Work Categories**

The special work category allows for qualified nationals from China, Indonesia, the Philippines and Vietnam to work in New Zealand for up to three years in specified jobs, depending on their citizenship, such as: farm managers, nurses, chefs, halal slaughters. There are a limited number of visas available.

### **International Students**

A New Zealand student visa is required for “all people coming to New Zealand to study for more than three months”, and “study must be the main purpose of [their] visit” (INZ, 2016c). Financial evidence must be provided to INZ proving the student has enough money to cover living costs for the duration of their studies. The visa also allows students, who meet certain criteria, to work 20 hours per week and full-time during vacation periods. An international student in New Zealand on the student visa may have access to both the “post-study work visa (open) or the post-study work visa (employer assisted)” (INZ, 2016f). The open visa allows students “up to 12 months to get a job in a field related to [their] studies” and as soon as work in the related field is found, they are eligible for the employer assisted post- study is which allows “a further two (or three years if work experience is required as part of a professional registration)” (INZ, 2016f). Most importantly “this visa relates to a specific job with a specific employer” and after the completion of the visa the student may “qualify for a New Zealand resident visa under the Skilled Migrant Category” (INZ, 2016f).

International students studying at a recognised institute are eligible to work up to 20 hours a week during term time and full-time during the vacation period (between semesters).

### **Primary Sector Trainees**

This 12 month visa category is open to up to 60 Chileans a year to complete vocational programmes of study and work in the primary sector.

### **Other options**

In addition to the RSE Category and Working Holiday Scheme, other visa options for seasonal workers in the horticulture and viticulture industries include:

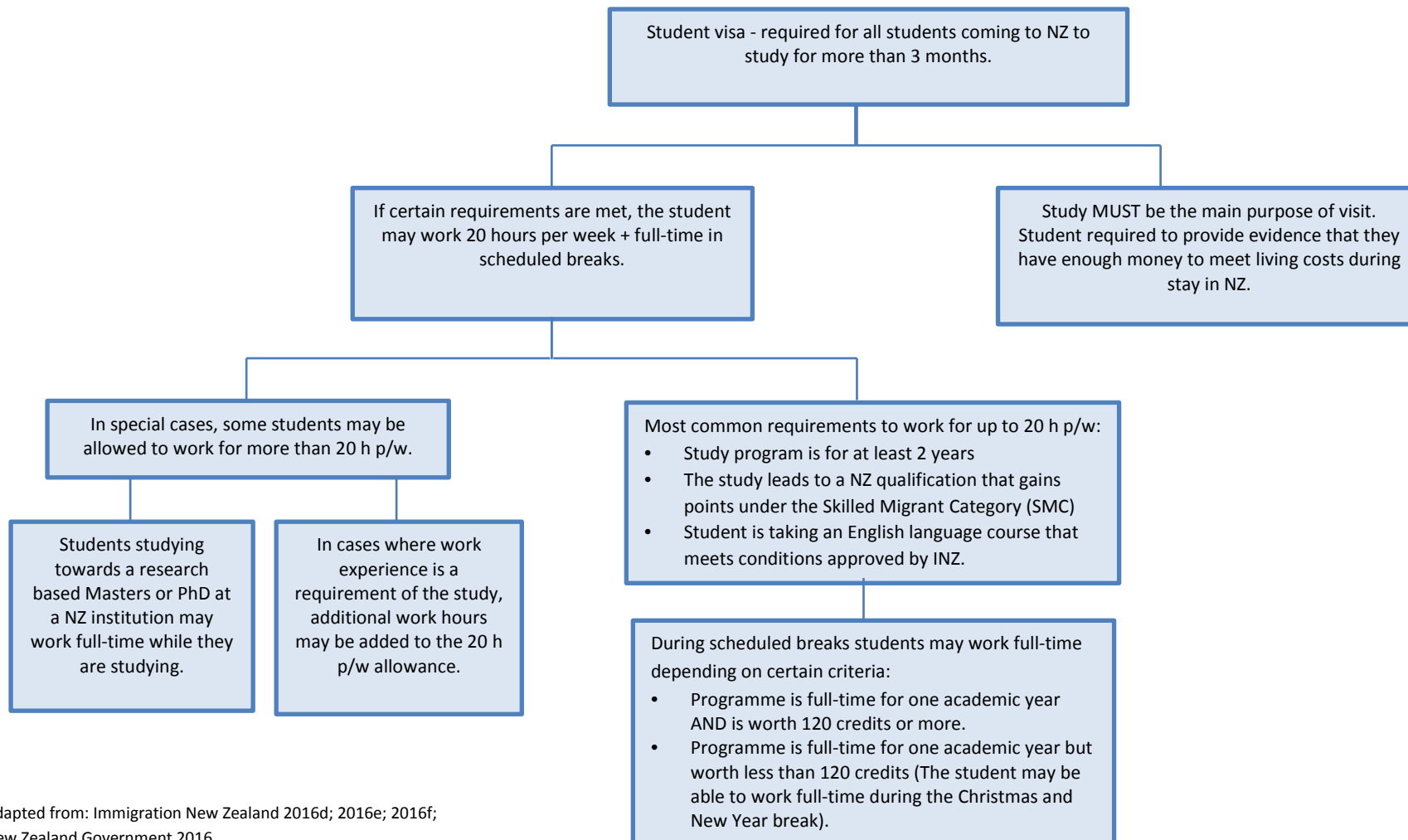
1. Supplementary Seasonal Employment (SSE) Category
2. Variations of Conditions (VOC) wherein there is a seasonal labour shortage and overseas workers are already in New Zealand
3. Working Holidaymaker Extension (WHE). Workers can apply for an extension if they have worked in the horticulture or viticulture industry for three months.

In other industries, the options include:

1. Immediate Skills Shortage List work visa – of relevance to the Canterbury post-Earthquake rebuild
2. Long Term Skills Shortage List

## Appendix 4: Visa Requirements

Table 1: International Student Visa Requirements



Adapted from: Immigration New Zealand 2016d; 2016e; 2016f; New Zealand Government 2016.

Table 2: New Zealand Work Visa and Residency Pathways for International Students

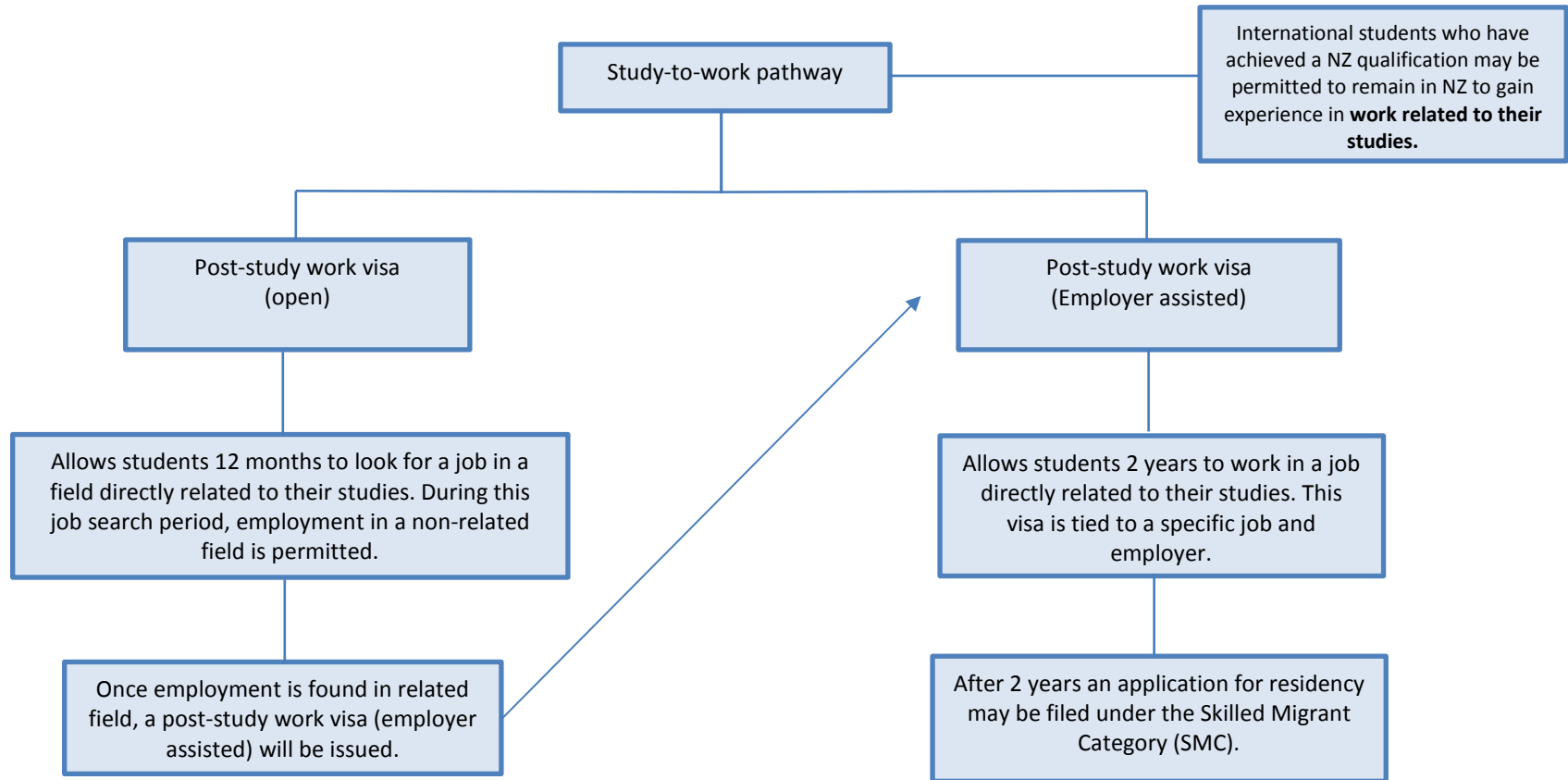
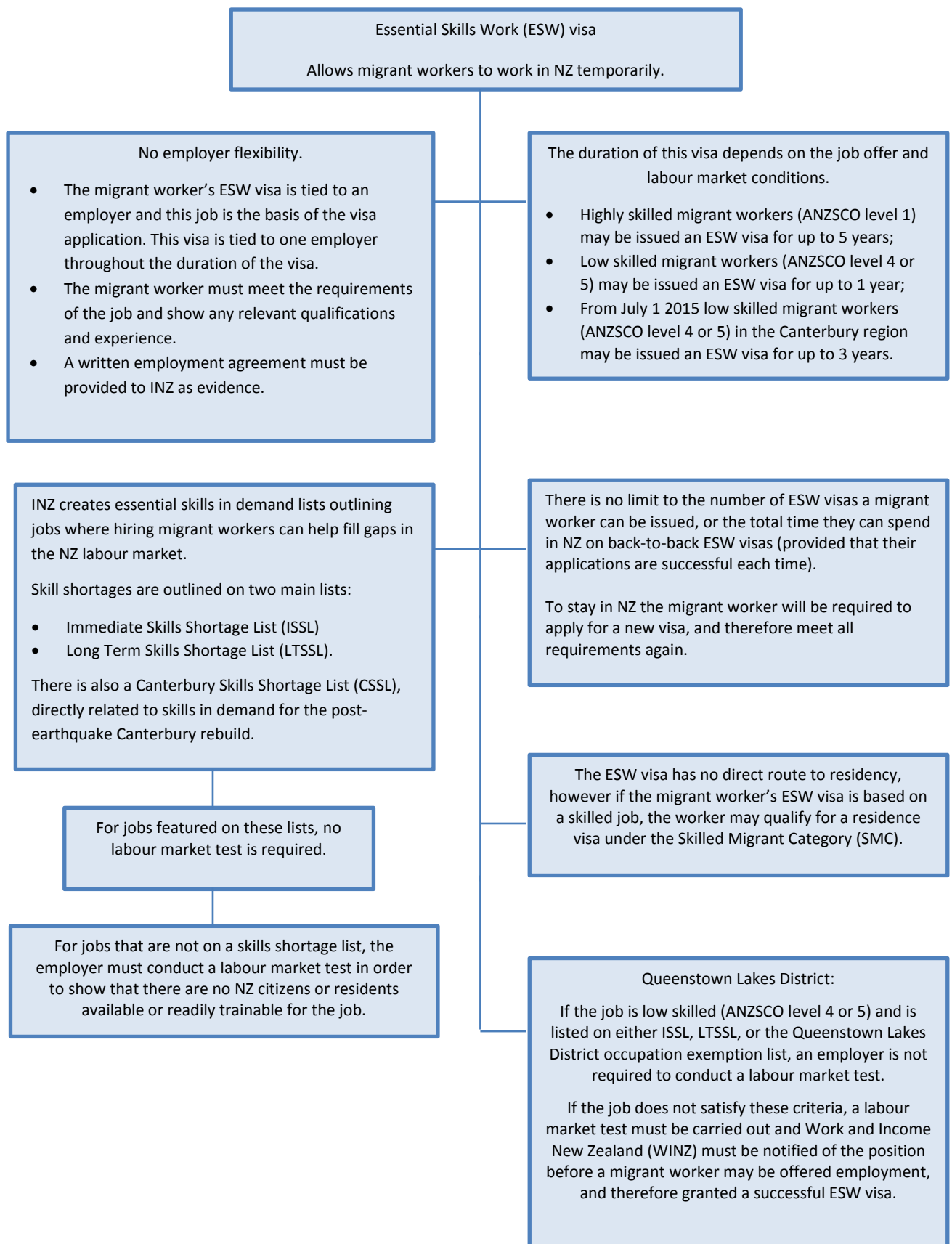
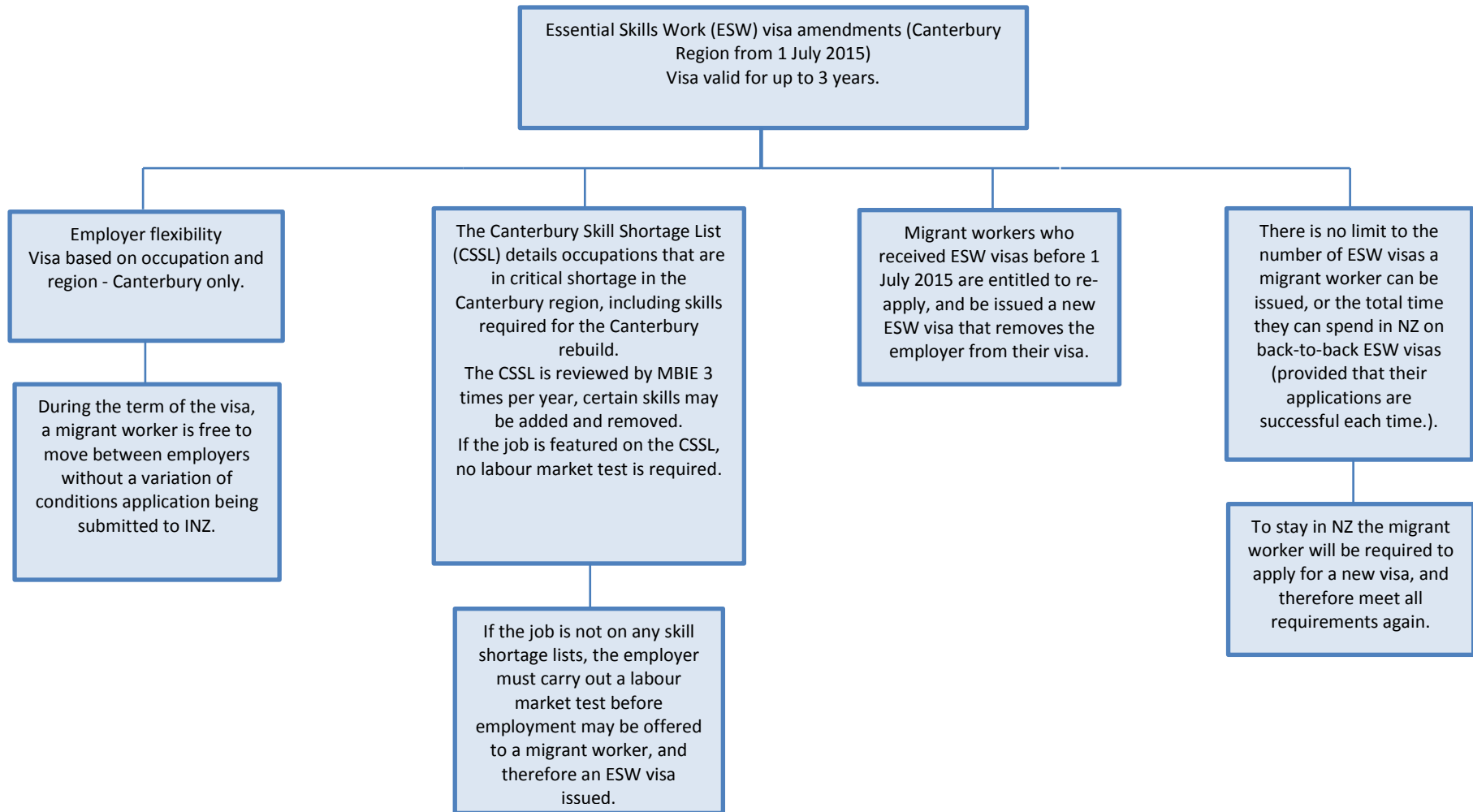


Table 3: Essential Skills Work Visa Conditions



Adapted from: Tiffen 2016; Immigration New Zealand 2016g; 2016h; 2016i; 2016j; 2016k; Williams 2015a; 2015b.

Table 4: Canterbury Region Essential Skills Work Visa Conditions



Adapted from: Immigration New Zealand 2016g; Williams 2015a.

## Appendix 5: Philippine Overseas Employment Administration (POEA)

The abuse by recruitment agents in the Philippines, was such that the Embassy of Philippines in New Zealand in 2013 posted the following announcement on their New Zealand website.

### PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) ISSUES MEMORANDUM CIRCULAR NO. 9 ON PROHIBITION OF COLLECTION OF PLACEMENT AND RECRUITMENT FEES FROM FILIPINO WORKERS BOUND FOR NEW ZEALAND

Pursuant to Section 3, Rule V, Part II of the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers and New Zealand's Wages Protection Act 1983, agencies recruiting, hiring and deploying Filipino workers to New Zealand are now prohibited from charging and collecting any recruitment and placement fee from Filipino workers. This unprecedented and ground-breaking step is a positive outcome of the continuous collaboration between the Governments of the Philippines and New Zealand.

Immigration New Zealand (2016I) states that "when you recruit from the Philippines you must follow the legal requirements of both the New Zealand and Philippine governments". In December 2014, changes were made by POEA, the agency which grants permission to Filipino workers to go aboard, to make New Zealand a 'no placement fee' country. According to Immigration New Zealand (2016I) the 'no placement fee' regulation means that "under Philippines law, workers in the Philippines being placed in New Zealand jobs cannot be charged recruitment and placement fees". This requires New Zealand employers to cover all costs including relocation costs (McClure, 2015). Following this rule change, it became "a legal requirement of the Philippines Government that [New Zealand employers] use a POEA licensed recruitment agent if [they] are recruiting Filipino workers. This can be either direct or via a New Zealand recruitment agent" (McClure, 2015). In light of this, New Zealand companies either "appoint a New Zealand recruitment agent to work on [their] behalf, [who] will engage a licensed POEA recruitment agent to manage the recruitment process in the Philippines" or, in some cases, "New Zealand recruitment agents are also POEA licensed recruitment agents and can run the full recruitment process themselves without using a Filipino recruitment agent as an intermediary" (McClure, 2015).

Journalist Tess McClure (2015) from *The Press* reported that the "Philippines government made [these] changes to bring its recruitment law into line with New Zealand labour laws", as the "Philippine government validated the New Zealand Wages Protection Act of 1983, which prohibits employers from charging for a job", therefore reducing the risk of exploitation occurring. McClure added that prior to the change in regulations "Filipino workers had faced paying between \$2000 and \$15,000 to recruitment agencies for a job in New Zealand". Additionally, in an interview with McClure (2015), "Lane Neave immigration partner Mark Williams said the change would help prevent exploitation of vulnerable migrants", and it would also ensure employers in New Zealand that workers from the Philippines will not "[come] to them completely laden with debt".