

## **Employment standards in world food production – the place of GLOBALGAP supply contracts and indirect legislation.**

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### **Abstract**

This paper evaluates two innovative systems which are encouraging higher employment standards amongst those engaged in the world's food production. They are through retailer led supply contracts, such as GLOBALGAP, and indirect regulation, such as the licensing of labour contractors.

The former contractual initiative has evolved from EUREPGAP, an initiative of supermarket retailers from Europe, which now extends worldwide. The paper outlines the evolution of EUREPGAP to GLOBALGAP and how this retailer initiative has increased the focus on worker welfare and development. The paper reviews how compliance with GLOBALGAP standards is achieved.

The second initiative is focused on the developed world where farm work is no longer popular. Finding the labour supply for seasonal production processes is difficult. Consequently, migrant labour is often utilised. However, compliance is problematic. Careful governance of labour supply contractors can help ensure compliant employers and employees while also fulfilling the labour needs of farmers and packers. A case study of the Recognised Seasonal Employer Scheme (RSE) now operating in New Zealand is presented as an illustration. New Zealand has insignificant unemployment, yet high seasonal labour needs for pruning, training, picking and packing of its varied horticultural produce. This is produced largely for export, and frequently has to comply with GLOBALGAP. At the same time, there is an underutilised labour force in the Pacific. A tripartite strategy has been developed between governments (both NZ and from the Pacific), New Zealand farmers and growers, and New Zealand trade unions. This gave rise to the RSE temporary migration policy. RSE requires compliance and worker care. Such a policy fits with a 'Work, not aid' philosophy for helping impoverished Pacific neighbours, and facilitates substantial remittances to source countries, potentially creating a 'Win:Win:Win' situation for participants.

### **Introduction: rural employment relations**

Food production, which is predominantly rural, is vital to us all. The rapid rise in many basic food commodity prices in 2008 was a salutary reminder that feeding the world's growing population engages a significant part of the world's workforce, many of whom are subsistence farmers. In 2005, the world's total agricultural workforce was estimated to be 1.1 billion, of whom some 450 million held a waged status and some kind of employment relationship (FAO-ILO-IUF, 2005).

In developed countries, only a small part of the population is still engaged in 'on-farm' food production pursuits; more are involved in related sectors, often rural too, of primary produce packing and processing. Most research and writing on employment relations, inevitably, has a strong urban focus. With the primary production sector (agriculture, forestry, horticulture,

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viticulture etc.) forming such a significant part of the New Zealand economy and external trade, the employment relations of the sector are vital for continued increases in production and productivity of the New Zealand economy as a whole.

However, today, rural employment relations are not just a concern of farm managers, but affect all sectors of the economy that are not distinctly urban. Agricultural production is conceived as a paddock to plate enterprise, with farmers being concerned about their inputs through to the ultimate consumption of their produce. Employment relations are a concern to them anywhere down the supply chain, especially where it impacts on their business operations (Tipples and Martin, 2006). In urban situations, employment relations are often more collective in nature, in contrast to rural ones, where there is less collective activity among the workforce. In developed economies, particularly, there may be a high level of legislative and judicial intervention, which sets basic conditions of employment. That is less apparent in the developing world where the labour market is less fettered by regulation. In the rural sector too, regulation is not popular and even in developed economies, such as in Australasia, compliance can be difficult to achieve. Further, because of the small scale of many businesses there is little effective collective activity among the labour force (Tipples, 1987).

## **Government interventions**

Australia and New Zealand have had some of the most interventionist employment regimes, particularly under the arbitration systems which existed from the end of the nineteenth century (Holt, 1986; Macintyre and Mitchell, 1989). There were attempts to extend these largely urban employment relations regimes to rural employment too. Initially, this was partially successful for the more collective rural enterprises such as shearing, nursery plant production and landscape gardening (e.g. Martin, 1987, 1990; Tipples, 1987). Such regimes tended to be enhanced in periods of governments sympathetic to collective employed labour. In New Zealand, these would have been the Liberal and Labour governments from 1894-1910, 1935-1950 and 1999-2008, particularly. These enhanced regimes were undone in periods of governments sympathetic to employer interests. In New Zealand, these were the Reform and later National Party dominated governments of 1910-1935, 1950-1984, and 1990-1999.

The National Party led Government (1990-1999) abolished the New Zealand arbitration system with the Employment Contracts Act 1991. Labour market deregulation under the Employment Contracts Act led to the collapse of collective bargaining in the rural sector (Tipples, 1995; 2007), leaving employees' protections to the minimum codes set by the state and price setting by the market. The organisation of the rural labour market has been brought back into focus too by the on-going recruitment and retention problems experienced across Australasian primary production and processing today. A broad interdisciplinary view of the labour market called the Human Capability Framework was developed by the New Zealand Department of Labour in the late 1990s (Department of Labour, 1999). This has been used to investigate rural and occupational labour markets in several different studies (Tipples, 2004). The individual employment relationship<sup>1</sup> can be considered to be a microcosm of the labour market. Very similar factors interplay and the labour market, for any area or occupation, may be considered to be the sum of all their individual and collective employment relationships.

## **The Present**

Today's issues of recruitment and retention continue to challenge the primary industries in developed economies, much as they have for the past half century. A recent issue of the

*Employment Relations Record*<sup>2</sup>, 'Changing Rural Employment' (Tipples, 2008) explored new ways of looking at these problems and highlighted the effects of demographic changes and the continued attraction of urban life and employment, which draws the young away from rural areas and jobs. What it did not do was examine the role of migration from developing countries with an over-supply of under-employed labour to developed ones with shortages in many and especially rural occupations. This is an area which needs more study. International experiences with short-term migratory groups have been a widespread phenomenon, but often not a happy experience for the short term migrants. For example, the Parliamentary Assembly of the Council of Europe was recently advised:

Reliance on migrant labour has become a characteristic feature of agriculture in southern European countries, especially for seasonal activities, where a large workforce may be needed at short notice for brief periods. The work of many of these migrants is undeclared. As a result, they have no rights to receive minimum wages or make social security contributions and are often subject to abuse and exploitation (De Zulueta, 2003: 1).

Similar recent views can be found about other developed countries such as the UK and the USA (Rogaly, 2008; Taylor, Martin and Fix, 1997; Martin and Taylor, 2003; Weil, 2009).

That is something of concern as New Zealand and Australia consider ways to utilise the large potential source of labour on their doorstep in the Pacific. In New Zealand, this has already begun with the Recognised Seasonal Employer scheme. Does this scheme deliver the Win:Win:Win outcome for New Zealand growers, New Zealand and Pacific Island governments, and Pacific workers and their communities? Further, if countries like Australia and New Zealand have a tradition of difficulty getting farmers and growers to be compliant with employment legislation, are there any other new developments which may help ensure marginal groups of employees like migrants get a better deal?

## **Higher employment standards from private codes**

Economic liberalism in the late twentieth century led to the state withdrawing from many parts of the economy where it had previously played a central role. Campbell and Rosin (2007) have argued that this deregulation was meant to unleash a burst of innovation and development from privately funded sources, but:

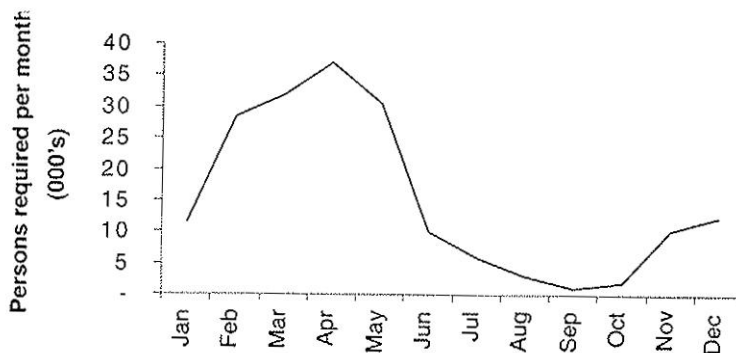
What actually happened was that de-regulation left a void that was filled, in part, by the least likely of sources. New Zealand food exports have become increasingly characterised by new forms of governance emanating from the private sector, or from hybrid alliances across private sector, public groups and sometimes government agencies...we are in the midst of a rise in retailer led governance and that this has created the need for a shift from 'economies of quantity' to 'economies of quality' among food exporters. Organisations, industries and sectors that can make the jump into the new 'economies of quality' will not only survive, but can actually thrive in this new global trading environment. (Campbell and Rosin, 2007: 12)

The New Zealand Vegetable Growers' Association was the first primary industry group in New Zealand to realise the significance of this change in about 1996 when an amendment to the Food Act 1981 was passed. Appreciating future competitive advantage and, particularly, access to large food purchasers like supermarkets was going to lie with quality production, they set up a \$400,000 research study with *HortResearch* to improve their product quality over four years. That study led to the New Zealand Approved Supplier Programme (NZASP) from 1999, which was a pro-active



Traditionally, apples were the major export, now superseded by kiwifruit, shortly to be superseded by wine. All of these crops have highly seasonal demands for labour, for apples and kiwifruit for pruning and picking and for grapes for pruning alone, although grape varieties less suited to mechanised harvesting still need staff for grape picking and there are a variety of other jobs, like bud rubbing, that also require labour. These needs vary regionally as well as by crop. The estimated labour demand for fruit production is shown in Figure 2.

**Figure 2 Estimated seasonal labour demand for the New Zealand Fruit Industry, (2004)**



Source: Horticulture and Viticulture Seasonal Working Group, 2005

## Supermarkets

Paralleling the development of the horticultural industries in New Zealand were other major changes in the retail sector. More and more food came to be sold through supermarkets rather than small specialty stores. The old pattern of small producers sending their produce to market and retailers buying their supplies from there was overtaken by a smaller number of large purchasers – the supermarkets – buying directly from larger growers on formally agreed supply contracts. Thus, their supplies were guaranteed throughout the year by complementing northern and southern hemisphere production seasons. Supermarkets as large corporate enterprises are concerned with maximising their returns for their shareholders and are very risk adverse. Anything which might damage their corporate brand image is to be avoided. Thus, they became interested in supplier codes of conduct to ensure no ‘bad news’ stories appeared about where their produce came from, what it contained and how it was produced. There is now extensive literature on such codes of conduct (e.g. Fulponi, 2005; Hatanaka, Maki, Bain, Carmen and Busch Lawrence, 2005; Hatanaka, Maki and Busch Lawrence, 2008), which have been used not only to avoid risk with their supplies but also to give them a competitive edge because they are more appropriately sourced than other producers. Thus in the United Kingdom, Marks and Spencer sell under their ‘Field to Fork’ banner, while Tesco sell as ‘Nature’s Choice’.

As a very small player on world markets, New Zealand producers have to remain closely attuned to what consumers are seeking by way of horticultural produce. Thus, they have to be sensitive to supermarkets’ requirements. Exports went to 118 countries in 2008, with most going to Australia and Japan, but almost as much to the United Kingdom and the European Union on the other side of the world (Plant and Food Research, 2008). That requires New Zealand growers, as niche suppliers, to stay aware of those markets. Food scares around the millennium about the presence of *E. Coli*, BSE and spray residues raised public awareness of the safety of food consumed. They

were accompanied by concerns as to how sustainable food sources were, with the result that retailers began to develop schemes to reassure consumers and to give themselves a market edge for their produce. These all came together in a protocol called EUREPGAP – the Euro Retailer Produce Working Group and Good Agricultural Practice, which was launched in May 2002. Initially, it targeted fresh produce with the intention to be expanded to cover all agricultural sectors and to provide critical mass and efficiencies greater than individual retailers would have on their own. This initiative was a commercial retailer initiative and not a regulatory requirement. Further, it applied to all supplying growers and suppliers and related coolstores and packhouses, and was based on documents (Rabobank, 2002).

Initially, EUREPGAP had 21 large EU food-based retailers chiefly from the UK and Netherlands. These were allowed to overlay the EUREPGAP protocols with their own ‘in-house’ requirements. Thus, Tesco’s ‘Nature’s Choice’, which was started in 1993, continues to profile that retailer’s produce. As EUREPGAP expanded and covered more produce and suppliers from more of the world its title was changed to GLOBALGAP in September 2007.

GLOBALGAP standards can now be obtained on-line from [www.globalgap.org](http://www.globalgap.org). Certification by GLOBALGAP permits New Zealand growers to access European markets because evidence is collected showing that their production practices meet the GLOBALGAP standards, which include:

- “A commitment to maintaining consumer confidence in food quality and safety
- Minimising detrimental impact on the environment, whilst conserving nature and wildlife
- Reducing the use of agrichemicals
- Improving the efficiency of natural resource use
- Ensuring a responsible attitude towards worker health and safety” (AsureQuality, 2009)

It is the last of these bullet points that leads us directly into our area of interest: “Ensuring a responsible attitude towards worker health and safety”. At the Geneva *Regulating for Decent Work* conference in 2009 there was a focus on such non-core labour standards as “...the regulation of wages, working hours, work/family, health and safety, security of employment and social protection, including the ability of vulnerable workers to access these rights” (ILO, 2008).

The first part of this paper is premised on the belief that the contractual requirements needed for GLOBALGAP accreditation reinforce local labour standards of the types specified. Not only do they require compliance and annual inspection to ensure that, but also, they hold a far greater sanction than the state over non-compliant suppliers. The severity of this sanction is best demonstrated by Wal-mart, who rather than try and work with a non-compliant supplier to resolve any employment relations concerns, terminates the relationship immediately and thus, ends the damage potentially caused by a ‘bad news’ story about the supplier – the relationship was ended because they were ‘bad news’! (Christopherson and Lillie, 2005). That is, of course, a most severe sanction and many certificating bodies actually work with non-compliant suppliers to help them improve and reach a satisfactory standard. The whole point of the *kaizen* (continuous improvement) principle upon which all true Quality Assurance programmes are based is just that, ‘continuous improvement’. Many GLOBALGAP related organisations work with this continuous improvement strategy firmly in mind (see Box 1 describing Tesco’s Nature’s Choice policy). This is most clearly shown by the Good Risk-based Agricultural Social Practices (GRASP) initiative, but before that is discussed it is necessary to be rather more specific about GLOBALGAP labour standards.

**Box 1****TESCO – Nature’s Choice**

Is a private quality assurance scheme applying to all fresh produce supplied to Tesco UK. It started in the UK in 1993 and was extended worldwide in 2004. After an audit a supplier may be awarded one of three levels of attainment: Gold, Silver or Bronze. Continuous Improvement is a key principle, which can be based on the annual percentage audit score. Tesco have some 11,400 farm suppliers worldwide from 66 countries. They are audited by 28 companies with 204 auditors.

The major drivers of the scheme are first customer food safety concerns and expectations. They seek to demonstrate corporate social responsibility and seek to harmonise farm operating systems and procedures in the global supply chain for fresh produce to give a level playing field for all producers. The Nature’s Choice protocol has 238 control points in seven groups:

- Rational use of plant protection products
- Rational use of fertilisers and organic matter
- Pollution prevention
- Protection of human health
- Efficient use of energy, water and other natural resources
- Recycling and re-use of materials
- Wildlife and landscape conservation and improvement

Trained auditors with a local knowledge of crops and the local language are used where possible, but quality control procedures are centralised to provide technical consistency and keep the integrity of the scheme.

Tesco, as a mass merchandise retailer, seeks to give outstanding value to its customers in the sourcing of all its foods, at best prices. To help ensure decent labour standards throughout its supply chain:

- It seeks good suppliers sharing its values
- It monitors performance to identify any issues. Where there are difficulties keeping high labour standards it needs to know what they are. Audits are based on the risk associated with a particular supplier from a particular country. High risk means annual audits; low risk may permit self-assessment, which is monitored by Tesco. Spot audits are also conducted.
- Where problems arise it addresses them. For labour standards priority is given to no child, forced or bonded labour; or any abuse in the supply chain. Correction plans are expected to be implemented within 6 months and the aim is to make the businesses concerned strong partners and not let ‘difficult’ situations or countries cause Tesco to ‘cut and run’. Those that fail to meet standards and refuse to put in place the corrective actions required are terminated as suppliers.
- To prevent problems arising it builds up the labour standards capabilities of the supplier and its own buying and technical staff. High risk suppliers are required to attend a ‘Supplying with your eyes open’ course to help attain good labour standards.
- Where these problems are complex and intractable, it works with others to solve them. In 2007 Tesco worked with Ethical Trading Initiative (ETI), Global Social Compliance Programme and Sedex (Supplier Ethical Data Exchange) on such problems.

**Sources:** The TESCO plc website downloaded on 15 May 2009: [http://tescoplc.com/plc/corporate\\_responsibility/resp\\_buying\\_selling/ethical\\_trade](http://tescoplc.com/plc/corporate_responsibility/resp_buying_selling/ethical_trade) and a Tesco powerpoint to a joint UNCTAD/WTO Information session found on 23 May 2009 at: [www.unctad.org/trade\\_env/test1/meetings/wto1/Tesco%20Nature's%20Choice%20Cox.pdf](http://www.unctad.org/trade_env/test1/meetings/wto1/Tesco%20Nature's%20Choice%20Cox.pdf)



## **GLOBALGAP Labour Standards**

GLOBALGAP standards are designed to reassure consumers about how food is produced on the farm by minimising damaging effects of various kinds and ensuring a responsible approach to the health of employees and their safety (GLOBALGAP home, 2009), but it has to be recognised that many, lacking other viable alternatives, agree to work with poor social conditions. The labour standards are introduced as follows:

People are the key to the safe and efficient operation of any farm. Farm staff and contractors as well as producers themselves stand for the quality of the produce and for environmental protection. Education and training will help progress towards sustainability and build on social capital. This section is intended to ensure safe practice in the work place and that all workers understand, and are competent to perform their duties; are provided with proper equipment to allow them to work safely; and that, in the event of accidents, proper and timely assistance can be obtained. (GLOBALGAP, 2007)

The emphasis is on documents – a written risk assessment and a written health, safety and hygiene policy; records of training and certificates of competence against specified control points, especially where handling or administering any chemical; documented hygiene instructions and related training. Concern is also given to whether these policies and procedures are carried out e.g. whether subcontractors and visitors are made aware of them, and of hazards they may encounter, with appropriate advice on how to react to them if necessary. Availability and handling of protective clothing is also addressed. In addition a member of management has to be identified as responsible for workers' health, safety and welfare (GLOBALGAP, 2007).

## **GRASP – Good Risk-based Agricultural Social Practices**

As the call for social responsibility has emerged in global food supply chains consumers and civil society have drawn attention to the need for meaningful approaches to these social requirements on farms, and in agricultural supply chains. From 2005, trials were undertaken to develop a tool to support farmers who were trying to show their compliance with international as well as national labour legislation. This was not for a full social audit because it was recognised that the agricultural mass market could not afford the cost of a full audit or high costs of compliance. However, it provided various support devices for those wishing to improve their performance based around 14 control points. Mostly based on management documentation, only limited interviews were required. Farmers' compliance was encouraged by giving them detailed guidelines adapted to their local situations. These criteria were developed in a tri-partite process between the GLOBALGAP secretariat, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH and Coop Switzerland. They were trialled in Kenya, Brazil, Viet Nam, Spain and Morocco.

While the GRASP module does not form part of the GLOBALGAP standards, it complements them in laying out a set of 14 control points and criteria for compliance in a similar system. Development of the research based GRASP protocol formed an important part of informing the revision process for worker health, safety and welfare revision of the GLOBALGAP 2007 standard (Anwander, 2008). Nigel Garbutt, Chairman of GLOBALGAP, wrote:

It was reassuring to note that GLOBALGAP certified farms tended to demonstrate overall better performance against certain social criteria. In part this can be attributed to



the high attention paid to establishing management systems of monitoring and control on these farms (as cited in Heise, Uhlig, Vonwiler, 2007: 2).

## **The Recognised Seasonal Employer Scheme**

The second part of this paper is focused on the developed world where farm work is no longer popular. Finding the labour supply for seasonal production processes is difficult. Consequently, migrant labour is often utilised (De Zulueta, 2003; Rogaly, 2008). However, casual employment often presents compliance problems. Farmers are often tempted to operate a cash-based, undocumented approach because it is easier. Now, however, with the need to satisfy quality assurance schemes and audits for the right to supply international retailers such a casual and often illegal approach is unacceptable. In New Zealand, at the beginning of the new millennium, these two issues became apparent at the same time – the need to maintain duly certified quality production and the need to have the labour supply to deliver that quality product. During the Labour led government from 1999, unemployment levels continued to fall as the economy had boomed, to the point where there was little employable labour available for seasonal tasks such as in horticulture. High seasonal peak demands for fruit picking and packing (see Fig. 2), exacerbated by the tight timelines for those processes needed to meet QA requirements and by the growth in total production, were further complicated by the nature of the labour force utilised.

In the 1980s, the seasonal labour force had operated with lots of students and local families, but by 2000, the task had grown and the work had become much less attractive to students. A review of MAF Research Reports on rural social affairs revealed the stresses in rural society, many of them about employment (MAF, 2000). In May 2001, the Central Otago District Council drew attention to the rapid growth in requirements for harvest labour and the difficulty of attracting labour when the limited accommodation facilities were also under pressure from tourists. In July 2002, a *Human Resources in Agriculture Workshop* resulted in Rotorua for the whole agricultural sector (MAF, 2002). It set out to define the problem, take stock of what had been done, identify gaps and suggest immediate and longer term initiatives. Horticulture representatives reported that they had been working on the issues of future horticultural employment with government for some time. On-going changes in the industry and the difficulties of retaining staff season to season were noted:

...a lot of numbers are involved in harvesting, especially fruit harvesting, and in the foreseeable future this will stay a manual job, maybe even bigger due to the technical needs of the market. We still need the numbers, but we need the supervisors, and the QA people in pack-houses checking quality (MAF, 2002).

They also noted the change in demographics and suggested the industry needed to undergo a culture change. A new organisation for governance was established: *Human Capability in Agriculture and Horticulture*, but its subsequent focus was more on the problems of full time staff across the sector. By 2002-2003, the emerging employment problem, with the decline in the number of unemployed available for picking and the falling skills base, was being noted. There was a piecemeal response and crisis management of the seasonal problems over the period 2000-2004 (Silcock, 2005).

By 2004, regional discontent became national and the Minister of Immigration was put on the spot in a televised debate by a squash grower who believed Thai immigrants worked better than New Zealand's unemployed. The Minister did not want the issue getting out of control at a sensitive time and called the heads of the relevant grower associations and four other related ministers together to discuss the issue. A key meeting in which the Minister laid down the principles upon which the government was prepared to help resolve the industry's problems then followed. First, he outlined the respective roles of industry and government. Industry had to share responsibility for

their labour needs, actively plan for the future, and attend to recruitment and retention through good employment terms and conditions, wages and staff training. Government would help through getting the mix of interventions right and help with the development of a strategy. Secondly, he differentiated between absolute labour shortages, with them being the concern of government and recruitment difficulties, short term concerns more for employers. Only for absolute labour shortages were immigration responses appropriate. Local labour had to have the priority and to be fully utilised. He urged that "...a standard, strategic approach is required to seasonal labour shortages rather than continuing to respond in an ad hoc manner" (Swain, 2004). He also outlined possible short-term (2004/05), medium-term (2005/06 – 2007-08) and long-term (2008/09 onwards) scenarios. Appropriate, good recruitment (attempting to recruit locally, engagement with Work and Income (New Zealand's benefit and work broking agency), addressing housing and transport problems, use of lawful labour and credible agents) and employer (improved business compliance, such as health and safety) practices were outlined. Government responses to industry were to be contingent upon them working together, not just on the labour shortages but also developing industry skills and productivity. Finally, he wanted a report on industry strategy development by Christmas 2004. However, that was to be Christmas 2005.

In the next season (2004/05), an election year, there were stories of fruit left to rot on the tree, coupled with tales of illegal immigrants because growers were so desperate. With New Zealand dependent on its export markets, these were not 'good stories' for overseas buyers. Also, kiwifruit suffered serious production problems. Zespri estimated that the shortage of staff and poor quality had cost some \$20 million (Whatman, 2009 personal communication, 11 May, 2009) as well as other production damage through adverse weather conditions for total losses of \$100 million.

## **The path to Recognised Seasonal Employers**

The path from this point is difficult to follow. There were a number of different threads developing at the same time and interacting, which have been reported elsewhere in more detail than is possible here (Hill, Capper and Wilson, 2005; Whatman, Wong, Hill, Capper and Wilson, 2005; Hill, Capper, Wilson, Whatman and Wong, 2007; Whatman and Van Beek, 2008; Institute of Policy Studies, 2008; Carroll, Blewden and Witten, 2008; Spoonley and Bedford, 2008; Bedford, 2008; Ramasamy, Krishnan, Bedford and Bedford, 2008). The key ones will be outlined in turn.

1. Behind the specific seasonal labour shortage problems developing in New Zealand was a wider policy context of relations with New Zealand's Pacific neighbours: New Zealand's role in the South Pacific (Ramasamy et al., 2008), the role of the World Bank, and the role of the United Nations. The latter two wanted to tackle some of the economic and demographic problems of Pacific countries by helping them gain access to the labour markets of the two major developed economies of the Pacific, Australia and New Zealand. In contrast to the ageing populations of Australia and New Zealand and their relatively low levels of unemployment, Pacific countries tended to have fast growing more youthful populations and have relatively few employment opportunities (Bedford, 2008). Pacific leaders were advancing their case for access from 2004, which gained particular potency from a UN General Assembly debate in 2006, just before the Pacific forum met (Ramasamy et al., 2008).
2. The quality problems of fruit harvesting had come to the fore and yet the harvest seemed to be miraculously gathered each year in spite of the increased labour market problems. The standard top-down policy formulation out of Wellington via a literature review and limited discussion did not seem appropriate, but fortuitously the Co-Chair of the working party had an interest in an alternative form of policy development. It was more 'bottom-up' and

‘outside-in’ than a model system in approved Cabinet Office mode driven from Wellington. It came to be known as ‘practice making’ (Whatman et al., 2005). Further, it was based on primary research funded securely from an inter-departmental fund, thus avoiding early termination of the research.

3. The primary research was based in the field with workshops in industry training space in Hastings, in the middle of the biggest area of apple production. The workshops:
  - ...involved practice-making by engaging the various regulators and all the elements of the industry – apple growers, contractors, quality controllers – to share knowledge about what happens on the ground and co-design the changes that industry needed to make, with the support for those changes from immigration and employment environment required to transform the apple industry...Without the primary research and understanding having been completed, it would have not been possible to respond quickly when the top down window of opportunity popped open (Institute of Policy Studies, 2008: 66).
4. Participants were exposed to multiple and conflicting perspectives, but managed to develop a real understanding of how the system of ‘Appling’, as it became called, really worked. That took time, but enough time was available to develop a shared understanding
  - ...that things looked very different in practice depending upon whether you were a low paid and poorly treated worker, the legitimate orchardist who was at a cost disadvantage compared to the shady operator, or the regulator worried about illegal and overstaying temporary workers, occupational health and safety issues, tax compliance and poor social assistance and housing issues (ibid).

So the harvest was no longer perceived as a miracle but a disaster.
5. One of the key moments in the workshops was when a quality controller perceived that there were:
  - ...disconnects between pickers rewarded on quantity, growers who were rewarded on quality, and a casualised, informal workforce; employers had no incentive to invest in productivity with a system that worked in that way. The key insight was that ‘the moment that value is added or destroyed is the moment of choice by the individual picker (ibid).

Thus to maximise crop value a sustainable workforce with the skills of repeat workers was essential.
6. Besides the ‘secure funding’ for the research, another key aspect was that it was facilitated and conducted by outside researchers (WEB Research) working with officials from the Department of Labour. This added a degree of independence and objectivity with their evaluative skills, together with their knowledge of workplace learning (Hill et al., 2007)
7. Another key feature was the risky role taken by a ‘policy entrepreneur’, who kept the project moving in the department, although there were regular changes in senior management and there were potential personal costs attached.
8. When the policy development process could have fallen down there was significant media attention focused on seasonal labour shortages that caused the responsible minister to call the Strategy Group together. Because of the prior established mutual

trust and understanding between officials and industry leaders, policy solutions quickly resulted.

9. A serendipitous moment was added by the eventual policy paper going to Cabinet at the same time as a paper on Pacific Labour Mobility, with the result that the RSE took on a more specific Pacific character, which is thought to have helped its progress from being just a possible policy to actually being implemented. It also assisted with the implementation of RSE because of the previously developed relationships between the Pacific Island States and New Zealand, and the relatively more manageable scale of undertaking a Pacific focussed RSE compared with a World-wide scheme.
10. Finally, the plans allowed for there to be some problems in the first year of operation with sufficient resources for a response. As the Institute of Policy Studies concludes: “Working together is hard and success is not guaranteed. Sometimes however, one plus one can equal five” (Institute of Policy Studies, 2008: 67).

Two concrete policy outcomes from these intermingled threads stand out. First, the delayed Seasonal Strategy, which outlined how the problems would be tackled in short, medium and long-term on 8 December 2005 and the introduction of the Recognised Seasonal Employer scheme on 30 April 2007. To avoid having to discuss each in full, in this analysis the focus will be on labour contractors as employers.

### **Labour contractors in the strategy**

The problem of illegal labour was highlighted in the Strategy (Objective 2, H&VSWG, 2005), with the presence of illegal workers being a problem in both domestic and international markets. Illegal labour was to be progressively eliminated but without disrupting the overall labour supply. The main section concerning contractors was Action Area 5.4 ‘Ensuring compliance and moving beyond compliance’. The competitive position of law-abiding growers and labour contractors was undermined by illegal activity. ‘Illegals’ were fundamentally unreliable and compromised the quality, value and reputation of the industries. Consequently government agreed to progressively enforce standards and eliminate illegal behaviour, especially where it concerned serious exploitation and fraudulent activity.

To prevent the problems from re-appearing it proposed a national contractor certification scheme. While most seasonal labour suppliers and growers wanted to build up long-term sustainable businesses, ‘rogue’ contractors using illegal labour undercut the good business practices of the law-abiding ones. The contractor certification processes for horticulture and viticulture were to be based on compliance with:

- Established minimum pay and conditions
- Immigration requirements
- Inland Revenue requirements
- Occupational safety and health requirements. (H&VSWG, 2005, Action Area 5.4)

Achievement of compliance was to be gradual with public agencies focusing enforcement activities on ‘rogue’ operators, while supporting those seeking to become legitimate. Industry was to promote contractor recognition and discourage illegal activity. The positive benefits of registration were to be highlighted:

- Decreased risk of being prosecuted for tax, employment and immigration breaches
- Support with compliance with the conditions of market assurance programmes and standards e.g. EUREPGAP, British Retail Consortium standards
- Protection of the industries' reputation and image (H&VSWG, 2005, Action Area 5.4).

## **Master Contractors and the RSE scheme**

The roots of a Master Contractors' association had been laid in the Bay of Plenty (the main kiwifruit area) back in 2003 among contractors who wanted to differentiate themselves as compliant compared to others. New Zealand Kiwifruit Contractors Inc had about 70 members, who wanted recognition for their excellent business practices and ethics (Wood, 2007). This pattern was readily accepted nationally in 2006 and New Zealand Master Contractors Inc (NZMCI) was launched by the Minister, Shane Jones, in March 2008, to aid the Recognised Seasonal Employer scheme (Jones, 2008). Not just compliance but also industry 'best practice' was sought (Kuiper, 2008). To ensure adequate standards NZMCI established a Code of Conduct and an audit procedure. The Code focuses on employment law, and the health and safety of its staff as well as 'best practice' (NZMCI, 2009). Throughout, its intention has been to raise the quality and compliance bar in the industry. With a sustainability and training focus, they are now working with post-harvest facilities to promote the organisation in the industry and improve their compliance and practices (Wood, 2008). The productivity of contractors is being developed, using tailored business training based on Government financed productivity research.

## **The Recognised Seasonal Employer scheme**

The product of the extensive policy development process eventually came into effect on 30 April 2007. To become a Recognised Seasonal Employer (RSE) six requirements had to be met:

- To meet the policy definition of a New Zealand employer
- To have a high standard of human resource policies and practices
- To have good work practices
- To be committed to recruiting and training New Zealanders
- To be in a sound financial position
- To be willing to pay market rates and 'take care' of their RSE workers (Department of Labour, 2009a)

Employers also had to be responsible for:

- Paying half the travel costs for workers flying to and from New Zealand
- Paying for at least 240 hours work
- Providing at least 30 hours per week work over the period of their employment
- Providing evidence of pastoral care of their RSE workers e.g. suitable accommodation, translation, transport, availability of suitable churches to attend, recreation facilities, and an introduction to life in New Zealand
- A commitment to pay at full market rates
- A commitment to contributing to the cost of removal of overstayers, if that should arise (Department of Labour, 2009a).

RSE status is approved for two years but has to be accompanied by an Agreement to Recruit (ATR). Applications for ATRs are dependent on applying in the approved form, paying the fee and supporting the case with evidence showing the requirements are met. These relate to the jobs to be filled, their terms and conditions and from where they are to be filled. With RSE status and ATR approved, they begin their own recruitment. RSE officers are available to help where necessary. To be suitable for recruitment workers must be:

- At least 18 years old
- Have an employment agreement
- Have a return ticket
- Satisfy health and character requirements, and
- Be able to show they only want to stay in New Zealand temporarily (Department of Labour, 2009a).

Pacific countries are given priority in providing potential RSE recruits. These include Federated States of Micronesia, Papua New Guinea, Nauru, Palau, The Republic of the Marshall Islands, Solomon Islands, and Kiribati, Tonga, Tuvalu, Samoa and Vanuatu, the Pacific 'Kick Start' states. The latter were helped to take advantage of RSE through New Zealand's Department of Labour helping develop pre-departure training and the setting up of work-ready pools of potential recruits (Department of Labour, 2009b). Recruiting from elsewhere requires demonstrating that a reasonable attempt had been made to recruit from the Pacific, or that they had a previous relationship with another country. While the number of potential workers was originally capped at 5,000, that depended on the state of the New Zealand labour market and whether there were any Kiwis seeking jobs. The cap was raised by the previous government to 8,000. 3,994 workers came to New Zealand over the initial period (2007-2008), 74 percent from 'kick-start' countries in the Pacific, 6 percent from another non 'kick-start' country and 20 percent from other countries, mainly Asian. 273 workers had returned home at 30 April 2008 and 3,721 were still in New Zealand (Department of Labour, 2008). Just over a year later (28 May 2009) 5,408 RSE workers were in New Zealand and 5,327 had gone home. They had been employed by 411 approved employers (Department of Labour, 2009c).

### **Initial Outcomes of the Recognised Seasonal Employer Programme**

While it is very early to speculate on the success of this programme, there are already some very positive indicators that it is indeed supplying the Win:Win:Win outcome suggested earlier. First, the World Bank initiated some tough evaluative studies of the scheme. A survey of 2,000 Tongans revealed that the RSE scheme had opened up the prospect of seasonal migration opportunities to many poor, rural households in Tonga. Some 20 percent of men of working age were offering themselves as part of a work-ready pool, with some 800 having the chance to work in New Zealand (Gibson, McKenzie and Rohorua, 2008). Of those who wanted to come from Vanuatu, those with better health records, more work and overseas experience, and with better English literacy tended to be favoured. They tended to be males between late 20s to early 40s, with some relatives in New Zealand and less likely to smoke or drink. More than 1,600 ni-Vanuatu had been allowed to work in New Zealand by May 2008. Poor information had discouraged some prospective applicants and returned RSE workers are suggested for briefing new contingents. Workers had a predominance of financial and individual motives and a desire to have the chance to learn English (McKenzie, Martinez and Winters, 2008). In terms of short term financial gains, the households of Tongan

participants of the RSE scheme had per capita income increased by almost \$US 300, but there was no apparent impact on their consumption (Gibson and McKenzie, 2008).

Informal comment suggests that remittances, which vary widely from a maximum of about \$NZ16,000 in one Tongan case and an average of \$NZ7,000, have made real differences for things like siblings' education rather than conspicuous consumption (Department of Labour, 2008). Besides the remittance taken home and their economic multiplier effects, there are also the formal work skills that may be transferable; also, the other social skills and informal learning from being in a different and more developed country. Then there are the less tangible benefits of eyes being opened to a different reality, choices extended, of human capabilities being built up (Sen, 1999), and enhanced self esteem having travelled, flown, and lived in New Zealand.

The great advantages of the scheme for the 'sending' communities has best been summed up by Tuatagaloa Joe Annandale, a senior matai of Poutasi village on the southern coast of Samoa. He came to appeal to the Pathways migration conference in Wellington on 3 November 2009 to keep the RSE scheme going because it gave hope of significant employment for his people. But he had come at a time of great personal trauma, having lost his wife, six family members, his business and all the 2010 RSE paperwork in the devastating tsunami which had hit his community only a few weeks previously. That he had come at such a time was quite unexpected by the conference organisers but spoke eloquently of the seriousness of the issue of the RSE scheme to his community so soon after the tsunami. Further, he appealed to have the paperwork involved in the scheme reduced because it was such a burden and its loss would slow down his people getting involved in the RSE in 2010 (Annandale, 2009).

Besides the benefits to workers and their communities, growers and employers have also benefitted. Initial teething troubles threatened to undo the scheme in the first year but the organisers had allowed for problems and were prepared for difficulties. A colleague taking a Lincoln University student field trip to the Central Otago apple growing area in April 2008 reported that the workers had learned how to get time off work for injuries received in work accidents at public expense and the growers encountered had tales of woe. After the similar trip in 2009, his report was quite different. Growers had suddenly discovered the virtues of the scheme with a certain workforce, returning workers who did not have to be trained again, and who could help their 'new' colleagues get to grips with the work and living. Further, there were also stories of New Zealand growers making efforts to help the communities from which their workers came. So, the RSE scheme seems to be achieving a Win:Win:Win outcome, which will be more thoroughly investigated with the passage of time. A positive official *Summary of Evaluation findings from Recognised Seasonal Employer (RSE) Policy – First Season (2007-08)* was published in June 2009 and the government announced that the strategy would continue, with minor improvements. HortNZ CEO, Peter Silcock, said:

It is simply a case of being able to pick an apple when it is meant to be picked, not a week before, or a week after. Pick it at its best and it will store better, travel better and look better on the shelf (Horticulture New Zealand, 2009).

The final word should rest with a representative opinion of the fruit trade, the UK's *Fruit Produce Journal*:

Pacific Islands labour in New Zealand is proving a bigger factor than even an improving new variety profile in helping growers deliver high quality fruit to market, the country's top-fruit industry body has said... 'New Zealand apples are taking the place of other southern hemisphere apples in our markets offshore because the quality is higher'... 'We have one of the best-quality crops we have ever had, but Pacific Islands labour has



fundamentally changed our ability to deliver quality to the market. It is bigger even than changing varieties – being able to pick the crop at exactly the right time in terms of fruit maturity is a huge fundamental change (Hammond, 2009: 1)

## Notes

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<sup>1</sup> The employment relationship has been described as a notion creating a legal link between an employee and an employer to “...whom she or he provides labour or services under certain conditions in return for remuneration” (FAO-ILO-IUF, 2005: 13). It is a concept common to all legal systems and traditions but the obligations, rights and entitlements associated with it vary from country to country.

<sup>2</sup> The *Employment Relations Record* is the refereed Journal of the Pacific Employment Relations Association (PERA).

<sup>3</sup> Hazard Analysis & Critical Control Points.

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