

## Are vulnerable workers really protected in New Zealand?

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### Abstract

Increasing migration to New Zealand is indicative of globalisation's influence on working arrangements and employment conditions. Although the "compression of time and space" (Harvey, 2000: 16) has opened borders and increased opportunity for many, it has also exacerbated worker vulnerability for a sizeable proportion of workers. One subset of such workers are migrants. Migrant workers often obtain precarious work through community connections or labour contractors; some have language difficulties; and a significant proportion of these migrants work in sectors with relatively high accident rates. It may be assumed, therefore, that they are likely to be more vulnerable to work accidents and injuries (Benach, Muntaner, Delclos, Menéndez & Ronquillo, 2011). Initially, we explore who are categorised as vulnerable workers using Sargeant and Tucker's 2009 framework; concluding that, for many, protection is largely rhetoric not reality. Then we ask three questions: What are the existing protections for New Zealand's vulnerable workers? Secondly, why are these mechanisms ineffective? Finally, what can be done to improve the protection of such vulnerable workers?

All New Zealand workers are protected by the state through public policy, monitoring, and enforcement with varying efficacy. While recent legislative amendments acknowledge some new features of vulnerability, on their own, they are recognised as insufficient to ensure compliance from employers and employees. As a result of public sector restructuring and budgetary constraints, there is also a lack of enforcement mechanisms to iterate legislative oversight. Moreover, many insecure and precarious workers will not advance entitlement claims due to employment dependency.

Most additional protections are likely, in the short-term, to come from collective worker initiatives and, to a more limited extent, by unions' collective labour actions. These are illustrated through case studies of new radical trade unions such as *Unite* and *First's Union Network of Migrants*, with a focus on membership ethnicity and new organisational devices, such as social media, communication campaigns and leadership development. Such features are contrasted with a non-union but demonstratively successful collective, the Filipino Dairy Workers in New Zealand (Inc.) of Ashburton in dairy farming, and of the role of the Canterbury Indonesian Society (Inc.) in the 'rescue' and repatriation of the Indonesian crew of the *Oyang 75*. Finally, discussion of the Recognised Seasonal Employers (RSE) Scheme is presented to query whether this model is a successful response to migrant exploitation and could offer an appropriate foundation for other primary industries.

### Introduction

Changing employment conditions in New Zealand have resulted in certain groups of workers collecting at the periphery of the labour market. This work is typically located in tedious or hazardous positions with little regulation, supervision, and poor remuneration (Anderson, Lamare, &

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Hannif, 2011; Bauder, 2006; Jayaweera & Anderson, 2009). However, while these jobs are often relatively hidden, they are nonetheless vital to some of New Zealand's major export sectors. For a country which depends on its export industries for economic survival, to rely on such groups of marginalised, vulnerable, and often migrant workers is placing those industries at risk. Therefore, addressing the causes and remedies for vulnerable employment is a matter of considerable domestic importance.

Sargeant and Tucker (2009) group three risk factors contributing to migrant worker vulnerability:

- migration factors
- characteristics related to migrants and their country of origin
- receiving country conditions.

We define vulnerable workers following Ori and Sargeant (2013: xii) as

[...] someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse.

Standing's denizen (resident alien) category from 'The Precariat' (2010) also describes this group well: individuals who have a right to be in New Zealand, but who are expected to comply with specific visa requirements which may increase their vulnerability. These groups may be exposed to exploitation because they need work to generate income, but also to repay debt (often incurred to 'middlemen' or migration/education agents), and for remittances to family, friends and community: often the reason they migrated. Many migrant workers have visa validity conditional on employment, placing increased (and some would say unbalanced) power in the hands of their employers with the potential for exploitation and abuse.

## **What are the sectors where vulnerable work is found?**

The makeup of the New Zealand economy is dominated by primary sector production where exports have reached record levels of \$37.7 billion in 2014 – about \$11.3 billion more than previously forecast (Rae, 2014). With annual exports in excess of NZ \$13.7 billion, the dairy industry is New Zealand's biggest export earner, accounting for more than 29 per cent by value of the country's merchandise exports (Dairy Companies Association of New Zealand, 2014, National Business Review, 2014). Horticultural products now account for eight per cent of New Zealand's total merchandise exports, and in the year to 30 June 2013, the horticulture industry generated more than \$3.6 billion in export revenue, with the major products being wine (\$1.2 billion) and kiwifruit (\$934 million) (Plant and Food Research, 2014). If fishing (\$1.3 billion) is added, these industries are responsible for \$18.6 billion in exports or about a third of total merchandise exports (New Zealand Trade and Enterprise, 2014). Such significant economic impact is matched by influence on employment conditions in the primary sector.

Extant literature shows that the employment of migrant labour in the primary sector is increasingly widespread where non-standard, precarious employment and the use of unregulated, contingent labour is the norm (see McLaren, Firkin, Spoonley, Dupuis, de Bruin & Inkson, 2004; OCED, 2009). The greatest proportionate growth in migrant labour worldwide has been among low-skill, low-wage workers in sectors, such as caregiving, agriculture, hospitality, and food services, expanding in response to employer demand, but with little public debate (Faraday, 2012). With the primary production sector forming a significant part of the New Zealand economy and external trade, the sector's employment practices are paramount for continued increases in productivity as well as maintenance of external trading reputation (Tipples & Whatman, 2009).

Export conditions are the main influence on sectorial employment trends where employment numbers fluctuate according to seasonal, economic, and climatic conditions. As horticulture and agriculture are seasonal in nature and largely unskilled, the difficulties of recruitment and retention domestically are pertinent. Staffing uncertainties continue to be a major concern to growers (Tipples & Whatman, 2010, Horticulture NZ & New Zealand Institute of Plant and Food Research, 2010) and dairy farmers (Tipples, Hill, Wilson & Greenhalgh, 2013), so potential employers often choose labour contractors and migrant workers who complete the work when needed. Labour contractors are usually employed by the owner/operator to complete a job and recruit and employ their own staff: migrant workers who may be illegal workers. As the contractor bears responsibility for employment, the farmers hiring them can 'step away' from the accountability of direct employment and its inherent legal obligations. Indeed, a typical defence of poor labour practices is that the owner was unaware (Stone, 2014; Clark, 2011).

As a primary industry, horticulture has been an avenue for migrant employment for some time (see Rogaly, 2008, Garson, 1999; Horticulture Week, 2008; Kandel, 2008; Shelley, 2007). Horticulture also remains a significant casual employer and of the 40,000 seasonal jobs, 30,000 are located in the forestry and horticulture sectors (Lamm et al., 2011). However, as in many developed countries, farm work is no longer regarded as a respectable or sufficiently attractive or available occupation to the local population. Further, many potential workers are domiciled far from the major regions of production, and transferring for short work periods is unattractive and institutionally difficult as various rural areas in New Zealand have restricted welfare payments to discourage residence (Coppel, Dumont, & Visco, 2001; Guthman, 2004; Horticulture Week, 2008). Therefore, in many cases, the workers available can be assumed to be contingent migrant workers. While they may not choose to work in such industries or conditions, they may be limited by work experience, English language competency, and a lack of other job opportunities (Mackenzie & Forde, 2009; McKay, Craw, & Chopra, 2006; Pollert & Charlwood, 2009).

In spite of worker vulnerability leading to access and information-gathering difficulties, Anderson, Jamieson and Naidu (2012) gathered evidence showing migrant workers experienced exploitative and illegal working conditions. A significant proportion of those surveyed worked above the legal hours stipulated in sectors with relatively high accident rates. Average hours worked per week were 29 hours (above the legal limit of 20), and a spread of hours between 16 and 55. Many obtained work from ethnic community connections or labour contractors, and all 93 respondents were paid below the minimum wage. Furthermore, just under half of these workers had any formal written contract. This research presents evidence of industry reliance on migrants working outside their visa conditions as well as the lack of monitoring or enforcement of employment minima by the relevant regulatory agencies. In an export-dependent economy like New Zealand, this can have far reaching implications.

The Recognised Seasonal Employers (RSE) scheme has attempted to address and mitigate some of the above problems as well as ameliorating worker shortages (Cameron, 2011), but secondary (illegal) labour market employment practices continue and undermine the primary sector as a whole. Moreover, the inability of vulnerable workers to enforce their contract or statutory rights creates a situation of commodification of workers, as well as creating workers for positions no domestic workers are prepared to accept. Guthman (2004) premises that this vulnerability is used to ensure compliance in the labour force; these are core jobs on which the primary industry is reliant, but for peripheral wages (Anderson & Naidu, 2009; Walsh & Deery, 1997). This peripheral work creates a workforce without comprehensive rights even though the jobs are economically essential.

The Foreign Charter Vessel (FCV) fishing sector has also seen human rights abuses occurring within New Zealand's exclusive economic zone (EEZ). Deregulation and a drive to increase profit margins from large fishing corporates (including major iwi enterprises) have encouraged the use of foreign vessels and foreign crews in the New Zealand fishing industry (Stringer, Simmons, & Coulston, 2011). Exploitation and cruelties were elucidated in two South Korean flagged boats within a short time period: *Oyang 70* with six deaths in 2010, and desertion by Indonesian crew of the *Oyang 75* in Lyttelton in 2011. "Crew members on the *Oyang 75* reported officers beating them for working too slowly, and making crew members remain standing in a fixed position for hours as punishment for perceived slights to officers" (Stringer et al., 2011: 8).

So we ask: what are the existing protections for New Zealand's vulnerable workers? Secondly, why are these protections ineffective? Finally, what can be done to improve the protection of vulnerable workers in primary industry?

### **What are the existing protections for New Zealand's vulnerable workers?**

The response to the first question reviews current legislation and its implementation. While the state regulates labour supply through its migration policy (Rogaly, 2008) as well as a protective dimension to regulation, varied viewpoints remain on its effectiveness protecting migrant workers (Anderson & Naidu, 2009; Bocock et al., 2010). Firstly, at the point of entry for new migrants, government regulation should ensure benefits for a variety of stakeholders and to avoid abuse of individuals as well as ensure social cohesion (ICFTU, 2005). In New Zealand immigration and employment law:

1. Onus is on the employer to act lawfully
2. An under-resourced inspectorate limits enforcement capability
3. There is inconsistent coverage of protective legislation among workers (for example, Accident Compensation).

Essentially, major statutory protections are under the Employment Relations Act 2000, the Health and Safety in Employment Act 1992, The Holidays Act 2003, the Minimum Wages Act 1983 (all as amended). To these must be added the ILO Covenants relating to migrant workers and the Code of Practice for Foreign Chartered Vessels (FCVs), approved by the Department of Labour (DoL) in 2004, and related international conventions covering migrant seafarers and fishermen. There is an obvious need for strengthening migration governance, as currently linking visa entitlement to a position with limited transfer ability appears to undermine worker protection. New Zealand also still maintains reservations on two of the eight core ILO Conventions<sup>1</sup>. Although legislative deficits relating to domestic labour markets exist, questions must also be asked about the global mechanisms encouraging worker vulnerability and how to reduce the 'attraction' of relocation for work.

### **Why are these protections ineffective?**

International labour migration has been described as "a new geography of centrality and marginality" (Sassen, 1998: xxv), reflecting widening gaps not only in terms of structures and dynamics of economic activities across the world, but also in terms of employment equity issues faced by migrants relative to the native population in host economies. While some interest in this area has been indicated by economic and policy research, the lack of access to or visibility of migrant workers

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<sup>1</sup> C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 C138 - Minimum Age Convention, 1973 (No. 138)

creates problems for both government agents and researchers alike. Improving labour legislation is the responsibility of domestic governments but the available national data does not consistently or accurately reflect what is occurring in New Zealand's labour market; so changes are often initiated in a reactive 'ad hoc' fashion, or as a response to negative publicity (Faraday, 2012; Woodhouse, 2013; Logie, 2014).

Further, the recent disestablishment of the Department of Labour (DoL) and merger of its functions into the mega-agency Ministry of Business, Innovation and Employment (MBIE), compromising of 14 agencies has meant there is no longer a single agency focused on labour issues (Lamm, Rasmussen & Anderson, 2013). Combined with a lack of policy coherence, geographic spread, business numbers and deficiency of information-sharing between the ministries responsible for migration and labour, weaknesses are apparent within domestic legislative frameworks, refuting the assumption that "laws are self-enforcing and have full compliance" (Fenn & Veljanovski, 1988: 1055). While enforcement law mechanisms in New Zealand are proclaimed to be "considered generally robust" (Williams, 2009: 17), the precarious nature of the migrant labour market generates anxieties about the monitoring and enforcement weaknesses of government agencies (see Anderson & Naidu, 2010; ILO, 2002, 1991; McLaren et al., 2004).

Domestic monitoring and enforcement capabilities are constrained by funding<sup>2</sup>, whereby the power of current regulation and the limited monitoring capacity of the INZ and DoL inspectorates (numbering approximately 35 compliance officers and less than 100 health and safety inspectors, respectively, as of August 2013) is limited. Thirty-five labour inspectors have responsibility for ensuring compliance in New Zealand (and fisheries within our exclusive economic zone). According to the latest Household Labour Force Survey (March 2014), 2,318 million people are employed in New Zealand. The ILO sets the desired number of labour inspectors as one per 10,000 workers in developed countries (CTU, 2014). This equates to one labour inspector per every 66,228 people, well below recommended levels (ILO, 2006). There is also criticism that:

The labour inspectorate's focus on high risk areas leaves them with little resource to deal with day to day breaches of the minimum employment rights (particularly in un-unionised industries such as hospitality) and many workers experience major delays or denials of effective enforcement of their rights (CTU, 2014),

and "in Auckland inspectors spend 54 per cent of their work time investigating abuse cases, while across New Zealand that work takes up 33 per cent of their time" (Fenton, 2013).<sup>3</sup>

Nevertheless, there is "tacit tolerance" of the presence of migrant workers by governments during economic booms while, officially, governments aim to be seen as "combating" or "fighting" irregular migration (Wickramasekara, 2008 as cited in Williams, 2009: 18; Ministry of Justice, 2009; DoL, 2006). Further, the level of employer compliance reflects the tensions between needs of 'flexible' labour market and desire to closely monitor/control migrants for immigration control purposes (Bernstein, Lippel, Tucker & Vosko, 2006). Employee wages are typically the only variable that can be manipulated by employers, with costs such as power and water a fixed expense.

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<sup>2</sup> However, approximately NZ\$7 million has been allocated over the next four years to fund the addition of six new labour inspectors and seven Immigration New Zealand (INZ) staff with a mandate to investigate and "stamp out" migrant exploitation and unlawful practices. This funding is for the Canterbury area only (Williams, 2014).

<sup>3</sup> The establishment of WorkSafe NZ will increase total health and safety inspectorate resourcing by more than 65 per cent. This will include increasing the number of core inspectors from 115 to 200, and the number of high hazards and major facilities inspectors from six to 29. However, this does not include labour inspectors.

This makes regulation of often invisible, unmeasured workers extremely difficult, given the financial incentives for non-compliance with minimum wage regulations. Its prevalence and causes are varied, with theories suggesting that compliance depends largely on the likelihood of detection, as well as the certainty and severity of sanctions imposed for infringements (Ruhs & Anderson, 2006; Kirchler, 1999; Fenn & Veljanovski, 1988). Given the low penalties and number of successful prosecutions, businesses could confidently feel that the opportunity versus risk is firmly weighted in their favour.

Nonetheless, the inability of vulnerable migrant workers to enforce their contractual or statutory rights creates a situation of worker commodification. When large migrant populations work in precarious conditions, governance is difficult; regulating the problem of unfair competition is challenging, and advantages go to enterprises using workers of irregular status at cheap wages. The irony of this bifurcated labour market is that unemployed and foreign workers exist side by side, potentially leading to conflict between local communities and migrant workers. Accusations often repeated in the media about ‘migrants taking jobs’ fail to recognise that these jobs are never designated nor intended for local workers as they fail to fall within the standard labour market and its legal obligations. Whole industries seemingly reliant on an underclass of workers make a mockery of rising wages and legislative protection.

Anderson et al.’s (2012) study of the working lives of student migrant workers in New Zealand horticulture, and Stringer et al.’s (2011) study of labour and human rights abuses aboard foreign fishing vessels illustrate how employers and contractors can extort more work from the employees for less pay because the vulnerable workers cannot afford to abandon their employment. The ability to access or protect those engaged in precarious work is further limited by low union membership, especially amongst private sector rural workers. Tension also remains as union preference and protection are for documented and subscribed members, while migrants rarely engage with established institutions or organisations that could represent their interests.

### **What can be done to improve the protection of vulnerable workers?<sup>4</sup>**

Recognising the limitations of regulation, monitoring, and enforcement, the third question is answered by looking at the development of new union features, especially geared to the increasing number of migrants in the workforce, and by considering other collective actions by migrants outside the trade union movement. These actions are contrasted with the operation of the RSE scheme for New Zealand horticulture and viticulture. From these examples, positive policy suggestions are made as to how a similar scheme might be of benefit to New Zealand dairy farming (Tipples et al., 2013).

### **New Unions and Alternative Forms of Organising**

At an international level, ASEAN trade unions meeting in Hanoi with ILO involvement have recently united to protect migrant workers who are vulnerable to abuse, exploitation and unfair treatment. Bilateral actions between unions in sending and receiving countries to formulate mutual protocols were discussed (Vietnam News, 2013). Acknowledged is that unions must find ways of representing non-traditional workers, where “Dependent and independent contractors, agency

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<sup>4</sup> Council of Trade Unions (2013) *Under Pressure: A Detailed Report into Insecure Work in New Zealand* outlines 20 fields in which positive actions can be taken to reduce the incidence of ‘insecure work’.

workers, temporary workers, farm workers and small farmers are categories of workers which would benefit from collective representation” (Ritchie, 2013). With some notable exceptions (e.g. Unite), current union structures are unable to represent such workers because they are structured to represent and protect the interests of workers in traditional employment with full time work and transparent contracted conditions. In the non-documented, particularly rural sector where work is often in a sub-contracting relationship, it is difficult, indeed unrealistic, to expect effective union reach.

However, two unions have been showing active interest in vulnerable migrant workers in New Zealand. First, Unite (formed in 2005) which has been prominent in campaigns against fast food giant McDonald’s for its discriminatory and anti-union employment policies (Unite Union, 2013), and against another fast food giant Burger King (Kumar, 2013). By targeting traditionally non-unionised workplaces in the service sector such as hotels, restaurants, casinos, cinemas, call centres, security, malls and language schools as well as instituting a lower fee structure, they have reversed an overall trend of declining union membership. With political engagement high on their agenda, they vocally criticise government policy settings for worker protection and offer an alternative form of organising.

Second is First Union’s Union Network of Migrants (UNEMIG), launched in August 2012 in Auckland. Aiming to protect the rights and welfare of migrant workers, they also provide information resources and media campaigns, UNEMIG represents and bargains across many service sectors in retail, transport and logistics, finance, wood, and textile/clothing/baking (First Union, 2014). UNEMIG have said migrant worker issues had stayed under the radar because many foreign workers were employed in small businesses working for other immigrants, where it was easy for employers to take advantage of their workers (in Glass, 2013). Vocal in their criticism of migrant workers’ exploitation by workplaces on which they are reliant for work visas, First Union spokesperson, Robert Reid, states “These migrants, when they come to New Zealand, in their passport – their visa – they can only stay here as long as they are working for the person who is nominated on their visa.” Reid also acknowledges: “Migrant workers are frequently victims of under legal minimum wage pay, abuse, discrimination, bullying, and harassment in the workplace” (as cited in Kumar, 2012).

## **New Zealand dairy migrants**

In addition to developments in trade unions as collective representatives of migrant workers, other non-union collectives have taken a growing role in the relatively unorganised migrant worker space. In dairy farming, propelled by the recent world commodity boom, rapid expansion has been constrained by problems with the recruitment and retention of labour. From 2006, these problems have been addressed by the employment of short-term (three to five years) migrants on work visas, nearly half of whom originate from the Philippines. The inflow of these ‘skilled’ migrants was explored using Sargeant and Tucker’s framework to document the working, health and safety experiences of Filipino dairy workers in mid-Canterbury, in New Zealand’s South Island (Tipples, Rawlinson, & Greenhalgh, 2012).

The Filipino Dairy Workers in New Zealand Inc. was set up in Ashburton in 2006 as an association to promote much needed social contact, and then advocacy for the many members experiencing employment or immigration difficulties. The overall objective of the group is to prevent exploitation of members by recruitment agencies and dairy farm employers (Tipples et al., 2012). They educate members about their rights in New Zealand employment law and the requirements placed on dairy

farm employers for their employees.

However, concerns continue to abound about farm working conditions. CTU President, Helen Kelly, has documented long hours and limited days off, making the salary of many farm workers below the minimum wage. These are not undocumented jobs in the secondary labour market, but are advertised positions. Callister and Tipples (2010: 12) note about wage levels that

When the long hours worked by dairy workers are taken into consideration, they are very low at an average level ... [O]nly 39.4 per cent of farmers record staff hours, leaving considerable scope for paying an hourly rate of pay below the minimum hourly rate of pay set for a normal 40 hour week<sup>5</sup> (Minimum Wages Act 1983).

This comes on the back of nearly three out of four dairy farmers having been caught breaking basic employment laws in a government crackdown in December 2013. Labour inspectors with the MBIE started visiting farms to check on compliance with minimum employment rights. Results of the initial visits revealed that employers on 31 out of 44 farms were breaking the law, a result the Ministry called “disappointing”. Many breaches involved time recording, where employer and staff had to sign timesheets confirming hours worked. In eight instances, workers had been employed without proper contracts. No prosecutions had been laid, a ministry spokeswoman acknowledged, but inspectors would follow up enforcement notices to check whether breaches had been rectified. If employers failed to comply, orders could be sought from the Employment Relations Authority (Stone, 2014).

## **New Zealand fishing migrants**

New Zealand public policy supports the use of FCVs to complement the local fishing fleet, provided that “...FCVs do not provide a competitive advantage due to lower labour costs and foreign crew receive protection from exploitation” (Stringer et al., 2011: 2). Stringer et al., (2011: 5) examined which institutions were responsible for the working conditions of foreign fishing crew and found that there was “...an institutional void pertaining to labour standards on board FCVs”, and distressing levels of “...inhumane conditions and practices...” which had become institutionalised. Labour and other abuses were exposed in FCVs after the sinking of the South Korean *Oyang 70* with loss of life in 2010. Further, 32 Indonesian crew left the *Oyang 75* in Lyttelton in 2011 claiming “...physical, mental and psychological abuse as well as the non-payment of wages” (Stringer et al., 2011: 10). This was not the first time such allegations had been made but limits of territory and inspectorate capacity have restricted offshore monitoring.

*Oyang 75* crew members immediately became illegal immigrants because their visas were as Korean crew. They had no means of support and were to be forcibly repatriated by INZ without any resolution of their pay dispute, let alone their other issues. The Canterbury Indonesian Society became involved to help with translation as some members came from the island of Ambon, where most of the crew had been recruited. Because of the human rights abuses, local churches and the local mosque also became gave support. These bodies organised a collection to help pay for the crew’s accommodation and support while their case was contested. The Society was able to act as an intermediary and collection agent as a formally registered charity. It also acted as a formal link with

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<sup>5</sup> Recent law changes have moved to fortnightly averaging to allow an employer to offset payment payable to a worker for work in one week against payments due to the worker in the following week towards the minimum wage rate. (MBIE, 2014). This change will affect many of the lowest paid workers in the country, and several industries with long hours such as dairying this are likely to become the norm (CTU, 2014).



INZ and sought, successfully, to get the crew repatriated, without the usual penalties from the agents who had recruited the crew (Kartikasari, 2013, personal communication). They were able to do this through establishing links with the Indonesian organisation responsible for foreign workers, ATKI-INDONESIA<sup>6</sup>.

Problems with FCVs are not restricted to vessels owned by the Oyang Corporation. The “cockroach infested and leaky” Shin Ji, chartered by Tu’ere Fishing Ltd 9, had no bed linen, no hot water and the life rafts were inaccessible due to mis-stowed fishing gear. Fishermen working aboard the vessel went on strike for non-payment of wages dating back two years – the wages only amounting to \$260 NZD a month (Harré, 2013: 2). The deaths, injuries, violence, abuse, stand over tactics, theft of wages, and shocking conditions on these vessels over many years have all been documented – and are now exposed on the international stage.

Following the conclusion of an official domestic inquiry into the industry in March 2012, the report made 15 recommendations for the government to consider (Ministry for Primary Industries, 2012). In a surprising development in response to mounting pressure, the New Zealand Government (2012) announced in May that a ban on foreign flagged fishing vessels in New Zealand waters would be phased in “to address labour, safety and fisheries practice concerns”. Foreign charter vessels would be required to comply fully with New Zealand laws and regulations. The government offered a four year transition period to soften the blow to the joint venture operators, who comprise 12 out of 27 of the fishing industry companies. The *Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill* was the final piece of legislation passed on the last sitting day of the House of Representatives prior to Parliament being dissolved for the election in July 2014 (House of Representatives, 2014).

### **The ‘success’ of RSE – How far can it go?**

Given the examples of migrant exploitation documented thus far in primary industry employment, is the RSE scheme a model that could be extended to other industries? The RSE policy was developed to meet a crisis in the pip fruit industry when growers were failing to meet quality deadlines because of a lack of picking staff and inability to export their fruit in required condition. A continued dearth of ‘suitable workers’ (Franks, 2009) and the national workforce perceiving “low skill jobs as undesirable” (Williams, 2009: 4) has minimised criticism that this work could be filled by locals (Cameron, 2011).

The RSE scheme has run since 2007, aiming to create a sustainable seasonal supply of experienced labour for the horticulture and viticulture sectors (DoL, 2010). Bilateral facilitative arrangements were negotiated between the DoL and the governments of five Pacific ‘kick-start countries’ (i.e. those countries initially participating in the scheme) of Kiribati, Samoa, Tonga, Tuvalu and Vanuatu (Luthria, 2008; DoL, 2010). The scheme has continued to help with many of horticulture and viticulture’s seasonal labour problems and provide ‘wins’ for governments (New Zealand and islands – labour supplied, exports facilitated, remittances received), growers (vines pruned, fruit harvested on time etc.) and for migrants who have earned far more than in the islands (sufficient to live, pay for remittances to invest in education/houses and small businesses) (Immigration NZ, 2012-2013).

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<sup>6</sup> **The Association of Indonesian Migrant Workers in Indonesia (ATKI-Indonesia)** is a self-organisation of Indonesian migrant workers, and advocates migrant workers policies and regulations in destination countries and Indonesia. ATKI also provides direct assistance, counselling, legal aid referral services for migrant abuse and trafficking cases. [Atki.indonesia@gmail.com](mailto:Atki.indonesia@gmail.com)

An evaluation was conducted on the first two seasons (1 April 2007-31 March 2008, and 1 April 2008-31 March 2009) of the RSE, identifying worker support and dispute resolution as key issues requiring attention. In addition, there was criticism by some employers and unions of the 'facilitative' approach of the relevant regulator – the DoL (DoL, 2010). It was also found, in the evaluation, that protection processes were not easily accessible by workers (DoL, 2010). In addition, some Pacific Islander workers did not understand their contracts; exploitative working conditions were also indicated, where workers recruited under the RSE scheme were regarded as highly productive, partly because they were willing to work “in very hot, cold or windy conditions...long hours, weekends and night shifts” (DoL, 2010: 56). Presently, as an established guest worker programme “the Scheme still has eight inspectors who are spending up to 70 per cent of their time... investigating possible breaches of minimum wage and other employment laws” (Fenton, 2013).

Could such a model be developed for other export sectors? The same research team who underpinned the RSE scheme have been helping dairy farming stakeholders with problems of fatigue and stress, induced partly by the staffing concerns that have led to the use of migrants (Tipples et al., 2013). As a targeted scheme for staffing shortages that mitigates the problem of illegal workers, it has some merit. However, temporary migration should not be permitted to “facilitate, institutionalize and normalize a second-tier, low-wage/low-rights “guest worker” program” (Faraday, 2012: 3). Further, the preference of migrant employment fails to address rural unemployment levels, nor does it seek to improve the generally poor working conditions found within primary industry employment. It can, therefore, be considered an imperfect response at best, and one that favours the primary sector over other sectors also facing worker shortages.

## Conclusion

Mitigating factors within the New Zealand employment environment have favoured migrant workers in primary sector employment. Nonetheless, with increasing numbers of these workers filling positions once considered 'New Zealand' jobs, it is timely to consider some concerns. What are the existing protections for New Zealand's vulnerable workers? Secondly, why are these mechanisms ineffective? Finally, what can be done to improve the protection of vulnerable workers?

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