



# TEMPORARY LABOUR MOBILITY IN AUSTRALIA AND THE PACIFIC ISLANDS

A discussion paper by  
Union Aid Abroad

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# Executive summary

**Pacific workers are on the move. Since 2007, increasing numbers of Pacific Island workers have begun arriving in Australia through the Seasonal Worker Program to work in the horticultural sector. Since 2015, the Australian government has proposed an expansion of this seasonal labour program into other sectors of the economy and created new access schemes for workers from three smaller island states (Kiribati, Tuvalu and Nauru).**

The rise of temporary labour migration from the islands region poses challenges and opportunities for the Australian labour movement. In this paper, Union Aid Abroad – APHEDA details the current temporary labour schemes for Pacific Island workers, and identifies new frontiers of Pacific Island mobility: the Ageing, Disability and Home Care sector and climate change induced mobility.

Union Aid Abroad – APHEDA argues that labour mobility is a mode of solidarity for our neighbours – which are some of the most aid dependent nations in the world. The World Bank, Asian Development Bank and the ILO have recognised the Pacific Island countries will be unable to meet the employment needs of their growing populations. With the exception of Papua New Guinea, the small size of Pacific Island nations, their remoteness from major markets, and their dispersed domestic geographies, limits the potential growth of the formal economy.

Australia is the largest development and trading partner to the region: in 2015–16 it provided three quarters of all overseas development aid (ODA) to the Solomon Islands, half of all ODA to Fiji and over 60 per cent to Vanuatu. By contrast, remittances already make up a key part of the economy for some island nations – on latest figures, Tonga was the fourth highest recipient of remittances in the world, with 27.9 per cent of GDP. Samoa, with remittances at 17.6 per cent of GDP, ranked 12th in the world.<sup>1</sup>

A well-designed labour mobility program for the whole region has the potential to reduce the region's dependency on foreign aid, and specifically, on aid from Australia. A labour mobility program – including in-country education and training up to Australian standards – should be integrated with the broader aid and development program for the region.

A well-designed migration program will also support communities at the front lines of climate change to adapt to the impacts of a changing climate. With agriculture and livelihoods on some

islands quickly becoming unsustainable, any labour mobility program for the region should be designed to enable Pacific Islanders to “migrate with dignity.”

Labour mobility will not be able to positively support development across the region if workers are exploited. When media reports have documented cases of worker exploitation, industry’s common response has been to blame a few “bad apples”, rather than address the fundamental imbalance of power between an employer and a non-citizen worker.

Temporary migrant workers face the same challenges as Australian workers – around pay, conditions and health and safety in the workplace – but without the rights and protections of citizens, and generally with less understanding of local labour laws, taxation and superannuation systems. Australian and Pacific Island unions must be involved in any future expansion of labour mobility schemes to ensure that the experiences of workers – and the families and communities they support at home – are taken into account.

The role of labour mobility in supporting development throughout the region has been promoted by a number of international organisations – including the ILO and the World Bank. However, in their reports, the experiences of workers are conspicuously absent. In August 2016, the inaugural Pacific Labour Mobility Annual Meeting was held in Christchurch. Despite a formal commitment to tripartitism throughout the region, unions were excluded from these discussions.

This paper seeks to foreground the experiences of Pacific Island workers and communities. It highlights the experiences of workers in the current Seasonal Worker Program (SWP), in order to make recommendations for the future expansion of labour mobility from across the region to Australia.

## Recommendations

- > Labour mobility must be considered as an integral part of the Australian development program for the Pacific, and understood as providing decent work and development opportunities for Pacific Island communities.
- > Pacific Island workers must be aware of their workplace rights under Australian law and be given information on how to access their rights. To this end, unions must be involved in pre-departure or post-arrival briefings to enable workers’ to join their relevant union prior to beginning work in Australia.
- > The **Seasonal Worker Program (SWP)** must address structural issues that impact on workers’ ability to exercise their workplace rights. It is not enough to inform workers’ of their rights under Australian law – the scheme must also limit repercussions faced by workers when exercising those rights. Most significantly, it must address workers’ fears regarding loss of income from the early termination of a season, or exclusion from future seasons. These changes include:
  - Sectoral visas rather than employer-based visas, to allow workers to transfer their employment between employers within the same sector, rather than being tied to a single employer. This will allow workers to speak up about workplace grievances without fear of loss of employment.

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- The in-country recruitment process must be transparent, and workers must be given a 'right of return' to ensure that workers are not penalised for exercising their workplace rights, being allowed to return for second and subsequent periods of seasonal work.
- > The specific characteristics of care work in aged care and disability services make it unsuitable for short-term visas. In recognition of this, the seasonal worker program should not be extended to these sectors. Instead, separate migration pathways that are integrated with in-country vocational education programs supported through the Australian aid program should be developed in consultation with Pacific Island governments and unions.
- > The Australian government should develop an integrated policy for **climate change induced mobility**. This policy should incorporate existing temporary migration schemes for skilled and unskilled workers, as these offer opportunities for workers (and their communities) to develop in-situ adaptation strategies and resist relocation. However, in recognition that some communities may have no other option than relocation, the government must introduce permanent migration pathways for Pacific Islanders. The migration policy must be developed in consultation with the Australian aid program to the region, to ensure that workers are given opportunities to develop the necessary skills to access skilled migration pathways.
- > All labour mobility schemes must include access to permanent migration pathways to ensure that workers do not become "permanently temporary" – living in Australia year after year without ever being able to apply for citizenship.
- > Federal and state governments should introduce licensing of labour hire companies, including the creation of a public register of licensed labour hire providers and legislation requiring companies to reveal the real beneficial owners of a labour hire business. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license.

# Introduction

**Pacific workers are on the move. People across the islands region are moving from rural areas and outlying islands to urban centres, to mine sites, canning factories and other industrial hubs; i-Kiribati and Tuvaluan seafarers staff the global shipping trade; Samoan and Tongan labourers work in factories and building sites in Sydney and Auckland or pick fruit in Australia's Murray Valley and Atherton tablelands; Fijian soldiers serve in peace-keeping operations around the globe. Meanwhile Pacific computer technicians, nurses, accountants and teachers migrate to get a better life, in the face of political turmoil or limited career opportunities in their homeland.**

A high percentage of Polynesian and Micronesian islanders now live overseas. Some freely associated states and territories have migration rights to their former colonial power. In smaller islands such as Niue, Cook Islands and Wallis and Futuna, the number of people living overseas is greater than the numbers who remain. There are more Cook Islanders in New Zealand than in the Cook Islands, more American Samoans in the USA than in their home islands.

With limited opportunities for employment in the cash economy at home in the islands, workers migrate with the hope that the remittances they earn will improve the livelihoods and welfare of their families and communities. While many of these workers only wish to engage in temporary or seasonal migration, others express a desire to settle more permanently – engaging in skilled employment that cannot be found at home, or establishing new lives ahead of massive environmental and economic changes being driven by climate change.

Australia has long welcomed skilled workers from the Pacific, as nurses, accountants, IT workers – even rugby players! But since 2007, unskilled workers have begun arriving through the Seasonal Worker Program (SWP), to work in the orchards, fields and packing sheds of Australia's horticulture industry. Since 2015, the Australian government has expanded the seasonal labour program into other sectors of the economy. This expansion requires critical consideration, and is one of the key focus areas of this paper.

This growing labour mobility from the islands region comes at a time of a structural shift in the Australian economy. As at 31 December 2016, there were nearly 700,000 temporary migrants with work rights living in Australia. The main groups were 150,220 skilled and semiskilled workers on 457 visas, 355,760 international students (and student graduates) and 148,500 working holiday makers. This does not include New Zealanders living in Australia.

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By comparison, Pacific Islanders arriving under the Seasonal Workers Program are a very small group of just a few thousand.<sup>2</sup>

**These temporary migrant workers face the same challenges as Australian workers – around pay, conditions and health and safety in the workplace – but without the rights and protection of citizens or residents. The majority of temporary migrant workers have visas that are tied to their employers. Many fear the cancellation of their visas and being forced to leave Australia if they take a stand against exploitation.**

Pacific Island workers in the horticultural industry are particularly at risk of exploitation. Over the last two years, stories of the exploitation of Pacific Island workers in Australia through the Seasonal Worker Program have featured on news and social media. For island workers – and their communities at home – these stories of exploitation resonate with memories of the notorious colonial labour trade known as “blackbirding.” Over 60,000 workers were recruited – or kidnapped – from across Melanesia between 1863 and 1904 to provide labour for the Australian sugar cane and cotton industry. Thousands of indentured workers who had made their lives and homes in Australia were deported after Federation.<sup>3</sup>

Today, exploitation of workers in the Seasonal Worker Program undermines the development aims of the program. Some workers have seen their wages underpaid or costs deducted, reducing the vital remittances sent home to their families and communities.

The rise of temporary labour migration from the region poses challenges and opportunities for the Australian labour movement. In this paper, Union Aid Abroad – APHEDA details the current temporary labour schemes for Pacific Island workers, and identifies new frontiers of Pacific Island mobility. It highlights the unique role that Australia has in the region – as the largest development and trading partner to the region – to make the case that labour migration from the region should be treated as a discrete and exceptional migration category.

A well-designed labour migration program for the region is a mode of solidarity for our neighbours, which has the potential to reduce countries’ dependence on foreign aid. However, this is only possible in a program that addresses the exploitation of migration workers. That is, an organised, unionised program.

Since mid-2015, the Coalition government has proposed major changes to temporary labour programs. The longstanding subclass 457 visa program, introduced in 1996 for skilled workers and their dependents, will be abolished and replaced with a new Temporary Skilled Shortage (TSS) visa.

Governments and employers are arguing for an expansion of other temporary labour programs into new sectors such as aged and disability care. The Abbott government’s 2015 White Paper on Northern Australia opened the way to “expand and streamline the Seasonal Worker Program by reducing costs to business, increasing worker numbers and allowing more countries and industries to participate.”<sup>4</sup>

But these proposals rarely mention labour rights or the social and workplace protections needed for migrant workers. The latest World Bank study on Pacific labour mobility, published in July 2016, does not even mention the word “union”!<sup>5</sup> Despite this, with increasing labour mobility between Australia and the Pacific islands, unions have a vital role to play: supporting workers on the job, co-ordinating with Pacific unions and lobbying to change government policy to better protect temporary labour migrants.

This paper details how some Australian unions have already begun to organise in partnership with their Pacific counterparts. It reports how some international union federations are organising their industries across national boundaries, and how the South Pacific and Oceanic Council of Trade Unions (SPOCTU) is trying to support union organising across the region, despite limited resources.<sup>6</sup>

The need for solidarity will grow in future years. Governments and employers are expanding temporary labour programs into other areas, including aged care, tourism and construction. In coming years, many Pacific workers will seek “migration with dignity” as they are displaced by climate change and need increased funding to re-build after natural disasters.

With governments in Australia and many Pacific islands signing a regional free trade agreement known as PACER-Plus, the issue of regional labour mobility is even more urgent. Protecting workers’ rights across Oceania and building links between workers in Australia, New Zealand and the Pacific islands must be an important part of our work as unionists.

These temporary migrant workers face the same challenges as Australian workers – around pay, conditions and health and safety in the workplace – but without the rights and protection of citizens or residents. The majority of temporary migrant workers have visas that are tied to their employers. Many fear the cancellation of their visas and being forced to leave Australia if they take a stand against exploitation.

# PART ONE: THE RISE OF TEMPORARY LABOUR

# 1. Pacific workers on the move

**Overseas labour migration is a growing option for young workers to earn a decent wage – or any wage at all. Since 2000, workers' remittances have far outpaced overseas aid as a source of revenue for developing countries: globally in 2014, workers' remittances amounted to US\$431 billion dollars, while overseas aid from OECD nations amounted to just US\$135 billion.<sup>7</sup>**

Remittances make up a crucial source of revenue for many smaller island nations. Across the Pacific region, only 15–30 per cent of the working age population are employed in the formal economy. The remainder are engaged in informal, subsistence or semi-subsistence livelihoods, with limited engagements with the cash economy. While some international development programs have attempted to grow the formal and informal economy to provide more opportunities for decent work in the region, there is increasing recognition that there are structural issues that limit the growth of the wage sector.<sup>8</sup>

Historically, workers from the larger Melanesian nations (Papua New Guinea, Vanuatu and Solomon Islands) have not migrated overseas to the same extent as the smaller atoll nations. But there is a significant “youth bulge” across the region, along with a growing pool of unskilled and semi-skilled workers who cannot find employment in the formal wage sector. This means that job creation will be an issue for the next generation, under economies increasingly based on cash and consumption. Many young people seek jobs in order to pay for school fees, housing, phone bills, basic necessities and improved livelihoods.

The debate about Pacific labour mobility comes at a time of trade liberalisation, deregulation, privatisation and the increasing integration of the islands into the global economy. The structural adjustment policies promoted by successive Australian governments and multilateral institutions like the Asian Development Bank have been a driver of regional labour mobility, due to job losses caused by public sector restructuring, and deteriorating public and social infrastructure. Workers struggle to maintain a living wage.<sup>9</sup>

Pacific unions have a long tradition of militancy<sup>10</sup>, but today are under pressure, from both economic transformations and political pressures (such as the restrictions on union rights in post-coup Fiji). Sectors of the economy that have maintained a strong, unionised labour force in the islands, such as nursing, teaching and the public service, have been decimated over the last 20 years. Union membership has been hit by government policies that

## Top 10 remittance recipients in Asia-Pacific during 2014 (percentage of GDP):

Tonga (27.9 per cent of GDP), Samoa (17.6), Marshall Islands (14.0), Tuvalu (10.7), Philippines (10.0), Kiribati (9.6), Federated States of Micronesia (6.9), Vietnam (6.4), Myanmar (4.8), Fiji (4.5).

*(Source: Migration and Remittance Fact book, 2016, p23.)*

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promote the corporatisation and privatisation of state owned enterprises and the slashing of jobs in the public sector.<sup>11</sup>

Major Pacific export industries are also facing pressure due to trade liberalisation. This challenge is likely to increase with the completion of regional trade agreements such as the PACER-Plus agreement and the third phase of the Melanesian Spearhead Group Trade Agreement (MSGTA3). Labour mobility is central to these regional trade deals, with the “temporary movement of natural persons” (known as “Mode 4”) a key pillar of trade in services.<sup>12</sup>

The Australian and New Zealand trade union movements have consistently expressed resistance to the inclusion of labour mobility in free trade agreements – arguing that people are not goods to be traded. Despite this, Pacific Island governments called on the Australian and New Zealand governments for binding agreements on labour to be included in the PACER-Plus agreement, which was finally signed by 10 countries in Tonga in June 2017.<sup>13</sup>

From the beginning of the process, Island negotiators argued for binding legal commitments on seasonal employment schemes, to match the commitments on services and investment made by FICs to the benefit of Australia and New Zealand. Even as the two largest Forum members continue to expand their temporary labour market programs – the NZ Recognised Seasonal Employer (RSE) scheme and the Australian Seasonal Worker Program (SWP) – the issue of labour mobility has been relegated outside the main text of the final PACER-Plus treaty.

Throughout the negotiations, Australia and New Zealand resisted the inclusion of commitments on labour mobility in a legally binding treaty. The issue has finally been included in a separate, non-binding ‘Arrangement on Labour Mobility’. This establishes a Pacific Labour Mobility Annual Meeting that may improve management of recruitment, visas and conditions, but does nothing to guarantee that access to labour markets will not be reduced in times of economic hardship.<sup>14</sup>

This call for binding commitments on labour access is part of a clear and growing demand from Australia’s Pacific island neighbours.

The call comes especially from workers who are skilled at farming or fishing, but lack the trade and professional qualifications needed for urban employment or the chance for permanent migration.

The adverse effects of climate change are also affecting displacement and migration around the region. Extreme weather events like cyclones and storm surges especially affect rural communities reliant on farming and fishing, who are seeking new opportunities to earn cash as traditional agriculture and forestry is more vulnerable to global warming.<sup>15</sup> As discussed in Part 4 below, Smaller Island States like Kiribati and Tuvalu have developed new national labour migration plans to promote the opportunity for “migration with dignity”. They are strengthening skills training programs and labour migration arrangements, in the hope of developing new opportunities in both the domestic and foreign labour markets.<sup>16</sup>

Despite the widespread call for temporary migration schemes, island workers are also wary of being ripped off. Temporary migration provides employers and governments with maximum economic and political flexibility, while leaving the migrants vulnerable to exploitation. Generally they are non-unionised and have limited access to independent advice or advocacy. Temporary labour migrants often lack the money or connections to enforce any contractual entitlements under local law.

For this reason, as the Australian labour movement campaigns for the rights of local workers and their families, there is also a crucial role for unions to support temporary labour migrants and defend their rights.

## 2. Temporary labour migration in Australia

**Over the last generation, Australia has undergone a structural shift in the economy, with temporary labour migration growing faster than permanent migration programs.<sup>17</sup>**

Over 2 million overseas migrants now live in Australia on temporary rather than permanent visas.<sup>18</sup> Of these people, more than 700,000 hold visas which grant work rights, a significant group in the total labour force:

- > International students, who are generally permitted to work up to forty hours per fortnight during term and full-time during semester breaks (subclasses 570 to 576), plus temporary graduate visa holders (subclass 485). In 2015–16, the program grew for the fifth successive year, with a total of 310,845 student visas granted.
- > Skilled workers and their dependents (including more than 70,000 partners and children who have work rights), under the subclass 457 visa program (to be replaced with a new Temporary Skilled Shortage visa).
- > Working holiday makers (WHM) under two types of visas (subclasses 417 and 462).
- > Pacific island workers recruited for the horticulture industry and other sectors through the Seasonal Worker Program, originally under a subclass 416 visa, but since November 2016 issued under the Temporary Work (International Relations) visa (subclass 403).

Another 646,830 New Zealand citizens are also visa holders (subclass 444) with work rights. Those arriving after 2001 – more than 200,000 people – are “indefinitely temporary”, with no pathway to permanent residency.

As discussed below, these temporary workers lack citizenship rights and often many basic workplace rights. A 2016 Senate inquiry into exploitation of these workers notes that “the interaction between the various temporary visa programs raises fundamental questions for Australian society, including the potential unintended consequences of a growing cohort of indefinitely temporary migrants.”<sup>19</sup>

University of Auckland law professor Jane Kelsey has detailed the way that temporary labour migration is now a structural part of the economy for both sending and receiving states:

**Source states promote migration-for-remittances to soak up unemployment, meet balance of payments deficits and provide income to domestic households. While their preference is generally to export their unskilled and unemployed, market and political realities in destinations often dictate the reverse. Destination states generally welcome a cheap, marginalised and docile workforce that can fill their labour gaps with minimal demands on welfare supports and depress domestic wages and unionisation.<sup>20</sup>**

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Many skilled workers and graduate students arrive on a temporary visa, then gain residency or citizenship rights in Australia. In 2015–16, around half of all permanent visas were granted to people already in Australia on a temporary visa. In contrast, “unskilled” seasonal labourers have no clear pathway to residency, and must return home at the end of their short-term contract, with any hope of returning again in future years dependant on the employer’s decision.

Government policy has extended the numbers of temporary labour migrants, by extending visa categories to workers from new countries (such as the expansion of WHM programs to the USA and China) or by extending the time that people can stay in Australia under their visa. However the Immigration Department is currently debating changes to citizenship laws, meaning migrants may have to spend a certain period of time on mandatory provisional visas before they are granted a permanent residency. Reforms to the existing 457 visa category (affecting eligible occupations, validity period and English language requirements) will be gradually introduced before it is abolished completely in 2018.

In Australia, there is long been debate about exploitation in temporary labour schemes. A decade ago, the inquiry into s457 skilled workers by industrial relations commissioner Barbara Deegan reinforced long-stated union concerns. Deegan stated that “concerns about exploitation are well-founded, particularly in relation to visa holders at the lower end of the salary scale.”<sup>21</sup>

One major issue for labour rights is that many temporary labour visas tie migrant workers to a specific employer. While some skilled visas allow workers 90 days to find a new employer to sponsor the visa if employment is cancelled, other visa categories – such as the seasonal worker s403 visa – is not transferable to other employers. This creates fears amongst migrant workers that actions that they take against exploitation will lead to the cancellation of their visa by their employer. This is particularly the case in the seasonal worker program, where workers are unable to transfer their visa to a new employer.

Any seasonal labour scheme in Australia needs to have safeguards built in to protect workers’ rights, and guarantee freedom of association. There should also be mechanism of independent dispute resolution to manage conflicts when they arise.

### 3. Temporary migration and exploitation in the horticulture sector

#### **A growing area for temporary labour migration is the horticulture sector – attracting migrant workers who come to Australia through the s417 Working Holiday Visa, the s462 Work and Holiday Visa and the s403 Seasonal Worker Program for the Pacific.**

Beyond these legal schemes, a number of employers in Australia continue to hire overseas workers illegally. Recent government inquiries and media exposes have highlighted widespread exploitation in the sector. Structural issues in the visa schemes – and the widespread use of undocumented labour – produce a workforce that finds it difficult to speak up against abusive employers.

In order to understand the specific conditions experienced by those participating in the Seasonal Worker Program, it is first necessary to understand the Working Holiday Maker (WHM) visa scheme – as both visa schemes shape employer demand and treatment of workers in the sector.

The s417 Working Holiday visa covers 19 countries, allowing young people aged up to thirty to stay in Australia for a year. These backpackers have the potential to extend their visa to a second year, by working in fruit picking or other industries in rural and regional Australia. A separate “Work and Holiday” visa program (subclass 462), allows young people from Chile, Indonesia, Malaysia, Thailand, Vietnam, Papua New Guinea, Turkey, China, and the United States to travel and work for up to 12 months. With the exception of the United States (which has no cap), there is a limit on the number of s462 visas issued for each country every year (the cap ranges from 100 visas for Papua New Guinea and Bangladesh to 5,000 for China).

To placate industry lobbyists, the Howard Coalition government introduced major reforms to the working holiday schemes in November 2005: a one-year WHM s417 visa can now be extended for a second year if the applicant does “specified work” for 88 days in a rural or regional area. This reform was extended in 2006 beyond horticulture to include the whole agriculture sector. It was again extended in 2008 to include mining and construction. There is no restriction on the number of s417 visas issued each year.

In the latest reforms, Working Holiday, and Work and Holiday visa holders can now work for one employer for more than six months if they work in certain industries in northern Australia or as au pairs.

Since the Howard-era reforms, many backpackers have flocked to work in orchards and packing sheds, in order to extend their stay in Australia for a second year. By 31 December 2016, there were 148,500 working holiday makers in Australia (in contrast, only 6166 Pacific seasonal worker visas were issued in 2016–17). In 2016, the top three countries for the initial WHM visa were the United Kingdom, Germany and Taiwan. The UK, Taiwan and Korea were the top three countries for the grant of a second extended working holiday visa.

According to the Department of Employment,

**... around 92 percent of the second working holiday visa applicants indicated that they engaged in agricultural work to acquire eligibility, with another six percent working in the construction sector and one per cent in mining.<sup>22</sup>**

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In May 2016, a Senate employment committee reported on the impact of Australia's temporary work programs on the Australian labour market. The committee documented exploitation of s457 visa holders, WHM and students – even titling the report “A National Disgrace.”<sup>23</sup> The Senate inquiry found that the Coalition government “clearly views the WHM visa as a de-facto working visa to bring low-skilled labour into the country ... labour hire companies and certain employers already view the WHM visa program in these terms and are in fact not only using the program to fill potential shortfalls in labour, but also to gain access to cheaper labour.”<sup>24</sup>

In May 2016, the Australian parliament's Joint Committee on Migration also released its report into the Seasonal Worker Program. The Committee found that “labour hire companies and, in particular, the so called ‘phoenix’ operators are particularly harmful to the industry and seasonal workers.”<sup>25</sup> In 2016, the Victorian government conducted an inquiry into the labour hire industry, but there is a need for national as well as state-by-state regulation.<sup>26</sup>

In Australia, there is a very low level of unionisation in the horticulture sector, which relies on casual labour, especially at harvest time. Without an organised workforce, there is growing evidence of exploitation of workers.

In a speech to the Australian parliament on 25 March 2015, National Party MP for Hinkler Keith Pitt stated: “Contractors are today employing fewer European backpackers and Australian workers because most know their rights. Instead they are recruiting Asian students. This discrimination has distorted regional labour markets, where unemployment is already high and fostered a deeply disturbing, yet widely accepted, culture of serious exploitation.”<sup>27</sup>

In a program broadcast in May 2015, ABC TV's “Four Corners” program provided evidence of widespread exploitation of backpacker labour in the horticulture sector.<sup>28</sup> While most employers obey labour laws, they often rely on labour hire

brokers to recruit their casual work force, and turn a blind eye to workers being underpaid, poorly housed or unjustly sacked.

The Four Corners program documented extensive underpayment of backpackers by labour hire firms. It showed working holiday makers from Asia and Europe being routinely abused and harassed at work, with some women being asked to perform sexual favours in exchange for visas. The program revealed that some companies were only paying half the legal wage to overseas workers, who didn't understand their rights.

In their submission to the Senate's “National Disgrace” inquiry, the National Union of Workers (NUW) states:

“Our most acute concern is the treatment of temporary visa workers employed in horticultural industries. In our own experience, the reason that workers on temporary work visas – which are in our industries most usually a s417 Working Holiday visa – are so often exploited is because the local employer is eager to find a way to avoid paying minimum (legal) wages to workers.”<sup>29</sup>

Beyond horticulture, there are a number of other industries that are exploiting temporary workers. ABC's “Four Corners” has documented the exploitation of overseas students and other temporary migrants by the 7-Eleven franchise.<sup>30</sup> In response, the corporation was forced to repay hundreds of thousands of dollars in unpaid wages and entitlements.

A Fairfax media investigation of Domino's Pizzas found “widespread underpayment of wages, the deliberate underpayment of penalties using a delivery scam and the illegal sale of sponsorships of migrants for as much as \$150,000.”<sup>31</sup> In another sample survey of the 440 franchises of United Petroleum, the Fair Work Ombudsman found the 50 per cent of employees were overseas visa holders and 40 per cent of businesses were non-compliant with award payments.<sup>32</sup>

## 4. Pacific Seasonal Worker Programs

**While overshadowed by the large number of backpackers on a WHM visa, New Zealand's Recognised Seasonal Employer (RSE) scheme and Australia's Seasonal Worker Program (SWP) provide regulated pathways for Pacific island and Timorese workers to work overseas. Seasonal labour programs were initially focused on the horticulture industry, with island workers working in fields, orchards and packing sheds to support the domestic and export market.<sup>33</sup>**

The program is based on "circular" migration – workers come for a short period (6–9 months), then return home with the option of applying for a second and further term. Training costs can be reduced as workers can return, at the employer's discretion, in second and subsequent years.

The SWP is promoted to employers as a way to provide a temporary labour force to meet peak work periods and increase productivity (Given many islanders have experience in agriculture and grow their own food, they have greater productivity than the average backpacker<sup>34</sup>).

The RSE and SWP are now being expanded to other sectors. Despite this, Australia faced a more difficult challenge than New Zealand to open its labour market to unskilled workers from the islands region. Australia's horticulture industry is significantly different to New Zealand, with labour market regulation spread across federal, state and local authorities. Under New Zealand's RSE scheme, growers act as the direct employer of the overseas workers. In Australia, a different model has been adopted with labour hire companies acting as the employer, and then contracting out workers to the growers at local level.

With a long history of Polynesian migration and experience of regional migration schemes (such as the Pacific Access Category), New Zealand employers were quick to seize the opportunity provided by the RSE scheme in early 2007.<sup>35</sup> In contrast, the Coalition government under Prime Minister John Howard refused to consider a seasonal worker program, despite a 2005 Senate inquiry and lobbying from the World Bank, which supported increased remittance flows into the islands region.<sup>36</sup>

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Instead, Prime Minister Kevin Rudd announced a Pacific Seasonal Worker Pilot Scheme (PSWPS), which ran from 2008 to June 2012. By the end of the three-year pilot, only 1,614 out of 2,500 visas had been allocated – a low level widely criticised in the Pacific media.<sup>37</sup> Tonga benefited most from the pilot, with 1,316 visas in 2009–2012, followed by Vanuatu (113), Papua New Guinea (82), Kiribati (52), Samoa (39) and Timor-Leste (12).

Following the pilot, the new Seasonal Worker Program (SWP) began in July 2012. While the pilot focussed only on the horticulture industry, the SWP is expanding beyond orchards and vineyards to start trials in other sectors. While the original pilot began with four countries, the SWP is now open to a range of Forum Island Countries (Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu), along with Timor-Leste.

When the SWP started in 2012, there were just 2,000 places available in the scheme. The number has slowly increased. In 2014–15, there were 3,177 seasonal worker placements with 59 employers approved to participate in the program. By 2016–

17, the Department of Immigration and Border Protection issued 6,166 SWP visas, with Tonga and Vanuatu providing the largest number of workers.<sup>38</sup>

Numbers will continue to grow. After September 2014 elections in Fiji, the post-coup government was allowed to participate in the program. Under pressure from other Pacific neighbours, and as a bargaining chip in the PACER-Plus trade negotiations, the Coalition government has moved to expand the SWP, with major changes to the scheme in mid-2015 and again in 2017.

Based on the 2015 White Paper on Developing Northern Australia, the government began to implement changes to the SWP.<sup>39</sup> The changes allow both Working Holiday (Subclass 417) and Work and Holiday (Subclass 462) visa holders to work an additional six months with one employer in northern Australia if they work in agriculture, forestry and fishing, tourism and hospitality, mining and construction or disability and aged care (as detailed below, these latter sectors create huge demand for nurses and health workers who are largely female).

**Table: Seasonal Worker Program (SWP), by Country of Origin 2012–17**

	2012–13	2013–14	2014–15	2015–16	2016–17
<b>Fiji</b>	0	0	<5	160	190
<b>Kiribati</b>	34	14	11	20	124
<b>Nauru</b>	10	0	0	17	0
<b>PNG</b>	26	26	25	42	134
<b>Samoa</b>	22	162	185	140	309
<b>Solomon Islands</b>	42	9	21	61	87
<b>Timor-Leste</b>	21	74	168	224	477
<b>Tonga</b>	1,119	1,497	2,179	2,624	2,690
<b>Tuvalu</b>	0	20	7	<5	0
<b>Vanuatu</b>	119	212	567	1,198	2,150
<b>Total</b>	<b>1,473</b>	<b>2,014</b>	<b>3,177</b>	<b>4,490</b>	<b>6,166</b>

From 1 July 2015, the national cap on the number of workers participating in the SWP was removed entirely, and the scheme has been expanded beyond horticulture to the broader agriculture industry and the accommodation sector. A new five year pilot program for up to 250 workers from the Pacific microstates of Kiribati, Nauru and Tuvalu was created to support employers in northern Australia.

In the 2015 Australian budget, Abbott government proposed a major change to taxation of the WHM scheme – though these changes were resisted by employers and the National Party. From 1 January, backpackers must pay 15 per cent tax on every dollar they earn up to \$37,000, with foreign resident tax rates applying from \$37,001. Without enforcement, however, the increased tax rates will encourage more cash-in-hand payments and more illegal activity by labour hire firms to offer cheap labour.

The key change in 2015 was the uncapping of the number of participants in the seasonal worker program, with employers determining the number of workers to be recruited. The changes also concluded the trial in the accommodation, aquaculture, cane and cotton sectors, rolling them into the ongoing program. The SWP is also expanded to other occupations in the agriculture industry. In May 2016, the government announced the start of an SWP tourism pilot, specifically for Northern Australia, with SWP workers able to take up basic jobs as cleaners, laundry workers, café workers, bar attendants and baristas, housekeepers, kitchen hands and gardeners.

As Australia, New Zealand and Pacific governments work to expand labour mobility across the region, there is a need to develop links between temporary labour schemes, industry policy and vocational and skills training, especially for indigenous youth who face major barriers to employment in rural and regional areas). However the Turnbull government has rejected Senate calls for “a comprehensive review of the changes to the seasonal worker and working holiday maker programs ... to ensure they are meeting their stated goals, and not impacting on each other or the local labour market in unintended ways.”

The benefits of increased remittances should not overshadow the significant social costs of temporary migration for work. Seasonal workers are separated from family for extended periods of time, which can impact on children’s welfare and education and put an extra burden on the elderly left in the village. Though it is beyond the scope of this paper, the issue of support services and pastoral care for seasonal workers and their families is a crucial element of the process.<sup>40</sup>

Beyond this, it is vital that workers are protected from breaches of labour law, and are guaranteed their rights. As discussed in the next section, a series of government inquiries have highlighted issues related to worker exploitation and breaches of labour rights, for both seasonal workers and backpackers.

# **PART TWO: WORKER EXPLOITATION AND UNION RESPONSES**

## 5. Risk of worker exploitation in the SWP

**When media reports have documented cases of worker exploitation, industry's common response has been to blame a few "bad apples", rather than address the fundamental imbalance of power between an employer and a non-citizen worker. Temporary migrant workers face the same challenges as Australian workers – around pay, conditions and health and safety in the workplace – but without the rights and protections of citizens, and generally with less understanding of local labour laws, taxation and superannuation systems.**

In February 2015, ABC TV's "7:30 Report" featured a story on exploitation of workers in the SWP.<sup>41</sup> The program focused on a group of Pacific workers who had been contracted by labour-hire firm AFS Contracting Pty Ltd. Some of the seasonal workers were only paid a few dollars a day after deductions for accommodation, transport, health insurance and tax [see case study 1].

This case is extreme, but not unique. In recent years, the Australian and Pacific Island news media have regularly reported on exploitation in the horticulture sector, while workers share stories of workplace abuses through social media and online groups.<sup>42</sup> Bodies like the Australian Institute of Criminology have looked at the dangers of human trafficking in temporary labour programs.<sup>43</sup>

The exploitation of horticultural workers engaged through the Seasonal Worker Program and Working Holiday Maker Scheme is confirmed by the Fair Work Ombudsman (FWO). In 2014, the FWO announced that it would be putting a spotlight on the sector following "persistent complaints and concerns about non-compliance with federal workplace laws" from workers in the sector.<sup>44</sup> The FWO received 33 requests for assistance relating to seasonal workers involved in the SWP. In response to their investigations, the FWO recovered approximately \$137,000 for 92 employees.<sup>45</sup> In October 2016, the government established a Migrant Workers' Taskforce, to target those involved in unscrupulous labour hire practices and the exploitation of vulnerable foreign workers.

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One of the more significant cases prosecuted by the FWO involved the labour-hire firm Maroochy Sunshine Pty Ltd, which underpaid workers a total of \$77,600. This included the failure to pay 13 ni-Vanuatu workers brought to Queensland in 2014, and payments of just \$50–300 to another nine workers for up to seven weeks' labour on Queensland fruit and vegetable farms.<sup>46</sup> In addition to underpayment of workers, it was reported that "annual leave entitlements were underpaid, pay-slip and frequency-of-pay laws were breached, and that a Notice to Produce employment documents was not complied with."<sup>47</sup>

For breaches of the Fair Work Act, the company was fined \$186,000 and its sole director Emmanuel Bani was fined pecuniary penalties of \$41,300. In his March 2017 ruling, Federal Court Justice Jarrett stated: "It is difficult to imagine more egregious conduct than that exhibited by Maroochy Sunshine ... this case concerns the serious exploitation of vulnerable foreign workers lured to work in Australia by false promises about the amount of work available to those workers and the amounts they might earn from that work. The contraventions are of the most basic of the employees' workplace rights."<sup>48</sup>

## CASE STUDY 1: Bonded contracts

*"They [are] pushing us to go back home. Every one of us is not happy. And we are going back home with nothing. We are taking nothing back home."<sup>49</sup>*

*In March 2016, a group of Fijian workers quit working for their employers after complaining about unfair deductions which left them with less than \$10/week in wages. The workers requested that the Departments of Employment and Immigration transfer their visa to another employer, to allow them to finish the season and return home with savings. However, the workers claimed that representatives from these departments told them that their only option to remain in Australia is to return to work for the contractor that they accuse of exploitation.*

*In a similar case from December 2015, a group of workers walked off their job with PlantGrowPick, claiming mistreatment and exploitation. Despite being entitled to \$21.61 an hour under the horticulture award, some workers only earned \$1.21 an hour as they were employed on a casual piece rate.<sup>50</sup>*

*The workers alleged that they had been coerced into agreeing to work on a piece rate after the labour hire company confiscated their passports. Following these protests, PlantGrowPick fired six Fijian workers, allegedly claiming that they had been the ringleaders of the protest. It attempted to deport these workers from Australia without informing the relevant Australian government departments, as required under the program.<sup>51</sup>*

*These two cases demonstrate the potential repercussions to workers who make complaints against employers, despite workplace legislation designed to protect workers. In both cases, seasonal workers lost their right to work in Australia, as their temporary visas were terminated when their employment relationship with their employers was severed.*

With the changes to the SWP announced in 2015–17, the revised program has increased “flexibility” for employers, to encourage greater participation in the scheme. In reality however, this “flexibility” has shifted costs away from the employer to the overseas worker, reducing the amount that can be remitted to their family and community.

Previous arrangements required the approved employer to pay for the entire return international airfare upfront (and later recover anything over \$500 from the worker’s pay). Employers also had to pay for domestic transfer cost – from port of arrival to host location (and recover up to \$100 from the seasonal workers’ pay). Approved employers still need to pay for the return international airfare upfront and pay for all domestic transfer arrangements upfront. However, they can now recover anything over \$500 from the combined amount of the international airfare and domestic transfer arrangements, forcing more costs onto the worker.

The requirement for employers to guarantee a minimum of fourteen weeks’ work has also been removed, even though the approved employer must demonstrate that seasonal workers will receive a net financial benefit of at least \$1,000 from their participation (For all periods of employment, approved employers must still guarantee a minimum average of 30 hours’ work per week to seasonal workers.)

Further changes announced in September 2017 once again benefit employers rather than the overseas worker. The government is removing the requirement for employers to organise training for seasonal workers while in Australia (Currently, funding of up to \$825 is available to each first time seasonal worker and each returning worker, for training in areas such as English language proficiency, basic computer or ICT skills and financial management). However the Turnbull government announced that, from 1 July 2018, it was removing the requirement for employers to organise “Add-on Skills Training” while overseas workers are in Australia.

In contrast, the government is piloting ways to lower upfront costs for employers: streamlining the application process, through the introduction of a multi-year, multi-entry visa for seasonal workers; allowing employers to lodge information online; and increasing promotion to employers through industry associations.<sup>52</sup>

Generally, employers have not addressed core problems for women as labour migrants – including workplace sexual harassment and costly child care – except by segregating women into lower-paying work (such as the packing sheds rather than fruit picking). Research on women in the SWP notes: “Poor participation rates may also reflect concerns about the safety of women, working in largely male teams in foreign countries; concerns about worker abuse and exploitation; or simply discrimination on the part of sending communities or local program managers.”<sup>53</sup>

Women can benefit from labour mobility schemes, both as workers and as recipients of funds, but this value only comes when they have real control over remittances. There can also be negative impacts, such as increased domestic violence due to conflict over remittance use, or being forced to move to urban centres to ensure that the family can meet when the seasonal worker returns home between seasons.<sup>54</sup>

The most common concerns expressed by SWP participants are:

- > Unclear, unfair and unreasonable deductions<sup>55</sup>
- > Unreasonable overtime and piece rates<sup>56</sup>
- > Overcrowded accommodation<sup>57</sup>
- > Unreasonable, above-market rate charges for accommodation and transport<sup>58</sup>

Many of these concerns are shared with workers employed in the horticulture sector through the Working Holiday Maker scheme.<sup>59</sup> However, SWP workers also face specific vulnerabilities and challenges in exercising their rights due to visa conditions specific to the program.

Visa conditions for SWP workers entering Australia specify that workers may only remain in Australia while they continue to be employed by their sponsor (the Approved Employer) and

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cannot work for anyone other than their sponsor while in Australia. In their submissions to the Inquiry into the Seasonal Worker Program, both the National Union of Workers (NUW) and the Fair Work Ombudsman (FWO) report that workers are fearful of making complaints or taking action against exploitative employers because of concern about retaining their visa. The FWO believes that these fears mean that there is “significant risk that problems experienced by workers participating in the scheme are underreported.”<sup>60</sup>

One clear case of employer pressure came in early 2017, with the labour hire firm MADEC – a well-established company and the largest user of the SWP. Several ni-Vanuatu workers alleged that MADEC had told workers to quit the National Union of Workers (NUW). If they did not, they would reportedly be denied future employment, and other workers from Vanuatu would not be recruited through the program. MADEC even distributed a prepared resignation form that the ni-Vanuatu workers were to complete and return to the union – a clear breach of Australian laws that protect freedom of association.<sup>61</sup>

MADEC’s CEO later claimed these actions were a “misunderstanding” and that the company respected workers right to join a union.<sup>62</sup> These “misunderstandings” occurred despite government pledges in 2015 that an expanded program would “ensure Seasonal Workers are aware they can join a union.”

Workers participating in the SWP make substantial sacrifices to take part in the program, including long periods away from their family. These sacrifices are weighed against the ability to earn significantly more in Australia than they would at home. Given this, fears that complaints against their employer may result in their time in Australia ending prematurely act as a huge disincentive for workers (see case study 2). Many prefer underpayment and unfair deductions to the total loss of income from terminating their relationship with an employer, ending the picking season in Australia.

Another reason that workers may be reluctant to challenge unfair conditions is the fear that they will not be allowed to return for second and

subsequent periods of seasonal work. There is a lack of transparency regarding redeployment, and no guaranteed right of return in future years. This means that workers fear losing future earnings over multiple seasons if their actions or complaints against employers in Australia are used by their own government to deny their selection to the program in subsequent seasons.

These losses can be substantial, with Department of Employment statistics showing that a significant proportion of participants in the program return complete at least three seasons.<sup>63</sup>

The fear that workers will not be chosen for future work is not unfounded. In February 2015, the Samoa Observer reported on a strike by Samoan seasonal workers in Australia.<sup>64</sup> The Samoan Prime Minister not only denied that the workers were mistreated, he went on to warn workers and imply that continuation of their actions would risk their participation in future seasons:

**“ We have a list of their names and the villages they are from. If anything happens again, the Village Councils will be notified so they can make a decision on those who have wasted the opportunity given by government ... Causing embarrassment to the country ... people might think Samoans are lazy.”<sup>65</sup>**

Punishment imposed on workers for breaches of visa conditions has also involved sanctions that go beyond deportation for the individual worker. Under SWP and RSE, there have been threats of sanctions against the families or villages of workers who breach visa conditions through overstaying.<sup>66</sup>

The lack of transparent grievance process regarding workers’ redeployment, and specifically, the lack of a “right of return” within the program, severely impinges on workers’ ability to exercise their workplace rights. To alleviate worker concerns about impact on future earnings, the National Union of Workers recommends that a fair process for redeployment be developed, where a worker is notified that they will be able to return to a work placement before returning to their home country (providing that there are no legitimate performance management concerns).<sup>67</sup>

## CASE STUDY 2: Right of return in Canada

*Around 45,000 migrant farm workers come to Canada on temporary work programs. The majority of these arrive as part of the Seasonal Agricultural Worker Program (SAWP). The SAWP has been in operation for almost 50 years, and brings Caribbean and Mexican workers to Canada to work in the farm sector. While the specific details of the scheme are different, migrant workers in Australia face similar vulnerabilities in the scheme due to their visa being tied to a single employer, and facing no 'right of return' under immigration law.<sup>68</sup>*

*The United Food and Commercial Workers (UFCW) union has organised migrant agricultural workers for over three decades. Since 2002 they have handled over 60,000 case files through their migrant worker support centres, which they use to illustrate the vastly unequal relationship between the agriculture industry and migrant agricultural workers. The UFCW argue that this inequity is produced by a combination of workplace and immigration law which results in "a legally constructed captive workforce that produces cheap labour and silences worker grievances."<sup>69</sup>*

*The UFCW has negotiated collective agreements to address a number of structural issues in the program. These agreements have not simply focused on wages; they have addressed a number of the vulnerabilities that accrue to workers due to their work rights resetting after each season, rather than accruing over multiple seasons. These collective agreements effectively recognise "migrant worker leave" – an unpaid period in which a migrant workers returns to their home country in between seasons.*

*Under the agreements, multiple seasons are treated as a single period of non-continuous service in which benefits are accrued. Migrants are therefore only expected to serve a single probationary period, and significantly are:*

*... provided with a right of recall in subsequent seasons based on their non-continuous service. Employers must request workers to be named to return in subsequent seasons in order of descending seniority, with priority being given to Canadians in accordance with the terms of the CASAWP.<sup>70</sup>*

*These collective agreements provide additional security to workers, and lessen the involvement of sending countries in the recruitment process. This is significant, with evidence from multiple sources that officials in sending countries had blacklisted workers who had participated – or expressed an interest in – organising.<sup>71</sup>*

*However, while an improvement on the current SWP, a 'right of return' is not enough – migrant workers must be offered a pathway to permanent residence. After a certain number of years, those workers who wish to remain in Australia must be given the opportunity to do so – workers must not be allowed to become "permanently temporary", that is, unable to apply for permanent residency if they so desire.*

## 6. Union involvement in the SWP

**Seasonal workers' fears about reporting exploitative working conditions are exacerbated by limited knowledge about Australian workplace laws and rights. Providing timely and accurate information to aspiring seasonal workers must be a central element of any scheme, to allow workers to make an informed choice as to whether they should participate.**

Under the SWP, workers are meant to be provided with a pre-departure briefing arranged by the home country. They should also receive another briefing on arrival, to be provided by the employer, who is then meant to sign a statutory declaration that the briefing has been completed.

Both the pre-departure and post-arrival briefings should include information on core workplace rights, including their right to join a trade union, and the protections for exercising these rights. However, reports from Pacific workers indicate that these briefings do not give workers a clear understanding of their rights. Workers are usually not told who to consult if they feel that their rights have been breached. At present, with the exception of Timor-Leste, there are no unions involved in pre-departure training.<sup>72</sup>

Currently, pre-departure briefings do not always provide comprehensive information on wage rate, labour conditions (hours, meal breaks, occupational health and safety) and their right to join a union. For this reason, there is also a need to develop greater involvement of Pacific unions and community organisations in pre-departure briefings, support and advice programs.

To co-ordinate information about labour rights, it is important to build links between unions in sending and receiving countries, as has begun between Vanuatu and Australia (see case study 3).

## CASE STUDY 3: Union solidarity

*To better protect seasonal workers, Vanuatu unionists are strengthening links with their Australian partners.*

*“In October 2015, we signed an agreement between the National Union of Workers in Australia and our union,” said Jean-Pascal Saltukro of Vanuatu’s National Workers Union (NUW). “It’s an agreement that’s already working. At the start of this year, there was a case investigated by the Fair Work Ombudsman in Australia, affecting 22 ni-Vanuatu workers who were not being correctly paid by their employer. Based on action by the NUW, the investigation by Fair Work led to the case going before the courts, to recover the 7 million vatu in salary that hadn’t been correctly paid.”*

*Saltukro says there have been too many cases where ni-Vanuatu workers have been exploited, through unexpected changes in working conditions or extra deductions taken from their weekly salary.*

*“Some seasonal workers aren’t receiving the level of salary set out in the contract they signed in Vanuatu with a recruiting agent,” he said. “For example, the contract they sign might say that they’re paid by the hour. But when they arrive in Australia, the employer doesn’t abide by this contract and they pay, not by the hour, but by the kilo of apples or strawberries or whatever.”*

*“The problems encountered by seasonal workers begin at home, before they’ve left,” Saltukro said. “They’re supposed to have a briefing before they depart. According to the agreement signed with the Australian and New Zealand governments, the trade unions should be involved in the briefing, to give the workers some understanding of their rights at work. But until now, we haven’t been involved in the briefings organised by the Labour Department.”<sup>73</sup>*

Former SPOCTU convenor, Anthony Turua of the Cook Islands Workers Association (CIWA), says that Pacific governments should involve unions in the pre-departure briefings given to seasonal workers: “New Zealand and Australia have opened their doors for seasonal workers, but it’s really important that workers have a proper orientation before they leave. They need to understand what their rights are, because different countries have different employment laws. They need to understand the cost implication of moving to another employment jurisdiction in terms of tax or health costs. We think there’s a place for unions to be involved when workers go on their pre-departure orientation.”<sup>74</sup>

Anecdotal evidence from Union Aid Abroad – APHEDA partners in Nepal suggests that the use of pre-departure training in alleviating or preventing exploitation has found mixed success. If workers are simply given information about their rights in country, the training does little to reduce exploitation – particularly where workers are employed in sectors where they are isolated (e.g. farming and domestic work). In contrast, the experience of NUW in Australia shows that when workers are given information about and the opportunity to join unions in the receiving country prior to departure, shows that workers are better able to advocate for their workplace rights.

Union participation in pre-departure training can be conducted by the relevant union from the host country, in co-operation with unions from the sending country. Agreements for portable union membership could allow workers to transfer their membership between unions in sending and receiving countries, which is particularly useful for those participating in the program over multiple seasons (see case study 4).

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## CASE STUDY 4: Portable union membership

*Public Sector International (PSI) is the global union federation representing workers in health care, community and public services. PSI has long campaigned for the rights of migrant workers at all stages of their migration path: pre-departure, arrival and settlement in their new country.<sup>75</sup>*

*In 2013, PSI introduced the PSI passport to “promote portable union membership among affiliates within the PSI family.” The passport provides information to migrating workers about PSI affiliates in individual receiving countries, along with information about key workplace rights.*

*The PSI initiative was developed in response to union research that found that “many migrant workers have unrealistic expectations and insufficient information about recruitment procedures, employment and living conditions abroad, labour laws, workers’ rights in countries of destination and social costs of migration.”<sup>76</sup>*

*The PSI passport provides information to workers who had already decided to migrate. However one of the first steps in reducing the exploitation of migrant workers is to provide them with the information that would allow them to make an informed decision about whether (or not) to migrate. This information includes information about the cost of living in the receiving country relative to wages, and the less tangible effects of migration, such as loss of connection to family and social networks.*

# PART THREE: NEW FRONTIERS FOR PACIFIC LABOUR MIGRATION

Australia's SWP and New Zealand's RSE both began with employment in the horticulture sector, a seasonal industry that requires extra labour at peak periods like harvest. In Australia, however, the seasonal work scheme is being expanded to other industries, even though they may not operate on a seasonal basis.

## 7. Ageing, Disability and Home Care (ADHC)

**The Ageing, Disability and Home Care (ADHC) sector has been identified as one of the primary areas of employment growth in Australia over the next five years.<sup>77</sup> It has been estimated that an ageing population, combined with the launch of the National Disability Insurance Scheme (NDIS), will produce “tens of thousands, probably hundreds of thousands of jobs” over the next five years.<sup>78</sup> The Aged Care Financing Authority (ACFA) estimates that this workforce will need to triple by 2050 in order to meet projected demand.<sup>79</sup>**

Against this projected increase in demand, the care sector has long had a problem with supply. In 2016, it recorded one of the largest vacancy rates of all sectors.<sup>80</sup> Migration has frequently been suggested as one solution to staff shortages in the sector.<sup>81</sup>

However, one of the largest barriers to attracting and retaining staff in the sector is the low pay (often close to the minimum wage), difficult work, and often unsociable hours. One union representing workers in the ADHC sector argues that migration will do little to resolve shortages in the long term, arguing that this will do little to “address the actual reasons for labour shortages, namely low pay in the sector as compared to other industries and sectors.”<sup>82</sup>

The 2016 Joint Standing Committee on Migration inquiry into the SWP recommended that the program be expanded into additional sectors with high levels of staff shortages and projected increases in demand, including ADHC. These recommendations are broadly supported by DFAT’s submission to the inquiry, who sees the expansion of the SWP into new sectors as an opportunity to “place graduates from the Australia Pacific Technical College (APTC) in areas such as hospitality, accommodation, various trades (automotive, electrical, plumbing, mechanical), aged care and community care.”<sup>83</sup>

While the recommendation by the Joint Standing Committee recognises both a shortage of workers in Australia, and an oversupply of trained workers in the Pacific, it fails to recognise the unique characteristics of care work that make it unsuitable to be performed by seasonal workers (or migrants on short-term visas).

ANMF Federal Secretary Lee Thomas says that: “The residential aged care sector is already heavily reliant on temporary offshore nurses from many countries including the Pacific. ANMF supports

worker migration as long as it does not replace local labour and workers from overseas receive comparable wages and employment conditions as their Australian counterparts. Given the demands on aged care services do not vary significantly on a seasonal basis ANMF does not believe the SWP is an appropriate program to staff aged care.”

Specifically, it fails to recognise that care work involves more than the practical tasks of providing clinical services, cleaning, washing etc. Care work also has relational dimensions that depend on “workers’ capacity to develop caring relationships with the people to whom they provide care.”<sup>84</sup> These relationships cannot be built over the period of the short-term seasonal worker visa, with a churn of temporary workers on 14 week or six month visas impacting on care recipients’ ability to feel safe and secure with their care providers.

There are many significant benefits from longer term knowledge of and engagement with as patient – the nurse or carer can recognise changes in personality as an indicator for infection, stroke or other medical problems, changes that are often missed by short term carers. Carers often act as an advocate for the aged care resident or patient, but this role is hampered when work is precarious.<sup>85</sup>

Given the consistent difficulty of attracting workers to this sector, any scheme to bring in Pacific ADHC staff must allow workers to build long lasting care relationships with care recipients. Furthermore, these schemes for Pacific Island workers should not be at the expense of developing a comprehensive National Workforce Development Strategy for the sector, and addressing the major structural constraints that impact on attracting and retaining local workers in these sectors.

## 8. Alternative visa schemes for Pacific workers in non-seasonal sectors

**Skilled migrants entering Australia for temporary work are typically sponsored to enter Australia on a s457 visa. However, the ability for employers to sponsor migrant workers into the care sector has been hindered by s457 visa conditions that set minimum wage thresholds well above rates typically paid in the sector.**

In April 2016, Australia signed an MOU with the governments of Kiribati to support the granting of visas under the *Pacific Microstates – Northern Australia Worker Pilot Programme*.<sup>86</sup> This program, first proposed in the Northern Australia White Paper, will make available 250 two-year work visas over a five year period to Kiribati, Nauru and Tuvalu citizens. They will be eligible to work in Northern Australia in semi-skilled “non-seasonal industries and occupations that are unable to access Australian workers.”<sup>87</sup>

At the 48th Pacific Islands Forum in Apia, Prime Minister Turnbull announced further changes: “A new Pacific Labour Scheme in 2018 will give Pacific Island citizens opportunities to work in rural and regional Australia for up to three years, and help plug labour shortages in our towns and on our farms. Kiribati, Nauru and Tuvalu will have first access to the scheme, with an initial intake of up to 2,000 workers.”<sup>88</sup> In contrast to the short-term SWP visas (6–9 months), it appears this new scheme will allow workers to stay for up to three years at a time.

The occupations and industries included in the scheme are vague, however it is widely accepted that it would offer workers in ADHC – including graduates from the APTC and KANI program (see case study 5) – an alternative migration pathway to Australia. The targeting of these three nations is significant. They are all currently under-represented in the Seasonal Worker Program, and are likely to remain under-represented due a lack of expertise in agriculture (compared to other countries in the program),<sup>89</sup> greater travel costs that substantially impact on earnings from short-term seasons, and a desire by the sending governments to provide migration opportunities for their citizens ahead of projected climate-induced relocation.

## 9. Skilling up for labour mobility: the Australian-Pacific Technical College (APTC) and the Australian aid program

**Since 2006, the Australia-Pacific Technical College (APTC) has conducted vocational training in five Pacific island countries – Fiji, Vanuatu, Samoa, Solomon Islands and Papua New Guinea – with the aim of providing Pacific workers with opportunities to find employment at home and abroad. By December 2015, more than 8,400 Pacific Islanders from 14 Pacific countries have graduated from APTC. The APTC was developed as part of Australian aid program to the region, with the intention of providing “skills and training to build more competitive workforces in the Pacific Islands both for domestic labour markets and to promote labour mobility”.<sup>90</sup>**

An analysis of the scheme in 2013 found that the scheme had been largely successful in training Pacific Island students up to Australian level qualifications.<sup>91</sup> However the second aim of the scheme – to promote labour mobility – had largely been a failure, with very few graduates finding employment outside their home country. A 2014 research paper from ANU’s Development Policy Centre found that while the APTC has attained its goal of skill creation, it has not attained its goal of skill mobility – less than 3 per cent of all graduates had migrated to Australia or New Zealand.<sup>92</sup> An Australian National Audit Office (ANAO) audit of the APTC criticised “the high cost of the initiative and lack of integration with existing technical and vocational training systems.”<sup>93</sup>

The low-rate of labour mobility points to limited political commitment on both the Australian and Pacific Island side to address structural issues in the program. On the Australian side, there are very real obstacles built into the program which make it difficult for graduates from migrating to Australia. These include the difficulty of formal skill/experience recognition in Australia; and the cost of applying for an Australian work visa and skill recognition, which can “rival or exceed the annual incomes of average workers in the campus countries.”<sup>94</sup>

However, Pacific Island governments have done little to pressure successive Australian governments to address these constraints, likely due to very real concerns that the program would contribute to the “depletion of skill stocks in the Pacific” and the perception that the program was “created for the purpose of ‘denuding the region of its skilled workers.’<sup>95</sup> The exception is the Government of Kiribati, which has embraced opportunities for education to encourage out-migration.<sup>96</sup> As part of its “migration-with-dignity” program, the Kiribati government has encouraged training programs such as the Kiribati Australia Nursing Initiative (see case study 5)

> *Continued next page*

## CASE STUDY 5: Training Kiribati nurses

*The Kiribati Australia Nursing Initiative (KANI) was an A\$20.8 million pilot program implemented in collaboration Griffith University, Queensland, which allowed approximately 30 young i-Kiribati annually to obtain internationally recognised nursing qualifications (up to an Australian Bachelor degree level), and upon graduation gain employment in the Australian nursing sector. The program ran between 2006 and 2014, and was part of a broader Australian aid strategy to support the Government of Kiribati's efforts to address a range of domestic issues, including youth unemployment, the need to diversify their remittance base, and address climate change imperatives (specifically climate change induced migration).<sup>97</sup>*

*KANI was a relatively expensive program. Each nursing student trained cost \$2,000,000 – \$3,000,000 once all living and training expenses were taken into account. This cost is significantly higher than the cost per graduate through the Australian Pacific Technical College (APTC). Despite the additional cost, KANI is largely deemed more successful than the training of nurses through APTC program – with the higher percentage of nursing graduates at all levels finding employment at the end of their training.<sup>98</sup>*

*Improving education outcomes in Kiribati remains a priority of the Australian aid program.<sup>99</sup> Despite this, and a positive reviews of the program which found that it “remains strongly relevant to the sustainable development needs of Kiribati and to its adaptation policy of ‘migration with dignity’ to address serious climate change imperatives”, the KANI program was not renewed when it expired in 2014.*

*In recognition of current debates to extend the seasonal worker program to the nursing and care sectors, this paper recommends developing an education program which combines the strengths of the KANI and APTC program. Students would be trained at home, but be given opportunities to complete portions of training and work placements in Australia. Having students complete their training in their home country, would avoid the situation where graduates (and their families) who had settled and built lives in Australia being forced home if they were unable to find work. This is something that occurred under the KANI program.*

# PART 4: CLIMATE CHANGE AND LABOUR MIGRATION

**The Pacific islands are often described as being on the “frontline” of climate change. Sea level rise, increasing intensity of cyclones, storm surges and other extreme weather events, the salination of the water table and other adverse effects of climate change are making subsistence and ultimately survival on many Pacific Islands increasingly difficult.**

However, people across the Pacific have already begun to move due to climate change – both within their own countries and to other countries. A study by ESCAP and UNU-EHS found that 23 per cent of migrants who had migrated within or outside Kiribati cited climate change as their reason for moving (second only to labour migration at 41 per cent).<sup>100</sup> The same survey found 8 per cent of migrants who had migrated within or outside Tuvalu cited climate change as their primary reason for moving.

Large scale population movements within and across borders are likely to increase as global temperature increases above pre-industrial levels. The 2015 climate negotiations in Paris forged agreement that global warming must be kept to “well below” 2°C and that serious effort must be made to limit it to 1.5°C. Achieving that goal will require a transformation of our carbon-reliant world to one that produces zero net carbon emissions by the second half of this century – however current commitments are unlikely to meet these targets.

## 10. “We don’t want to be climate change refugees”

**In August 2014, a Tuvaluan family became the first in the world to gain residency on humanitarian grounds after claiming they would be affected by climate change if they were returned home. The family was granted residency in New Zealand – despite their application for protection being first denied in 2012. Their application was successful despite the Refugee Convention not recognising victims of climate change as refugees. Similar claims for New Zealand residency before and after this case were ultimately unsuccessful.<sup>101</sup>**

This case is the culmination of decades of debate about the expansion of the refugee convention to include environmental or climate change refugees.<sup>102</sup> There have been extensive discussions by Pacific Island governments of the need to develop strategies for climate change induced relocation.<sup>103</sup>

Most Pacific Island governments have long expressed a reluctance to discuss climate-induced mobility, and particularly to talk about their citizens becoming climate change refugees. While the figure of the refugee has been used by international organisations and activists to emphasise the urgency required to mitigate the effects of climate change, Pacific Island governments resist this framing, acknowledging the stigmatisation of refugee movements globally.<sup>104</sup>

Furthermore, they argue that actively discussing relocation strategies would send a message “that they had effectively given up on mitigation measures to avert future impacts of climate change.”<sup>105</sup> The refugee discourse displaces responsibility from those countries that need to act to reduce their contribution to climate change back onto the communities affected by climate change. It positions vulnerable populations as “victims” and as “evidence” of climate change, rather than as active agents in determining their own future, and strategies of resilience – as the slogan goes: “We are not drowning, we are fighting.”<sup>106</sup>

The ability to discuss relocation strategies is further compounded by the trauma and grief felt by older Pacific Island citizens regarding the need to leave their homeland, which is particularly acute for communities who understand their culture in relation to their land and their sea, and which makes it difficult to confront the need to move.

Despite these legitimate concerns, Pacific Island governments are increasingly discussing climate change induced mobility, both in terms of forced relocation of whole communities, and as part of a suite of adaptation strategies that can support in-situ adaptation for those individuals and communities that wish to remain at home. As an adaptation strategy, migration can be internal (from rural to urban communities) or external (from one country to another).

Whether internal or external, migration as an adaptation strategy is not intended to supplant in-situ adaptation activities (disaster risk reduction, improved agricultural practices, improved access to freshwater and coral reef conservation). Instead, it is understood as supporting these activities by maximizing resource opportunities over wider, dispersed geographic areas.<sup>107</sup>

Migration works as an adaptation strategy in two key ways:

- > Through the sending of remittances that help communities sustain consumption of basic needs and to rebuild after natural disasters.
- > Reducing pressure on agriculture and the environment, and thereby improving the livelihood security of those who remain behind.

Australia must do more to address its impacts. It must take responsibility for developing policies that support the mobility of Pacific Islanders to move in response to climate change. While these policies must address relocation due to climate change, they must also look to how labour mobility can be integrated into broader adaptive strategies to reduce the vulnerability of communities to both the **rapid onset** and **slow onset** effects of climate change.

These policies must take into account the needs and desires of those who decide to move – as well as those who elect to stay in the origin country, including the desire for permanent versus temporary or circular migration.

## 11. “Migration with Dignity”

**In February 2016, the then President of Kiribati Anote Tong stated that by 2020, people will need to start leaving Kiribati because rising sea levels will make life on many of the country’s atolls unsustainable. Tong has long argued for diverse cross-border adaptation techniques for the people of Kiribati. This has included buying 20sqm land in Fiji in which to grow crops to ensure food security for the country’s 110,000 people as sea level rise contaminates the water table with sea water, destroying crops.<sup>108</sup>**

It has also included a detailed relocation policy for i-Kiribati, which is aimed at simultaneously facilitating the migration of those who wish to leave i-Kiribati, and supporting those who wish to remain.

The Kiribati government has entitled their policy “migration with dignity”, eschewing the language of the climate change refugee. Their intention is to prepare for an orderly relocation over an extended period of time – rather than the forced relocation of the entire population when life on the atolls becomes untenable. The program recognises that while some – predominantly young – i-Kiribati are willing to migrate, many i-Kiribati – particularly the elderly – are reluctant to leave their land and the sea.

In supporting those who wish to migrate first, the government hopes to support those who wish to remain by lifting remittances to the country. Furthermore, through migration the government hopes to alleviate environmental pressures on the overpopulated atolls, thereby making possible other in-situ adaptation strategies that will prolong residence on the atolls for those who are reluctant to leave. In addition to providing remittances to those who remain in Kiribati, the first waves of migration are intended to facilitate later waves of migration, by establishing “expatriate communities of i-Kiribati, who will be able to absorb and support greater numbers of migrants in the longer term”.<sup>109</sup>

A central pillar of the “migration with dignity” program is education and vocational training. At a 2011 Conference on Climate Change and Migration in the Asia-Pacific, Tessie Lambourne, Kiribati’s Secretary for Foreign Affairs, stated that the government’s migration strategy aims to improve language, workplace skills and qualifications, in order to make i-Kiribati – Kiribati citizens – “competitive and marketable at international labour markets,” with options for labour mobility developed over time.<sup>110</sup>

This was one reason given for the government’s participation in the KANI pilot program. Despite the KANI program not being renewed, the Australian government continues to support the Kiribati government to improve their vocational education to ensure that the levels of qualifications able to be obtained in Kiribati will be raised to those available in countries such as Australia and New Zealand, to make “qualified i-Kiribati more attractive as migrants”.<sup>111</sup> However, as reviews of the APTC program have demonstrated, unless this improvement is combined with support to graduates to connect with employers and to have their skills recognised, greater qualification levels will do little to increase out-migration from Kiribati.

I have never encouraged the status of our people being refugees. [But] we have to acknowledge the reality that with the rising sea, the land area available for our populations will be considerably reduced and we cannot accommodate all of them, so some of them have to go somewhere, but not as refugees. We have more than enough time now to train them, to up-skill them, so that they can be worthwhile citizens when we relocate them as a community, not as refugees.

Anote Tong, (former) President of Kiribati.

## 12. The SWP as a climate change adaptation program

**The Seasonal Worker Program is typically framed as a ‘development’ program. It is intended support the development of Pacific Island communities through the sending of remittances. However, it could also be seen as an integral part of a climate change adaptation strategy – providing funds that can be used to rebuild communities after natural disasters, and alleviating environmental pressure on communities, thereby allowing communities to resist permanent relocation due to climate change for longer.**

Governments could provide practical support to seasonal workers in the aftermath of disasters – for example, by extending the visas of seasonal workers already in country (as New Zealand offered for ni-Vanuatu RSE workers after Cyclone Pam). Targeted recruitment programs could allow workers from affected areas to access high-income employment for a period after the disaster, to assist raising funds for re-building.<sup>112</sup>

One of the lesser discussed impacts of climate change in the Pacific is on food security. The majority of Pacific Islanders live in semi-subsistence communities, with food security and income generation largely dependent on agricultural production and the harvesting of marine resources. Food security is likely to be impacted by climate change in a number of ways. The increase in natural disasters will destroy and damage food production in the short, medium and long term; and increased land temperatures and changes in rainfall are predicted to reduce agricultural yields. Remittances from the seasonal worker (and other labour mobility schemes) allow communities impacted by climate change to purchase food to supplement agricultural production and marine harvesting, ensuring increased food security.

Natural disasters are an example of rapid onset events that typically cause temporary migration. In 2015 and 2016, the Pacific was hit by the two strongest cyclones in its history: Cyclone Pam and Cyclone Winston. Both cyclones caused widespread loss of housing, public infrastructure and health centres. The cyclones also destroyed crops, leaving communities dependent on processed food until their crops could be re-established. Following the cyclone, many individuals moved to urban areas to shelter with family who had managed to survive the cyclone with housing more or less intact.

## CASE STUDY: VEGAid after Cyclone Pam

*On 13 March 2015, Vanuatu was devastated by Cyclone Pam – one of the strongest Category 5 cyclones ever recorded in the South Pacific. The 270 km/h winds destroyed critical infrastructure in the capital Port Vila as well as in rural centres, leaving tens of thousands of people without homes.*

*The cyclone damaged food gardens for people reliant on agriculture and fishing, affecting both nutrition and the ability to raise cash for basic necessities such as school fees (Vanuatu's Ministry of Education set up a fundraising website, to raise funds so that secondary students could stay at school.)*

*For ni-Vanuatu seasonal workers, the news from home posed immediate challenges. The day that Cyclone Pam hit, a group of 15 ni-Vanuatu workers were picking fruit at Riviera Farms, in Australia's East Gippsland district. The workers had a hard choice: rush home to be with family or stay and earn the remittances that would be sorely needed by their community in Vanuatu.*

*For these Pacific workers, the opportunity to earn higher wages in Australia was too important to cut short. The workers decided to stay. Two weeks after the cyclone, they joined with local supporters in the Bairnsdale community to organise VEGAid, a fundraising concert which collected \$21,000 for the Vanuatu Red Cross.*

*After Cyclone Pam, Australian and New Zealand employers organised shipping containers to send goods like building materials, solar pumps, chainsaws, garden tools and basic household goods to communities of their affected employees.*

# Recommendations

- > Labour mobility must be considered as an integral part of the Australian development program for the Pacific, and understood as providing decent work and development opportunities for Pacific Island communities.
- > Pacific Island workers must be aware of their workplace rights under Australian and be given information on how to access their rights. To this end, unions must be involved in pre-departure or post-arrival briefings to enable workers' to join their relevant union prior to beginning work in Australia.
- > The Seasonal Worker Program (SWP) must address structural issues that impact on workers' ability to exercise their workplace rights. It is not enough to inform workers' of their rights under Australian law – the scheme must also limit repercussions faced by workers when exercising those rights. Most significantly, it must address workers' fears regarding loss of income from the early termination of a season, or exclusion from future seasons. These changes include:
  - Sectoral visas rather than employer-based visas, to allow workers to transfer their employment between employers within the same sector, rather than being tied to a single employer. This will allow workers to speak up about workplace grievances without fear of loss of employment.
  - The in-country recruitment process must be transparent, and workers must be given a 'right of return' to ensure that workers are not penalised for exercising their workplace rights, being allowed to return for second and subsequent periods of seasonal work.
- > The specific characteristics of care work make it unsuitable for short-term visas. In recognition of this, the seasonal worker program should not be extended to the ADHC sector. Instead, separate migration pathways that are integrated with in-country vocational education programs supported through the Australian aid program should be developed in consultation with Pacific Island governments and unions.
- > The Australian government should develop an integrated policy for climate change induced mobility. This policy should incorporate existing temporary migration schemes for skilled and unskilled workers, as these offer opportunities for workers (and their communities) to develop in-situ adaptation strategies and resist relocation. However, in recognition that some communities may have no other option than relocation, the government must introduce permanent migration pathways for Pacific Islanders. The migration policy must be developed in consultation with the Australian aid program to the region, to ensure that workers are given opportunities to develop the necessary skills to access skilled migration pathways.
- > All labour mobility schemes must include access to permanent migration pathways to ensure that workers do not become "permanently temporary" – living in Australia year after year without ever being able to apply for citizenship.
- > Federal and state governments should introduce licensing of labour hire companies, including the creation of a public register of licensed labour hire providers and legislation requiring companies to reveal the real beneficial owners of a labour hire business. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license.

# Endnotes

- <sup>1</sup> Data from 2014, in *Migration and Remittance Fact book*, World Bank, 2016, p13.
- <sup>2</sup> <http://www.border.gov.au/ReportsandPublications/Documents/statistics/temp-entrants-newzealand-dec31.pdf>
- <sup>3</sup> For discussion, see Clive Moore: *Kanaka – a history of Melanesian Mackay* (UPNG, Port Moresby, 1985).
- <sup>4</sup> *Our North, Our Future: White Paper on Developing Northern Australia*, (Commonwealth of Australia, June 2015) p13
- <sup>5</sup> Richard Curtain, Matthew Dornan, Jesse Doyle and Stephen Howes: *Labour mobility – the ten billion dollar prize*, World Bank 'Pacific Possible' series, July 2016
- <sup>6</sup> "Pacific unions reach across boundaries", *Islands Business* magazine, May 2016.
- <sup>7</sup> For country data, see World Bank: Migration and Remittances Data <http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>
- <sup>8</sup> See for example: *Labour mobility – the ten billion dollar prize*, op.cit.
- <sup>9</sup> Rajeshwar Singh: *Struggle for a living wage in Fiji* (University of the South Pacific, Suva, 1999).
- <sup>10</sup> For case studies of labour struggles, see Clive Moore; Jacqueline Leckie and Doug Munro: *Labour in the South Pacific* (James Cook University, 1990); Michael Hess: *Unions under economic development – private sector unions in Papua New Guinea* (OUP, 1992).
- <sup>11</sup> See for example: Jacqueline Leckie: *To Labour with the State: The Fiji Public Service Association* (University of Otago Press, Dunedin, 1997); Nic Maclellan: "Pomp and privatisation: political and economic reform in the Kingdom of Tonga", Australian Centre for Peace and Conflict Studies (ACPACS), University of Queensland, 2009.
- <sup>12</sup> Jane Kelsey: *Serving Whose Interests?: The Political Economy of Trade in Services Agreements* (2008)
- <sup>13</sup> Vanuatu later signed the agreement in September 2017 at the 48<sup>th</sup> Pacific Islands Forum meeting in Apia. The two largest island economies, Papua New Guinea and Fiji, have both refused to sign the agreement, with Port Moresby seeking a separate bilateral Economic Co-operation Agreement with Australia.
- <sup>14</sup> "Opening up Australia's labour market", *Islands Business* magazine (Fiji), June 2015, pp24–26.
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- <sup>16</sup> *Tuvalu National Labour Migration Policy*, November 2015 ([http://www.ilo.org/suva/publications/WCMS\\_431831/lang--en/index.htm](http://www.ilo.org/suva/publications/WCMS_431831/lang--en/index.htm)); *Kiribati National Labour Migration Policy*, November 2015 ([http://www.ilo.org/suva/publications/WCMS\\_431833/lang--en/index.htm](http://www.ilo.org/suva/publications/WCMS_431833/lang--en/index.htm))
- <sup>17</sup> For an overview, see Peter Mares: *Not Quite Australian: How Temporary Migration Is Changing the Nation* (Text, 2016).
- <sup>18</sup> Department of Immigration and Border Protection: *Temporary Entrants in Australia* report as at 31 December 2016,
- <sup>19</sup> Senate Education and Employment References Committee: *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (Commonwealth of Australia 2016), p10.
- <sup>20</sup> Jane Kelsey: *Taking Nurses and Soldiers to Market – Trade Liberalisation and Gendered Neo-colonialism in the Pacific*, mimeo, 2006.
- <sup>21</sup> Department of Immigration and Citizenship, *Visa Subclass 457 Integrity Review Final Report*, October 2008. See also Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014.
- <sup>22</sup> Department of Employment: *Annual Report 2014–15* (Commonwealth of Australia, Canberra, 2016).
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- <sup>24</sup> *A National Disgrace*: op.cit. p119.
- <sup>25</sup> Joint Standing Committee on Migration: *Seasonal change: Inquiry into the Seasonal Worker Programme*, Commonwealth of Australia, May 2016 (hereafter *Seasonal change inquiry*), p150.
- <sup>26</sup> "Victorian Inquiry into the Labour Hire Industry and Insecure Work", Final Report, August 2016 – <https://economicdevelopment.vic.gov.au/inquiry-into-the-labour-hire-industry>
- <sup>27</sup> Keith Pitt MP: "Exposing horticulture's 'underbelly'", 25 March 2015
- <sup>28</sup> 'Slaving Away: *The dirty secrets behind Australia's fresh food*', Four Corners, Australian Broadcasting Corporation, broadcast 4 May 2015.
- <sup>29</sup> NUW submission to the Senate Education and Employment References Committee: *A National Disgrace*.

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<sup>30</sup> '7-Eleven: *The price of convenience*', Four Corners, Australian Broadcasting Corporation, broadcast 31 August 2015.

<sup>31</sup> "The Domino's Effect", Sydney Morning Herald <http://www.smh.com.au/interactive/2017/the-dominos-effect/>

<sup>32</sup> Fair Work Ombudsman: United Petroleum retail fuel outlets – compliance activity outcomes <https://www.fairwork.gov.au/reports/united-petroleum-retail-fuel-outlets-compliance-activity-outcomes/findings>

<sup>33</sup> Nic Maclellan and Peter Mares: "Labour Mobility in the Pacific: Creating seasonal work programs in Australia" in Stewart Firth (ed), *Globalisation and Governance in the Pacific Islands* (ANU Press, Canberra, 2006) pp 137–172.

<sup>34</sup> A 2013 study found that "seasonal workers were more efficient than working holiday makers. Seasonal workers earned an average of \$4.50 an hour (22 per cent) more than WHMs, indicating that they harvested fruit at a faster rate." Robert Leith and Alistair Davidson: "Case study on seasonal workers and working holiday makers", research report by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), December 2013, p3

<sup>35</sup> "Workers for All Seasons? New Zealand's Recognised Seasonal Employer (RSE) program", Working Paper, Institute for Social Research, Swinburne University, May 2008.

<sup>36</sup> Manjula Luthria, Ron Duncan, Richard Brown, Peter Mares and Nic Maclellan: *At Home and Away – expanding job opportunities for Pacific Islanders through labour mobility* (World Bank, Washington, 2006)

<sup>37</sup> The front cover of the January 2010 edition of the regional news magazine *Islands Business* stated: "Rudd's Pacific failure – the job scheme that hasn't worked."

<sup>38</sup> Data supplied by Australian Department of Employment, October 2017. Of these Temporary Work (International Relations) visas (subclass 403), just 106 were in the accommodation/tourism sector while the remaining 6,060 were in horticulture and agriculture.

<sup>39</sup> *Our North, Our Future: White Paper on Developing Northern Australia* (Commonwealth of Australia, June 2015)

<sup>40</sup> For discussion of this issue, see Rochelle Bailey: "Why Pastoral Care Policy1 Affects Experiences, Productivity & Uptake in Seasonal Worker Programs", *SSGM In Brief*, 2015/55; Rochelle Bailey, Peter Bumseng and Regina Bumseng: "Labour Mobility Support Networks – 'It's Not Just a Seasonal Thing'", *SSGM In Brief*, 2016/23.

<sup>41</sup> "Seasonal farm workers receiving as little as \$9 a week after deductions, investigation reveals", 7.30 report, ABC TV, 25 February 2015.

<sup>42</sup> For examples of social media forums dedicated to the seasonal worker program, see: <https://www.facebook.com/groups/552758644885306/>; <https://www.facebook.com/groups/Fruitpickers19/>; <https://www.facebook.com/groups/SeasonalWorkersVanuatu/>

<sup>43</sup> Rochelle Ball, Laura Beacroft, Jade Lindley: "Australia's Pacific Seasonal Worker Pilot Scheme: Managing vulnerabilities to exploitation", *Trends & issues in crime and criminal justice*, Australian Institute of Criminology, No.432, November 2011.

<sup>44</sup> "Spotlight on Queensland fruit & vegetable farms", Fair Work Ombudsman, media release, 23 June 2014. <https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/june-2014/20140623-bundaberg>.

<sup>45</sup> FWO submission to the *Seasonal change inquiry*: <http://www.aph.gov.au/DocumentStore.ashx?id=6ead337f-71a7-4447-a4ca-f571e19edff1&subId=413075>

<sup>46</sup> Emma Field, "Fair Work Ombudsman Takes Labour-Hire Firm to Court for Allegedly Underpaying Vanuatu Workers | WeeklyTimesNow," *The Weekly Times*, January 13, 2016, <http://www.weeklytimesnow.com.au/agribusiness/fair-work-ombudsman-takes-labourhire-firm-to-court-for-allegedly-underpaying-vanuatu-workers/news-story/d8e42103d960d0b17ff4ec6348ad3a0c>.

<sup>47</sup> "Queensland labour hire operator allegedly underpaid overseas workers \$77,000", Fair Work Ombudsman, media release, 13 January 2016. <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/january-2016/20160113-maroochy-sunshine-litigation>; David Sparkes, "Labour-Hire Company Faces Court over Allegations of Exploiting Pacific Island Workers in 416 Visa Program – ABC Rural (Australian Broadcasting Corporation)," ABC Rural, January 14, 2016, <http://www.abc.net.au/news/2016-01-13/labor-hire-company-faces-allegations-of-416-visa-breaches/7086100>.

<sup>48</sup> *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd & Anor* [2017] FCCA 559 (24 March 2017) – <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2017/559.html?context=1;query=%5b2017%5d%20FCCA%20559>

<sup>49</sup> Seasonal farm workers receiving less than \$10 a week after deductions, investigation reveals, 7.30 report, ABC online, 26 February 2016 [http://www.abc.net.au/news/2016-02-25/seasonal-farm-workers-receiving-as-little-as-\\$9-a-week/7196844](http://www.abc.net.au/news/2016-02-25/seasonal-farm-workers-receiving-as-little-as-$9-a-week/7196844)

<sup>50</sup> Emma Field and Alex Sampson: "Shocking conditions exposed in Federal Government's Seasonal Worker Program", *Weekly Times*, 16 December 2016. <http://www.weeklytimesnow.com.au/news/national/shocking-conditions-exposed-in-federal-governments-seasonal-worker-program/news-story/46a5db6adb9611b8db30a2a41689cc25>

- <sup>51</sup> Emma Field: "Labour-hire company PlantGrowPick 'skimmed' pay: claim", *Weekly Times*, 23 December 2015. <http://www.weeklytimesnow.com.au/news/national/labourhire-company-plantgrowpick-skimmed-pay-claim/news-story/4f410ce2150655bdb18239bc6dc471ca>
- <sup>52</sup> "Increasing access to the Seasonal Worker Programme", Australian government SWP fact sheet, September 2017.
- <sup>53</sup> Rochelle Ball et al: "Pacific Labour Mobility: Removing the Gender Blinkers", *SSGM In Brief* 2015/51
- <sup>54</sup> For evidence of family impacts for i-Kiribati seafarers, see Jennifer Dennis: "Pacific Island seafarers – a study of the economic and social implications of seafaring on dependants and communities", Pacific Seafarers Training Program, Regional Maritime Program, Secretariat of the Pacific Community (SPC, Suva, 2003).
- <sup>55</sup> According to the Department of Employment submission to the *Seasonal change inquiry*, "most seasonal workers employed in horticulture are paid piece rates under the relevant modern award for the industry in which they are employed."p8.
- <sup>56</sup> NUW submission to the *Seasonal change inquiry*
- <sup>57</sup> NUW submission to the *Seasonal change inquiry*
- <sup>58</sup> The NUW submission documents one case where 8 Pacific workers sharing a 4-bedroom house were each charged \$100 per week (\$800 total) for a house that on the private rental market has been listed for \$350 per week.
- <sup>59</sup> 'Slaving Away: The dirty secrets behind Australia's fresh food', Four Corners, Australian Broadcasting Corporation, broadcast 4 May 2015.
- <sup>60</sup> FWO submission to the Seasonal change inquiry.
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- <sup>62</sup> Max Thorburn: "MADEC forced to defend actions on Seasonal Workers Program deployment", *Mildura Independent*, 14 March 2017.
- <sup>63</sup> Department of Employment submission to the *Seasonal Change inquiry*, p20 has data on the number of returning seasonal workers. It shows that in 2014–15, there were more than 582 second visas granted, plus a further 725 3<sup>rd</sup> – 7<sup>th</sup> visa – meaning that returns make up a substantial/majority proportion of the returns.
- <sup>64</sup> "PM Tuilaepa warns Samoa's seasonal workers", *Samoa Observer*, 18 February 2015. <http://www.pina.com.fj/?p=pacnews&m=read&o=6043958954e55e80cb82590588b4a0>
- <sup>65</sup> Ibid.
- <sup>66</sup> For examples, see "Overstaying and repatriation", section 2.8, *Workers for all seasons*, op.cit., pp28–29.
- <sup>67</sup> NUW submission to *Seasonal change inquiry*, p4.
- <sup>68</sup> For discussion of the specific details of the program, and the vulnerabilities faced by workers see: [http://www.ufcw.ca/templates/ufcwcanada/images/directions15/october/1586/MigrantWorkersReport2015\\_EN\\_email.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/directions15/october/1586/MigrantWorkersReport2015_EN_email.pdf)
- <sup>69</sup> United Food and Commercial Workers, *The Status of Migrant Farmworkers in Australia*, 2015, [http://www.ufcw.ca/templates/ufcwcanada/images/directions15/october/1586/MigrantWorkersReport2015\\_EN\\_email.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/directions15/october/1586/MigrantWorkersReport2015_EN_email.pdf). p11.
- <sup>70</sup> Andrew Newman, "The Legal Insecurity of Temporary Migrant Agricultural Work", *Deakin Law Review*, v18, n2, p381.
- <sup>71</sup> See for example: [http://www.ufcw.ca/templates/ufcwcanada/images/directions15/october/1586/MigrantWorkersReport2015\\_EN\\_email.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/directions15/october/1586/MigrantWorkersReport2015_EN_email.pdf), p16; <http://www.migrationpolicy.org/article/canadas-temporary-migration-program-model-despite-flaws>.
- <sup>72</sup> Nic Maclellan: "Where are the unions in seasonal work programs?", *DevPolicy Blog*, 15 August 2017.
- <sup>73</sup> Interview with Jean-Pascal Saltukro, Vanuatu National Workers Union (NWU), Brisbane, February 2016.
- <sup>74</sup> Interview with outgoing SPOCTU convenor Antony Turua, Brisbane, February 2016.
- <sup>75</sup> <http://www.world-psi.org/en/migration-more-information>
- <sup>76</sup> [http://www.world-psi.org/sites/default/files/en\\_migration\\_project\\_background\\_leaflet\\_3\\_docs.pdf](http://www.world-psi.org/sites/default/files/en_migration_project_background_leaflet_3_docs.pdf). The passport was produced as part of a project conducted with the ILO: [http://www.ilo.org/manila/public/pr/WCMS\\_173607/lang--en/index.htm](http://www.ilo.org/manila/public/pr/WCMS_173607/lang--en/index.htm)
- <sup>77</sup> Department of Employment: *Employment Outlook to November 2019*, Labour Market Research and Analysis Branch Department of Employment August 2015.
- <sup>78</sup> Anna Patty: "Aged care and health sectors will provide new jobs of the future, says report", *Sydney Morning Herald*, 25 February 2016.
- <sup>79</sup> Aged Care Financing Authority submission to the *Seasonal change: Inquiry into the Seasonal Worker Programme*, p48.
- <sup>80</sup> Department of Employment, *Vacancy Report*, 23 March 2016, p3.
- <sup>81</sup> See submissions to the Senate Inquiry on the Future of Australia's Aged Care Sector Workforce.
- <sup>82</sup> United Voice submission to the *TSMIT review*, p43. The union's reasons for shortages in the sector are reiterated by numerous inquiries, including: Productivity Commission, *Trends in Aged Care Services: some implications*, Productivity Commission research paper, September 2008; Senate Community Affairs References Committee, *Quality and Equity in Aged Care. Final Report*. June 2005.

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<sup>84</sup> Gabrielle Meagher, Marta Szebehely, and Jane Mears: "How institutions matter for job characteristics, quality and experiences: a comparison of home care work for older people in Australia and Sweden", *Work, Employment and Society*, February 2016.

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<sup>86</sup> "Kiribati sign MOU for seasonal workers scheme in Australia", PACNEWS, 17 April 2016.

<sup>87</sup> "Major tourism wins in Northern Australia White Paper" Minister for Trade Andrew Robb, media release, 19 June 2015. [http://trademinister.gov.au/releases/Pages/2015/ar\\_mr\\_150619.aspx?w=0 per cent2F per cent2FeXE per cent2BIYc3HpslRhVl0XA per cent3D per cent3D ; http://devpolicy.org/a-big-week-for-pacific-labour-mobility-swp-reforms-and-the-microstate-visa-20150626/](http://trademinister.gov.au/releases/Pages/2015/ar_mr_150619.aspx?w=0%20per%20cent2F%20per%20cent2B%20I%20Y%20c%203%20H%20p%20s%20l%20R%20h%20V%20I%20X%20A%20per%20cent3D%20per%20cent3D%20;http://devpolicy.org/a-big-week-for-pacific-labour-mobility-swp-reforms-and-the-microstate-visa-20150626/)

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<sup>92</sup> *Skill Development and Regional Mobility: Lessons from the Australia-Pacific Technical College*, Development Policy Centre Discussion Paper No. 34, May 2014. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2439558](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2439558)

<sup>93</sup> *AusAID's Management of Tertiary Training Assistance*. ANAO Audit Report No.44, 2010–11 Performance Audit, p96.

<sup>94</sup> Michael Clemens, Colum Graham, Stephen Howes, "Skill development and regional mobility: lessons from the Australia-Pacific Technical College", *The Journal of Development Studies*, v51, n11, 2015.

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<sup>98</sup> Lea Shaw, Murray Edwards, and Akka Rimon, *KAN/Independent Review*, Aidworks Initiative Number: ING466, April 2013, p5.

<sup>99</sup> <http://dfat.gov.au/geo/kiribati/development-assistance/Pages/kiribati-objective-2-building-a-better-educated-and-healthier-population.aspx>

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<sup>107</sup> UN ESCAP: *Climate Change and Migration Issues in the Pacific* (ESCAP, 2014)

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