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**Labour exploitation in the  
Australian construction  
industry: risks and  
protections for temporary  
migrant workers**

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# Executive summary

There have been a number of alleged cases of labour exploitation involving temporary migrant workers in Australia since the late 1990s. The Australian construction industry was identified as particularly problematic, with allegations of deception in relation to work contracts, lack of compliance with employment standards, limited autonomy and threats of abuse levelled. In response to these concerns, the Sisters of Saint Joseph of the Sacred Heart Josephite Counter-Trafficking Project and the Catholic Archdiocese of Sydney commissioned the Australian Institute of Criminology to undertake research on labour exploitation in the Australian construction industry, with a particular focus on temporary migrant workers.

The research sought to identify risks for temporary migrant workers in the Australian construction industry in relation to labour exploitation and the protections currently available to this population of workers. While the original mandate was to examine how these factors may contribute to increased vulnerability to human trafficking, the final study sought to examine the full spectrum of labour exploitation, from 'simple time and wage matters...to... clear cut cases of slavery' (David 2010: 49).

Specifically, this research sought to investigate:

- the state of existing knowledge among selected stakeholders about human trafficking and labour exploitation in the Australian construction industry;
- the features of the industry that may increase or decrease the vulnerability of temporary migrant workers to labour exploitation;
- existing responses to labour exploitation and the perceived protective nature of these responses; and
- key gaps in the knowledge around this issue, to inform research priorities for the future.

As the qualitative findings of this study predominantly focused on evidence of labour exploitation and the risks and protections around it, the report presented here is similarly focused, with reference to human trafficking only where relevant.

## Methodology

The research adopted a qualitative methodology that included targeted stakeholder interviews with government, industry and union representatives, academics specialising in research on migrant workers and skilled migration, and advocacy and support services personnel. A total of 25 interviews with 27 participants took place between August 2012 and February 2013. The interviews sought to identify the key risks and protections for migrant workers employed in the Australian construction industry, the characteristics of temporary migrant workers and how human trafficking and labour exploitation might manifest in the industry.

The interviews were supplemented with a review of the literature and policy on issues associated with temporary migrant workers, the construction industry and labour exploitation. A small amount of quantitative data was sought to contextualise the number of temporary migrant workers in the Australian construction industry and those found to be working unlawfully.

### *Labour exploitation*

For the context of this report, it is important to recognise the spectrum of practices that fall within the broader concept of labour exploitation. At the most severe end of the spectrum is forced labour, considered a severe violation of human rights and a restriction on freedom. Forced labour is defined as a slavery-like practice under Australian law (under Division 270 of the Criminal Code), and constitutes:

“

...[t]he condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free: (a) to cease providing the labour or services; or (b) to leave the place or area where the victim provides the labour or services (Criminal Code Act 1995 (Cth), s 270.6).

Labour exploitation is also equated with poor working conditions—low wages, substandard working and living conditions and/or lack of choice due to economic necessity (ILO Director-General 2009). In Australia, minimum employment standards for entitlements around maximum weekly hours of work, options for flexible working arrangements, leave, notices of termination, and redundancy pay are prescribed in the National Employment Standards (NES). Wages and pay rates are regulated under the national minimum wage and reviewed annually by the Fair Work Commissioner. Substandard working conditions are therefore described here as those conditions that do not fulfil the NES and national minimum wage provisions.

## **The Australian construction industry and temporary migrant labour**

The Australian construction industry is defined as including all forms of building and construction, and is divided into the residential or cottage, commercial, public infrastructure, onshore mining/resource and offshore sectors. It is the third largest industry employer, representing 8.7 percent of all employed Australians at the time of the study in 2012 (ABS 2015). At the beginning of the 2000s the Australian construction industry was affected by a skills and labour shortage, partly caused by a lack of investment and low retention rates in local apprenticeship schemes and related training (Toner 2005, 2003; Watson 2007).

One major response to the overall skills shortage that affected multiple Australian industries was a series of changes to Australia's temporary migration program. These included prioritising the migration of skilled temporary migrants for industries experiencing critical skill shortages in

2008, and the establishment in 2010 of a Skilled Occupations List which built on the 1996 introduction of the Temporary Work (Skilled) visa (subclass 457). The subclass 457 visa enabled employers to sponsor temporary worker migrants to Australia for up to four years and provided flexibility in the recruitment of migrant workers to specialised jobs and short-term contracts.

The introduction of the subclass 457 visa, and the subsequent changes to it and other temporary visa programs (specifically the Working Holiday visa [subclass 417]), saw an influx in temporary migrant workers to Australia. The need to recruit for a particular skill that was unavailable or difficult to source was cited as an important motivating factor among employers who sponsored skilled temporary migrants during this period (Khoo et al. 2007).

## Risks for migrant workers

The risks facing temporary migrant workers in the Australian construction industry are comprised of a combination of the inherent vulnerabilities associated with being a temporary migrant worker and the characteristics of the industry. Temporary migrant workers in the construction industry, whether lawfully employed or not, may be more vulnerable to labour exploitation due to the interaction of factors such as a limited understanding of Australian workplace legislation and rights, lower levels of access to union and government support, language and cultural barriers and social isolation. Visa arrangements were also identified as a major risk factor. Much of the discussion around the exploitation of migrant workers has focused on the subclass 457 visa, and among some stakeholders the (unspecified) conditions attached to this visa potentially left temporary migrant workers with few options to contest poor working conditions. However, construction workers on subclass 417 and student visas were equally at risk of labour exploitation, if not more so, particularly if semi-skilled. Again, much of the labour exploitation noted by stakeholders concerned poor working conditions (eg underpayment of wages), with some identified cases of students who payed exorbitant fees to study in Australia and were then directed to work in industries such as the construction industry in breach of their visa conditions and for low pay.

Employment practices and the informal economy were identified as the primary industry features that promoted risk. The nature of both lawful (pyramid contracting and subcontracting) and unlawful (sham contracting) employment practices posed a risk for all workers in the construction industry, but were seen as particularly risky for temporary migrant workers in combination with other vulnerabilities inherent in their migrant status. Stakeholder opinions on the relative risks of the various employment practices used in the construction industry diverged, including on whether sham contracting was as prevalent as some stakeholders claimed. It was acknowledged, however, that sham contracting was more likely to be associated with informal employment contracts and cash-in-hand wages, which exposed workers to a greater risk of being subjected to poor working conditions—in particular, reduced wages or none at all. In some cases, employers justified reducing wages to account for other costs incurred, such as accommodation costs and administrative fees linked to visas/sponsorship arrangements.

## Protections

A range of national and international protections are available to both migrant workers and workers employed in the construction industry. At the national level these include:

- the inclusion of human trafficking, slavery and slavery-like offences in the Criminal Code;
- migration and workplace legislation;
- the compliance, monitoring and enforcement functions performed by government bodies, unions and non-government organisations; and
- tools developed specifically to educate and inform migrant workers of their workplace rights.

Of these protections, stakeholders nominated compliance and monitoring activities and the distribution of educational tools as the most useful. All stakeholders supported education on workplace rights and responsibilities for employers and employees, and found the development of these tools to be particularly important. The tools comprise a mix of online videos and fact sheets—some of which have been translated into up to 20 different languages—and special education campaigns directed at particular industries or communities with a sizeable proportion of migrant labour.

Despite these and other efforts to improve protections, there were concerns that migrant workers still encountered problems accessing information and/or did not know what to do or who to contact if experiencing poor or exploitative working conditions. It was not clear from the stakeholder discussion what the actual barriers to protections were, other than the common barriers of limited English proficiency and lack of knowledge about rights, and hence it was also unclear where greater effort was required.

Coordinated compliance monitoring among government agencies such as the Department of Immigration and Border Protection, the Fair Work Ombudsman and Fair Work Building and Construction, along with monitoring undertaken by state-based workplace health and safety entities, unions and advocacy groups, was seen as effective provided regular, broad-ranging and formal sanctions were consistently applied. There was a view among some stakeholders, however, that these conditions were not always realised, and that compliance monitoring was irregular and not accurately targeted at the sponsors or employers of workers with particular visa arrangements. Unions and non-government organisations helped to address this perceived lack through onsite visits and other educational activities, and played the intermediary in instances where migrant workers were fearful of, or otherwise unable to contact, formal authorities.

## Labour exploitation in the construction industry

There was a belief among stakeholders that extreme forms of labour exploitation could occur in the industry—examples of which have been documented in the media—and a few of the anecdotes provided centred on issues of deception around the content or legality of a work contract, debt bondage, threats of denunciation to authorities, false information about permanent residency and threatened violence. Severe labour exploitation was considered

more likely to occur when a worker was employed or residing in Australia unlawfully. No stakeholder could identify a formally recognised case of forced labour or human trafficking.

The great majority of labour exploitation observed within the construction industry fell at the less severe end of the exploitation spectrum—that is, under substandard working conditions. These instances largely related to pay and hours worked.

## Best practice and the construction industry

While a number of broader national responses and international partnerships focus on addressing the root causes of labour exploitation, the application of these approaches to context-specific practices is limited. Despite this, stakeholders recognised that government and industry bodies were working to address some of the underlying risks, such as the skills shortage and subsequent demand for migrant labour. Further, there is movement to address the inherent risks within the construction industry, including on sham contracting, low levels of compliance, and the provision of training for frontline workers to better enable them to identify cases of exploitation and human trafficking.

This research identifies some of the major risks and protections that influence the likelihood of temporary migrant workers being subjected to labour exploitation in the Australian construction industry. While some of these issues have received considerable attention, there are still gaps in the available responses that warrant further attention. Given the relatively new focus on labour exploitation in Australia, further research is required to better gauge the extent and relative influence of specific risk factors as well as broader issues of exploitation and trafficking. This is not to suggest that current activities or legislative frameworks are ineffective; rather it demonstrates that, while Australia is aligned with international best practice more broadly, there appears to be a need for further engagement with the issues at an industry level. The evaluation of current initiatives is important in assisting to refine and develop further protections.

# Introduction

Increased attention has been paid over the last decade to the conditions experienced by temporary migrant workers employed in the Australian labour market. More specifically, there has been a focus on these issues within the Australian construction industry, with several government (see, for example, Cole 2003), union (eg CFMEU 2011) and media reports highlighting questionable practices around the employment and treatment of temporary migrant labour. Many of these examinations suggested that conditions associated with the Australian construction industry increased the likelihood of workers being subjected to varying levels of exploitation and abuse. Among the allegations highlighted were:

- deception about the content or legality of a work contract, working conditions and remuneration;
- a lack of compliance with labour laws and failure to honour contracts signed;
- the isolation, confinement or surveillance of workers;
- threats of denunciation to the authorities and false information about permanent residency;
- the abuse, or absence, of education provisions; and
- generating worker dependence on their exploiter.

Some of the publicised cases are summarised in Box 1. These cases involved allegations of workers being paid less than the minimum wage or not at all; not receiving their due entitlements; being forced to live in substandard conditions with limited autonomy; being expected to work long hours with little option for leave; and/or being exposed to threats of, or actual, physical abuse.

### Box 1: Alleged cases of migrant worker exploitation in the construction and other labour industries

Case 1: In 2011, four Filipino workers hired to work as painters on an oil rig off the coast of Western Australia were employed under contracts that stipulated an annual salary of \$40,000, significantly less than the \$115,000 salaries that would be payable to their Australian colleagues (Donovan 2008). Further investigation revealed they were working 12 hours a day, seven days a week and being paid \$3 an hour (Barlow 2011; Trembath 2013). The case was referred to the Fair Work Ombudsman, but the Federal Court dismissed the claim, as the place of employment was not covered by the Fair Work Act (*Fair Work Ombudsman v Pocomwell Limited (No 2)* (2013) FCA 1139).

Case 2: The Wahroonga project was put on hold for over two months in 2009 when it was found that 30 Chinese plasterers working under Australian Business Number (ABN) arrangements had not been paid for over two months by the subcontractor (Needham 2009). Several similar allegations were made regarding other groups of Chinese workers being forced to work under ABN arrangements and not being paid their wages or entitlements.

Case 3: In 2004, over 25 South African tradesmen responded to advertisements in South African newspapers regarding skilled work positions in Australia. The men were told they would be provided with four-year visas and paid approximately \$25 per hour. When they arrived in Australia, they discovered no work had been arranged for them and were told to find their own employment. They were also informed a range of deductions would be taken from their salaries (healthcare levy, super and kickbacks to the labour hire company), and that they would be required to repay \$5,000 to cover airfares and administration costs relating to visas arranged through the then Department of Immigration and Citizenship (Marr 2004).

Case 4: In 1999 a group of eight Indian stonemasons were brought to Australia on Temporary Work (Skilled) visas (subclass 457) to work on a temple complex in regional New South Wales (Norrington 2001). The men were recruited in India by a temple committee, but not informed of their pay and working conditions until the day they flew out of India. Once they arrived in Australia, the men's passports were confiscated. They were forced to live in two shipping containers on the construction site, rarely provided access to medical care and allowed out once a month for a half-day supervised trip (CFMEU personal communication 2009, cited in David 2010). The men were initially promised good wages but were paid approximately \$45 per month and worked seven days a week. The Construction, Forestry, Mining and Engineering Union (CFMEU) pursued a lengthy case against the temple that resulted in a negotiated settlement.

Case 5: Concerns that migrant workers were engaged in jobs beneath their skill set in the construction industry were confirmed in March 2007 following the death of a migrant worker crushed in a stoneworks north of Perth. The worker had been brought to Australia on a subclass 457 visa, allegedly for his specialist stonemasonry skills, but was subsequently forced to perform manual labour (Moore & Knox 2007).

Case 6: A man from the Cook Islands brought to Australia to work in the construction industry was forced to work 15 hours a day, seven days a week, for as little as \$50 a month. His passport was confiscated and he experienced physical abuse which resulted in a brain injury, hearing loss and partial blindness in one eye. The case was pursued by the CFMEU under industrial mechanisms and in the following proceedings, the magistrate ordered the man's employer to pay \$136,018 in unpaid wages (David 2010). The matter also resulted in state criminal law charges being brought by the NSW Police Force (David 2010); the employer was found guilty of maliciously inflicting grievous bodily harm and sentenced to the maximum penalty of two years imprisonment.

In response to these and similar concerns, the Sisters of the Sacred Heart Josephite Counter-Trafficking Project and the Catholic Archdiocese of Sydney commissioned the Australian Institute of Criminology (AIC) to undertake research on labour exploitation in the Australian construction industry (see Box 2 for a definition of the construction industry), with a particular focus on temporary migrant workers. The purpose of the study was to highlight those characteristics of the industry that might affect the vulnerabilities of migrant workers to labour exploitation and their protections against it. This present study seeks to examine the full spectrum of labour exploitation that exists in the construction industry, from 'simple time and wage matters, right through to very clear cut cases of slavery' (David 2010: 49).

Specifically, the research investigated the following:

- the state of existing knowledge about human trafficking and labour exploitation in the Australian construction industry among selected stakeholders;
- the features of the industry that may increase or decrease the vulnerability of temporary migrant workers to labour exploitation;
- the existing responses to labour exploitation and the perceived protective nature of these responses; and
- key gaps in the knowledge of this issue, to inform the framing of research priorities into the future.

#### Box 2: Definition of construction industry

Construction is defined in the Australian and New Zealand Standard Industrial Classification (ANZSIC; ABS & Statistics New Zealand 2013) as including:

...the construction of buildings and other structures, additions, alterations, reconstruction, installation, and maintenance and repairs of buildings and other structures...[and the] demolition or wrecking of buildings and other structures, and clearing of building sites...[and] blasting, test drilling, landfill, levelling, earthmoving, excavating, land drainage and other land preparation.

The construction industry is defined as including all forms of building and construction outlined in the ANZSIC, categorised into the following five sectors:

- the residential or cottage sector;
- the commercial sector;
- public infrastructure;
- the onshore mining and resource sector; and
- the offshore sector.

## Definitions of labour exploitation

In presenting the findings of this research, it is vital that a distinction is made between practices that fall within the broader concept of labour exploitation—from forced labour as a

slavery-like practice at one end of the exploitation spectrum to those at the less severe end, which can be described as poor or substandard working conditions.

Forced labour is defined in the ILO Forced Labour Convention 1930 (No. CO29) as:

“

...all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.

It is considered a severe violation of human rights and a restriction of human freedom, and may involve:

- the perpetration of physical violence;
- restrictions on freedom of movement;
- the application of threat, debt and other forms of bondage;
- the withholding or non-payment of wages; and/or
- the retention of identity documents (Andrees 2008: 18–19).

Under Australian legislation forced labour is defined as a slavery-like practice, as are servitude, deceptive recruitment and forced marriage (*Criminal Code Act 1995 (Cth)*, s 270), and constitutes:

“

...[t]he condition of a person (the *victim*) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free: (a) to cease providing the labour or services; or (b) to leave the place or area where the victim provides the labour or services (*Criminal Code Act 1995 (Cth)*, s 270.6(1)).

Exploitation of one person (the victim) by another occurs where:

“

...the other person's conduct causes the victim to enter into any of the following conditions: (a) slavery, or a condition similar to slavery; (b) servitude; (c) forced labour; (d) forced marriage; (e) debt bondage (*Criminal Code Act 1995 (Cth)*, s271.1A).

It is important to recognise that while a person may be trafficked either into or within Australia for the purposes of forced labour, not all victims of forced labour are necessarily trafficked.

Labour exploitation is also equated with low wages, substandard working conditions or lack of choice due to economic necessity (ILO Director-General 2009). The ILO has developed working

conditions standards that address working hours, maternity protection and minimum wages (see, for example, ILO 2012).

In Australia, minimum employment standards are prescribed in the National Employment Standards (NES). The NES, which apply to most workers in Australia, outline entitlements around maximum weekly hours of work, options for flexible working arrangements, leave, notice of termination and redundancy pay (see Appendix A). Wages and pay rates are covered under the national minimum wage, which is reviewed each year by the Fair Work Commissioner. For the purposes of this report, poor working conditions are defined as those not meeting the minimum entitlements and wage standards stipulated in the NES and national minimum wage rates.

In practice it can sometimes be difficult to separate the different manifestations of labour exploitation:



There is a broad spectrum of working conditions and practices, ranging from extreme exploitation including forced labour at one end, to decent work and the full application of labour standards at the other. Within that part of the spectrum in which forced labour conditions may be found, the line dividing forced labour in the strict legal sense of the term from extremely poor working conditions can at times be very difficult to distinguish (ILO Director-General 2005: 8).

Conversely, there is the risk of what Chuang (2013: 4) describes as ‘exploitation creep’ or the ‘labelling of abuses as more extreme than they really are’. This argument stems from issues of definitional conflation which have ‘created confusion’ and the potential for ‘any form of exploitation...[to] now [be] called slavery or trafficking’ (Andrees 2014: np).

With these caveats in place, an examination of the spectrum of practices that may facilitate a breeding ground for human trafficking, slavery and slavery-like practices allows this research to explore the enabling factors and contexts that may impact upon migrant workers’ vulnerability to labour exploitation. While many of the examples cited in this research may not meet the requirements of Australian legislation, an examination of the broader spectrum of labour exploitation practices might both provide further information around how these crimes could manifest in different industries and assist in identifying the risks and protections for those identified as potentially vulnerable to exploitation.

## Methodology

The research adopted a qualitative methodology, including a review of Australian and international literature and policy documents and a series of semi-structured interviews with key stakeholders involved in the construction industry and/or anti-trafficking initiatives in Australia. Interviews with temporary migrant workers employed in the Australian construction

industry, including some who had been exploited, were initially sought; however, researchers were unable to gain access to suitable candidates.

The project was approved by the AIC Human Research Ethics Committee on 18 January 2012.

### *Literature and document review*

The literature review involved an examination of the limited Australian literature relating to the construction industry and labour exploitation. The review also included a similarly small body of current literature around migrant workers in Australia, not limited to the construction industry.

### *Interviews*

Qualitative interviews were undertaken with a range of stakeholders, including:

- human trafficking experts;
- stakeholders from government agencies and regulators;
- union officials;
- industry stakeholders; and
- non-government stakeholders engaged in counter-trafficking programs and victim services.

Participants were initially identified from agencies and organisations interviewed as part of a previous AIC study on labour trafficking (David 2010). As these interviews progressed, a 'snowball' sampling technique was adopted, with participants either identifying or recommending additional potential participants, who were then formally approached to participate.

Interviews were undertaken either in person or via teleconference, depending on the participant's location. All interviews were semi-structured, and participants were encouraged to discuss their experiences and perspectives around the following themes:

- the nature of the construction industry;
- the characteristics and role of temporary migrant workers in the construction industry, including any particular trends or patterns in employment;
- the perceived risks and protections for migrant workers, including any characteristics or factors within the industry and related employment practices that may impact the level of vulnerability to exploitation; and
- human trafficking and labour exploitation and the ways in which these might manifest in the construction industry (see Appendix B for the interview schedule).

Interviews were undertaken from August 2012 to February 2013 and included 25 interviews with 27 participants. Researchers took extensive notes throughout the interviews, and participants were invited to review the summarised notes to ensure they were an accurate reflection of the discussion.

The interviews aimed to identify the key risks and protections for migrant workers as they

relate to labour exploitation through discussions around the key themes noted above. More broadly, the interviews sought information regarding industry-related factors and practices that may contribute to, or facilitate, labour exploitation. Interviews were held with a diverse range of stakeholders to mitigate potential biases associated with the perceived risks and protections in the industry.

Participant interview summaries were analysed according to the key themes outlined above. These themes were derived from the literature or identified in previous investigations and inquiries into the construction industry.

# Temporary migrant workers and the Australian construction industry

Temporary migrant workers are those who work in Australia having entered on temporary work, student or working holiday visas. Temporary migration was introduced in the early 1980s and continued to expand as Australia became more integrated into the global economy. While Australian migration policy was historically focused on permanent migration, temporary migration has become the dominant mode of migration in the Asia Pacific region, including Australia (Hugo 2009). This is evident in the contemporary Australian labour market, with increases in the numbers of temporary visas since the 2000s.

One of the larger consumers of temporary migrant labour in Australia has been the Australian construction industry. The industry constitutes the third largest employment industry in Australia, representing 8.7 percent of persons in the labour force at time of the 2012 interviews (ABS 2015). While reliable data on the proportion of the workforce comprising temporary migrant workers is not available, characteristics of the industry suggest a reliance on interim labour. Such characteristics include the intermittent, locational and trade-specific nature of the work. Additionally, there is the outsourcing of goods and services, with specialist skills serviced through subcontracting arrangements and labour secured through labour hire agreements. Temporary migrant workers present an ideal source of interim labour for the construction industry, available where needed and purposely secured for the position required.

## Temporary migrant labour

Three primary schemes permit temporary migrant labour in Australia:

- temporary work visas;
- working holiday visas; and
- student visas.

A subset of these visa categories is referred to in the context of alleged and confirmed labour exploitation in the Australian construction industry and summarised below. Regulatory

protections on pay and conditions for workers are largely unavailable to persons on working holiday and student visas.

### *Temporary Work (Skilled) visa (subclass 457)*

The Temporary Work (Skilled) visa (subclass 457) was introduced in 1996 to streamline the entry of skilled labour to Australia, as a means of addressing skills shortages and preserving Australia's productivity growth. The visa permits sponsored migrant workers to work in Australia for periods of four weeks to four years. Australian businesses that invest in the training of local workers and have a consistent record of employing local labour are eligible to act as sponsors of migrant workers. Sponsoring businesses are compelled to provide terms and conditions of employment equal to those of local workers and as specified under Australian workplace legislation, and to ensure workers are engaged in the occupation or activity specified in the visa application. Sponsored workers are obliged to work in the occupation for the sponsor specified in the visa, and to not cease employment for a period of 90 days.

Of the series of amendments to the subclass 457 visa (see Azarias et al. 2014; Campbell & Tham 2013 for comprehensive reviews), some were implemented following allegations around visa misuse and labour exploitation. In 2008 an integrity review of the subclass 457 visa program was undertaken by the Industrial Relations Commissioner, Barbara Deegan, in response to 'concerns raised about the exploitation of migrant workers, salary levels and English language requirements within the temporary skilled migration program' (Deegan 2008: 6). The review made a number of recommendations to ensure that temporary skilled workers were not exploited in a tighter labour market, and that Australian jobs were safeguarded. Of relevance to temporary migrant workers was:

- the introduction of progressive formal skills assessments for visa applications from high-risk countries in trade occupations;
- a 4.1 percent increase in the minimum salary level for visa holders;
- the introduction of a market based minimum salary;
- the introduction of a requirement for businesses to demonstrate that terms and conditions for sponsored workers would be 'no less favourable' than those of local workers; and
- an increase in minimum English language requirements for persons to be employed in trade occupations.

Among further changes announced in 2013 (through the *Migration Amendment (Temporary Sponsored Visas) Act 2013 (Cth)*) to reduce the risk of exploitation were:

- the assessment of the number of subclass 457 visa holders that could be sponsored by any one employer;
- the extension of the time allowed for visa holders to find a new employer from 45 days to 90 days;
- the expansion of the application of the market salary rate assessment from within the workplace to the workplace's regional locality; and

- a requirement for visa holders to be employed in a direct employee-employer relationship.
- In 2013–14, a total of 98,750 subclass 457 visas (primary and secondary visas combined) were granted (DIBP 2014a), an 11 percent decrease from 2007–08 (n=110,570; DIBP 2008). Over the seven year period, around nine to 13 percent of primary visas granted were for temporary migrant workers employed in the construction industry.

### *Working Holiday visas*

Young adult visitors to Australia are eligible to undertake short periods of employment under the Working Holiday visa (subclass 417) and Work and Holiday visa (subclass 462). The subclass 417 visa is open to visitors aged 18 to 30 years from specified countries, who can spend 12 months in Australia and work for up to six months for an individual employer during this time. Work can be pursued in one of five industries, including construction. A second visa is available to applicants who work for three months or more in one of the specified industries in a regional location. The subclass 462 visa is open to visitors from a separate group of countries but does not specify the type of work that must be sought, and a second visa is not available.

The number of subclass 417 visa holders increased by 55 percent between 2007–08 and 2013–14 from 154,432 to 239,592 (DIBP 2014b, 2010). Subclass 462 visas granted over the same period more than doubled from 3,488 to 10,214. Ten percent or fewer visitors granted a second subclass 417 visa reported working in construction; up to 90 percent or more were involved in agricultural work.

### *Student visas*

There is an extensive range of visas open to overseas students for study in Australia:

- the Independent ELICOS Sector visa (subclass 570);
- the Schools Sector visa (subclass 571);
- the Vocational Education and Training Sector visa (subclass 572);
- the Higher Education Sector visa (subclass 573);
- the Postgraduate Research Sector visa (subclass 574);
- the Non Award Sector visa (subclass 575); and
- the Foreign Affairs or Defence Sector visa (subclass 576).

Primary and secondary (ie dependent family) visa holders are able to obtain paid work during the term of the visa, but only once the specified course of study has commenced. Paid or voluntary work is limited to 40 hours per fortnight during study terms, although additional hours may be worked outside term. Students visas granted between 2007–08 and 2013–14 increased by five percent (n=278,145 and n=292,060 respectively; DIBP 2014c). Just over half the visas granted in 2013–14 were subclass 573 visas (52%, n=152,344); a quarter were subclass 572 visas (full-time vocational or education training; 21%, n=60,648) and one in ten were subclass 570 visas (English language courses; 11%, n=30,964).

Research undertaken by Khoo et al. (2007) suggests there are a number of reasons that influence migrants' decisions to seek temporary employment in Australia. The research, undertaken in partnership with the then Department of Immigration and Multicultural and Indigenous Affairs, interviewed both migrant workers and employers who sponsored skilled temporary migrants to identify what influenced their decisions to seek employment in Australia and to sponsor migrant workers, respectively.

Among the 1,175 skilled temporary migrants interviewed, the largest proportion (84%) nominated lifestyle reasons as an important motivating factor. Other reasons included to gain international experience (76%), for promotion and career development (64%), and for better employment opportunities (62%; Khoo et al. 2007). Interviewees in trade occupations were more likely to highlight poor economic conditions and a lack of suitable employment in their home country as a reason for migrating to Australia than those in managerial and professional occupations.

The need to recruit a particular skill that was unavailable or difficult to source was an important motivating factor for hiring temporary migrant workers (Khoo et al. 2007). Almost 90 percent of the 135 employers surveyed for the study indicated this was important or very important. The need to engage people to train other employees was another important factor in recruiting from overseas, cited by just under 60 percent of employers. Only a small proportion of employers (around 10% or less) cited factors related to the degree of control that could be exercised over workers on temporary visa arrangements or the lower costs associated with employing them as motivating their sponsorship.

## Temporary migrant employment in the construction industry

Starting in the 2000s, the Australian construction industry was affected by a marked skills and labour shortage which threatened future growth (McGrath-Champ et al. 2011). The Centre of Full Employment and Equity defines a skills shortage as 'an absence of technical proficiency, but more broadly...[the absence of a] range of worker capabilities and behaviours that contribute to...profitability' (Mitchell & Quirk 2005: 3). A 2008 survey of Australian industry CEOs, examining the impact of skills shortages on Australian businesses, found the construction industry was the most affected of all industry sectors in Australia. Eighty-three percent of surveyed firms stated that skill shortages were affecting business (Australian Industry Group & Deloitte 2008). A follow-up survey two years later reported that 86 percent of Australian construction companies CEOs predicted difficulties in filling positions in the following 12 months (Australian Industry Group & Deloitte 2010).

The skills shortage experienced by the construction industry was addressed through a series of changes to Australia's temporary migration program. The purpose of the program, and specifically of the subclass 457 visa, was to promote greater flexibility for employers in recruiting workers appropriate to specialised jobs and short-term contracts. This flexibility was achieved, as noted by Khoo et al. (2007: 483), through the 'radical simplification of rules and procedures governing the temporary entry of skilled workers'.

Among the measures created to achieve flexibility were those announced in 2008 by then Minister for Immigration and Citizenship, Senator Chris Evans, in which priority was given to unsponsored skilled migrants for industries currently experiencing critical skills shortages, listed as the medical, information technology, engineering and construction sectors (Evans 2008a, 2008b). By prioritising entry based on specified skill sets, the program was modified to respond to demand rather than to supply, which had characterised skilled migration patterns in the past. In 2010 further reforms were introduced, including the implementation of the Skilled Occupations Lists (see Evans 2010) which annually itemise occupations in demand in Australia.

In relation to the Australian construction industry, McGrath-Champ et al. (2011: 469) have argued that 'migrant policy has become a key element in the endeavour to address skill shortages, and also...an essential component of the labour-market flexibility agenda'. The combination of reforms outlined above led to a marked increase in the number of permanent and temporary migrant workers employed in Australia from the mid-1990s, offset only by a brief decline in the demand for temporary workers during the Global Financial Crisis (Phillips & Spinks 2012). The Australian construction industry, in particular, experienced a substantial influx of temporary migrant workers—boosted by the changes to subclass 457, subclass 417 and subclass 462 visa arrangements (Shin & McGrath-Champ 2009). Of particular relevance was the aforementioned option of obtaining a second working holiday visa if the applicant had spent three months working in construction in a regional location (Evans 2008c).

It is important to note that, while the expansion of conditions attached to temporary skilled work visas influenced the increase in migrant workers entering Australia, a myriad of factors contributed to the increase in the number of temporary entrants more broadly. In particular, sustained levels of production and output across key industrial sectors such as the construction industry were juxtaposed against marked skills shortages, the latter of which were partly created by a decline in funding and other commitment to local apprenticeship schemes and related training (Toner 2005, 2003; Watson 2007). Smaller enterprises, in particular, lost the impetus to administer such training schemes, largely due to low apprentice/trainee retention rates that did not justify regular investment of training monies (Cully 2002; Toner 2005, 2003; Watson 2007). Some of the inherent problems in education and training have since been rectified, providing greater flexibility to employers and encouraging increased adoption of training schemes (McGrath-Champ et al. 2011).

Alongside sustained or increased levels of production, there have also been significant changes to the institutional and organisational features of the construction industry. These evolving features are what Rosewarne et al. (1998: 1) recognised as providing or underpinning the impetus for the expansion of the industry into the globalised economy, where major construction companies ultimately transformed into transnational conglomerates. As a result, major companies have distanced themselves from actual construction work through complex subcontracting networks. Such changes have shifted the operation of the Australian construction industry and changed the composition of the labour market (Rosewarne et al. 1998). The global construction industry, including in the current Australian context, is now characterised by the sourcing of labourers, including migrant workers, through various intermediaries and subcontracting arrangements.

# Risks for migrant workers in the Australian construction industry

This section describes the type and severity of labour exploitation observed in the Australian construction industry. It explores, with reference to qualitative information drawn from stakeholder interviews, the factors inherent in temporary migrant work arrangements and the key industry characteristics that interact with these to heighten the risk of labour exploitation.

## Indications of human trafficking and forced labour

Using indicators of forced labour developed by the ILO (2009) as a prompt (see Appendix C), most stakeholders were able to identify an example of the exploitation of a migrant worker, or group of workers, within the construction industry. These examples primarily correlated with medium exploitation indicators pertaining to salary, hazardous work and non-compliance with contract arrangements; medium deception indicators relating to conditions of work and legality of contracts; and medium coercion indicators around denunciation to authorities and threats of violence. Further, many stakeholders believed that extreme forms of labour exploitation could occur in the Australian construction industry; however they had no concrete cases or evidence to confirm that belief (industry stakeholders; union stakeholders' personal communication 2012). No stakeholder could identify a recognised case of human trafficking or forced labour, and many of the examples provided were anecdotal.

The most severe forms of exploitation and abuse occurred where migrant workers were employed or residing in Australia unlawfully (union stakeholder; industry stakeholder personal communication 2012). While it was suggested that the majority of migrants working unlawfully would have initially entered Australia legitimately, a number of stakeholders suggested there may be a smaller number who enter Australia illegally and become involved in precarious situations that may amount to forced labour. This suggestion was particularly relevant to examples of sham contracting, in which workers were often made to get an ABN and then either paid a considerably smaller wage than their Australian colleagues or not paid at all. In one example, workers were paid \$8 an hour with no entitlements (union stakeholder personal communication 2012).

Other examples provided by stakeholders describe indicators of exploitation including workers being made to work excessive hours, seven days a week, in poor and dangerous working conditions and with little or no training. Issues of debt bondage were raised with respect to labour hire companies, with two stakeholders suggesting that overseas recruitment agencies required exorbitant fees to organise travel, work documents and other arrangements which were either deducted from workers' weekly or monthly wages or required to be repaid as lump sums (recruitment agency stakeholder; union stakeholder personal communication 2012). Similarly, evidence from two stakeholders suggested that some temporary migrant workers endured exploitative conditions as a result of threats to their own physical safety or that of their family at home.

The prevalence of such exploitation was, however, less clear. Much of the observed labour exploitation fell at the less severe end of the exploitation spectrum and constituted substandard working conditions. These largely affected pay and sometimes the nature or hours of work. Stakeholders did not provide information on the combination of exploitative practices experienced by temporary migrant workers and how these commonly manifested in the construction industry. Irrespective of the severity of the descriptions of labour exploitation submitted by stakeholders, similar factors contribute to the risk of exploitation and similar barriers exist for redress and support. These risk factors are explored below.

## Temporary migrant workers: inherent risks and risks associated with visa status

The vulnerability of temporary migrant workers might be described as a product of their:

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...in(capacity) to participate in the political system that determines their work rights, [a] lack of security of residence, and...language and cultural barriers which makes it less likely they will know their rights as workers, and more difficult for them to assert them against a local employer (Reilly 2012: 187).

Stakeholders unanimously nominated similar factors as increasing the risk of labour exploitation more generally. These included workers' low English proficiency, limited knowledge and understanding of Australian work and pay conditions and underdeveloped support networks, as well as vulnerabilities associated with visa (read: migration) and legal work status.

### *Inherent risks*

Limited proficiency in English is a fundamental vulnerability of temporary migrant labourers in Australia, affecting their capacity to comprehend instructions, decipher work contract documentation, understand labour laws and regulations, and instigate complaints if working

conditions are poor. It was suggested that the introduction of the subclass 457 visa saw a marked increase in the number of temporary skilled workers from non-English speaking backgrounds coming to Australia. Limited English proficiency was recognised in the Deegan review (Deegan 2008) as a key factor rendering migrant workers vulnerable to exploitation. This finding was addressed through the Migration Amendment Regulations 2009, which increased the minimum English language requirements under the IELTS test for future visa applicants. Despite this, English proficiency was still seen by some stakeholders as an ongoing problem among some groups of temporary migrant workers in the construction industry. However, it was not clear from these statements to what extent these issues applied to workers who came in on visas requiring a standard of English proficiency (eg subclass 457) and those who did not (eg subclass 417).

Language issues potentially compromise workers' knowledge and understanding of Australian workplace laws, rights and entitlements. Fact sheets and similar tools outlining conditions and options for redress, created and translated by agencies such as the Fair Work Ombudsman (FWO), provide temporary migrant workers with one avenue for locating and assimilating this information. Nonetheless, workers from different linguistic backgrounds may still experience difficulty in comprehending the available information (see, for example, Reilly 2012; Velayutham 2013), which could affect their ability to recognise their conditions of work as substandard or to negotiate improvements where poor conditions are realised. It was alleged that the distribution of information about workers' rights and responsibilities, and access to unions or other information/advocacy bodies, was discouraged and sometimes prevented in precarious employment situations (union stakeholders' personal communication 2012). It was also noted that temporary migrant workers might not be informed of their rights when signing contracts or commencing employment. A few stakeholders suggested that a level of confusion, some of which may have been deliberately perpetuated by employers, continued to exist among some temporary migrant workers around entitlements attached to employee-based and contract work (union stakeholders' personal communication 2012). Migrant workers in the construction, retail and IT industries in Australia described intentional misinformation about conditions and the content of contracts, as well as overt discouragement from seeking advice from unions, when interviewed by Velayutham (2013).

Additionally, limited English proficiency restricted workers' awareness and comprehension of workplace health and safety requirements. This issue was identified as a serious safety concern for all construction workers where there were workers on site who did not understand, and hence could not follow, basic safety procedures. One example provided by a union stakeholder described the difficulty of communicating the actions required during an emergency evacuation to a group of Chinese workers with limited English. According to this stakeholder, the workers did not understand what was happening during the on-site drill nor what they were being told to do and not do (personal communication 2012). It was also suggested that, where workers with limited English undertook jobs that required general induction or other safety training, other workers were known to undertake the training on their behalf (union stakeholder personal communication 2012). Toh and Quinlan (2009) recognised similar issues

among temporary migrant workers in Australia, with limited English proficiency affecting workers' understanding of workplace health and safety training and some employers failing to provide properly translated training and induction materials in response. Both insufficiencies endanger worker safety; and the workers' recourse to compensation, if injured, could be hampered by their limited understanding of their rights and/or their fear of reporting.

These intrinsic vulnerabilities interact with the effects of social isolation. Social isolation both compounds and reinforces problems with English language acquisition, a lack of knowledge of workplace standards and limited or restricted access to information and support services. It was suggested that social isolation might be intentionally imposed on temporary migrant workers working unlawfully in Australia. Both union and industry stakeholders noted that the managers or middlemen responsible for these workers might potentially act to ensure the workers did not fraternise with fellow workers who may influence their understanding of their situation (personal communication 2012). It was also alleged that restrictions on social and workplace interaction were more common among workers who were engaged in work through family or community ties (advocacy stakeholder personal communication 2012). Velayutham's (2013) study of Indian workers in the IT, construction and retail sectors in Australia also highlighted the social isolation experienced by temporary migrant workers. Social contact was confined to other workers on subclass 457 visas, with little contact with other members of the Indian diaspora or the broader Australian community.

A final contributing factor was the workers' perceptions and acceptance of substandard work conditions. While stakeholders were not always able to comment on migrants' motivations for moving to Australia for work, some believed the promise of permanent residency and higher income was the most influential factor in seeking employment in Australia. Factors such as family and community remittances, tied to better pay outside the home country, were also highly influential, particularly among Asian workers (advocacy stakeholder personal communication 2012).

Stakeholders who had worked specifically with migrant workers noted that in situations where employment conditions were exploitative by Australian standards, some migrant workers still perceived them as significantly better than those in their home country (advocacy stakeholder personal communication 2012). In some cases, poor working conditions were accepted because of promises of permanent residency. Other workers feared losing their job if they did not comply with their employment arrangements. Job loss was perceived as leading to certain deportation, affecting the worker's ability to support family and repay debts incurred from loans, labour agent and visa fees et cetera. One stakeholder noted that problems in honouring debts had on occasion been met with threats to the safety of the worker or their family (advocacy stakeholder personal communication 2012).

### *Visa arrangements*

Each of the primary visa categories that facilitate temporary migrant labour in Australia was recognised as carrying inherent risks to workers. Stakeholders thought that most temporary migrant workers in the construction industry were on subclass 457 visas and, as a result,

entered predetermined employment upon their arrival in Australia. Despite some differing opinions, several stakeholders indicated that the conditions attached to this particular visa potentially left temporary migrant workers with fewer options to contest poor working conditions (union stakeholder personal communication 2012). This was thought to be a result of the implied or perceived control an employer might have over wages, other work conditions and the duration of the workers' stay in Australia.

The limitations of the subclass 457 visa in protecting temporary migrant workers—and conditions for local workers—was formally examined in the Deegan review (2008), as well as being the subject of comprehensive academic assessments (see, for example, Campbell & Tham 2013; Howe 2010). Numerous amendments to this visa category since its introduction in 1996 have addressed issues around English language proficiency; the potential for wages to be paid below market rate and relative to workplace rather than occupational averages; the potential to water down terms and conditions; insufficient enforcement activity; and the inconsistent application of penalties for non-compliance with sponsorship obligations. A suite of critical amendments to Visa Condition 8107 increased the number of days a worker can cease employment before their visa becomes subject to cancellation from 28 to 90 days, providing workers with an opportunity to arrange employment with a new business sponsor if the original arrangement is terminated. Campbell and Tham (2013) described the previous timeframe available to seek new employment as constraining the mobility of temporary migrant workers, particularly where they believed other factors bound them to their employer. Immobilising migrant workers in this way, particularly if they believed there was no easy option to pursue employment elsewhere, created an environment in which exploitation could manifest.

The regulatory changes to the subclass 457 visa suggest that the risk of labour exploitation for workers on this visa is weakened, although not completely eliminated. However, workers on other types of visas—such as subclass 417 and student visas—are still at risk (industry stakeholder, union stakeholder personal communication 2012), although this has garnered less regulatory and enforcement attention. For example, it was suggested that a number of student visa holders had paid exorbitant fees to training facilities to obtain visas but, on arrival in Australia, ended up working instead, with some of them engaged in the construction industry (union stakeholder personal communication 2012). While the extent of complicity in these situations was unknown, the nature of the work was often not disclosed to the worker prior to employment (union stakeholder; industry stakeholder personal communication 2012). Stakeholders also described the recruitment of students by illegitimate training and education organisations to work in various industries, including construction (union stakeholder personal communication 2012). The majority of these training or education facilities offered English courses—sometimes rudimentary—to international students, accepted payment for enrolment and then provided options for students to obtain work. This rendered students more susceptible to exploitation due to the illegality of their working arrangements (for example, working outside the prescribed conditions of their visa).

The susceptibility of international students to labour exploitation relates to their migrant, financial and entitlement status (Reilly 2012). International students are vulnerable in similar

ways to other temporary migrant workers; they face cultural, linguistic and social barriers that cause them difficulties in ascertaining workplace laws and limit their ability to negotiate better conditions and seek compensation (Nyland et al. 2009; Reilly 2012). They also experience potential insecurity with their residency status. Students risk cancellation of their visa if they (or a secondary visa holder) are found to be in breach of the mandated 20 hours of paid work a week. Exceeding the weekly quota may be inadvertent; stipulations around student visa work entitlements are sufficiently complex that this could occur, and the nature of certain jobs may also contribute (Reilly 2012). It may also be deliberate, as a means of managing financial uncertainties—Reilly (2012) highlights the disproportion between fees and cost of living expenses against earning capacity—or through undue pressure from an employer. Either way, international students seeking to safeguard continuing employment place themselves at greater risk of working in, and accepting, substandard conditions.

Workers on working holiday visas are also exposed to poor working conditions. A 2015 report by *Four Corners* on the employment of workers on subclass 417 visas uncovered evidence of routine underpayment of wages, excessive work hours and inferior accommodation (Meldrum-Hanna & Russell 2015). Stakeholders did not identify similar conditions for construction workers on 417 visas, although these workers were often underpaid or engaged in the informal economy through cash-in-hand contracts (industry stakeholders' personal communication 2012). In mid-2014 the FWO announced a review of the wages and working conditions of persons in Australia on subclass 417 visas (FWO 2014). The review follows a series of cases—largely of non-payment and underpayment—recently pursued by the FWO. None of these cases, however, involved workers in the construction industry.

### *Unlawful work status*

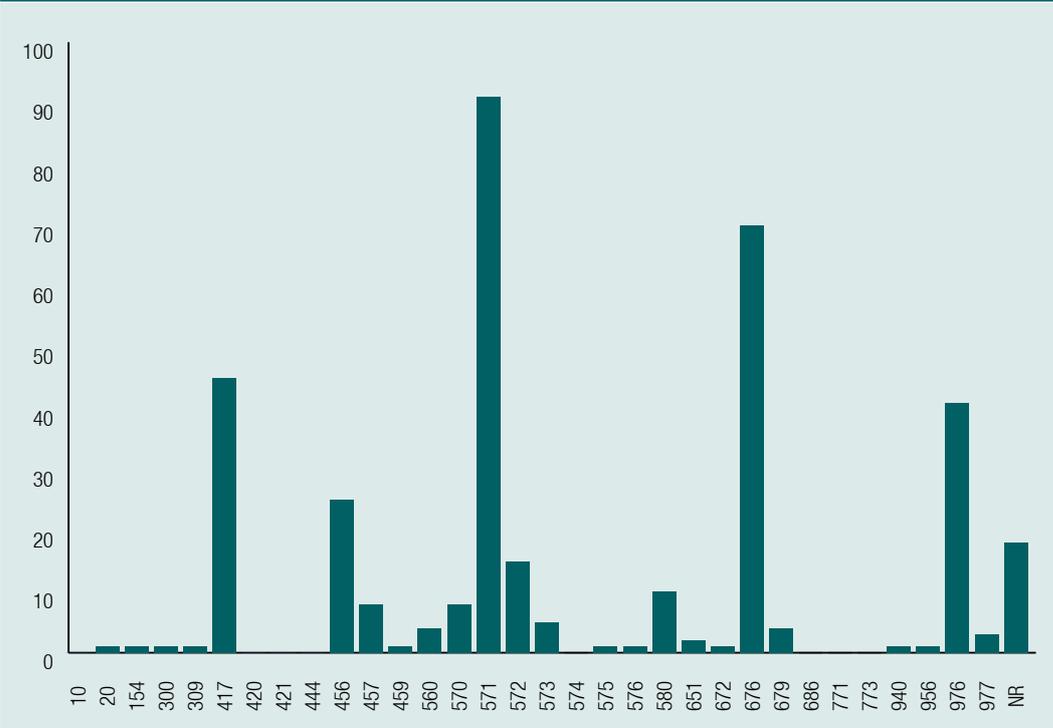
Stakeholders unanimously agreed that temporary migrant workers were more likely to be exploited if they were working unlawfully. It was suggested that the majority of such workers were in Australia on legitimate visas, but working in breach of the conditions attached to the particular visa; for example, subclass 457 visa holders working in an occupation not specified in their sponsorship arrangement (such as labouring rather than site management) or international students working more than the hours permitted by their visas (union stakeholder; industry stakeholder; employment sector stakeholder, personal communication 2012). A government stakeholder, however, indicated that the majority of unlawful workers had simply overstayed their visa (personal communication 2012).

Estimates of the number of non-citizens working unlawfully in the construction industry immediately prior to time of interview are shown in Table 1. These include persons working in breach of their visa conditions or not permitted to work in Australia at all. Between 16 and 19 percent of unlawful citizens found to be working in Australia between 2009–10 and 2011–12 were employed in the construction industry when detected, with an increase in numbers detected over that three-year period. However, it is not possible to determine if this reflects a genuine increase in unlawful workers recruited to the construction industry or is a consequence of increased monitoring and reporting, or both.

Table 1: Unlawful non-citizens working in the construction industry, 2009–2012			
	2009–10	2010–11	2011–12
Construction industry	272	336	358
Total illegal workers	1,669	1,788	1,928
% in construction industry	16.3	18.8	18.6

Source: Data provided by DIBP

Figure 1: Unlawful workers in the Australian construction industry by visa class, 2012 (n)



Source: Data provided by DIBP 2012

The breakdown of visa holders found working unlawfully in the construction industry by category in 2012 is shown in Figure 1. The largest number were subclass 571 visa holders, accounting for 25.4 percent (n=91) of all unlawful workers in the industry. This visa is for international students applying to study an approved primary or secondary school course, or approved exchange program, and their eligible family members. Students and family members on this visa can work up to 20 hours a week while the student’s course is in session. Given the age range of most applicants for this visa type, it is assumed that the majority of unlawful construction industry workers on this visa were adult family members. The number of identified unlawful workers on other student visas totalled 30 in 2012.

Tourist visas (subclass 676; now closed to new applicants) were the second most commonly held visa class among unlawful workers in the construction industry, (19.5%, n=70), followed by working holiday-makers (subclass 417; 12.6% n=45). Just 2.2 percent (n=8) of migrant workers found to be working unlawfully in the construction industry in 2012 were on subclass 457 visas.

## Labour exploitation risks associated with working in the construction industry

Stakeholders were asked what features related to the construction industry might contribute to, or facilitate, the exploitation of temporary migrant workers. Factors associated with specific trades or sectors within the industry were also explored with relevant stakeholders. The primary risks identified were employment practices, the permanence of the informal economy and skill shortages. None of these risk factors were necessarily unique to the construction industry although some, such as sham contracting, have been the focus of industry-based inquiries. Nor were permanent migrant or local workers necessarily impervious to these risks. Rather, it was the constellation of vulnerabilities identified above which undermined workers' ability or inclination to bargain for decent working conditions and seek redress if poor conditions were not rectified, and exposed temporary migrant workers to the consequences of industry-related practices.

### *Employment practices*

The nature of employment arrangements in the construction industry, both lawful (eg subcontracting and pyramid contracting) and unlawful (sham contracting), was identified as the predominant industry-related feature that exposed temporary migrant and other workers to labour exploitation in the Australian construction industry. Much of the discussion centred on sham contracting, which was the focus of separate union and government investigations in 2011 (CFMEU 2011; Office of the Australian Building and Construction Commission 2011). Under the *Fair Work Act 2009* (Cth), a sham contracting arrangement occurs:

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...where an employer attempts to disguise an employment relationship as an independent contracting arrangement...[which] is usually done for the purposes of avoiding responsibility for employee entitlements.

The Act states that an employer must not represent what is essentially a contract of employment as a contract for services by an independent contractor (s 357(1)).

There were differing opinions among stakeholders regarding the prevalence of sham contracting, and this variance was reflected in the findings of the aforementioned studies. Industry stakeholders suggested widespread sham contracting created opportunities for the exploitation of all workers. By contrast, union and government stakeholders instead presented

the view that, while there was concern around the impacts of sham contracting, its prevalence in the industry was still unknown.

This contention was premised on the ambiguity around what constitutes a sham contract—despite the legislative definition—and who initiates the contract. A number of union and industry stakeholders highlighted examples where sham contracts were initiated by the worker themselves as a way to avoid paying taxes, provide more flexibility and autonomy with working hours and arrangements, and reduce their accountability. Stakeholders gave a similar representation to the Office of the Australian Building and Construction Commission's (2011) examination of sham contracting in the construction industry. Contracts were deliberately sought by some workers who saw them as a better financial option than being an employee. In other situations, contractors were involuntary or unknowing parties to the agreement. The limited bargaining power and knowledge of workplace laws common among temporary migrant workers creates an opportunity for employers to engage workers on sham contracts and subsequently abuse their entitlements.

Both government and other industry stakeholders in the study indicated it was not uncommon for contractors to be engaged in sham contracting through the cash-in-hand economy (see below) or the misuse of ABNs. In the latter scenario, workers were made to obtain an ABN, despite being in an arrangement that would typically constitute an employer/employee relationship. Where workers were paid under these arrangements it was generally well below award rates; some were not paid at all. Reduced payments were typically justified as covering accommodation costs and administrative fees accrued by the worker, such as those associated with visas or sponsorship (union stakeholder personal communication 2012).

Another form of illegitimate practice reported in the construction industry, and considered particularly risky for temporary migrant workers, is the establishment of phoenix companies. Phoenix activities constitute the 'fraudulent act of transferring the assets of an indebted company into a new company to avoid paying creditors, tax or employee entitlements' (ASIC 2015: np). Described as an 'occupational hazard' of the building and construction industry in Australia, phoenix activities adversely affect workers through the non-payment of wages, superannuation or entitlements (Anderson et al. 2014: 42). According to one union stakeholder who had been involved in recovering unpaid wages from a number of companies on behalf of workers, it was typical for businesses to supply contact numbers that would be disconnected when the business went into liquidation. In another case, when a union stakeholder took action on behalf of a group of Pacific Islander workers who had not been paid, the business owner alleged that the business was not a construction company at all, and further investigations were unable to identify whether the business ever actually existed (union stakeholder personal communication 2012). Temporary migrant workers face a particular risk due to phoenix activities for the same reasons they are at risk of other exploitative employment practices—their limited knowledge of their rights, their lack of English proficiency, their visa status and their greater likelihood of not possessing the full range of documentation necessary to pursue compensation. (Anderson et al. 2014). The apparent prevalence of phoenix activity in the Australian building and construction industry has prompted the

Australian Securities and Investments Commission, Fair Work Building and Construction (FWBC) and the Australian Taxation Office to undertake an investigation into the practice (Ryan 2014).

Subcontracting arrangements are a legal employment practice and frequently used in the Australian construction industry. Yet according to stakeholders they are sometimes misused—often in combination with cash-in-hand work—as a means of reducing transparency and, therefore, accountability to employees (union stakeholder personal communication 2012). According to industry stakeholders, the nature and operation of the construction industry meant that it was common for higher-level site managers to have very little idea about who was on site, what positions on-site workers held and what their employment conditions or arrangements were. While not an inherently exploitative arrangement, some stakeholders suggested subcontracting was sometimes used illegitimately, in the form of sham contracting. There was general consensus that the issues associated with sham contracting and other suspect contracting arrangements were often compounded by the practice of ‘looking the other way’ as long as the job was done (union stakeholder; industry stakeholder personal communication 2012).

Ultimately, the risk of labour exploitation (and informal labour) increases in proportion to the level and complexity of sub-contracting arrangements made (Anderson & Rogaly 2005). Pyramid contracting, identified by stakeholders as potentially problematic in the construction industry, is an extreme form of this layering. Workers at the bottom level of extensive layers of subcontracting arrangements are generally completely dependent on intermediaries (Anderson & Rogaly 2005; Shin & McGrath-Champ 2013, 2009) with reduced transparency and line of oversight between contracting layers. This disrupts the moral relationship that distinguishes conventional employer-employee associations (Wise 2013) and decreases the probability of poor working conditions being detected or acted upon by entities at the apex of the contracting arrangements.

### *The informal economy and cash in hand*

The informal economy is defined as the ‘market based production of goods and services, whether legal or illegal that escapes detection in the official estimate of the Gross Domestic Product (GDP)’ (Schneider 2002: 3). It includes all unreported monetary and non-monetary transactions, from both legal and illegal activities, and is often engaged in for the purposes of tax evasion or to neglect or avoid government regulations regarding workplace standards (Bajada 1999).

A natural by-product of the informal economy is the informal labour market, which stakeholders also raised as having a negative effect on legitimate workers and businesses in the construction industry. It was noted that engagement in the informal economy drives down wages and as a result compromises wages in the official labour market, which may be reduced to remain competitive (union stakeholder; industry stakeholder, person communication 2012). In the official labour market, firms and individuals carry the higher costs associated with hiring employees; this is in part due to taxes on wages, social contributions, and legal and administrative regulations intended to control economic activity. These costs are usually higher

than the actual wage earned by the worker, so there is greater incentive to engage in the informal economy (Schneider 2002).

A number of stakeholders recognised issues associated with informal employment contracts and cash-in-hand wages. Union stakeholders stated that both practices were common in the construction industry, particularly the use of verbal agreements to undertake a particular job for cash as opposed to being 'on the books' (personal communication 2012). While poor working conditions and lesser forms of exploitation often result from these practices, cases such as that of Mr K (outlined earlier) show that, where cash-in-hand is paid or other non-formal payment methods are involved, there is also the potential for more serious exploitation. In Mr K's case, this involved a range of deductions (including for accommodation, food and recruitment costs) with no way to prove wages had not been paid (union stakeholder personal communication 2012).

### *Skills shortages*

Skills shortages in the Australian construction industry led to an influx in temporary migrant workers, but not all stakeholders believed skill shortages were necessarily linked with a heightened risk of exploitation. Several stakeholders confirmed the findings from the literature that skills shortages were the result of construction companies failing to undertake training and skills development and create apprenticeships. The high demand for labour that accompanied the boom in the construction industry meant skills were needed immediately, and the time taken to train local workers was seen as lengthy and costly (union stakeholder personal communication 2012). The failure to provide training created a cycle where local workers did not have the opportunity to develop the required skill set and the demand for migrant workers therefore grew (government stakeholders; union stakeholder personal communication 2012).

Despite the increased demand for skilled migration, it was suggested that temporary migrant workers were sometimes engaged in work below their skill level, or were delegated the repetitive, less-skilled aspects of the various trades they were employed in. In an interview with a migrant worker advocate, it was suggested that it was common for workers to be brought to Australia on subclass 457 visas and made to work in semi- or low-skilled jobs. In one particular instance, the advocate highlighted a case where two IT specialists were employed on subclass 457 visas; when they arrived in Australia they were made to work as concreters (advocacy worker personal communication 2012). An investigation by Department of Immigration and Border Protection (DIBP) officers found the workers had restrictions placed on their access to public transport, were forced to live in one room of a house and had not been paid their full entitlements, including overtime (advocacy worker personal communication 2012). While several other stakeholders mentioned similar deskilling of workers on arrival in Australia, it was acknowledged that it was impossible to gauge how widespread the practice was or what its relationship with other forms of exploitation was.

# Protections: availability and access

The protections available to migrant workers in Australia cover a range of international frameworks (largely contained in various ILO conventions), provisions in Australian criminal, migration and workplace legislation, and targeted responses undertaken by specified organisations. This section examines the last category of protections, identified by stakeholders as the primary mode for preventing and detecting labour exploitation among migrant (and domestic) workers in Australia. These categories of protection are anchored in the legislative frameworks described in Appendix A (see Appendix A for a summary of the international statutes also).

It is relevant to note that, when identifying relevant protections, stakeholders were less forthcoming in addressing the reasons why particular protective responses were beneficial for temporary migrant workers. Instead, the majority of stakeholders tended to list what the relevant protective actions were and use the following discussion to point out the potential and actual flaws in the system. The following discussion is hence dominated to some extent by the latter observations. Further, the majority of stakeholder interviews preceded the 2013 amendments to the *Criminal Code Act 1995* (Cth) and the introduction of a stand-alone offence of forced labour, and the most recent changes to the subclass 457 visa. These are, however, included in the following discussion.

## Compliance monitoring and enforcement

Several agencies were identified by stakeholders as providing assistance and support to temporary migrant workers. These included the FWO, Fair Work Building and Construction, Commonwealth and state-located workplace health and safety authorities, and unions. Key contributions of these agencies were their compliance monitoring and auditing functions.

Along with their general obligation to ensure compliance with workplace law as stipulated in the Fair Work Act, as of June 2013 the FWO assumed responsibility for monitoring the sponsorship obligations attached to certain subclass 457 visas—specifically to ensure that workers were being paid the market rate and undertaking work as specified in the approved visa (IDC 2014). The FWBC took up a similar monitoring role in June 2013, also focused on

subclass 457 visa sponsor obligations around salary and the type of work carried out, and ensuring cooperation from employers.

These functions complement the monitoring and site inspections performed by DIBP personnel to ascertain visa compliance and investigate suspected breaches of visa conditions. Referral and information sharing arrangements between DIBP and the FWO and FWBC were additionally established in 2013 to further complement interagency monitoring activities.

The potential impact of monitoring and enforcement activities was positive where monitoring activities were consistent, sanctions were routinely applied for noncompliance and there was industry awareness of both. Nonetheless, some stakeholders stated the potency of compliance monitoring was undermined by the perceived irregularity of monitoring activity, particularly of subclass 457 visa sponsors, despite the fact there was a potentially greater risk of labour exploitation attached to student and working holiday visas. Under the subclass 457 visa arrangement, sponsors sign an undertaking that requires them to cooperate with DIBP's desktop monitoring activity (DIAC 2008). Monitoring includes a desk audit and can involve a site check to ensure that business sponsors are compliant with various visa conditions. A government stakeholder suggested that the construction industry is 'at the top of the deliberately noncompliant group' (government stakeholder personal communication 2013) as there was a 'widespread assumption' within the industry that they rarely got caught, and even if they were, the penalty applied was minor.

An independent 2014 review of the subclass 457 visa found that there was a change in DIBP's monitoring procedure after 2007, with high-risk sponsors the focus of monitoring activity (Azarias et al. 2014). Prior to 2006, around 50 percent of sponsors were monitored in a given year, with around 90 percent found to be compliant with their sponsorship obligations. While this change has seen a decrease in the number of sponsors monitored, it has also seen an increase in the proportion of serious noncompliance cases detected. The same review also found that DIBP is not allocated a specific budget for monitoring sponsors and pursuing resulting litigation, and recommended that in future sufficient resources be secured for priority to be given to this function (Azarias et al. 2014). It further suggested the promotion of a broader awareness of the monitoring system among both sponsors and the community.

Little was said about the monitoring work outside of DIBP's activities. According to some stakeholders, on-site monitoring by unions was likelier to reach individuals in exploitative situations; but resource issues meant unions had to 'choose their fights' by allocating resources to the larger commercial sector, in an attempt to help the majority of workers (government stakeholder personal communication 2012). The nature of the residential sector—described as highly fragmented and 'discrete'—hindered effective union oversight and possibly also accounted for the apparent increase in monitoring targeted at the commercial construction sector (recruitment agency stakeholder personal communication 2012). Union membership is also typically lower in the residential sector.

The *Migration Amendment (Reform of Employer Sanctions) Act 2013* (Cth) had not been enacted when the interviews for this study were undertaken. The Act, which amends the

*Migration Act 1958* (Cth), followed the Howells Review (Howells 2010) which found the *Migration Amendment (Employer Sanctions) Act 2007* (Cth) had only a low deterrence effect on employers and related entities employing non-citizens who did not have approval to work in Australia. This included persons whose current visas did not permit work, persons whose visas had expired and those working in breach of conditions stipulated on their visa (eg students working in excess of the mandated 20 hours per fortnight). The Act, which was passed on 1 June 2013, expanded liability for work-related offences to all parties potentially involved in arranging the work. It also introduced a tiered penalty regime, incorporating infringement notice and civil penalty provisions, alongside criminal offences. A non-fault civil penalty provision was adopted to enable the court to award a civil penalty even where the employer was not aware the individual was engaged in work unlawfully.

A corresponding inclusion to the Act transferred to the employer the burden of proving they knew that an employee was eligible to work in Australia. An amendment to the *Migration Regulations 1995* (Cth) prescribed the Visa Entitlement Verification Online (VEVO) system, which contains information on visa status and entitlements, as the mechanism employers must use to take reasonable steps to confirm the legal status of an employee regarding permission to work. Kinslor (2013) suggested verification problems may arise for employers if an employee did not hold a visa, as it would not be immediately provable the employee was not a citizen or resident, although other mechanisms are ultimately available to confirm residency or migrant status.

## Access to information

In addition to the monitoring functions of specified organisations, education tools aimed at employers and employees that outline rights and responsibilities were regarded as particularly useful. Government stakeholders highlighted education and awareness strategies developed by the FWO and FWBC that were available for resident and migrant workers from culturally and linguistically diverse backgrounds. These included the FWO's *Working in Australia—what you need to know* and *Employing staff in Australia* YouTube information clips, fact sheets and other resources (translated in 10 to 20 different languages, depending on the resource) hosted on the Fair Work site and radio station programs disseminating information about legal rights and responsibilities and options for support. The availability of educative tools online was seen as helpful, enabling word-of-mouth dissemination of information among workers. Education campaigns that targeted individual industries or communities were believed to be equally beneficial. The FWO runs education and compliance activities in particular regions of Australia and for industries that have a higher proportion of migrant workers; it also works closely with selected communities to improve and extend contact with vulnerable members. In October 2014 the FWO commenced a national education campaign targeted at the building and construction industry, citing the size of the industry, the young age of its workforce and issues around pay as its reasons for this. The campaign involves contacting employers in the industry to discuss minimum wages, penalty rates, overtime and the importance of record keeping.

Despite the protections identified by stakeholders, there were concerns that available protections were not well-known among temporary migrant workers; nor did workers necessarily know where to report an experience of poor working conditions or more severe exploitation (government stakeholder; industry stakeholder; advocacy stakeholder personal communication 2012). Similar conclusions were made by Reilly (2012) and Velayutham (2013) in their examination of risks for temporary workers on student and subclass 457 visas. While few stakeholders could comment on where in particular migrant workers might seek assistance, it was assumed that non-government organisations were more likely to be approached if a formal authority was consulted. Workers from non-English speaking backgrounds, particularly those where law enforcement was corrupt or untrustworthy, would be less likely to contact the police (advocacy stakeholder personal communication 2013). A union member indicated that if a union were approached by such a worker, they would assist where possible, regardless of the worker's membership status (union stakeholder's personal communication 2012). Notwithstanding the limitations of the current protections, both the reported large number of inquiries and the increased attention paid to these issues demonstrate a commitment to clean up the industry on both a national and an industry level.

# Discussion

This research presents an overview of practices within the Australian construction industry that may present as risks of labour exploitation among temporary migrant workers. While stakeholders could not readily identify cases of human trafficking and forced labour, there was a collective view that the nature of the construction industry could facilitate more extreme forms of labour exploitation. Extrinsic factors such as industry culture, employment practices, variable compliance with regulations and the nature of construction work were suggested as contributing to the vulnerability of all construction workers in Australia. For temporary migrant workers, the combination of these with intrinsic risk factors such as migration status, proficiency in English, acquisition of knowledge about rights and entitlements, and social isolation acted to increase susceptibility to exploitation.

The examples of labour exploitation given described scenarios that fell across a wide spectrum of exploitative practices, largely the underpayment or non-payment of wages, fraudulent and illegal employment contracting arrangements, and forced labour in poor and sometimes dangerous conditions. More extreme forms of labour exploitation, or forced labour, had potentially occurred, but evidence of these based on observation was limited. Issues around the detection and identification of victims of human trafficking, slavery and slavery-like practices are both well-known and habitually raised, and it is again relevant to note that the interviews for this study preceded the introduction of the forced labour offence into the Criminal Code and subsequent education and training on this crime and related wrongdoing. Nonetheless, it is equally important not to assume that the lack of formal documentation of more extreme forms of labour exploitation is due to a lack of awareness of, or ability to identify, such cases. There was evidence that labour exploitation is occurring in the Australian construction industry, but extreme forms of exploitation may not be as visible simply because they may not be occurring so frequently as to come to the fore.

Primary protections available to temporary migrant workers encompass a range of legislative, regulatory and educative tools, as well as monitoring and site visits by FWO, FWBC, workplace health and safety, immigration and union officials. The concern is that knowledge of, and access to, these protections is restricted among temporary migrant workers due to a lack of English proficiency and other barriers—intentional or otherwise—to obtaining information on rights and entitlements or contacting authorities who could assist. Access to available support systems is a widely acknowledged issue for migrant workers, and both government and non-government bodies continually work to enhance the availability of information about migrant

workers' rights and responsibilities in Australia. However, this research indicates a need for ongoing momentum in identifying and promoting avenues of support for migrant workers experiencing labour exploitation, including industry-specific initiatives to ensure these supports are more readily promoted and accessible.

The findings suggest that despite major reforms to the construction industry, and visa and employer sanctions in legislation, employers may still have the capacity to use employment conditions imposed on temporary migrants as a method of control. This was identified by David (2010), and has been raised again as a concern in this research. It was suggested that this control facilitated the ability of employers to engage temporary migrant workers in illegitimate and often unlawful employment contracts such as sham contracting, which in turn may lead to other forms of exploitation. David's (2010) research also suggested that despite the increased sanctions available to authorities to address these practices, compliance remains low and the financial benefits associated with such practices make them a low-risk, high-profit venture. Stakeholders reiterated this, suggesting that where costs needed to be reduced this was done by either lowering or not paying wages or entitlements (industry stakeholders; union stakeholder's personal communication 2012). Despite the obvious issues with this, stakeholders recognise that it is considered a norm within the industry.

## Responses to labour exploitation

There is an increasing body of knowledge dedicated to developing a best practice approach to responding to and preventing human trafficking, slavery and slavery-like practices. However, it is well documented that there are substantial practical difficulties in achieving this (Gallagher & Holmes 2008). Given the diversity of industries in which labour exploitation has been identified as an issue (David 2010), the findings of this report suggest that a contextually-specific approach, underpinned by international and national evidence and best practice, would assist in providing direction for further prevention and response initiatives in the construction industry.

Despite efforts on a national level to combat human trafficking, slavery and slavery-like practices in Australia, the complexities of the construction industry arguably require a targeted approach to address factors that increase the likelihood of migrant worker exploitation. Given the relatively recent focus on forced labour in Australia, further evidence is required to better understand the extent of both the risk factors for labour exploitation more generally in the Australian construction industry, and the prevalence of forced labour as it is legislatively defined. Further—as suggested by commentators such as Gallagher and Holmes (2008)—it is important to develop standards for identifying and protecting migrant (and other) workers, and evaluating current responses to labour exploitation more broadly, in order to monitor the progression and impact of preventative programs. Given the complexity of the construction industry, further research and evaluation would not only aid the development of industry specific indicators, but inform frontline worker training and education.

Particular focus should be given to better assessing, and then addressing, the proposed root causes of labour exploitation. One of the mooted historical causes of labour exploitation is the

skills shortage in the Australian construction industry and associated recruitment of temporary migrant workers; however, the extent to which the skills shortage still affects flows of temporary migrant labour into the construction and related industries has changed and should be reassessed. This issue is a complex one and falls outside the scope of this report. Preventative responses may need to consider investment in training and education, proper regulation and the monitoring of temporary skilled worker schemes in order to address the risks inherent in the employment and recruitment structures of the construction industry. It is also important to note that despite the attention given to temporary skilled worker schemes—namely, the subclass 457 visa—other types of temporary entry visas, such as student and working holiday visas, may be associated with a higher risk of exploitation. It was noted that this appeared to be due to many of these visa holders finding themselves, for a variety of reasons, working unlawfully, resulting in limited options for redress and support. Further investigation of the issues faced by workers on these visas is needed; at the time of writing, at least one Commonwealth agency was investigating this issue.

Overall, there has been significant movement in Australia towards the development of a comprehensive legislative and policy framework that supports prevention initiatives. This includes legislation criminalising forced labour as a stand-alone offence and addressing illegitimate employment practices such as sham contracting, with increased regulation and enforcement activity to be undertaken by the FWBC. Further, reviews of temporary migrant visa schemes—specifically the subclass 457 visa, and now also the Working Holiday visa—have led to changes intended to reduce the exploitation of temporary migrant workers. The long-term outcome of these is yet to be ascertained.

This research identifies some of the major risks and protections that influence the likelihood of temporary migrant workers being subjected to labour exploitation in the Australian construction industry. However, while there has been considerable attention paid to these issues, it appears there are still gaps in the available protections that warrant further attention. This is not to suggest that current activities or legislative frameworks are ineffective; rather it demonstrates that, while Australia is broadly aligned with international best practice, our response requires further engagement with the issues at an industry level.

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# Appendix A: International frameworks and Australian legislation

The following summarises the primary international and national protections for migrant and domestic workers.

## International frameworks

### *Work standards and forced labour*

The ILO's fundamental conventions around labour standards and workers' rights cover four core principles: the abolition of forced labour, trade union rights, equality and non-discrimination in employment and occupation, and the elimination of child labour. Two covenants address the issue of forced labour—C029 Forced Labour Convention, 1930 (No 29) and C105 The Abolition of Forced Labour Convention, 1957 (No 105)—both of which Australia has ratified.

Australia has also ratified the United Nations sponsored International Covenant on Economic, Social and Cultural Rights, which asserts that states must recognise the rights of everyone to just and favourable work conditions, including the provision of: fair wages and equal remuneration for work of equal value; safe and healthy working conditions; equal opportunity for promotion; and the reasonable limitation of work hours and access to periodic holidays with pay.

### *Migrant labour*

Several ILO conventions concerning more technical aspects of labour standards have specific provisions for migrant workers, mainly to ensure standards apply equally to migrant and domestic workers. These rights are also enshrined in C097 Migration for Employment Convention, 1949 (No 97) and C143 Migration Workers (Supplementary Provisions) Convention, 1979 (No 143) and specify regulations around recruitment, the provision of accurate information to prospective migrant workers and the minimum conditions available to workers.

ILO 143 adds to these protections by requiring state parties to detect and prosecute those who facilitate illegal migration for work or the illegal employment of migrants.

The ILO conventions created a precedent for the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention). The convention provides protections specifically to migrant workers and their families, regardless of legal status. It came into force in 2003; Australia is yet to become a signatory.

## Australian legislation

### *Criminal legislation*

Australian legislation on human trafficking, slavery and slavery-like practices is contained in the Criminal Code. In 2013, amendments were made to the Criminal Code under the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth), including the addition of forced labour offences (s 270.6A) and a revision of the definition of exploitation to include forced labour (s 271.1A). The addition of forced labour as a stand-alone offence, and amendments to the deceptive recruitment and servitude offences, expanded opportunities for the investigation and prosecution of cases of human trafficking, slavery and slavery-like practices occurring outside the sex industry.

### *Workplace legislation*

Structures that provide protections for basic entitlements, maintain appropriate and legitimate employment arrangements and outline and enforce rights and responsibilities for employers and employees are largely contained in the *Fair Work Act 2009* (Cth) and the NES.

The *Fair Work Act 2009* (Cth) provides various forms of legislative protections around terms and conditions of employment and the minimum wage for both citizen and non-citizen workers engaged in employment in Australia.

The NES apply to all employees engaged in employment of any kind in Australia, except for 'most' employees in state and local government, Western Australian corporations whose main activity is trade or finance, and sole traders, partnerships and other unincorporated entities. Among the main entitlements of workers under the act are:

- the right to a maximum standard working week of 38 hours for full-time employees;
- the right to request flexible working arrangements;
- the right to parental and adoption leave;
- the right to four weeks paid annual leave (plus an additional week for certain shift workers);
- the right to personal, carers, compassionate and community service leave arrangements;
- the right to long service leave; and
- the right to be given notice of termination and receive redundancy pay.

The Fair Work Ombudsman has responsibility for ensuring the protections outlined in the Act and the NES are enforced. The FWO also monitors certain subclass 457 visa arrangements to ensure wages are paid at market rates and the visa holder is undertaking work as specified in the job title and description permitted by the visa.

In addition to the FWO, Fair Work Building and Construction (FWBC) is the national regulator of the construction industry. The FWBC is responsible for workplace relations matters in the building and construction industry, including for investigating and auditing contraventions of the *Fair Work Act 2009* (Cth) and *Independent Contractors Act 2006* (Cth).

### *Migration legislation*

In addition to visa and entry requirements, the *Migration Act 1958* (Cth) stipulates what conditions constitute unlawful work practices for non-citizens and their employers, and what sponsorship conditions apply to non-citizens in Australia on temporary work visas. Sections 245AB–AD of the Act defines offences around allowing non-citizen to work unlawfully or in breach of their visa conditions, and aggravated offences to address situations where workers are exploited in the course of their relevant work or the employer is negligent or reckless to that circumstance. Employer sanctions under the Act were strengthened through the *Migration (Reform of Employer Sanctions) Act 2013* (Cth), a response to the Howells review (Howells 2010), which found the deterrence effect of the previous employer sanctions framework was negligible.

### *Related protections*

The Building Code is a legislative instrument that establishes responsibilities and requirements for building contractors undertaking projects for the Australian Government. The code replaced the National Code of Practice for the Construction Industry (and associated guidelines) in 2013, and includes provisions around sham contracting and the engagement of non-citizens and non-residents in employment in the construction industry.

In addition, amendments to Commonwealth procurement arrangements and Department of Finance strategies have been proposed to ensure the supply chain of goods and services provided to the Australian Government is free of incidents of human trafficking and slavery. The proposed changes aim to:

- ensure that the identification of slavery and related practices is a key consideration when procuring goods and services;
- apply guidelines and rules to assist businesses in taking action to abolish slavery in supply chains; and
- task the Department of Finance with the provision of training to Commonwealth procurement officers in the legal and policy requirements and how to report breaches of these policies (IDC 2014).

# Appendix B: Stakeholder interview questions

## Background information

The AIC is conducting a research project examining exploitation and people trafficking in the Australian construction industry, with a particular focus on migrant workers.

### *1. Role of interviewee and agency*

How does your research relate to migrant labour and specifically the construction industry?

### *2. The Australian construction industry*

Just to give you some background, the focus of our project is on the construction industry, however we're taking a very broad approach to the industry, and we're incorporating any building or construction that relates to:

- Residential
- Commercial
- Offshore
- Mining and resources infrastructure
- Public infrastructure

This includes finishing trades.

- Within the Australian context, are there particular sectors in the construction industry that your research has focused on?
- Do particular groups of people work in particular sectors in the construction industry? (ethnicity, SES, gender etc.)

### *3. Labour migration*

- What are the current trends in international migration, particularly in the labour/ construction industry? (historical changes, changes in sources countries)
- What factors (social, cultural, political, economic etc.) are influencing the changes?

#### *4. Migrant workers in the construction industry*

- To what extent are migrant workers employed in the construction industry?
- Which sectors are migrant workers most likely to be employed in?
- What motivates them to seek employment in the Australian construction industry?
- Do you think there are differences in the accepted employment conditions depending on their legal status?
- Are you aware of the circumstances under which migrant workers tend to be employed?
  - Recruitment/third party facilitation
  - Visa type
  - Contract arrangement
  - Employment type and conditions
  - Length of time
  - Living conditions
  - Unionised

#### *5. Risks of labour exploitation in the construction industry in Australia*

- How is labour exploitation prevented generally in the industry? How does your organisation prevent labour exploitation?
- Does labour exploitation vary between skilled and unskilled sectors in the construction industry?
- What impact has the 'skills shortage' had on the construction industry? Is it more noticeable in certain sectors?
- What are the risks associated with migrant employment conditions that increase the likelihood of labour exploitation? (Explain- for example: To what extent do you think a cash-in-hand sector exists within the industry? Is this more noticeable in certain sectors?)
- What impact does the use of labour hire firms have on the industry?
- Are there risks associated with subcontracting?
- Have you come across sham contracting (define if necessary)? Can you provide examples? What impact do you think such a practice has on construction workers and the industry?
- Are migrant workers at any greater risk of labour exploitation than non-migrant workers? Explain.
- Are there other groups that are particularly at risk of labour exploitation? Can you provide more detail?
- Are you aware of the enterprise migration agreement? Will this have an impact on the level of labour exploitation in the industry?

#### *6. Protections against labour exploitation in the construction industry in Australia*

- What are the key regulations, legislations, policies that protect against labour exploitation and people trafficking in the construction industry? Does this vary depending on the sector?

- Are you familiar with the national code of practice for the construction industry? What is your opinion of this code? Is it abided by?
- Do you know whether private companies adopt the code?
- What impact, if any, do you think subcontracting has on practical implementation of the code?
- What role do unions and other regulatory bodies play in regulating the construction industry and protecting workers?
- Are you aware of the bill that has recently been introduced to federal parliament that seeks to establish forced labour as a crime under the Commonwealth Criminal Code? What impact do you think this will have on the construction industry?
- There have been industry specific temporary migrant labour scheme such as the Pacific Seasonal Workers Pilot Scheme introduced in other industries:
  - What role do these schemes play in preventing labour exploitation?
  - Is there a place for such as scheme in the construction industry?

### *7. Human trafficking in the construction industry*

- Does human trafficking occur in the Australian construction industry?
- What is the nature of the exploitation or abuse that workers experience?
- Are there particular characteristics or vulnerabilities that make workers susceptible to exploitation and/or trafficking?
- Who is employing these workers? Who is responsible for recruiting them?
- How have instances of trafficking/related exploitation been detected?
- How have these cases been dealt with by the law?
- How could they be better addressed?
- Can you describe examples of exploitation and/or trafficking that you have come across in the construction industry?
- Are you aware of any cases involving minors?

### *8. Reporting of labour exploitation and human trafficking*

- If you came across labour exploitation or human trafficking, how would you go about reporting the matter?
- Who would you report it to?
- Have you had experience in reporting matters?
- What are the barriers that prevent reporting of exploitation/bad labour practices?
- How can these barriers be addressed or overcome?
- Do you have any thoughts around ways that reporting can be improved?

# Appendix C: ILO indicators of trafficking for labour exploitation

Table C1: ILO indicators of trafficking of adults for labour exploitation

Dimension	Indicator strength	Indicator
Deceptive recruitment	Strong indicator	Deceived about the nature of the job, location or employer
		Medium indicators
	Deceived about content or legality of work contract	
	Deceived about family reunification	
	Deceived about housing and living conditions	
	Deceived about legal documentation or obtaining legal migration status	
	Deceived about travel and recruitment conditions	
	Deceived about wages/earnings	
	Deceived through promises of marriage or adoption	
	Weak indicator	Deceived about access to education opportunities
Coercive recruitment	Strong indicator	Violence on victims
	Medium indicators	Abduction, forced marriage, forced adoption or selling of victim
		Confiscation of documents
		Debt bondage
		Isolation, confinement or surveillance
		Threat of denunciation to authorities
		Threats of violence against victim

Table C1: ILO indicators of trafficking of adults for labour exploitation cont.		
Dimension	Indicator strength	Indicator
Recruitment by abuse of vulnerability	Medium indicators	Threats to inform family, community or public
		Violence on family (threats or effective)
		Withholding of money
		Abuse of difficult family situation
		Abuse of illegal status
		Abuse of lack of education
		Abuse of lack of information
		Control of exploiters
		Economic reasons
		False information about law, attitude of authorities
		False information about successful migration
		Family situation
		Personal situation
		Psychological and emotional dependency
		Relationship with authorities/legal status
Exploitation	Weak indicators	Abuse of cultural/religious beliefs
		General context
		Difficulties in the past
		Difficulty to organise travel
	Strong indicator	Excessive working days or hours
Coercion at destination	Medium indicators	Bad living conditions
		Hazardous work
		Low or no salary
		No respect of labour laws or contract signed
		No social protection
		Very bad working conditions
		Wage manipulation
	Weak indicators	No access to education
Coercion at destination	Strong indicators	Confiscation of documents
		Debt bondage
		Isolation, confinement or surveillance
		Violence on victims
	Medium indicators	Forced into illicit/criminal activities
		Forced tasks or clients
		Forced to act against peers
	Forced to lie to authorities, family etc	

Table C1: ILO indicators of trafficking of adults for labour exploitation cont.		
Dimension	Indicator strength	Indicator
		Threat of denunciation to authorities
		Threat to impose even worse working conditions
		Threats of violence against victim
		Under strong influence
		Violence on family (threats or effective)
		Withholding of wages
	Weak indicator	Threats to inform family, community or public
Abuse of vulnerability at destination	Medium indicators	Dependency on exploiters
		Difficulty to live in an unknown area
		Economic reasons
		Family situation
		Relationship with authorities/legal status
	Weak indicators	Difficulties in the past
		Personal characteristics

Source: ILO 2009



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