



International
Labour
Organization

► Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards

Technical report



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This report has been produced under the programme "Enhancing Protection and Empowerment of Migrants and Communities affected by Climate Change and Disasters in the Pacific Region" (also commonly known as the Pacific Climate Change Migration and Human Security (PCCMHS) programme).

The PCCMHS programme is implemented by the ILO, the International Organization for Migration (IOM), the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), and the Office for the High Commissioner for Human Rights (OHCHR) along with the Pacific Islands Forum Secretariat (PIFS) and the Platform on Disaster Displacement (PDD). The PCCMHS programme receives funding through the United Nations Trust Fund for Human Security and components of the programme are supported by the New Zealand International Development Cooperation Programme.

Foreword

In June 2021, the International Labour Conference adopted the Global Call to Action for a Human-Centred Recovery from the COVID-19 crisis, which encourages countries to put full employment and decent work at the heart of inclusive, sustainable and resilient recovery strategies.

The impacts and uncertainties of the COVID-19 pandemic have created significant challenges for the pursuit of decent work. One group that have been particularly affected are migrant workers, who have faced increased risks and vulnerabilities. These include – but are by no means limited to – reduced access to health services and social protection, uncertain accommodation, and limited access to justice. In some cases, such as with seafarers, migrant workers have been stranded in precarious situations for months at a time. Indeed, the COVID-19 pandemic has highlighted the critical importance of ensuring that policies and programmes protect the rights of migrant workers. One specific group of migrant workers that are very relevant to the communities and economies of the Pacific are seasonal workers, many of whom participate in labour mobility schemes with Australia and New Zealand.

It is commendable that in many key areas these seasonal work schemes are consistent with international labour standards relevant to migrant workers, and that the governments of Australia and New Zealand are proactively engaged in an ongoing process of strengthening the schemes, including maximizing their potential development impacts and minimizing risk of exploitation. The objective of this report is to understand how seasonal worker schemes in Australia and New Zealand align with international labour standards – both binding and non-binding – and to provide constructive recommendations for areas where the schemes could be more consistent with these standards.

It is hoped that the following analysis and recommendations will be considered by all stakeholders involved in defining policy and legislation relevant to seasonal worker schemes in the region, which have the potential to set an example of labour mobility best practice.

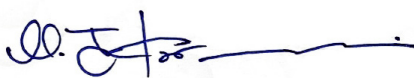
The ILO has a constitutional mandate since 1919 to promote social justice, to develop international labour standards related to all facets and institutions of the world of work, and to protect all workers, including migrants, refugees, and displaced or stateless persons, irrespective of their nationality and migration status. In addition to this normative mandate, the ILO's unique tripartite structure mainstreams engagement of governments, workers' organizations and employers' organizations across programme activities, which are further supported by the ILO's technical expertise.

On behalf of the ILO, I would like to take this opportunity to sincerely thank all our partners who supported the preparation and validation of this report through a tripartite process, as well as the independent experts Carmen Voigt-Graf and Sanushka Mudaliar, who have taken these at times differing perspectives into account when writing and finalizing this report.

Safe labour migration is a critical strategy for sustainable development; one that can contribute to climate resilience when well governed. Labour migration should be a choice, and not a substitute for creating decent jobs or mitigating climate change.

The ILO Office for Pacific Island Countries stands ready to collaborate on any future efforts to promote the rights of labour migrants and strengthen the sustainable development impacts of labour mobility schemes as a key component of decent work. Such efforts are critical to achieving the goals set out in the ILO Global Call to Action for a Human-Centred Recovery from COVID-19.

Sincerely,



Matin Karimli

Director, ILO Office for Pacific Islands Countries

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► Abbreviations and acronyms

ACCI	Australian Chamber of Commerce and Industry
AUD	Australian Dollar
AWU	Australian Workers Union
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DESE	Department of Education, Skills and Employment (Australia)
DFAT	Department of Foreign Affairs and Trade (Australia)
FTUC	Fiji Trades Union Congress
GCM	United Nations Global Compact for Safe, Orderly and Regular Migration
GP	General Practitioner
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IOM	International Organization for Migration
KTUC	Kiribati Trade Union Congress
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer or Questioning
LSU	Labour Sending Unit
MBIE	Ministry of Business, Innovation and Employment (New Zealand)
NAWPP	Pacific Microstates–Northern Australia Worker Pilot Programme
NEC	National Employment Centre (Fiji)
NZCTU	New Zealand Council of Trade Unions
NZD	New Zealand Dollar
OHCHR	Office of the High Commissioner for Human Rights
PACER	Pacific Agreement on Closer Economic Relations
PALM	Pacific Island Labour Mobility
PIC	Pacific Island Country
PLS	Pacific Labour Scheme (Australia)
PSWPS	Pacific Seasonal Worker Pilot Scheme (Australia)
RSE	Recognised Seasonal Employer (New Zealand)
SEU	Seasonal Employment Unit (Samoa)
SOGIESC	Sexual Orientation, Gender Identity, Expression and Sex Characteristics
SWC	Samoa Workers Congress
SWP	Seasonal Worker Programme (Australia)
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UWU	United Workers Union (Australia)
VNWU	Vanuatu National Workers Union
VUV	Vanuatu Vatu
WST	Samoan Tālā

1. Introduction

This review of the seasonal worker programmes in Australia and New Zealand, which are available to citizens of Pacific Island Countries (PICs), was carried out as part of the project “Enhancing Protection and Empowerment of Migrants and Communities Affected by Climate Change and Disasters in the Pacific Region”, otherwise known as the Pacific Climate Change Migration and Human Security Programme, led by the International Organization for Migration alongside the ILO, the Office of the High Commissioner for Human Rights, and the United Nations Economic and Social Commission for Asia and the Pacific, with the Platform on Disaster Displacement and the Pacific Islands Forum Secretariat. One of the objectives of the project is that “migrants and communities in the Pacific Island Countries benefit from safe labour migration as a sustainable development and climate change adaptation strategy”. To achieve this objective, the ILO Office for Pacific Island Countries commissioned a review of the seasonal worker programmes in Australia and New Zealand to examine the schemes’ alignment with international human rights and labour standards as well as the participation of women and marginalized groups.

The review consists of two main components. The first component is a legal review of Australia’s Seasonal Workers Programme (SWP) and New Zealand’s Recognised Seasonal Employer (RSE) scheme with respect to migration policies and laws governing the two schemes in light of human rights and labour standards, as well as the inclusion of women and marginalized groups. The second component is a review of the two schemes in practice, particularly from the point of view of the seasonal workers themselves. Chapter 2 presents a brief overview of the SWP and RSE¹, and is followed by a section on methodology in Chapter 3. The legal review is addressed in Chapter 4, and it identifies the extent to which the design of the schemes (and related immigration laws and policies in the countries of origin and destination) meet relevant international human rights and labour rights standards. In Chapter 5, the two schemes are investigated concerning: the inclusion of women and marginalized groups; recruitment, working conditions and rights at work; and migration costs. Chapter 5 is mostly based on interviews with seasonal workers in four participating PICs – Fiji, Kiribati, Samoa and Vanuatu – as well as on consultations with key stakeholders.

In Chapter 6, the findings from the legal review and the review of practices based on participants’ experiences are brought together, and recommendations are presented for improving recruitment practices and labour standards, enhancing the participation of women and marginalized groups, and increasing the degree to which the schemes are consistent with international human rights and labour laws.

The review is grounded in the human security approach, which seeks to apply a participatory approach throughout the entire process. Among others, researchers have closely engaged with seasonal workers to determine their specific needs and vulnerabilities. The legal review has uncovered areas for improvement in the design and practise of Australia’s and New Zealand’s seasonal worker schemes, especially when measured against international human rights and labour standards. Recommendations are made by comparing international legal standards and practices with the design and practice of the seasonal worker programmes in Australia and New Zealand in order to craft comprehensive, people-centred and inclusive solutions for their improvement to the benefit of migrants, countries of origin and countries of destination.

¹ Included in this overview is an update on recent and expected changes to the two schemes that have been introduced since the research for this report was carried out in 2020–21. These include some particularly substantial changes to Australia’s SWP, which has been merged with another programme to create the Pacific Australia Labour Migration (PALM) scheme.

2. Overview of the Recognised Seasonal Employer scheme and the Seasonal Worker Programme

2.1. Brief history of seasonal worker schemes in Australia and New Zealand

The Seasonal Worker Programme (SWP) in Australia and the Recognised Seasonal Employer (RSE) scheme in New Zealand are two seasonal labour mobility programmes that provide restricted labour market access to workers from PICs.² While respecting selected aspects of international labour and human rights law, these seasonal worker programmes prohibit the permanent settlement of workers.

Recognised Seasonal Employer scheme, New Zealand

In 2007, New Zealand launched the **Recognised Seasonal Employer (RSE)** scheme to fill seasonal labour shortages in its horticulture and viticulture industries. Under this scheme, employers can apply for “Recognised Seasonal Employer” status and fill vacant seasonal positions for which there are no New Zealand applicants. The annual cap has grown from the initial 5,000 to 14,400 in 2020 (New Zealand, INZ, n.d.-d). Unless employers can demonstrate pre-established relationships with workers from other countries, they may only recruit workers from nine PICs: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu. The scheme allows seasonal workers to stay in New Zealand up to 7 months in any 11-month period; though citizens of Tuvalu and Kiribati can stay an extra 2 months. Workers may be re-employed in subsequent years, either with the same or a new employer.

In 2009, the Joint Agreement to Recruit system was made available for RSE employers, allowing multiple employers to share Pacific workers across different crops and regions. This change has led to an overall increase in the number of RSE workers employed, and has provided smaller enterprises in New Zealand’s horticulture and viticulture industries with the opportunity to participate in the RSE scheme. Through the Joint Agreement to Recruit system, smaller Recognised Seasonal Employers can work with other employers to share workers and the associated costs over the season, ensuring guaranteed hours of work are met and extending workers’ periods of employment. By 2017, [over 2,000 workers](#) were being employed on Joint Agreements to Recruit across the country (Bailey and Bedford 2018).

Pacific Trades Partnership, New Zealand

Following the Christchurch earthquake in 2011, the New Zealand Government established the pilot Canterbury Reconstruction Programme (2015–2016) which was a geographically and industry restricted labour mobility programme that prohibited permanent settlement. This pilot provided 24 workers from Tonga, Fiji and Samoa with one-year visas to work with three specified employers as skilled carpenters. As part of the programme, the workers had the opportunity to attain a qualification endorsed by the New Zealand Qualifications Authority. Subsequently, and as part of New Zealand’s commitments under the Pacific Agreement on Closer Economic Relations (PACER) Plus agreement, the Ministry of Business, Innovation and Employment (MBIE), with funding from the New Zealand Aid Programme, established the **Pacific Trades Partnership**, which provides combined work and training opportunities for Pacific carpenters in New Zealand’s construction industry (New Zealand, MFAT 2018). By February 2019, 42 workers had been offered positions in the Pacific Trades Partnership (Ara Institute of Canterbury 2019).

² The SWP is also open to workers from Timor-Leste. Under the RSE, employers can recruit from other countries if they can demonstrate pre-established relationships with workers from these countries.

Seasonal Worker Programme, Australia

The Australian Government implemented the **Pacific Seasonal Worker Pilot Scheme (PSWPS)** from 2008 to 2012. The PSWPS was largely modelled on the success of New Zealand's RSE scheme. It had a total cap of 2,500 workers, although there were just 1,623 arrivals throughout the pilot. In 2012, the PSWPS was subsumed by the Seasonal Worker Programme (SWP), which initially allowed workers from eight PICs and Timor-Leste to work in the Australian horticulture industry for up to six months. In 2015, Fiji joined the scheme, and the annual cap, which was initially set at 12,000, was removed, allowing employers to determine the number of workers to be recruited (World Bank 2017). As of November 2018, the maximum duration of employment in Australia for all SWP workers is nine months per year; while previously only workers from Kiribati, Nauru and Tuvalu could be employed for up to nine months. The SWP was subsequently expanded to the broader agriculture industry and the accommodation sector (in selected locations), as well as offering trials in the aquaculture, cotton and sugarcane sectors.

Pacific Labour Scheme, Australia

A new temporary migration pathway for Pacific Islanders opened up in 2015 with the Pacific Microstates–Northern Australia Worker Pilot Programme (NAWPP). Through this programme, Approved Employers who are unable to fill positions from the Australian labour market could recruit workers from Kiribati, Nauru and Tuvalu for an initial two years with the option of applying for a third year. The microstate visa permitted a total of 250 migrants to work in lower-skilled jobs in northern Australia in non-seasonal occupations in any industry, such as tourism and hospitality. In July 2018, the Australian Government launched the **Pacific Labour Scheme (PLS)**, which builds upon the NAWPP and the SWP. The PLS is uncapped and open to citizens of nine PICs – Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu – as well as Timor-Leste (Australia, DFAT 2019a). Under the PLS, workers can take up low- and semi-skilled jobs in rural and regional Australia for up to three years. The scheme is open to all sectors and industries, but initially focuses on the accommodation and food services industry; the healthcare and social assistance industry; and the non-seasonal agriculture, forestry and fishing industries (Howes 2018c). As of 30 June 2019 at the end of its first year of operation, 203 workers had been recruited under the PLS (Howes and Lawton 2019).

Under the SWP and the RSE scheme, workers always travel as a group with a nominated team leader who is one of the seasonal workers and who usually has considerable previous experience with the schemes.

As noted above, this review focuses on the SWP and RSE schemes. However, it is worth noting that New Zealand's RSE shares some features with other government schemes employing Pacific workers, such as the Pacific Trades Partnership and the labour mobility fisheries pilot. Likewise, the Pacific Labour Scheme is framed in a similar way to the SWP, but, until November 2021, was overseen by a different Australian government department through the Pacific Labour Facility (PLF, which is managed by a contracted company). This will be discussed only in so far as the PLF is involved in the implementation of the SWP.

Recent and expected changes to the SWP and the RSE scheme

Data collection and validation for this report was undertaken in 2020 and 2021. While the report was being finalized, a number of new reforms and initiatives were announced relating to labour mobility schemes, particularly in Australia where there were two significant developments: (i) the new Agricultural Visa was announced in August 2021; and (ii) the SWP and PLS were merged under the unified brand of the Pacific Australia Labour Mobility (PALM) scheme shortly thereafter³. At the time of writing, the specific conditions of the Agricultural Visa were not yet clear. As part of the

³ As part of the transition to the PALM scheme a number of web-based resources related to the SWP were removed from the website of the Department of Education, Skills and Employment (DESE) in late 2021 and replaced by content on the PALM scheme website (<https://www.palmscheme.gov.au/>). As this transition occurred after the completion of this report, some of the webpages cited in this paper are no longer active, although equivalent content can be found at the PALM scheme website.

shift to PALM, it was announced that there will be more flexibility for workers to change employers and that these arrangements will be overseen by “the Pacific Labour Facility and the government, to ensure worker wellbeing is maintained” (Australia, PALM, n.d.). As no further detail is available as yet on how this arrangement will work, a related recommendation remains in the report. Specifically, it is not yet clear if workers will be able to initiate the change of employer through a process that better aligns with international labour standards with respect to free choice of employment, or whether the decision will be led by employers who are only required to seek the consent of workers.

A number of other shifts are expected under the PALM rebranding. In some cases these changes relate to recommendations in the report; for example, an increased emphasis on skills development, the provision of multi-entry visas, and more attention to worker welfare. The specific details on how these changes will be operationalized have not yet been announced. As such, the associated recommendations remain in the report. Furthermore, the report recommendations reflect the analysis of the data collected in 2020–21.

Additionally, in November 2021, the Fair Work Commission ruled that Australian farm workers covered by the Horticulture Award 2020 and working under a piecework agreement must now be paid a minimum rate for each hour of work. The applicable minimum hourly rate for casual workers under the Award is currently 25.41 Australian dollars per hour (Australia, Fair Work Commission 2021). The Fair Work Commission has made a further decision in February 2022 that the Horticulture Award minimum hourly wage guarantee will take effect from the first pay period on or after 28 April 2022 (Australia, FWO 2022). A recommendation along these lines remains in this report, and it is noted that this ruling is a positive development for seasonal migrant workers in Australia that will make it easier to monitor the correct payment of wages under the PALM scheme.

Government of New Zealand focal points consulted for this report also highlighted that a review into the RSE scheme had been approved by the Minister of Immigration, focusing on the following key areas: “Cap setting and worker allocation mechanisms that are fair, transparent, and drive better performance of the scheme; Good management of domestic impacts – better mitigating risks of displacing New Zealand workers and any adverse impacts of the scheme on local housing pressures; and Ensuring RSE workers get a fair share of benefits from their participation in the scheme.”⁴

The following research is informed by the operating arrangements of the SWP and RSE up until July 2021. It is acknowledged that some aspects of the schemes have evolved since data was collected and that further announcements related to the operational arrangements of PALM are expected imminently. It is hoped that this analysis of how the SWP and RSE align with international labour standards and human rights will inform potential future developments to the labour mobility schemes at this time of significant policy reform.

2.2. Overview of participant numbers in the SWP and the RSE scheme

Seasonal worker numbers had been considerably higher in the RSE than in the SWP in the early years (see table 2.1). However, with the removal of the annual cap and several other reforms (Australia, Parliament, Joint Standing Committee on Migration 2016), arrivals under the SWP have grown rapidly in recent years (Howes and Curtain 2019), and the difference between participant numbers in the two countries has been closing. With the RSE currently capped at 14,400, the number of workers in the SWP could soon overtake those in the RSE scheme.

The SWP grew by 44 per cent in 2018–19, or by some 3,000 workers – the largest absolute increase ever and one of the highest percentage growth rates in the programme’s history. Numbers dropped by 22 per cent, or some 2,500 workers, in the 2019–20 season as a result of the COVID-19 pandemic and associated border closures, considerably impacting seasonal work opportunities (see section 5.8 below). The long-term effect of the pandemic on the number of seasonal workers under the

⁴ RSE Policy Review Scope, unpublished document provided via correspondence with MBIE, September 2021.

RSE and SWP is unknown. One prediction before the onset of the pandemic was for SWP demand to reach 37,500 seasonal work opportunities by 2030 or even sooner (Lawton 2019). As of 31 August 2020, the first 162 visas for seasonal work in Australia after the onset of the pandemic for the 2020–21 season had been granted to workers from Vanuatu who are participating in a Northern Territory pilot to provide labour for the mango harvest (see section 5.8).

In the 2019–20 season, more than 10,000 Pacific seasonal workers moved to New Zealand and more than 8,000 to Australia under the two schemes.⁵ Since the beginning of the schemes, Vanuatu and Tonga have provided the largest numbers of workers. In Tonga, the number of SWP- and RSE-participating workers is reported to have reached 13 per cent of the eligible sending population (those aged 20–45) (Howes 2018a). In general, larger PICs have better resourced Ministries or Departments of Labour to promote their workers; better end-to-end processes; and cheaper air linkages to Australia and New Zealand (ILO 2017b). As such, it is not surprising that they have been more successful at securing SWP and RSE placements than smaller countries like Kiribati, Nauru and Tuvalu. Some countries have also benefitted from so-called first-mover advantages. For instance, Vanuatu had an initial advantage in the RSE due to employers' desire to recruit from a country without a large diaspora in New Zealand in an attempt to reduce absconding (ILO 2017a). As a result, Vanuatu later enjoyed an advantage as employers displayed a preference for returning workers (Maguire and Johnson 2017). Similarly, Tonga had first-mover advantage in Australia. Remarkably, Fiji – which only joined the schemes in 2014/15 – has already recorded considerable growth rates.⁶

One of the countries that has largely missed out on these seasonal work opportunities is Papua New Guinea. In 2017–18, Papua New Guinea's share of seasonal workers in Australia and New Zealand stood at just 1 per cent, despite Papua New Guinea's population being several times larger than that of all the other PICs combined. Papua New Guinea's poor performance has been attributed to the absence of recruitment intermediaries with strong connections in both the sending and receiving countries; the absence of direct recruitment by employers; and a mismatch between selected workers and required skills (ILO 2017a).

Another country that has sent only small numbers of seasonal workers to Australia and New Zealand is Kiribati. Under the RSE and SWP, Kiribati has faced competition from the larger PICs for the reasons described above and has not had a first-mover advantage. Under the RSE, participants from Kiribati have accounted for around 2 per cent of all seasonal workers. The latest season for which data are available (2017–18) saw the largest number of participants from Kiribati (231) and their highest ever share of Pacific workers in the scheme (2.4 per cent). Recent years also saw an increase in the number of SWP workers from Kiribati. In 2018–19, 377 workers from Kiribati participated in the SWP, equivalent to 3.5 per cent of workers from all PICs, but dropping again to a mere 146 workers (or 1.5 per cent of workers from all PICs) in the 2019–20 season (see table 2.1).

Since their inception, the programmes' participation rates have been heavily male dominated. This is one reason why the inclusion (or lack thereof) of women and other marginalized groups receives specific attention in this review. Information on women participants in the SWP is available for every season (see table 2.2). In the 2019–20 season, 20 per cent of SWP participants were women, this percentage dropping to 19 per cent if Timor-Leste is excluded and only participants from PICs are considered. Tonga recorded the highest percentage of women sent by any PIC (26 per cent), followed by Papua New Guinea (23 per cent). The two PICs with the lowest women participation rates were Samoa (6 per cent) and Fiji (10 per cent).

Information about the participation rates of other marginalized groups in the schemes, such as persons with disabilities, or members of the lesbian, gay, bisexual, transgender and queer or questioning (LGBTQ) community, was not available for this report.

5 Altogether, 11,152 workers arrived in New Zealand under the RSE scheme, including 10,239 workers from Pacific island countries (New Zealand, INZ, n.d.-a). A total of 9,824 workers arrived in Australia under the SWP scheme, including 8,298 from Pacific island countries (unpublished data provided by DFAT).

6 In December 2014, the Fijian Government signed an Inter-Agency Agreement (IAU) outlining the implementation agreement for Fiji's participation in the RSE scheme. In April 2015, the Fijian Government signed an MOU outlining the implementation agreement for Fiji's participation in the SWP.

It is also noted that due to the centralization of key services in the majority of PICs, potential participants from more remote islands or regions face particular financial and practical barriers to participation. Comprehensive analysis of available data on the geographic spread of participants from within countries of origin has not yet been undertaken.

Table 2.1. Number of seasonal workers from PICs under the RSE and SWP by country of origin, 2012–13 to 2019–20

PIC	2012–13		2013–14		2014–15		2015–16		2016–17		2017–18		2018–19		2019–20	
	RSE	SWP	RSE	SWP	RSE	SWP	RSE	SWP	RSE	SWP	RSE	SWP	RSE	SWP	RSE	SWP
Fiji	–	–	–	–	30	<5	92	160	355	190	359	247	444	436	487	227
Kiribati	138	34	127	14	136	11	162	20	189	124	231	364	263	377	289	146
Nauru	–	10	–	–	20	–	20	17	17	–	14	–	19	–	5	–
Papua New Guinea	31	26	58	26	96	35	68	42	121	139	124	92	172	128	134	116
Samoa	1 137	22	1 169	162	1 238	185	1 454	140	1 690	309	1 878	527	2 315	677	2 409	543
Solomon Islands	423	42	491	9	511	21	590	61	593	87	643	175	696	314	756	228
Tonga	1 573	1 199	1 538	1 497	1 750	2 179	1 687	2 624	1 822	2 691	1 899	2 790	2 037	3 738	1 807	2 217
Tuvalu	56	–	71	20	70	7	64	<5	80	–	80	–	92	–	115	–
Vanuatu	2 829	119	3 070	212	3 434	562	3 726	1 198	4 171	2 149	4 445	3 349	5 130	4 964	4 237	4 821
All PICs	6 187	1 452	6 524	1 940	7 285	3 000	7 863	4 262	9 038	5 689	9 673	7 544	11 168	10 635	10 239	8 298

– = nil.

Note: i) The number of seasonal workers from countries other than PICs, including Timor-Leste in the case of the SWP, are not included in this table.

ii) Participant numbers in the SWP were provided by the Australian Government, and are based on the number of visas issued (subclass 416 and subclass 403 under the SWP). They are from a dynamic source and are subject to variations. They may also slightly differ from the numbers recorded in PIC countries of origin.

Sources:

For RSE: New Zealand, INZ, n.d.-a;

For SWP: DHA data made available via correspondence with the DFAT;

For Kiribati data: Consultation with Kiribati, Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020;

For Samoa data: Consultation with Samoa, Ministry of Commerce, Industry and Labour, Labour Sending Unit, September 2020;

For Vanuatu data: Consultation with Vanuatu, Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

Table 2.2. The number of SWP participants by gender and country of origin

Season	Gender	Fiji	Kiribati	Nauru	Papua New Guinea	Samoa	Solomon Islands	Timor-Leste	Tonga	Tuvalu	Vanuatu	Total	Total without Timor-Leste
2012–13	Female	–	10	2	7	4	13	10	138	–	30	214	204
	Male	–	24	8	19	18	29	11	1 061	–	89	1 259	1 248
	% Female	–	29%	20%	27%	18%	31%	48%	12%	–	25%	15%	14%
2013–14	Female	–	–	–	6	6	–	19	176	13	32	252	233
	Male	–	14	–	20	156	9	55	1 321	7	180	1 762	1 707
	% Female	–	–	–	23%	4%	–	26%	12%	65%	15%	13%	12%
2014–15	Female	–	–	–	8	3	–	39	261	–	94	405	366
	Male	4	11	–	27	182	21	129	1 918	7	473	2 772	2 643
	% Female	–	–	–	23%	2%	–	23%	12%	–	17%	13%	12%
2015–16	Female	39	–	4	4	5	11	46	327	–	191	627	581
	Male	121	20	13	38	135	50	178	2 297	4	1 006	3 862	3 684
	Not specified	–	–	–	–	–	–	–	–	–	1	1	1
	% Female	24%	–	24%	10%	4%	18%	21%	12%	–	16%	14%	14%
2016–17	Female	15	14	–	40	8	–	125	301	–	395	898	773
	Male	175	110	–	99	301	87	352	2 390	–	1 753	5 267	4 915
	Not specified	–	–	–	–	–	–	–	–	–	1	1	1
	% Female	8%	11%	–	29%	3%	–	26%	11%	–	18%	15%	14%
2017–18	Female	30	58	–	10	33	9	292	294	–	522	1 248	956
	Male	217	306	–	82	494	166	623	2 496	–	2 827	7 211	6 588
	% Female	12%	16%	–	11%	6%	5%	32%	11%	–	16%	15%	13%
2018–19	Female	25	47	–	31	58	42	449	651	–	893	2 196	1 747
	Male	411	330	–	97	619	272	1 118	3 087	–	4 072	10 006	8 888
	% Female	6%	12%	–	24%	9%	13%	29%	17%	–	18%	18%	16%
2019–20	Female	23	18	–	27	35	28	414	580	–	885	2 010	1 596
	Male	204	128	–	89	508	200	1 112	1 637	–	3 936	7 814	6 702
	% Female	10%	12%	–	23%	6%	12%	27%	26%	–	18%	20%	19%

– = nil. Source: Australian Department of Home Affairs (DHA) data made available via correspondence with the DFAT.

3. Methodology for the legal review and fieldwork

3.1. Methodology for the legal review

The legal review analyses the design and operation of the RSE scheme and the SWP, and determines their compliance with relevant international labour and human rights standards. The method applied to conduct this legal analysis began with identifying the most relevant ILO Conventions and Recommendations and international human rights instruments and frameworks concerning temporary labour migration ("Relevant Documents"). See table 3.1 below for the complete list of Relevant Documents included in this review and, where applicable, any action taken in relation to each Relevant Document on the list by the countries included in this study. Second, the provisions pertaining to seasonal workers at each stage of the migration process were extracted from these Relevant Documents. Provisions from different Relevant Documents that contained substantially the same content were collated. The language used in the official legal instruments within the Relevant Documents was simplified into plain English statements that identify specific obligations and the party responsible for implementing each obligation. The outcome of this process was a list of international labour and human rights standards that apply to temporary migration programmes for seasonal workers. The simplified legal standards were divided into the following categories:

- ▶ Pre-departure arrangements (recruitment, offer of employment, visas, travel, costs);
- ▶ Working conditions (pay, leave, termination, choice of employment, wages and remittances, training, health and safety);
- ▶ Living conditions (accommodation, social life, access to healthcare, family life);
- ▶ Equality of treatment (membership of trade unions, taxation, social security, access to justice, monitoring and enforcement);
- ▶ Return and re-integration; and
- ▶ Participation of women and marginalized groups.

Third, a web-based search was conducted to identify official documents issued by the Government of Australia concerning the SWP and by the Government of New Zealand concerning the RSE scheme. All the information required to conduct the legal review of the SWP was publicly available online. The information about the RSE scheme that is publicly available online did not cover some aspects of its operation. Further information was therefore obtained from the New Zealand Ministry of Foreign Affairs and Trade (MFAT) in response to a request made by the ILO Office for Pacific Island Countries. Fourth, these official programme documents were parsed to identify whether, and if so to what extent, the operation of the SWP and RSE complies with the legal standards identified in stage two of the review. The complete list of documents utilized for each review is contained in the references section of this report.

Justification for the selection of Relevant Documents

The review referred to binding international treaties as well as recommendations and frameworks issued under the auspices the United Nations and the ILO that contain standards applicable to seasonal migrant workers. Additionally, the review referred to the Yogyakarta Principles (2006) and the Yogyakarta Principles plus 10 (2017). The Yogyakarta Principles were created by a distinguished group of international human rights experts as a definitive statement on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics.

The ILO Conventions and binding United Nations (UN) treaties included in this review have not been universally ratified by all of the countries covered by this report (see table 3.1 below). Upon ratifying an ILO Convention, a Member State is required to submit periodic reports outlining the steps it has taken in law and in practice to apply its contents. However, under Article

19 of the ILO Constitution, ILO Member States are also required to report at regular intervals, at the request of the Governing Body, on measures they have taken to give effect to the provisions of any Conventions or Recommendations, and to indicate any obstacles that have prevented or delayed the ratification of a particular Convention (ILO 2019b, 117). The standards contained in all ILO Conventions and Recommendations are therefore relevant for the purposes of this legal review.

Within the UN human rights system, States are under an obligation to respect, protect and fulfil the human rights contained in the UN treaties that they have ratified. States participate in the Universal Periodic Review conducted by the UN Human Rights Council, which assesses their human rights record in relation to ratified treaties.

For the purposes of this legal review, it is important to note that the ILO Conventions and core international human rights treaty that focus exclusively on migrant workers have relatively low levels of ratification by States. These include the:

- ▶ ILO Migration for Employment Convention (Revised), 1949 (No. 97);
- ▶ ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and
- ▶ UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (ICRMW).

Convention Nos 97 and 143 together with the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151), have been the subject of two ILO General Surveys, in 1999 and 2016, and were assessed by the ILO Standards Review Mechanism in 2016 (ILO 1999, ILO 2016).

This review also considers three non-binding frameworks:

- ▶ the ILO General Principles and Operation Guidelines for Fair Recruitment (2016) and Definition of Recruitment Fees and Related Costs (2019);
- ▶ the ILO Multilateral Framework on Labour Migration (2006); and
- ▶ the UN Global Compact for Safe, Orderly and Regular Migration (2018) (GCM).

The ILO General Principles and Operational Guidelines, which are based on ILO standards, were included in the review because they represent a comprehensive approach to realizing fair recruitment through the development, implementation and enforcement of laws and policies aimed at regulating the recruitment industry and protecting workers' rights (ILO 2019a). The GCM was adopted by 164 UN Member States in 2018. Prepared under the auspices of the UN, it is the first inter-governmentally negotiated agreement covering all dimensions of international migration in a holistic and comprehensive manner. The ILO Multilateral Framework on Labour Migration contains non-binding principles and guidelines for a rights-based approach to labour migration. It was developed and adopted at a tripartite meeting of experts, is based on ILO standards, and provides comprehensive guidance on labour migration.

In summary, the analysis reviews the schemes' consistency with standards that are binding for Australia and New Zealand as a result of their ratification of various international instruments, as well as consistency with standards that are not binding, either because the relevant instruments have not been ratified by the countries covered in this report, or because they are frameworks and recommendations that are, by their nature, non-binding. The analysis in relation to these standards is therefore provided as a useful point of reference. ILO standards are adopted by a majority of qualified delegates attending the International Labour Conference, and their contents represent internationally-accepted good practice recommended by the ILO.

It is also noted that, in part due to the COVID-19 pandemic, the preceding 2 years have been a period of significant change for the operational settings of seasonal work programmes in Australia and New Zealand. Furthermore, it appears that potentially significant policy reforms are expected in both Australia and New Zealand in terms of how seasonal work schemes will operate in future. It is

therefore hoped that the proceeding analysis, which indicates specific areas where the RSE and SWP could be better aligned with both binding and non-binding international standards, will be viewed as a constructive contribution to this reform process.

Table 3.1. Instruments and frameworks included in this legal review: Ratification status by country

Convention/Treaty or framework	Australia	New Zealand	Fiji	Kiribati	Samoa	Tuvalu	Vanuatu
ILO Conventions							
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	1959	Not ratified	1974	Not ratified	Not ratified	Not ratified	Not ratified
Labour Inspection Convention, 1947 (No. 81)	1975	1959	2008	Not ratified	Not ratified	Not ratified	Not ratified
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	1973	Not ratified	2002	2000	2008	Not ratified	2006
Protection of Wages Convention, 1949 (No. 95)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Migration for Employment Convention (Revised), 1949 (No. 97)	Not ratified	1950	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	1973	2003	1974	2000	2008	Not ratified	2006
Social Security (Minimum Standards) Convention, 1952 (No. 102)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	1973	1983	2002	2009	2008	Not ratified	2006
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Employment Injury Benefits Convention, 1964 (No. 121)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Labour Inspection (Agriculture) Convention, 1969 (No. 129)	Not ratified	Not ratified	2010	Not ratified	Not ratified	Not ratified	Not ratified
Minimum Wage Fixing Convention, 1970 (No. 131)	1973	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified

Convention/Treaty or framework	Australia	New Zealand	Fiji	Kiribati	Samoa	Tuvalu	Vanuatu
Workers' Representatives Convention, 1971 (No. 135)	1993	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Human Resources Development Convention, 1975 (No. 142)	1985	Not ratified	2013	Not ratified	Not ratified	Not ratified	Not ratified
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Occupational Safety and Health Convention, 1981 (No. 155)	2004	2007	2008	Not ratified	Not ratified	Not ratified	Not ratified
Maintenance of Social Security Rights Convention, 1982 (No. 157)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	1990	Not ratified	2004	Not ratified	Not ratified	Not ratified	Not ratified
Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Private Employment Agencies Convention, 1997 (No. 181)	Not ratified	Not ratified	2013	Not ratified	Not ratified	Not ratified	Not ratified
Maternity Protection Convention, 2000 (No. 183)	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified	Not ratified
Safety and Health in Agriculture Convention, 2001 (No. 184)	Not ratified	Not ratified	2008	Not ratified	Not ratified	Not ratified	Not ratified
UN Human Rights Treaties							
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	1975	1972	1973	No action	No action	No action	No action
International Covenant on Civil and Political Rights (ICCPR), 1966	1980	1978	2018	No action	2008	No action	2008
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	1975	1978	2018	No action	No action	No action	No action
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	1983	1985	1995	2004	1992	1999	1995
International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990	No action	No action	2019	No action	No action	No action	No action

Convention/Treaty or framework	Australia	New Zealand	Fiji	Kiribati	Samoa	Tuvalu	Vanuatu
Convention on the Rights of Persons with Disabilities (CRPD), 2008	2008	2008	2017	2013	2016	2013	2008
Non-binding frameworks							
The ILO General Principles and Operation Guidelines for Fair Recruitment (2016) and Definition of Recruitment Fees and Related Costs (2019)	n/a						
ILO Multilateral Framework on Labour Migration (2006)	n/a						
The Global Compact on Safe, Orderly and Regular Migration (GCM) United Nations General Assembly, 2018	Abstained	Yes	Yes	No action	Yes	Yes	No action

n/a = not applicable.

3.2. Fieldwork methodology

Primary data were collected during interviews with seasonal workers in four Pacific countries of origin and through questionnaires sent to key stakeholders in five Pacific origin countries as well as Australia and New Zealand.

3.2.1. Interviews with seasonal workers

Sampling

The main data collection method consisted of individual interviews with seasonal workers in Fiji, Kiribati, Samoa and Vanuatu. The sampling was done to include workers with a diverse range of experiences, rather than to draw a representative sample. Since most seasonal workers are male, able-bodied and come from the sending countries' main islands, efforts were made to include women, persons with disabilities and people from remote areas and islands in order to gain insights into the specific challenges that members of these disadvantaged groups face.

Initial respondents were identified with the assistance of Labour Departments, following which the snowball sampling method was applied. A total of 121 workers were interviewed, all of whom had participated in the RSE or SWP in 2018 or more recently.⁷ Table 3.2 provides a summary of the 30 respondents in each of Fiji, Samoa and Vanuatu and the 31 respondents in Kiribati. In each country of origin, the sample included at least ten women, at least ten workers with experience in Australia and ten with experience in New Zealand, and not more than ten workers who ordinarily live in the capital city or surrounding district. A maximum of four workers from each Australian or New Zealand employer were included.⁸

⁷ One respondent in Fiji did not meet the last criterion, as the latest year he worked overseas was 2017.

⁸ Some employers in Australia and New Zealand have farms in different locations. In these cases, the different locations were regarded as different places of employment because they differ in terms of working and living conditions. Since the sampling criteria were initially not adhered to in Samoa, where an insufficient number of workers had been to Australia and where nine respondents had worked for the same employer, some interviews had to be removed from the sample and five additional interviews had to be conducted.

Table 3.2. Overview of survey participants, by number of respondents

Country	Interview period	Total	Gender			Country of work		Home location		Members of disadvantaged group ¹	No. of different employers ²
			Women	Men	Other ³	Australia	New Zealand	Capital and surrounding	Elsewhere		
Fiji	22 Jul – 8 Oct 2020	30	11	19	-	13	17	9	21	-	19
Kiribati	16 Jul – 7 Aug 2020	31	12	19	-	20	11	7	24	1	13
Samoa	13 Jul – 18 Nov 2020	30	10	19	1	13	17	3	27	1	14
Vanuatu	8 Jul – 8 Aug 2020	30	12	18	-	12	18	10	20	1	23
Total		121	45	75	1	58	63	29	92	3	121
%		100%	37%	62%	1%	48%	52%	24%	76%	2%	n/a

– = nil. n/a = not applicable.

1 This includes LGBTQ persons and persons with disabilities; all three of these individuals were men.

2 The same employer at two different locations is counted as two different employers.

3 In the questionnaire, gender was self-identified and participants could select the “other” category.

Data collection and analysis

In Fiji, an ILO staff member conducted the interviews. In the other countries, research assistants were engaged by the ILO. All interviewers received training in the use of the questionnaire and instructions for data entry.

The standardized questionnaire included both closed-ended and open-ended questions and took about 90 minutes per worker. The questionnaire included sections on the demographic, educational and economic background of the participants; previous seasonal work experience; their most recent experience with the SWP/RSE; working conditions in Australia/New Zealand; general living circumstances in Australia/New Zealand; the participation of disadvantaged groups; contacts with family in the home country; impacts of the COVID-19 pandemic; and their future plans. The questionnaire was pre-tested in Fiji, and slight changes were made following the pre-test.

The specific research topics that were addressed through interviews with workers included:

1. specific challenges faced by women, people with disabilities and members of other disadvantaged groups in accessing the schemes;
2. challenges faced by seasonal workers in terms of working conditions and general living conditions in Australia and New Zealand; and
3. economic migration costs for participants.

The questionnaire was in English. In cases where respondents did not understand the questions in English or were unable to reply in English, research assistants translated the questions into the respective local language but recorded the answers in English.

The research assistants were instructed to take detailed notes during the interviews and to expand and correct their notes as soon as possible after completing the interviews. They entered the responses to closed questions into an Excel spreadsheet and responses to open-ended questions into a Word document. The data were cleaned up by the consultant who also analysed the data, focusing on qualitative content analysis and descriptive statistics.

3.2.2. Key stakeholder interviews

Key stakeholders from governments and trade unions in countries of origin and destination and employer organizations in Australia and New Zealand provided written responses to questionnaires. The questionnaires contained mostly open-ended questions to get the views of experts on issues relevant to the research study. The original plan of conducting face-to-face interviews with key stakeholders was not feasible considering travel and other restrictions during the COVID-19 pandemic. Instead, the ILO sent the questionnaires to its tripartite constituents. Annex 3 contains a list of stakeholders that responded to the questionnaires.

The specific research questions that were addressed through key informant interviews included:

1. participation rates of women, people with disabilities and members of other disadvantaged groups in the four Pacific countries of origin and measures that could address the challenges faced by members of disadvantaged groups in accessing the schemes;
2. details of the recruitment process and pre-departure preparation in each of the four countries of origin;
3. challenges faced by seasonal workers in Australia and New Zealand in terms of their working conditions and general living conditions;
4. economic migration costs for seasonal workers; and
5. possible improvements to the schemes.

3.2.3. Ethics considerations

Before the interviews with seasonal workers, respondents were informed of the purpose of the interview and the envisaged benefits of the research. It was emphasized that participation was voluntary, and that the information would be treated confidentially. Respondents signed a consent form indicating their willingness to participate in the survey. They were also informed of their right to end the interview at any time during the process. In the report, the names of respondents have been changed and individuals cannot be identified. No personal information of the respondents has been included in the report and information cannot be linked to individual respondents. Although Labour Departments provided lists with names of seasonal workers for participation in interviews, the information provided by respondents has not been shared with the Labour Departments. After data from the interviews were put into Word and Excel files, the questionnaires were sent to the ILO Office in Suva for secure storage. The research assistants were instructed to delete all information from the interviews from their computers after the recorded information sent to the ILO was deemed satisfactory.

As for the questionnaires sent to key stakeholders, the information that was collected was not personal but institutional and based on the experience and position of respondents. In the report, none of the information provided is linked to specific persons. Responding to the questionnaire was voluntary.

3.2.4. Limitations

One limitation of the research included the costly and time-consuming nature of the interviews with seasonal workers, which meant that the number had to be limited to 30 interviews in each sending country. Due to the small sample size and non-random sampling method, the sample is not representative, and findings cannot necessarily be generalized. Interviews could only be conducted in a limited number of locations within the four PICs, thereby excluding workers residing in other locations. Since different research assistants conducted the interviews in the four countries without ILO supervision during the interviews, as travel was impossible due to the COVID-19 pandemic, there could be some differences in how the interviews were conducted and therefore in the responses they generated. An attempt was made to address this possible limitation by providing an intensive online training session that all research assistants attended together prior to the interviews being conducted.

Additional limitations are typical of interviews in general. Although research assistants were not permitted to interview workers that they know, interviews can cause biases, as responses can be affected by the interviewer's gender, origin, age, physical appearance or other personal characteristics. Moreover, since one issue discussed during the interviews were the challenges experienced by workers in Australia/New Zealand, some respondents might not have been willing to share negative experiences for fear that this might jeopardize their future participation in the schemes.

Concerning the key stakeholder interviews, the COVID-19 pandemic necessitated a change from the original plan of interviewing key stakeholders in person; instead questionnaires were sent out to tripartite constituents. This approach did not allow for further clarifications and more in-depth discussion.

4. Legal review of the Recognised Seasonal Employer scheme and the Seasonal Worker Programme

4.1. Pre-departure arrangements

4.1.1. Bilateral arrangements

Table 4.1. Summary of RSE and SWP consistency with legal standards related to bilateral arrangements

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
States should enter agreements to regulate matters of common concern arising in connection with migration for employment (Convention No. 97, Art. 10).	✓ (Australia, Department of Employment 2017a)	✓ (New Zealand and Fiji 2014)
Recommendations and frameworks		
ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons (Recommendation No. 86, Annex)	Partially consistent See Annex 1 below (Australia, Department of Employment 2017)	Partially consistent See Annex 2 below (New Zealand and Fiji 2014)
States agree to enhance availability and flexibility of pathways for regular migration by taking action to facilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements (GCM, para. 21b; see also ILO Multilateral Framework, guideline 2.3).	✓ (Australia, Department of Employment 2017)	✓ (New Zealand and Fiji 2014)
States should establish tripartite procedures to ensure that employers' and workers' organizations are consulted on labour migration issues and their views taken into account (ILO Multilateral Framework, guideline 4.10).	Ø No information is available on consultation processes that may have been held in the creation of the SWP. An SWP Advisory Group chaired by the Department of Education, Skills and Employment (DESE) and the Approved Employers Association of Australia and involving trade unions and CSOs is currently in operation (Curtain and Howes 2020, 64)	✓ "New Zealand growers and their peak association played a key role in its design and the changes made to it over time" (Curtain and Howes 2020, 4)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

Australia has created a standard form Memorandum of Understanding (MOU) that it signs with all countries that participate in the SWP (Australia, Department of Employment 2017a). The use of an identical MOU across all countries indicates that countries of origin were not able to negotiate and tailor aspects of the MOU to suit their national circumstances and the associated social and economic impacts of migration (as per Recommendation No. 86, Annex Art. 5; Recommendation No. 122, Paras 1, 30; Recommendation No. 151, Para. 1; ICRMW, Art. 64). The MOU does not contain details of the obligations, responsibilities and actions that are required by the States Parties. This information is contained in a separate document issued by the Australian Government entitled the *Seasonal Worker Programme Implementation Arrangements* (Australia, DESE 2018). Taken together, the MOU and the Implementation Arrangements do not comply with a number of provisions in the ILO Model Agreement on Temporary and Permanent Migration for Employment, which can be found as an Annex of Recommendation No. 86. Annex 1 of this report indicates the areas in which the MOU and the Implementation Arrangements are either in compliance or not in compliance with the ILO Model Agreement. The Department of Education, Skills and Employment (DESE) convenes an SWP Advisory Group meeting four times a year. Membership of the Advisory Group includes Approved Employers, industry representatives, trade unions and community groups (including a member of a Pacific Island council). It does not appear to include workers or representatives of the labour-sending units (LSUs) of PIC governments.

New Zealand – Recognised Seasonal Employer scheme

The RSE prioritizes workers from PICs but also permits recruitment from any country if the employer has an existing relationship with specific workers or can provide evidence that they have been unable to recruit from PICs to meet their labour needs (New Zealand, MBIE 2020a, WH1.10.10). In order to facilitate the flow of workers from PICs, the New Zealand Department of Labour has signed Inter-Agency Understanding (IAU) documents with the governments of Kiribati (2011), Samoa (2007), Tonga (2009), Tuvalu (2009), Vanuatu⁹ and the Solomon Islands (2010). There are two schedules to each IAU. Schedule 1 on “Facilitative Arrangements” outlines the recruitment process and Schedule 2 covers “Immigration Instructions”. The documents provided for this review by MFAT included the Facilitative Arrangements for the Solomon Islands, Fiji and Kiribati, and the Immigration Instructions for Fiji.

IAUs with different countries are similar in content but with different wording in some sections. The near replication of the same IAU across all countries indicates that countries of origin were not able to negotiate aspects of the IAU to suit their national circumstances and the associated social and economic impacts of migration (as per Recommendation No. 86, Annex Art. 5; Recommendation No. 122, Paras 1, 30; Recommendation No. 151, Para. 1; ICRMW, Art. 64).

Taken together, the IAU, the Facilitative Arrangements and the Immigration Instructions do not wholly comply with a number of provisions in the ILO Model Agreement on Temporary and Permanent Migration for Employment (Recommendation No. 86, Annex). Annex 2 of this report outlines areas in which the IAU and the Facilitative Arrangements are either in compliance or not in compliance with the ILO Model Agreement.

⁹ (Date of agreement uncertain, as this IAU was not provided by the MFAT.)

4.1.2. Recruitment

Table 4.2. Summary of RSE and SWP consistency with legal standards related to recruitment

International legal standard	SWP consistency with standard	RSE consistency with standard
Conventions		
States shall provide an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information (Convention No. 97, Art. 2; see also ICRMW, Art. 33(3)). This free service should be provided by public authorities and/or not-for-profit organizations that are approved and regulated by public authorities (Recommendation No. 86, Para. 5(1)). Private employment agencies should not charge any fees or costs to workers directly or indirectly (Convention No. 181, Art. 7).	✓ (Australia, DESE 2020b, section 2.5.3; Australia, DESE 2021c, schedule 1(E9); DESE 2018 sections 1–2)	Fiji – ✓ (New Zealand and Fiji 2014, schedule 1(1)) Kiribati – ✓ (New Zealand and Kiribati 2011, schedule 1(1.3)) Solomon Islands – Ø Not mentioned in New Zealand and Solomon Islands 2010, schedule 1 See also New Zealand, INZ 2019, 3
Migrants shall receive information regarding migration in an appropriate language, assistance with administrative formalities, orientation both pre-departure and post-arrival and assistance during the initial period of settlement (Convention No. 97, Annex I, Art. 6; Recommendation No. 86, Para. 5(2–4); ICRMW, Art. 33(1–2)).	✓ (Australia, DESE 2018, sections 6–7)	Fiji – ✓ (New Zealand and Fiji 2014, schedule 1(3–4)) Kiribati – ✓ (New Zealand and Kiribati 2011, schedule 1(3–4)) Solomon Islands – ✓ (New Zealand and Solomon Islands 2010, schedule 1(3–4)) See also New Zealand, INZ 2019, 3

International legal standard	SWP consistency with standard	RSE consistency with standard
Member States shall supervise and approve direct recruitment undertaken by employers. Members States shall create a system to licence private recruitment agents (Convention No. 97, Annex I, Art. 3).	✓ (Australia, DESE 2018, section 2)	Kiribati – ✓ (New Zealand and Kiribati 2011, schedule 1(1.2)) Solomon Islands – ✓ (New Zealand and Solomon Islands 2010, schedule 1(1.3)) No direct recruitment is permitted in Fiji.
Recommendations and frameworks		
The process of selection of migrant workers should restrict migration as little as possible while ensuring that the migrants are qualified to perform the required work (Recommendation No. 86, Para. 14(1)).	✓ (Australia, DESE 2018, sections 3–4)	✓ (New Zealand, MBIE 2020a, WH1.15.1)
The responsibility for selecting migrants shall be entrusted to official bodies, or authorized private bodies of the territory of immigration, where necessary in the interest of the migrant, under the supervision of the territory of emigration (Recommendation No. 86, Para. 14(2)(a–b)).	✓ (Australia, DESE 2018, section 2)	✓ (New Zealand and Fiji 2014, schedule 1(1))
Before their departure from the territory of emigration, migrants should be examined, for purposes of occupational and medical selection, by a representative of the territory of immigration (Recommendation No. 86, Para. 14(4)).	✓ (Australia, DESE 2018, section 1)	✓ (New Zealand and Fiji 2014, schedule 1(1))
Recruitment and selection should be carried out as near as possible to the place where the intending migrant is recruited (Recommendation No. 86, Para. 14(6)).	Ø No information could be found on this issue	Ø No information could be found on this issue
Authorities of the relevant territories should consult the employers' and workers' organizations about the operations of recruitment, introduction, and placement of migrants for employment (Recommendation No. 86, Para. 19; Recommendation No. 100, Para. 15(d)).	Ø No information could be found on this issue	Ø No information could be found on this issue

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

See also ILO Definition of Recruitment Fees and Related Costs (ILO 2019a), paras 6–7, 9, 11. Please also see section 4.1.4 below on migration costs.

Australia – Seasonal Worker Programme

Recruitment of SWP workers is a multi-stage process. First, Australian employers who wish to participate in the SWP must apply to become an Approved Employer. Approval is given by the Department of Education, Skills and Employment (DESE) to employers who meet the eligibility criteria (Australia, DESE 2020a). In June 2021, there were 184 Approved Employers listed on the DESE website (Australia, DESE, n.d.-c). Second, an Approved Employer must submit a Recruitment Plan to the DESE that indicates how many seasonal workers are required and the details of their recruitment, transport arrangements, working conditions, accommodation and pay (Australia, DESE 2020b, 20; Australia, DESE 2021c, Schedule 1 (B2.A, B3)). Approved Employers must seek the approval of the DESE to increase the number of seasonal workers to be recruited or to change the appointed work location (Australia, DESE 2021c, 24.4(d)). Third, once the Recruitment Plan has been

submitted, the Approved Employer may begin recruitment using the recruitment pathways that are allowed in the selected country of origin. The three possible recruitment pathways for the SWP are: (i) from the “work-ready” pool of workers that have been vetted by the Labour Sending Unit in the country of origin; (ii) direct recruitment by Approved Employers; and (iii) recruitment by a licensed recruitment agent (Australia, DESE 2020b, section 2.3.1). Participating countries agree to allow Approved Employers to “decide which Participating Country they will recruit from” (Australia, DESE 2018, section 2).

The Implementation Arrangements attached to the MOU signed between Australia and countries of origin mandates that pre-departure training and on-arrival briefings must be conducted and must cover a list of specific topics. Countries of origin may, but are not required to, invite representatives of organizations with relevant expertise to participate in the briefings, such as trade unions, financial institutions, government officials from other ministries, returned seasonal workers, medical professionals and community organizations. There is no express requirement that trade unions participate. The Implementation Arrangements further indicate that “the Australian Government and Approved Employers will make available to the nominated Ministry training materials, a DVD and information that may be drawn on for the purpose of delivering a pre-departure briefing. The Australian Government will liaise with the Ministry regarding the translation of materials, where appropriate” (Australia, DESE 2018, section 7). Prior to travel, workers are given a copy of *Working and Living in Australia: Pre-Departure Guidebook for Seasonal Workers*, issued by the DESE (Australia, DESE 2019b). This guidebook has been translated into local languages for Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu.

New Zealand – Recognised Seasonal Employer scheme

Recruitment of RSE workers is a multi-stage process. First, prospective employers are required to submit an application to become a Recognised Seasonal Employer (New Zealand, INZ, n.d.-h). The requirements for obtaining and keeping Recognised Seasonal Employer status include abiding by New Zealand law on employment and working conditions (New Zealand, MBIE 2020a, WH1.5.5). Second, Recognised Seasonal Employers submit an Agreement to Recruit. Two or more Recognised Seasonal Employers can submit Agreements to Recruit covering the same workers for consecutive periods of employment (New Zealand, MBIE 2020a, WH1.10.1). Third, recruitment takes place using an approved pathway. The MFAT only provided information on recruitment for the Solomon Islands and Fiji for the purposes of this review. In Fiji recruitment occurs solely through a “work-ready” pool of vetted prospective workers maintained by the Fijian Ministry of Employment, Productivity and Industrial Relations (New Zealand and Fiji 2014, schedule 1(1)). The Solomon Islands operates an agent-based system of recruitment. Agents are licensed by the Labour Mobility Unit within the Solomon Islands Department of Labour. These agents are responsible for the selection of workers, and workers are then screened by the Labour Mobility Unit (New Zealand and Solomon Islands 2010). Workers can then apply for a visa from New Zealand Immigration. The MBIE has created a resource for workers entitled *Get Ready Pack: Information for RSE Workers*. This has been translated into local languages for Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The Immigration New Zealand “Guide to Becoming a Recognised Seasonal Employer” indicates that employers must provide an induction for workers (New Zealand, INZ 2019, 4). RSE employers are required to include the following in the induction programme:

- ▶ Introduction to supervisors and co-workers, and the trade union delegate where there is one.
- ▶ Guided tour of the site and work areas.
- ▶ Health and safety briefing, including hazards within the workplace and the workplace evacuation plan, and introduction to the health and safety representative.
- ▶ Provision of safety or other equipment required for the job.
- ▶ Information on reporting requirements, such as who to contact in case of absence or in an emergency in the workplace.

- ▶ Clarification of expectations regarding attendance and breaks.
- ▶ Outline of any training, on or off the job, that employees can expect to receive.
- ▶ Discussion of ongoing performance expectations, including the support and guidance that the employee will receive during their employment.
- ▶ Information on when and how the employer will review performance and provide feedback.
- ▶ Information required by employees, such as reimbursement of work expenses and what constitutes gross misconduct (for example, sexual harassment or consuming drugs and alcohol during work time).
- ▶ Explanation and, where appropriate, signing up of employees to any benefit schemes (such as medical insurance) (New Zealand, INZ 2017).

There are 171 employers on the current list of Recognised Seasonal Employers (New Zealand, INZ, n.d.-i). It is not possible to discern which ones are labour hire companies (see box 4.1 below).

Fiji

Recruitment in Fiji is managed by the National Employment Centre, part of the Ministry of Employment, Productivity, and Industrial Relations. Ministry employees visit districts to provide information on the selection criteria: workers must be recommended by community leaders, be currently unemployed, have lived for at least 12 months in the village, hold a valid passport, be physically fit and healthy, have a clear police and immigration record, basic English literacy, some farming experience, be hardworking and a team player, and be honest and reliable. Candidates are selected and endorsed by the head of the village or district. Employers may also refer candidates to the Ministry for consideration. All candidates undergo a medical and fitness assessment, and those who pass and receive clearance from the police and immigration authorities are included in the work-ready pool. Employers provide specifications to the Ministry and are forwarded profiles. Face-to-face interviews can also be conducted by employers. Employers provide the contracts and other information to selected workers. The Ministry explains the contract to workers before they sign. The worker can then apply for a visa. Workers are not charged recruitment fees at any point in this process.¹⁰

Every worker completes pre-departure training, which is held over three days during the week before departure. The training is delivered as per the guidelines provided by Australia and New Zealand. Those traveling to Australia are provided with pre-departure guidebooks (translations to Fijian and Fijian Hindi are available). One day of the training uses tools from ANZ bank's MoneyMinded initiative. This is a flexible education programme for adults that builds money management skills, knowledge and confidence.¹¹ The Fijian Trades Union Congress has no direct involvement in the implementation of recruitment and preparation processes for the SWP or RSE.¹²

Kiribati

Kiribati allows recruitment via the work-ready pool pathway and through direct recruitment (Australia, DESE 2020b, para. 2.3.1). Prospective workers register their interest with their Island Council. Candidates are then screened by the Council's Pre-Selection Committee, and a list of eligible names is sent to the Kiribati Ministry of Employment and Human Resource. Workers on the list have two chances to pass a physical fitness test, and if successful, must complete an English training course (this course is not assessed, and all participants receive a pass grade if they attend). The worker is then added to the work-ready pool and is available for recruitment. Employers then select

¹⁰ Consultation with Fiji Ministry of Employment Productivity and Industrial Relations, National Employment Centre, September 2020.

¹¹ Consultation with Fiji Ministry of Employment Productivity and Industrial Relations, National Employment Centre, September 2020.

¹² Consultation with Fiji Trades Union Congress, September 2020.

workers from the pool. Workers directly recruited by employers are vetted using the same process as those entering the work-ready pool. Pre-departure training is conducted by the Employment Support Services unit of the Kiribati Institute of Technology and takes place over three days. During this process the unit explains the letter of employment and provides information to workers about their overnight stay in Nadi and check-in for a flight from Nadi to Australia. SWP workers are provided with the pre-departure booklet issued by the Australian Government and the contents are explained to them, but there is no equivalent for RSE workers.¹³ The Kiribati Trade Union Congress is not involved in recruitment processes and the selection of workers.¹⁴

Samoa

Samoa allows recruitment through the work-ready pool and directly by employers (Australia, DESE 2020b, para. 2.3.1). Prospective workers are interviewed by a staff member of the Labour and Employment Export Division, who assesses their previous work history, skills and motivation to work overseas and conducts a verbal English language assessment. Prospective workers must also submit references from their village mayor and pastor, a copy of their birth certificate and any certificates obtained through work or study. Workers' physical fitness, strength and endurance are then rated. A worker profile is then created and sent to employers. RSE workers receive a half-day training a week before their departure, and SWP workers receive a two-day training two weeks prior to departure.¹⁵ The Samoa Workers Congress plays a minimal role in recruitment and is currently negotiating for the opportunity to formally work with the Government during recruitment processes.¹⁶

Tuvalu

Tuvalu only permits recruitment through the work-ready pool. If employers have specific requirements and cannot be found in the work-ready pool, then the LSU can search for jobseekers who qualify and meet the specific requirements. These workers are then included in the work-ready pool. The information provided by the Tuvalu Department of Labour for this review indicates that the recruitment process is overseen by the National Employment Recruiting Agency. Worker selection is the responsibility of a committee headed by this agency and comprising stakeholder representatives including secretaries from government departments of Health, Immigration, Police Force, Education, Maritime; the Tuvalu Overseas Seafarers Union; and the Tuvalu Maritime Training Institute. Workers attend a one-day pre-departure briefing during which their contracts are explained to them and officials try to answer questions about their contracts. Workers are informed that they can ask their employers further questions during their induction briefing upon arrival. The pre-departure briefing also includes information on the type of work, the work culture and context in Australia, and other matters.¹⁷

Vanuatu

The information provided to Approved Employers indicates that Vanuatu allows recruitment via all three pathways. (However, the survey response from the Vanuatu Labour Department indicates that "[t]he selection and recruitment of workers is done through agents".)¹⁸ The Department of Labour and Employment Services (2019) operates a licensing system for recruitment agents. Workers attend a two-day pre-departure briefing that includes information on living in Australia and New Zealand, and the contents of their employment contracts.¹⁹ The Vanuatu National Workers Union (VNWU) does not play any role in the recruitment process.²⁰

13 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

14 Consultation with the Kiribati Trade Union Congress, September 2020.

15 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

16 Consultation with the Samoa Workers Congress (SWC), October 2020.

17 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

18 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

19 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

20 Consultation with the VNWU, September 2020.

Box 4.1

Labour hire companies and seasonal worker programme

The top four Approved Employers for the SWP are labour hire companies. These four companies are responsible for hiring 48 per cent of workers between 2012 and 2019 (Curtain and Howes 2020, 1). The high prevalence of labour exploitation in Australia's labour hire sector within the past decade, including with reference to SWP workers, has been highlighted in a number of Government inquiries (Australia, Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade 2017; Australia, FWO 2018a).

At present, in addition to meeting the standard requirements to become an Approved Employer with the DESE (which includes a requirement to become a Temporary Activities Sponsor with the Department of Home Affairs), labour hire companies are required to show evidence that their labour hire licence is renewed annually if they are in a jurisdiction that requires a license.

At the state/territory level, the Australian Capital Territory introduced a licensing scheme in May 2020, Victoria in April 2019, Queensland in June 2018 and South Australia in June 2020. The Western Australian Government has committed to a state scheme in principle, but no details have been announced. No schemes have been announced or introduced in New South Wales, the Northern Territory or Tasmania.

At the Federal level, in 2019, the Migrant Worker Task Force ¹ report made the following recommendations:

11. It is recommended that the Government consider additional avenues to hold individuals and businesses to account for their involvement in breaches of workplace laws, with specific reference to: a) extending accessorial liability provisions of the Fair Work Act, 2009, to also cover situations where businesses contract out services to persons, building on existing provisions relating to franchisors and holding companies; b) amending the Fair Work Act, 2009, to provide that the Fair Work Ombudsman can enter into compliance partnership deeds and that they are transparent to the public, subject to relevant considerations such as issues of commercial in confidence. ...

14. It is recommended that in relation to labour hire, the Government establish a National Labour Hire Registration Scheme with the following elements: a) focused on labour hire operators and hosts in four high risk industry sectors — horticulture, meat processing, cleaning and security — across Australia b) mandatory for labour hire operators in those sectors to register with the scheme c) a low regulatory burden on labour hire operators in those sectors to join the scheme, with the ability to have their registration cancelled if they contravene a relevant law d) host employers in four industry sectors are required to use registered labour hire operators (Australia, Migrant Workers' Task Force 2019, 10–11).

In 2019, in its response to the report of the Migrant Workers' Taskforce, the Australian Government made a commitment to "finalise and introduce a model, in consultation with stakeholders, for a National Labour Hire Registration Scheme that will reduce worker exploitation, improve accountability, provide greater transparency and drive behavioural change among labour hire operators in high-risk sectors, without causing major disruption to the entire labour hire industry"(Australia, Attorney-General's Department 2019).

As of 9 June 2021, there is still no national labour hire licensing scheme operated by the Australian Federal Government. ² Issues with conditions experienced by SWP workers employed by Approved Employers from the labour hire industry continue to be reported. This includes a group of Ni-Vanuatu workers who left one such employer in Bundaberg after raising issues about accommodation and discrepancies between their letter of offer and employment conditions (Marie 2021).

¹ The Migrant worker Taskforce was established in 2016 as "as part of the Government's response to the revelation of significant wage underpayments in certain industry sectors" (Australia, Migrant Workers' Task Force 2019, 5)

² On 13 May 2021, information provided by the Attorney-General's Department to the Senate Select Committee on Temporary Migration stated that in response to recommendations 11 and 14, the Government has:

- extensively consulted with stakeholders on possible reforms to the Fair Work Act, 2009, through two discussion papers and the JobMaker Industrial Relations Compliance and Enforcement Working Group; and
- continued consultations on the establishment of a national labour hire registration scheme (Australia, Senate 2021b).

4.1.3. Offer of employment

Table 4.3. Summary of RSE and SWP consistency with legal standards related to the offer of employment

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
States shall ensure that the system of supervision of contracts between an employer and a migrant worker is enforced and that appropriate penalties are applied in cases of violations (Convention No. 97, Annex I, Art. 5(3)).	✓ The system of supervision established in the SWP Implementation Arrangements (Australia, DESE 2018, section 6) indicates that the governments of Australia and participating countries will investigate breaches of recruitment practices (Australia, DESE 2018, section 8). Penalties are defined in the Fair Work Act, 2009 .	✓ The New Zealand Department of Labour monitors compliance with employment and workplace legislation and monitors the Facilitation Arrangements (New Zealand and Kiribati 2011, schedule 1(5); New Zealand and Solomon Islands 2010, schedule 1(5); New Zealand and Fiji 2014, schedule 1(5)). Penalties are defined in the Employment Relations Act, 2000 .
States shall ensure that the migrant receives a copy of the contract in writing that contains provisions indicating the conditions of life and work (Convention No. 97, Annex I, Art. 5(1-2)).	✓ (Australia, DESE 2021c, schedule 1(C))	✓ (New Zealand and Kiribati 2011, schedule 1(1.3); New Zealand and Fiji 2014, schedule 1(1.2)) <i>Note: Not mentioned in New Zealand and Solomon Islands 2010.</i>

International legal standards	SWP consistency with standard	RSE consistency with standard
Recommendations and frameworks		
Governments should take steps to ensure that employment contracts are clear and transparent and are respected, including that written contracts of employment are provided to workers specifying the job to be performed and the terms and conditions of employment including those derived from collective agreements. The contract (or an authoritative copy) should be in the language of the worker or in a language the worker can understand, and the necessary information should be provided in a clear and comprehensive way in order to allow the worker to express his or her free and informed consent. For migrant workers, these contracts should be provided sufficiently in advance of departure from their country of origin. These contracts should not be substituted and should be enforceable in the destination country. While respecting confidentiality and the protection of personal data, governments may consider the use of information technology to achieve the aforementioned objectives (ILO General Principles and Operational Guidelines for Fair Recruitment, part 1(IV), para. 7).	Partially consistent – See discussion below.	Partially consistent – See discussion below.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The Deed of Agreement signed by SWP employers with the Australian Government creates a legal requirement that the offer of employment (which functions as a contract) includes all relevant information required under international labour standards (Australia, DESE 2021c, schedule 1I). Nominated ministries in the countries of origin and/or recruitment agents are required to provide a written copy of the offer of employment to the prospective worker, explain the offer to them in an appropriate local language, and tell the worker that they can seek independent advice regarding the offer. The ministry must also keep a copy of the signed contract and is responsible for forwarding it to the employer (Australia, DESE 2018, section 6). This meets the requirements of ILO standards in a general sense, though the offer assumes a level of understanding of Australian laws and policies relevant to seasonal workers and does not clearly state these in the offer itself.

The Seasonal Worker Programme Regional Pilot (launched in 2019 and operating alongside the main SWP) does not wholly comply with Convention No. 97 insofar as Pilot workers are hired on the understanding that they will be moved to multiple placements, yet the offer of employment received by workers before they depart from their country of origin only contains the details of their first placement. They are provided with amended offers for subsequent placements during their time in Australia (Australia, DESE 2020c, section 3.7.3). This arrangement assumes that Pilot workers are in a position to negotiate the terms of subsequent employment if they do not agree to the conditions offered. Also, the documentation does not provide information to workers on their options if they do not agree to the terms offered by a subsequent Approved Employer. The Seasonal Worker Programme Regional Pilot Guidance (Australia, DESE 2020c) states that employers “do not need to seek prior approval from DESE for the location and length of subsequent placements, type of work (although it must be seasonal agricultural work) and payment rates” (Australia, DESE 2020c, section 6.2.1).

New Zealand – Recognised Seasonal Employer scheme

The Facilitative Arrangements contained in Schedule 1 of the IAUs between New Zealand and Kiribati and New Zealand and Fiji specify that workers must be provided with a written contract that meets the requirements of relevant New Zealand legislation and policies and be given the opportunity to seek independent advice (New Zealand and Kiribati 2011, schedule 1(1.3); New Zealand and Fiji 2014, schedule 1(1.2)). There is no corresponding information in the IAU with the Solomon Islands, although it does specify that workers will enjoy the full protection of New Zealand employment and workplace legislation (section 4.1). This meets the requirements of ILO standards in a general sense, though New Zealand requirements regarding written contracts assume a level of understanding of laws and policies, and these may not be clearly stated in the contracts for RSE workers.

Fiji

Officers from the National Employment Centre of the Ministry of Employment, Productivity and Industrial Relations go through the details contained in the Letters of Offer with prospective workers. Workers are given copies of the letters.²¹

Kiribati

Staff of the Ministry of Employment and Human Resource briefly explain the contents of the Letter of Offer to prospective workers. More detailed information about contracts is provided during the pre-departure briefing.²²

Samoa

Staff of the Ministry of Commerce, Industry and Labour provide a briefing to workers on their offer of employment before workers sign their contracts.²³

Tuvalu

All workers receive a copy of their contract; however, there are insufficient resources to ensure that workers understand the details of the contract prior to departure.²⁴ A representative of the Tuvalu Department of Labour provided the following comment regarding the process:

Usually we just receive the contracts, no allowance for changes or negotiations, it comes as a final contract, [we are] not sure whether it has been endorsed by which authority, we just feel that we have no say in terms of trying to improve conditions for our workers, [and are] not sure of when would be the correct time to raise these with the employers, for example, accommodation or transport deductions may increase from the last season, but nothing new has changed from [the] accommodation or transport arrangements [paid for at a lower price in the] last contract.

Vanuatu

Recruitment agents discuss the letter of offer and contract with workers before these are signed, and staff from the Department of Labour provide further explanation during the pre-departure briefings.²⁵

21 Consultation with Fiji Ministry of Employment Productivity and Industrial Relations, National Employment Centre, September 2020.

22 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

23 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

24 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

25 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

4.1.4. Travel

Table 4.4. Summary of RSE and SWP consistency with legal standards related to migrant worker travel

International legal standards	SWP consistency with standard and reference	RSE consistency with standard and reference
Conventions		
Appropriate measures shall be taken by each Member to facilitate the departure, journey, and reception of migrants for employment (Convention No. 97, Art. 4).	✓ (Australia, DESE 2018, section 7; Australia, DESE 2021c, schedule 1(E1–E2, E4, I–J))	✓ (New Zealand and Kiribati 2011, schedule 1; New Zealand and Fiji 2014, schedule 1; New Zealand and Solomon Islands 2010, schedule 1; <i>not provided for other countries</i>)
Migrant workers shall have the right to be informed of the conditions of their admission, their rights and obligations under the law, and any other matters that will enable them to comply with administrative or other formalities in that State (ICRMW, Arts 33(1), 37).	✓ (Australia, DESE 2018, section 7; Australia, DESE 2021c, schedule 1(I–J))	✓ (New Zealand, INZ 2019; New Zealand, MBIE 2018; New Zealand and Kiribati 2011, schedule 1(3); New Zealand and Fiji 2014, schedule 1(3); New Zealand and Solomon Islands 2010, schedule 1(3))
States Parties shall take measures to disseminate the said information or to ensure that it is provided by employers, trade unions, or other appropriate bodies. As appropriate, they shall cooperate with other relevant States (ICRMW, Art. 33(2)).	✓ (Australia, DESE 2018, section 7; Australia, DESE 2021c, schedule 1(I–J))	✓ (New Zealand, INZ 2019; New Zealand, MBIE 2018; New Zealand and Kiribati 2011, schedule 1; New Zealand and Fiji 2014, schedule 1; New Zealand and Solomon Islands 2010, schedule 1)
Information shall be provided upon request to migrant workers free of charge (ICRMW, Art. 33(3)).	✓ (Australia, DESE 2018, sections 2, 6)	✓ (New Zealand, INZ 2019; New Zealand, MBIE 2018)
Recommendations and frameworks		
Migrants are to be informed of their rights under national law as far as possible in their mother tongue, or, if that is not possible, in a language with which they are familiar (Recommendation No. 151, Para. 8; ICRMW, Art. 33(3)).	✓ (Australia, DESE 2018, section 7)	✓ (New Zealand, INZ 2019, 3)
Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation (Recommendation No. 151, Para. 21(1)).	✓ (Australia, DESE 2018, section 7)	✓ (New Zealand, INZ 2019, 3)

International legal standards	SWP consistency with standard and reference	RSE consistency with standard and reference
Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols, and other signs relating to safety and health hazards at work. In cases where the training given to other workers is inadequate for them, special measures should be taken to ensure their full understanding (Recommendation No. 151, Para. 22(1-2)).	✓ Australia, DESE 2021c, section 9.2 requires Approved Employers to “carry out Your obligations under this Deed in a safe manner ... (c) ensuring, as far as is reasonably practicable, Your Workers understand and comply with all Your applicable instructions, directions, policies and procedures relating to work health and safety”. The Deed in operation prior to 2020 did not mention special measures beyond the requirement that occupational safety and health is covered during the on-arrival briefing.	(New Zealand, INZ 2019, 4)
States should have in place laws or regulations regarding the provision of special measures to ensure full understanding of safety and health information and provide that where employers or other persons or organizations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed (Recommendation No. 151, Para. 22(1-2)).	✓ (Work Health and Safety Act, 2011, and associated legislation at the state and territory level; Australia, DESE 2018, section 7) Note that neither of the above mention special measures for migrant workers beyond provision of information in an appropriate language.	✓ (Health and Safety at Work Act, 2015; New Zealand, INZ 2019, 3) Note that neither of the above mention special measures for migrant workers beyond provision of information in an appropriate language.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The Australian Government requires workers to be provided with a pre-departure briefing by the nominated ministry in their country of origin and with an arrival briefing by the employer that contains all the information set out in international labour standards (Australia, DESE 2018, section 7; Australia, DESE 2021c, schedule 1(I-J)). Employers are required to provide information in a format and language that can be understood by the workers (Australia, DESE 2021c, schedule 1(D1)(h)).

New Zealand – Recognised Seasonal Employer scheme

The IAU requires countries of origin to provide workers with a pre-departure orientation using information kits and seminar tools provided by the New Zealand Department of Labour that contains all the information set out in international labour standards (New Zealand and Kiribati 2011, schedule 1(3); New Zealand and Fiji 2014, schedule 1(3); New Zealand and Solomon Islands 2010, schedule 1(3)).

4.1.5. Migration costs

Table 4.5. Summary of RSE and SWP consistency with legal standards related to migration costs

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Wages shall be deducted only under the conditions prescribed by national laws or regulations, or fixed by collective agreement or arbitration award (Convention No. 95, Art. 8(1); Recommendation No. 100, Para. 13).	✓ (Australia, DESE 2021c, schedule E8)	✓ (New Zealand, MBIE 2019; New Zealand, MBIE 2020a, WH1.20.10)
Workers shall be informed of the conditions under which and the extent to which such deductions may be made (Convention No. 95, Art. 8(2)).	✓ (Australia, DESE 2021c, schedule 1(E8))	✓ (New Zealand, MBIE 2020a, WH1.20.10; New Zealand, MBIE 2018)
Any deduction from wages with the intention of obtaining or retaining employment, made by a worker to an employer or to any intermediary, shall be prohibited (Convention No. 95, Art. 9).	✓ (Australia, DESE 2021c, schedule 1(E10))	✓ (New Zealand, MBIE 2020a, WH1.20.10)
The laws or regulations concerning deductions should be: <ul style="list-style-type: none"> made available for the persons concerned; define the persons responsible for compliance; provide for the maintenance of adequate records in an approved form (Convention No. 95, Art. 15(a–b, d)). 	✓ (Australia, DESE 2021c, schedule 1(E8–E11))	✓ (New Zealand, MBIE 2020a, WH1.20.10; New Zealand, MBIE 2018)
The laws or regulations concerning deductions should prescribe adequate penalties for any violation (Convention No. 95, Art. 15(I)).	✓ (Fair Work Act, 2009)	✓ (Wages Protection Act, 1983)
Recommendations and frameworks		
Employers should be required to restrict any advances to workers to a small proportion of their monthly remuneration (Recommendation No. 100, Para. 33).	X (Australia, DESE 2020b, section 2.5; Australia, DESE 2021c, schedule 1(E8))	X None (no mention of an upper limit to deductions in New Zealand, MBIE 2019)
Migrant workers who have entered into a contract prior to departure should have the right to repatriation at the expense of the employer when: <ul style="list-style-type: none"> (i) the period of service stipulated in the contract has expired; (ii) the contract is terminated by reason of the inability of the employer to fulfil the contract; (iii) the contract is terminated by reason of the inability of the migrant worker to fulfil the contract owing to sickness or accident; (iv) the contract is terminated by agreement between the parties; (v) the contract is terminated on the application of either of the parties, unless the competent authority otherwise decides (Recommendation No. 100, Para. 10(b)). 	X See above. In a comment on a draft version of this report, the DESE indicated that “if workers need to return home early due to illness, choice or terminated employment they can do so using their return ticket”. See discussion below.	Ø Not mentioned in RSE documentation.

International legal standards	SWP consistency with standard	RSE consistency with standard
Recruitment fees or related costs should not be collected from workers by an employer such as through deductions from wages. The competent authority has flexibility to determine exceptions consistent with relevant international labour standards after consulting the most representative organizations of workers and employers (ILO Definition of Recruitment Fees and Related Costs (ILO 2019a), paras 6–7, 9, 11).	X The SWP prohibits Approved Employers from charging recruitment fees (Australia, DESE 2021c, schedule 1(E9)); however, it does not comply in other ways – see analysis below.	X See analysis below.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

The ILO Definition of Recruitment Fees and Related Costs states: “Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits” (ILO 2019a, part 2(II), para. 7).

The ILO Definition of Recruitment Fees and Related Costs defines “recruitment fees” as follows:

Recruitment fees include:

- a. payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;
- b. payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
- c. payments made in the case of direct recruitment by the employer; or
- d. payments required to recover recruitment fees from workers.

These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment (ILO 2019a, part 2(II), paras 9–10).

“Related costs” are defined as “expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment”. Related costs include medical costs, insurance costs, and expenses incurred for travel, lodging and subsistence within or across national borders while migrating for work if these are:

- i. initiated by an employer, labour recruiter or an agent acting on behalf of those parties;
- ii. required to secure access to employment or placement; or
- iii. imposed during the recruitment process (ILO 2019a, part 2(II), para. 12).

The ILO Definition of Recruitment Fees and Related Costs also recognizes that the “competent authority” (in this case, the governments involved) has:

flexibility to determine exceptions to [the applicability of the above provisions], consistent with relevant international labour standards, through national regulations, and after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject, but not limited, to the following conditions:

- i. they are in the interest of the workers concerned; and
- ii. they are limited to certain categories of workers and specified types of services; and
- iii. the corresponding related costs are disclosed to the worker before the job is accepted (ILO 2019a, part 2(II), para. 11).

Australia – Seasonal Worker Programme

The only costs associated with migration covered by the Approved Employer are costs associated with recruitment (where applicable), 300 Australian dollars (AUD) towards the cost of return travel from the country of origin to the worksite, and the cost of providing general welfare and wellbeing support (Australia, DESE 2021c, schedule 1(E4)). By requiring workers to pay for migration costs,²⁶ the SWP does not follow the ILO Definition of Recruitment Fees and Related Costs (ILO 2019a, part 2(II), paras 11–12) or ILO Recommendation No. 100. The ILO Definition of Recruitment Fees and Related Costs provides for flexibility on this principle if paying the costs is in the interest of the workers concerned; is limited to certain categories of workers and specified types of services; and costs are disclosed to the worker before the job is accepted. However, this flexibility should only be exercised after consulting the most representative organizations of workers and employers (ILO 2019, part 2(II), para. 11). No information was readily available to confirm whether this consultation took place before the current system was introduced.

Whether this exception applies depends on a number of factors, including how the “interests of the workers” is defined. For example, there is evidence that the SWP provides employment and earning opportunities otherwise unavailable to these workers (World Bank 2017). However, in addition to recent reports about issues with labour conditions in the SWP cited elsewhere in this paper, there is also a current discussion about the wellbeing and health of Pacific workers in Australia, as well as the implications of Pacific labour mobility on workers’ families (ANU, Crawford School of Public Policy 2021). Pacific Island countries of origin may wish to seek clarification on this from the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) as part of a report on relevant Conventions. Technical assistance may also be sought from ILO specialists.

The SWP places an obligation on employers to provide workers with a loan to cover these migration-related costs (Australia, DESE 2021c, schedule 1(E1–E5)). This loan is repaid via direct deductions in “reasonable instalments” from workers’ wages, over a “reasonable timeframe” (Australia, DESE 2021c, schedule 1(E7)). The amount and rate of deductions is approved by the DESE as part of the Recruitment Plan submitted by employers, and employers must “ensure that the deductions do not result in the seasonal workers having insufficient net income for reasonable living expenses” (Australia, DESE 2020b, section 2.5; Australia, DESE 2021c, schedule 1(E8)). Employers must also provide workers with regular payslips in accordance with statutory requirements, which clearly set out gross pay, itemized deductions, tax and net pay, and must instruct workers on how to read the payslip (Australia, DESE 2021c, schedule 1(E11)). After deductions, employers must ensure that workers derive a reasonable “Net Financial Benefit” from the period of their employment in Australia. The information contained in the SWP Approved Employer Guidelines does not provide a formula for calculating this, but notes that it is ascertained “through factors including the proposed hours of work (noting the minimum average of 30 hours of work a week for the duration of employment in Australia), duration of stay, and expected earnings after deductions” (Australia, DESE 2020b, section 2.2).

The *Pre-Departure Guidebook* does not provide information for workers who want to return home early or before the upfront costs of migration have been repaid. The website of the SWP states: “Yes, you can volunteer to return home early. You can also go home and come back during a placement if that has been agreed with your employer (for example, to attend to an urgent family matter and then come back to work, noting you will need to pay for your return airfare if you plan to come back)” (Australia, DESE, n.d.-a).

Three aspects of the system for employer-funded loans and wage deductions require urgent attention: First, the term “reasonable instalments” needs to be defined and employers need to be provided with clear guidance on the upper limit of deductions permitted at any one time from wages. The only provision in the SWP official documentation regarding non-repayment of employer-provided loans states, “In the event that a Seasonal Worker has not paid their expenses back in full by the time they are due to depart Australia, You may, with the written agreement of the Seasonal Worker, reduce or withhold their final pay” (Australia, DESE 2020b, section 2.5). This creates an incentive for employers to recoup their loans as fast as possible.

26 “Migration costs” are defined by the ILO (2019a, 28) to include such things as the cost of visa applications, health checks and medical examinations, police and character checks, the cost of insurance and travel expenses.

Second, the loan amount advanced to workers by employers in order to enable their participation in the SWP is substantial. The median amount paid by returned workers surveyed for this report was AUD1,032 for Vanuatu, AUD1,275 for Samoa, AUD2,745 for Kiribati, AUD1,140 for Fiji and AUD1,412 for other countries (see figure 5.6). This means that workers arrive in Australia indebted to their employers, a situation that means workers are less likely to report workplace exploitation or substandard working conditions.

Third, a stronger system of penalties needs to be created in the event of unreasonable deductions being made by an employer. Under the Australian legislation regarding workplace relations (the Fair Work Act, 2009; Australia, DESE 2020b, section 2.5), a worker can request support from the Fair Work Ombudsman (FWO), which offers a range of voluntary dispute resolution processes. Fair Work Inspectors also have powers to investigate potential breaches of Australia's workplace laws, which includes breaches of Fair Work Act 2009 provisions relating to deductions from wages. Investigation can result in formal compliance and enforcement actions, including FWO litigation of matters in court. In response to a request for information in relation to this report on the number of SWP investigations conducted to date, the FWO indicated that "since August 2008, three matters have warranted a significant enforcement outcome: One litigation and 2 Enforceable Undertakings executed with SWP Approved Employers".²⁷ Other information about FWO activities in relation to migrant workers is not disaggregated to identify those that involved SWP workers specifically.

The FWO *Annual Report 2020–21* notes:

Migrant workers continue to be over-represented in the FWO's work, due to their limited knowledge about Australia's workplace rights and entitlements, and language and cultural barriers. While they make up only 4 per cent of the Australian workforce, in 2020–21 migrant workers accounted for:

- ▶ 19% of disputes completed
- ▶ 20% of anonymous reports received
- ▶ 32% of litigations initiated (Australia, FWO and ROCE 2021, 20–21).

While migrants' knowledge, language skills and cultural barriers are a factor in the under-representation of migrants in the FWO's caseload, research in this area indicates that other factors are more influential. Berg and Farbenblum (2021) conducted a detailed global review of migrant workers' access to justice related to underpayment of wages. They identified the main barriers experienced by migrant workers who have experienced a violation of their work rights as follows: "First, most migrant workers are unlikely to file a claim because they fear being deported, losing their job or other forms of retaliation. ... Second, if workers do file a claim, the burden of proof generally rests with the worker, and it is extremely difficult for a migrant worker to provide evidence of their work and the wages they were not paid [and] [a]ny penalties for wage theft or consequences for noncompliance with a judgment will not be commercially significant." (Berg and Farbenblum 2021, 7).

Workers can also take legal action in the small claims court. Migrant workers have been shown to be reluctant to engage with the FWO and to have low rates of recovering unpaid wages when they do so (Farbenblum and Berg 2017). Workers can also contact the Seasonal Worker Programme information line, though the *Pre-Departure Guidebook for Workers* does not indicate what will happen if a worker calls this line, and workers may be concerned about repercussions for their placement in Australia (Australia, DESE 2019, section 5.12; see also section 4.4.5 below on monitoring and enforcement). On 6 October 2020, an AUD9 million Pacific Labour Mobility Safeguarding the Welfare of Workers package was announced by the Australian Government. This package included funding for Pacific Labour Mobility Officers to be based in locations around Australia to check welfare, monitoring, compliance and accommodation for workers (Australia, DESE, n.d.-b).

The SWP Deed of Agreement and Approved Employer Guidelines only state that employers can recoup the cost of return international travel beyond the amount specified as being the employers' responsibility (Australia, DESE 2020b; 2021c). There is no mention of what happens if a worker decides to return home before this debt is paid. The Approved Employer is responsible for creating a contingency plan of alternative work in the event of being unable to provide the amount of work anticipated in the Recruitment Plan (Australia, DESE 2020b, 22).

27 Correspondence with the FWO, March 2022.

New Zealand – Recognised Seasonal Employer scheme

The only costs associated with migration covered by the RSE employers are costs associated with recruitment (where applicable) and half of the return airfare between New Zealand and the worker's country of residence (New Zealand, INZ 2019, 5).²⁸ As noted above in relation to the SWP, by requiring workers to pay for migration costs, the RSE does not follow the ILO Definition of Recruitment Fees and Related Costs (ILO 2019a, part 2(II), paras 11–12) or Recommendation No. 100.²⁹ However, the exception contained in the ILO Definition of Recruitment Fees and Related Costs may also be considered to apply here (ILO 2019a, part 2(II), para. 11).

The RSE documents available to this legal review indicate that pay deductions have to be approved by New Zealand Immigration (New Zealand, MBIE 2020a, WH1.20.10). The Wages Protection Act, 1983, (section 5A) prohibits deductions that are “unreasonable”. Information provided to workers in the MBIE publication *Get Ready Pack* states, “For your protection, all deductions must be shown to the Ministry of Business, Innovation and Employment labour inspectors, who will check that they are lawful and correct,” and “[y]our rate per hour might sound like a lot but there are deductions, and if you are not careful with the rest of your money, you may not go back home with as much money as you expected to” (New Zealand, MBIE 2018, 7–8). This suggests that the MBIE undertakes direct monitoring of employer deductions, though the details of what is considered “reasonable” could not be found in the documents made available for this review (New Zealand, MBIE 2018, 7). The IAU only indicates that the employment agreement must specify the “terms and conditions of employment” (New Zealand and Fiji 2014, section 1). Workers should be provided with detailed information on expected deductions prior to departure. Further, employers and workers need to be provided with clear guidance on the upper limit of deductions from wages permitted each month in order to ensure that repayment of loans is spread out over time.

Fiji

In addition to the share of their airfare that is paid by workers as mandated by the RSE and SWP, Fijian workers must pay for police clearance, to obtain a passport and for their health check. Workers pay for their accommodation during transit and cover costs associated with attending the pre-departure training. Workers can receive cash advances from employers to pay for these costs. This is then recouped by the employer as deductions from workers' pay. Some workers use savings to pay these pre-departure expenses, and others obtain loans from their families or village clans. The cost of the medical and physical checks and transport to the airport after the pre-departure training is paid by the Government.³⁰

Kiribati

In addition to the share of their airfare that is paid by workers as mandated by the RSE and SWP, workers from Kiribati are responsible for all pre-departure costs, including passport, visa, police clearance, medical checks and accommodation during transit. Workers are sometimes able to pay these expenses using personal savings. Otherwise, they receive an advance from their employers that is then deducted from their pay.³¹

Samoa

In addition to the share of their airfare that is paid by workers as mandated by the RSE and SWP, all pre-departure and on-arrival expenses are borne by the workers. Samoa limits the cash advance

28 The return airfare is defined as the total cost of travel from the worker's country of residence (or from Nadi (Fiji) for a worker who is a citizen of Tuvalu or Kiribati) to New Zealand and back, including all associated taxes and fees.

29 As noted above, “migration costs” are defined by the ILO (2019a, 28) to include such things as the cost of visa applications, health checks and medical examinations, police and character checks, the cost of insurance and travel expenses.

30 Consultation with Fiji Ministry of Employment, Productivity and Industrial Relations, National Employment Centre, September 2020.

31 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

that employers can loan to workers to no more than AUD300. If workers do not have adequate savings to cover the costs involved, then they access loans within the country.³²

Tuvalu

In addition to the share of their airfare that is paid by workers as mandated by the RSE and SWP, workers from Tuvalu pay for their passport, the cost of medical and police clearance, transport and accommodation while in transit (and transit costs upon arrival for RSE workers). The cost of the visa is covered by the Government. Workers borrow money from families to cover migration costs and can access a loan of AUD200 from the Government that is repaid upon their return.³³

Vanuatu

All migration costs are paid by the workers with the exception of employer contributions towards airfare. Workers borrow money from employers, which is repaid by deductions from wages.³⁴

4.2. Working conditions

The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are reflected in the eight fundamental ILO Conventions, and the relevant United Nations human rights Conventions (ILO Multilateral Framework on Labour Migration, para. 8).

All international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by relevant international labour standards and other relevant international and regional instruments (ILO Multilateral Framework on Labour Migration, para. 9).

4.2.1. Pay, leave and working hours

Table 4.6. Summary of RSE and SWP consistency with legal standards related to pay, leave and working hours

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member, without discrimination in respect of nationality, race, religion or sex, shall treat immigrants lawfully within its territory no less favourably than its own nationals with respect to: remuneration, including family allowances where these form part of remuneration; hours of work; overtime arrangements; and holidays with pay (Convention No. 97, Art. 6(1)(a)(i); Convention No. 143, Art. 10; Recommendation No. 151, Para. 2(e–f); Recommendation No. 111, Para. 2(b)(v–vi); ICRMW, Art. 25).	✓ (Fair Work Act, 2009)	✓ (Employment Relations Act, 2000)

32 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

33 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

34 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

International legal standards	SWP consistency with standard	RSE consistency with standard
States should establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate (Convention No. 131, Art. 1)	✓ (Fair Work Act, 2009) Minimum wages are established in the Fair Work Act; however, until November 2021, it was possible to pay horticulture workers on a piecework agreement less than the minimum wage. This has now changed.	✓ (Employment Relations Act, 2000)
Everyone, without any discrimination, has the right to equal pay for equal work (Universal Declaration of Human Rights, Art. 23(2)).	✓ (Workplace Gender Equality Act, 2012)	✓ (Equal Pay Act, 1972)
States Parties shall recognize the right of everyone to just and favourable work conditions, which ensure fair wages and equal remuneration for work of equal value without distinction of any kind ... rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays (ICESCR, Art. 7(a, d)).	X (Fair Work Act, 2009; National Employment Standards, Part 2-2 of the Fair Work Act, 2009)	X (New Zealand, MBIE 2018, 5; Holidays Act, 2003)
Recommendations and frameworks		
Arrangements should be made to fix the wages of migrant workers (Recommendation No. 100, Para. 23).	✓ (Australia, DESE 2019, section 5.1)	✓ (New Zealand, MBIE 2018, 4)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

In Australia under the Fair Work Act, 2009, workers can be employed either on a permanent or fixed-term contract. Employees on a fixed-term contract are employed for a specific period of time or a specific task. Once the time duration or task is completed, their employment ends. Permanent employees are employed on an ongoing basis until the employer or employee acts to end the employment relationship. Within both permanent and fixed-term contracts, an employee can be classified as full-time, part-time or casual. A full-time employee usually works, on average, 38 hours each week and a part-time employee works, on average, less than 38 hours per week. Both full-time and part-time employees are entitled to paid leave, including annual leave and sick and carer's leave, and are usually entitled to written notice, or payment instead of notice, if their employer terminates their employment. A casual employee "does not have a firm commitment in advance from an employer about how long they will be employed for, or the days (or hours) they will work. A casual employee also does not commit to all work an employer might offer" (Australia, FWO, n.d.-d). The minimum rights and entitlements of full-time, part-time and casual workers are contained in the [National Employment Standards](#) (Australia, FWO, n.d.-a; n.d.-b).

The majority of SWP workers are employed on casual contracts, and therefore under the National Employment Standards are not entitled to paid public holidays or periodic holidays. This is inconsistent with ILO standards and the ICRMW. Casual workers are not guaranteed a minimum number of hours of work per week. In general, the maximum hours of work per week is 38 hours

on average over the course of the contract, provided that ordinary work hours do not exceed 38 hours per week. The definition of “reasonable additional hours” per week is dependent on a host of factors set out in the Fair Work Act, 2009 (FWO, n.d.-h).

Employee entitlements in all of the industries in which seasonal workers are employed are outlined in industry-specific “awards” or registered employment agreements.³⁵ The awards do not differentiate between seasonal workers and workers who are citizens or permanent residents, and SWP workers “must receive the same pay and employment conditions as an Australian worker would receive for the same work” (Australia, DESE 2020b, section 2.2.3; Australia, DESE 2021c, schedule 1(D1)).³⁶ The SWP allows workers to either be paid hourly or using a piece rate system. If a piece rate is to be paid, the Horticulture Award requires that it be set such that an “average competent employee” can earn a fixed percentage more per hour than the minimum hourly rate under the relevant award. This is reiterated in the SWP Guidelines. Workers must be provided with pay slips in accordance with workplace laws, and pay and deductions must be consistent with that agreed by the seasonal worker in accepting the offer of employment or a subsequent written agreement (Australia, DESE 2020b, section 2.2.3).

The SWP guarantees workers a minimum of 30 hours of work per week on average over the course of their employment (Australia, DESE 2019, section 5.3). The DESE has commented that it calculates this using information provided in reports by the Approved Employers. Further information was requested from the DESE about how it enforces this requirement and what happens if the minimum is not met. The uncertainty surrounding the total amount of employment a worker can expect during their time in Australia is relevant to the discussions below concerning freedom of employment.

New Zealand – Recognised Seasonal Employer scheme

Seasonal workers in New Zealand are generally “fixed-term” employees. This means that they are full-time workers whose employment will end on a specified date. RSE workers might also be classified as casual employees who have “no guaranteed hours of work, no regular pattern of work, and no ongoing expectation of employment” (New Zealand, MBIE, n.d.-b).

Fixed-term employees in New Zealand may be paid “holiday pay” of 8 per cent of gross earnings with their regular pay in lieu of four weeks annual holiday a year. The employee must agree to this in their employment agreement and the 8 per cent gross earnings must be shown as an identifiable component of the employee’s pay (New Zealand, MBIE, n.d.-b). All employees receive a paid day off on public holidays that occur on a day that an employee would otherwise have been working. Employees that work on a public holiday are paid time and a half, and may get an alternative day off (New Zealand, Employment New Zealand, n.d.-a). All employees are only entitled to ten days of sick leave after they have completed six months of current continuous employment with the same employer, or have worked for the employer for six months for an average of 10 hours per week, and at least one hour in every week or 40 hours in every month (New Zealand, Employment New Zealand, n.d.-b).

RSE workers can be paid either an hourly rate, a piece rate, a sliding rate or a combination of these rates (New Zealand, MBIE 2018, 4). The Tuvalu LSU has commented:

We see this as a window for the employer to change the kind of pay to use. We have had workers complaining that because the contract is not specific enough when it comes to type of work and rates, they can start off with a task and be told that they will be paid piece rate, [but] this can easily change when the employer sees they are too fast and then when the payslip comes in, they will see that they were not paid piece rate but hourly rate which will be cheaper for the employer.³⁷

35 This refers to the Australian system whereby a national employment tribunal establishes “awards” or quasi-statutory instruments containing minimum terms and conditions of employment for particular industries and occupations. The terms must be either the equivalent of or more generous to workers than the National Employment Standards contained in part 2-2 of the Fair Work Act, 2009.

36 For further information see: [Aquaculture Award](#); [Horticultural Award](#); [Hospitality Award](#); [Pastoral Award](#); [Sugar Industry Award](#).

37 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

Regardless of the type of pay, RSE workers must be paid at least New Zealand's minimum wage. For all adult workers in 2020 the minimum wage was 18.90 New Zealand dollars (NZD) per hour, though this increased on 1 April 2021 to NZD20 per hour (New Zealand, MBIE, n.d.-a). The nominated ministry in countries of origin is required to explain the different rates of pay (for example, see New Zealand and Fiji 2014, schedule 1(3)). RSE employers must guarantee a minimum payment to workers. If the employment agreement is for a period of six weeks or longer, the minimum amount paid must be the greater of the following:

- ▶ 240 hours at the “per hour” rate; or
- ▶ payment for an average of 30 hours per week at the “per hour” rate for the period worked.

If the employment agreement is for a period of less than six weeks, the employee must be paid at least 40 hours per week at the “per hour” rate over the period of work offered in the employment agreement (New Zealand, INZ, n.d.-k, WH1.20.5)

4.2.2. Termination of employment

Table 4.7. Summary of RSE and SWP consistency with legal standards related to termination of employment

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
A migrant worker who has resided legally in the territory for the purposes of employment shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment. Nor should the loss of employment imply the withdrawal of his authorization of residence or work permit. Instead, he shall enjoy equality of treatment with nationals with respect to security of employment, the provision of alternative employment, relief work, and retraining (Convention No. 143, Art. 8).	X The DHA Assurance Protocol with the FWO states that workers “can seek help without fear of visa cancellation, even if they’ve breached their work-related visa conditions” (Australia, FWO, n.d.-e). This relies on a policy decision by the DHA and is therefore not legally binding on the DHA in the event that worker exploitation is found to have occurred (see section 4.4.5 on monitoring and enforcement for further discussion). The FWO has noted that the mandate of the Assurance Protocol is to assist workers experiencing workplace exploitation, rather than providing relief in routine employment matters.	X Information provided to workers by Immigration New Zealand does not meet this standard (see section 4.4.5 on monitoring and enforcement for further discussion).
Recommendations and frameworks		
National laws and regulations concerning residence in its territory are to be applied such that the lawful exercise of rights cannot be the reason for non-renewal of a residence permit or for expulsion and are not inhibited by the threat of such measures (Recommendation No. 151, Para. 5).	X	X

Australia – Seasonal Worker Programme

It is a condition of the Temporary Work (International Relations) Visa (subclass 403, Seasonal Worker stream) that workers must continue to be employed by their approved sponsor and can only change sponsor with the approval of the Department of Home Affairs (DHA) (Australia, DHA, n.d.-a). The *Pre-Departure Guidebook for Seasonal Workers* indicates that workers can contact the DHA directly or call the Seasonal Worker Programme Information line for assistance (Australia, DESE 2019, section 2.4). While this is a matter of legal interpretation, termination of employment can be construed as implying withdrawal of authorization to stay in Australia, because a change of employers must be approved by the DHA and workers are not given information about the conditions under which approval will be granted or how to explore employment with other employers. The DESE stated in response to a draft of this report that movement of workers to a new employer is facilitated in exceptional circumstances. This information is not mentioned in the *Pre-Departure Guidebook* or other documentation reviewed for this report. Additionally, workers employed on casual contracts in Australia are not able to bring claims for unfair dismissal.

Official documents issued by the DESE indicate that SWP employers are prohibited from terminating a worker on the basis of trade union membership, race, religion, pregnancy, marital status or gender, or if the worker questions employment conditions or makes a complaint about the employer (Australia, DESE 2019, section 5.10). Employers must inform the DESE if they intend to terminate a seasonal worker, as well as after termination occurs (Australia, DESE 2020b, 5.1.2). The documentation reviewed for this report did not find any indication that employers are required to provide an explanation if they decide not to re-hire a worker in future seasons. The *Pre-Departure Guidebook for Seasonal Workers* states:

If you have worked hard while in Australia, and you have impressed your approved employer you may be able to come back. You will need to apply again through the government agency or approved recruitment agency in your country. You will need to go through the same arrangements for visa application as you did the first time—submit another visa application, pay for the visa application charge, undertake a chest x-ray and meet other visa conditions. Your country may also ask for certain requirements to be met so that you can participate in the Australia – Seasonal Worker Programme again.

You may be allowed to apply for another placement as a seasonal worker in Australia if:

- ▶ you comply with your visa conditions
- ▶ your approved employer is happy with your work
- ▶ you did not do anything that could harm your participation in the Seasonal Worker Programme
- ▶ there is demand for seasonal workers in Australia (Australia, DESE 2019, section 22.4).

Explicit guidelines and monitoring practices should be implemented to ensure that employers provide reasons for failure to re-hire workers who would like to return with the same employer, in order to ensure that this does not occur for reasons prohibited by the SWP. In the absence of such provisions, employers wield significant power over workers, since in the absence of any requirement to provide an explanation, a worker may reasonably fear that a decision by an employer not to re-hire would jeopardize any future participation in the programme with other employers. This imbalance in power increases the risk of worker exploitation. A discussion of the “Assurance Protocol” for workers who report exploitation is contained below in section 4.4.5 on monitoring and evaluation.

New Zealand – Recognised Seasonal Employer scheme

It is a contravention of Convention No. 143, Article 8, that RSE workers who are dismissed from employment must leave New Zealand (New Zealand, MBIE 2018, 18). RSE workers can only work for the employer (or employers in the case of Joint Applications to Recruit) specified on their visa (New Zealand, INZ 2018, 1). Workers can only transfer to a new employer if their current employer provides written approval of the transfer (New Zealand, INZ 2018, 6). Information on the possibility of transferring is not included in the pre-departure information booklet provided to workers (New Zealand, MBIE 2018). A discussion of information provided to workers who report exploitation is contained in section 4.4.5 on monitoring and evaluation.

As with the SWP, there is no requirement within the RSE scheme for employers to provide reasons

if they do not re-hire a worker who wishes to return for future seasons. In the absence of such provisions, employers wield significant power over workers (Bailey 2019). This imbalance in power increases the risk of worker exploitation.

4.2.3. Choice of employer

Table 4.8. Summary of RSE and SWP consistency with legal standards related to choice of employer

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
While assuring migrant workers the right to geographical mobility, the free choice of employment may be made subject to the conditions that the migrant worker has: (a) resided lawfully in its territory for the purpose of employment for a period not exceeding two years, or (b) if its laws provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract. Access to limited categories of employment may be restricted where this is necessary in the interests of the State (Convention No. 143, Art. 14(a, c); Recommendation No. 151, Para. 6). ¹	X In the SWP, workers must continue to work for their Approved Employer. In the Regional Pilot, SWP workers move between a pre-agreed set of Approved Employers, but are not able to determine which employer they will be working for at different times. The DHA website says that during COVID-19 workers can move between any Approved Employer if the employer contacts the DESE.	X In response to COVID-19, workers are able to change their employer, but must apply for a new visa.
Recommendations and frameworks		
States should develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden (GCM, objective 6, 22(h)), and “[d]evelop accessible and expedient procedures that facilitate transitions from one status to another” (GCM, objective 7, 23(h)).	X	X
Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer’s or recruiter’s permission to change employer (ILO General Principles and Operational Guidelines on Fair Recruitment, part 1(III), para. 12)	X Worker permits are tied to an individual employer or group of specific employers.	X Worker permits are tied to an individual employer.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

¹ Note that ICRMW Article 52 states that the right of temporary migrant workers to freely choose remunerated activities may be limited provided that the migrant has not lawfully resided in the territory for a period “exceeding two years”. This period can be extended to five years if the purpose of restricting freedom of employment is to grant priority of employment to nationals and this is prescribed in a bilateral agreement.

As discussed below, restrictions on free choice of employment may also constitute discrimination under Convention No. 111.

Australia – Seasonal Worker Programme

The SWP does not facilitate the right to geographical mobility and does not grant freedom of employment for workers returning for a second contract. The industries that can access workers under the SWP are limited to agriculture,³⁸ horticulture, cane, cotton, aquaculture and accommodation. The SWP Regional Pilot allows small farms to employ workers in the agriculture industry only in specific geographical locations.³⁹

All SWP workers are prohibited from changing visa categories while in Australia (Australia, DESE, n.d.-a; Australia, DESE 2019, section 2.5). It should also be noted that while SWP workers are not able to change employers without the approval of the Australian Government, they may be moved to another employer by the DESE or when a contingency plan is executed. In the Regional Pilot SWP, workers were moved by the Pilot Approved Employer without securing DESE approval for the new employer. Regional Pilot Approved Employers must notify their Regional Coordinator at least three calendar days before the workers are moved to a new location and the Regional Coordinator may make an unannounced monitoring visit (Australia, DESE 2020d, section 2). The SWP indicates that workers must have the opportunity to accept a new offer of employment before being moved between employers (Australia, DESE 2020c). However, workers appear to have little bargaining power if they disagree with the terms of such offers. The only alternative would be to return home, potentially while still in debt for the upfront costs of migration. Further, the absence of an official and advertised mechanism for SWP workers seeking to transfer employers leaves workers with little bargaining power to obtain better working conditions and pay.

New Zealand – Recognised Seasonal Employer scheme

The RSE scheme does not operate in limited geographical areas, though it is limited to horticulture and viticulture businesses. Like the SWP, the RSE scheme does not grant free choice of employment for workers returning for a second contract. All RSE workers are prohibited from changing visa categories while in New Zealand. Workers are not permitted to transfer to a new employer without the approval of their first employer (New Zealand, INZ 2018, 6). This contravenes the principle of equality of treatment and creates the risk of worker exploitation stemming from the power this gives to employers. In response to COVID-19, workers were able to apply for a new visa with a different employer (Bailey and Bedford 2020b).

38 As defined by the [Pastoral Award 2010](#).

39 Sunraysia (New South Wales/Victoria); Goulburn/Murray (Victoria); Riverina (New South Wales); and Wimmera Mallee (Victoria).

4.2.4. Remittances

Table 4.9. Summary of RSE and SWP consistency with legal standards related to remittances

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member for which this Convention (No. 97) is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire (Convention No. 97, Art. 9).	✓ (Australia, DESE 2020b, section 2.6.1)	✓
Recommendations and frameworks		
Arrangements should be made to create such facilities as may be required for the voluntary remittance of funds to the worker's family in his area of origin (Recommendation No. 100, Para. 48).	✓ (Australia, DFAT, n.d.-c)	✓ (New Zealand, MBIE 2018, 8)
States should establish conducive policy and regulatory frameworks that promote a competitive and innovative remittance market, remove unwarranted obstacles to non-bank remittance service providers in accessing payment system infrastructure, apply tax exemptions or incentives to remittance transfers, promote market access to diverse service providers, incentivize the private sector to expand remittance services, and enhance the security and predictability of low-value transactions by bearing in mind de-risking concerns, and developing a methodology to distinguish remittances from illicit flows, in consultation with remittance service providers and financial regulators (GCM, objectives 20, 26(d))	✓ Various initiatives are in place.	✓ Various initiatives are in place.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

SWP employers are required to assist workers to remit money to their countries of origin. In recognition of the relative expense of sending money from Australia and New Zealand to the Pacific, the Australian and New Zealand governments jointly funded the creation of a free website – sendmoneypacific.org – that provides information on the remittance options and processes available to migrants, as well as a comparison of current rates available from a range of operators (Australia DFAT, n.d.-c). Through the Department of Foreign Affairs and Trade (DFAT), Australia's contribution through the International Finance Corporation enabled the Tonga Development Bank to design and implement a new low-cost remittance product for the Australian–Tongan remittance corridor. The 'Ave Pa'anga Pau has lowered the cost of sending AUD200 from Australia to Tonga to 4.89 per cent (as of Q1 2021, according to the World Bank). In June 2021, the DFAT commented that it is exploring options with the International Finance Corporation and World Bank to replicate the remittance model in other Pacific countries. In September 2020, the DFAT issued a tender for "innovative proposals to address the high cost of remittances from Australia and New Zealand to the Pacific. Our aim is to foster a dynamic, competitive and transparent remittance market in Australia and New Zealand, so that people can send the most money home to support their friends and

family” (Australian Tenders 2020). The DFAT is engaged in discussions with regional partners (Asian Development Bank, World Bank, central banks) to support the development of a regional facility to reduce costs of verification and to facilitate compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act, 2006, with a view to reducing remittance costs. The DFAT also supports Pacific financial regulators and the remittance sector in Australia through its partnership with the Australian Transaction Reporting and Analysis Centre (AUSTRAC) to increase confidence that the Pacific remains a safe destination for the transfer of remittances.⁴⁰

New Zealand – Recognised Seasonal Employer scheme

In addition to the measures mentioned above being implemented jointly by Australia and New Zealand, the Reserve Bank of New Zealand’s Pacific Remittance Project aims to improve access to and reduce the costs of remittance transfers to the Pacific. The project was established in 2019 and is currently exploring a range of initiatives, including ongoing information gathering exercises, policy/legislative changes and the development of a regional electronic know-your-customer facility (RBNZ 2021).

Other relevant activities where the New Zealand Government is dedicating resources to support secure and cost-effective remittances include an MFAT-funded pilot to test the feasibility of a mechanism to enable safe, auditable and low-cost transfers of voluntary superannuation contributions from the wages of RSE workers. The pilot included remittance transfers, and is set to be expanded.⁴¹

4.2.5. Training

Table 4.10. Summary of RSE and SWP consistency with legal standards related to training

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination including in the activities of vocational guidance, vocational training and placement services under the direction of a national authority (Convention No. 111, Arts 2, 3I; ICRMW, Art. 43(1) (a-c)).	Partially consistent Australia, DESE 2020b, section 1.5, and relevant awards – There is no equality of opportunity and treatment with nationals with respect to access to vocational placement services, and workers currently cannot choose the type of training beyond the limited selection offered by the Australian Government.	Partially consistent New Zealand and Fiji 2014, section 5.2. See discussion below.

⁴⁰ DFAT, validation workshop, July 2021.

⁴¹ Correspondence with MBIE, September 2021.

Recommendations and frameworks

Each Member shall ensure equality of opportunity and treatment with nationals with respect to access to vocational guidance and placement services; access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment; advancement in accordance with their individual character, experience, ability and diligence (Recommendation No. 151, Para. 2(a-c))

Partially consistent

Australia, DESE 2020c, section 1.5, and relevant awards—There is no equality of opportunity and treatment with nationals with respect to access to vocational placement services, and workers currently cannot choose the type of training beyond the limited selection offered by the Australian Government.

Partially consistent

New Zealand and Fiji 2014, section 5.2. See discussion below.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The SWP does not facilitate access to formal vocational guidance or training for migrant workers. Basic training for SWP workers (entitled “Add-On Skills Training”) is funded by the Australian Government and delivered by the DFAT. This involves training on topics such as first aid, English and IT skills, and has also provided funding for workers to obtain drivers licences if required for their jobs. SWP employers are consulted on the training provided to the workers they employ and are required to assist SWP workers to attend training sessions. The training may be scheduled during work hours (if related to employment) or outside of work hours. Training is delivered by the contractor that the DFAT has hired to administer the SWP and PLF. Currently the contractor is the Palladium Group (Australia, DESE 2020b, section 1.5; Australia, DESE 2021c, schedule 1(F1)(h)). The DESE has commented that the Add-on Skills Training Program was reviewed in consultation with industry in early 2021. The review, which includes a proposal for a new skills development programme, is currently being finalized.⁴²

As discussed above, SWP workers do not have free choice of employment. As a consequence, they also do not have access to equality of opportunity and treatment with respect to vocational guidance, training and placement services. None of the SWP official documentation indicates that the Add-On Skills Training might provide opportunities for advancement in current employment.

New Zealand – Recognised Seasonal Employer scheme

The RSE scheme does not facilitate access to formal vocational guidance or training for migrant workers. The IAU signed by New Zealand and Fiji states that if funding is available, the nominated ministry in the country of origin in collaboration with other stakeholders (including the MBIE) will identify scope and implement targeted training for workers (New Zealand and Fiji 2014, section 5.2). Training is not mentioned in the IAUs with the Solomon Islands, Tuvalu, Samoa, Kiribati or Tonga, though the attainment of “appropriate work skills” is mentioned in the IAU with Tonga (New Zealand and Tonga 2009, section 5.2). In order to become a Recognised Seasonal Employer, employers must demonstrate a commitment to employing New Zealand nationals.

RSE employers are expected to provide on-the-job training, upskilling and access to training courses provided through Vakameasina, an independent training programme that offers courses based on worker demand. However, it is not clear whether this is an express requirement for employers. The MFAT fund a number of initiatives for RSE workers, including Vakameasina. While training is available, it does not appear that this is offered on the basis of equality of treatment with nationals.

⁴² This review was flagged in July 2021 at the report validation workshop. Since then, in September 2021, a new approach to skills development has been summarized on the PALM website which includes possible support for formal qualifications. Employers are required to apply to the PLF for funding for training and the decision to do this is at the discretion of employers. It is therefore not yet clear if workers’ access to training will be increased through this new approach to training.

4.2.6. Health and safety

Table 4.11. Summary of RSE and SWP consistency with legal standards related to health and safety

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment (Convention No. 155, Art. 4; Recommendation No. 164, Para. 10).	✓ (Australia, Safe Work Australia 2018)	✓ (New Zealand, Worksafe, n.d.-a)
In the light of national conditions and practice and after consulting the representative organizations of employers and workers concerned, Members shall formulate, carry out and periodically review a coherent national policy on safety and health in agriculture. This policy shall have the aim of preventing accidents and injury to health arising out of, linked with, or occurring in the course of work, by eliminating, minimizing or controlling hazards in the agricultural working environment (Convention No. 184, Art. 4).	✓ Work Health and Safety Act, 2011 and associated legislation at the state and territory level	✓ (Health and Safety at Work Act, 2015)
Measures shall be taken to ensure that temporary and seasonal workers receive the same safety and health protection as that accorded to comparable permanent workers in agriculture (Convention No. 184, Art. 17).	✓ Work Health and Safety Act, 2011 and associated legislation at the state and territory level.	✓ (Health and Safety at Work Act, 2015)

International legal standards	SWP consistency with standard	RSE consistency with standard
Recommendations and frameworks		
<p>The steps to be taken for migrant workers should include appropriate arrangements for industrial hygiene and prevention of accidents and occupational diseases. These arrangements should include:</p> <ul style="list-style-type: none"> • suitable assistance measures in case of accident or occupational disease; • measures to secure the health and safety of migrant workers in their places of employment; • measures for reporting accidents and investigating their causes; • an obligation on the employers to bring to the attention of migrant workers by notices, talks or any other means any dangerous or unhealthy features of their work; • special or additional training or instruction to migrant workers on the prevention of accidents and risks to health in places of employment when, on account of lack of familiarity with processes, language difficulties or for other reasons, the training or instruction normally given to other workers employed in the country or territory is unsuitable; • provision for the collaboration of employers and workers in the promotion of safety measures (Recommendation No. 100, Para. 46; Recommendation No. 151, Paras 21–22; Recommendation No. 164, Para. 10). 	<p>✓</p> <p>Work Health and Safety Act, 2011, and associated legislation at the state and territory level. However, no special arrangements for migrant workers.</p>	<p>✓</p> <p>Health and Safety at Work Act, 2015. However, no special arrangements for migrant workers.</p>

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

Approved Employers are required to comply with all relevant workplace health and safety legislation (including the Work Health and Safety Act, 2011, and relevant state legislation) as well as Approved Codes of Practice that apply to workers in Australia. Employers must provide protective equipment, provide clear instructions to workers regarding health and safety, and ensure that these provisions are met by any subcontractors. Employers are also required to notify the DESE of any work-related health and safety concerns (Australia, DESE 2021c, section 9.2). SWP workers are entitled to receive compensation for illness or injury through the private health insurance they pay for personally, or through Australia's national workers' compensation scheme, which is funded by compulsory insurance purchased by employers.

A number of concerns about safety in Australia's agricultural industry as well as in other industries that employ Pacific workers have been raised over the past decade. The seven priority industries targeted to reduce fatalities and serious claims under the Australian Work Health and Safety Strategy 2012–2022 (revised in 2018) are agriculture, road transport, manufacturing, construction, accommodation and food services, public administration and safety, and healthcare and social assistance (Australia, Safe Work Australia 2018).

The most current information displayed on the Safe Work Australia website in June 2021 indicates that between 2010 and 2014, the agricultural industry accounted for 21 per cent of worker fatalities in Australia, despite constituting only 2.6 per cent of the Australian workforce. During this period, the fatality rate for agricultural workers was almost eight times higher than the fatality rate for all industries and significantly higher than any other industry (Australia, Safe Work Australia 2016). Issues with the implementation of workplace health and safety in Australia's agriculture industry as part of Australia's obligations under the Occupational Safety and Health Convention, 1981 (No. 155), have been the subject of observations and direct requests by ILO Committee of Experts on the

Application of Conventions and Recommendations (CEACR) in recent years (2009, 2010, 2012 and 2016), with Australia being required to report on this Convention to the Committee.⁴³

According to DESE comments on the draft version of this report, no SWP deaths have occurred due to workplace health and safety incidents. However, there have been multiple road fatalities involving SWP participants – four workers died between September 2020 and January 2021 (Faa 2021), while another five workers died in car accidents before 2018 (Munro 2018). The Australian Workers' Union states on its website that it “has discovered that most workers are transported to farms in buses driven [by] a seasonal worker – who then does a 12 hour shift in the field – before getting back behind the wheel to drive everyone home. Workers are charged around \$AUD 40-80 a week for their transport costs, but the driver has this fee waived” (Australian Workers' Union 2021). This statement has relevance for concerns raised by workers about the rates charged for transport provided by employers (see section 5.3.3 of this report on pay deductions). In March 2021, the DESE created road safety awareness posters translated into participating country languages. These are available on the DESE website (Australia, DESE 2021a).

New Zealand – Recognised Seasonal Employer scheme

New Zealand's Health and Safety at Work Act, 2015, and associated regulations apply to all work and workplaces that employ RSE workers. The application to become a Recognised Seasonal Employer requires employers to provide information on health and safety procedures and to demonstrate continued compliance with relevant laws and regulations (New Zealand, INZ 2019, 2). The 2015 Act was passed in response to a 2013 report by an Independent Taskforce on Workplace Health and Safety created by the Minister for Labour in 2012 (New Zealand, Independent Taskforce on Workplace Health and Safety 2013). Employers in New Zealand's agriculture and viticulture industries have specific obligations with respect to the Health and Safety at Work Act and are subject to workplace inspections (New Zealand, Worksafe, n.d.-b). The Health and Safety at Work Act, 2015, contains a requirement for worker participation, including elected health and safety representatives. The New Zealand Council of Trade Unions (NZCTU) commented on a draft of this report that, in their experience of the conditions of RSE employment, it is “unlikely that most employers, if any, are complying with these requirements” and that “while it is true that migrant workers are entitled to accident compensation, they may struggle to access this if they are repatriated after an injury”.⁴⁴

43 When examining the application of international labour standards, the CEACR makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention ratified by a State. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information.

44 Consultation with the NZCTU, February 2021.

4.3. Living conditions

4.3.1. Accommodation

Table 4.12. Summary of RSE and SWP consistency with legal standards related to accommodation

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of accommodation (Convention No. 97, Art. 6(1)(a)(iii); ICRMW, Art. 43(1)(d)). ¹	✓ (Australia, Safe Work Australia 2018)	X (New Zealand, MBIE 2020a, WH1.10.35)
Recommendations and frameworks		
The arrangements to be made for the housing of migrant workers should include measures to enable such workers to be provided, either at the expense of the employer or by the provision of appropriate financial aid or by other means, with accommodation meeting approved standards and at rents reasonable in relation to the wages earned by the various categories of workers (Recommendation No. 100, Para. 21).	✓ (Australia, DESE 2020b, section 4.1)	✓ (New Zealand, Worksafe 2016; New Zealand, MBIE 2017; New Zealand, MBIE 2020a, WH1.5.5(d))
The competent authority should be responsible for ensuring the establishment of satisfactory housing conditions for migrant workers including minimum standards of accommodation and exercise strict control over the enforcement of these standards. It should also define the rights of the worker who may be required to vacate his accommodation on leaving employment and should take all necessary steps to secure the enforcement of these rights (Recommendation No. 100, Para. 22).	✓ (Australia, DESE 2020b, sections 4.1–2)	✓ (New Zealand, MBIE 2017; New Zealand 2016)
It is generally not desirable that employers should provide housing for their workers directly, with the exception of cases in which circumstances necessitate that employers provide housing for their workers, as, for instance, when an undertaking is located at a long distance from normal centres of population, or where the nature of the employment requires that the worker should be available at short notice (Recommendation No. 115, General Principles, Para. 12(2)).	X (though may be consistent under the exception) (Australia, DESE 2020b, sections 4.1–2)	X (though may be consistent under the exception) (New Zealand, MBIE 2018, 7)
In cases where housing is provided by the employer, the fundamental human rights of the workers, in particular freedom of association, should be recognized; national law and custom should be fully respected in terminating the lease or occupancy of such housing on termination of the workers' contracts of employment; and rents charged should be to ensure that adequate and decent housing accommodation should not cost the worker more than a reasonable proportion of income, and in any case should not include a speculative profit (Recommendation No. 115, General Principles, Para. 12(3)). ²	✓ (Australia, DESE 2020b, section 4.2)	✓ (New Zealand, MBIE 2018, 7)

International legal standards	SWP consistency with standard	RSE consistency with standard
The provision by employers of accommodation and communal services in payment for work should be prohibited or regulated to the extent necessary to protect the interests of the workers (Recommendation No. 115, General Principles, Para. 12(4)).	✓ (Australia, DESE 2020b, sections 4.1–2)	✓ (New Zealand, MBIE 2018, 7)
As a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of decency, hygiene and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards (Recommendation No. 115, General Principles, Para. 19). ³	✓ (Australia, DESE 2020b, sections 4.1–2, 6.4)	✓ (New Zealand, MBIE 2017; New Zealand, Worksafe 2016)
Rent for workers' housing should not be increased to a rate that permits more than a reasonable return on investment (Recommendation No. 115, Suggestions Concerning Methods of Application, Para. 40(2)).	✓ (Australia, DESE 2020b, section 4.1)	✓ (New Zealand, MBIE 2018, 7)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

1 Refers specifically to States' responsibility to provide "protection against exploitation in respect of rents".

2 Consistency with this standard has been assessed taking into account the specifications contained in Recommendation No. 115, Suggestions Concerning Methods of Application, Paras 15–17.

3 Consistency with this standard has been assessed taking into account the specifications contained in Recommendation No. 115, Suggestions Concerning Methods of Application, Paras 7–8.

Australia – Seasonal Worker Programme

SWP employers are required to submit an Accommodation Plan as part of the Application to Recruit. Accommodation must be "safe and secure" and "fit for occupation" and comply with state-level and local government work health and safety legislation (these are issues devolved from the federal level in Australia). The plan must include photographs of all rooms that will be used to accommodate workers and demonstrate the setup of furniture required for living arrangements. The Approved Employer Guidelines indicate that the photos will be used for monitoring visits (Australia, DESE 2020b, section 2.2.2). Detailed guidance is also provided to employers to enable them to meet four "principles" concerning employer-provided accommodation within the SWP:

- i. Renting arrangements and inclusions must be fair and provide good value for money for seasonal workers.
- ii. Monetary breakdown of inclusions of accommodation costs must be transparent.
- iii. Accommodation must be fit for immediate occupation and be in good condition.
- iv. Accommodation must be accessible, safe and secure (Australia, DESE 2020b, section 4.1).

Detailed requirements are also outlined for bedrooms, bathrooms, and leisure, social and telecommunication facilities (Australia, DESE 2020b, section 4.2).

The DESE issues comprehensive guidelines regarding employer-provided accommodation for workers and mandates compliance with relevant Australian legislation. ILO standards indicate that employers providing accommodation to workers is "undesirable". However, the SWP recruits workers for deployment in rural areas, which meets the criteria for exceptions to this standard. The DESE's guidelines for accommodation comply with the relevant ILO instruments. However, there have been multiple reports of SWP (and Pacific Labour Scheme) accommodation conditions that do not meet the guidelines and rental charges that are much higher than prevailing market conditions (Hermant 2020; Bailey 2018). This is an SWP- (and PLS)-specific issue that is separate from the issue that many SWP workers are residing in rural and remote locations where accommodation in general can be limited and therefore expensive. The DESE commented on a draft of this report to request that it be

noted that “not all allegations/reports have been substantiated and the department investigates all allegations thoroughly and takes action swiftly”. As of March 2021, the 15 Pacific Labour Mobility Officers employed by the DESE are assigned the responsibility of undertaking accommodation checks.

In 2020, the DFAT commissioned a private consulting firm to conduct a review of Pacific labour mobility accommodation. The purpose of the review was “to examine the costs and inclusions of accommodation for Pacific Labour Scheme and Seasonal Worker Program workers and to consider what policy and process changes are warranted to improve the value and suitability of accommodation for workers” (Australia, DFAT, n.d.-b). The Government agreed to all the recommendations of the review and commented:

We acknowledge that accommodation issues are an ongoing and serious issue and are important to resolve for the wellbeing of workers and reputation of the programmes. Accommodation issues are complex and, as noted by the Migrant Workers Taskforce, of concern for all temporary migrant workers. We are committed to resolving accommodation issues for Pacific workers, including by working through the Migrant Workers Taskforce on the broader issue (Australia, DFAT, n.d.-b).

Workers are allowed to arrange their own accommodation, though it seems that very few, if any, actually do so (Australia, DESE 2020b, section 4.1.5). Further information on non-compliant accommodation is contained in section 5.4.2 of this report.

New Zealand – Recognised Seasonal Employer scheme

RSE employers must make available suitable accommodation to their workers “at a reasonable cost during the period of the workers’ RSE limited visas” (New Zealand, MBIE 2020a, WH1.5.5(d)). Comprehensive guidelines regarding accommodation standards are established in the Health and Safety at Work Act, 2015, and in written advice to employers issued by the New Zealand Government (New Zealand, Worksafe 2016; New Zealand, MBIE 2017). In some regions (Hawkes Bay, Bay of Plenty, Auckland, Marlborough, Nelson/Tasman, Northland and Otago) residential houses cannot be used for RSE workers, unless the houses are owned by the employer or have been purpose-built for the use of horticulture/viticulture workers (New Zealand, INZ 2019, 4). This restriction was introduced to address the concern that housing for RSE workers was exacerbating residential housing pressures. This restriction may contravene Convention No. 97, Article 6(1)(a)(iii), as it applies a restriction on accommodation of workers from the Pacific that is not equally applied to New Zealand nationals (New Zealand, MBIE 2020a, WH1.10.35). The CEACR has noted that “discrimination based on national extraction means distinctions on the basis of place of birth, ancestry or foreign origin and is not necessarily related to citizenship”.⁴⁵ A specific ruling on whether these provisions constitute prohibited discrimination may be sought from the CEACR.

4.3.2. Social life and welfare

Table 4.13. Summary of RSE and SWP consistency with legal standards related to social life and welfare

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member shall take into account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment (Convention No. 143, Art. 12(e)).	✓ (Australia, DESE 2020b, section 2.2.2)	✓ New Zealand, INZ 2019, 4

⁴⁵ CEACR, [Direct Request – Discrimination \(Employment and Occupation\) Convention, 1958, \(No. 111\) – Eritrea](#), adopted 2010, published 100th Session, International Labour Conferences, 2011.

International legal standards	SWP consistency with standard	RSE consistency with standard
National laws and regulations or the competent authority shall prescribe, after consultation with the representative organizations of employers and workers concerned the provision of adequate welfare facilities at no cost to the worker (Convention No. 184, Art. 19).	✓ Note: No evidence that consultation has taken place. (Australia, DESE 2020b, sections 2.2.2, 3.1; Australia, DESE 2021c, schedule 1, F1(J-K))	✓ Note: No evidence that consultation has taken place. Employers must provide "the opportunity for recreation and religious observance" (New Zealand, INZ 2019, 4).
National laws and regulations or the competent authority shall prescribe, after consultation with the representative organizations of employers and workers concerned the provision of adequate welfare facilities at no cost to the worker (Convention No. 184, Art. 19).	✓ (Australia, DESE 2020b, section 3)	? Employers must provide "the opportunity for recreation and religious observance" (New Zealand, INZ 2019, 4), but no further information is available.
Recommendations and frameworks		
Each country should provide a free service, conducted by a public authority and/or a non-profit organization, to provide migrant workers with accurate information on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants (Recommendation No. 86, Para. 5(1)).	✓ (Australia, DESE 2018, section 7)	✓ (New Zealand and Fiji 2014, schedule 1(1)) ✓ (New Zealand and Kiribati 2011, schedule 1(1.3)) ? Not mentioned in New Zealand and Solomon Islands, schedule 1.
Migrants and the members of their families should be assisted in obtaining access to recreation and welfare facilities, and steps should be taken where necessary to ensure that special facilities are made available during the initial period of settlement in the country of immigration (Recommendation No. 86, Para. 11).	✓ (Australia, DESE 2020b, section 2.2.2)	✓ (New Zealand, INZ 2019, 4)
Steps should be taken to ensure the availability of consumer goods, particularly essential products and foodstuffs, to migrant workers and their families at reasonable prices and in sufficient quantities (Recommendation No. 100, Para. 42(1)).	✓ (Australia, DESE 2020b, section 2.2.2)	? Neither New Zealand, INZ 2019 or New Zealand, MBIE 2018 contain specific instructions to employers to provide loans for the initial settlement period when required.

International legal standards	SWP consistency with standard	RSE consistency with standard
In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin (Recommendation No. 151, Para. 7; ICRMW, Art. 31).	✓ Compliance achieved in 2021 under the Pacific Labour Mobility Safeguarding the Welfare of Workers package announced in October 2020. (Australia, DESE, n.d.-b)	✓ Employers are to support workers to access recreation and religious observance, but cultural ties and ethnic identity are not mentioned. (New Zealand, INZ 2019, 4).
Social services should be made available that provide migrant workers every assistance in adapting to the economic, social and cultural environment of the country of employment; help migrant workers to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation (Recommendation No. 151, Para. 24(a-b)).	✓ (Australia, DESE 2020b, section 2.2.2)	✓ (New Zealand, INZ 2019, 4)
Social services should be made available that assist authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers in identifying their needs and in adapting thereto; give the competent authorities information and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers and provide information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers (Recommendation No. 151, Para. 24(c-e)).	✓ (Australia, DESE, n.d.-b)	✓ (New Zealand, INZ 2017)
The social services referred to may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organizations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families. Full use should be made of services which are or can be provided by authorities, organizations and bodies serving the nationals of the country of employment, including employers' and workers' organizations (Recommendation No. 151, Para. 25).	✓ Compliant as of March 2021 (Australia, DESE, n.d.-b)	✓ See information provided by MFAT below.
Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services (Recommendation No. 151, Para. 26).	✓ (Australia, DESE 2020b, section 3.3) Information on the assessment of Welfare and Wellbeing Plans needed to assess compliance (Australia, DESE 2020b, section 3)	✓ The role of an RSE team leader or pastoral care worker may fulfil this function, though these are not legally required of RSE employers.

International legal standards	SWP consistency with standard	RSE consistency with standard
Each Member should promote cooperation and coordination between different social services on its territory and, as appropriate, between these services and corresponding services in other countries, without, however, this cooperation and coordination relieving the States of their responsibilities in this field (Recommendation No. 151, Para. 27).	X None	X None
Arrangements should be made to ensure the material, intellectual and moral welfare of migrant workers, including wherever practicable, the maintenance in immigration areas of welfare officers who are familiar with the languages and customs of the migrant workers to facilitate the adaptation of these workers and their families to their new way of living; and facilities to enable migrant workers to satisfy their intellectual and religious aspirations (Recommendation No. 100, Para. 49).	✓ Compliant following the introduction of Pacific Labour Mobility Officers (PLMOs).	✓ The role of an RSE team leader or pastoral care worker may fulfil this function, though these are not legally required of RSE employers.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The Application to Recruit requires employers to submit a Welfare and Wellbeing Plan that outlines the support they will provide to SWP workers. As part of the plan, employers must appoint a Welfare and Wellbeing Support Person from their existing staff or an external organization within 300 km of the worksite. The employer is required to facilitate and keep records of fortnightly face-to-face, inperson discussions between the Welfare and Wellbeing Support Persons and the SWP workers (Australia, DESE 2021c, section 12.1–2, schedule 1(F1)(k); Australia, DESE, 2020c, section 3). Employers are also responsible for assisting with “special needs” of workers, such as explaining how Australia’s banking and tax systems work; ensuring that SWP workers understand food requirements and the importance of proper nutrition and hydration; and making efforts to help integrate workers with the wider local community (Australia, DESE 2020b, section 3.1; Australia, DESE 2021c, schedule 1(F1) (b, g)).

Recommendation No. 151 (Para. 25) indicates that social services for migrants should be provided by public authorities, by approved non-profit-making organizations or bodies, or by a combination of both. Until 2021, SWP welfare and wellbeing services were provided by the Approved Employers or an employer subcontractor. In March 2021, the DESE awarded the Salvation Army a AUD1 million contract to implement the Community Connections measures announced as part of the Pacific Labour Mobility Safeguarding the Welfare of Workers package in the Australian Government’s 2020–21 Budget. Under the contract, the Salvation Army will “provide additional and strengthened welfare support to workers, better connect them with their local communities and work to advance cultural understanding with the wider population” (Australia, DESE 2021b). Information on when these activities will commence and what they will involve was not available as of June 2021. The 2020 Australian Budget also included funding for new Pacific Labour Mobility Officers to assist in providing welfare to workers. These officers were deployed by the DESE in March 2021 (Australia, DESE, n.d.-b).

New Zealand – Recognised Seasonal Employer scheme

The *RSE Pastoral Care Guide* indicates that employers are responsible for:

- ▶ transportation to and from the port of arrival and departure;
- ▶ an induction programme;
- ▶ suitable accommodation;
- ▶ transportation to and from worksite(s);

- ▶ access to personal banking;
- ▶ access to lawful and reputable remittance services;
- ▶ access to acceptable medical insurance;
- ▶ provision of personal protective equipment;
- ▶ provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water);
- ▶ necessary language translation (for example, for health and safety purposes); and
- ▶ opportunities for recreation and religious observance.

The requirements in each category are outlined in detail in the Guide, which further states, “Pastoral care means that as an employer you address the needs of the whole person, their safety and their wellbeing, and don’t limit your involvement to what happens between nine and five. Just giving someone a job is not enough. Pastoral care doesn’t happen by accident. It takes time and resources and most importantly a determination to make sure your RSE workers feel welcome and well settled” (New Zealand, INZ 2017). The MFAT indicates that while the guide is not legislatively enforceable by the Labour Inspectorate, any incidences whereby an employer is not adhering to the Guide will be reported to the RSE unit and may result in appropriate action being taken, such as an accommodation site not being approved, the loss of RSE status, or the decline of an Agreement to Recruit.⁴⁶ “Pastoral care” workers are often employed to provide RSE workers with assistance in accessing services and community groups, though this is not a legal requirement (New Zealand, INZ 2017; 2019b). The MFAT also indicates that “local communities, diaspora communities, churches, NGOs, and trade unions are engaged in various ways by RSE employers to care for and connect workers. New Zealand has provided some funding to community/non government/industry bodies to provide support to workers, often in the form of recreational activities and training”.⁴⁷

4.3.3. Access to healthcare

Table 4.14. Summary of RSE and SWP consistency with legal standards related to access to healthcare

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
The States Parties to the present Covenant (ICESCR) recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the creation of conditions which would assure to all medical service and medical attention in the event of sickness (ICESCR, Art. 12).	✓ Compulsory health insurance provides in-principle access to in- and out-patient services. (Australia, DESE 2021c, schedule 1(F1)(e–f)).	✓ Compulsory health insurance provides in-principle access to in- and out-patient services. (New Zealand, MBIE 2018, 4)

⁴⁶ Correspondence with MFAT, July 2021.

⁴⁷ Correspondence with MFAT, July 2021.

International legal standards	SWP consistency with standard	RSE consistency with standard
Recommendations and frameworks		
The steps to be taken for migrant workers should include appropriate arrangements, without discrimination, for medical care for workers. These arrangements should include medical supervision in accordance with local possibilities by periodical visits in the course of employment, and in case of sickness; and first aid, free medical treatment and hospitalization facilities in accordance with standards to be prescribed by the competent authority (Recommendation No. 100, Paras 45–46).	X Free medical treatment is not provided. (Australia, DESE 2021c, schedule 1(F1)(e–f)).	X Free medical treatment is not provided except under COVID-19-related exceptions. (New Zealand, MBIE 2018, 4)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

SWP workers are not entitled to access Australia’s universal public health system (Medicare), which provides medical services by doctors, specialists and other health professionals, as well as hospital treatment and prescription medicines for free or at a low cost. SWP workers are liable for all healthcare costs incurred while in Australia and it is a requirement of Visa Subclass 403 that the holder maintain adequate health insurance (Australia, DHA, n.d.-c). The Deed of Agreement signed between Approved Employers and the Australian Government indicates that workers must have health insurance that covers both in- and out-patient care (Australia, DESE 2021c, schedule 1(F1)(f)). The DHA stipulates that the cover must not include waiting periods for anything other than:

- ▶ 12 months for pregnancy-related conditions;
- ▶ 12 months for pre-existing conditions applied in a way that is consistent with section 75-15 of the Private Health Insurance Act, 2007; and
- ▶ 2 months for psychiatric, rehabilitation and palliative care, whether or not the condition is pre-existing.

Co-payments, excess and patient contributions are permitted (Australia, DHA, n.d.-c). SWP employers are required to assist workers to access medical and health services and make insurance claims (Australia, DESE 2021c, schedule 1(F1)(e–f)). Employers must also provide a “reasonable level of assistance” under terms that are “fair, transparent, and agreed to” by workers who are unable to afford medical treatment (Australia, DESE 2021c, schedule 1(D1)(i)).

The cheapest policy available to SWP workers in mid-2020 cost about AUD70 per month (with an AUD500 excess) and does not cover dental treatment or visits to a general practitioner (GP). Cover that includes GP visits costs about AUD100 per month. A visit to a GP that is paid for by the patient costs a minimum of AUD38.50 for a consultation lasting less than 20 minutes. Most private health insurance policies in Australia have waiting periods attached to claims. The Department of Home Affairs enables Visa Subclass 302 holders to purchase insurance with a waiting period of 12 months applied to pre-existing conditions (Australia, DHA, n.d.-c). Unless a worker is willing to continue paying for the policy once they have returned to their country of origin in anticipation of returning to Australia the following season, this means that no SWP workers will have pre-existing conditions covered while in Australia.

In December 2020, the DFAT finalized a tender to select a preferred insurer – NIB – for PLS and SWP workers. NIB has created a version of their visitor policies for these workers and will allow Approved Employers to purchase policies online on behalf of new workers. The basic policy will cost AUD80.17/month (AUD19.30/week) for SWP workers. This price will be fixed until 30 June 2024. A more expensive policy will contain dental and physiotherapy benefits. Twelve-month waiting periods will remain for pre-existing conditions and pregnancies. This means that SWP workers will not be able to access these benefits, since they return home within 12 months of arriving in Australia. The DFAT commented that “NIB has committed to working with PLF [the Pacific Labour Facility] to take cases on an individual basis

where there may be extenuating circumstances” and is preparing educational and product material that will be translated into country of origin languages.⁴⁸

New Zealand – Recognised Seasonal Employer scheme

The insurance required for RSE workers is more comprehensive than under the SWP and costs about NZD78 per month. Workers pay the cost of insurance, and it must cover the full cost of:

- ▶ all medical expenses, including diagnosis and treatment, prescribed medicines, ambulance, hospital and post-hospital discharge care/home nursing care;
- ▶ emergency dental care, including the provision of antibiotics and treatment for the relief of sudden and acute pain;
- ▶ evacuation/return home in the event of serious illness or disability; and
- ▶ the return of remains to one’s country of origin in the event of death.

Insurance can exclude coverage related to:

- ▶ suicide or attempted suicide;
- ▶ sexually transmitted disease;
- ▶ any situation or action when under the influence of alcohol or non-prescribed drugs;
- ▶ HIV and/or HIV-related illness (including AIDS);
- ▶ childbirth or pregnancy unless they arise from medical complications that occur before the end of the 24th week of pregnancy; or
- ▶ pre-existing conditions (a surcharge is permitted for this cover) (New Zealand, INZ, n.d.-k).

4.4. Equality of treatment and non-discrimination

In the jurisprudence of the UN human rights systems, the principle of equality of opportunity and treatment (which mirrors the principle of non-discrimination) does not impinge upon State sovereignty with regard to immigration policy provided that these policies do not discriminate against any particular nationality (ICERD, Art. 1(3)). Article 1(2) of the ICERD reads, "This Convention shall not apply to the distinctions, exclusions, restrictions of preference made by a State Party to this Convention between citizens and non-citizens", and the Committee on the Elimination of Racial Discrimination (CERD Committee) has stated that this clause:

must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in the Universal Declaration of Human Rights the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (CERD Committee 2005, para. 2).

The CERD Committee (2005, para. 35) has also stated that “while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including freedom of assembly and association, once an employment relationship has been initiated until it is terminated”. In sum, distinctions between citizens and non-citizens are permitted only when: (a) lawfully imposed under the very narrow exceptions stated in international human rights treaties; (b) these distinctions serve a legitimate State objective; and (c) the distinctions are proportional to the achievement of that objective (OHCHR 2006). It is not clear that the distinctions being drawn in the case of workers in the RSE and SWP fall into these exceptions.

In ILO jurisprudence, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), defines discrimination as including:

1. (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; ...
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent

⁴⁸ DFAT, validation workshop, 2021.

requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Both international human rights law and international labour standards indicate that the exclusion of SWP and RSE workers from equality of opportunity and treatment in areas of employment and occupation in national laws and policies can constitute discrimination if it is on the basis of nationality (discrimination on the basis of citizenship is permitted). Further, the CEACR has stated that “[t]he Committee considers that where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on the grounds of the Convention” (ILO 2012, para. 779).

Australia – Seasonal Worker Programme

Australia has not ratified the Migration for Employment Convention (Revised), 1949 (No. 97), though by ratifying Convention No. 111, Australia is required to take note of Recommendation No. 111, which states: “With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment” (Para. 8).

Recognised Seasonal Employer scheme

New Zealand has ratified both Convention No. 97 and Convention No. 111.

4.4.1. Membership of trade unions

Table 4.15. Summary of RSE and SWP consistency with legal standards related to membership of trade unions

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
All migrant workers have the right to freedom of association and equality of treatment and non-discrimination with respect to membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings (Convention No. 87, Art. 2; Convention No. 97, Art. 6(1)(a)(ii); Convention No. 143, Art. 10; Recommendation No. 143, Paras 6–17; Recommendation No. 151, Para. 2; Convention No. 98, Arts 1–4; Recommendation No. 100, Para. 41; Convention No. 135, Arts 1–6; Universal Declaration of Human Rights, Art. 23(4); ICRMW, Arts 26, 40; ICCPR, Art. 22; ICESCR, Art. 8).	✓ (Australia, DESE 2021c, schedule 1(F)(1)(b); Australia, DESE 2018, section 6)	✓ (New Zealand Bill of Rights Act, 1990)
Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (Convention No. 98, Art. 1).	✓ (Australia, DESE 2021c, schedule 1(F)(1)(b); Australia, DESE 2018, section 6)	✓ (New Zealand Bill of Rights Act, 1990)

International legal standards	SWP consistency with standard	RSE consistency with standard
Recommendations and frameworks		
Each Member shall ensure equality of opportunity and treatment with nationals with respect to membership of trade unions (Recommendation No. 151, Para. 2(g)).	✓ (Australia, DESE 2021c, schedule 1(F)(1)(b); Australia, DESE 2018, section 6)	✓ (New Zealand Bill of Rights Act, 1990)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The right to freedom of association is guaranteed by the SWP (Australia, DESE 2021c, schedule 1(F1)(b)). The Implementation Arrangements associated with the MOUs between Australia and participating countries requires Australia to ensure that employers make seasonal workers aware that they can join a trade union (Australia, DESE 2018, section 6). This is fulfilled in the Deed of Agreement signed with SWP employers that protects SWP workers' "lawful ability to associate and move freely and unhindered outside of working hours" and requires employers to "invite and make reasonable endeavours to accommodate" the attendance at the arrival briefing of a representative from the relevant trade union (Australia, DESE 2021c, schedule 1(J3)). Information on trade unions is also contained in the *Pre-Departure Guidebook* (Australia, DESE 2019, section 6). Freedom of association is also protected through the Fair Work Act 2009 (Australia, FWO, n.d.-g).

New Zealand – Recognised Seasonal Employer scheme

The New Zealand Bill of Rights Act, 1990, protects freedom of association for all people in New Zealand regardless of immigration status (section 17). RSE programme documents do not expressly protect workers against anti-union activity, and further information about trade union operations in New Zealand is required to determine whether this is necessary.

4.4.2. Taxation

Table 4.16. Summary of RSE and SWP consistency with legal standards related to taxation

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Each Member undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of employment taxes, dues or contributions payable in respect of the person employed (Convention No. 97, Art. 6(1)(c)).	X (Australia, DESE, n.d.)	✓ (New Zealand, MBIE 2018, 6; New Zealand, Inland Revenue Department, n.d.)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

SWP workers are classified as non-residents for Australian tax purposes. In 2012, the Australian Government introduced a special arrangement for the SWP whereby workers are taxed at a flat rate of 15 per cent on earnings (Australia, DESE, n.d.). This rate is different to the tax rate applied to the income of Australian residents.

Australia has a compulsory retirement savings scheme called “superannuation”, which is paid by employers directly into a superannuation fund. Superannuation contributions are paid on top of wages at a minimum of 9.5 per cent of earnings (Australia, DESE, n.d.-a).⁴⁹ The tax paid on superannuation contributions for SWP workers is 15 per cent (the same rate applied to Australian residents). Australian residents ordinarily cannot access the money in their superannuation accounts until they are 65 years old (Australia, ATO, n.d.-b).⁵⁰ SWP workers are able to withdraw their superannuation as soon as they return to their country of origin. Australians pay no additional tax when they withdraw funds, whereas SWP workers are charged an additional 35 per cent tax (Australia, DESE, n.d.).

Income tax and tax on superannuation contributions for SWP workers are deducted by employers, and workers are not required to fill in an Australian tax return. SWP workers must claim their superannuation from the Australian Tax Office (Australia, ATO, n.d.-c). Employers are required to provide workers with information on how to claim their superannuation before their return home (Australia, DESE 2021c, schedule 1(L1)). Labour sending units (LSUs) in countries of origin are also required to provide workers with information on how to access superannuation during the return briefings (Australia, DESE 2021c, schedule 1(K2)). It has been widely reported that large numbers of SWP workers have been unable to claim their superannuation (Australia, Parliament of Australia 2016, paras 9.30–9.49). LSUs also report difficulties in attempting to assist workers with this process.⁵¹

New Zealand – Recognised Seasonal Employer scheme

A Pay as You Earn tax is compulsory and deducted by RSE employers (New Zealand, MBIE 2018, 6). RSE workers are taxed at 10.5 per cent, which is the tax rate for citizens earning up to \$14,000. However, RSE tax rates are set separately to those for citizen workers and workers are not required to file tax returns (New Zealand, MBIE 2018, 6; New Zealand, Inland Revenue Department, n.d.).

49 The superannuation guarantee was increased to 10 per cent on 1 July 2021. However, the rate of 9.5 per cent remains in the report as this was current at the time of the survey and therefore aligns with the perception of migrant workers.

50 Note that Australians are not permitted to make lump sum withdrawals except under specific circumstances.

51 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

4.4.3. Social security

Table 4.17. Summary of RSE and SWP consistency with legal standards related to social security

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
<p>Each Member undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of social security (including legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:</p> <p>(i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;</p> <p>(ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension (Convention No. 97, Art. 6; Convention No. 102, Art. 68; Convention No. 118, Art. 3; Convention No. 143, Art. 10).¹</p>	<p>Ø</p> <p>SWP workers are excluded from accessing social security in Australia, but this may fall under the exception in ILO Convention No. 102, Art. 68(2). See discussion below.</p> <p>(Australia, Department of Social Services, n.d.)</p>	<p>Ø</p> <p>RSE workers are excluded from accessing social security in New Zealand. See discussion below.</p> <p>(New Zealand, Ministry of Social Development n.d.-a)</p>
<p>Migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals regarding social security in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.</p> <p>Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances (ICRMW, Art. 27).</p> <p>Migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:</p> <p>(a) Protection against dismissal;</p> <p>(b) Unemployment benefit</p> <p>(c) Access to public work schemes intended to combat unemployment;</p> <p>(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity (ICRMW, Art. 54).</p>	<p>Ø</p> <p>No provision is in place to reimburse taxation of SWP workers; though amounts paid in tax are not directly linked to contributory benefits schemes.</p>	<p>Ø</p> <p>No provision is in place to reimburse taxation of RSE workers; though amounts paid in tax are not directly linked to contributory benefits schemes.</p>

International legal standards	SWP consistency with standard	RSE consistency with standard
In accordance with national law and practice, workers in agriculture shall be covered by an insurance or social security scheme against fatal and non-fatal occupational injuries and diseases, as well as against invalidity and other work-related health risks, providing coverage at least equivalent to that enjoyed by workers in other sectors. Such schemes may either be part of a national scheme or take any other appropriate form consistent with national law and practice (Convention No. 184, Art. 21).	✓ (Australia, Safe Work Australia, 2019)	✓ (New Zealand, Accident Compensation Corporation, n.d.)
States Parties recognize the right of everyone to social security, including social insurance (ICESCR, Art. 9 (CECSR General Comment No. 19 on the Right to Social Security specifies that seasonal workers should have access to unemployment benefits); ICERD, AI. 5(e)(iv); CEDAW, AI 11(1) (e), 14(2)(c); CRPD, Art. 28).	X SWP workers are excluded from accessing social security in Australia. See discussion below.	X RSE workers are excluded from accessing social security in New Zealand. See discussion below.
States should grant to the nationals of other countries, who suffer personal injury due to industrial accidents happening in its territory, the same treatment in respect of workmen's compensation as it grants to its own nationals. This equality of treatment shall be guaranteed to foreign workers and their dependants without any condition as to residence (Convention No. 19, Art. 1).	✓ (Safe Work Australia, 2019)	✓ (New Zealand, Accident Compensation Corporation, n.d.)
Recommendations and frameworks		
With a view to making social policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants (Recommendation No. 151, Paras 10–11).	X None	X None
Recognizing the overall and primary responsibility of the State in giving effect to the Recommendation on social protection floors, Members should apply this by applying the principles of universality of protection, based on social solidarity; non-discrimination; solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interests among those who finance and benefit from social security schemes; and consideration of diversity of methods and approaches, including of financing mechanisms and delivery systems. Members should provide the basic social security guarantees referred to in this Recommendation to at least all residents and children, as defined in national laws and regulations (Recommendation No. 202, Paras 3(a, d, h–i), 6).	X None	X None

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

¹ Note that Convention No. 118 regarding equality of treatment with respect to social security and Convention No. 157 regarding maintenance of social security rights are not mentioned here as none of the countries involved in the SWP or RSE have ratified these Conventions and these Conventions concern reciprocal arrangements between ratifying parties.

Australia – Seasonal Worker Programme

The bulk of Australian social security provisions are based on a defined benefits scheme accessible only to citizens and permanent residents (Australia, Department of Social Services, n.d.). SWP workers are covered by laws at the state/territory level concerning workers compensation. These laws require employers to purchase compulsory insurance that provides protection to workers who suffer a work-related injury or contract a work-related disease. Claims can be made for medical treatment and rehabilitation expenses, weekly payments, psychological injury, permanent impairment, injuries incurred during work breaks or journeys, and hearing impairment (Australia, Safe Work Australia 2019).

The right to social security is well established in human rights law, including labour standards. Nonetheless, by excluding SWP workers from the entire social security system, Australia fails to meet standards articulated in the ILO Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151), and the ILO Social Protection Floors Recommendation, 2012 (No. 202). These Recommendations are particularly relevant to the SWP, since the programme is designated as part of Australia's official development assistance programme.

The exclusion of Pacific workers from key forms of social protection, and in particular from unemployment benefits had clear implications during the COVID-19 pandemic.

It is relevant to both Australia and New Zealand that in 2021 the International Labour Conference adopted the Resolution concerning the second recurrent discussion on social protection (social security), which states:

In spite of progress made during the last decade, the pandemic and its socio-economic consequences and its effect on business have revealed significant social protection coverage and financing gaps. Considerable additional efforts are urgently needed to extend coverage and guarantee universal access to comprehensive, adequate and sustainable social protection for all, with a particular focus on those unprotected and in vulnerable situations. Certain groups, such as women, youth, persons with disabilities, migrant workers, domestic workers, agricultural workers, platform workers, rural populations, persons in precarious situations, persons in low-paid work, and persons in the informal economy, are often disproportionately affected by lack of coverage and/or inadequate levels of protection, which could be problematic for universal coverage (ILO 2021, para. 8).

The Equality of Treatment (Social Security) Convention, 1962 (No.118), provides for the right to equality of treatment with regard to all nine branches of social security.⁵² For each of the nine branches it accepts, a State party to the Convention undertakes to grant within its territory to nationals of any other State that has ratified the Convention equality of treatment with its own nationals. The Convention provides some flexibility by permitting the exclusion of non-nationals in cases where benefits or parts of benefits are payable wholly out of public funds (OSCE, IOM and ILO 2006).

New Zealand – Recognised Seasonal Employer scheme

New Zealand's social security system is only available to New Zealand citizens and permanent residents (New Zealand, Ministry of Social Development, n.d.-a). As part of this system, the New Zealand Government offers Seasonal Work Assistance to residents who:

- ▶ stopped getting a benefit within the last 26 weeks to go into seasonal horticultural work;
- ▶ have lost wages because they could not work due to bad weather;
- ▶ are a New Zealand citizen or permanent resident (New Zealand, Ministry of Social Development, n.d.-b).

New Zealand's Accident Compensation Corporation operates a no-fault scheme that covers everyone injured in an accident in New Zealand, regardless of immigration status (New Zealand, Accident Compensation Corporation, n.d.).

See the previous section concerning the SWP for the extract from the 2021 Resolution concerning the second recurrent discussion on social protection (social security) adopted by the International Labour Conference.

⁵² The nine branches of social security are protection in the areas of sickness, medical care, invalidity, work injury, family, unemployment, old-age, survivors and maternity

4.4.4. Access to justice

Table 4.18. Summary of RSE and SWP consistency with legal standards related to access to justice

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
<p>Each Member undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of legal proceedings relating to employment (Convention No. 97, Art. 6(1)(d); Recommendation No. 151, Para. 34).</p> <p>[All] Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals (ICRMW, Art. 18; ICCPR, Art. 26).</p>	<p>✓</p> <p>(Fair Work Act, 2009)</p>	<p>✓</p> <p>(Employment Relations Act, 2000)</p>
Recommendations and frameworks		
<p>A worker to whom minimum rates are applicable and who, since they became applicable, has been paid wages at less than these rates, should be entitled to recover, by judicial or other means authorized by law, the amount by which he has been underpaid, subject to such limitation of time as may be determined by law or regulation (Recommendation No. 100, Para. 35).</p>	<p>✓</p> <p>(Fair Work Act, 2009)</p>	<p>✓</p> <p>(Employment Relations Act, 2000)</p>
<p>A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon. If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment (Recommendation No. 151, Para. 32).</p>	<p>Partial consistency</p> <p>Under the Fair Work Act, 2009, workers can claim unfair dismissal under the national regime after 6 months of employment, and must do so within 21 days. If their claim is upheld, reinstatement and back pay are possible. The Fair Work Commission can rule in some circumstances – in others, state rules apply. The same rules apply to migrant workers as other employees. Different rules apply for businesses with fewer than 15 employees.</p> <p>(Australia, FWO, n.d.-f)</p>	<p>Partial consistency</p> <p>(New Zealand, INZ, n.d.-j)</p>

International legal standards	SWP consistency with standard	RSE consistency with standard
Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred (ILO General Principles and Operational Guidelines for Fair Recruitment, part 1(III), para. 13).	✓ (Fair Work Act, 2009)	✓ (Employment Relations Act, 2000)
States should protect the rights of all migrant workers by providing for effective remedies for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation (ILO Multilateral Framework on Labour Migration, guideline 10.5)	✓ Grievance procedures exist under the Fair Work Act, 2009; however, there are questions about the accessibility and effectiveness of these channels for SWP workers (see discussion below).	✓ Grievance procedures exist; however, there are questions about the accessibility and effectiveness of these channels for RSE workers (see discussion below).

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

SWP workers have the same entitlements to justice as national workers under the Fair Work Act, 2009. Workers can also ask the Fair Work Ombudsman (FWO) for assistance. Whether assistance is offered is determined based on:

- ▶ the seriousness of the workplace issue;
- ▶ the circumstances of the employer and employee; and
- ▶ practical issues involved in resolving the matter.

Assistance from the FWO can involve the provision of information and advice regarding workplace rights and responsibilities, or arranging dispute resolution processes. Fair Work Inspectors have powers to investigate potential breaches of Australia's workplace laws and a summary of how this has been applied to the SWP is included in section 4.1.5 above.

Workers are also able to recover amounts of money less than AUD20,000 by pursuing proceedings in small claims court. Workers can represent themselves in small claims court and the proceedings are faster and more informal than other court proceedings (Australia, FWO, n.d.-c).

The SWP includes measures to address the relative vulnerability of SWP workers in Australia. These include the provision of information on rights and entitlements during pre-departure and arrival briefings, the availability of a dedicated telephone information line, and access to a welfare and wellbeing support person. Some of these briefings are conducted by the FWO's Fair Work Inspectors, which serves to introduce SWP workers to the appropriate body for investigating and auditing allegations.

However, there is no mention in any of the SWP programme documents of a mechanism to support workers to remain in Australia to complete legal or conciliation proceedings, or to ensure that returned workers are able to participate in such proceedings. Most SWP workers would have claims of less than AUD20,000 against employers and are unlikely to be able to obtain the assistance needed to pursue a claim in small claims court. They may also be unwilling to do so, as it could jeopardize their prospects of SWP employment in the future.

The FWO allows members of the public to report non-compliance anonymously. As an SWP partner agency, the FWO has received funding for education and compliance activities in support of the SWP. The FWO has a dedicated [Seasonal Worker Programme webpage](#) containing links to relevant resources for SWP workers, including in-language versions of the Fair Work Information Statement and [in-language video storyboards](#) covering information about basic workplace rights and entitlements in Australian workplaces.

Employers are required to give every new employee a copy of the [Fair Work Information Statement](#) before, or as soon as possible after, they start their new job in Australia. The Fair Work Information Statement:

- ▶ has information on the National Employment Standards – these are the 11 minimum entitlements that have to be provided to all employees; and
- ▶ is available in 38 languages, including nine Pacific languages.

Additional in-language resource offerings for seasonal workers, include:

- ▶ in-language pre-departure postcards in nine Pacific and Timor-Leste languages that introduce the FWO and how they can assist SWP workers before departure to Australia;
- ▶ in-language on-arrival animated videos that introduce seasonal workers to the FWO and provide a high-level overview of key workplace relations concepts; and
- ▶ in-language on-arrival factsheets have been prepared that will provide seasonal workers with key information about their workplace rights and entitlements in Australia. The FWO advised in March 2022 that these would be available online shortly.⁵³

New Zealand – Recognised Seasonal Employer scheme

RSE workers are entitled to the same rights and entitlements as New Zealand nationals under the [Employment Relations Act, 2000](#). The Facilitative Arrangements of the IAUs do not specify that information on worker rights and entitlements should be provided during pre-departure briefings or during the employer induction upon arrival (New Zealand and Fiji 2014, schedule 1(3); New Zealand and Kiribati 2011, schedule 1(3); New Zealand and Solomon Islands, schedule 1(3); New Zealand, INZ 2019, 4). However, New Zealand Immigration includes a section on worker exploitation on their website, which states: “If you report exploitation, you may be able to stay in New Zealand while we investigate and prosecute your employer. We may let you complete your visit. This can happen even if you have been working without the right visa” (New Zealand, INZ, n.d.-j). New Zealand has also introduced a new Migrant Exploitation Protection Visa, though this is not available to RSE workers (New Zealand, INZ, n.d.-j).

⁵³ Correspondence with the FWO, March 2022.

4.4.5. Monitoring and enforcement

Table 4.19. Summary of RSE and SWP consistency with legal standards related to monitoring and enforcement

International legal standards	SWP consistency with standard	RSE consistency with standard
Convention		
Each Member shall maintain a system of labour inspection in industrial workplaces. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors (Convention No. 81, Arts 1–2; Convention No. 129, Arts 1–2).	✓ (Fair Work Act, 2009)	✓ (Employment Relations Act, 2000)
Recommendations and frameworks		
Each Member should ensure the activities concerning the application of the principles of equality of opportunity and treatment are placed under the control of a public authority and promote its observance in all other activities by methods appropriate to national conditions and practice (Recommendation No. 151, Para. 3).	✓ (Fair Work Act, 2009)	✓ (Employment Relations Act, 2000)
Appropriate measures should be taken, with the collaboration of employers' and workers' organizations and other bodies concerned, with a view to fostering public understanding and acceptance of the above-mentioned principles; and examining complaints that these principles are not being observed and securing the correction, by conciliation of other appropriate means, of any practices regarded as in conflict therewith (Recommendation No. 151, Para. 4(a–b)).	✓ (Fair Work Act, 2009)	✓ (Employment Relations Act, 2000)
In countries where the number of migrants for employment is sufficiently large, the conditions of employment of such workers should be specially supervised, such supervision being undertaken according to circumstances either by a special inspection service or by labour inspectors or other officials specializing in this work (Recommendation No 86, Para. 17).	✓ (Australia, DESE, n.d.-b)	✓ (New Zealand, MBIE, n.d.-c)
Each Member should organize and encourage the organization, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, of periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers (Recommendation No. 151, Para. 28).	X The SWP Advisory Group does not have worker or LSU involvement.	X There do not appear to be mechanisms for consultation with workers and LSUs regarding the operation of the scheme.

International legal standards	SWP consistency with standard	RSE consistency with standard
Governments should take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred (ILO General Principles and Operational Guidelines for Fair Recruitment, part 1(III), para. 8).	Partially consistent Steps have been taken; however, as outlined in section 4.2.2 above, workers are not fully protected against blacklisting. The impact of measures introduced in 2020 will need to be assessed in future.	Partially consistent Steps have been taken; however, as outlined in section 4.2.2 above, workers are not fully protected against blacklisting. The impact of measures introduced in 2020 will need to be assessed in future.
The rights of all migrant workers should be protected by the effective application and enforcement of national laws and regulations in accordance with international labour standards and applicable regional instruments including by providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation (ILO Multilateral Framework on Labour Migration, principle 10).	Partially consistent Note: Australia meets other aspects of this principle in relation to migrant workers; however, this report demonstrates flaws with enforcement and workers accessing remedies.	Partially consistent Note: New Zealand meets other aspects of this principle in relation to migrant workers; however, this report demonstrates flaws with enforcement and workers accessing remedies.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The Australian Government and participating countries are jointly responsible for monitoring the SWP and are required to act promptly to investigate allegations of exploitation or misconduct by employers, misconduct by workers, and breaches of mutually determined recruitment policies, including allegations of fraud or corrupt recruitment practices (Australia, DESE 2018, section 8).

The Australian Government is also responsible for establishing a monitoring and reporting programme to ensure that seasonal workers are employed in accordance with SWP requirements and Australia's fair work, occupational safety and health, immigration, tax, and workers' compensation laws (Australia, DESE 2018, section 8).

This monitoring programme is called the "SWP Assurance Framework" and is implemented in the first instance through desk review of documentation submitted by employers (Australia, DESE 2020b, section 6). The DESE also acts in response to information received through the SWP Information Line (Australia, DESE 2020b, section 6.3). Employers are required to provide the DESE with access to the workplace to ensure labour standards are being applied and that all aspects of the SWP programme implementation adhere to the approved Recruitment Plan (Australia, DESE 2021c, section 16; Australia, DESE 2020b, section 6.4). The DESE is empowered to take a wide range of actions to limit or alter employer and worker participation in the SWP, including terminating any aspect of an agreement with an employer (Australia, DESE 2021c, section 24). SWP worksites are also within the jurisdiction of the FWO as described above.

The FWO's Fair Work Inspectors investigate and proactively audit the SWP's operation. They independently determine how to respond to allegations, and workers are not required to attempt to resolve the matter themselves before this happens. In 2019–20, the FWO's investigations of SWP employers netted AUD127,285 for 248 seasonal workers from AUD123 million recovered overall in that financial year (Australia, Senate 2021c).

The Department of Home Affairs (DHA) has established an Assurance Protocol with the FWO, which offers migrant workers who report problems in the workplace an assurance that their visa will not be cancelled. As the FWO puts it: “Visa holders can seek help without fear of visa cancellation, even if they’ve breached their work-related visa conditions” (Australia, FWO, n.d.-a). The Assurance Protocol is accessible to those who have asked the FWO for help, as long as there is no other reason to cancel their visa – national security, character, health and fraud reasons are given as examples by the FWO – and the individual commits to following visa conditions in future. The protection offered by the Assurance Protocol arises from an Inter-Agency Agreement between the FWO and DHA. It should be noted that the decision not to cancel a visa is a policy decision made at the sole discretion of DHA. It is not a legally binding requirement of the Fair Work Act that visa holders who report problems in a workplace are protected from visa cancellation in all circumstances.

In the 2020 Budget, the Australian Government announced AUD9 million in additional measures to monitor the welfare of Pacific and Timorese workers in Australia. This will fund Pacific Labour Mobility (PLM) Officers based in states and territories to undertake additional welfare, monitoring, compliance and accommodation checks and also provide funding for non-profit organizations to enhance efforts to connect Pacific workers with local community groups (Australia, DESE, n.d.-b).

The Australian Government is working with state and territory governments to pursue a national approach to labour hire regulation, including through harmonization of existing state and territory labour hire schemes. A national labour hire registration scheme was recommended by the Migrant Workers’ Taskforce.⁵⁴

New Zealand – Recognised Seasonal Employer scheme

The MBIE’s Labour Inspectorate has a critical role in enforcing and monitoring compliance in respect of the RSE scheme. The Labour Inspectorate has a team of employees specifically dedicated to the RSE scheme and undertakes an audit role within the scheme. The Labour Inspectorate is the regulator of the Wages Protection Act, 1983, and the Holidays Act, 2003, in New Zealand, and works to ensure that statutory minimum employment standards are complied with. It does so by identifying and investigating breaches and taking enforcement actions, as well as by working with industry and sector leadership, including RSE employers, to strengthen the systems that underpin employment standards compliance. Labour Inspectors also review the accommodation provided to house RSE workers to ensure it meets the pastoral care guidelines as outlined in the Immigration Instructions.

In July 2020, the New Zealand Government announced an NZD50 million investment over four years to reduce the risk of temporary migrant worker exploitation in New Zealand, remove barriers to reporting exploitation, and improve response systems for helping migrant workers. The funds will also be used to establish a new visa to support migrants to leave exploitative work situations and to increase the number of labour inspectors and immigration investigators. A free-phone number and reporting service will be set up to receive and handle complaints, and an employer-focused campaign will be undertaken (New Zealand, MBIE, n.d.-c). These changes were in response to a review of temporary migrant worker exploitation conducted by the MBIE. The Ministry is also drafting legislation to introduce new employment infringement offences related to migrant worker exploitation, which is expected to be introduced in 2021 (New Zealand, MBIE, n.d.-d).

In July 2021, New Zealand announced new reporting tool designed to address migrant exploitation. Immigration New Zealand (INZ) has also created a 0800 number (0800 20 00 88) for reporting exploitation as well as an online reporting form (New Zealand, INZ 2021c). INZ (n.d.-j) further states, “If you do not qualify for a visa, INZ will still treat you fairly. We may let you stay in New Zealand temporarily to act as a witness in the court case against your employer.” This may be in response to a high-profile case in July 2020 when RSE workers were required to return to the Solomon Islands despite allegations of unfair dismissal that were to be investigated by a court (Fonseka 2020). The New Zealand Prime Minister intervened and reassured the workers that their claims would be

54 Correspondence with Australia’s Attorney-General’s Department, August 2021.

investigated, and that whistle-blowers would not be barred from returning to participate in the RSE in subsequent seasons.

Though these formal complaints processes existed in the past as well, a study of RSE workers found that they were unlikely to be used due to a fear among workers of being perceived as troublemakers and cultural respect for authority. The study found that complaints were more likely to be raised informally to peers such as local Pacific community members, rather than through organized structures such as the Pacific Liaison Officers employed by the sending governments or RSE Relationship Managers, and that there were no structures in place within the programme to enable the participants to express their views directly (Bedford, Nunns, and Bedford 2020).

4.5. Return and reintegration

Table 4.20. Summary of RSE and SWP consistency with legal standards related to return and reintegration

International legal standards	SWP consistency with standard	RSE consistency with standard
Recommendations and frameworks		
States shall facilitate the sustainable reintegration of returning migrants into community life by providing them with equal access to social protection and services, justice, psychosocial assistance, vocational training, employment opportunities and decent work, recognition of skills acquired abroad, and financial services, in order to fully build upon their entrepreneurship, skills and human capital as active members of society and contributors to sustainable development in the country of origin upon return (GCM, objective 21(h)).	Ø (Australia, DESE 2018, section 7)	X (New Zealand and Fiji 2014, section 6; New Zealand and Kiribati 2011, section 6; New Zealand and Solomon Islands 2010, section 6; New Zealand and Samoa 2007, section 6; New Zealand and Tonga 2009, section 6; New Zealand and Tuvalu, section 6)
States shall identify and address the needs of the communities to which migrants return by including respective provisions in national and local development strategies, infrastructure planning, budget allocations and other relevant policy decisions and cooperating with local authorities and relevant stakeholders (GCM, objective 21(i)).	✓ (Australia, Department of Foreign Affairs and Trade, n.d.)	✓ (Correspondence with MFAT, March 2021)

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

SWP employers must provide workers with a pre-return briefing and the nominated ministry in each participating country must also provide workers with an on-return briefing, which covers earnings and seasonal worker goals, how to claim superannuation, and keeping in touch in case the employer wants the workers to return in following years. The ministry is also required to seek feedback from the seasonal workers on their placement and on improvements to the briefings and materials provided to assist future seasonal workers to be prepared for employment under the SWP (Australia, DESE 2018, section 7; Australia, DESE 2020b, schedule 1(L1, L3).

The Australian Government provides development assistance to the Pacific through the Pacific Labour Scheme (PLS), and specific assistance with worker re-integration is delivered through the Pacific Labour Facility (PLF). This support is described as including “delivering re-integration

briefings to workers on return to their home; and assisting households diversify their income through providing workers with opportunities to develop their skills, establish businesses, or seek employment with existing programmes or institutions in the PLS sectors” (Australia, DESE, n.d.-b), but there are no specific details about this support available online.

New Zealand – Recognised Seasonal Employer scheme

The IAUs establishing the RSE scheme include as a “critical success factor” that workers “have successful re-entry to their home community and heighten the prospect of return employment in New Zealand” (New Zealand and Fiji 2014, section 6; New Zealand and Kiribati 2011, section 6; New Zealand and Solomon Islands 2010, section 6; New Zealand and Samoa 2007, section 6; New Zealand and Tonga 2009, section 6; New Zealand and Tuvalu, section 6). The New Zealand Government provides official development assistance through the Pacific Labour Mobility Strengthening Programme (Toso Vaka o Manu). The purpose of the programme is to support PICs to become efficient and effective labour-sending countries, thereby enabling economic and social benefits for workers’ families and communities through remittances. The programme has five core objectives and associated outputs. The work includes supporting LSUs to deliver the RSE scheme (and other labour mobility initiatives). It also includes (within outputs 2 and 5) scope to support reintegration of workers on their return.⁵⁵

In countries of origin

The PLS policy handbook indicates that re-integration strategies will be developed by the PLF in consultation with PICs. It further states that the PLF will consider providing training with the relevant LSUs to workers on topics such as goal-setting, financial planning, savings and investment, and providing assistance to workers to obtain employment or engage in self-employment (Australia, DFAT 2019).

4.6. Participation of women and marginalized groups

4.6.1. Participation of women

Table 4.21. Summary of RSE and SWP consistency with legal standards related to the participation of women

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
Member States shall ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother’s health or that of her child (Convention No. 183, Art. 3).	✓ The Fair Work Act, 2009, provides workers with protection from discrimination on the basis of sex, marital status, family or carer’s responsibilities, and pregnancy. Pregnant women in Australia are entitled to move to a safe job, or take safe job leave.	✓ The Employment Relations Act, 2000, and the Human Rights Act, 1993, provide workers with protection from discrimination on the basis of sex (including pregnancy or childbirth) or marital or family status. The Health and Safety at Work Act, 2015, also requires employers to not put at risk the health of a pregnant or breastfeeding mother.

⁵⁵ Correspondence with MFAT, March 2021.

International legal standards	SWP consistency with standard	RSE consistency with standard
On production of a medical certificate or other appropriate certification a woman shall be entitled to a period of maternity leave of not less than 14 weeks (Convention No. 183, Art. 4).	X (Australia, Department of Social Services, n.d.) In Australia a worker has to work for an employer for 12 months before receiving parental leave entitlements.	X The Parental Leave and Employment Protection Act, 1987, provides entitlement to 26 weeks' leave and a "primary carer" payment after 6 months with the same employer averaging at least 10 hours a week (12 months' leave, 6 unpaid, after a year). Most RSE workers will not be able to access maternity leave given that they will be due to return shortly after becoming eligible.
It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 (of Convention No. 183) or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer (Convention No. 183, Art. 8(1)).	✓ Protection available under the Fair Work Act, 2009.	✓ Protection available under the Employment Relations Act, 2000. Section 49 of the Parental Leave and Employment Protection Act, 1987, prohibits dismissal on grounds of pregnancy or because a worker has taken parental leave.
Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including access to employment (Convention No. 183, Art. 9(1)).	Ø Protection available under the Fair Work Act, 2009, for all workers. It is unclear how this is implemented or monitored in practice in SWP recruitment.	Ø Protection available under the Employment Relations Act, 2000, sections 104–105, and section 21(1) of the Human Rights Act, 1993. It is unclear how this is implemented or monitored in practice in RSE recruitment.
Women should not be required to undergo a pregnancy test when applying for employment except where required by national laws or regulations in respect of work that is prohibited or restricted for pregnant or nursing women under national laws or regulations; or where there is a recognized or significant risk to the health of the woman and child (Convention No. 183, Art. 9(2)).	✓ SWP workers are required to undergo a health check but not a pregnancy test.	✓ RSE workers are required to undergo a health check but not a pregnancy test.
Measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health (Convention No. 184, Art. 18).	X None	✓ (New Zealand, INZ 2021a; 2021b)

International legal standards	SWP consistency with standard	RSE consistency with standard
<p>States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:</p> <p>(a) The right to work as an inalienable right of all human beings;</p> <p>(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;</p> <p>(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;</p> <p>(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work (CEDAW, Art. 1)</p>	<p>Ø</p> <p>Protection is available under the Fair Work Act, 2009. It is unclear how this is implemented in practice in SWP recruitment.</p>	<p>Ø</p> <p>Protection available under the Employment Relations Act, 2000. It is unclear how this is implemented in practice in RSE recruitment.</p>
Recommendations and frameworks		
<p>States should develop gender-responsive migration policies to address the particular needs and vulnerabilities of migrant women which may include assistance, healthcare, psychological and other counselling services, as well as access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation (GCM, objective 7, para. 23(c)).</p>	<p>X</p> <p>The onus is placed on countries of origin to promote the participation of women; however, it is unclear how this can be implemented when the choice of workers is entirely at the discretion of employers and in the absence of policies to support the participation of women.</p>	<p>X</p> <p>The onus is placed on countries of origin to promote the participation of women; however, it is unclear how this can be implemented when the choice of workers is entirely at the discretion of employers and in the absence of policies to support the participation of women.</p>

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

International labour standards permit ILO Member States to exclude limited categories of workers from maternity protections if their inclusion would raise “special problems of a substantial nature”. States must report to the ILO the reasons for exclusion of these categories and describe the measures taken to extend the provisions of the Convention to these categories over time (ILO Convention No. 183, Art. 2). Australia and New Zealand have not signed Convention No. 183. The CEDAW Committee (2009, paras 18, 26) has addressed maternity protections in its General Recommendation No. 26, indicating the measures that need to be taken to ensure non-discrimination and the equal rights of women migrant workers, including: prohibiting mandatory pregnancy tests, ensuring access to safe reproductive health and abortion services, providing maternity benefits and protecting workers from dismissal on the grounds of pregnancy. Australia and New Zealand do not implement discriminatory bans or restrictions on women's migration through the SWP or RSE, but neither do they have facilities in place to monitor or prevent discrimination against women on the basis of pregnancy, if such workers desire to participate in the programmes.

Australia – Seasonal Worker Programme

The MOU between Australia and participating countries states: “The Participants recognise that the Implementation Arrangements will be effective if ... (f) opportunities for employment facilitate inclusive participation in the SWP, that actively promote participation by women and under-represented groups” (Australia, Department of Employment 2017a, section 6.1(f)). The Implementation Arrangements indicate that participating countries are authorized to “offer Approved Employers eligible candidates, taking account of employer requirements, development objectives and gender equity” and note that “[a]s far as possible the Participating Country will give consideration to gender equity in the composition of the work-ready pool and in the selection of candidates recommended to Approved Employers” (Australia, DESE 2018, sections 1–2). The only other mention of women in the SWP documents is the requirement that men and women must have separate sleeping and bathroom facilities (Australia, DESE 2020b, section 4.1.4).

Neither the *Approved Employer Guidelines* nor Deed of Agreement mentions employer obligations or responsibilities in the context of pregnancy of workers. The DESE indicates that when a worker is pregnant further information is provided to employers, including that they should “[e]stablish if the worker would like to continue working or return home” and “[a]ssist the pregnant SWP worker to see a doctor to establish whether she can continue to work and if the current work is suitable, if so, then establish a date for when she should stop working”. Employers are required to notify the Department of Home Affairs if a worker gives birth.⁵⁶ The *Pre-Departure Guidebook* for SWP workers also does not mention pregnancy. Obligations of employers to pregnant employees is covered in the Fair Work Act, 2009, but these general provisions do not address the specific vulnerabilities that may be experienced by pregnant SWP workers in remote locations. SWP workers are excluded from maternity payments available to Australian residents and do not have access to the Medicare system (see section 4.3.3 on access to healthcare above). Pregnancy is covered by some insurance policies available to SWP workers after a 12-month waiting period, but given the short-term nature of their employment, no workers would therefore be eligible. No data are publicly available regarding SWP workers and pregnancy. Anecdotal reports suggest that workers who become pregnant are given lighter duties if needed, but inevitably return home early because of the prohibitive cost of healthcare and because they would be unable to stay in Australia after giving birth (Development Policy Centre 2020).

New Zealand – Recognised Seasonal Employer scheme

Documents from the RSE reviewed for this report, such as the “Get Ready” booklet, did not contain information on pregnancy. New Zealand Immigration states that RSE workers who became pregnant while on the RSE scheme were able to travel home to receive maternity care and childbirth support (New Zealand, INZ 2021a). The RSE worker health insurance policy only provides cover for complications arising from pregnancy up to 24 weeks. In response to COVID-19 travel restrictions, New Zealand Immigration issued factsheets regarding pregnancy to RSE employers and workers that contain the following information:

- ▶ Workers and employers should “find out what prenatal information and childbirth support is available through the District Health Board, local GPs and community-based organizations”.
- ▶ Maternity care and childbirth support costs for non-residents in New Zealand start from NZD9,000.00.
- ▶ Workers who take leave to have a baby may apply for a general limited visa that expires three months after the due date to allow for recovery and may cost a fee.
- ▶ The child is automatically granted a visa, but loses the right to that visa if the worker applies for a new visa or the parent and child leave the country.
- ▶ Workers may be entitled to parental leave, and costs associated with accommodation and maternity care are the responsibility of the worker.
- ▶ Websites and phone numbers of relevant services (New Zealand, INZ 2021a; 2021b).

56 DESE, validation workshop, July 2021.

Accommodation standards indicate that separate facilities are not required for men and women if the doors of the proposed accommodation are lockable (New Zealand 2016, 2).

4.6.2. People with disabilities

Table 4.22. Summary of RSE and SWP consistency with legal standards related to people with disabilities

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
<p>States Parties recognize the right of persons with disabilities to work, on an equal basis with others. This includes the right to the opportunity to gain a living in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work by:</p> <ul style="list-style-type: none"> • Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment (including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions) • Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value • Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures • Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace; • Promoting the acquisition by persons with disabilities of work experience in the open labour market (ICRPD, Art. 27(1)). 	<p>Ø</p> <p>The Fair Work Act, 2009, protects workers from discrimination on the basis of physical or mental disability, though it is permissible for an employer not to offer employment to a prospective employee with a disability if the employer can show that this decision was made because of the employer's genuine belief that the candidate would be unable to perform the inherent requirements of the position. The Disability Discrimination Act, 1992, requires employers to make "reasonable adjustment" for workers unless it would cause an employer "unjustifiable hardship" to do so. It is unclear how this applies to the SWP recruitment process.</p>	<p>Ø</p> <p>Under the Human Rights Act, 1993, employers are required to take "reasonable measures" to provide services and facilities to meet the needs of workers with disabilities. It is unclear how this applies to the RSE scheme.</p>
Recommendations and frameworks		
<p>States should establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights in particular in cases related to persons with disabilities (GCM, objective 7, para. 23(b)).</p>	<p>Ø</p> <p>No mention of support for workers with disabilities in the SWP documentation.</p>	<p>Ø</p> <p>No mention of support for workers with disabilities in the RSE documentation.</p>

Australia – Seasonal Worker Programme

The SWP *Gender and Inclusion Strategy and High Level Action Plan* written by Cardno, which at the time was the contractor responsible for the delivery of the Labour Mobility Assistance Program (LMAP),⁵⁷ stated:

Including people with disabilities in the SWP predominately rests on demand. A rapid appraisal found that no Approved Employer has knowingly recruited a person with a disability. Concerns cited included that there might be additional requirements for pastoral care or other support e.g. obtaining healthcare; and that the work was seen as unlikely to be suitable for many workers with disabilities. LMAP will support people with a disability to benefit from the SWP through a number of ways. One is direct participation as workers in the SWP. However, this relies on demand from employers, and will raise potential workers' expectations that are difficult to fulfil unless employers see the advantage of taking on this disabled cohort. Given the very physical nature of much of the seasonal work this will be challenging, particularly for people with mobility impairments. However, it is important to note many people with disabilities have a range of impairment types and abilities, and do not always include mobility restrictions.

No other reference to people with disabilities appears in the SWP documentation.

New Zealand – Recognised Seasonal Employer scheme

No mention of the participation of people with disabilities could be found in the RSE documentation.

4.6.3. People from rural areas and outlying islands

Table 4.23. Summary of RSE and SWP consistency with legal standards related to people from rural areas and outlying islands

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
States recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which is freely chosen or accepted and will take appropriate steps to safeguard this right without discrimination of any kind (ICESCR, Arts. 2(2), 6(1)).	Ø No mention of specific efforts to involve people from rural areas and outlying islands in SWP documentation	Ø No mention of specific efforts to involve people from rural areas and outlying islands in RSE documentation

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

The only countries of origin that specifically referred to measures to support the inclusion of people from rural areas were Kiribati and Fiji.⁵⁸

⁵⁷ These services – renamed the “Pacific Labour Facility” – are now provided by the Palladium Group.

⁵⁸ Consultations with Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020, and with Fiji Ministry of Employment Productivity and Industrial Relations, September 2020.

4.6.4. Persons with diverse sexual orientation, gender identity, expression and sex characteristics (SOGIESC)

Table 4.24. Summary of RSE and SWP consistency with legal standards related to persons with diverse SOGIESC

International legal standards	SWP consistency with standard	RSE consistency with standard
Conventions		
States undertake to respect and to ensure to all individuals their human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States undertake to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant (ICCPR, Art. 2(1–2); ICESCR, Art. 2(2)).	✓ Legislative protection exists in Australia; though this is not mentioned specifically in SWP documentation.	✓ Legislative protection exists in New Zealand; though this is not mentioned specifically in RSE documentation.
States recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which is freely chosen or accepted and will take appropriate steps to safeguard this right without discrimination of any kind (ICESCR, Art. 6(1)).	✓ See above.	✓ See above.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

None of the documents reviewed discussed specific measures to ensure inclusion and non-discrimination for persons with diverse SOGIESC.

4.7. Changes in response to the COVID-19 pandemic

Table 4.25. Summary of RSE and SWP consistency with legal standards related to changes in response to the COVID-19 pandemic

International legal standards	SWP consistency with standard	RSE consistency with standard
Recommendations and frameworks		
Include migrant workers in national income and related policy responses (ILO 2020).	X See discussion below.	✓ See discussion below.
Extend access to health services and social protection coverage to migrant workers (ILO 2020).	X See discussion below.	✓ See discussion below.
Ensure migrant workers have regular status or do not fall into irregular status (ILO 2020).	✓ See discussion below; though note that workers had to apply for a new visa and did not receive an automatic extension.	✓ See discussion below.

✓ = consistent; X = inconsistent; Ø = silent or no evidence located.

Australia – Seasonal Worker Programme

The Australian Government introduced a range of new visa concessions in response to the COVID-19 pandemic, acknowledging that due to the border restrictions imposed, some temporary workers would effectively be stuck in Australia, while others would be unable to enter to meet the needs of local businesses, with the agricultural sector being particularly vocal about its need for more workers. Among other changes, a “COVID-19 Pandemic Event” visa was introduced (Subclass 408), which allowed temporary workers in critical sectors (agriculture, food processing, healthcare, aged care, disability care, child care, or tourism and hospitality) who were already in the country to stay for up to 12 months, while non-critical workers could stay for up to 3 months. The visa is renewable for workers who wish to remain and work in a critical sector, or who cannot leave (Australia, DHA, n.d.-d).

The Government advised holders of the usual Subclass 403 SWP visas to apply for one of these new visas in Subclass 408. The DHA also permitted SWP workers to change the Approved Employer attached to their visa if their original Approved Employer is unable to continue to provide the minimum hours of work required by the SWP, and their redeployment was organized by the DESE (Australia, DHA, n.d.-e). According to the DFAT and DESE, more than 10,000 PLS and SWP workers have been redeployed as of 20 May 2021, and 1,391 workers were provided with assistance to “navigate complex flight and quarantine arrangements” through the Pacific Screening Support Program.⁵⁹ Just fewer than 10,000 workers arrived in Australia through the SWP and 1,000 through the PLS in the 2019–20 season (see section 2.2 of this report; Lawton 2021). As of 30 April 2021, there were 8,284 SWP workers in Australia in total, including those under the SWP Restart (Australia, Senate 2021a).

With regard to worker welfare, the DFAT commented that it is “working with communities and Pacific diaspora to support workers”, and that the Pacific Labour Facility was assigned responsibility for providing welfare support to workers in the SWP at the start of the pandemic in Australia.⁶⁰

In August 2020, the Australian Government announced a Pacific Restart for both the SWP and the flexible PLS. A key difference with the Restart SWP is that the DESE has set a maximum amount that may be recouped from SWP workers by employers for the cost of international airfares and transportation to the workplace that is based on pre-COVID transportation costs. Quarantine costs cannot be charged to workers, and it does not appear that workers are paid during quarantine. All ten countries that had previously accessed the SWP had re-joined by November. Under the Restart, new workers from participating Pacific countries and Timor-Leste were allowed to recommence temporary labour migration to Australia. Recruitment and quarantine of SWP workers had to be managed by the states and territories, which were required to opt-in and set specific protocols determined by their Chief Health Officer – for instance, Queensland opted in to cover a labour shortage in agribusiness (Australia, Government of Queensland, n.d.). At a time when very few non-Australians were being allowed into the country, incoming SWP and PLS workers were allowed to access on-farm, regional and (on a trial basis for some workers) pre-travel quarantine. This was a far more flexible approach than that available to most arrivals, given the perceived economic urgency of bringing them in and the relatively COVID-free status of the sending countries (Lawton 2021).

Schedule 3 was added to the SWP Deed to impose COVID-safe practices and additional obligations for employers hiring this new category of “Restart Seasonal Workers”. The changes, which are detailed elsewhere within this document, impose additional obligations on employers such as responsibility for safety briefings, quarantine arrangements, temperature checks and providing face masks on flights. The new schedule also provides for transfers to “Alternative Approved Employers”.

In addition, a pilot programme was launched to enable SWP workers to assist smaller producers instead of the larger employers who had previously taken advantage of the scheme. The Northern Territory and Australian governments launched a pilot programme for mango producers in the Northern Territory (Bedford and Bailey 2020a). The workers were required to undergo quarantine,

⁵⁹ DFAT, validation workshop, July 2021.

⁶⁰ DFAT, validation workshop, July 2021.

and 75 per cent of their flights and quarantine costs were covered by the Approved Employers (Australia, DESE 2020d). The Agriculture Minister foreshadowed that, depending on the trial's success, this new pathway could be open to more SWP workers in future (Kwan 2020). A targeted recruitment programme has also been introduced (Australia, DESE 2020e). A total of 3,528 SWP workers have arrived in Australia under the new/updated programmes as of 30 April 2021, with 162 under the Northern Territory mango trial and 3,366 arriving under the SWP Restart to work on farms in the Northern Territory, Queensland, Tasmania and Western Australia (Australia, Senate, Select Committee on Temporary Migration, 2021b).

However, during the period when sudden movement and travel restrictions were imposed by the Australian Government, SWP workers found themselves excluded from the Government's temporary income support measures such as JobKeeper and JobSeeker, along with other temporary foreign workers such as working holidaymakers and international students, and this caused considerable financial hardship. This tough stance denied equal treatment with citizens and residents to the very categories of migrant workers who were most likely to be in a precarious position.

In some cases, SWP workers' communities rallied around them to provide support – in others, employers provided for their SWP workers. In some cases, workers who had their hours cut due to COVID-19 found that unexpected deductions were taken from their pay to cover rent and food, substantially reducing the amount that SWP workers could send home at the precise time when the recipients of those funds were most likely to need them (Graue 2020).

New Zealand – Recognised Seasonal Employer scheme

The border closures and flight suspensions that were part of New Zealand's response to COVID-19 had the effect of stranding many RSE workers in the country, while at the same time cutting off the supply of new incoming workers. As part of New Zealand's COVID-19 Response Package, RSE workers became eligible for government funding, equating to NZD585.50 per worker per week, if they could not work during the lockdown because their employer's business was not operating or the employer could not afford to pay them due to reduced business activity (Bailey and Bedford 2020b).

In July 2020, the New Zealand Government decided to change its usual requirement of 30 hours' work per week for stranded RSE workers, who were allowed work part-time for a minimum of 15 hours per week without the usual restrictions on which roles they could perform. Workers permitted to do this were allowed to stay until October 2020 while they awaited repatriation. They were required to retain an employment agreement with an RSE employer, which retained responsibility for them and subcontracted them to the new employer (New Zealand, Government of New Zealand 2020b).

In August 2020, the New Zealand Government catered for those who had continued with their RSE employers by extending then-current RSE scheme visas by six months, and advised RSE workers wishing to continue working in the country after this period that they could apply to stay longer and obtain a visa to work with a new employer. The requirement to return home between seasons was also suspended due to the ongoing travel restrictions. This only affected workers in the country when the pandemic began – those outside were not allowed to return to New Zealand at this point (New Zealand, INZ 2020). Many workers already in New Zealand wished to return home, however, and from June 2020, the Royal New Zealand Air Force repatriated more than 1,000 RSE workers who had been stuck in the country due to border closures (New Zealand, Defence Force 2020).

From 1 July 2020 until the end of November, the Red Cross partnered with the New Zealand Government to offer a programme called Visitor Care Manaaki Manuhiri, which was designed to provide welfare assistance to visitors stuck in New Zealand due to border closures, including RSE workers. Almost half the applicants were seasonal workers (Bonnett 2020).

Experienced RSE workers were allowed to return to New Zealand from 1 January 2021 to work in the agriculture and viticulture industries under a border exception (New Zealand, Government of New Zealand 2020a). They were to be paid a "living wage" of NZD22 per hour (Hanley 2020). As seasonal

workers have returned to New Zealand from neighbouring countries, the Government has allowed them to transition more flexibility between employers “across seasonal peaks and to meet labour demands for different crops”, and workers no longer need to be shared between regions (Bedford 2021).

In May 2021, the Government announced a second border exception for RSE workers that would cover the summer season (Bedford 2021). In June 2021, the Government allocated places in MIQ (managed isolation and quarantine) to incoming RSE workers under this second exemption, bringing in around 300 per month until March 2022 (New Zealand, Government of New Zealand 2021).

From July 2021, the Government allowed RSE workers still in the country on an extended visa to apply for a new, more flexible RSE visa (New Zealand, INZ, n.d.-g). The required stand-down period, where workers had traditionally returned home, was removed. Employees could more easily change to other employers, reflecting the seasonal flow of work in industries such as fruitpicking – but when an employee changed to a new employer under their existing RSE visa, the RSE employer designated in the visa remained responsible for the pastoral care of the employee. Changing employers to one not permitted under their RSE visa required employees to seek a new visa, however. After RSE employees served 12 continuous months with one employer – which was not previously possible, given the requirement to return home each year – they became eligible for four weeks of paid leave (New Zealand, INZ, n.d.-b).

5. The practice of human rights and labour standards under the SWP and RSE

5.1. Demographic, educational, and economic background and previous seasonal work experience of seasonal workers

5.1.1. Demographic background

Forty-five of the 121 survey participants (37.2 per cent) were women. This is a larger proportion than that of women participants in the SWP and RSE from the four study countries, due to this study's focus on the experiences of marginalized groups of workers. The participants from Vanuatu had the largest percentage of women (40 per cent). One participant from Samoa identified as "other" gender (see table 5.1).⁶¹ The average age of the participants was 34.4 years, with a higher average age among women (37.1 years) than men (32.8 years) (see table 5.2). Participants from Kiribati had the lowest average age at 31.8 years. Samoa was the only country where the average age of female participants was considerably lower than that of male participants.

Table 5.1. Gender of survey participants, by country of origin

Gender	Fiji		Kiribati		Samoa		Vanuatu		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Men	19	63.3	19	61.3	19	63.3	18	60.0	75	62.0
Women	11	36.7	12	38.7	10	33.3	12	40.0	45	37.2
Other	-	-	-	-	1	3.3	-	-	1	0.8

- = nil.

Table 5.2. Average age of survey participants, by gender and country of origin

	Fiji	Kiribati	Samoa	Vanuatu	Total
Average age	38.7	31.9	32.7	34.3	34.4
Average age men	35.5	31.9	33.2	30.6	32.8
Average age women	44.3	31.8	32.4	39.8	37.1

The only participant with a disability was a woman with a hearing impairment. Two participants identified as belonging to the LGBTQ community.

All participants were citizens of the PIC where they were interviewed. In terms of ethnicity, all respondents from Samoa and Vanuatu identified as Samoans and ni-Vanuatu, respectively. Two of the 31 respondents from Kiribati identified as Banabans from the island of Banaba, which was largely devastated due to phosphate mining in colonial times. The majority of the 30 respondents from Fiji were indigenous Fijians or i-Taukei, while five were Indo-Fijians (including one woman), one was Rotuman, and two were of mixed ethnicities.

⁶¹ Since only one survey participant identified as being of an "other" gender, some information that is presented by gender in this report is not presented for persons of other gender in order to protect their anonymity.

In terms of their marital status, approximately half of all respondents were currently married, while most others were either in a de facto relationship or had never been married. Few respondents were separated, divorced or widowed. There were differences between the countries. In Fiji, a larger percentage of respondents were currently married, which is likely to positively impact on the number of dependents in the household. In Samoa, 63 per cent of male respondents but only 30 per cent of female respondents were currently married. This points to the fact that it is less common for married women in Samoa to participate in overseas seasonal work; possibly because it is deemed less appropriate and because women are expected to shoulder the largest share of domestic duties and care for children and the elderly.

The average number of children of participants was 2.2 (see table 5.3). The maximum number of children of respondents was eight by a male participant from Samoa, aged 34. Thirty-two participants had no children. The number of dependents ranged from zero to 26, with average number of dependents being 5.8. The Samoan respondent with eight children was also the respondent with the largest number of dependents (that is, 26). Five respondents in Fiji had no dependents. The participants from Fiji had the highest number of children (2.5 on average) compared to the other countries, yet at the same time, they had the lowest number of dependents (3.6). At the other extreme, Vanuatu participants had an average of 7.3 dependents.

Table 5.3. Average number of children and dependents of survey participants, by country of origin and gender

	Average number of children	Average number of dependents
Fiji	2.5	3.6
Women	3.3	3.0
Men	2.1	4.0
Kiribati	1.9	6.6
Women	1.9	6.3
Men	1.9	6.7
Samoa	2.0	5.8
Women	1.6	4.0
Men	2.3	6.8
Vanuatu	2.4	7.3
Women	3.1	7.0
Men	1.9	7.6
Total	2.2	5.8

5.1.2. Educational background

Table 5.4 shows that participants had spent an average of 10.6 years at school. Participants in Samoa had spent the most years at school and participants in Vanuatu the least. In all countries except Fiji, women had spent more years at school than men, with the largest difference found in Kiribati.

Table 5.4. Average number of years at school of survey participants, by country of origin and gender

Average number of years at school	
Fiji	10.6
Female	10.5
Male	10.7
Kiribati	11.4
Female	12.4
Male	10.8
Samoa	11.8
Female	12.3
Male	11.4
Vanuatu	8.5
Female	8.5
Male	8.4
Total	10.6

Across the four countries, about 15 per cent of respondents had only attended primary school; while about one-third of respondents had attended secondary school without completing it, and another 10 per cent had completed secondary school (see table 5.5). Less than 40 per cent of all respondents had completed a post-school qualification, in most cases a vocational certificate or diploma. This percentage varied between the four countries, with 40 per cent of participants from Fiji and Vanuatu having a vocational certificate or diploma, versus just 20 per cent of Samoans. Participants had obtained vocational training in a range of areas, including in construction trades like carpentry and joinery, plumbing and sheet metal, as well as hospitality, office administration, and others. Some respondents had attended a Foundation programme at a university and one respondent (from Fiji) held a university degree.

Table 5.5. Highest educational qualification of survey participants, by country of origin

Highest qualification	Fiji		Kiribati		Samoa		Vanuatu		Total	
	No	%	No	%	No	%	No	%	No	%
Primary school	7	23.3	1	3.2	1	3.3	9	30.0	18	14.9
Secondary school (not completed)	4	13.3	16	51.6	15	50.0	6	20.0	41	33.9
Secondary school (completed)	5	16.7	2	6.5	4	13.3	2	6.7	13	10.7
Vocational certificate or diploma	12	40.0	8	25.8	6	20.0	12	40.0	38	31.4

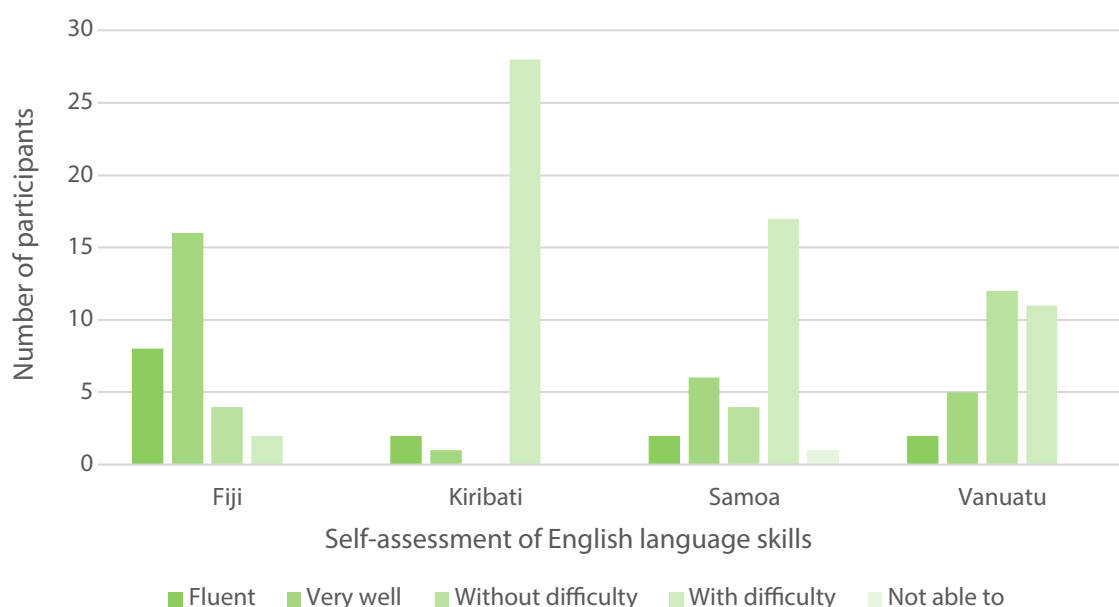
Highest qualification	Fiji		Kiribati		Samoa		Vanuatu		Total	
	No	%	No	%	No	%	No	%	No	%
University degree (pre-degree or not completed)	1	3.3	3	9.7	4	13.3	–	–	8	6.6
University degree	1	3.3	–	–	–	–	–	–	1	0.8
None	–	–	–	–	–	–	1	3.3	1	0.8
No answer	–	–	1	3.2	–	–	–	–	1	0.8
Total	30	100	31	100	30	100	30	100	121	100

– = nil.

Note: In creating the categories, the differences between education systems in the four PICs were taken into account. “Vocational certificate or diploma” refers to any post-school training for which a certificate was achieved, without distinguishing between formal training institutions and informal training centres. Students who did not complete the full course of secondary education of 12 or 13 years are classified as “secondary school (not completed)”.

Asked, how well they could read and write in English, considerable differences between the countries became apparent (see figure 5.1). Most workers from Fiji rated their ability as fluent or very good, while most workers from Kiribati and many from Samoa had difficulty reading and writing in English.

Figure 5.1. Survey participants’ ability to read and write in English, by country of origin



5.1.3. Economic background

Participants were asked if they had ever held a paid job or owned a business before participating in the RSE or SWP. The numbers of respondents who had held a paid job or owned a business in the past were 16 in Fiji, 18 in Kiribati, 24 in Samoa and 20 in Vanuatu. Most respondents who had not

held a job or owned a business had still been economically active in subsistence farming or some other informal economic activity such as food preparation or handicraft.⁶² Some women had been housewives. In Fiji, all but one respondent who had held a job in the past had worked in the private sector in occupations ranging from driver, carpenter, and electrician to resort worker and restaurant supervisor. In Kiribati, most participants with previous jobs had worked for the Government, consistent with the labour market in Kiribati being characterized by a dominant public sector and a very small private sector. Respondents had worked as clerks, seafarers, security officers, drivers and others. In Samoa and Vanuatu, all participants had worked in the private sector. In Samoa, they had worked in hospitality, retail, construction, the security industry, accounting and farming; whereas in Vanuatu they had mostly worked in retail, hospitality, tourism and the transport sector. Only one respondent in Fiji had been self-employed (as a taxi driver), and three respondents in Vanuatu had been self-employed (two as drivers and one as a painter).

Table 5.6 shows the average (mean) and the median incomes of respondents in their previous jobs in their respective local currency and in Australian dollars for comparative purposes. Participants in Vanuatu had earned the highest income, which was more than double that of participants in Fiji, which had the second-highest income. The income was lowest in Kiribati.

Table 5.6. Mean and median income of survey participants in previous job, by country of origin (in local currency and Australian dollars)

PIC	No. of responses	Mean income		Median income	
		Local currency	AUD	Local currency	AUD
Fiji	15	FJD208.13	137.37	FJD190.00	125.40
Kiribati	18	AUD100.00	100.00	AUD89.00	89.00
Samoa	24	WST249.54	134.75	WST200.00	108.00
Vanuatu	20	VUV26 700.00	320.40	VUV25 000.00	300.00

AUD = Australian dollars; FJD = Fijian dollars; WST = Samoan tālā; VUV = Vanuatu vatu.

Note: This table is based on the responses of those who had indicated that they had previously held a job or owned a business in their country. Some others who had not owned a business but had engaged in some other activity, most often subsistence farming, had still generated an income that was at times considerable. In the case of Fiji, for instance, some subsistence farmers earned some 300 Fijian dollars per week, which was more than the average of those in paid employment. For consistency between the countries, these have not been included in the calculations for this table.

5.1.4. Previous seasonal work experience

Most respondents had only ever participated in either the RSE or SWP, and only one respondent from Kiribati and five from Vanuatu had worked in both schemes (see figure 5.2). The greater number of ni-Vanuatu with experience of both schemes is linked to Vanuatu's longer participation in the schemes and the country's larger number of participants.

⁶² Responses to the question were slightly inconsistent, as some workers in the informal economy said that they had not had a paid job or owned a business while others counted informal activity as a job or business ownership. Consequently, some responded to the follow-up question on income earned, while others did not.

Figure 5.2. Previous seasonal work experience of survey participants in Australia and/or New Zealand, by country of origin

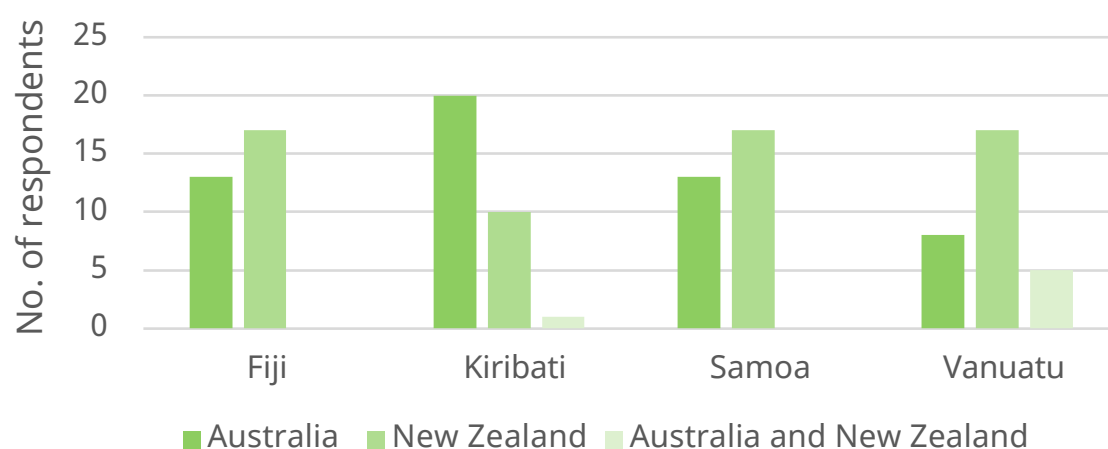
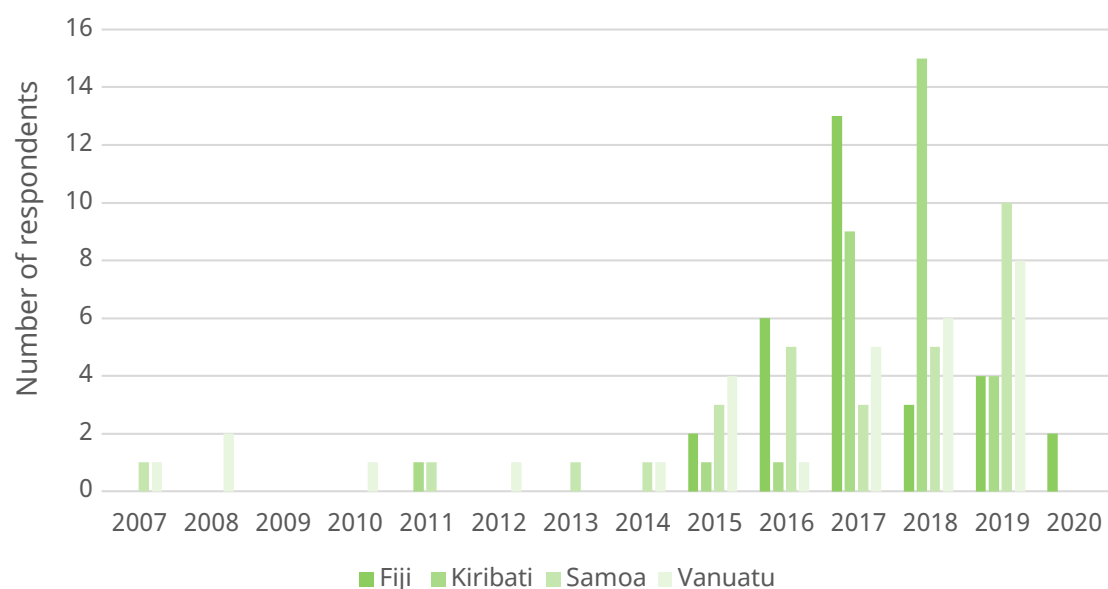


Figure 5.3 shows the year that the seasonal worker respondents first participated in one of the schemes. One worker from Samoa and one from Vanuatu first participated in seasonal work in 2007. The years when most respondents first went overseas were 2017, 2018 and 2019. The earliest participants from Fiji joined in 2015, and two respondents from Fiji first participated in 2020.

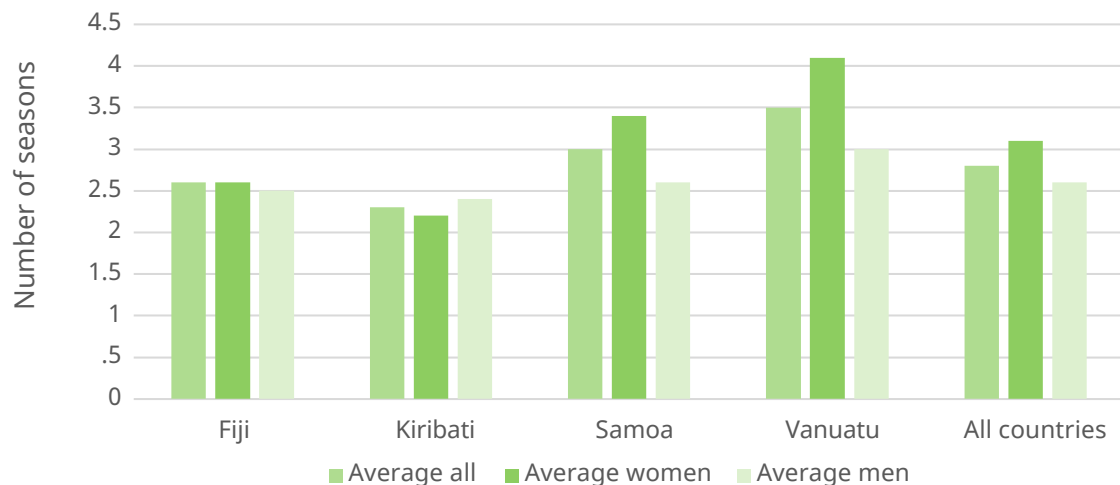
Figure 5.3. Survey participants' first year of seasonal work experience, by country of origin



The minimum number of seasons that participants went to Australia or New Zealand for seasonal work was one, while the maximum number for workers from Fiji was four, from Kiribati seven, from Samoa nine, and from Vanuatu as much as 13. The worker from Vanuatu who went overseas 13 times is a widowed woman of 57 years of age who first participated in 2007 and has always gone to New Zealand. Since workers from Vanuatu have a longer history of participating in seasonal work programmes, it is not surprising that ni-Vanuatu respondents in this study also recorded the highest

average number of seasons abroad (see figure 5.4). Except for Kiribati, women participants had on average travelled overseas for more seasons than the men participants.

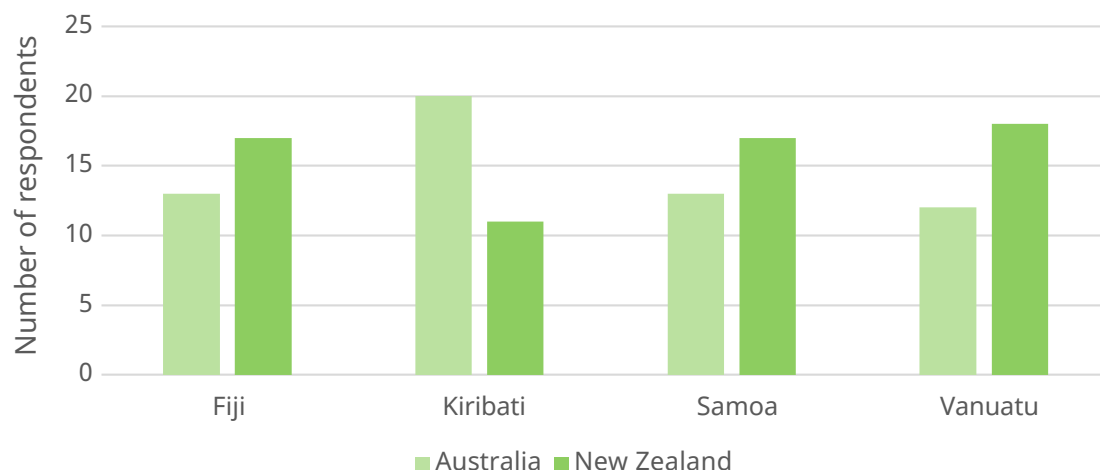
Figure 5.4. Survey participants' average number of seasons in Australia and/or New Zealand, by gender and country of origin



5.1.5. Most recent stay in Australia or New Zealand

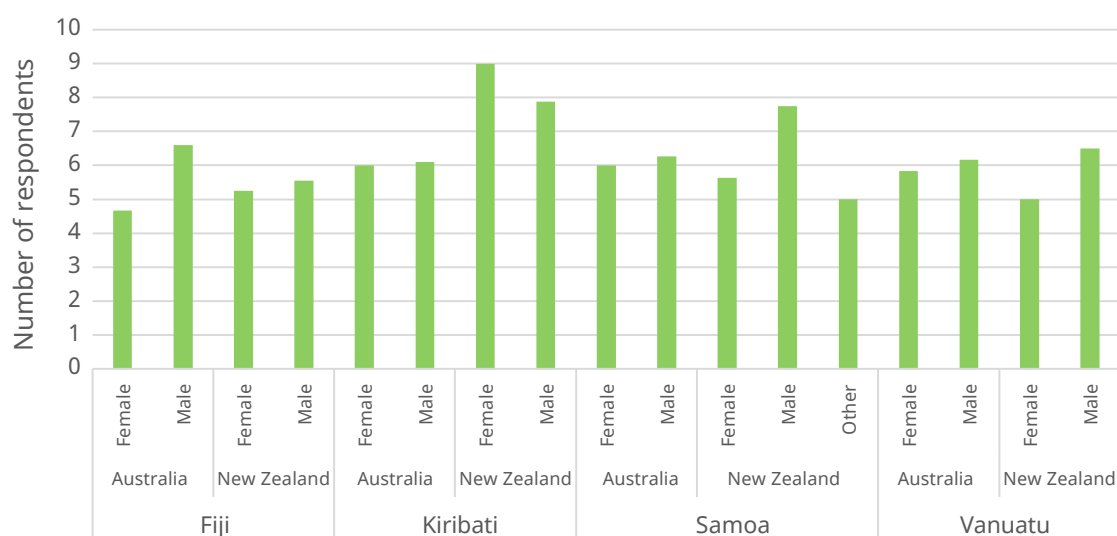
For their most recent stay, 63 respondents had been to New Zealand and 58 to Australia. A majority of respondents from every country except Kiribati had been to New Zealand rather than Australia (see figure 5.5). The vast majority of respondents had most recently left their home country for seasonal work abroad in 2019.

Figure 5.5. Survey participants' country of most recent stay (Australia or New Zealand), by country of origin



The average number of months that respondents stayed in Australia or New Zealand during their most recent stay was 6.2. There were differences between the countries, with respondents from Kiribati recording the longest average stay (6.8 months), followed by Samoa (6.4 months), Vanuatu (5.9 months) and Fiji (5.7 months). Among all countries of origin, men recorded longer durations of stay in both Australia and New Zealand, except for respondents from Kiribati in New Zealand, where women recorded longer stays (see figure 5.6).

Figure 5.6. Average duration of survey participants' most recent stay (in months), by country of origin, country of destination and gender



5.1.6. Early return home from Australia and New Zealand

Overall, ten respondents from Fiji, 16 from Kiribati, and 14 from Vanuatu were working in Australia or New Zealand in 2020. Some had travelled overseas in 2019 while the rest had arrived in early 2020 before the onset of the pandemic. Seven respondents from Fiji, five each from Samoa and Vanuatu, and two from Kiribati returned home early from their most recent stay. Of the 19 respondents who returned home early, 12 returned because of the pandemic. The five early returnees to Vanuatu explained that there was not enough work available on their farms, and that they were therefore sent home early. A worker in Samoa said that the season on his farm in New Zealand finished early, and another worker complained about the lack of work: "When the coronavirus crisis came, priority was given to local workers on my farm. Therefore for the last two months, I was only working for one to two days per week." A worker from Fiji belonged to a batch that left New Zealand one month earlier than planned. According to his understanding, there were complaints that some workers had broken COVID-19 restrictions. The workers were only given 24 hours' notice by the employer to leave. A female worker from Fiji was sent home from Australia only two weeks after arriving there because the resort where she was employed was closed due to the COVID-19 pandemic.

There were also other reasons for early returns home, such as a worker from Fiji who was involved in a car accident and another who got sick while overseas. One worker from Kiribati returned early because his father passed away while he was in Australia.

5.2. Pre-departure arrangements under the SWP and the RSE scheme

5.2.1. Selection and recruitment

Recruitment models in the countries of origin differ among the PICs. **Vanuatu**, which has been particularly successful in both schemes, has relied on private recruitment agents that are licensed by the Government. The Department of Labour under the Ministry of Internal Affairs is the main regulator of the Labour Mobility Program, which is governed under the Seasonal Employment Act, 2007. Up until now, the Department has overseen the recruitment model of using agents and has ensured that agents comply with regulations when selecting and recruiting seasonal workers under the Seasonal Employment Act.⁶³ At present, there are more than 60 licensed agents in Vanuatu.

⁶³ Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

According to the Department of Labour, it is a requirement that the selection and recruitment process is fair and transparent, and that recruitment is done in every province. In theory, the agent model serves to increase the diversity of workers, as agents mostly recruit from their community and home island networks. Therefore, a large number of agents should increase the diversity of where workers are coming from. In practice, however, many large employers have worked with a small number of large agents. There have also been concerns about workers having to compensate agents for the opportunity to enter or stay in the programme (Bailey 2019).

Bailey (2019) emphasizes that the private sector agent approach in Vanuatu is more common in Australia's SWP than in the RSE. New Zealand growers prefer a direct recruitment model, where they also use their team leaders to assist in recruitment (see also section 4.1.2 above). Some New Zealand growers have travelled to the PICs and are directly involved in recruiting. In Australia, by contrast, the initial governmental structures of the SWP (that is, using registered contractors in the recruitment processes) has favoured the agent model. For the SWP, in most cases, workers are recruited and trained by licensed agents in Vanuatu to be ready for Australian contracting companies to place them with employers. As in the other PICs, the final selection of workers is done by employers according to their requirements.⁶⁴

The Vanuatu Government has recently announced the intention to abolish the system of licensed recruitment agents (Wade 2020). The reasons behind this decision are to generate revenue for the Government and to give more opportunities to workers from the outer islands. The risk is that Vanuatu's past success in sending large numbers of workers under the RSE scheme and the SWP – which has partly been attributed to the system of licensed private agents – could be diminished by abolishing its current recruitment system. However, even though this recent decision has been made by Vanuatu's Government, legislative change will be required to abolish agents, giving the Government time to further consider the proposed changes (Wade 2020).

Most respondents from Vanuatu had heard about opportunities under the RSE and SWP from friends, relatives or fellow villagers. Most received help from other workers or agents to fill in the initial application forms. A woman explained how the agent assisted her to arrange her trip to Australia:

I went and dropped my papers with the agent. These included police clearance, chief's letter, pastor letter and husband letter. Then the agent called me for an interview. Then they provided documents for our medical check-up. After that, another selection was done. Out of the group of 14, only four women were recruited and I was one of them. Two women were selected for housekeeping and two for bar and restaurant work.

Fifteen of the 30 respondents in Vanuatu found the selection process to not be fair because, they claimed, agents mostly selected their friends and family members. This represents a much larger number of respondents who found the process unfair compared to the three other PICs.

In most other PICs, including in Fiji, Kiribati, Samoa and Tuvalu, governments have established units that are responsible for maintaining work-ready pools of prospective seasonal workers who have been pre-selected based on fulfilling general requirements and from which employers can draw workers. There is also direct recruitment, wherein employers themselves (or via one of their team leaders) recruit workers directly.

In **Fiji**, the National Employment Centre (NEC) is one of the units within the Ministry of Employment, Productivity, and Industrial Relations. The NEC is home to the Foreign Employment Service, which is tasked with administering the SWP and the RSE scheme. No agents are involved. According to the NEC, the focus of recruitment is on rural areas and villages to uplift their standard of living; in addition to the fact that those living in villages are more accustomed to working on farms and doing hard labour as required under the RSE and SWP.⁶⁵ There are no advertisements for employment opportunities in seasonal work; workers are selected from the work-ready pool or through referrals

⁶⁴ Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

⁶⁵ Consultation with the NEC, September 2020.

by employers. To be included in the work-ready pool, workers must fulfil several generic criteria. These include a recommendation from community leaders, being unemployed, having resided in a village for 12 months, being physically fit and healthy, and others. They also have to pass a fitness and medical test, as well as police and immigration checks.

The NEC regards the recruitment process as fair because the work-ready pool includes candidates from Fiji's 14 provinces and allows everyone to participate in the seasonal work schemes. At the end of the day, employers have the final say on the selection.⁶⁶ The Fiji Trades Union Congress (FTUC) recommended that the Government involve trade unions in the selection and recruitment process. It also recommended that the departure package given to workers include the contact details of trade unions in the receiving country.⁶⁷

Respondents explained that provincial councils from around the country provide the names of two potential workers from each village to the NEC. Interviews and fitness tests are then done in various locations around the country for a pre-selection, while medical tests and pre-departure training are done in Suva. Some workers have been recruited directly by New Zealand employers upon recommendation from relatives or fellow villagers. A female participant from Fiji's second island of Vanua Levu registered with the NEC and explained the next steps as such:

I passed the fitness test which was a 20-minute run and 30 press-ups and sit-ups. After the medical check, I waited one year for the employer to register with the Fiji Government. Then the employer came to interview us. After the pre-departure briefing, we had another physical test. This was an obstacle course, running, and teamwork. After the physical, we rested one day then flew out the next.

Most respondents from Fiji thought the selection process was fair for reasons such as "everyone goes through the selection tests", "all types of people are selected", and "the process mainly targets those in the villages and rural areas around Fiji". Five of the 30 respondents in Fiji found the process or aspects of it unfair. One respondent complained that he knew people who passed the tests but still did not go overseas. Another respondent from the remote island of Rotuma argued that "a lot of Rotumans applied and passed the requirements but cannot go. Some cannot afford to pay the money to join the seasonal work." There were also complaints about people using their connections in the process.

Similar to Fiji, there are no private recruitment agents in **Samoa**. The Ministry of Commerce, Industry and Labour houses the Seasonal Employment Unit (SEU), which is responsible for managing Samoa's participation in the SWP and the RSE scheme. The SEU's responsibilities include government-managed recruitment services for employment, including selection, documentation, employment contract review, liaising with informal recruiters, liaising with employers, and monitoring and supporting direct recruiting by employers. In the case of the RSE scheme, formal recruitment through the SEU comprises 70 per cent of total recruitment (Samoa, Government of Samoa 2015). The remaining 30 per cent of workers are recruited informally, such as through foreign employers travelling to Samoa; through experienced Samoan workers who are tasked by their overseas-based foreign employers to select workers; and through church leaders and/or village *matai*.

Registration in the Government's work-ready pool is open to persons of any gender of 21 years of age and above. The worker's work history, skills, motivation and English skills are assessed; several documents have to be submitted, including references from the village mayor and pastor and a birth certificate; and fitness, medical and police checks have to be passed.⁶⁸

Many of the survey respondents from Samoa took the initiative and registered their interest in participating in seasonal work with the Ministry of Commerce, Industry and Labour after hearing about seasonal work opportunities in the media or from friends or relatives. Many dropped off a letter at the Ministry, such as a male worker who has already been to Australia for five seasons:

⁶⁶ Consultation with the NEC, September 2020.

⁶⁷ Consultation with the FTUC, September 2020.

⁶⁸ Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

I left my name with the labour office expressing interest to participate in the scheme. The labour office contacted me for an interview. The interview included labour office personnel and someone from the company through Skype. They later contacted me to say I was accepted, so I organized my papers such as clearances, medicals, etc. The papers were submitted by the labour office to New Zealand immigration to process [the] visa. Once done, they informed us on what day to depart.

Others were selected by a village committee or the village mayor, who put their names forward to the Ministry. This was how a young 19-year-old man who had been to New Zealand once was selected:

I was recruited through the village process where the mayor takes the role of recruiting for the company. The village council chooses the people who will go. This is based on their commitment to family, village and church activities, behaviour and attitudes. The labour office called when my interview time was ready. After I was successful in the interview, I had to prepare my papers and clearances for the visa application.

Most respondents in Samoa found the selection process fair, arguing that everyone can get an interview and, if they pass the interview and tests, everyone has a chance to go. Only three respondents from Samoa found some aspects of the process unfair. One respondent alleged that many workers are picked by the employers in New Zealand, who choose friends and relatives of existing workers, and that these individuals do not have to go through the formal application process organized by the Government. There were also complaints about the length of the process from the time of the first application to moving overseas for work.

In **Kiribati**, the Employment Unit, which is part of the Labour Division under the Ministry of Employment and Human Resource, maintains a work-ready pool of prospective seasonal workers for the SWP and the RSE scheme. Workers who fulfill general requirements such as citizenship and age are pre-selected by island councils with job opportunities rotated between the islands. At present, there is no private recruitment in Kiribati (Voigt-Graf, unpublished). According to the Labour Division, each Island Council is given a quota for prospective workers from the island in the age range of 18 to 45. After selection by the Island Council, candidates undergo a fitness test with two chances to pass the test, followed by compulsory participation in English language training. From the work-ready pool, the Employment Unit sends a list of prospective workers who meet the requirements to overseas employers who then select the workers. According to the Employment Unit, the recruitment process is generally fair, although there is some concern about workers promoting their family members to overseas employers, as other workers will miss out on a fair chance to participate.⁶⁹

Respondents in Kiribati explained how the recruitment and selection process worked in their cases. Many of them applied through their local councils and were pre-selected based on screening by the Ministry or a written test. They then had to undergo an interview and a fitness test, and if they passed these, they had to organize their medical clearance and passports. A worker from Banaba explained:

I applied for the SWP/RSE job through the local council office on my home island, Banaba. ... The clerk sent my application to the Ministry of Labour on Tarawa. All of us who applied were sent to Tarawa for an interview and fitness test. The selection was done after these tests. ... The successful candidates were told to process their passports, visas, work permits, etc., and to wait for their tickets to leave either to Australia or New Zealand.

Other respondents mentioned the existence of a "bonus system", which a male worker who had been to New Zealand four times explained:

I was recruited through a bonus system. My brother-in-law worked for a company in NZ. He worked really really hard. So the employer got him to bring someone from his family as a bonus. This is how I got this job. ... The employer contacted the Ministry of Labour and recommended my name, so I was listed. I understand that the Ministry of Labour has stopped this [bonus system], but this

⁶⁹ Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

change is not good because the bonus system benefits the employer and also the employee. It creates a strong team of workers which is very easy to manage. They work really hard.

Most respondents in Kiribati thought the process was fair, though some complained about its length. There was an appreciation of the fact that the bonus system is no longer used and that all selection is now done at the Ministry. As one respondent argued:

I believe the procedure was fair. After all, everyone was given equal opportunity to apply. ... If one is able to provide all that was required and pass the oral test and fitness test, then that person gets the opportunity to work in Australia or New Zealand. ... Before we hardly get the chance. We had to wait for very long because when an opportunity came up, the employer had already chosen his workers through the bonus selection. ... Now the Labour [Division] gets to do the selection. ... I was fortunate to have been one of the many candidates who passed the several tests.

However, some dissatisfaction continued among outer island residents for whom it is very expensive to travel to Tarawa at their own expense to participate in the recruitment process. One respondent mentioned that not all selected candidates receive the information that they have been selected, saying that the list of successful candidates is published on the Ministry's Facebook site, which not everyone has an opportunity to check regularly.

In **Tuvalu**, the Department of Labour maintains a work-ready pool of eligible candidates who fulfil certain criteria such as not having a criminal record and a satisfactory health screening. Pre-selected candidates have to be approved by the Secretaries and CEO of the Ministry and be endorsed by the National Employment Recruiting Agency. Once included in the work-ready pool, actual recruitment depends on the requirements specified by employers. According to the Department of Labour, the recruitment process is fair, as everyone interested in registering will be taken through the same process.⁷⁰ Previously, island leaders had been involved in the selection committee because the department thought that they were able to recommend the best candidates for the jobs, as they would best know the people in their communities and because it was a strategy to equally distribute opportunities among the eight islands of Tuvalu. However, the candidates selected by island leaders were usually the ones that were most committed to the community programmes but not necessarily the best for seasonal agricultural work.

Based on the consultation of trade unions in the PICs, trade unions have no role in the selection and recruitment process of workers in Fiji, Kiribati, Samoa and Vanuatu. In all countries, trade unions would like to become more engaged in the process.

5.2.2. Pre-departure arrangements

As discussed in section 4.1.3., under the SWP, nominated ministries in the countries of origin and/or recruitment agents are required to provide a written copy of the offer of employment to prospective workers, explain the offer to them in an appropriate local language, and inform them that they can seek independent advice regarding the offer. There are no similar uniform requirements under the RSE. According to their survey responses, all workers from Fiji, Kiribati and Vanuatu who participated in the RSE and SWP had received, read and understood their letter of offer and employment. Among the 30 respondents in Samoa, only 23 had received a letter of employment, and only 12 had read it, and 11 had understood the letter. Among the Samoan workers who went to Australia, 11 of 13 respondents had received a letter of employment (85 per cent), and among those who went to New Zealand, 12 of 17 had received a letter (71 per cent). The data do not show a strong relationship between the workers' English language skills and the likelihood that they read and understood their letter of employment. For instance, some Samoan workers who can read and write English very well or without difficulty did not read the employment letter they received. Trade unions in the PICs were generally concerned that many workers do not understand the letters of employment and contracts,⁷¹ whereas PIC governments were more confident that workers understood the letters.

70 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

71 Consultation with the Fiji Trades Union Congress, September 2020 and the Vanuatu National Workers Union, September 2020.

All country of origin governments consulted for this study argued that workers were taken through the letters of employment and contracts, either by a government labour officer or, in the case of Vanuatu, by recruitment agents. Only the Government of Tuvalu mentioned that the letters of employment were difficult to understand for new workers.⁷² The Government of Fiji emphasized that the letters of offer were vetted by the respective government agencies in New Zealand and Australia to ensure that they abide by the countries' labour laws.⁷³

Even if workers understand the terms in the letters of employment and contracts, they do not necessarily understand what they mean practically before they actually start working under these terms. It is through joining trade unions in Australia and New Zealand that they can get expert advice on the terms of their contracts, and, more importantly, assistance in enforcing their workplace rights. Sometimes contracts require re-negotiation in Australia/New Zealand, which again requires trade union support.

Pre-departure briefings are an important tool for preparing workers for their overseas work and to reduce their vulnerability abroad, because workers who are aware of their employment conditions, their rights at work, their human and gender rights, as well as their responsibilities are less likely to experience abuse and rights violations. Under the RSE and SWP, Pacific countries of origin are responsible for pre-departure briefings that generally include information on employment conditions, climate, clothing and footwear requirements, taxation, insurance, remittances, budget advice, and emergency contact information. The New Zealand and Australian governments have prepared pre-departure resources for workers, including a *Get Ready Pack* for the RSE, and the *Working and Living in Australia: Pre-Departure Guidebook* for the SWP (New Zealand, MBIE 2018; Australia, DESE 2019b).

The arrangements for the pre-departure briefing differ among PICs in terms of length and content. In some PICs, training is provided by recruitment agents; in others by government departments.

In **Vanuatu**, pre-departure briefings are organized by agents approved by the Department of Labour and also involve other stakeholders. They are conducted over two days and cover workers' expectations, living in Australia and New Zealand, budgeting, and the law in Australia and New Zealand. In addition, the contents of the employment agreements are explained. According to the Department of Labour, the main objective is for workers to be ready and have sufficient information before they leave.⁷⁴ Workers normally receive a handbook. The Vanuatu National Workers Union (VNWU) has some understanding of the pre-departure process but has no role in it. It would like to play a role, as it regards the level of preparedness of first-time participants as unsatisfactory.⁷⁵

In **Samoa**, all seasonal workers must attend pre-departure briefings delivered by the Government. According to the Labour Sending Unit, pre-departure orientation sessions for RSE workers are held one week before their departure and are usually for half a day. SWP pre-departure briefings are held two weeks before departure and take up to two days.⁷⁶

In **Kiribati**, pre-departure briefings are provided by the Employment Support Services based at the Kiribati Institute of Technology (KIT) and take five days (Voigt-Graf, unpublished). According to the Employment Unit, KIT's Employment Support Services explain the letters of employment and discuss all important issues that workers should be aware of in regard to their overseas travel (including their transit in Fiji) and living and working in their destination country. Currently, there is only a pre-

72 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

73 Consultation with the NEC, September 2020.

74 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

75 Consultation with the VNWU, September 2020.

76 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

departure booklet provided for workers heading to Australia.⁷⁷ The Kiribati Trade Union Congress (KTUC) is not involved in the planning or preparation of the pre-departure briefings or training.

In **Fiji**, a pre-departure briefing is provided by the Government and takes three days, including two days for topics ranging from health and hygiene, employers' expectations, climate, laws of host countries, employment agreements, emergency contacts, pay, deductions, accommodation and travel logistics, and a one-day programme on money-mindedness run by ANZ bank. According to the NEC, the pre-departure briefing is designed by counterparts in New Zealand and Australia. The Australian Government provides pre-departure booklets in Fijian, Fiji-Hindi and English. At the end of the training, participants receive certificates.⁷⁸ The FTUC regards workers as inadequately prepared for their overseas work and is concerned that many workers are not able to seek assistance overseas if needed.⁷⁹

In **Tuvalu**, workers receive copies of their contracts and pre-departure booklets and participate in a one-day pre-departure briefing. At this briefing, the Department of Labour explains their contracts to them and tries to answer all contract-related questions, explains the type of work, the new context, work culture, and other aspects of life, with pictures used to illustrate these topics.⁸⁰

It is important to stress that although most workers receive letters of employment and contracts before they travel to Australia or New Zealand, it is almost impossible for migrant workers to assess whether the conditions are fair, especially in regard to proposed deductions for accommodation, transport and others, and whether piece rates are compliant with national law (see also corresponding sections on pay deductions and piece rates in the legal review above). Therefore, mere participation in pre-departure briefings and an understanding of the conditions in the employment contracts do not necessarily mean that the conditions offered by employers are fair and reasonable. This can often only be established after commencing work under the specified conditions.

All respondents, except for one worker from Samoa who went to Australia, had participated in a pre-departure briefing or training before they left for their most recent stay in Australia or New Zealand. All workers from Kiribati and Vanuatu and most workers from Fiji and Samoa who had participated in the SWP had received a pre-departure booklet for Australia containing information about the job and conditions in Australia. All workers from Kiribati and most from Fiji, Samoa and Vanuatu who participated in the RSE had received a booklet before moving to New Zealand (see figure 5.7). Although the majority of workers had read and understood the booklets, not all workers had bothered to read them, even if they received them. Respondents from Samoa were particularly unlikely to read the booklets.

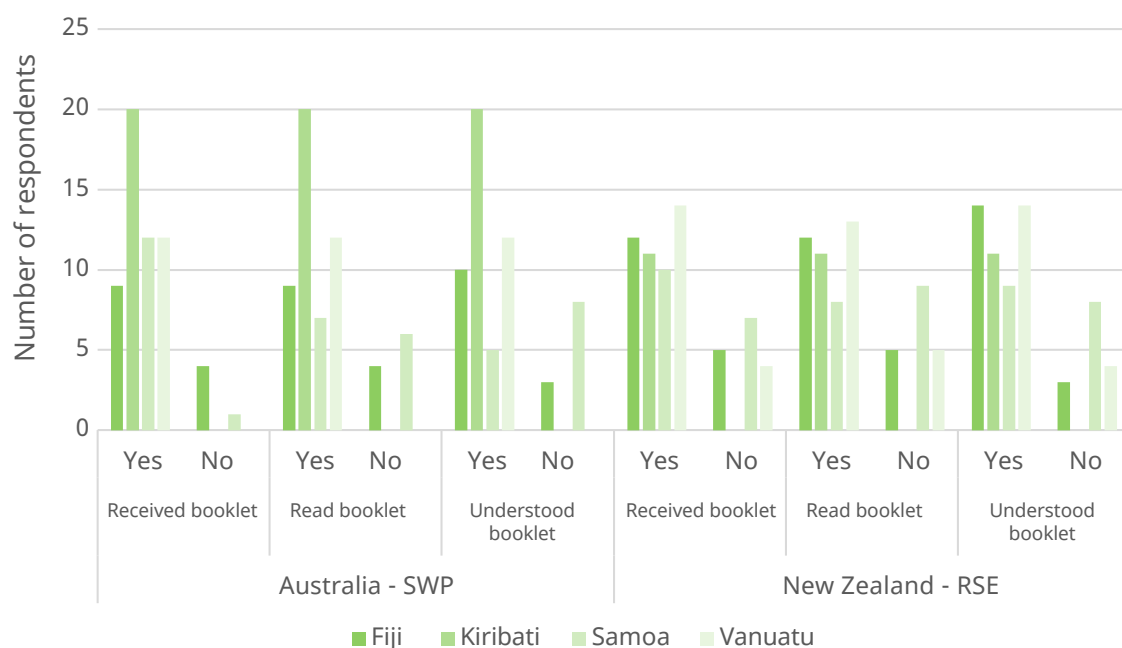
77 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

78 Consultation with the NEC, September 2020.

79 Consultation with Fiji Trades Union Congress, September 2020.

80 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

Figure 5.7. Workers who received, read and understood a booklet provided by Australia and New Zealand, by country of origin



Note: The data in this figure show that in some PICs the number of workers who claimed to understand the booklet is greater than the number who received or read the booklet. This may be the result of some respondents misunderstanding the question or due to the fact that instructors will have gone through the contents of the booklet as part of pre-departure training, which provided these respondents an understanding of the contents without them having read it.

Even though the responses seem to suggest that workers, in general, are relatively well informed about what to expect in Australia and New Zealand, there are important shortcomings. In the case of the RSE, much information made available by Immigration New Zealand is only available online and in English, with only some of it translated into Pacific languages. According to the New Zealand Council of Trade Unions (NZCTU), trade union involvement in pre-departure and on-arrival briefings for workers would be desirable.⁸¹ Similarly, the Retail Supply Chain Alliance in Australia, which is a coalition of trade unions that represent workers in each facet of the horticulture supply chain, recommends a formalization of the induction process of workers that includes trade union involvement (Retail Supply Chain Alliance 2020). As discussed above, PIC countries of origin have failed to involve trade unions in the process.

Moreover, the length and content of the pre-departure training vary greatly between countries and, due to time and travel constraints in all countries, the content covered is necessarily basic.

5.2.3. Recruitment fees and related costs

As per the ILO Definition of Recruitment Fees and Related Costs, recruitment fees and related costs refer to any fees or costs incurred in the recruitment process for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection. Related costs include such items as medical costs, insurance costs, costs for training and orientation, equipment costs, and travel and accommodation costs. According to the Definition and the ILO General Principles and Operational Guidelines for Fair Recruitment, such costs should not be charged to migrant workers (ILO 2019a). In the Pacific countries of origin, costs can be divided into pre-departure expenses, travel expenses and post-arrival expenses. **Pre-departure expenses** include fees for passports, visas, medical and police clearances, as well as domestic travel and accommodation expenses in the capital city for workers from other parts of the country to undergo

⁸¹ Consultation with the NZCTU, September 2020.

medical or fitness tests, arrange for required documents, and attend pre-departure training. Some workers take more than one trip to the capital. The costs differ among the various PICs because of different requirements and logistical arrangements. **Travel expenses** comprise international return airfares ⁸², domestic travel (both in the PICs and in Australia/New Zealand) and accommodation expenses during transit. Following their arrival in Australia/New Zealand, many employers provide a cash advance to workers on the order of AUD200–300 that can be used for day-to-day expenses until they receive their first pay. In some cases, workers also receive a clothing allowance. These allowances are deducted from wages. Following the return to the home country, the **post-arrival expenses** to travel from the airport to their home village are usually paid by the workers.

Some expenses are paid by the workers upfront, while others are initially paid by employers and later repaid by workers through wage deductions. There are some variations between countries where, for instance, in Tuvalu the Government covers visa fees, whereas workers in the other PICs pay for their visas, either upfront or through wage deductions. Table 5.7 provides a summary of the main migration cost items based on worker interviews and key stakeholder consultations.

Table 5.7. Main recruitment fees and related costs and usual source of payment

Items	Usual source of payment
Pre-departure expenses	
Passport (if required)	Worker pays upfront
Visa	Initially paid by employer and worker repays through wage deductions
Medical clearance	Worker pays upfront
Police clearance	Worker pays upfront
Domestic travel and accommodation expenses (to the capital or other town to organize required documents and participate in predeparture training)	Worker pays upfront
Recruitment fee (if applicable) ¹	Worker pays upfront
Travel expenses	
Domestic travel to the airport	Transport is usually provided by PIC government from the capital city to the airport
International airfare	Initially paid by employer and worker repays most through wage deductions
Domestic travel in Australia / New Zealand	Initially paid by employer and worker repays through wage deductions
Accommodation in transit (if required)	Initially paid by employer and worker repays through wage deductions

¹ Recruitment fees are not allowed under the schemes. However, there is anecdotal evidence of individuals paying middlemen for their names to be included in the pool of prospective workers.

⁸² In Australia, employers pay AUD300 towards the total cost of travel (international airfare and domestic transits). In New Zealand, employers pay 50 per cent of the return airfare between the PICs (except Kiribati and Tuvalu) and New Zealand. For workers from Kiribati and Tuvalu, the New Zealand Government pays 50 per cent of the airfare from Nadi/Fiji to New Zealand, with workers paying the full cost of the return airfare from Kiribati/Tuvalu to Fiji.

Items	Usual source of payment
Post-return expenses	
Domestic travel from the airport to home	Worker pays

As seen in table 5.7, workers have considerable expenses before moving to Australia or New Zealand. In Kiribati, workers usually cover these expenses from savings.⁸³ In Samoa, workers use either savings or loans.⁸⁴ In Tuvalu, loans are only available to people who have permanent jobs, and most workers, therefore, have to source money from their families to cover their expenses. The Tuvalu Department of Labour usually allows workers to take out a loan of AUD200 before their departure to assist with their transit costs en route to Australia/New Zealand. The workers repay this to the Government when they return.⁸⁵ In Fiji, most workers use their farm income to cover pre-departure expenses, while some take loans from their families, and for yet others, their village clan pays on their behalf.⁸⁶

The workers' pre-departure expenses for passport, visa, medical clearance, police clearance and recruitment fees to work in Australia or New Zealand can vary considerably between countries and depending on the recruitment provider. Workers were asked to estimate their upfront expenses and their expenses through wage deductions, which together account for the total migration costs. Responses ranged from a minimum of AUD154 to a maximum of AUD7,884, with five respondents not providing any estimates. Due to some unrealistically low and high estimates, median values, instead of average values, were calculated and are presented in figure 5.8. The median migration costs to Australia were AUD2,054 and the median migration costs to New Zealand were AUD1,471. Figure 5.8 shows the workers' total migration costs, divided between upfront payments and payments through wage deductions. The median total payments by workers from all countries was almost AUD1,836. Expenses were highest among workers from Kiribati due to high international airfares, and lowest among workers from Samoa.

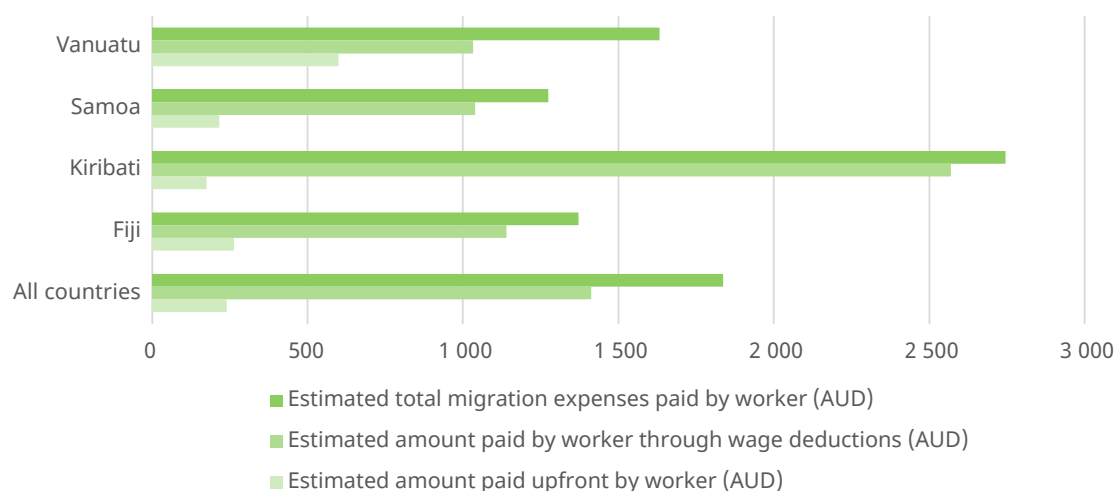
83 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

84 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

85 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

86 Consultation with the NEC, September 2020.

Figure 5.8. Median migration expenses paid by workers upfront, through wage deductions and in total, by country of origin (AUD)



Note: Five respondents from Fiji and two from Samoa did not provide estimates of their migration costs.

Figures 5.9 and 5.10 show the migration costs for the corridors of Kiribati to Australia and Vanuatu to New Zealand, respectively. The median expenses for workers from Kiribati to Australia were AUD2,634. Of these, AUD154 was paid by the workers upfront and AUD2,481 was paid through wage deductions. The median expenses for workers from Vanuatu to New Zealand were AUD1,716. Of these, AUD582 was paid upfront, and AUD1,074 was paid through wage deductions. As seen in figures 5.9 and 5.10, some workers had considerably higher migration costs than these median values.

Figure 5.9. Expenses in the Kiribati–Australia migration corridor (in AUD) (n=20)

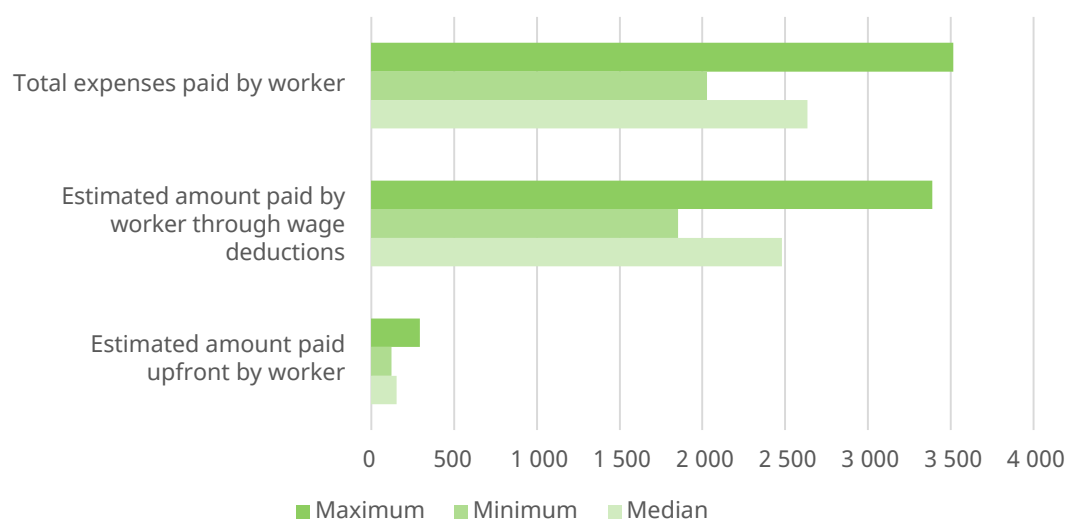
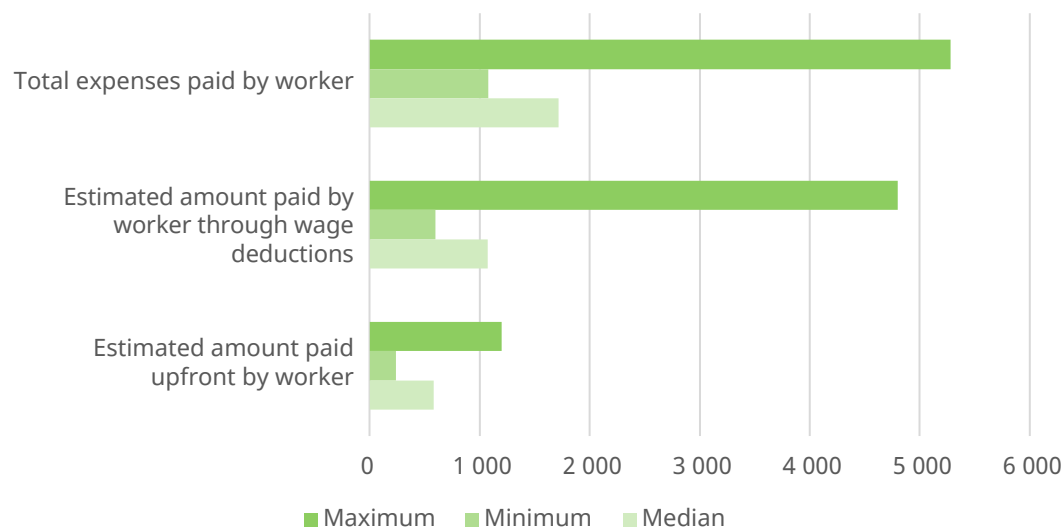


Figure 5.10. Expenses in the Vanuatu–New Zealand migration corridor (in AUD) (n=18)



The average migration costs borne by workers amounted to 12 per cent of their total gross earnings (12 per cent for SWP workers and 11 per cent for RSE workers).⁸⁷ Recruitment costs borne by workers are considerable, and workers start their seasons in Australia and New Zealand with considerable debts to their employers, while also carrying debts to family, banks and governments in their home countries. By contrast, while employers meet some upfront expenses, they largely recoup these later through wage deductions. For workers, these repayments are a priority, as outstanding sums will normally attract high interest rates of between 10 per cent and 20 per cent after the first few weeks. These deductions often create an unreasonable and unfair burden on workers, which can act to significantly reduce their earnings, especially as workers effectively pay all costs associated with participating in the scheme (pre-departure expenses, travel expenses and post-return expenses). Therefore, the policy position of the NZTCU is that all costs of recruitment and migration should be borne by the employer, and that employers should be barred from charging interest or imposing any other onerous terms of debt on workers.^{88 89}

Workers were asked about the main challenge they faced before their departure to Australia/New Zealand. Their responses showed some important differences among the four PICs, both in regard to the number who did not face any challenges and the nature of the challenges that were faced. The number of respondents who did not face any particular challenge was highest in Samoa, at 12 respondents (40 per cent). One worker explained why the process was mostly smooth: “I did not have a problem. My team, we all went together to do our police and health clearances.” Only two Samoan respondents were challenged by the preparation process and getting their documents ready. The rest who faced challenges found it hard to say goodbye to their families, especially their children, spouses and parents.

In Kiribati, nine respondents (29 per cent) said they did not face any challenge before their departure. A female worker explained it as such:

There was no challenge except the homesickness. I miss my family and children. I always look forward to work in New Zealand. My parents are very supportive and look after our children. I see this job as an opportunity, not a challenge!

87 This percentage refers only to the costs related to recruitment and travel, and does not include expenses for accommodation and similar items, nor does it include deductions for tax paid by workers in the destination countries.

88 Consultation with the NZTCU, September 2020.

89 Under the RSE and SWP, employers are not supposed to charge interest on repayments. To establish whether or not interest has at times been charged requires further investigation.

The majority of those who faced a challenge found it hard to leave their family behind (13 respondents). One male participant said: “I was happy but also sad because my wife was pregnant and ready to have our baby.” Nine respondents were afraid of particular issues, such as a male worker who had only been in New Zealand once: “I was scared of the change in culture and scenery, scared of leaving my family, and the cold climate in New Zealand.” One respondent mentioned his lack of English skills as a challenge, but only one respondent felt challenged by the high upfront migration costs.

Five respondents in Fiji (17 per cent) did not face any challenges, six respondents were challenged by the prospect of their families staying behind, one respondent mentioned a lack of English skills as the main challenge, while for 15 respondents (50 per cent) the main challenge was linked to the high migration costs that they had to pay upfront, including the need to travel to the capital Suva, sometimes several times. A male worker from Fiji's second island of Vanua Levu explained:

The number of times we had to travel from Vanua Levu to Suva was a burden. The costs of travel and accommodation when travelling to Suva were too high. Also, the expenses for medical and police clearances were a challenge for me.

Another worker from the town of Ba on Fiji's main island shared a similar experience:

The travel from Ba to Suva to do a medical test is too expensive. The expenses for the application process are too high. We need more explanation from the Ministry about what is happening and what is needed.

It is noteworthy that although ni-Vanuatu have the longest experience in participating in seasonal work, only two respondents (7 per cent) did not face any challenges before their departure. For 19 respondents (63 per cent), the main challenge was related to the migration costs, including travelling to the capital Port Vila and paying for the required documents. One worker explained:

The main challenge for me is paying for another medical certificate and police clearance, and also that I must have enough finance set aside for my family to survive while I am out to travel until my first and second pay overseas.

In contrast, a female respondent mentioned that she was well prepared:

I think all is okay. I had saved up before I travelled the first time. Every season I have to save 100,000 [vatu] for next season to do my documents.

Five ni-Vanuatu workers found it difficult to organize the required documents in time, especially as police clearances often took a very long time to obtain:

Sometimes preparing for police clearance is a challenge before departure, because it takes time and sometimes it has caused me to provide my police clearance to the agent too slowly.

The length it takes to organize police clearances can be particularly challenging when workers are given only short notice to prepare for their departure, as is often the case.

5.3. Working conditions and rights at work under the SWP and the RSE scheme

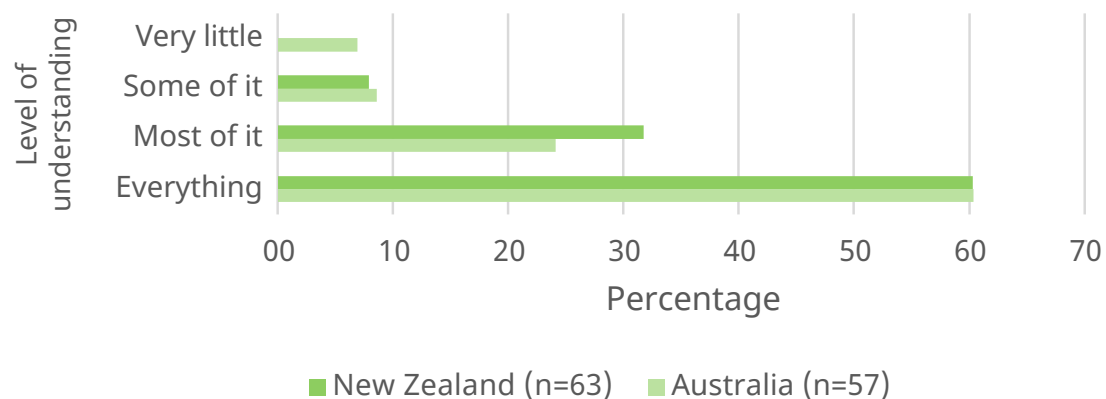
5.3.1. Type of seasonal work

The vast majority of respondents were engaged in the pruning of trees and the picking, weighing, sorting and packing of fruits including apples, citrus fruits, grapes, strawberries, mangoes, kiwis and berries, and vegetables such as capsicum, chilies, broccoli, spinach, cabbage, mushrooms, tomatoes and others. As explained in more detail below (see section 5.6), the physically harder tasks of pruning and picking were mostly done by male workers, while many women were employed in the packhouse where they weighed, sorted and packed fruits and vegetables. Some men were also employed as forklift drivers. Often, the exact tasks that were to be done were unknown to the workers

before they arrived in Australia/New Zealand and were allocated based on skills and experience. A small number of respondents worked in industries other than the horticulture industry. One male and two female SWP workers from Fiji worked at a tourist resort in Australia as a receptionist, a room attendant, and in food preparation, respectively. They all held vocational certificates in hospitality/tourism. A female worker from Vanuatu was also employed as a housekeeper in the tourism industry in Australia. Another worker from Vanuatu was employed on an Australian chicken and egg farm, and a Samoan worker was employed at a meat processing facility in New Zealand. Since RSE workers cannot be employed in the meat industry, the situation of this worker is unclear. It is possible that he transferred to a different visa during the COVID-19 pandemic, after arriving on an RSE visa.

Fifteen respondents who had been to New Zealand and 19 who had worked in Australia were employed through a labour hire contractor. All respondents from Fiji, Kiribati and Vanuatu had received a written employment contract. Of the Samoan respondents, three said that they had not received a written contract for their work in Australia and seven had not received one for work in New Zealand. The language of all contracts in Australia was English. Most contracts in New Zealand were also in English only, but the contracts of two workers from Vanuatu in New Zealand were in English and Bislama, and the contract of one Samoan worker was in English and Samoan. The level of understanding of the employment contracts among seasonal workers varied slightly (see figure 5.11). About 60 per cent of workers in Australia and New Zealand understood everything in the contract. Most other workers understood most of their contracts. However, a larger percentage of workers in Australia understood only some or very little of the contract's contents. All workers who understood very little of the contract were from Samoa.

Figure 5.11. Workers' level of understanding of contract, by destination country



Five workers who had been to Australia and five who had been to New Zealand said that the actual working conditions were not the same as in their contracts, partly stressing that the difference was due to the contracts not including details about their tasks.

5.3.2. Earnings

Under the regulatory provisions for the protection of migrant workers under the RSE and SWP, workers are entitled to the same minimum pay as permanent employees, and there are minimum remuneration provisions guaranteeing participants an overall minimum pay. In terms of wages, RSE workers are entitled to the same minimum rights as permanent employees, including at least New Zealand's minimum adult working wage. Similarly, SWP workers are covered by the minimum entitlements under Australia's National Employment Standards, though Australian law excludes all casual workers from certain entitlements (World Bank 2017, see discussion in section 4.2.1 above). The changes made to the SWP in 2015–16 included the removal of the (previously 14-week) minimum stay requirement, and the addition of a minimum average of 30 hours of work per week (Maclellan 2017; Hepworth and Maclellan 2017).

All workers were paid weekly, except for five workers in Australia and two workers in New Zealand who were paid fortnightly. Figure 5.12 shows respondents' average weekly earnings before any deductions for the 5th to 95th percentile to exclude extreme values (some of which were unrealistically

high or low, and therefore probably erroneous). To compare earnings between Australia and New Zealand, all earnings are displayed in AUD. The average weekly earnings of workers in Australia were AUD988, compared to AUD868 in New Zealand. Female workers had higher weekly earnings than male workers in both Australia and New Zealand. In Australia, workers from Fiji had the highest average earnings (AUD1,138 per week) and workers from Vanuatu the lowest (AUD834). In New Zealand, Samoan workers had the highest average earnings (AUD1,093) and workers from Fiji the lowest (AUD736).

Figure 5.12. Average weekly pay of workers in Australia and New Zealand, by gender and country of origin (5th to 95th percentile)



The law in Australia requires employers to make superannuation contributions of 9.5 per cent on top of the wages.⁹⁰ Fifty-five of the 58 workers in Australia were aware that their employers paid superannuation contributions. Fifteen of the 63 respondents who had worked in New Zealand also said that they paid superannuation contributions, which is likely to be based on misunderstandings as there is no system of superannuation contributions for seasonal workers in New Zealand.

Of the 121 workers interviewed, 63 were paid an hourly rate, 22 a piece rate, 9 a combination of hourly and piece rate, and 27 did not give a clear response or did not know. A worker from Fiji in Australia explained how his combination pay was calculated: "I was paid both per bin and hourly. If I have less than four bins in a day, I am paid an hourly rate." The pay of a Samoan worker in New Zealand was calculated as follows: "When we were thinning, we got 2 to 3 dollars [NZD] per tree and managed to do about 60 trees per day. When we were picking, we got 40 dollars per box and made a maximum of five boxes per day. For pruning, we were paid by the hour at 19 dollar per hour."

Thus, there were considerable variations in income among countries of origin and individual cases on closer examination. An RSE impact study found that many workers were concerned about differences in wage rates and employment conditions among RSE employers (Nunns, Bedford and Bedford 2019). Some employers pay their return workers the minimum wage despite increased skills and several years of experience. While some employers recognize the extra responsibility of team leaders and drivers by paying them higher wages or by having other reward systems in place, other employers do not have such systems. Concerns about employment conditions also relate to the complexity and lack of transparency around how piece rates are calculated; about rates that change throughout the season; and about employers that do not confirm what the rate will be.

⁹⁰ The superannuation guarantee was increased to 10 per cent on 1 July 2021. However, the rate of 9.5 per cent remains in the report as this was current at the time of the survey and therefore aligns with the perception of the migrant workers.

An informant described that some kiwifruit employers had different pay scales for New Zealand nationals and RSE workers for the same task, where for example, New Zealanders were on piece rates for pruning while RSE workers were on hourly rates (Nunns, Bedford and Bedford 2019).

Another concern for RSE workers is that pay rates have moved relatively little over the 13 years of the scheme (Bedford, Nunns and Bedford 2020). Workers are paid either on an hourly rate or via piece rates that are tied to the inflation-adjusted minimum hourly rate. The annual increases in the minimum hourly wage have not kept pace with workers' rising accommodation, transport and other living costs in New Zealand. Further, the RSE policy allows RSE employers to average out the amounts of money workers earn each day to meet the minimum requirement of 30 hours' work per week over the term of the contract. Workers' financial rewards for hard work during peak times are offset by quieter periods when fewer hours of work are available. The averaging of hours worked reduces incentives for employers to find alternative work for workers during quiet periods, and can reduce workers' incentive to work at maximum capacity during peak periods. Research indicates that the major productivity gains, in terms of earnings by season, are within the first two to three years as new recruits become more skilled and experienced (Bedford, Nunns and Bedford 2020). Around seasons three to four earnings start to plateau in real terms, or even decline if costs such as rent and transport increase faster than inflation.

5.3.3. Pay deductions

All respondents said that they understood how their pay was calculated, except for three workers in New Zealand (two from Fiji, one from Vanuatu). All workers were aware that they paid tax in Australia/New Zealand.

Most workers, except for two workers in New Zealand, understood how pay deductions were calculated and were aware that there were higher deductions in the first two months when they repaid the pre-departure and travel expenses that had been advanced by employers. The deductions for these repayments depend on how much a worker has earned in a particular week. In addition to these, there are deductions for ongoing expenses. Many respondents said that the deductions were too high. As a worker from Fiji in New Zealand said:

Yes, deductions were too high. Over half of my pay sometimes. The pay was not enough because of the high deductions.

The most common deductions for ongoing expenses in Australia and New Zealand are summarized in Table 5.8, which shows that the largest pay deductions are for taxes and accommodation expenses. Also, a small number of respondents said that they paid for their induction training, job-related training or job-unrelated training. Two workers from Kiribati said that they paid for equipment and tools in Australia, and that if anything was broken, the cost was subtracted from their wages.

Table 5.8. Deductions for living expenses in Australia/New Zealand

Item	Estimated weekly deductions in Australia (AUD)	Estimated weekly deductions in New Zealand (AUD) ¹
Accommodation ²	25–164	124–180
Transport	25–65	0–76
Health insurance ³	19–50	17–109
Tax	15%	105–285

Notes:

¹ The exchange rate from NZD to AUD applied is 1 NZD = 0.95 AUD.

² Accommodation costs often included utilities and Wi-Fi.

³ Most workers in Australia indicated that their health insurance premiums were around AUD20 or 25. Only one worker gave an amount of AUD50, which is likely to be erroneous. Similarly, most workers in New Zealand paid around NZD20 to 25 for their health insurance. Only one worker gave an amount of NZD115, which is also likely to be an error.

Workers in New Zealand estimated their total earnings after deductions at AUD13,399, compared to workers in Australia with AUD12,999. Table 5.9 compares the total earnings before deductions with the total earnings after deductions in Australia and New Zealand. In New Zealand, deductions over the entire season were almost AUD2,000 lower than in Australia, largely as a result of a higher share of international travel expenses being paid by seasonal workers in Australia. Workers in New Zealand also receive holiday pay, which is accumulated and paid to workers as part of their final pay before leaving New Zealand. The lower deductions in New Zealand together with a longer average length of stay in New Zealand of 6.5 months, compared to 6 months in Australia, contribute to the higher total earnings after deductions in New Zealand.

Table 5.9. Workers' total earnings before and after deductions in Australia and New Zealand (in AUD)

	Australia	New Zealand
Total earnings before deductions ¹	25 695.80	24 309.32
Total earnings after deductions	12 999.31	13 399.04
Overall deductions	12 696.49	10 910.28
% of total earnings remaining after deductions	50.6	55.1

¹ Total earnings figures were calculated by multiplying the average weekly pay of workers in Australia and New Zealand (see figure 5.12) by the average length of stay, which was 6 months for Australia (26 weeks) and 6.5 months (28 weeks) for New Zealand.

Respondents were also asked if they had expected to earn more, the same or less than what they earned during their last season (see figure 5.13). More than half of the respondents earned as much as they had expected.

Figure 5.13. Workers' expected earnings versus actual earnings, by country of destination



The reasons for workers earning more than expected were long hours of work due to favourable weather conditions and extension of the overall stay due to the COVID-19 pandemic. None of the workers mentioned that they earned more than expected because they worked particularly efficiently when on piece rates. The reasons for earning less than expected included higher pay deductions

than anticipated, the lack of available work or bad weather conditions and the associated cutting of work hours, as well as early departure due to the COVID-19 pandemic. One worker earned less because his employer in New Zealand cut the hourly rate from NZD17.70 to NZD12.00, and the rate to prune a tree from NZD0.65 per tree to NZD0.25.

An area of concern for many workers is the need for consistent work across the entire duration of their contracts, because even without adequate work and earnings, workers must still meet accommodation and living costs that increase their debt at the beginning of the season or deplete their savings during the season.

5.3.4. Workhours and leave entitlements

The average number of workdays per week was 5.96 in Australia and 5.98 in New Zealand. Eighteen workers in Australia (31 per cent) and 12 in New Zealand (19 per cent) worked seven days per week.⁹¹ The minimum number of workdays was four, which applied to one worker in Australia and one in New Zealand. The average working hours per day were 8.4 in Australia and 8.9 in New Zealand, with a wider range of average working hours in Australia (between 3 and 15) than in New Zealand (between 6 and 12).

Table 5.10 shows the number and percentage of respondents who worked overtime, shift work and/or on weekends and public holidays while in Australia/New Zealand. Respondents who were engaged in these types of work were asked if they received a higher pay rate for these types of work.

Table 5.10. Number of respondents with overtime, shift, weekend and public holiday work ¹

	Australia		New Zealand	
	Number	%	Number	%
Total	58	100.0	63	100.0
Respondents doing overtime	29	50.0	37	58.7
– Overtime paid at higher rate	13	44.8	11	29.7
Respondents doing shift work	8	13.8	28	44.4
– Shift work paid at higher rate	2	25.0	5	17.9
Respondents working on weekends	28	48.3	45	71.4
– Weekend work paid at higher rate	10	35.7	5	11.1
Respondents working on public holidays	42	72.4	32	50.8
– Public holiday work paid at higher rate	14	33.3	24	75.0

¹ More than one answer possible.

⁹¹ While such working hours are not legal in Australia if they continued for the entire contract, they might periodically be legal as there is no exact limit on overall working hours, so long as the work hours are “reasonable”, taking into account factors that include the usual patterns of work in the industry or in the part of the industry in which the employee works (Fair Work Act, 2009, section 62(3)). In New Zealand ordinary hours of work in excess of 40 hours per week must be agreed between the employer and employee. It is unknown whether seasonal workers and their employers routinely agree on this as per the law.

Whether or not workers were working overtime depended on the organization of the workplace and the amount of work available. In workplaces that used shift work, few workers ever worked overtime. In other workplaces, workers worked overtime if there were urgent tasks or if many workers were absent. Often, a short amount of overtime work was done before workers started their day off, especially if that fell on a weekend. Only 44.8 per cent and 29.7 per cent of workers who worked overtime in Australia and New Zealand, respectively, received overtime pay. Whether or not workers were paid for overtime again depended on the organization of the workplace. If workers were paid piece rates, overtime was generally not paid at a higher rate. If workers were paid an hourly rate, arrangements varied, with some workers receiving their normal hourly rate for overtime work, some workers receiving 1.5 times and others even two times their normal rate.

Most workers who did shift work and weekend work were also not paid at higher rates for these. Most workers working on public holidays received higher pay in New Zealand but not in Australia. As discussed in the legal review above, the majority of SWP workers are employed on casual contracts, and under the National Employment Standards are not entitled to paid public holidays or periodic holidays. As a worker from Kiribati in Australia recounted:

The boss made us sign a document so if we were going to work during public holidays, we would not get overtime pay. He gets upset if we do not sign the agreement. If one of us stays home, the owner will talk to us about why we do not work. He always reminds us of our obligation to our families and not to waste time.

Respondents were asked if they were eligible to take different types of leave, and if yes, how many days they had taken. Most workers were not eligible to take **annual leave**.⁹² Only three workers from Vanuatu (two in New Zealand and one in Australia) said that they could take annual leave. One of them took two days and one took one day of annual leave. Asked if they were entitled to paid **sick leave**, 23 workers in New Zealand (37 per cent) and eight workers in Australia (14 per cent) answered in the affirmative. Ten workers in New Zealand had taken between one and seven days of sick leave, while only two workers in Australia had taken three and seven days of sick leave, respectively. It is unclear if all workers who took sick leave days were actually paid for these days or whether it was unpaid leave, as many workers said they never took sick leave because they did not want to forfeit their pay. In a different study of SWP workers from Papua New Guinea, many workers reported not receiving sick pay, which reduced their income or forced them to work despite being sick (Voigt-Graf 2017).

None of the workers in Australia or New Zealand took **maternity leave** or **compassionate leave**, although one female worker in Australia said that seasonal workers were eligible to take maternity leave. There was some confusion about the possibility of taking unpaid leave. Only three workers said that they could ask for unpaid leave (two in Australia, one in New Zealand), while 15 did not know (seven in Australia, eight in New Zealand).

5.3.5. Training

Under the SWP, Approved Employers must assist workers to access training in literacy, numeracy, basic IT and first aid. Given this requirement, it is surprising that 24 respondents who had been to Australia (41 per cent) and 22 in New Zealand (35 per cent) had not received any training. This included 5 respondents from Fiji, 10 from Kiribati, 11 from Samoa and 20 from Vanuatu. Most workers who said they had received training had only received on-the-job training such as inductions to pruning, picking, packing and weighing fruit. The large number of ni-Vanuatu who have not received any training is possibly linked to their long experience with the schemes and their reduced need for on-the-job training. Other training courses that were attended are included in table 5.11. The small number of respondents who attended training courses in all areas is noteworthy.

⁹² In New Zealand, workers who are employed for less than 12 months are entitled to 8 per cent of their wages paid in lieu of annual leave at the end of their contract. Although there was no targeted question about this entitlement in the questionnaire, several workers mentioned that they received their holiday pay.

Table 5.11. Training courses attended by seasonal workers ¹

Training course	No. of respondents who received training in the area
First aid/health and safety	6 workers from Fiji, 2 from Kiribati, 1 from Samoa, 2 from Vanuatu
Forklift/tractor driving	4 workers from Fiji, 1 from Kiribati
Computing/IT	5 workers from Fiji, 4 from Vanuatu
Cooking/nutrition	1 worker from Fiji, 4 from Kiribati, 2 from Vanuatu
Literacy/English	1 worker from Fiji, 1 from Kiribati
Maths/numeracy	1 worker from Fiji
Road safety	4 workers from Kiribati
Solar panel maintenance	2 workers from Kiribati, 1 from Vanuatu
Supervision/leadership skills	4 workers from Samoa, 1 from Vanuatu
Mechanics/carpentry	1 worker from Vanuatu

¹ Some workers attended more than one training course.

5.3.6. Forms of labour exploitation, including the tying of workers to employers¹

Pacific seasonal workers face the risk of exploitation in Australia and New Zealand due to three main factors. First, exploitation occurs as a result of conditions in the horticulture industry in general and the treatment of migrant workers more broadly. Secondly, some workers are exploited as a result of problems in the design of the SWP and the RSE scheme. Thirdly, exploitation also occurs due to employers not complying with the regulations of the SWP and the RSE scheme. These factors are overlapping, and in some workplaces, all three are present.

In regard to the first factor, over the last decade, Australia's horticulture industry has arguably become the most exploitative industry in the country. At the same time, it has become the sector that is most reliant on overseas migrant workers (Retail Supply Chain Alliance 2020). Many workers in the industry are workers without formal work rights in Australia, which is a central driver of exploitation. The horticulture industry demands high volumes of work within short timeframes, compensates on piecework, is regionally located and uses a complex supply-chain of labour hire contractors that can result in unclear roles of responsibility and the muddling of culpability. A landmark report published in 2019 by leading international experts on migration and industrial relations law concluded a detailed three-year investigation into Australia's horticulture sector. The findings established that non-compliance with labour standards is endemic and multi-faceted, and that the horticulture industry has a structural reliance on undocumented workers (see Howe et al. 2019). Indeed, worker exploitation, such as through the widespread use of piece rates – a payment method which in Australia is limited to agricultural industries and is routinely used by growers to underpay workers in horticulture – and the use of labour hire companies, has been identified as a widespread problem across the Australian horticultural industry, which relies heavily on backpackers, seasonal worker scheme participants and migrant workers without formal work rights, and has a low level of unionization (Berg and Farbenblum 2017; Maclellan 2017).

In terms of the design of the SWP and the RSE scheme, previous studies have found that seasonal workers are highly disadvantaged, especially compared to permanent workers. The requirement for employers to attain Recognised Seasonal Employer/Approved Employer status binds workers to specific employers, since their visa can generally not be transferred to new employers.⁹³ It is always problematic when workers are bound to specific employers without the opportunity to change their employer. This creates fears among workers that actions against their employers will lead to the cancellation of their visa by the employers, thereby rendering workers vulnerable to exploitation (Australia, Parliament, Joint Standing Committee on Migration 2016; Hepworth and Maclellan 2017; Maclellan 2017; Mildura Independent 2017).

Research found that migrant workers are more likely to be exposed to exploitation when their employer yields power over them concerning the right to remain and work in the country. As such, stringent restrictions on job changes for migrants result in an imbalanced employer–employee relationship that may lead to abuses (Kouba and Baruah 2019). The residence and work rights of seasonal and temporary workers in Australia and New Zealand are bound to the workers' continued employment with the employer who sponsored them (in New Zealand, multiple employers can jointly sponsor a Pacific worker who can then be transferred among these employers).

Also, it was reported that some sending country governments actively discourage returned workers from speaking out about any violations of rights at work or any other negative issues they experienced in order not to jeopardize opportunities for other workers from the country. This concern stems from the fact that PICs compete with each other for the limited number of seasonal work opportunities in Australia and New Zealand.

Researchers and the media (Braae 2018; Doherty 2017; Hepworth and Maclellan 2017; Australia, Parliament, Joint Standing Committee on Migration 2016; Lees-Galloway 2017; Maclellan 2017, McCarthy 2018, McKenzie and Toscano 2017; RNZ 2018; Stringer 2016; 2017) have documented some cases of worker exploitation under both the RSE and SWP, including underpayment of wages, and even non-payment in some cases; unlawful deductions from wages; excessive working hours without proper compensation; lack of breaks; overcrowded and substandard accommodation and unreasonable above-market rate charges for accommodation and transport; racism and discrimination at work; verbal and physical abuse; employer non-compliance with pre-departure and on-arrival briefing requirements; and others.⁹⁴ In New Zealand, for instance, paid sick leave is only granted after six months of employment, which means that seasonal workers from Kiribati and Tuvalu who stay for nine months in New Zealand only have paid sick leave entitlements in the last three months of their contracts (Voigt-Graf, unpublished); while workers from the other PICs who are allowed to stay for only seven months have paid sick leave entitlements only in the last month of their contracts.

Given that many seasonal workers return to Australia or New Zealand each season for many years, they have essentially become permanent workers without the benefits of permanent employees (such as paid sick leave and paid annual leave). Since they only return to their home countries during the enforced breaks between two seasons in Australia or New Zealand, they rarely work during what is essentially their unpaid annual leave in the Pacific Islands. If seasonal workers are not working during their stay in their country of origin, there is no opportunity for them to transfer skills in the workplace, although there are opportunities to transfer skills to family and community members, such as when engaging in subsistence work.

The third factor contributing to worker exploitation is employers not following the regulations of the SWP and the RSE scheme. In Australia, the Fair Work Ombudsman's Harvest Trail Inquiry (which started in 2013) highlighted widespread employer non-compliance, with inspectors recovering

93 Under the SWP, workers can be transferred in exceptional circumstances, such as when workers were found to not be safe. There has also been more flexibility concerning transfers during the COVID-19 pandemic. This flexibility is expected to increase under PALM. The RSE scheme permits joint recruitment by Recognised Seasonal Employers, wherein smaller Recognised Seasonal Employers can work with other employers to share workers (see also Chapter 4 above).

94 While it is impossible to estimate the number of cases of exploitation under the RSE and SWP, the safeguard mechanisms within the two schemes are strong and have been further strengthened over time, and as such, no systemic exploitation takes place. However, even isolated cases of exploitation are unacceptable and require addressing.

more than AUD1 million in unpaid wages for over 2,500 workers (Australia, FWO 2018).⁹⁵ According to Howes (2020), Approved Employers under the SWP who have been found not to have followed the rules are liable to lose their authorization to participate in the SWP. Therefore, the consequences for SWP employers abusing workers are harsh and have led to a situation of relatively little abuse, especially when compared to the entirely unregulated situation of backpackers. However, it should also be noted that, in comparison with backpackers, seasonal workers under the SWP face specific vulnerabilities and challenges in exercising their labour rights due to their visa conditions, as discussed above (Hepworth and Maclellan 2017; McCarthy 2018).

The SWP is overseen by the DESE and was developed with safeguards under which employers have to be approved in advance, are subject to site visits and audits, have to provide an arrival briefing and induction for workers and invite the FWO and trade unions, are responsible for arranging pastoral care and accommodation, and can be suspended from the SWP for non-compliance. Yet, not all Approved Employers under the SWP comply with the regulations of the scheme. According to the Retail Supply Chain Alliance (2020), there have been many cases of worker exploitation found under the SWP, with 29 employers under the SWP found to have not complied with workplace laws. This suggests that there is limited continual oversight and enforcement of labour standards and programme requirements once employers have been approved. SWP workers were found to be vulnerable to inflated deductions from pay for accommodation and others, and it has been found that SWP workers were unlikely to submit complaints to the FWO because of their desire to remain in Australia for the duration of the season and to return for subsequent seasons. In one investigation it was found that SWP workers in Griffith, New South Wales, reported fear of retribution (including beatings) and that their passports were being held by the sponsoring employer, thus in effect restricting their movement and ability to leave an abusive workplace (Retail Supply Chain Alliance 2020).

One factor that has contributed to the exploitation of RSE and SWP workers is the small number of labour inspectors and compliance officers who ensure that minimum conditions are being met. In the case of New Zealand, when the RSE started in 2007, six labour inspectors and six compliance officers were responsible for monitoring and supporting up to 5,000 workers. Ten years later, no additional labour inspectors or compliance officers had been employed, despite the increased numbers of seasonal workers (Lees-Galloway 2017).

The VNWU and FTUC expressed an awareness of violations of rights at work such as non-payment of wages, excessive working hours, and poor quality of accommodation. The FTUC obtained some of their information from the media, but they are unable to intervene as they do not have formal agreements with trade unions in the recipient countries.⁹⁶ In contrast, the KTUC mentioned that in the past there were few problems that workers faced overseas and that only during the COVID-19 pandemic have issues around non-payment and underpayment of wages increasingly come up. The KTUC was not aware of complaints by workers regarding accommodation and pastoral care.⁹⁷

Many seasonal workers are paid piece rates that employers can set at unfair levels below what they would be paying under an hourly rate approach, especially when workers work extended shifts and weekends. All Pacific country of origin governments were aware of problems that workers faced in Australia/New Zealand in terms of conditions at work, pay and pay deductions, and contract breaches. Only the Government of Kiribati stated that its workers generally faced few problems and that problems have only arisen due to the COVID-19 pandemic.⁹⁸

Both the New Zealand and Australian governments have begun to take measures to address issues concerning seasonal worker exploitation. In February 2017, the New Zealand Government introduced new measures under which employers found to have exploited migrant workers will be banned from recruitment for between six months and two years (Stringer 2017). The 2018 RSE

95 SWP Approved Employers were part of the FWO's Harvest Trail Inquiry; however, the Inquiry involved horticulture and viticulture enterprises from across Australia.

96 Consultation with Fiji Trades Union Congress, September 2020.

97 Consultation with the KTUC, September 2020.

98 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

Employers' Conference included discussions on worker exploitation (Horticulture New Zealand 2018). Also, the New Zealand Government (2018) has undertaken a comprehensive review of the RSE scheme. The MBIE has been directed to research temporary migrant worker exploitation, and has initiated a programme focused on eliminating exploitation of temporary migrant labour. The Ministry has established the Temporary Migrant Worker Exploitation Consultation Group, which includes representatives from trade unions, employers' organizations, and educational, cultural and other associations. Through the Group, the MBIE is leading an in-depth policy and operational review to better understand temporary migrant worker exploitation in New Zealand and to identify impactful and enduring solutions. Based on the review and wide consultations, the Government has already announced several changes to be implemented over the coming years (New Zealand, MBIE 2020a). These include higher standards required from franchises, labour hire companies and similar businesses where migrant exploitation often occurs; establishing a free-phone line and dedicated reporting and triaging function to make it easier to report migrant worker exploitation; and a new visa for exploited migrant workers to ensure that they can safely leave exploitative situations without jeopardizing their immigration status.

The Australian Government has accepted the recommendations of the Migrant Workers' Taskforce (Howes and Curtain 2019), and will establish a monitoring and reporting programme to ensure compliance with immigration and employment relations laws. The Australian Government has strengthened the Deed of Agreement signed between Approved Employers and the Australian Government and strengthened the Guidelines for the SWP, in addition to approving new budget measures that will fund Pacific Labour Mobility Officers, among other measures. The establishment of the Pacific Labour Facility (PLF) by the Government was another important step, as the PLF provides support services for Pacific workers in Australia as well as support for their reintegration into home communities and economies (DFAT 2019b).

5.4. Living conditions under the SWP and the RSE scheme

Upon close examination there are considerable variations in regard to general pastoral care, accommodation and opportunities for social activities among countries of origin and individual cases.

5.4.1. General pastoral care

Under the "pastoral care" requirement in the RSE, employers are required to provide arrangements to help workers arrive, settle in and access adequate facilities while in New Zealand. Under the RSE scheme, employers are required to:

- ▶ arrange transport to and from the port of arrival and departure;
- ▶ provide a work induction programme;
- ▶ ensure access to suitable accommodation at a reasonable cost;
- ▶ provide information on medical insurance, banking services and money transfers;
- ▶ provide transport to and from work;
- ▶ make occupational safety and health provisions; and
- ▶ provide opportunities for recreation and religious observance, among other things (New Zealand, INZ, n.d.-e).

Similar requirements for employers exist in the SWP (Australia, DESE 2020b). Under both schemes, employers must attain Recognised Seasonal Employer/Approved Employer status, which makes them liable to government monitoring for compliance. However, since the responsibility of pastoral care provision lies with employers rather than the government, monitoring is difficult (Bedford, Bedford, and Ho 2010).

Workers were asked about the provision of several aspects of pastoral care in Australia/New Zealand. If these were provided, workers also indicated whether they had to pay for them and how satisfied they were with them. Table 5.12 summarizes the responses. The aspects of pastoral care that were provided to almost all workers in Australia and New Zealand included:

- ▶ transport from the airport to the place of work;
- ▶ transport to work and amenities;
- ▶ access to banking;
- ▶ provision of work clothes, personal protective equipment (PPE), work equipment and facilities at work;
- ▶ recreation opportunities;
- ▶ opportunities for religious observance; and
- ▶ access to healthcare.

Most workers paid for transport from the airport to the place of work, to and from work, and to and from amenities, as well as for access to healthcare. Some workers also paid for work clothes and PPE, work equipment and other facilities at work, which is not in conformity with RSE and SWP policy. Workers that were provided with different aspects of pastoral care were mostly satisfied or very satisfied with what they received.

Table 5.12. Pastoral care aspects provided in Australia and New Zealand

Pastoral care aspects	Australia		New Zealand	
	Number	%	Number	%
Transport from airport to place of work				
Total responses	58	100.0	63	100.0
Provided	56	96.6	62	98.4
Worker paid	52	92.9	54	87.1
Worker satisfied or very satisfied	45	80.4	57	91.9
Induction programme/initial briefing				
Total responses	57	100.0	62	100.0
Provided	56	98.2	61	98.4
Worker paid	3	5.4	1	1.6
Worker satisfied or very satisfied	56	100.0	61	100.0
Transport to and from work				
Total responses	58	100.0	61	100.0

Pastoral care aspects	Australia		New Zealand	
	Number	%	Number	%
Provided	51	87.9	58	95.1
Worker paid	49	96.1	57	98.3
Worker satisfied or very satisfied	41	80.4	49	84.5
Transport to and from amenities				
Total responses	57	100.0	63	100.0
Provided	52	91.2	59	93.7
Worker paid	50	96.2	57	96.6
Worker satisfied or very satisfied	44	84.6	52	88.1
Access to banking				
Total responses	57	100.0	63	100.0
Provided	56	98.2	63	100.0
Worker paid	21	37.5	40	63.5
Worker satisfied or very satisfied	50	89.3	59	93.7
Work clothes and PPE ¹				
Total responses	58	100.0	63	100.0
Provided	56	96.6	55	87.3
Worker paid	22	39.3	20	36.4
Worker satisfied or very satisfied	49	87.5	53	96.4
Work equipment				
Total responses	58	100.0	63	100.0
Provided	54	93.1	61	96.8
Worker paid	7	13.0	9	14.8
Worker satisfied or very satisfied	48	88.9	60	98.4
Facilities at work				
Total responses	58	100.0	63	100.0

Pastoral care aspects	Australia		New Zealand	
	Number	%	Number	%
Provided	57	98.3	63	100.0
Worker paid	7	12.3	5	7.9
Worker satisfied or very satisfied	53	93.0	62	98.4
Language translations				
Total responses	57	100.0	61	100.0
Provided	28	49.1	13	21.3
Worker paid	-	-	-	-
Worker satisfied or very satisfied	27	96.4	13	100.0
Recreation opportunities				
Total responses	58	100.0	60	100.0
Provided	54	93.1	48	80.0
Worker paid	8	14.8	8	16.7
Worker satisfied or very satisfied	53	98.1	44	91.7
Opportunities for religious observance				
Total responses	56	100.0	59	100.0
Provided	52	92.9	51	86.4
Worker paid	6	11.5	8	15.7
Worker satisfied or very satisfied	52	100.0	49	96.1

- = nil

Note: The percentages of various aspects of pastoral care that were provided were calculated in terms of total responses, and the percentages of workers who paid and were satisfied with aspects of pastoral care were calculated in terms of the number of workers that were provided with the respective aspects of pastoral care.

1 SWP and RSE workers are not supposed to pay for branded work clothes or PPE. With more than one third of SWP and RSE respondents claiming to have paid for work clothes or PPE, it is possible that some employers charge workers against the schemes' regulations. Alternately, some workers might be unaware of what they were charged for and wrongly assumed that it was for work clothes or PPE, and some workers might wrongly consider their own clothes, which they used at work, as being work clothes.

Respondents were asked to provide details about those aspects of pastoral care they were dissatisfied with. The majority of workers were not dissatisfied with any specific aspects (including 21 workers from Fiji, 19 from Kiribati, 18 from Samoa and 12 from Vanuatu). The major causes of dissatisfaction were around accommodation and high expenses, especially for transport.

Overall, the levels of satisfaction with various pastoral care aspects were high, even surprisingly high, given the poor quality of accommodation that was also reported by some workers and the

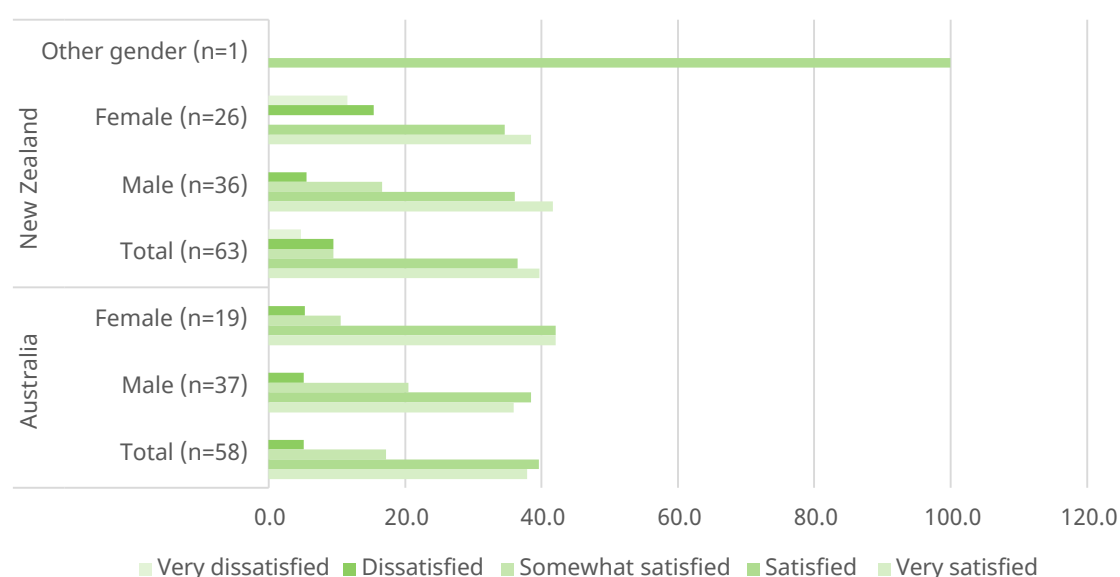
high costs that many workers paid for travel to and from the workplace. The responses might have been impacted by the traditional culture in the Pacific whereby raising an issue of concern or showing dissatisfaction is seen as a sign of disrespect. Team leaders and Pacific governments frequently emphasize the importance of maintaining a good reputation of their country of origin so that other workers will be given opportunities in the future.

5.4.2. Accommodation

All workers were provided accommodation by their employers and all workers except for one worker from Vanuatu in New Zealand had to pay for their accommodation. It can be assumed that the worker was either not aware of paying for his accommodation through wage deductions or that the answer was recorded wrongly.

Overall, 39 per cent of respondents were very satisfied and 38 per cent were satisfied with the accommodation provided. A further 13 per cent were somewhat satisfied while 7 per cent were dissatisfied and 3 per cent were very dissatisfied. As figure 5.14 shows, female workers were more likely to be dissatisfied, and a larger proportion of workers who had been to New Zealand were dissatisfied compared to those who had been to Australia.

Figure 5.14. Satisfaction with accommodation provided by country of destination and gender



Respondents were asked whether they had received information on the accommodation before their departure. Forty-four respondents who went to New Zealand (70 per cent) had received such information, and in all but two cases the accommodation was the same as the information received. Among the respondents who went to Australia, 43 had received information (74 per cent), and the accommodation was the same as the information received in all but three cases.

Workers generally had to share a bedroom, with the average number of workers per bedroom being 3.1 in Australia and 3.3 in New Zealand (table 5.13). Three workers in New Zealand and six in Australia had their own bedroom, while the maximum reported number of workers sharing a bedroom was 12 in New Zealand and 10 in Australia. The majority of workers slept in single beds, but 37 slept in bunk beds (31 per cent), 15 in double bunk beds (12 per cent), and one worker shared a double bed⁹⁹. The average number of workers per bathroom was 5.8 in Australia and 5.9 in New

⁹⁹ Under the SWP, workers must be provided with their own bed and not share with another person. The only exception is a married couple who may share a double bed. Since the worker who claimed to have shared a bed did not travel to Australia together with his spouse, it is possible that he misunderstood the question, or that the bed provided to him was against SWP requirements.

Zealand. There were respondents from Australia and New Zealand who had to share a bathroom with as many as 30 others.

Table 5.13. Number of workers sharing a bedroom and bathroom in Australia and New Zealand

	Australia			New Zealand		
	Average	Minimum	Maximum	Average	Minimum	Maximum
No. of workers per bedroom	3.1	1	10	3.3	1	12
No. of workers per bathroom	5.8	1	30	5.9	1	30

Most workers in New Zealand had heating and laundry facilities, but only about one-third had air conditioning. In Australia, all workers had laundry facilities and most had heating and air conditioning (see table 5.14).

Table 5.14. Availability of select facilities in Australia and New Zealand, by number and share of workers

		Heating		Air conditioning		Laundry	
		Number	%	Number	%	Number	%
Australia	Total (n=58)	49	84.5	47	81.0	58	100.0
New Zealand	Total (n=63)	57	90.5	23	36.5	61	96.8

Almost all workers were satisfied with the available cooking facilities, and most were satisfied with the level of security in the accommodation (see table 5.15). Fewer respondents were satisfied with the level of privacy.

Table 5.15. Number and share of workers who were satisfied with selected accommodation features in Australia and New Zealand

		Cooking facilities		Privacy		Security	
		Number	%	Number	%	Number	%
Australia	Total (n=58)	56	96.6	38	65.5	47	81.0
New Zealand	Total (n=63)	61	96.8	51	81.0	55	87.3

Asked if they were allowed to arrange for accommodation themselves, 12 respondents who had been to Australia and 5 who had been to New Zealand said that they would have been allowed to

arrange their own accommodation if they had wanted to. Asked if they were allowed to leave their accommodation if they wanted to go somewhere in their free time, all workers in New Zealand said that they were allowed to leave. Despite freedom of movement being a requirement under the SWP, 16 workers reported that they were not allowed to leave. If it is true that a considerable number of workers in Australia were not allowed to leave their accommodation freely, this would be a major curtailment of their personal freedom.

Most negative comments about accommodation referred to the crowdedness and the high cost of accommodation.¹⁰⁰ The current practice also appears to provide employers with an opportunity to overcharge workers for substandard accommodation. Selected quotes from workers are included in box 5.1 below.

Box 5.1

Workers' grievances regarding accommodation in Australia and New Zealand

Australia

"The accommodation was too open with no locks on the door. Our work clothes sometimes get stolen" (Male worker from Fiji).

"The accommodation is crowded ... there were six of us and only one toilet and one shower" (Male worker from Kiribati).

"Women should have houses separated from men. There was so much disturbance and drinking when everyone is together" (Female worker from Kiribati).

"The accommodation cost \$134 per head, but we shared bedrooms and bathrooms" (Male worker from Samoa).

"There is no free Wi-Fi in the accommodation that we sleep in. We had to walk to another house to get free Wi-Fi to communicate with our families at home" (Female worker from Vanuatu).

"Accommodation was too hot during summer, and there was no privacy inside the caravan – also it is too crowded" (Male worker from Vanuatu).

"I am dissatisfied with the accommodation. There are many of us inside a room and there is no privacy, and people can spread disease easily and also stealing can happen easily" (Male worker from Vanuatu).

100 During the COVID-19 pandemic, crowded accommodation has generally become an issue of concern (see also section 5.8 below).

"The managing contractor in Australia provides accommodation for us but it is too expensive. Farmers are willing to provide cheaper accommodation but the company does not allow this to happen" (Male worker from Kiribati).

New Zealand

"In our first accommodation, the toilet was outside the house and this was inconvenient during the cold season. Also, 12 people had to share one stove" (Female worker from Fiji).

"The accommodation was small and too expensive. ... The employer made a profit from us being there" (Male worker from Fiji).

"We had to supply our own toilet paper. Also, pots, pans and cutlery were not always available. ... There was no Wi-Fi" (Female worker from Samoa).

"Just last year, there was a report on our house noting that it did not pass health and safety and a big uproar for the company. ... One of us received a visitor who was a social worker, and she reported that there were too many people living in our place for the amount of space and rooms" (Worker from Samoa).

"There is no privacy ... only two washing machines but there are many of us in the farm, only few kitchen utensils and only three shower rooms which ten ladies had to share" (Female worker from Vanuatu).

"The accommodation was too crowded and the facilities not so good ... our heater was not working" (Male worker from Vanuatu).

PIC governments are aware of grievances about the quality of accommodation, including the lack of heaters and air-conditioning.¹⁰¹ The Kiribati Government mentioned that RSE workers did not have problems with the quality of accommodation, while the main complaint from SWP workers was that the bedrooms, kitchens and lounge rooms were often inadequate due to their small size.¹⁰²

The Government of Fiji requests photographs of accommodation places to show workers where they will be living before they move overseas. In case of complaints, the Government informs the MBIE in New Zealand or the DESE in Australia.¹⁰³

The Tuvalu Government has received complaints from workers about not having a proper cooking and dining area.¹⁰⁴ Some workers have to cook next to their beds, and eat while sitting on their beds or sitting outside in the cold. Others have complained about the cold weather in winter and an insufficient number of heaters. Some of these issues have been resolved with the assistance of the Tuvalu High Commission in New Zealand. However, the Government has not received answers to all queries from Australia. The challenge is that the Tuvalu Government does not have a liaison officer in Australia.

¹⁰¹ Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

¹⁰² Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

¹⁰³ Consultation with the NEC, September 2020.

¹⁰⁴ Since the SWP has not received workers from Tuvalu since 2016, the information provided by the Tuvalu Government is likely to refer to the experiences of workers in New Zealand.

Trade unions in Australia are aware of multiple issues with poor accommodation standards and overcharging (Retail Supply Chain Alliance 2020). In this regard, it is important to note that there is a general lack of quality housing in many farming areas in Australia, which affects everyone living in those areas.

In sum, in both Australia and New Zealand, there are widespread problems with the accommodation offered to seasonal workers, which is often overpriced, overcrowded and lacking suitable amenities, especially in terms of bathrooms, kitchens and heating. Many growers profit from the provision of worker housing.

5.4.3. Transport to work and amenities

Most groups of workers in Australia and New Zealand were provided with a vehicle. In almost all cases, workers paid for the fuel costs, and some groups of workers also paid for the use or rental of the vehicle. The amounts deducted for fuel and/or car use varied considerably, and some workers were lucky in that they did not have to pay anything. Usually, the same vehicle was used to transport workers between their accommodation and workplace as well as to amenities, such as in the case of a worker from Kiribati in New Zealand:

We have a car at our disposal. We all contribute money to pay for its rental, so we use as we please. ... We use it when we go to church, go shopping, go to work and go to places we want to go to.

Some workers complained about the high costs of transport, such as a worker from Kiribati in Australia:

The cost of transportation per person was AUD50 per week and there are six of us, so we paid AUD300 altogether. That is AUD2,400 a month, plus AUD70 for petrol. It is too expensive. The transport was not provided by the farmer but by the managing contractor. They are taking too much from us. ... The Solomon Islanders told us that they only paid AUD21 per week. ... The company is making too much money on transport. It would be better if the farmers provided the transport and received the rent from us, rather than the managing company.

A Fijian worker in New Zealand said:

A car was provided to travel to amenities. ... The car was too expensive. Over \$100 [NZD] was deducted each week. We were paying the rental. It would have been cheaper to rent our own but we were not given a choice. The deduction for the car was not fair.

A Samoan worker in New Zealand explained that each team has an allocated driver. Workers take a driving test when they first arrive. In some cases, no transport was provided and workers either walked to nearby shops and towns or used public transport or taxis.

5.4.4. Induction programme

Almost all respondents participated in an induction programme and were satisfied with it. Four workers said they paid for the induction programme, which is unlikely to be the case and might be due to a misunderstanding of the question. In Australia, it is a programme requirement that employers invite trade unions and the Fair Work Ombudsman to the arrival briefing. In addition, workers are provided with a workplace induction.

Also, most respondents participated in a departure briefing before they left Australia/New Zealand. However, 12 respondents who had been to Australia and nine who had worked in New Zealand had not attended a departure briefing, despite the fact that employers are required to provide a departure briefing under the SWP Deed.

5.4.5. Recreation and leisure activities

Asked about their leisure activities, some workers said there was little or no time for leisure activities. Some workers reported that they were working as much as seven days in some weeks. In general, regular activities included shopping, attending church and playing sports.

Most respondents regularly attended church services, usually on Sundays. Sometimes employers provided information about nearby churches, in other cases, workers had to find this information themselves. Some employers provide free transport to the church, in other cases, workers use the vehicle that they have access to, while yet others have to arrange transport to churches. Workers often go as a group. However, some respondents said that they were not given Sundays off and therefore could not attend church. As a woman from Vanuatu who had been in Australia said: “We just work throughout worship days, unless our day off happens to fall on a Sunday then I can go to church.” Workers of other religions (especially Hindus and Muslims among Indo-Fijians) seem to have few opportunities for religious worship. Some groups of workers organize regular prayer meetings at their place of accommodation during the week.

The places of accommodation are equipped with different standards of recreational equipment. While some places have no recreational equipment at all, others have a range of facilities such as televisions and video games, sports facilities (most commonly volleyball nets, basketball hoops, billiard tables, table tennis tables, weights). One place shared by workers from Kiribati in Australia even had a swimming pool. In some cases, workers put up volleyball nets or similar items. Often, workers also used nearby public fields to play rugby or soccer. They also organized barbecue nights and picnics.

Sometimes employers organized leisure activities. As a worker from Kiribati in Australia said: “Recreational opportunities were only provided during the Christmas holiday. ... Otherwise recreation is at our own time and choice.” In a few cases, employers invited workers on camping or other sightseeing trips. Some workers from Kiribati in New Zealand were invited on such trips, and one worker even went on a farewell trip to the South Island paid for by the owner.

As noted by Nunns, Bedford and Bedford (2019), the drinking of kava is another leisure activity which is permitted by some RSE employers, but not those in the Marlborough area. Some employers allow the drinking of kava for special occasions or if workers are not working the next day, providing its use is controlled. It is a curtailment of the personal freedom of workers if employers control their activities outside of work hours so long as these activities do not infringe on their ability to work.

5.4.6. Healthcare

Seasonal workers in the SWP are required to maintain adequate health insurance for the duration of their time in Australia as a condition of their visa. The cost of coverage is around AUD20–25 per week. Not enough is known about what medical services SWP workers are accessing (Lawton 2020). Research conducted on the RSE scheme in 2019 provides some useful information on the types of medical concerns Pacific seasonal workers in New Zealand face. Dental concerns accounted for 53 per cent of medical issues experienced by those workers (MBIE 2019).

When asked about access to healthcare in Australia/New Zealand, the vast majority of workers said that access to healthcare and dental treatment was provided. Only six workers (one in Australia and five in New Zealand) said they did not have access to healthcare services. Most workers were aware that they paid for their health insurance. Asked about how satisfied they were with their access to healthcare (including dental care), most of the workers who had indicated that they had access to healthcare services, were either very satisfied (54 per cent) or satisfied (40 per cent).¹⁰⁵ Only 3 per cent were somewhat satisfied and another 3 per cent were dissatisfied. The main complaint in regard to healthcare was what workers considered to be high insurance premiums on top of the fact that they usually had to pay part of their medical bills. A woman from Kiribati who worked in Australia said: “I am not satisfied with the medical costs because we pay health insurance, yet we still pay for our medical bills.” Two workers from Vanuatu argued that they had to pay high insurance premiums in Australia which they considered a waste as few workers ever got sick. One worker suggested that they should be reimbursed if they did not make any insurance claims.

¹⁰⁵ It is unknown how many workers actually made use of healthcare services while in Australia or New Zealand.

Moreover, in the event of workers being unable to work due to sickness, seasonal workers are not being paid, and therefore many delay taking sick leave or seeing a doctor for as long as possible. There have also been instances where employers have not responded quickly in case of sickness, as one female worker from Fiji in New Zealand explained:

A colleague who was sick was not prioritized until the condition worsened and the person needed surgery and was bedridden. While bedridden there was no care, and since it's a "no work no pay" policy, this person didn't get paid for the whole two months that they were sick.

In general, workers seem to avoid visiting a doctor and taking time off work for these visits or when they are sick because they do not want to lose their income for the day. In Australia, many SWP workers are also based in rural areas, where health services are often not abundant and reaching medical centres might pose challenges.

At present, seasonal workers have to pay for their private health insurance in Australia and New Zealand, rather than being covered by the public health system (see section 4.3.3 for recent changes in Australia). Since private insurance can be expensive and have high out-of-pocket costs, leading to some workers lacking sufficient cover or avoiding care and incurring high costs in the event of illness, the NZCTU advocates in favour of seasonal workers being covered by the public health system.

5.4.7. Road safety

There has been a disproportionately high number of motor vehicle fatalities involving SWP workers in Australia, with four deaths within a few weeks in early 2021. According to the Australian Workers Union (AWU), this is the most critical health and safety risk for SWP workers in Australia, which the AWU partly blames on the current system under which SWP workers are transported to their workplaces in buses driven by one of the SWP workers. After a long shift on the farm, the driver then transports everyone back to their place of residence even though they cannot be expected to be able to drive safely under these conditions.

5.4.8. Other pastoral care aspects

Translations are provided informally by team leaders or other team members with good English skills. Most workers mentioned that if there were difficulties with understanding, they helped each other. In some cases, team leaders with good English skills helped other workers when opening bank accounts.

Almost all workers had **access to banking**. Employers usually provide information on nearby banks and some provide active assistance when opening bank accounts.

5.4.9. Living costs

Workers are paying for several aspects of pastoral care and living expenses through wage deductions. When asked about payments through wage deductions, all but three workers in New Zealand said that they paid for their travel from the airport to the workplace in Australia/New Zealand, and all but one worker paid for their accommodation. Thirty-two workers in Australia and 39 in New Zealand paid for utilities. The other workers are likely to have paid for utilities as part of their deductions for accommodation without utilities being specifically identified. All but five workers in Australia and New Zealand each paid for their daily transport to work. A considerable number of workers in Australia (39) and in New Zealand (24) said that deductions were made from their pay for work clothes.¹⁰⁶

¹⁰⁶ It is unclear whether these workers were provided with advances upon arrival to purchase clothing which they then repaid through wage deductions; whether they were being charged for their work clothes (in breach of the schemes' conditions); or whether they misinterpreted and incorrectly answered the question.

Two workers in Australia also paid for meals through wage deductions. One worker in New Zealand had to pay for a bedsheet, blanket and pillow. Several workers in New Zealand explained that there were regular deductions for holiday pay that they received as a lump sum at the end of their stay. One worker said that 10 per cent of the weekly pay was deducted for that purpose and for another worker NZD0.60 was deducted per hour.

Some workers also received an allowance when they first started work (in the form of a starter pack, grocery card or clothes allowance) that they repaid through wage deductions.

5.4.10. Major likes and dislikes about participating in the schemes

Respondents were asked about their major likes and dislikes about living and working in Australia/New Zealand. Regarding major likes, the responses for Australia and New Zealand were similar and centred around the following:

- good income-earning opportunities;
- shopping opportunities;
- healthy and affordable food;
- clean and safe places, towns and environment;
- the opportunity to make new friends and have good company;
- the opportunity to learn new skills at work, be engaged in new types of work, and be competitive;
- working with a good team and having good team leaders and bosses;
- the opportunities to get to know new places and a new culture; and
- support from the local community (in the case of New Zealand, the local Pacific Islander and Maori communities were mentioned).

Asked about their major dislikes, six workers who had been to Australia and 15 to New Zealand had no major dislikes. For the others, the climate was a major negative factor, mentioned by 25 workers who had been to Australia (complaining about the cold in winter and the heat and dryness in summer) and by 29 workers who had been to New Zealand (complaining about the cold). Apart from the climate, other dislikes in both countries centred around:

- working conditions (long working hours in some cases and lack of available work in others, lack of holidays, no overtime pay);
- pay-related issues (high deductions, frequent mistakes in payslips, inaccurate recording of work time);
- the actual work (especially having to climb up ladders);
- the attitude of employers;
- the attitude of national workers (especially in Australia);
- poor quality accommodation;
- a busy, rushed and complicated lifestyle;
- the high cost of everything (especially in Australia);
- seeing homeless people begging (in New Zealand);
- the existence of temptations to spend money, such as in casinos (in Australia); and
- the lack of fish in the diet (in Australia).

5.5. Equality of treatment of SWP and RSE workers

5.5.1. Trade union membership

The majority of seasonal workers are not unionized, and trade unions in the PICs are only marginally involved with seasonal workers. In Fiji, the FTUC made attempts to be included in the process of recruitment but was unsuccessful. The FTUC has established contacts with individual trade unions in Australia/New Zealand to alert them to any workers or groups of workers needing assistance. Similarly, the Samoa Workers Congress (SWC) attempts to work with trade unions in Australia/New Zealand.¹⁰⁷ The VNWU is unable to support workers in the various stages of the process, including pre-departure, overseas work and reintegration, and counts on sister unions in Australia and New Zealand to support workers while overseas. The VNWU has an agreement with the United Workers Union (UWU) in Australia and depends on workers from Vanuatu joining the UWU to receive assistance while in Australia. It estimates that some 20 per cent of seasonal workers from Vanuatu join the UWU in Australia. After returning home, trade union members receive support to pursue outstanding pay claims and superannuation claims through the VNWU and UWU. The reasons for low membership numbers among ni-Vanuatu workers include workers being discouraged by agents and the Department of Labour from joining trade unions and the VNWU not being allowed to organize seasonal workers.¹⁰⁸ At present, there is no cooperation between the KTUC and trade unions in Australia/New Zealand. According to the KTUC, none of the seasonal workers from Kiribati are unionized and workers do not receive any support from trade unions in case of complaints.¹⁰⁹

In the FTUC's view, it is one of the valuable aspects of the schemes that trade unions in Australia and New Zealand are accessible and are introduced to the seasonal workers during the arrival briefings. The FTUC is aware that trade unions in Australia and New Zealand make efforts to visit and inform workers of their rights and provide assistance.¹¹⁰

In New Zealand, the NZCTU works primarily with affiliated member trade unions rather than directly with workers. It is the FIRST Union, affiliated with NZCTU, that has direct contact with migrant workers in the RSE scheme through their support for the Union Network of Migrants (UNEMIG). Although trade union coverage in the horticulture and viticulture industries has been low in recent decades, the FIRST Union has managed to organize workers in these industries in recent years and has taken a positive and proactive approach to organizing migrant workers.¹¹¹ A general concern of the NZCTU is that employers in the horticulture and viticulture industries have developed a dependence on low wage temporary migrant labour, including through the RSE. The NZCTU promotes good employment for all working people in New Zealand, including migrant and resident workers, advocating for careful monitoring and enforcement to eliminate all forms of labour exploitation and supporting policies to raise standards and conditions of employment. The FIRST Union is currently organizing a network for workers in the kiwifruit industry, which will include migrant workers.¹¹²

In Australia, the Australian Workers Union (AWU) is one of the major trade unions for agricultural and horticultural workers, and it is involved in the SWP. The AWU has formed a coalition together with the Transport Workers Union (TWU) and the Shop Distributive and Allied Employees Union (SDA) called the Retail Supply Chain Alliance, which represents and advocates for the rights of workers across the horticulture supply chain in Australia and advocates for the harmonization of the workplace standards instituted by the horticulture industry (Retail Supply Chain Alliance 2020). The Retail Supply Chain Alliance has been a significant stakeholder in parliamentary inquiries, media commentary, government advisory boards and consultations concerning seasonal workers' rights.

¹⁰⁷ Consultation with the SWC, October 2020.

¹⁰⁸ Consultation with the VNWU, September 2020.

¹⁰⁹ Consultation with the KTUC, September 2020.

¹¹⁰ Consultation with Fiji Trades Union Congress, September 2020.

¹¹¹ Consultation with NZCTU, September 2020.

¹¹² Consultation with NZCTU, September 2020.

The UWU is a large and diverse Australian trade union, representing over 150,000 workers in more than 45 industries and sectors. As mentioned above, Pacific trade unions have formed partnerships with the UWU, and seasonal workers who join UWU receive support when in Australia and after they return home.

Table 5.16 shows that only 10 per cent of all respondents (13 per cent in New Zealand and 7 per cent in Australia) joined a trade union while overseas. Trade union membership was highest among workers from Vanuatu (20 per cent) and lowest for workers from Kiribati where none had joined a trade union. The degree of unionization was higher among men (12 per cent) than women (7 per cent). No women from Kiribati and Samoa had joined a trade union, while 18 per cent of women from Fiji and 8 per cent from Vanuatu had joined a trade union. Fiji was the only country with a higher degree of unionization among women (18 per cent) compared to men (16 per cent). The highest degree of unionization was recorded among men from Vanuatu (28 per cent).

Table 5.16. Number and percentage of workers who joined a trade union or workers' association

PIC	Destination	No. of trade union members	Percentage trade union members
Fiji	All (n=30)	5	16.7
	Australia (n=13)	2	15.4
	New Zealand (n=17)	3	17.6
Kiribati	All (n=31)	-	-
	Australia (n=20)	-	-
	New Zealand (n=11)	-	-
Samoa	All (n=30)	1	3.3
	Australia (n=13)	-	-
	New Zealand (n=17)	1	5.9
Vanuatu	All (n=30)	6	20.0
	Australia (n=12)	2	16.7
	New Zealand (n=18)	4	22.2
All countries of origin	All (n=121)	12	9.9
	Australia (n=58)	4	6.9
	New Zealand (n=63)	8	12.7

- = nil.

Workers who had not joined a trade union were asked for their reasons. The overwhelming reason among workers from Fiji was that they had not received any information on joining trade unions and that no union representatives came to their workplace. This applied equally to workers in Australia

and New Zealand. Three workers from Fiji said that they were not allowed to join trade unions. Most workers from Kiribati said that they were not aware of trade unions or why it would be useful to join. Seven respondents said that they were afraid to get fired or not be able to return in the future if they joined a trade union. One male worker in Australia said: "We were afraid because those who joined the union previously, were not recruited in the next trip." Discouragement of workers to join a trade union in Australia by employers has also been reported in the media (see, for example, McKenzie and Toscano 2017). Another worker mentioned active discouragement by the Kiribati Government. There was also little awareness of trade unions among workers from Samoa. Workers from Vanuatu who had not joined trade unions also blamed this on a lack of information. Four said that their employers did not allow them to join trade unions.

In addition to assistance from government agencies provided under the schemes, workers from all countries mentioned that they had formed support groups among themselves that were drawn upon regularly. Some had nominated liaison officers who dealt with the company in case of any issues. Moreover, workers from Fiji in New Zealand mentioned that the Fiji Trade Commissioner based in New Zealand regularly visited RSE workplaces, which was seen as a substitute for trade union membership.

5.5.2. Equal rights at the workplace

The majority of respondents (79 per cent) thought that they had the same workplace rights as national workers who are citizens of Australia/New Zealand with few differences between Australia and New Zealand (see table 5.17). There were considerable differences among the PICs, as almost all Samoans thought that they had the same workplace rights (97 per cent) but only half of the ni-Vanuatu thought so. This may point to different levels of awareness around workplace rights, to different levels of caution when giving responses that might be perceived as negative, or to actual differences of how workers from different PICs are treated in Australia/New Zealand.

Table 5.17. Number and percentage of workers who said they had the same workplace rights as national workers

PIC	Destination	Workers who said they had the same workplace rights	
		Number	%
Fiji	All (n=30)	27	90.0
	Australia (n=13)	11	84.6
	New Zealand (n=17)	16	94.1
Kiribati	All (n=31)	24	77.4
	Australia (n=20)	13	65.0
	New Zealand (n=11)	11	100.0
Samoa	All (n=30)	29	96.7
	Australia (n=13)	12	92.3
	New Zealand (n=17)	17	100.0
Vanuatu	All (n=30)	15	50.0

PIC	Destination	Workers who said they had the same workplace rights	
		Number	%
	Australia (n=12)	9	75.0
	New Zealand (n=18)	6	33.3
All countries of origin	All (n=121)	95	78.5
	Australia (n=58)	45	77.6
	New Zealand (n=63)	50	79.4

One important factor that curtails the workplace rights of seasonal workers stems from their being tied to their employer and the fact that they are not allowed to change employers. Not all workers were aware of this. Thirteen respondents thought they were permitted to change employers while in Australia/New Zealand, including seven workers from Fiji, five from Vanuatu and one from Samoa. During consultations with the DFAT, a different opinion was voiced, namely that it was an advantage for workers to be tied to an employer as the employer holds more responsibility for workers under the SWP than other employers do for their workers, and that SWP workers, therefore, enjoy higher levels of protection.¹¹³

Under the seasonal work arrangements, all workers are entitled to receive a health and safety briefing before starting work. All but three respondents (two in Australia, one in New Zealand) had received a health and safety briefing. Moreover, all workers in New Zealand and all except for four workers in Australia considered the workplace to be safe. Reasons for not considering the workplace to be safe included the following: “The workplace is on the farm, so it fine. But the container house is not safe. It is an open place without locks on the door”; “there is no safety equipment to wear”; and “it is not safe because there are beehives in between strawberry rows and workers get stung by the bees so often”. Finally, all but two workers found the workplace to be healthy. One worker from Fiji said: “The work was tough – working long hours caused severe stress”, and according to a worker from Vanuatu, the work was unhealthy in summer as there was too much dust.

5.5.3. Complaints and grievances

Workers were asked whether they had a grievance or complaint at work and whether they were aware of the formal grievance or complaint mechanism. Their responses are summarized in table 5.18, which shows that overall, 38 per cent of respondents had had a grievance, with a slightly higher percentage in Australia (40 per cent) than New Zealand (37 per cent). Workers from Vanuatu were most likely to have a grievance (47 per cent) compared to only 20 per cent of workers from Fiji. The majority of workers were aware of the formal grievance/complaints procedure at their workplace. Only 12 per cent were not aware (14 per cent in Australia, 10 per cent in New Zealand).

¹¹³ Consultation with DFAT, November 2020.

Table 5.18. Number and share of workers with complaints and grievances, and awareness of grievance/complaint procedures

PIC	Destination	Workers with complaints or grievances at work		Workers not aware of grievance/complaint procedure	
		Number	%	Number	%
Fiji	All (n=30)	6	20.0	3	10.0
	Australia (n=13)	2	15.4	2	15.4
	New Zealand (n=17)	4	23.5	1	5.9
Kiribati	All (n=31)	13	41.9	7	22.6
	Australia (n=20)	9	45.0	5	25.0
	New Zealand (n=11)	4	36.4	2	18.2
Samoa	All (n=30)	13	43.3	4	13.3
	Australia (n=13)	6	46.2	1	7.7
	New Zealand (n=17)	7	41.2	3	17.6
Vanuatu	All (n=30)	14	46.7	2	6.7
	Australia (n=12)	6	50.0	–	–
	New Zealand (n=18)	8	44.4	2	11.1
All countries of origin	All (n=121)	46	38.0	14	11.6
	Australia (n=58)	23	39.7	8	13.8
	New Zealand (n=63)	23	36.5	6	9.5

– = nil.

Of the total of 46 workers who had a grievance/complaint at work in Australia or New Zealand, only 23 actually raised their complaint. Most of those who raised a complaint spoke to their team leaders, supervisors or bosses. Only two workers from Fiji contacted a government agency in Fiji and one worker from Vanuatu was part of a group that got a trade union involved in Australia. None of the workers that participated in the survey approached an Australian or New Zealand government agency to raise their complaint.

Half of the workers who had grievances did not raise them for a variety of reasons. Some reasons that were identified in previous studies include:

- ▶ feelings of respect towards authority including employers;
- ▶ shyness towards Australians and New Zealanders;

- ▶ unequal power dynamics between employers and workers, with workers fearing that they might be sent home early or not be allowed to return if they raise a complaint;
- ▶ allegiance of team leaders to the employer; and
- ▶ maintaining a good reputation of their country as seasonal workers.

In addition, women might not be confident to raise an issue with a male supervisor (Nunns, Bedford and Bedford 2019). A female worker from Fiji in Australia said: “We are frightened to complain because the owners are often swearing.” Many workers were afraid of raising a complaint fearing that they would either be sent home or not be permitted to join the scheme next season. One worker from Vanuatu in Australia said: “The agent and our supervisor told us that if we complain, we won’t join the SWP for the next session.” Workers recalled instances where team leaders discouraged members from their team from complaining. A Samoan team leader in New Zealand recounted: “At one time when the work got scarce I advised my team that we might risk future opportunities if we complain too much.” Some workers who were employed through a managing contractor in Australia mentioned that it was difficult to contact the managing contractor if problems arose.¹¹⁴ Some workers were advised by their employers to contact the Government of Kiribati directly, rather than the managing contractor that had failed to keep connections with the workers. Some workers mentioned that they can solve their own problems and that, if any issue comes up, they sit together and find a solution without taking the issue outside of their team. A worker from Kiribati explained that complaints are often not solved and that therefore the only solution for individual workers was to request not to return to the same employer the next season. However, with a long waiting list, it is uncertain if the worker requesting a new employer will have an opportunity to work overseas at all and, therefore, asking for a change of employer is only a last resort.

Respondents who had a grievance/complaint were asked to provide details. While some workers specifically mentioned that they had no complaints because their employer or boss was nice, others mentioned that they were worried about negative repercussions if they raised a complaint, and therefore decided not to complain. Some described the complaints process as being cumbersome, as workers had to first raise a complaint with their team leader, from there it might be raised to the supervisor and the farm owner. If there is no solution, workers can also contact their liaison officer in Australia/New Zealand or within the Ministry in their home country. In Australia, they can also call the SWP telephone information line. Box 5.2 lists some specific complaints by workers.

¹¹⁴ It remains to be seen if the appointment of Pacific Labour Mobility officers by the DESE to assist with the welfare issues of seasonal workers will address this concern.

Box 5.2

Selected worker complaints by country of origin

Complaints by workers from Fiji

"The employer is dishonest. Ten workers were laid off with no letters given. Sick workers were not looked after well. The pastoral care manager did not help the workers. NEC is not involved in our issues raised. The team leader is not helpful too" (Female worker in New Zealand).

"We don't want to complain because the supervisor is not helpful. We are treated unfairly by her" (Male worker in Australia).

"No complaints because the bosses are nice. They look after us well. But just last year, 2019, our pay is often late so we cannot send money back home early. We don't know why it's late" (Female worker in Australia).

Complaints by workers from Kiribati

"Our supervisor was not faithful in producing our payslips on time. Sometimes we had to wait for four weeks to get our payslip even though we were paid weekly. This is too long to wait to cross-check with what we worked and to check the deductions made every week" (Male worker in New Zealand).

"Accommodation costs kept changing. Sometimes it is \$150 [AUD] or more, maybe because of the electricity. I don't know. ... The prices of the orange bins kept changing as well; sometimes it is high then it drops" (Male worker in Australia).

"We contacted the Ministry of Labour, we also told our team leader and we had a strike to wait for the response from the employer, and some of us got drunk and they broke the windows, etc. ... The problem was that there were too many people and very little work. There were workers from Kiribati, East Timor, Afghanistan ... too many people doing little work, so we got little money. We had no money to send to our families. In our contract it says that we need to clear our debt within 13 weeks. ... But [we] could not make enough money with the strawberries. ... When we started work, we ended up with nothing in our hands. We repay our debts and had nothing left because the farmer was not providing enough money" (Male worker in Australia).

Complaints by workers from Samoa

"We have our prayer groups and teams that are very close. Our morning and evening prayers help us to bond and work together to resolve issues and grievances. We have one on one discussions and opportunities to clear the air in the evening before the next day" (Male worker in Australia).

"Our team complained about the car we got to use, as it was very old and used too much petrol that we were paying for. I complained to the boss and we got a new car in the end" (Male worker in Australia).

"Sometimes the place where we stayed was not very clean, and if my flatmate complained they didn't listen. I didn't complain because I didn't want to lose my opportunity" (Female worker in Australia).

“We felt that we didn’t get enough warning for when we got sent back early [during the COVID-19 pandemic]. We only got one week [of] notice. We didn’t have time in the last week to check our payslips if they were all correct because we left that morning we got paid. Also we got told that the company were going to cover the expenses for the bus or car for the week ... but in the end we had to pay and it was deducted from our pay” (Female worker in New Zealand).

Complaints by workers from Vanuatu

“I am one of the supervisors. I raised a complaint with the employer because some workers are slow in their work but we all get the same pay. So I asked the employer to talk to the slow workers to work faster so that it will be fair in receiving the same salary” (Female worker in New Zealand).

“Our group asked the union to come and hear our complaint about the hours of paid work. Sometimes we work overtime but they never pay us for it. We were afraid to complain to the supervisor because they might send us back home” (Male worker in Australia).

“When pruning grapes, I complained because of the price they pay us. Most of the trees are bushy and I work too hard to clean the grape trees but they just pay us the normal rate” (Male worker in New Zealand).

“We arrived one month early. The strawberries were not yet ready to harvest. ... We have more than two days off in a row. Also, we were not always paid for pruning strawberry runners. It was not on the payslip” (Female worker in Australia).

Workers were asked to list the people or organizations they could contact to make a complaint while in Australia/New Zealand and how they would go about this. The responses revealed some differences in dealing with complaints based on the attitude of workers from different countries. Of the workers from Fiji, 12 did not answer the question and seven did not know whom to contact in case of a complaint. Most others said they would talk to their team leader or supervisor or would contact the NEC in Fiji. Only two workers mentioned trade unions and none mentioned government departments in Australia or New Zealand. One worker from Fiji in Australia was dissatisfied with the hourly rate and the pruning rate per tree being less than what he had been told before he departed from Fiji. As the employer paid in cash, there was no record of these discrepancies. The worker was dissatisfied with the complaints process and the way his complaint was ignored: “I lodged a complaint with my employer and also wrote to NEC but NEC doubted the allegations. Then I wrote to Labour Australia [DESE] but still didn’t get anything resolved.” Following this incident, the respondent lost faith in the complaints mechanism and also mentioned that his employer threatened that he would never set foot in Australia again. According to the Fiji Government, seasonal workers from Fiji are advised to alert the NEC in case of any grievance with the employer. In turn, the NEC notifies the DESE in Australia or the MBIE in New Zealand to help resolve the issue.¹¹⁵

Several respondents from Kiribati mentioned that there was no need for a complaints procedure because there were no problems in Australia/New Zealand. Yet, most knew whom to approach within the company in case of grievances, such as a male worker in New Zealand: “The first person to turn to is our immediate supervisor. He reports it directly to the Human Resource Manager of the company or the owner. These are the people in the communication channel that could help us. ... We usually solve our problems without ever reporting outside of our company, as the union. Besides, many of us are not aware of these organizations. These organizations were not promoting their services to us.”

¹¹⁵ Consultation with the NEC, September 2020.

Only one worker from Samoa did not know who to turn to with a grievance. Most of the others would first approach their team leader or supervisor who would then raise it with the owner of the company. In some cases, they would contact a liaison officer in the MBIE or DESE, as appropriate, or within the Labour Department in Samoa. None of the workers would contact trade unions.

By contrast, all ni-Vanuatu workers were aware of the process and explained that their grievances would first be raised with their team leaders and, if not solved, would then go up to their supervisor and the employer, as well as the trade union if the grievance was not resolved within the workplace.

Pacific governments provide different levels of complaint resolution support for their seasonal workers while in Australia/New Zealand. The Vanuatu Government provides mediation support to workers who are faced with issues and the Vanuatu High Commissions also get involved.¹¹⁶ Samoa maintains a Government Liaison Officer based in Australia that supports workers when they need assistance.¹¹⁷ In Kiribati, the Ministry of Employment and Human Resource normally organizes a ministerial tour to New Zealand once a year and visits RSE workers, who then have an opportunity to raise concerns that the Ministry will try to solve. While there are no tours of Australia, the Ministry maintains close communication with the workers and sends them regular updates.¹¹⁸ Similarly, the Tuvalu Government and the Tuvalu High Commission in New Zealand sometimes visit workplaces and accommodation places of seasonal workers, and also stay connected with workers through phone calls and videoconferencing.¹¹⁹

5.5.4. Superannuation

Employers of all 58 seasonal workers who had worked in Australia paid superannuation contributions. This is consistent with the Australian policy whereby employers must pay superannuation contributions of 9.5 per cent on top of the weekly gross wages for every worker.¹²⁰ It is not always possible to confirm that superannuation is calculated correctly on the gross wages before deductions as some employers have calculated the payment on wages after deductions, thereby reducing the amount substantially.

According to the Fiji Government, workers can access their superannuation once they return to Fiji by applying for a Departing Australian Superannuation Payment (DASP) via the Australian Tax Office (ATO) website.¹²¹ According to the Vanuatu Government, it will take two to three months for the payment to be made into the workers' bank accounts.¹²² In Kiribati, the Government assists returned workers to claim their superannuation.¹²³ According to the Government of Tuvalu, it is a challenging process for both the workers and the Department of Labour to claim superannuation.¹²⁴ There is also a lack of clarity whether returned workers can claim their superannuation after returning to Tuvalu or whether they can only claim it if they do not intend to return to work in the future.

116 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

117 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

118 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

119 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

120 Consultation with the NEC, September 2020.

121 The taxes on superannuation claims are about 50 per cent, including a 15 per cent government tax when contributions are paid in, and 38 per cent when workers withdraw them.

122 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

123 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

124 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

When the 58 workers who had accumulated superannuation in Australia were asked what happened to these contributions, 30 had withdrawn their contributions and two workers from Samoa had transferred the money to their home country fund. Nine workers did not know what happened or will happen to these funds, pointing to a lack of information provided to seasonal workers in Australia.

Previous studies have also pointed to the struggle of many seasonal workers to access their accrued superannuation in Australia, which has also been noted by the second and third Pacific Labour Mobility Annual Meeting (PIFS 2018; PLMAM 2019). According to a 2017 World Bank study, there is an estimated AUD11.4 million in superannuation contributions that SWP participating workers have not been able to access.

There is no compulsory superannuation contribution system for seasonal workers in New Zealand. Of the 63 seasonal workers who had been to New Zealand, 19 workers said that they had made superannuation contributions. Fourteen of them had withdrawn the funds. It is unclear why superannuation contributions were made by some workers and not others, and whether any employers made contributions. According to the Samoan Government, 5 per cent of the gross pay of seasonal workers is deducted in New Zealand and transferred into their superannuation funds in Samoa.¹²⁵

In sum, in both Australia and New Zealand, all seasonal workers face a significant number of challenges arising from the fact that they are tied to their employer, who is not just their employer but also their recruiter, visa sponsor and accommodation and transport provider. Trade union membership could reduce the power imbalance between seasonal workers and employers so that seasonal workers can enforce their workplace rights.

5.6. Participation of women and marginalized groups

5.6.1. Women in the SWP and the RSE scheme

Since their inception, participation in the programmes has been heavily male. Information on the number of women participants in the SWP is available for every season and is presented above in table 2.2. In the 2019–20 season, 20 per cent of SWP participants were women, though this percentage drops to 19 per cent if Timor-Leste is excluded and only participants from PICs are considered. Tonga recorded the highest percentage of women sent by any PIC (26 per cent), followed by Papua New Guinea (23 per cent). The two PICs with the lowest women participation rates were Samoa (6 per cent) and Fiji (10 per cent). Statistics on RSE visa approvals are not published disaggregated by gender. Table 5.19 is based on information provided by the governments of Fiji, Kiribati and Samoa and includes the number of female and male seasonal workers in the RSE and SWP.

¹²⁵ Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

Table 5.19. The number of RSE and SWP participants from Fiji, Kiribati and Samoa by gender, 2015–present ¹

Season (Year) ²	Gender	Fiji		Kiribati ³		Samoa	
		RSE	SWP	RSE	SWP	RSE	SWP
2015–16	Female	2	29	n/a	n/a	65	5
(2015)	Male	44	108	n/a	n/a	1 389	135
	% Female	4.3	21.2	n/a	n/a	4.5	3.8
2016–17	Female	21	14	n/a	n/a	58	8
(2016)	Male	207	71	n/a	n/a	1 632	301
	% Female	9.2	16.5	n/a	n/a	3.4	2.6
2017–18	Female	19	26	n/a	n/a	65	33
(2017)	Male	265	188	n/a	n/a	1 813	494
	% Female	6.7	12.1	n/a	n/a	3.5	6.3
2018–19	Female	26	17	n/a	n/a	97	57
(2018)	Male	361	283	n/a	n/a	2 218	620
	% Female	6.7	5.7	n/a	n/a	4.2	8.4
2019–20	Female	15	39	104	32	67	36
(2019)	Male	482	377	259	330	2 342	483
	% Female	3.0	8.7	28.7	9.1	2.8	6.9
2020–21	Female	25	2	n/a	n/a	n/a	n/a
(up to March 2020)	Male	298	44	n/a	n/a	n/a	n/a
	% Female	7.7	4.3	n/a	n/a	n/a	n/a

n/a = data not available.

¹ The numbers provided by the three country of origin governments may vary slightly from those provided by the Australian Government in table 2.2.

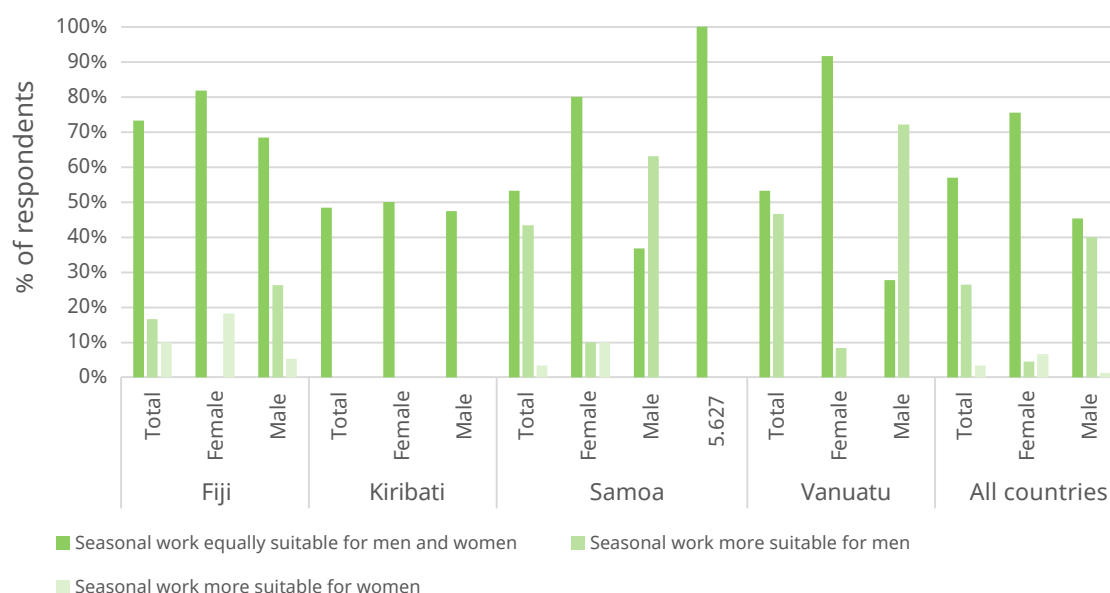
² The Fiji Government records information by calendar year and not by season. Therefore, the numbers for Fiji refer to calendar year, as per years contained in brackets.

³ The Government of Kiribati provided data only for the 2019–20 season.

Source: Data provided directly by the governments of Fiji, Kiribati and Samoa.

Respondents were asked if they thought seasonal work was equally suitable for both men and women or more suitable for either men or women. In figure 5.15, it can be seen that 57 per cent of all respondents (76 per cent of women respondents and 45 per cent of men) across the four countries found the work equally suitable for both men and women. Some important differences in perception between the four PICs are obvious from figure 5.15. A majority of men in Samoa (63 per cent) and Vanuatu (72 per cent) thought that seasonal work was more suitable for men.

Figure 5.15. Respondents finding seasonal work suitable for different genders, by country of origin and gender



Note: The responses for Kiribati are incomplete and only the number of respondents who found seasonal work equally suitable for men and women is available.

According to many respondents, much of the work in the horticulture industry is difficult and physically demanding. Some aspects of the work, including pruning and picking, are widely regarded as too hard for women, as they often involve workers climbing up on ladders carrying heavy baskets of fruit. Moreover, forklift driving was seen as a men's job. On the other hand, planting work can be done by women and most respondents agreed that women were more suitable than men for working in the packhouse where fruits are sorted, graded and packed. Some respondents argued that women were in general faster workers and quicker learners of new skills. Some also thought that women were better pickers, especially of more delicate fruits like berries.

Overall, men were doing the physically demanding work of picking, pruning, lifting, stacking, and carrying heavy loads, as well as forklift driving. In orchards, men were largely working outside. In the hospitality and tourism sector, men were typically working as porters, gardeners, drivers, barmen and chefs.

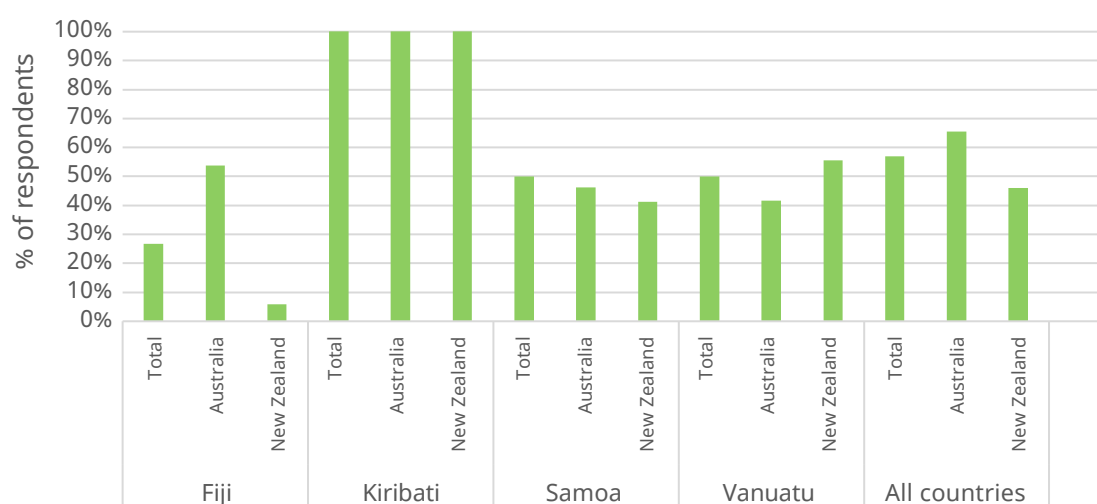
In contrast, in the horticulture industry, most women were working inside the packhouses where they pack, weigh and sort the fruit. If they work outside, they often pick the lower trees without having to climb up on ladders and the more delicate fruits such as berries. Also, some hold responsibility for housekeeping at the accommodation. In hospitality and tourism, many women have reception duties, housekeeping, and food and beverage duties.

Respondents were presented with different potential explanations for the low number of female participants in the SWP and RSE. Most factors were dismissed as possible reasons. Only three respondents (all men) agreed with the statement that "women are not aware of the SWP/RSE". Similarly, only four respondents (all men) thought that "women do not want to work in the SWP/

RSE". Nine respondents (seven men, two women) believed that "women need[ing] to care for family members including children and the elderly" is one reason for their lower participation. Two women thought that "women do not have enough resources for the upfront costs to participate in the SWP/RSE", and two women from Fiji thought that "women are not permitted by their family to participate in the SWP/RSE" was a reason for the low participation of women in the schemes. While only female respondents agreed with the last two factors, the low numbers suggest that they also were not regarded as important reasons. An important factor in Fiji was that the "selection process in my country disadvantages women", as seven women (64 per cent) and nine men (47 per cent) thought that women were disadvantaged in the selection process. In contrast, none of the respondents in Kiribati and Samoa and only one woman in Vanuatu thought that this was the case in their countries. It is unclear why so many more respondents in Fiji than in the other countries thought the selection process was unfair to women, as the process in Fiji is similar to that in Kiribati and Samoa where it is organized by the government rather than by private agents. Possibly, it is based on personal experience of the selection process.

The only factor that many respondents in all countries found important was that "Australian/New Zealand employers select men over women". In Kiribati, all respondents thought that this was the case, as did 11 men and four women in Vanuatu, four men and four women in Fiji, and ten men in Samoa. Figure 5.16 shows responses to this question disaggregated among workers by the country where they had their most recent seasonal work experience. This shows whether there was a difference between how respondents thought about Australian and New Zealand employers in regard to the selection of workers. From across the four PICs, 57 per cent of respondents thought that employers selected men over women. However, 66 per cent of workers who had been to Australia during their most recent stay thought employers selected men over women, compared to 46 per cent of workers who had been to New Zealand. The perception that Australian employers were favouring men was most pronounced in Fiji, where 54 per cent of respondents who had worked in Australia agreed with this statement versus just 6 per cent of those who had worked New Zealand. The trade unions in the PICs also found employers responsible for not selecting more women and individuals from other disadvantaged groups.¹²⁶

Figure 5.16. Respondents claiming that employers in Australia and New Zealand select men over women, by country of origin



Respondents were also asked if there were any other reasons for the low number of female participants in the schemes. Several respondents mentioned that some of the work was too heavy and difficult for women, as already discussed above. One woman in Fiji mentioned that some women

126 Consultations with the FTUC, September 2020; KTUC, September 2020; SWC, October 2020; and VNWU, September 2020.

were breaking rules and had attitude issues. Another respondent mentioned that it was difficult for employers to provide suitable accommodation for women. This argument is supported by other studies, as it was found that it is easier for employers to employ either women or men, rather than both, from an accommodation-management and pastoral care point of view (Nunns, Bedford and Bedford 2019).

The average number of women from the respondents' country who were working in the respondents' workplace during their last season abroad was 6.7 (6.5 in Australia, 7.2 in New Zealand). Only 11 respondents altogether thought that women experienced discrimination in their workplace (six in Australia, five in New Zealand).

A male Fijian talked about a case of sexual assault in his workplace in Australia:

There was a case of sexual assault within the living quarters of a female member of our group by one of the male members. Since it was a church group, they didn't want to draw negative attention to the group and bring disrepute to the church. ... The men and women all lived in the same complex. There were only two females. One of them was married to the perpetrator and shared the room with him. The other female lived alone in the next room. The perpetrator sexually assaulted the woman living by herself. When the wife of the perpetrator found out, she tried to commit suicide. None of these events was reported.

By contrast, several respondents from Kiribati thought that men, rather than women were discriminated against in the workplace. There was a perception that i-Kiribati women are strong and able to do the same work as men. Two female respondents, therefore, argued that men were discriminated against because they were given the heavier and harder work while women were often given a choice between either packing or picking (which is the physically more demanding), and that men often earned less than women as they were paid by piece rates while women were paid by hourly rates. While some men found it unfair that they did a larger share of the heavy work compared to women, some women also found it unfair that employers sometimes did not differentiate and gave women and men the same tasks. A female respondent from Vanuatu who worked in Australia also recounted that she felt discriminated against:

In my view, women should be treated differently in their work. In my group, women were pushing huge trolleys that were loaded with strawberry from one end of the farm to the other end. This farm was too big, and the work was too hard. Men should be pushing the trolley.

It is important to note that workplaces employing seasonal workers in Australia are often located in remote regions with limited access to medical and support services. The nature of the work is physically demanding and the work can be dangerous. According to Safe Work Australia (n.d.), the Australian agriculture industry is one of the country's most dangerous industries to work in. Employers in Australia and New Zealand have to ensure that accommodation provided to seasonal workers is suitable for all genders, provides sufficient security, especially for women; is approved by the local government authorities for use; and is in line with community expectations. These factors have to be considered when promoting increased numbers of women participants.

5.6.2. Other marginalized groups and minorities

Little is known about the participation numbers and rates of other marginalized groups in the schemes, such as persons with disabilities; outer island residents; members of the LGBTQ community; particular ethnic, religious or linguistic groups; and others. Data on RSE visas published by the New Zealand Government is not disaggregated by gender, and no information is available on the participation of persons with disabilities, nor is there any information on ethnicity, religion or other demographic characteristics.

Twenty-six respondents said that there were members that belonged to disadvantaged groups in their batch during their last stay in Australia/New Zealand (2 from Fiji, 3 from Kiribati, 10 from Samoa and 11 from Vanuatu). None of the respondents thought that these individuals faced discrimination in the workplace.

A female respondent from Fiji who went to New Zealand said that there were four Indo-Fijians in her batch, whom she generally regarded as disadvantaged. Three respondents from Vanuatu had co-workers with a disability in their group, including two who had a co-worker with eyesight problems. According to the Fiji Government, no individuals with disabilities from Fiji have so far participated in the schemes. Most women who have participated are of i-Taukei descent, while only a tiny proportion are Indo-Fijians.

The largest number of individuals belonging to marginalized groups were LGBTQ people. One respondent from Fiji, eight from Samoa and four in Vanuatu had LGBTQ members in their group. Many mentioned that LGBTQ individuals usually get the same roles at work as women. One respondent who identified as LGBTQ had a strong opinion about this:

LGBTQ find it hard to get in as most of the time they get put together with the boys' team. I know for me if I was going to be put in a boys team I would not go.

Some respondents recounted their experience of working together with LGBTQ persons. One respondent from Samoa who had worked in New Zealand said:

There was one LGBTQ staff and she was considered as one of the girls. She was selected to be a weigher of the fruits. She spoke English very well.

Another Samoan LGBTQ worker was a team leader and another worked in the office. A female respondent from Vanuatu who had worked in Australia recounted:

There were 20 women, and inside these 20 women, there was one lesbian. We all did the same work, collecting mushroom and packaging it. There was no discrimination against women and our LGBTQ friend.

Asked if, based on their experience, any particular groups find it particularly hard to be selected for the schemes, many respondents mentioned that because of the requirement to pass a fitness test only physically fit individuals were chosen. As one man from Fiji said:

People with a physical disability cannot go because the physical test we had to do included 30 plus press-ups, 40 plus chin up and sit-ups and a 3 km run. I do not know for sure but I think the women had a smaller number to do, it was based on age too.

Respondents from Kiribati also mentioned that there were no i-Kiribati workers with disabilities at their workplace, although a woman who went to Australia mentioned that there were several national workers with disabilities:

I saw a young lady who had a little disability who was working there. And one elderly ... she must have been almost 80 years old. And I found one who always had a fit and still got a job with us. But all these were from Australia and no one from Kiribati with a disability was selected. ... I am not sure why. ... Maybe they did not apply or the employer specifically did not want people with disabilities.

Another respondent from Kiribati also said that people with disabilities never joined the schemes

I really do not know whether people with disabilities applied or not, but I never saw anyone selected for this scheme.

In Samoa, some respondents brought up a bias against young participants, as a woman who had worked in New Zealand said:

Maybe the selection panel leans more towards adults rather than the youth. Adults generally have a better work ethic and are more mature. Issues that always come up for young girls are unplanned pregnancies and for young males, alcohol abuse.

There would be significant barriers to access for disabled people, including the physical requirements of both the pre-departure tests and work in the horticulture and viticulture industries more generally; a lack of accessible accommodation and work areas; remote locations; and a lack of access to appropriate support.

According to the NZCTU, recruitment facilitated by New Zealand and Pacific governments is heavily guided by employer preferences and has been influenced by generalized assumptions about stereotyping related to ethnicity: “We have indications that recruitment sites in Fiji tend to be located in rural areas and that this corresponds to an employer preference to employ indigenous Fijian rather than Fijian Indian workers.”¹²⁷

5.6.3. The view of PIC governments and trade unions

Gender balance in labour mobility schemes does not seem to be a particular concern of PIC governments. For instance, when looking at the National Labour Migration Policies of Kiribati, Samoa and Tuvalu, Kiribati’s policy is the only one wherein the Government commits to proactively expanding labour mobility opportunities to disadvantaged groups, including women (Kiribati, Government of Kiribati 2015).¹²⁸ By contrast, the term “gender” does not appear in the Samoa Labour Migration Policy (Samoa, Government of Samoa 2015).

Consultations showed that PIC governments generally agreed with the view that women and individuals with disabilities were disadvantaged in accessing the seasonal work schemes compared to able-bodied men, due to the nature of the work and employers’ preferences for physically fit persons. The Tuvalu Government also emphasized the difficulty of persons older than their late 30s and of outer island residents when it comes to getting selected.¹²⁹ They mostly blamed this on employers’ preferences. The Fiji Government also mentioned the lack of available accommodation for women as a factor, as well as the fact that it is a widely accepted cultural norm that women need the approval of their family to participate.¹³⁰ The Tuvalu Government mentioned cultural barriers for women, in that women need approval from their spouse or guardian to travel overseas, that women are often shy, and that many women think that it is more appropriate for men to work overseas.¹³¹

Asked about what measures could be taken to address the challenges faced by women and other disadvantaged people in accessing the schemes, the Vanuatu Government argued that awareness-raising is required in the countries of destination and among the employers.¹³² The Kiribati Government thought that women and persons with disabilities should be promoted especially to employers in Australia and New Zealand;¹³³ while the Samoan Government wanted to address the imbalance by providing training for potential workers in Samoa to increase their chances in accessing the schemes.¹³⁴

According to the Vanuatu Government, individuals belonging to disadvantaged groups among the workers might be left out of activities. LGBTQ individuals might be left out of certain leisure activities for instance. The Government reflected that there have been issues with sexual harassment and extra-marital affairs among groups of mixed genders.¹³⁵ According to the Samoan Government, the long absence required for seasonal workers makes it hard for women with children to join the schemes.¹³⁶ The Samoan Government stated that the situation could be alleviated by running

127 Consultation with the NZCTU, September 2020.

128 According to the ILO’s Review of Implementation of National Labour Migration Policy and Action-Plan in Kiribati of 2019, no actions have been taken to that effect and no progress has been made.

129 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

130 Consultation with the NEC, September 2020.

131 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

132 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

133 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

134 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

135 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

136 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

awareness programmes for families and within communities, although it is not clear how such awareness programmes address the issue of childcare and whether the social norm that women stay with children could be changed. Some Kiribati women got pregnant in Australia and New Zealand and therefore could no longer work and earn money.¹³⁷ The Government, therefore, supports the distribution of contraception to avoid unwanted pregnancies. Trade unions in Kiribati also regarded the risk of pregnancy as a challenge for women to join.¹³⁸

Several respondents from Kiribati commented on the difficult relationship between women and men overseas, and women's fear of harassment when alcohol is involved. As one woman said:

There is little understanding of English for most of us Kiribati workers. Sometimes when we are instructed, we fail to perform because of our lack of understanding and we are too shy to ask questions. ... We do not like sharing our problems. ... We always undermine ourselves. ... There is too much drinking. ... We should not take those who drink too much because they do not know how to drink and get very rowdy and rough. They have spoilt the reputation of everyone from Kiribati. ... Accommodation should be separate for men and women. If the men are drunk, they will disturb us. Sometimes when they were drunk, we moved to the hotel and wasted our money.

A male Kiribati worker told his side of the story, pointing blame only on women, rather than on men, for infidelities abroad:

I feel that the women who join the work scheme should be accompanied by their spouses. The ladies should be grounded in their cultural values. They should know who they are and who they represent. From my experience, most of the time when the women visit our homes, they cause temptations and are very forward. The men are stable but the women often come along to tempt them by bringing alcohol and then ended up sleeping with the men. This will eventually cause family breakups.

In Samoa, 63 per cent of male respondents but only 30 per cent of female respondents were currently married. This points to the fact that it is less common for married women in Samoa to participate in overseas seasonal work, possibly because it is culturally less appropriate for married women to work overseas and because they are seen as relatively more indispensable at home.

The Tuvalu Government recommends improving pre-departure training to include concrete activities that enable the workers to practice likely scenarios they will be facing in the destination countries.¹³⁹ The Fiji Government recommends addressing the challenges faced by women and other disadvantaged groups through encouraging regular contact with families, taking care during extremely hot and cold weather, eating healthy and exercising, and to always seek advice from the Government and the High Commission if they are unsure about anything.¹⁴⁰

Only the governments of Vanuatu and Tuvalu acknowledged that the existence of gendered social norms and cultural expectations make it more difficult for women to participate in the programmes, as they are expected to take care of children and the household while men are the breadwinners.¹⁴¹ The VNWU agreed that cultural reasons were a factor for the low participation rate of women from Vanuatu.¹⁴²

To sum up, there are several factors within countries of origin that discourage the participation of women and other marginalized groups. These include cultural norms, self-selection, discouragement by spouses and families, lack of support from village heads and pastors, and discouragement by

137 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

138 Consultation with the KTUC, September 2020.

139 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

140 Consultation with the NEC, September 2020.

141 Consultations with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020, and with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

142 Consultation with the VNWU, September 2020.

government officials and recruitment agents. And, in the end, women who successfully overcome these factors also might not be chosen by employers in Australia and New Zealand. The SWP and the RSE scheme are employer-driven, which means that recruitment decisions are made by employers in Australia and New Zealand who might hold biases about which workers are suitable for certain jobs. Horticultural work is generally physically demanding, leading to an employer preference for male workers. However, employers recruit women for specific roles that they perceive as being more suitable for women, such as sorting, grading, packing and picking delicate crops like berries. In New Zealand, employers are reportedly largely free to discriminate in hiring practices, without being challenged in practice by either the New Zealand or Pacific government agencies responsible for the recruitment process.¹⁴³ The Pacifica Labour and Skills Team in the MBIE have been encouraging employers and contractors that are accredited to recruit labour under the RSE work policy to provide more work opportunities for women. The data presented for the 147 Recognised Seasonal Employers that recruited workers from Pacific and Asian sources in 2018–19 demonstrates clearly that there is little evidence as yet of a positive response by Recognised Seasonal Employers to providing more opportunities for women (R. Bedford 2020). Data on other disadvantaged groups remains unavailable, though given the interview data from this study, persons with disabilities or diverse gender identities are also not participating in the schemes in high numbers.

5.7. Overview of the economic and social impact of the SWP and the RSE scheme

5.7.1. Economic impacts for participants and their families

A World Bank study based on surveys in Tonga and Vanuatu (which made up about 70 per cent of the PIC workers in the RSE at the time) found multiple positive development impacts on the sending households (Gibson and McKenzie 2014). These included a more than 30 per cent rise in the per capita income of participating households relative to the comparison groups, increased household savings, increased ownership of durable goods, and an increase in subjective standards of living for participating communities. These positive effects have to be weighed against the costs associated with the absence of workers from households, which result in opportunity costs of work that the seasonal workers are unable to do at home while they are away. Depending on the role of the absent workers, families might require cash to make up for these roles, such as to purchase food that would otherwise have been produced by the household.

The main economic benefits for participants and their families are the earnings received by workers, part of which are sent home as **remittances**, part of which the workers take home at the end of their stay as **repatriations**, and part of which are used to purchase durable goods that are taken or sent home.

Respondents were asked about their total earnings after deductions, the amount spent in Australia/New Zealand, the amount sent home as remittances, the amount taken home by the workers at the end of their stay as repatriations, and the amount left in Australia/New Zealand (see figure 5.17). In the case of workers in New Zealand, the total earnings approximated the sum of remittances, repatriations, money spent in New Zealand and money left in New Zealand. However, in the case of workers in Australia, the total earnings were about AUD2,000 lower than the sum, suggesting that there were errors in the estimation and that workers in Australia most likely overestimated what they spent on remittances, repatriations or in Australia.

Average total earnings after deductions were higher in New Zealand than in Australia (see table 5.9 above). Workers in both countries repatriated more than half of their total earnings at the end of their stay. They also remitted more money to their families while they worked overseas than what they spent themselves out of their disposable income. Workers left small amounts of money in Australia/New Zealand.

143 Consultation with the NZCTU, September 2020.

Figure 5.17. Average total earnings (after deductions) and where these earnings were spent or saved, by country of destination



Note: ANZ = Australia and New Zealand.

Table 5.20 shows the total earnings, remittances and repatriations by country. Respondents from Fiji and Samoa remitted or repatriated almost their entire take-home earnings, while respondents from Kiribati and Vanuatu remitted lower proportions (that appear more realistic, given that respondents had to spend some money on necessities such as food while overseas). There are other notable differences among the countries. Respondents from Vanuatu remitted more money while working overseas than they repatriated at the end, while workers from the other three PICs repatriated more – in the case of Samoans, substantially more – than they remitted.

Table 5.20. Average total earnings, remittances and repatriations (in AUD), by country of destination and country of origin

Country of destination	Country of origin	Average take-home earnings ¹	Average amount remitted	Average amount repatriated	Average amount remitted and repatriated	Percentage of take-home earnings
Australia	Fiji	8 138.44	2 290.00	4 857.14	7 147.14	87.82
	Kiribati	14 811.94	4 410.00	4 755.00	9 165.00	61.88
	Samoa ²	9 908.88	2 075.00	6 737.50	8 812.50	88.94
	Vanuatu	15 932.32	5 887.82	3 604.17	9 491.98	59.58
New Zealand	Fiji	5 323.33	1 827.96	3 435.83	5 263.79	98.88
	Kiribati	19 919.09	5 108.41	6 118.86	11 227.27	56.36
	Samoa	12 943.19	2 505.94	9 965.00	12 470.94	96.35
	Vanuatu	14 712.01	5 521.41	5 122.33	10 643.75	72.3

¹ The average take-home earnings were calculated as the gross earnings minus all deductions (including taxes, deductions for migration costs and ongoing expenses). Moreover, the migration costs that workers paid upfront were also subtracted from the gross earnings.

² The data for Samoa had several errors where the amount of remittances and repatriations exceeded the total take-home earnings. Since this is impossible, these responses were excluded from the calculations. One respondent from Fiji was excluded for the same reason.

The vast majority of seasonal workers (89 per cent) bought **durable goods** while in Australia/New Zealand and took them to their home country. The most common goods that were purchased and taken home were clothes, shoes, phones and laptops. Other electronic goods such as appliances and television sets were also common, as was kitchenware. Eleven respondents across the four PICs purchased tools, largely construction tools and power tools, and construction materials, and four workers from Kiribati took solar panels home. This shows that part of the seasonal earnings is spent on products that are used to improve the housing of seasonal workers in their home countries.

The **remittance channels** respondents used depended on which channels were available in their respective countries. Respondents from Kiribati and Vanuatu mostly used Western Union to transfer money, and only one ni-Vanuatu and five i-Kiribati also transferred directly into bank accounts that their families had access to. Respondents from Fiji and Samoa had more options, and several respondents from both countries used different channels depending on the amount they sent and the associated charges, thus being able to reduce charges compared to workers from countries with fewer options. Respondents from Fiji used Western Union (19 respondents), MoneyGram (6), World Remit (8), and internet banking (2). Respondents from Samoa used Western Union (16 respondents), MoneyGram (3), World Remit (3), Pacific Way (3)¹⁴⁴, Ezy Money (7) and Digicel Topup¹⁴⁵ (2). Transfer charges vary among providers and depend on the transfer amount. Western Union and Money Gram charges are similar, and workers complained that they were too high but that they often lacked an alternative. For instance, remittance costs from Australia to Fiji with Western Union are between AUD10 and 28, depending on the amount sent. A transfer of AUD200 from Australia to Fiji costs around AUD17. Charges for a transfer from Australia to Fiji with MoneyGram are AUD 21. Transfer from New Zealand to Fiji are lower, at around NZD17 with Western Union and NZD15 with MoneyGram.¹⁴⁶ In Tuvalu, workers have only three options for sending remittances, which are Western Union, MoneyGram, and international bank transfers. According to the Department of Labour, the best option is MoneyGram, as it is operated by the National Bank of Tuvalu. Although Western Union is preferred and people are more familiar with it, the service in Tuvalu is not always reliable and families have experienced delays in receiving their money.¹⁴⁷

Although most workers had a smartphone in Australia/New Zealand, few used them for money transfers, instead relying on more traditional channels for remittances.

The monetary benefits of receiving remittances and repatriations have to be offset by the opportunity costs, that is, what the workers would have contributed to household production at home if they had not moved abroad. While it is impossible to put a monetary value to this forgone contribution, if it was considered, the net gain per worker would be reduced. It is also important to note that 61 per cent of respondents from Kiribati, almost half of the respondents from Fiji and Samoa, and 27 per cent of respondents from Vanuatu said that they lived off their RSE/SWP savings while at home in between seasons. This period of no income at home is another opportunity cost and shows that many returning workers effectively treat their time in their home country as (unpaid) annual leave in what is effectively regarded as a permanent job. Only a minority of workers either work in their previous occupation or a different job when at home. Those who responded “other” when asked about their between seasons activities were asked to provide details. In most cases, this referred to subsistence farming, gardening or fishing and sometimes selling their produce. Others sold kava, worked in a family-owned bakery or worked in retail shops. One worker from Kiribati said that he and his family were selling goods that he brought from overseas, and one worker from Fiji was working as a missionary.

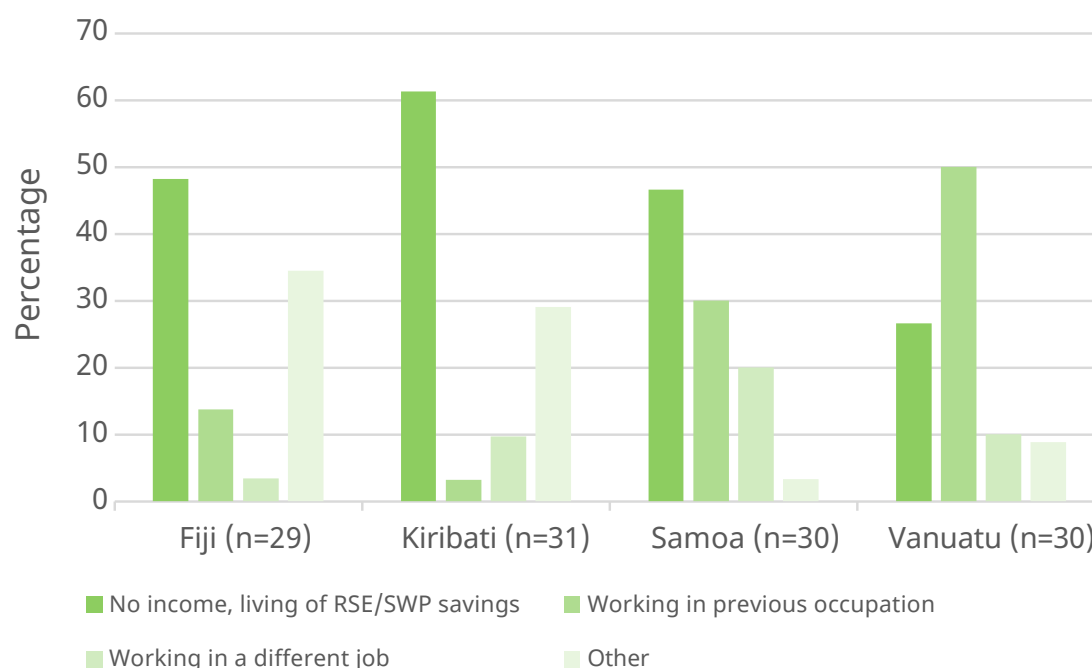
¹⁴⁴ Pacific Way is a Samoa-specific money transfer service.

¹⁴⁵ Money can be sent to top up Digicel mobile accounts in Fiji, Samoa and Tonga.

¹⁴⁶ Consultation with the NEC, September 2020.

¹⁴⁷ Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

Figure 5.18. Activity of respondents when at home in between seasons, by country of origin



5.7.2. Economic impacts for sending countries

The main economic impacts of the schemes for PIC countries of origin are: the remittance receipts, which improve national incomes and ease pressure on government services; the provision of income opportunities for a considerable number of un- and underemployed Pacific Islanders; and the opportunity for PIC workers to earn new skills either through on-the-job training or through participating in training courses.

At the same time, an evaluation of the RSE by the World Bank listed concerns of community leaders in Vanuatu and Tonga that were related to the loss of able-bodied young men for community work; loss of contributions to church or family; alcohol consumption; and family separation, among other things (Gibson and McKenzie 2014). In Samoa, Tonga and Vanuatu, seasonal workers account for 6.0 per cent, 14.7 per cent and 8.1 per cent of the workforce, respectively (World Bank 2020). Such a significant absence of the younger and mostly male working population impacts families and communities and necessitates significant adjustments to “economic activities, social responsibilities and engagement, and cultural maintenance and cohesion” at the family and community levels (Underhill-Sem et al. 2019, 36).

Given that more than half of the respondents had held a paid job or owned a business in their home countries in the past and most others were economically active in subsistence farming or some other informal economic activity, and given that only Fiji has a selection policy that explicitly targets unemployed persons who have resided in a village for 12 months, it is questionable whether the schemes, in general, go far enough to provide unemployed people in the Pacific with employment opportunities.

Another factor that impacts the economic benefits of the schemes in the PICs is how widely the benefits are spread within the countries. One aspect is the number of children and other dependents that participants have, given the assumption that dependents will be the main beneficiaries of increased incomes and remittances. The participants from Fiji had the lowest number of dependents

(3.6 on average), while at the other extreme, participants in Vanuatu had 7.3 dependents on average. This suggests that Vanuatu has the largest number of persons who benefit directly from the income earned by each worker in Australia/New Zealand.

Another consideration regarding the spreading of benefits in sending countries is whether the same workers participate season after season or whether new workers get opportunities to join the schemes, thus spreading benefits to different households and communities. The schemes are employer-driven and employers are mostly interested in recruiting experienced workers, as they are generally perceived to work better and faster. This practice, however, limits new entrants to the schemes. For instance, the aforementioned 2019 survey of RSE employers conducted by the MBIE found that a total of 85 per cent of Recognized Seasonal Employers stated that their Pacific seasonal workers that year were returning workers from the previous year (New Zealand, MBIE 2019).

PIC governments currently provide little or no reintegration assistance to seasonal workers returning from Australia and New Zealand, despite the potentially wide-ranging benefits of such assistance for migrants and their families. For instance, no training is provided on how to make the best of use of their resources or how to apply newly learnt skills in their home countries. In Fiji, some support is provided by the Government to connect returned workers to other stakeholders to advise them of various assistance schemes, such as help with purchasing land, farming equipment or housing materials or even business start-up assistance.¹⁴⁸

This general lack of reintegration support has been identified as contributing to a situation in most PICs wherein workers try to return to Australia or New Zealand for as many seasons as possible to maximize their economic benefits (see, for example, Voigt-Graf and Kagan 2017; Voigt-Graf 2017). Since the number of seasons that workers can participate in the RSE and SWP is unlimited and many workers return several times, opportunities for newcomers become more restricted and the economic benefits remain more concentrated within certain families and communities than they would otherwise be. Moreover, with the right reintegration support, skills acquired overseas could be used in the PICs, which would benefit not only the returned workers but also their countries' economies.

5.7.3. Economic impacts for receiving countries

Improved viability and profitability of the horticulture/viticulture sector in New Zealand and the agricultural sector in regional Australia through the expansion of production and the easing of labour shortages are among the main benefits for receiving countries.

In Australia, the SWP is critically important in securing a seasonal workforce in regional Australia. The Australian Chamber of Commerce and Industry (ACCI) argued that, while both the SWP and the Working Holiday Maker programme help secure a seasonal workforce, the SWP has the additional benefits of supporting workers in the Pacific region; building community, business and government partnerships with neighbouring PICs; and enabling a relationship over multiple seasons to be established between employers and workers. Due to a variety of reasons, it is very hard for farmers and regional and remote hospitality and tourism businesses to attract a seasonal workforce from within Australia. The SWP fills this gap, while at the same time protecting the rights of the workers and ensuring that they are not paid less than Australians.¹⁴⁹

In New Zealand, the latest RSE survey conducted by the MBIE in 2019 found that 45 per cent of Recognised Seasonal Employers stated their business had expanded in that year. In addition to employing Pacific RSE workers, they also employed workers from other sources, including from the local community and workers on the Working Holiday Scheme. Although these employers hired workers from a range of different sources, their Pacific RSE workers were rated the most positive (New Zealand, MBIE 2019).

¹⁴⁸ Consultation with the NEC, September 2020.

¹⁴⁹ Consultation with the ACCI, September 2020.

Among the costs of running the schemes for Australia and New Zealand are the reputational damage to Australia and New Zealand when seasonal workers are exploited, and the institutionalization of the at times precarious working conditions of a labour force that is largely not unionized and that shoulders most of the expenses related to their employment.

5.7.4. Social impacts on participants and their families

In the PICs, researchers have found evidence of “marital dissolution or family abandonment, domestic violence, poor nutrition of workers and/or those who remain at home, disciplinary problems with children, cultural transgressions, and extreme emotions felt by workers and those who remain at home” as a result of seasonal and temporary work (Underhill-Sem et al. 2019, 36). Although there has not been an in-depth social impact study of RSE/SWP participation in any of the PICs, consultations showed that several workers and other stakeholders were concerned about the negative social impacts of the schemes, including the breaking up of families.

When asked if there were negative consequences for their families due to their absence, most respondents said that there were no negative consequences for their families, including 80 per cent of respondents from Fiji, 58.1 per cent of respondents from Kiribati, 83.3 per cent of respondents from Samoa, and 60 per cent of respondents from Vanuatu. Several others (6.7 per cent from Fiji, 12.9 per cent from Kiribati, and 10 per cent from Samoa and Vanuatu) mentioned that their families were missing them as the main negative consequence. The children, spouses and parents of the workers were most affected. A male worker from Samoa said: “My mum keeps crying on the phone so I don’t call home so much. ... I sent some money for Mother’s Day.” A female worker from Vanuatu said: “Yes, I am a mother and my kids miss me a lot when am away.” The remaining respondents (13.3 per cent from Fiji, 29.0 per cent from Kiribati, 6.7 per cent from Samoa and 10 per cent from Vanuatu) provided details of other negative consequences that their absence had caused their families. These included the breakup of marriages and families, missing out on major lifecycle events such as births and deaths, not being able to solve family disputes, and houses not being looked after and household chores not being done. Some responses are presented in box 5.3.

Box 5.3

Selected negative consequences for households in countries of origin

“There was a bit of struggle for my wife because she was pregnant. We are sharing the house with relatives. Sometimes she is doing all the work at home” (Male worker from Fiji).

“My husband cheated on me while I was in NZ. He put our children at his parents’ house. ... My children were not taught properly at my in-laws’ place. My five daughters wear very short pants. My children lost their manners and good behaviour. They now talk back at me” (Female worker from Fiji).

“My partner was about to give birth and my father was sick in Rotuma. I was not there for them” (Male worker from Fiji).

“My spouse had affairs” (Female worker from Kiribati).

“There was no one to help my mother and kid at home” (Female worker from Kiribati).

“There is nobody to settle disputes in my family” (Female worker from Kiribati).

“I lost custody of my only son. His dad took him away” (Female worker from Kiribati).

“Drunkards entered my house while I was away ... but now it is ok because I have increased security at the house” (Male worker from Kiribati).

“The negative consequences are that I am not there for decision-making and family commitments. I am homesick and I long for my children and wife” (Male worker from Samoa).

“My husband was not faithful to me. He is now in prison” (Female worker from Vanuatu).

Respondents were asked what their main challenges during their stay overseas were. For some workers, the main challenges related to the work, the pay and the deductions, for others they were related to the climate, and yet others they were related to missing their families at home and the disruptions that their absence had caused to their family life. One factor that has caused disruptions to family in the PICs are the pregnancies of women while working overseas. This was mentioned most frequently in Kiribati, as some married women who participated in the schemes got pregnant overseas, which led to family breakups.¹⁵⁰

Strategies to minimize disruptions to family life include regular and frequent communications with households at home. Eight-four respondents were in daily contact (69.4 per cent). Thirteen respondents (10.7 per cent) were in contact more than once a week, 20 (16.5 per cent) once a week, and four once a fortnight (3.3 per cent). None of the respondents communicated with their households less frequently than once a fortnight. All respondents except for one worker in Australia and one in New Zealand had mobile reception at their accommodation, and all but five (four in Australia and one in New Zealand) had access to the internet. As shown in table 5.21, mobile phones were the most common means of communication with family at home, followed by social media. Only 32 respondents wrote emails, and this included all 31 workers from Kiribati.

Table 5.21. Number and percentage of respondents using various means of communication to connect with family at home

Means of communication	Number of respondents	Percentage of respondents
Mobile phone calls	110	90.9
Landline phone calls	–	–
Public phone calls	–	–
Internet calls (Skype, Viber, WhatsApp, lmo, etc.)	56	46.3
Social media (Facebook, Instagram, etc.)	95	78.5
Email	32	26.4
Mail	–	–

– = nil.

Note: More than one response possible.

In other words, for temporary migrants to remain part of the life of their family, they spend money on communication. Moreover, they remit part of their earnings, for which they pay money transfer fees and exchange rate commissions. These two types of transaction costs – communication and remittance fees – add to the costs facing a transnational household.

In sum, the potential positive impacts of the schemes are largely economic and are determined by who participates in the schemes, how much they earn, what the income is spent on, and whether useful skills are acquired overseas. By contrast, most of the negative impacts are social and psychological, and include the fragmentation of workers' lives, negative social impacts on families, and the cost of reintegrating workers into their home societies. Potential negative economic impacts are the costs associated with losing workers in the islands and socio-economic imbalances created by the uneven distribution of remittances.

5.7.5. Future plans

Asked whether they planned to participate in seasonal work in the next season, 114 of the 121 respondents said that they planned to participate in the next season. Fifty-four of the 58 workers who had been to Australia wanted to participate in the next season. This included 50 who planned to return to Australia, one who planned to work in New Zealand and three who were unsure where they would work. Sixty of the 63 workers who had been to New Zealand planned to participate in the next season, with 51 planning to go back to New Zealand, three planning to join the SWP and six still unsure where they would go. The large number of workers willing to return to Australia or New Zealand for future seasons shows their overall satisfaction with the schemes. Responses also show that the majority of workers were planning to rejoin the same seasonal worker scheme in the next season that they had participated in during their last season working abroad.

Table 5.22 summarizes the respondents' general intentions regarding future participation in the RSE or SWP. Almost three-quarters of all respondents wanted to participate for as many seasons as possible, with most of the others also intending to participate again but unsure how often.

Table 5.22. Intentions regarding future participation in the RSE/SWP

Intention	Number	Percentage
No future participation	4	3.3
Participate once more	7	5.8
Participate for as many seasons as possible	88	72.7
Participate again but unsure how often	21	17.4
Don't know	1	0.8

Asked where they wanted to live in the future, most respondents said that after participating in the RSE/SWP (as indicated in table 5.25) they would then want to stay at home permanently. This was the preferred scenario for all ni-Vanuatu, 25 i-Kiribati and 27 Samoans, but only 10 Fijians. Fourteen respondents would prefer to live permanently at home without the need of having to work abroad (13 Fijians and one Samoan) and only six respondents, all from Kiribati, would prefer to move to New Zealand permanently.

Respondents were asked what they were planning to do after their final trip to Australia/New Zealand. The majority of respondents in all four countries had plans to at least expand their houses or build new houses. Most also wanted to expand their farms or open businesses. In Fiji, respondents had

plans for a variety of different businesses, including small shops, a billiard centre in the village, a kava business, building a house to rent out, buying a car to run a taxi business and others. In Kiribati, small shops, fishing businesses, a poultry farm and an import business were among the plans of respondents. Samoan respondents were planning to open small shops, restaurants and a hairdressing salon, and several were planning to retire. Most respondents from Vanuatu wanted to build a house and buy land to expand their agricultural activities. Others planned to open poultry farms and transport businesses. Several respondents in all countries also mentioned that they wanted to pay for their children's education. Three respondents in total were planning to further their own studies. Only a few respondents were planning to work as employees, such as a respondent from Fiji who planned to work as a plumber and a female respondent from Fiji who planned to work at a resort. One respondent from Fiji and one from Samoa planned to apply for permanent residence in Australia, while four respondents from Kiribati were planning to try their luck with the Pacific Access Category lottery scheme to permanently move to New Zealand.

Given the opportunity to make any final comment about their participation in the SWP/RSE scheme, most respondents stressed the positive sides of seasonal work, including the opportunity to earn money, support their families, learn new skills, improve their English skills, build their confidence, benefit from being exposed to a different workplace culture, and make positive behavioural changes including drinking and smoking less. A Woman from Kiribati who went to Australia summed it up as follows:

I like the programme. I was able to learn and support my family and build my house. There are good opportunities to buy items that are really needed for good prices. ... I also developed my English while in Australia and build my confidence. We learnt to drive using GPS on Australian roads. ... We also build relationships with fellow Australian workers and our boss. ... We got to know them really well. When they have family functions, we get invited and we became really close friends. We are still in touch until now and we hope that one day they will visit Kiribati

5.8. Impacts of the COVID-19 pandemic

5.8.1. The general situation

During a crisis like the COVID-19 pandemic, migrant workers are often the first to be laid-off but the last to gain access to testing or treatment. In most countries, migrant workers are excluded from national COVID-19 policy responses, such as wage subsidies, unemployment benefits or social security and social protection measures (ILO 2020). At the same time, workers' residences are often cramped and require sharing of bathrooms, cooking and dining facilities – living conditions that are inadequate for limiting the spread of COVID-19. In some cases, travel restrictions have trapped migrants in countries of destination with few options to return home. Layoffs of migrant workers not only often lead to income losses but also the expiration of visas or work permits. Travel restrictions have also meant that many migrant workers have been prevented from taking up employment abroad for which they have contracts, and for which many may have paid recruitment fees and other pre-migration costs. Loss of income can also result in a collapse in remittances.

According to the ILO (2020), there are three key areas of action to alleviate the difficulties of migrant workers during the COVID-19 pandemic: (i) migrant workers' inclusion in national COVID-19 responses; (ii) bilateral cooperation between countries of origin and destination; and (iii) social dialogue with full involvement of employers' and workers' organizations in the development of COVID-19 responses. The ILO recommends including migrant workers in national income and related policy responses, extending access to health services and social protection coverage to migrant workers, and providing adequate and accessible information, among other interventions.

The World Health Organization has developed guiding principles for the treatment of migrants during the COVID-19 pandemic (see, for example, WHO 2020), which include the right to the enjoyment of the highest attainable standard of physical and mental health; equitable access to health services and non-discrimination; people-centred, inclusive child- and gender-sensitive health systems for refugees and migrants; and equal treatment at the workplace.

5.8.2. Australian and New Zealand government responses

Visa extensions

RSE and SWP workers have been affected in different ways by the COVID-19 pandemic. International travel restrictions have left thousands of seasonal workers stranded in Australia and New Zealand while preventing others from travelling to Australia or New Zealand to take up employment. On 19 March 2020, Australia and New Zealand closed their respective borders in attempts to limit the spread of COVID-19. At that time, some 7,000 Pacific seasonal workers were working in Australia and more than 9,700 in New Zealand (Bailey and Bedford 2020a).

On 2 April the New Zealand Government extended all temporary visas, including those for RSE workers, to 25 September, and Immigration New Zealand has been processing thousands of Variations of Conditions of RSE visas to allow RSE employers to shift their workers between different regions and crops (C. Bedford 2020a).

While April and May were busy months and the apple and kiwifruit harvests provided lots of work for RSE workers, the situation changed by June when these harvests had come to an end and demand for seasonal workers dropped. Usually over the winter months from July to September around 6,000 to 7,000 RSE workers are employed for winter pruning work in grapes and kiwifruit. With over 9,700 in the country at the start of June, this indicates an oversupply. New Zealand's Minister for Immigration announced further support for RSE employers and their workers on 8 July, with the introduction of more flexible work arrangements. These temporary arrangements allow RSE workers who are without a formal RSE employment agreement, and unable to return home, to undertake part-time work at a minimum of 15 hours per week. Workers who qualify have been issued with new limited visas, valid until 30 October 2020, which enable them to work in any industry, doing any role, while awaiting repatriation. During this time, workers are still employed by their RSE employer who must agree to honour all RSE commitments and provide pastoral care. RSE employers are permitted to subcontract their workers to employers in industries other than horticulture and viticulture. The work must be approved by the Ministry of Social Development to ensure no suitable New Zealanders are available (C. Bedford 2020a).

RSE workers have received information on COVID-19 from their RSE employers and the MBIE. The relevant information has been translated into different Pacific languages to make it readily accessible to workers (Bailey and Bedford 2020b). As part of the COVID-19 Economic Response Package, RSE workers are entitled to government funding, equating to NZD585.50 per worker per week, if they cannot work during the lockdown because their employer's business is not operating or the employer cannot afford to pay them due to reduced business activity.

If an RSE worker is required to self-isolate while in New Zealand, due to illness or close contact with a confirmed COVID-19 case, they are also eligible for the Government's wage subsidy. RSE employers apply for the subsidy on behalf of their workers and provide accommodation and pastoral care facilities during the 14-day isolation period. Workers will continue to pay for their accommodation and other living costs. Under existing medical insurance, RSE workers are entitled to receive medical treatment for any presenting conditions, including COVID-19. To abide by New Zealand law and new measures for physical distancing and minimal staff interactions, RSE employers are required to set strict rules for the safety of their workforce, including restricting workers' ability to leave their worksites and prohibiting engagement with people other than those they live and work with (Bailey and Bedford 2020b).

In November 2020, around 6,500 RSE workers were still in New Zealand, which is approximately 1,000 more than in November 2019. For its summer harvest, New Zealand normally relies on seasonal labour. With the international border remaining closed and fewer backpackers in the country than usual, there is a risk of severe labour shortages across a range of crops. Moreover, by March there would normally be at least another 5,500 RSE workers in New Zealand for the peak apple harvest (C. Bedford 2020c).

In November 2020, the Government announced it will allow 2,000 RSE workers from the Pacific to enter New Zealand between January and March to help fill labour shortages in the horticultural

and wine sectors under strict conditions. This will be the first significant opening of the border to foreign workers since the beginning of the COVID-19 pandemic and few other border exceptions are expected to be granted until April 2021. Employers will have to pay the workers a living wage of NZD22.10 an hour (which is above the minimum wage), pay them for 30 hours a week while they are in managed isolation for 14 days, and cover their isolation costs, which are estimated at NZD4,472 per worker (Cheng 2020).

In New Zealand, the NZCTU (2020a) supported temporary changes to the Immigration Act to allow the Minister of Immigration to make changes to classes of visa, including extensions of periods, in response to the impacts of COVID-19 and travel restrictions.¹⁵¹

The situation of SWP workers in Australia is similar to that of RSE workers in New Zealand. Some 7,000 SWP workers were stranded in Australia when borders were closed. They have been able to apply for new so-called COVID-19 Pandemic Event visas¹⁵² and are allowed to work until they can return to their home countries. The same SWP arrangements, including those relating to employers, apply to the new visa. However, SWP workers are normally only allowed to work for one sponsor/ Approved Employer, whereas during the COVID-19 period, SWP workers may be redeployed with the workers' agreement and approval from the DESE and DHA to ensure they have enough work and keep earning an income. According to the DESE, almost 9,000 SWP workers had been redeployed as of 23 February 2021. Despite these efforts by the DESE and the increased flexibility of the arrangements, not all SWP workers have been able to find work. Like other temporary migrants, SWP workers are not eligible for government benefits (Howes 2020).

Australia's National Farmers Federation estimated a shortage of 26,000 workers in horticulture, and, among others, recommended an expansion of the SWP (NFF 2020). Australia first opened up its borders to Pacific workers under the Northern Territory mango pilot. On 4 August the Australian and Northern Territory governments announced a small pilot that will initially bring in 170 ni-Vanuatu workers under the SWP to provide labour for the upcoming mango harvest (Bedford and Bailey 2020a). The upfront costs of participation are significant, with workers' return airfares from Vanuatu to Darwin costing up to AUD1,500 and the cost of two weeks in quarantine being AUD2,500 per worker, which growers have committed to paying in full. Queensland also opted into the Australian Government's recommencement of the SWP to address the expected labour shortage in agribusiness, particularly during the summer harvest period. This involves allowing workers recruited under the SWP by Approved Employers in Queensland to work while quarantining in accommodation on the farms.¹⁵³ Moreover, plans are underway in Tasmania for around 700 SWP workers to re-enter the state for their summer harvest.

In both Australia and New Zealand, employers and communities have supported Pacific seasonal workers throughout the pandemic by setting up fundraisers and donating food, money and goods such as warm clothing for workers who have remained stranded during winter. SWP and RSE employers have been contributing to workers' living costs (Bailey 2020). Despite this support, RSE and SWP workers have faced multiple challenges during the COVID-19 pandemic, including being stranded, experiencing a lack of work opportunities, having to move to new locations and be introduced to new jobs, being socially separated, and at least in New Zealand, being constantly accused on social media platforms of carrying the virus in New Zealand.

5.8.3. Repatriations

With most Pacific borders remaining closed and very few commercial flights available, worker repatriations are a highly complex task. Repatriations of RSE workers have been prioritized based on need, with first priority given to those with an urgent or compassionate reason to return to the Pacific (for example, for family issues or bereavement, or serious health concerns). RSE workers without employment, and where no ongoing work is readily available, are the second priority, followed by those with limited work.

¹⁵¹ Also consultation with the NZCTU, September 2020.

¹⁵² For more information on the new visas, see: Australia, DHA, "COVID-19 and the Border: Staying in Australia"; and Australia, DHA, "Temporary Activity Visa (Subclass 408): Australian Government Endorsed Events (COVID-19 Pandemic Event)".

¹⁵³ For more details, see: Australia, Government of Queensland, "Guidelines for On-Farm Quarantine of PLS and SWP".

In late June the New Zealand Air Force assisted with the repatriation of more than 1,000 ni-Vanuatu workers, the cost of the operation being borne by the New Zealand Government. Some RSE workers from Papua New Guinea, the Solomon Islands and Fiji also returned home by July.

Some of the biggest logistical and operational challenges with repatriations are due to variations in pre-departure and on-arrival requirements across Pacific countries. There are also medical and travel costs that are partly borne by the workers. For instance, some PICs require a negative COVID-19 test result, which represents a cost. Return travel on commercial airlines or charter flights is a grey area in the sense that under RSE scheme regulations employers and workers are required to equally split the workers' return airfare costs to New Zealand each season. In the vast majority of cases, RSE employers pay for workers' flights upfront, later recovering the worker's share via deductions from their wages. This means that RSE workers currently in New Zealand have already paid their half share of the original return airfare. However, it is unclear whether RSE employers have credits from Air New Zealand or other regional Pacific airlines for return flights that have already been purchased, or whether new tickets will be required for workers and, if this is the case, who will pay for them (C. Bedford 2020b).

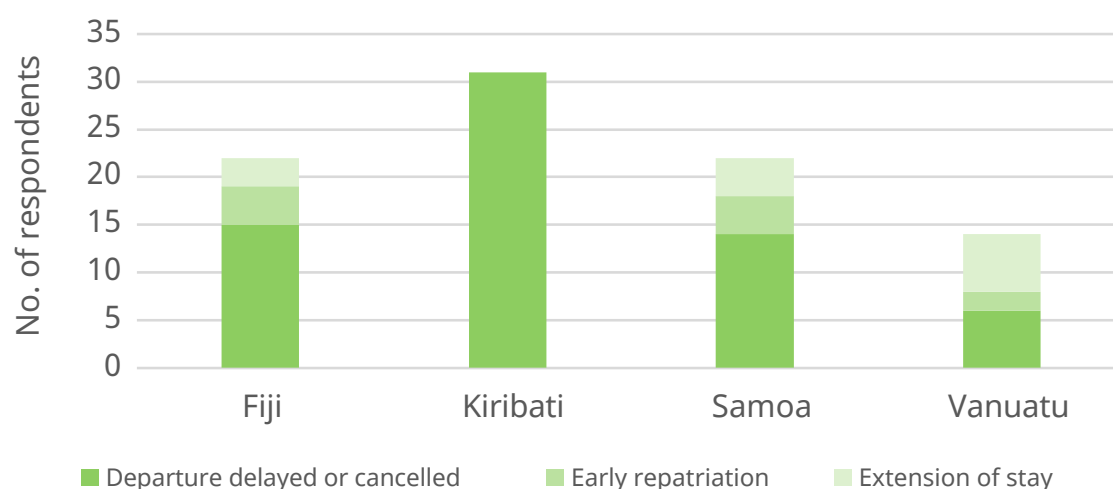
5.8.4. Impacts of the COVID-19 pandemic on workers

Eight respondents from Fiji and two from Samoa said that they had not been affected by the COVID-19 pandemic in any way. Only two workers, one from Kiribati and one from Vanuatu, were worried about the health risks associated with COVID-19. One woman from Kiribati said: "The main impact on me was loss of income because there was no work. ... I was also afraid because COVID-19 was in Australia. I was afraid to leave and worried about my family in Kiribati if somehow COVID comes to Kiribati and I am not there." So far, there have not been any COVID-19 infections among seasonal workers from Fiji, Kiribati, Samoa, Tuvalu and Vanuatu.

All respondents except two workers from Samoa received information on COVID-19. While some workers relied on the media, social media and their friends for such information, most workers also received information from their governments, and, if they were overseas, also from their employer and/or labour hire company.

The three main effects of the COVID-19 pandemic on respondents were missing out on the opportunity to move overseas; being stranded overseas, often with less work and less pay and with movements being restricted; and having to return early to the islands (see figure 5.19).

Figure 5.19. Respondents affected by COVID-19 during the 2020 season, by country of origin



Delayed and cancelled departures

Many workers were due to leave the PICs in April, May or June 2020 but the trip became impossible after borders had been closed. Overall, the departures of 15 respondents from Fiji, 31 from Kiribati, 15 from Samoa and 6 from Vanuatu were either delayed or cancelled due to COVID-19. At the time of the interviews, all of these workers were still waiting to be informed when they would be able to travel. One respondent from Fiji explained:

Our trip this year has been delayed. We were supposed to go in April but the border was closed in March. Some have signed their contracts. Now we are just awaiting news from NEC and the employer. We use Facebook messages as updates.

A female respondent from Fiji who worked in a resort in Australia said:

Returning to work in Australia is delayed. Now we are just waiting for the borders to re-open. However, the resort had reopened in June and the local workers are working there now.

A male worker from the island of Banaba in Kiribati was supposed to travel to New Zealand:

I was supposed to leave in June so I came early from [the remote island of] Banaba to get ready for my flight. Because of the irregular shipping to Banaba, I came early [to the capital South Tarawa]. ... I have been waiting since April. I thought the lockdown would be for a short time but now I am on Tarawa trying to survive on the little I have and still hoping that the borders will open. It has not been easy living on Tarawa without a job.

Another male worker from Kiribati who was recruited to work in Australia stated:

The trip has been delayed one month and to date we are still not sure whether the borders will open or not. ... We do not know if we will continue to work or not. ... And because of this unknown, we are still undecided whether to find a permanent job in Kiribati or not. It is frustrating.

Another male respondent from Kiribati who was due to work in New Zealand this year sees some positive sides:

My plan to work in New Zealand was delayed. I was so much looking forward to start working again. There is no extra cost but there is a lack of income to support my family. The waiting is getting long and very uncertain. On the other hand, I am happy to be in Kiribati and with my family at this time during the lockdown. I prefer to be here than to be away from my family.

A female i-Kiribati explained her situation:

My plan to leave for work this year has been delayed. There are no extra costs but there are the living costs that will continue to be incurred. Both my parents have died, leaving me and my brother and his family. As the older sibling, and because I love to be with my brother, I worked really hard to complete building our family house. The delay in my overseas work is also a delay to my family house project. I hope that the borders are opening soon so I could return to work to complete this project.

Another woman from Kiribati recounted:

My husband and I are both waiting for the borders to open. We are happy to be with our children and family but we need to start earning. Fortunately, we have a little shop and we sell fish every day to complement our income while waiting for the borders to open.

These delays and cancellations have had a negative financial impact on most affected respondents. Some simply stated that they now have less income and less money to buy things. Others have had to cancel specific projects such as improving their house or opening a business. For some, there have been major impacts, as one respondent from Fiji explained:

The impact is big. I was to pay for my daughter's wedding in November. There is no money for the wedding now

Others explained that they still had incurred pre-departure expenses for a trip that never eventuated

and that they did not receive any reimbursements. One respondent from Fiji travelled to Suva expecting that he would be able to go overseas, but his trip was cancelled and he incurred the costs of the trip to Suva. Another respondent from Fiji spent an additional NZD250 on airfares. Several workers from all countries went back to a subsistence lifestyle, as one respondent from Kiribati said:

I have no more earnings. Now we are planting and trying other means of earning money. We plant cabbage and cucumber to sell.

Respondents were asked who informed them of the changes to their planned trips. All respondents in Kiribati received information from the Government, the radio and their employer. Most workers in Fiji and Samoa were informed by their respective governments; some also received information from their team leaders or supervisors. By contrast, all affected workers from Vanuatu received information from their employers with no information provided by the Government. Most workers received information in March 2020 when Australia and New Zealand closed their borders. Several workers received information about cancelled trips only a day before they were supposed to depart or even on the day of departure.

All respondents in Samoa and Vanuatu who were affected by delayed or cancelled departures have regularly received up-to-date information. In contrast, only seven of the 15 Fijians affected (46.7 per cent) and 22 of the 31 affected i-Kiribati (71.0 per cent) have been kept up-to-date.

Early repatriations

Ten respondents (four from Fiji, four from Samoa and two from Vanuatu) were repatriated early. The stay of the four workers from Fiji that were repatriated was cut short by between 2 months and 34 months¹⁵⁴, two workers from Vanuatu went home six months early and four workers from Samoa went home between one month to two months early. Except for one respondent from Fiji, early repatriations were not the choice of the workers.

All workers had lower earnings in Australia/New Zealand as a consequence of early repatriations. For some workers, the amount of work was reduced in the last few months of their stay and as such, incomes were reduced even before their early repatriations. As one worker from Samoa in New Zealand explained: "Our wages were reduced in the last month and then our early return meant a lot less pay than in the previous year."

Three workers from Fiji were repatriated from New Zealand. This was arranged by their companies and the workers did not have to pay any additional air travel expenses, as they had already paid for half of their airfare through wage deductions. In one of the cases, the employer asked if workers wanted to return and one of the respondents chose to return. One worker was repatriated to Fiji from Australia and also did not have to pay anything additional. The four Samoan workers who returned early and their company organized everything, including the COVID-19 tests. One worker was tested three times due to a miscommunication, and workers were also given short notice to leave New Zealand. The two workers who returned early to Vanuatu also came from New Zealand, where the company organized everything and they did not have to pay anything additional towards the airfare.

Waiting for repatriations, many seasonal workers have lived off their savings, which has made many workers re-evaluate the cost-benefits of the schemes (Bailey 2020). A respondent from Vanuatu spent an estimated AUD1,000 more on accommodation because his return to Vanuatu from Australia was delayed. Most Samoans incurred the usual costs for medical and police clearances even though they were unable to join the schemes this year. Six Samoan respondents had to pay for COVID testing in New Zealand either before their early repatriation or because their stay was extended. This cost each worker between NZD200 and 250.

When arriving in Fiji, Samoa and Vanuatu, respondents had to undergo a 14-day mandatory government quarantine during which they were isolated and their health was monitored at the expense of their governments.

¹⁵⁴ Since SWP visas are for less than 34 months, the response might be erroneous.

Respondents from Fiji and Vanuatu were satisfied with the way their early return from Australia/New Zealand and arrival home was handled and the support they received. Workers from Samoa were less satisfied. The worker who was tested three times for COVID-19 was unhappy about the mishandling of this testing, and another repatriated worker was unhappy about the long queues in very hot weather without air-conditioning upon arrival in Samoa.

Extended stays

Thirteen respondents (three from Fiji, four from Samoa and six from Vanuatu) had their stays in Australia or New Zealand extended due to the COVID-19 pandemic. All of these workers stayed in New Zealand, except for one worker from Vanuatu who stayed in Australia. The season was extended by two weeks to one month for the three Fijian respondents, by between one to two months for the respondents from Vanuatu and by between two and three months for the respondents from Samoa. None of the workers chose to extend their stay except for one Samoan in New Zealand. The others were caught in Australia/New Zealand at the time of border closures and had no choice but to stay longer.

All three Fijians stayed in New Zealand and the seasonal work of two of them was not affected; while the third worker was working only for three days per week and yet had the same expenses and wage deductions.

The worker from Vanuatu in Australia also had less work but the same expenses and deductions. By contrast, a Samoan worker in New Zealand explained that many national workers did not come to work during the lockdown and therefore his team picked up many of the shifts and ended up working more than before. Another Samoan in New Zealand stopped working for three weeks during the lockdown and then started working again with the company trying to give the group as much work as possible. Three respondents from Samoa stayed for an extra two months, but did not have any work during that time.

Most workers had their original visas extended, which was organized and paid for by the companies. One worker from Samoa did not require a visa extension because his original visa was for 12 months. All workers continued to work for the same employer during their extension.

All extended workers from Fiji and Vanuatu received information on COVID-19 from their employers, while most Samoans received such information from television, social media and the Government, with only one Samoan worker having received information from their employer. All workers received adequate PPE to use during and outside of work and followed physical distancing at work. Physical distancing rules at the accommodation were followed only by two respondents, one Samoan in New Zealand and one ni-Vanuatu in Australia. In employer-provided transport, nine of the thirteen workers followed physical distancing rules.

Few changes were made to the accommodation of the workers on extended stays. Two workers saw the number of persons who shared their bedroom reduced and three workers reported that the number of persons who shared their bathroom was reduced. Only 7 of the 13 workers had enough space for social distancing at their place of accommodation. Soap, water and hand sanitizer were provided to 12 of the 13 workers, and cleaning products were provided for 10 of the 13 workers. No other changes were made. However, one respondent from Fiji explained that if someone from the house became sick, none of the workers staying together could go to work.

During lockdown periods, the lives of seasonal workers were affected through movement restrictions and enforced isolation. Some workers spoke of their fear of being in crowded places, and others found it difficult to get food. Six workers received food deliveries, and the employer of one of the workers did all the shopping for the seasonal workers. Workers from another company received free fruit and vegetables from their employer. All workers said that their basic needs were met at all times.

In the case of the three Fijian respondents, the employer organized the return flights that workers had already paid half of through wage deductions, and transport to the airport was organized by

the company. The situation was similar for three of the four Samoans stranded in New Zealand. Only one Samoan had to pay for the bus trip to Auckland and for his overnight stay in Auckland. For these, NZD245 was deducted from his pay. The case was different for workers from Vanuatu stranded in New Zealand, as the New Zealand and Vanuatu governments organized the return trips and chartered planes. Two of the six ni-Vanuatu had to pay for their full return airfare and one paid half of the airfare with the Vanuatu Government contributing the other half. Upon arrival in their home countries, all workers were quarantined for 14 days at government facilities and at the expense of the Government. All except one respondent from Vanuatu were satisfied with the way their extension in Australia/New Zealand and return home were handled and with the support they received.

Decreased earnings

Close to two-thirds of workers under the SWP and the RSE scheme experienced fewer work hours and lower weekly earnings as compared to the pre-lockdown period of January and February 2020, according to a phone survey undertaken as part of a World Bank (2020) study. Among those reporting a decrease in income, the average reduction in their weekly earnings was 50 per cent (or AUD400) among SWP workers and 48 per cent (or NZD364) among RSE workers. Facing income losses, stranded seasonal workers have been largely unable to access formal social protection systems in host countries while also being cut off from safety nets at home. Of those surveyed, 35.7 per cent had experienced at least one week without any work since the lockdowns in March 2020 and 8.3 per cent anticipated that their total earnings from the current work season will fall short of the pre-departure costs that they incurred to participate in their labour mobility scheme. By contrast, a minor proportion of this group worked more hours (13.2 per cent) and earned a higher income (18.2 per cent) than they did pre-lockdown. The decrease in remittances, although substantial, has been less drastic than the decrease in earnings. While about two-thirds of interviewed workers saw their earnings fall, only half reported remitting less. This suggests that many workers adjusted their spending and saving behaviours to cope with the income impacts of the crisis to maintain their level of remittances (World Bank 2020).

The operations of the businesses where 8 of the 13 extended stay workers were employed were not impacted by the COVID-19 pandemic while the respondents were still there. The remaining five businesses were impacted negatively through reduced orders and exports, which had negative impacts on available work. Nine of the 13 workers were on reduced working hours or had no work at all, causing substantial economic hardship, as one Samoan in New Zealand said: “We wanted to come home after the season finished as we spent a lot of money on accommodation and transport. This was the money we were supposed to bring home.” The four Samoan workers stranded in New Zealand mentioned that they used their holiday pay, which they receive at the end, to pay for their ongoing costs in New Zealand.

In addition to detrimental economic impacts, the crisis has caused mental distress among Pacific migrants, both seasonal workers and members of the diaspora. Concerns and anxiety related to employment, visas, repatriation uncertainties and the welfare of family back home were reported as major issues faced by seasonal workers (World Bank 2020).

5.8.5. Government responses in the PICs

Consultations with PIC governments showed that they are undertaking a variety of efforts to support their seasonal workers. In the case of Fiji, the Fijian High Commissions in Australia and New Zealand advise employers about new guidelines and protocols that have been put in place in regard to COVID-19. The Fijian Government stays in contact with workers.¹⁵⁵ The Government of Kiribati assists RSE workers with visa extensions as well as helping workers stranded in Fiji and the Solomon Islands. The Government has been planning repatriation flights from New Zealand to Fiji. According to the Government, most i-Kiribati RSE workers wished to remain working in New

¹⁵⁵ Consultation with the NEC, September 2020.

Zealand, while only a few wished to be repatriated.¹⁵⁶ The Samoan Government has worked with employers and Australian Government departments to ensure that the latest updates on COVID-19 are released to the workers.¹⁵⁷ The Government of Tuvalu has remained in constant contact with workers overseas through their Facebook page and other social media and is working closely with government officials from Australia and New Zealand to ensure the safety of Tuvaluan workers during the pandemic, to get visa extensions, and to find work for workers who require redeployment to other employers.¹⁵⁸ The Vanuatu Government through the Labour Department organized several meetings with recruitment agents to update them about COVID-19. The Commissioner of Labour also recorded video messages for workers to encourage them to think positive during this crisis and take precautionary measures. Some COVID-19 information is shared on the Government's social media platforms to help workers abroad. The Government also has arranged the repatriation of workers from both Australia and New Zealand in the past months.¹⁵⁹

It is expected that despite ongoing travel restrictions and mandatory quarantine requirements that limit travel numbers (due to caps on quarantine capacity), demand for Pacific Island workers in certain industries in regional areas, particularly in horticulture, is likely to remain strong. Production in horticulture has continued despite COVID-19 lockdowns, and there is a high demand for workers (World Bank 2020). Pacific governments estimate an increase in travel costs for seasonal workers as well as additional costs for quarantine and COVID-19 testing, and it is feared that some of these costs will be borne by seasonal workers. All governments keep workers who were supposed to participate in the RSE or SWP in 2020 informed regularly to ensure that workers can be mobilized in a short timeframe when borders re-open.

156 Consultation with the Kiribati Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020.

157 Consultation with the Samoa Ministry of Commerce, Industry and Labour, Labour and Employment Export Division, Labour Sending Unit, September 2020.

158 Consultation with the Tuvalu Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020.

159 Consultation with the Vanuatu Ministry of Internal Affairs, Department of Labour and Employment Services, August 2020.

6. Concluding analysis and recommendations

This chapter presents a series of recommendations for consideration with respect to the design and implementation of the RSE scheme and SWP. While some of these recommendations can be directly implemented by Australia and New Zealand, others require a review of the terms of the bilateral labour agreements that establish the SWP and the RSE scheme. This should be done by engaging the participating countries.

In addition to the recommendations below, it is therefore recommended that **both Australia and New Zealand undertake a review of the agreements establishing the SWP and RSE in consultation with participating PICs, trade unions, workers, employers' organizations, employers and civil society organizations.** Such a review should ensure that Australia's MOU establishing what will now be the PALM scheme and New Zealand's Inter-Agency Understanding establishing the RSE scheme draw on the ILO Model Agreement on Temporary and Permanent Migration for Employment contained in the Annex to ILO Recommendation No. 86.

Both the Implementation Arrangements and the Work Policy should become the subject of consultations between Australia/New Zealand and participating PICs. These consultations may be convened in the first instance between Australia/New Zealand and countries of origin negotiating as a group. Further bilateral negotiations may be conducted so that country-specific variations are included in each agreement that reflect the labour migration needs and circumstances of different countries of origin. Trade unions and union peak bodies, including the Australian Council of Trade Unions and the New Zealand Council of Trade Unions, workers, civil society organizations, and employers and employers' associations in Australia or New Zealand and all participating countries of origin should be consulted as part of the negotiation process.

There is also a need to consider ratification of relevant ILO instruments in both countries of origin and destination, which would ensure greater consistency with international standards and lead to enhanced protection of women and men migrant workers. It is therefore recommended that consultations be undertaken with social partners on ratification of the ILO fundamental and governance Conventions, migrant worker Conventions and other relevant instruments referred to in table 3.1 above.

6.1. Pre-departure arrangements, post-arrival and associated recommendations

Considerable efforts have been made by countries administering the seasonal worker programmes to set up processes through which workers can be selected and recruited and be provided uniform information related to the SWP and RSE. Both Australia and New Zealand prohibit the charging of recruitment (placement) fees to workers, and Fiji is one of three countries in Asia and the Pacific that has ratified ILO Convention No. 181, which in principle prohibits the charging of recruitment fees to workers. There are a range of recruitment modes, including direct recruitment (by employers), the use of work-ready pools and reliance on private recruitment agents.

However, migration costs (including both recruitment fees and related costs) appear to be high and processes are not in line with international standards (ILO 2019a).

Assistance to labour sending units

It is recommended that Australia and New Zealand collaborate to provide joint technical and financial resources to the labour sending units (LSUs) of country of origin governments. The DFAT has indicated that Australia currently has 25 persons located in the Pacific who work with LSUs (Australia, Senate 2020). The New Zealand Government supports the implementation of the RSE using "relationship managers". These managers are government employees who have an intermediary

role in RSE implementation and liaise with the LSUs. They are not part of the RSE operations unit (which is responsible for administration and compliance) (Curtain 2019).

Existing technical and financial support provided to the LSUs should be reviewed in consultation with trade unions and employers' organizations with a view to ensuring that LSUs are better involved in scrutiny of recruitment practices.

The governments of Australia and New Zealand should also review their current commitments to increase the capacity of participating countries to recruit and prepare workers for participation in the SWP and the RSE scheme.

Labour hire companies

Australia and New Zealand should each conduct a specific review of the experiences of SWP and RSE workers and employers with labour hire companies. This review should be designed to ensure that there is sufficient industry-appropriate regulation of the activities of labour hire companies that participate in the SWP and the RSE scheme. New Zealand recently passed the Employment Relations (Triangular Employment) Amendment Act, 2019. This Act enables employees to bring an action regarding personal grievances against a "host" employer in a labour hire arrangement.

Strengthen the monitoring and transparency of the selection and recruitment process

At present, trade unions have not been assigned a specific role in the implementation of the SWP and RSE or in the selection and recruitment process beyond a provision that they must be invited by employers to be present at (but not necessarily conduct) presentations to workers, and that information must be provided to workers on freedom of association. While no solid evidence exists supporting the need for trade unions to be involved in the selection process, the involvement of trade unions in monitoring the selection and recruitment of workers could make the process more transparent and fair. Since the selection and recruitment process is organized slightly differently in each PIC, the best way to incorporate trade union involvement will have to be identified for each country.

Pre-departure briefings

The Implementation Arrangements of the SWP MOU and RSE IAU contain information on the content of pre-departure briefings and all respondents in the sample, except for one worker from Samoa who went to Australia, had participated in a pre-departure briefing or training before they left for their most recent stay in Australia or New Zealand. However, the length and content of the pre-departure training vary greatly between different countries of origin and – due to time and travel constraints in all countries – the content covered is necessarily basic.

The wide variety in regard to pre-departure orientation in PICs – such as lengths ranging from one to five days, provision (or not) of certificates and the use (or not) of handbooks – offers a good opportunity for knowledge sharing among countries of origin.

Involve trade unions and human rights groups in pre-departure briefings

At present, Pacific governments do not routinely invite local trade union representatives to participate in pre-departure briefings. The programme guidelines in the Implementation Arrangements only provide that the country of origin government *may* invite local trade union representatives. This requirement should be strengthened to ensure local trade unions and union federations are invited, which is critical to ensuring that RSE and SWP workers have all relevant information about their rights and understand the role of trade unions in enforcing these rights in Australia/New Zealand. Trade union involvement will also help prospective migrant workers assess whether the conditions

in their letters of offer are fair and reasonable, especially in regard to proposed deductions for accommodation, transport and others, and whether piece rates are compliant with national law. The involvement of human rights groups and civil society organizations in pre-departure briefings will further enhance the understanding of workers concerning their rights while overseas and upon return.

Offer of employment

A system for the supervision of SWP and RSE contracts and offers of employment made by Australian and New Zealand employers has been put in place. In Australia, templates are in accordance with the requirements of the FWO.

Revised standard forms for offers of employment and standard employment contracts

All employers should be required to use standard form offers of employment and contracts that contain not only the terms of employment for the individual worker, but also information on minimum employment and accommodation standards required by Australian/New Zealand law. While some guidance is provided to Approved Employers/Recognised Seasonal Employers in each programme at present, this additional measure will increase understanding in countries of origin of the relevant laws and facilitate workers' access to information regarding their rights and entitlements. These measures will also assist the authorities in each country of origin to explain the offer and its contents to seasonal workers. Employment conditions and worker deductions (such as for accommodation and transport) should be transparent in the employment contract.

Option for workers to revisit the terms of employment after commencing employment

The assumption underlying the way information is presented in pre-departure sessions is that the terms of the employment agreements offered by employers are fair, and the main difficulty is for workers to understand them. The DESE and MBIE approve the offer of employment as part of the recruitment approval process, but there is no information to assist LSUs and workers to independently assess the conditions in the offers of employment, especially in regard to proposed deductions for accommodation, transport and others. Workers in Australia/New Zealand offered subsequent contracts also rarely have access to information to assess fairness. Often, the fairness can only be established after commencing work under the specified conditions. Therefore, if workers assess the conditions to be unfair after commencing work and viewing the working conditions, pay rates or other factors within the context of the actual workplace, they should be provided with the option to renegotiate the terms of employment, with the assistance of a trade union or an advocate. A process for doing so should be clearly defined and explained to workers and employers.

Recruitment fees and related costs

The recruitment fees and related costs (as per the ILO Definition) that are borne by workers are considerable, and workers start their seasons in Australia and New Zealand with considerable debts to their employers, and partly with debts to family, banks and governments in their home countries.¹⁶⁰

Review and replace the existing system to cover the upfront costs of migration

Migration costs borne by workers are considerable and workers start their seasons in Australia and New Zealand with debts to their employers and/or with debts to family, banks and governments in

¹⁶⁰ While the Government-to-Government agreements related to the seasonal work schemes ban charging recruitment fees to workers, there is anecdotal evidence of individuals paying middlemen for their names to be included in the pool of prospective workers.

their countries of origin. By contrast, while employers meet some upfront expenses, they largely recoup these later through wage deductions. These deductions often create an unreasonable and unfair burden on workers, which can act to significantly reduce their earnings, especially as workers effectively pay all costs associated with participating in the scheme (pre-departure expenses, travel expenses, post-return expenses). While the current system prohibits workers from being charged recruitment fees, it does impose on workers considerable costs related to recruitment, including documentation, transport and airfares. This is contrary to the ILO Guidelines and Operational Principles on Fair Recruitment and Definition of Recruitment Fees and Related Costs (ILO 2019a). The current system also creates an incentive for employers to deduct unreasonable amounts from workers to ensure loans are repaid quickly at the expense of workers' income in the first months of their employment. Australia and New Zealand should implement the terms of ILO Recommendation No. 100 and restrict deductions to a small portion of monthly remuneration and require employers to pay the traveling expenses of workers. An example of how this could work can be found in Canada's Seasonal Agricultural Workers Programme. The contract for Mexican workers participating in this programme specifies the maximum dollar amount that employers can deduct for air travel and limits deductions to 10 per cent of the workers' gross pay from the first day of employment (Canada, Employment and Social Development Canada, 2021).

As the programmes continue to expand, the review should consider shifting a fairer share of the costs to employers. The COVID-19 pandemic and the restarting of the SWP through the Northern Territory mango pilot present an opportunity to rebalance the recruitment costs, as growers participating in the pilot have committed to paying for quarantine and a greater share of airfare costs if the flights exceed a cap set by the DESE (Bedford and Bailey 2020a). This could be regarded as an important precedent that should result in a broader shift of responsibility back to employers to cover the costs of recruiting and employing seasonal workers in accordance with international labour standards. ILO Recommendation No. 100 (Para. 7(b)) states:

Migrant workers who have entered into a contract prior to departure should have the right to repatriation at the expense of the employer when:

- i. the period of service stipulated in the contract has expired;
- ii. the contract is terminated by reason of the inability of the employer to fulfil the contract;
- iii. the contract is terminated by reason of the inability of the migrant worker to fulfil the contract owing to sickness or accident;
- iv. the contract is terminated by agreement between the parties;
- v. the contract is terminated on the application of either of the parties, unless the competent authority otherwise decides.

The DESE has commented that if a worker returns without paying back the cost of the airfare, then it is the employer who shoulders this expense. There is no explicit discussion of this requirement in any of the documentation reviewed for this report, including in the information provided to workers. Further, the design of the SWP and RSE places only partial responsibility on the employer to pay for airfares and it is expected that workers pay the remaining airfare costs.

To the extent that employers continue to provide workers with large loans to finance travel, the system of deductions could be revised in consultation with workers, trade unions and employers' organizations.

Create a system for the repayment of migration-related debt in the event of early return

The SWP (and the RSE scheme, though it should be noted that employer loans are larger in Australia) should establish a clear process for workers who wish to return home prior to the repayment of their debt related to migration costs. Information about this process should be included in contracts, pre-departure training, worker guidebooks and induction training. One option to explore is for governments to work with the private sector to create an appropriate form of low-cost compulsory insurance that could be bought by employers.

On-arrival briefings

The guidelines for on-arrival briefings are clear and comprehensive, and Australia and New Zealand have created legislative frameworks, as recommended in international labour standards, to ensure workplace and occupational safety and health. Employers are required to consider language and other issues workers might encounter in understanding these laws. Almost all workers in the survey had received on-arrival briefings in Australia and New Zealand and all were satisfied with the briefings.

Involve trade unions in on-arrival briefings

Trade union and union federation involvement in on-arrival briefings for workers would be desirable in New Zealand.¹⁶¹ It is already a mandated requirement in Australia that trade unions be invited by employers to on-arrival briefings. In addition to trade union involvement in on-arrival briefings, the Retail Supply Chain Alliance (2020) recommends that the arrival process for workers also includes trade union involvement.

6.2. Working conditions and associated recommendations

Previous research has documented cases of worker exploitation under both the RSE and SWP, including: underpayment and even non-payment of wages; unlawful deductions from wages; excessive working hours without proper compensation; lack of breaks; overcrowded and substandard accommodation and unreasonable above-market rate charges for accommodation and transport; racism and discrimination at work; verbal and physical abuse; employer non-compliance with pre-departure and on-arrival briefing requirements; and others. Several examples of such instances were recounted by respondents in this survey.

Pay and pay deductions

SWP workers in Australia should be classified as full-time fixed-term employees rather than casual workers and receive the minimum standards for full-time employees under the National Employment Standards. Their current designation as casual workers does not reflect the reality of their employment contracts. A casual employee “does not have a firm commitment in advance from an employer about how long they will be employed for, or the days (or hours) they will work. A casual employee also does not commit to all work an employer might offer” (Australia, FWO, n.d.-d). The SWP guarantees workers a minimum 30 hours of work per week on average throughout their employment (Australia, DESE 2019, section 5.3).

New Zealand should consider exempting RSE workers from the law that casual employees are only entitled to sick leave and bereavement leave only after six months of starting work. Since each season workers return on a new employment contract the current system excludes workers from these benefits for the majority of their time in New Zealand. RSE workers are already entitled to annual holidays or pay in lieu of annual holidays.

SWP workers, including those on piecework rates, should be guaranteed a set minimum wage. RSE workers can be paid either an hourly rate, a piece rate, a sliding rate or a combination of these rates but in all cases the payments must equal or exceed the minimum wage. The current system of piece rates set according to the “average competent employee” disadvantages workers from the Pacific during their first season with any employer and decreases the development benefit of the SWP.¹⁶²

Guaranteed minimum payment over employment period

The “net financial benefit” employers must ensure for workers in the SWP is “demonstrated through factors including the proposed hours of work (noting the minimum average of 30 hours of work a week for the duration of employment in Australia), duration of stay, and expected earnings after

¹⁶¹ Consultation with the NZCTU, September 2020.

¹⁶² It is noted that this recommendation has been implemented since the preparation of this report. The recommendation remains in the document as it reflects the research findings.

deductions" (Australia, DESE 2020b, section 2.2.2). Employers are only required to demonstrate a net financial benefit if requested to do so by the DESE, though the 30 hours minimum is monitored as a matter of course. In the past this net financial benefit has been assessed using a dollar amount of AUD1,000 over the entire contract (Howes 2015). Australia and New Zealand, in keeping with the development assistance goals of the SWP and RSE, could consider implementing a minimum net payment (after deductions) over the period of employment. This amount should be indicated in the letter of offer and contract and be negotiated with the PICs. Responsibility for meeting this minimum net payment should lie with employers and Australia/New Zealand, so that workers whose hours are affected by poor weather or other agricultural conditions do not bear a personal cost for unforeseen events.

At present, workers' earnings are affected by factors outside their (and their employers') control, such as weather conditions, crop quality, the harvest season starting later or ending sooner than anticipated, and the availability of full days of work. Earnings are also affected by the failure of (or inability of) employers to make contingency plans that provide workers with enough working hours. At the same time, workers are limited to certain types of agricultural jobs and cannot shift to a different employer or a different industry in search of higher rates of pay. Also, there are deductions from workers' wages, particularly for accommodation and transport. In addition to these, RSE and SWP workers – like other workers in the industry – also face significant risks when it comes to the ways growers set piece rates. In Australia, this payment method is only allowed in agricultural industries and can be used by growers to underpay workers in horticulture. However, some workers have reported earning high wages on piece rates and prefer this payment method. Survey participants reported average earnings after deductions of around AUD13,000 for the entire season. After deducting their incidental expenses for food and other essentials, their savings were on the order of AUD10,000, which is a reasonable amount.

The RSE has a system of calculating the minimum payment; however, it is a complicated calculation that is difficult for workers to understand and calculate prior to accepting an offer of employment. The SWP guarantees workers a minimum of 30 hours of work per week on average throughout their employment. What this translates to in terms of payment can only be calculated at the end of the period of employment.

RSE and SWP workers' pay should keep pace with increases in expenses

The pay rates should keep pace with annual increases in rent and workers' other living costs.

Rewards for skills and experience

Skilled and experienced workers should be rewarded with a higher rate of pay compared to first-year workers.

Revise pay deductions

As noted above, in regard to the recruitment costs, transportation and other ongoing expenses, workers now effectively pay all of the costs associated with participating in the RSE and SWP. While employers must meet moderate upfront costs to recruit workers, they recoup these through deductions from workers' pay. It can be considered reasonable for workers to cover the cost of their passports, visas and police clearances. However, deductions for international travel, transport within Australia/New Zealand and the practice of overcharging for accommodation place a burden on workers, which can act to significantly reduce their earnings. A review of these costs could establish whether these should be borne by employers. Both Australia and New Zealand have laws and policies in place to prevent unreasonable deductions or excessive charges for accommodation and transport, however, enforcement mechanisms appear to be lacking.

Moreover, some workers are charged by their employers to pay for work clothes, PPE, work equipment and other facilities at work, which is not in conformity with RSE and SWP policy.

Instances have been noted where work has been called off, for example due to bad weather, yet workers are required to be available for work. It is recommended that workers should be paid an allowance on days when work is called off but they are required to be available.

Investigating employers charging interest

Under the RSE and SWP, employers are not supposed to charge interest on repayments. No formal complaints have been received by Australian government agencies regarding the charging of interest. However, some workers claimed that employers would charge them interest if they did not repay their debts over a certain period. Investigations are required to establish whether or not there are instances where interest has been charged and, if this is found to be the case, appropriate action should be taken.

Changes to the terms and conditions of employment

In addition to the recommendation above enabling workers to revisit the terms of their contract after arriving in Australia/New Zealand, if any of the terms and conditions of employment of seasonal workers change during their contract, workers should be provided with the ability to receive advice from LSUs, labour attachés and/or trade unions concerning these changes.

Leave provisions

Improve sick leave provisions

As noted above, at present, workers in Australia are not eligible for paid sick leave as most are employed on casual contracts. In New Zealand they are eligible for paid sick leave only after six months of employment. This has to be improved. Firstly, it is widely acknowledged that workers are susceptible to getting colds or influenza upon their arrival in New Zealand and Australia while adjusting to the new climate and environment. Paid sick leave should be available from day one of their employment. Moreover, due to sick leave not being paid, many seasonal workers delay taking sick leave or seeing a doctor for as long as possible. Situations like these are a risk to the health of seasonal workers and should be avoided, particularly in the context of COVID-19.

Termination

Recognizing the specific vulnerabilities that many migrant workers from the Pacific experience and the ways in which these workers' situation is different to that of the average citizen worker, the SWP and RSE should implement a special procedure to be followed by an employer to terminate the contract of an SWP or RSE worker. The SWP and RSE should also implement a process for employers to justify the decision not to re-hire a worker for subsequent seasons. This procedure should be created in consultation with LSUs, trade unions, workers, employers and employer associations. At present termination is governed by the labour laws applying to all workers in Australia and New Zealand. However, RSE and SWP workers, regardless of the number of seasons they have worked in Australia or New Zealand, are not able to access these procedures due to the temporary nature of their contracts.

Labour hire companies

Increase regulation of labour hire companies in Australia and New Zealand

Labour hire contractors are currently at the core of compliance problems in the horticulture industry. It is widely acknowledged that the prevalence of labour hire firms in the horticulture industry aides and abets the widespread use of undocumented workers, regularly results in non-compliance with conditions in the Horticulture Award, and allows some growers to generate a perceived legal and moral distance between their business and compliance issues. The Australian Government's Migrant Workers' Taskforce argued in their March 2019 report that the lack of a regulatory framework for labour hire firms nationally was a key motivator of non-compliance with Australian workplace laws (Retail Supply Chain Alliance 2020). New Zealand has taken some steps to address issues arising from labour hire contractors; however, both countries should implement specific measures for SWP/RSE workers that reflect their additional vulnerabilities as employees.

Choice of employment

Australia and New Zealand should explore methods to extend free choice of employment to SWP and RSE workers within the pool of Approved Employers/Recognised Seasonal Employers in each country.

The SWP places a legal responsibility on employers to police immigration policy and enforce adherence to visa requirements. This places employers in a position of power over workers and exacerbates existing vulnerabilities experienced by low-wage workers (Berg 2015).

Reducing restrictions on job changes will provide workers with the ability to report labour exploitation and leave exploitative workplaces without fear that this will affect their immigration status. It will also enable workers and worker representatives to bargain for better conditions and pay in response to market needs.

Although the Pilot SWP involves workers being transferred between a number of employers, this does not amount to free choice of employment since the decision to move workers appears to be made by the employers. Workers in the general SWP (and the PLS) are normally only allowed to work for one sponsor/Approved Employer. During COVID-19, the DHA has allowed workers to move to a new Approved Employer. These moves are organized by the DESE at the request of employers (Australia, DHA, n.d.-e).

It has been announced that under PALM workers will have the option to change employers, however it is not yet clear what model this will follow. If the decision to move workers is made by employers, with consent from workers, then this may not represent a meaningful improvement in choice of employers for workers. If workers are able to initiate the process of changing employers, this could represent a meaningful shift toward freer choice of employment.

With a view to increasing free choice of employment following a certain period of residency, free choice could be extended within the entire cohort of Approved Employers/Recognised Seasonal Employers. Options to expand free employment should be explored on the basis that sufficient protections are in place for workers.

Efforts to ensure that LSUs have the tools and information to understand the labour laws and industrial relations systems in Australia and New Zealand should also be strengthened, so that LSUs will be well placed to support workers to understand fully the offer of employment.

Remittances

Australia and New Zealand should continue to strengthen measures to reduce the cost of remittance transfers to the Pacific. A variety of strategies to achieve this can be found under GCM Objective 20 ("Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants").

Training

It is recommended that the provision of skills development be mandatory as part of the SWP and RSE so that workers can progress to higher rates of pay in accordance with industrial relations provisions in Australia and New Zealand. Australia has provided “add-on” skills training for SWP workers in the past. In response to evaluations of that approach, Australia and New Zealand should introduce meaningful training opportunities leading to formal qualifications on the basis of equality of treatment with nationals. International labour standards establish:

Each Member shall ensure equality of opportunity and treatment with nationals with respect to access to vocational guidance and placement services; access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment; advancement in accordance with their individual character, experience, ability and diligence” (ILO Recommendation No. 151, Para. 2(a-c); see also Convention No. 111, Art. 2).

Australia should replace “add-on” training for SWP workers with opportunities to obtain formal qualifications that can: (a) assist with seasonal workers’ career advancement during their contract of employment; and (b) contribute to skills development relevant to countries of origin.¹⁶³

New Zealand should introduce training opportunities for RSE workers that lead to formal qualifications as indicated above.

Health and safety

The national health and safety authorities in Australia and New Zealand should undertake a review of the occupational health and safety experiences of SWP/RSE workers in order to ensure that equality of treatment and non-discrimination are being adhered to across major industries that employ these workers.

6.3. Living conditions and associated recommendations

There are considerable variations in regard to pastoral care and living conditions between countries and between employers. Under the “pastoral care” requirement in the RSE and SWP, employers are required to provide arrangements to help workers arrive, settle in, and have access to adequate facilities while in New Zealand and Australia. Apart from ensuring access to suitable accommodation at a reasonable cost; employers have to provide information on medical insurance, banking services, and money transfers; provide transport to and from work; and provide opportunities for recreation and religious observance, all of which affect the living conditions of workers. Respondents in this study reported high levels of satisfaction with the various pastoral care aspects that affected their living conditions, including opportunities for recreational activities and religious observance.

Accommodation

Australia and New Zealand should implement steps to improve enforcement of accommodation standards for SWP and RSE workers.

The SWP and RSE mandate minimum accommodation standards for workers. However, these have not always been enforced. At present, employers have to identify a specific accommodation venue and submit details as part of the process to obtain approval to recruit workers. The approval process takes place about four to six weeks before workers arrive in Australia or New Zealand. Employer-provided accommodation should be approved with recent photos, floorplans and inventory in a separate process just before the workers’ arrival. Employers should be subject to rigorous monitoring of accommodation plans by the DESE in Australia and the MBIE in New Zealand

¹⁶³ As flagged in the body of the report, a new approach to skills development was published on the PALM website in September 2021 which includes avenues for supporting formal qualifications. Employers are required to apply to the PLF for funding for training, which may include funding for formal qualifications. Based on what is published on the PALM website, the decision to do this is at the discretion of employers. See: [Australia, PALM, “Frequently Asked Questions”](#).

in addition to monitoring by labour inspectorates.

In spite of existing efforts by the DESE and MBIE, some workers interviewed for this report were accommodated in substandard accommodation wherein workers live in crowded conditions in which bedrooms, kitchen and lounge rooms are frequently inadequate due to their small size, and where there is a lack of heaters and air-conditioning. Some workers do not have access to lounge and dining rooms, instead having to eat on the beds. In other cases, kitchens and bathrooms are located in separate buildings from the bedrooms, with workers having to cross courtyards to reach them even in the winter cold. Some PIC LSUs were not aware that Australia and New Zealand had implemented guidelines on minimum standards for accommodation for workers.

There is a need for stronger enforcement of minimum standards. Enforcement of accommodation standards should involve officials from Australia and New Zealand verifying directly with workers upon their arrival that the conditions meet the minimum standards required in each country.

Rents should be reasonable and based on equality of treatment with nationals

The process by which the DESE or MBIE approve accommodation plans submitted by employers should be amended to include the requirement that “rents [are] reasonable in relation to the wages earned” (Recommendation No. 100, Para. 21). With the term “reasonable” clearly defined in SWP and RSE programme documentation.

Where accommodation is not owned by the employer, a rental agreement for the property must be provided in order to verify that workers are being charged for the exact cost of the rental (and other amenities, if included). The DESE currently undertakes a desk review of costs from Approved Employers that includes reference to other rental listings in the area. Nonetheless, workers consider rents to be excessive for the accommodation offered.

In cases where the accommodation is owned by the employer, information should be provided on mortgage repayments in order to ascertain that the rent charged to workers permits no more than a “reasonable return on investment” (Recommendation No. 115, Suggestions Concerning Methods of Application, Para. 40(2)).

Whether or not the accommodation is owned by the employer, there is a need for greater levels of scrutiny around the “market rate” for housing in each region, whether accommodation services are truly being provided to workers “at cost”, and whether these rates are fair and reasonable, considering the quality. This is particularly the case in regions with few accommodation options and where labour hire providers are leasing private dwellings to accommodate workers, effectively setting the “market rate” based on what they choose to charge workers.

Employers should only be allowed to recoup a percentage of the cost of furniture and accessories from workers.

New Zealand should consider whether exclusionary accommodation requirements placed on RSE workers in certain regions can be removed and replaced with alternative measures to reduce housing pressures. In some regions (Hawkes Bay, Bay of Plenty, Auckland, Marlborough, Nelson/Tasman, Northland and Otago) residential houses cannot be used for RSE workers, unless the houses are owned by the employer or were purpose-built for the use of horticulture/viticulture workers (New Zealand, MBIE 2019, 4).

Transport costs

Transport costs should be reasonable

Workers should be charged fair and reasonable rates for transport between the place of accommodation and work, and between the place of accommodation and other amenities. A similar system of monitoring and compliance-assessment should take place as indicated for accommodation (see above).

Welfare services and social life

Responsibility for welfare of workers should lie with the Australian and New Zealand governments

The Australian and New Zealand governments should be directly responsible for providing services to support the welfare and wellbeing of SWP/RSE workers and for funding the work of the Welfare and Wellbeing Support Person (the cost might be subsidized by requiring employers to contribute). This could be implemented in Australia through the existing systems for tendering migrant settlement services in rural and regional Australia.¹⁶⁴ Organizations responsible for delivering migrant settlement services in Australia already have systems in place to hire and train qualified staff, as identified in international labour standards.

With regards to the Pacific Labour Facility (PLF), Palladium has been awarded the contract from the DFAT to field Pacific Labour Mobility Officers to support a Pacific Labour Mobility Coordinator in connection with the Pacific Labour Mobility scheme's recommencement in September 2020, following its temporary cessation due to COVID in 2020. Fifteen Pacific Labour Mobility Officers (PLMOs) were deployed in by the beginning of June 2021, with an additional three remaining to be hired. The role of the PLMO is to "work with seasonal workers, approved employers, and local community groups, and undertake additional welfare, monitoring and compliance activities (including accommodation checks)" (Australia, Senate 2021a). The role of PLMO has been described as less independent and troubleshooting-oriented than the RSE's equivalent Relationship Managers (Curtain 2021).

The current responsibilities of employers regarding social integration should be maintained.

The Australian and New Zealand governments should undertake research to identify strategies to facilitate the maintenance of cultural and ethnic ties by SWP/RSE workers, with a view to enhancing support towards this end.

Ending curtailment of personal freedom

The consumption of kava is a widespread leisure activity in the Pacific. As noted by Nunns, Bedford and Bedford (2019), the drinking of kava is permitted by some RSE employers, but not all. Some employers allow the drinking of kava for special occasions or if workers are not working the next day, providing its use is controlled. It is a curtailment of the personal freedom of workers if employers control their activities outside of work hours, so long as these activities do not infringe on their ability to work. Employers should not be permitted to control the leisure time activities of seasonal workers and there should be penalties for doing so.

Asked if they were allowed to leave their accommodation if they wanted to go somewhere in their free time, all workers in New Zealand said that they were allowed to leave, whereas 16 workers in Australia said that they were not allowed to. If it is true that a considerable number of workers in Australia were not allowed to leave their accommodation freely, this would be a major curtailment of their personal freedom.

Access to healthcare

SWP/RSE workers should be provided access to the public health system in Australia/New Zealand on the basis of equality of treatment with nationals.

At present, seasonal workers have to pay for their private health insurance in Australia and New Zealand, rather than being covered by the public health system. Private insurance is expensive and yet still does not provide sufficient cover to prevent some workers from incurring high costs in the

¹⁶⁴ The Australian Government already utilizes non-profit organizations to deliver support services to migrants in regional and rural areas, see: [Australia, Services Australia, "Help for Refugees, Humanitarian Entrants and New Arrivals"](#).

event of illness. Moreover, some workers avoid visiting a doctor and taking time off work for doctor visits or when they are sick because they do not want to lose their income for the day. In Australia, many SWP workers are also based in rural areas, where health services are often not abundant and reaching medical centres might pose challenges and incur costs of transportation.

If SWP and RSE workers had access to the public health systems, this would contribute to the development assistance goals of the SWP and RSE by reducing the costs incurred by workers and reducing barriers to the participation of persons with disabilities.

If access to the public health system will not be provided, existing private health insurance policies offered to seasonal workers must be urgently reviewed to ensure they meet minimum requirements, including, for example, the provision of pregnancy care.

Family life

Pathways to permanent residency and citizenship may be considered. This could be done via skilled visas for returned workers which in turn have a pathway to residency. Similarly, workers on longer-term employment contracts, such as those within the Pacific Labour Scheme, should have the option for family unification or travel to see family during their employment (Hugo 2013).

Introduction of multi-entry visas

A multi-entry visa for RSE and SWP workers should be introduced to reduce the administrative burden of allowing workers to return home during the season for family-related events such as the birth of a child.¹⁶⁵

6.4. Equality of treatment and associated recommendations

In both Australia and New Zealand, all seasonal workers face a significant number of challenges arising from the fact that they are tied to their employer, who is not just their employer but also their recruiter, visa sponsor, and accommodation and transport provider. Although not all workers are aware of this, workers are not permitted to change employers.

Membership of trade unions

Trade union membership could reduce the power imbalance between seasonal workers and employers so that seasonal workers can enforce their workplace rights. Currently, only a small number of seasonal workers have joined trade unions in Australia and New Zealand, with some differences among workers from the various PICs.

Participation of trade unions in the recruitment process and pre-departure briefing

Labour-sending units (LSUs) and employers could be required to invite Pacific and Australian trade unions to take up specific roles in the recruitment process (in particular the explanation of the offer of employment and contract) and pre-departure training. However, whether or not trade unions will participate is outside of their control.

Agreements between trade unions in countries of origin and destination

The Australian Council of Trade Unions, the New Zealand Council of Trade Unions and the Pacific

¹⁶⁵ It was announced in November 2021 that PALM workers will benefit from “extended visa validity of up to 4 years, with provision for multiple entry to Australia” as part of the reforms that will be implemented from April 2022 onwards. No changes have been flagged in relation to family unification options for migrant worker families to travel to Australia. See: [Australia, PALM, “Frequently Asked Questions”](#).

Island Council of Trade Unions could develop agreements with respect to the representation of SWP and RSE workers.

This could correspond with initiatives to involve trade unions from the Pacific as well as destination countries in efforts to conduct joint research, share good practices and engage in capacity development initiatives on how to protect seasonal workers.

Providing all necessary information on trade union membership

Workers should be provided with all necessary information on joining trade unions both before leaving their home countries and after commencing work in Australia/New Zealand. Currently, many seasonal workers do not have enough information or are not sufficiently aware of the process of joining trade unions. Some Pacific governments also appear to discourage workers from their countries from joining trade unions.¹⁶⁶

Superannuation

The Australian Government should make the Departing Australia Superannuation Payment process more accessible to SWP workers and tax the superannuation of SWP workers on the basis of equality of treatment with nationals. The Departing Australia Superannuation Payment process poses several practical barriers for Pacific workers and is time-consuming for LSUs to facilitate. Some LSUs report that no worker from their country has ever accessed this payment. In addition, superannuation contributions are taxed at almost 50 per cent, with 15 per cent tax at source and 30 per cent at withdrawal. These are additional tax payments that SWP workers do not derive any benefits from.

Social security

Extend access to social security on the basis of equal treatment with nationals to SWP and RSE workers. The COVID-19 pandemic starkly demonstrated that existing procedures under SWP contingency plans whereby the DESE can re-allocate workers to new employers is insufficient to protect Pacific workers and can have negative consequences for the welfare and wellbeing of these workers. Seasonal workers should have the same access to income support and unemployment benefits as nationals during emergencies such as the COVID-19 pandemic when they are stranded in the country of employment.

Access to justice

As per international standards, SWP and RSE workers are granted equality of treatment under employment protection legislation and are not exposed to differential labour laws.

The SWP and the RSE scheme should explore introducing new processes to ensure workers are able to avail themselves of employment protections and redress mechanisms available under employment legislation in Australia/New Zealand.

This may involve the allocation of government funding for labour inspectorates or legal aid organizations to provide support services designed to meet the specific needs of SWP/RSE workers. In October 2020 the Australian Government announced the Pacific Labour Mobility Safeguarding the Welfare of Workers package, which will allocate AUD9 million in funding to support the SWP's current model and ensure the programme continues to protect the welfare of Pacific and Timorese workers. In addition to any consultation that has already taken place with the SWP Advisory Group, if any, Australia should engage in consultations with LSUs, trade unions, workers, employer organizations and employers on how best to spend this money and ensure that this provides tailored support to address welfare issues arising from the SWP.

¹⁶⁶ See section 5.5.1 on trade union membership.

Monitoring and enforcement

Monitoring of the SWP and the RSE scheme occurs through the Australian and New Zealand labour protectorates and according to procedures established in the programme guidelines and implementation policies.

Australia/New Zealand should convene periodic meetings with representatives of SWP/RSE workers, representatives of participating countries, trade unions, employer representatives and other parties to exchange information and experiences concerning the implementation of these programmes.

Before returning to their country of origin, all workers should be provided with an opportunity to provide written and verbal feedback about their employment conditions and employer to an independent third party who will share anonymized feedback to the Australian and New Zealand governments and to employers.

6.5. Participation of women and marginalized groups and associated recommendations

Since the inception of the SWP and the RSE scheme, women have been underrepresented in both schemes, with considerable differences among Pacific countries of origin. While it is challenging to increase female participation rates in employer-driven schemes focused on industry sectors that are traditionally male-dominated and where working tasks are physically demanding, it is still possible to successfully increase female participation rates with targeted measures. It is arguably a greater challenge to address the under-representation of other marginalized groups, such as individuals with a disability or LGBTQ persons, partly because little information is available on their participation in the schemes.

Increasing participation of women

Setting industry targets

Women are underrepresented in both the SWP and the RSE scheme. The hiring processes in the schemes are employer-driven and employers are largely free to discriminate in hiring practices, without being challenged by either the Australian/New Zealand or Pacific government agencies responsible for the recruitment process.

In New Zealand, the Pacific Labour and Skills Team in the MBIE have been encouraging employers and contractors who are accredited to recruit labour under the RSE work policy to provide more work opportunities for women. This encouragement has not yet resulted in the desired outcome, and therefore, if the RSE scheme is to offer more opportunities for Pacific women, there are going to have to be some changes made to the RSE work policy. Several possible interventions have been suggested in the RSE Impact Study. If implemented, these will result in a subtle shift from what is often referred to as an “employer-led” seasonal work policy to a seasonal work policy that is still demand-driven but where the decisions about who can be recruited each year are moderated by some wider system-level objectives, and not just the preferences of the employers (R. Bedford 2020).

The DESE in Australia and the MBIE in New Zealand should set targets regarding the employment rate of women to be achieved by Approved Employers and Recognised Seasonal Employers, such that these targets align with current Australian/New Zealand industry participation levels.

It is important to note that workplaces employing seasonal workers in Australia are often located in remote regions with limited access to medical and support services. The nature of the work is physically demanding and dangerous. According to Safe Work Australia (n.d.), the Australian agriculture industry is one of the country's most dangerous industries to work. These factors should be considered when promoting the employment of women seasonal workers.

Furthermore, opportunities for country-to-country peer learning in regard to gender-responsive policies may be explored.

Making conditions under the RSE/SWP more conducive for women

Access to healthcare and maternity leave

All pregnant SWP and RSE workers, regardless of the length of their time in Australia or New Zealand, should be provided with access to universal healthcare and paid maternity leave on the same terms as nationals.

If they wish to return to their country of origin before the end of their contract, women workers who are pregnant or post-partum should have their repatriation costs covered as per ILO Recommendation No. 100, which indicates that “migrant workers who have entered into a contract prior to departure should have the right to repatriation at the expense of the employer when: ... (iv) the contract is terminated by agreement between the parties; (v) the contract is terminated on the application of either of the parties, unless the competent authority otherwise decides” (Para. 7(b)). As noted elsewhere in the report, workers are not provided with information that an employer must cover any remaining amount of the return airfare that has not be repaid at the point of departure. Additionally, ILO Recommendations are clear that workers should not shoulder the cost of airfares at all.

Maternity policies

Australian and New Zealand employment laws contain provisions regarding accommodation and safe work for pregnant women that apply equally to SWP and RSE workers. However, these provisions do not adequately cover pregnancy, health and maternity leave for seasonal migrant workers. None of the official programme documents related to the SWP or RSE contain provisions or policies concerning maternity or pregnancy.¹⁶⁷ It seems that responsibility is placed on the worker to negotiate conditions of work and decisions regarding leave with employers. Women workers also appear bear all medical costs related to pregnancy (since many insurance schemes contain a 12-month waiting period on access to maternity benefits) as well as debts and costs associated with early return to their countries of origin. There is anecdotal evidence that some workers who were unable to return home to give birth have had their medical costs paid by the Approved Employers. Australia and New Zealand, in consultation with employers, workers, trade unions and employer associations should urgently develop policies and practices that enable SWP and RSE workers to access maternity benefits on the basis of equality of treatment with nationals as well arrangements to provide access to healthcare and return (if desired) that does not result in a financial penalty for pregnant workers. Importantly, access to maternity benefits should become an entitlement and not be dependent on the goodwill of an employer. Immigration law in both countries prevents SWP and RSE workers from bringing dependents. It appears that the costs associated with pregnancy and the difficulty establishing safe working conditions in seasonal industries result in most workers returning to countries of origin during their pregnancy.

¹⁶⁷ In response to COVID-19 travel restrictions, New Zealand Immigration issued factsheets regarding pregnancy to RSE employers, see section 4.6.1.

Information on pregnancy, the obligations of employers and the Australian and New Zealand governments, and the support options available to workers should be included in pre-departure materials, be an obligatory part of the explanation of the offer of employment for all workers and be part of the on-arrival briefing. This information should also be included in the Deed of Agreement.¹⁶⁸

Improve access to information on reproductive health

Women workers should be consulted to determine whether it is suitable to provide a separate pre-departure training session (facilitated by a suitably qualified woman) that covers sexual and reproductive health and rights, including contraception, maternity leave provisions, and prevention of and recourse in case of violence or harassment in Australia and New Zealand.

Improve living arrangements for women

Employers in Australia and New Zealand have to ensure that accommodation provided to seasonal workers is gender-acceptable, approved by the local government authorities for use, and in line with community expectations. These factors have to be considered when promoting increased numbers of women participants.

Women workers should be provided with the option to maintain separate living quarters from men and which include separate bathroom, living and kitchen facilities.

Increasing participation of other marginalized groups

Collect information on the participation of marginalized groups

Due to the nature of the work and employers' preferences for physically fit persons, women and individuals with disabilities are disadvantaged in accessing the seasonal work schemes compared to able-bodied men. There are significant barriers to access for disabled people, including the physical requirements of work in the horticulture and viticulture industries, a lack of accessible accommodation and work areas, remote locations and a lack of access to appropriate support. At this point, information on participation rates of marginalized groups other than women is largely anecdotal. Therefore, the official information on scheme participation numbers and rates collected and published by the Australian, New Zealand and PIC governments should routinely and systematically include information on individuals with disabilities, members of the LGBTQ community, and any other minority groups deemed important in the national context. After such information becomes available, policy measures can be used to address the under-representation of selected marginalized groups.

The ILO Model Agreement on Temporary and Permanent Migration for Employment (Recommendation No. 86, Annex Art. 5) indicates that parties should specify diseases and physical attributes that constitute a disability for the purposes of employment in the occupations available for migrant workers.

¹⁶⁸ In response to an advanced copy of the report, the DFAT advised in March 2022 that the Pacific Labour Facility had produced a comprehensive Worker Pregnancy and Childbirth Operational Policy and developed the "Approved Employer Guide (COVID-19) Managing Pregnancies within the 12 Month Waiting Period" to ensure Approved Employers are able to provide appropriate support for pregnant workers in the course of 2021 (Correspondence with DFAT March 2022). This would have been applicable to the PLS, and under PALM will inform support to all workers. As these documents are not publicly available it is not possible to assess the extent to which these resources improve the support available for women participating in the schemes.

6.6 The COVID-19 pandemic and associated recommendations

Seasonal workers during the COVID-19 pandemic and recovery

Australia and New Zealand should ensure that workers are able to access work and do not have additional costs

In Australia, the movement of seasonal workers across state borders should be facilitated so that they can have work to do and earn money. In both Australia and New Zealand, costs for quarantine of workers must not be passed onto the seasonal workers. Seasonal workers stuck in Australia and New Zealand without work should have access to social security benefits and universal healthcare and should not be charged for accommodation and travel costs.

The COVID-19 pandemic has exacerbated existing challenges and vulnerabilities facing seasonal workers in Australia and New Zealand. In particular, it has revealed the insecurity of seasonal workers as casual employees with no entitlement to sick leave, which therefore gives workers every incentive to continue working and earning even if they feel ill. The UWU's position is that the full support provided to Australian citizens and permanent residents during the pandemic should also be provided to temporary migrant workers, including seasonal workers, and should include access to Medicare for SWP workers.

Seasonal worker schemes in the Pacific are at a time of significant reform. The region – and the world at large – is moving ever faster to recover from COVID-19. Australia is shifting to PALM, and different stakeholders across the region are clearly committed to strengthening the design, implementation, and coordination of labour mobility schemes. It is hoped that the learnings from COVID-19 will inform future changes to these schemes, particularly in regard to social protection.

Indeed, the current context provides an unprecedented opportunity, not just to address short-term challenges, but to facilitate the creation of a more stable, secure and supported workforce. This will contribute to a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient.

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► Annex 1. Consistency of SWP bilateral agreements with the ILO Model Agreement on Temporary and Permanent Migration for Employment (Recommendation No. 86, Annex)


The table opposite indicates the degree to which the SWP is consistent with the ILO Model Agreement based only on the text of the MOU and Implementing Arrangements (IA). The table identifies articles of the Model Agreement on which the MOU/IA are silent, as well as where the content of the Model Agreement article is dealt with in other Australian Government policies, guidelines or legislation relevant to the SWP. Consistency with the ILO Model Agreement indicates that Australia and countries of origin have made a formal bilateral commitment to uphold certain standards. It is recommended that the topic areas of the ILO Model Agreement that are currently unilaterally decided by Australia should be negotiated with countries of origin and included in a revised MOU.

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 1	Exchange of information	<ul style="list-style-type: none"> Creates a clear framework for inter-governmental collaboration. Identifies administrative provisions relating to entry, employment, residence and settlement of migrants. Indicates the number, the categories and the occupational qualifications of the migrants. Outlines measures designed to promote rapid adaptation of migrants. 	<ul style="list-style-type: none"> Refers to, but does not provide a clear process or timeframe within which information will be furnished to countries of origin concerning the conditions of life and work for the migrants – in particular, the cost of living and minimum wages according to occupational categories and regions of employment. No mention of social security. Refers to, but does not provide specific information about, working conditions and labour rights. Refers to relevant pieces of Australian legislation concerning occupational health and safety, immigration, tax and workers' compensation that cover migrant workers, but only specifically names the Fair Work Act, 2009, without indicating the relevant provisions contained within these pieces of legislation. <p><i>Note: Consultations with government officials in PICS conducted for this report indicated that many do not have sufficient information on the points listed above. For example, predeparture materials provided to LSUs state that the minimum wage is "in accordance with the relevant award", but does not include information to explain the Australian award system and what the expected minimum wage under each award should be. Knowledge of, and capacity to research, Australian legislation varies among the PICS. This information should be provided by Australia to the LSUs.</i></p>	MOU, section 6.1, 7.3; Implementing Arrangements (IA), section 1




Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 2	Action against misleading propaganda	<ul style="list-style-type: none"> Commits to avoiding unethical recruitment practices and investigation of allegations of fraud. Requires breaches of mutually determined recruitment policies, including allegations of fraud or corrupt recruitment practices, to be promptly investigated. Requires the parties to act in cooperation with the competent authorities of other countries concerned. 	None	MOU, sections 5.1(d), 4.1(f), 7.2 ; IA, section 8
Article 3	Administrative formalities	<ul style="list-style-type: none"> Implements steps to expedite and simplify migration. Requires recruitment body in country of origin to assist selected candidates to understand their offer of employment. 	None	MOU, section 7.2; IA, section 1
Article 4	Validity of documents	<ul style="list-style-type: none"> The conditions to be met by documents indicating civil and legal status are established. 	<ul style="list-style-type: none"> The conditions to be met for purposes of recognition in Australia of any document concerning occupational qualifications, general education or vocational training and social security matters are contained in other programme documents issued by the Australian Government. Recognition of existing qualifications or previous training is not anticipated by the MOU or IA. 	
Article 5	Conditions and criteria of migration	<ul style="list-style-type: none"> The lower age stipulated for participation is 21. There is no upper age restriction. 	<ul style="list-style-type: none"> Although some consultation with PICs has occurred, it appears that the conditions and criteria of migration; the numbers and occupational categories of migrants to be recruited in the course of a stated period; the areas of recruitment and placement; and the criteria governing the technical requirements of participation are unilaterally determined by Australia, in large part driven by the needs of Australian employers. Selection criteria for workers specifies that they must be "healthy and fit for the work specified, as evidenced by undergoing a medical examination" (IA, section 3). None of the SWP documents identify the specific diseases and physical defects that constitute a disability for the purposes of employment in the occupations available under the programme. 	MOU, section 7.2; IA, section 3

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 6	Organisation of recruitment, instruction and placing	<ul style="list-style-type: none"> The right to engage in recruitment is restricted to licensed operators (both public and private). The charging of recruitment fees to workers is prohibited. 	None	MOU, sections 1, 2, 6
Article 7	Selection testing	<ul style="list-style-type: none"> Clinics require approval in order to conduct medical examinations. The process to select migrants has been clearly established as the responsibility of the body approved to recruit in consultation between the two parties (or their approved representatives). The nature of cooperation between the parties in selection has been established. 	None	MOU, section 7.2 ; IA, section 5
Article 8	Information and assistance of migrants	<ul style="list-style-type: none"> The country of origin recruitment body is responsible for explaining the offer of employment in a suitable language. The offer of employment must include the information stipulated in the Model Agreement. Migrants must be provided with a briefing upon arrival in Australia. 	None	MOU, section 7.2; IA, section 7
Article 9	Education and vocational training	<ul style="list-style-type: none"> The MOU anticipates workers being given opportunities to access up-skilling and training. 	<ul style="list-style-type: none"> The IA does not contain any information on how vocational training will be carried out, nor any provision for cooperation between the States Parties concerning education. 	MOU, section 7.2
Article 10	Exchange of trainees	<ul style="list-style-type: none"> The MOU anticipates that migrants will receive training (see comments on Article 9). 	None	



Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 11	Conditions of transport	<ul style="list-style-type: none"> The Australian Government commits to maintaining close supervision of national labour-receiving arrangements and to dedicating adequate staff and resources to the monitoring of Approved Employers. Requirements for conditions of transport have been established, and employers must submit plans for approval by the Australian Government. Terms and conditions are agreed between the parties. 	None	MOU, sections 1, 2, 6
Article 12	Travel and maintenance expenses	<ul style="list-style-type: none"> The methods for meeting the cost of travel of the migrants and members of their families from the place of their residence to the place of their destination, and the cost of their maintenance while travelling, sick or hospitalized, as well as the cost of transport of their personal belongings has been agreed between the parties. 	<i>Note: Under the SWP, workers pay all but the first AUD300 of the cost of airfares and transportation (the employer contribution under the Restart SWP may be more, as the amount contributed by workers is capped).</i>	MOU, sections 1, 2, 6
Article 13	Transfer of funds	<i>Note: The Seasonal Worker Programme Approved Employer Guidelines requires employers to provide workers with information on how to transfer money home. Other steps to reduce the cost of remittances are being taken by the Australian Government (Consultation with DFAT, 2021 – see section 4.2 above).</i>	<ul style="list-style-type: none"> The Australian Government does not provide facilities for the transfer of remittances at the prevailing official exchange rate. 	
Article 14	Adaptation and naturalisation	n/a	n/a	

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 15	Supervision of living and working conditions	<ul style="list-style-type: none"> The Australian Government commits to ensuring workers receive fair and reasonable treatment from Approved Employers in accordance with Australian law. Assistance with respect to the employment and living conditions of the migrants is provided through the regular labour inspection service (the Fair Work Ombudsman). The IA enables the parties to investigate: <ol style="list-style-type: none"> exploitation or misconduct by Australian Approved Employers; misconduct by seasonal workers; and breaches of mutually determined recruitment policies, including allegations of fraud or corrupt recruitment practices, which enables authorized representatives of the country of emigration to cooperate with the competent authority or duly authorized bodies of the territory of immigration in carrying out supervision of living and working conditions. 	<ul style="list-style-type: none"> No provision is made for a fixed period during which migrants can obtain special assistance from Australian authorities in regard to matters concerning their conditions of employment. <p><i>Note: Details regarding living and working conditions are contained in the Seasonal Worker Programme Approved Employer Guidelines rather than in the MOU or IA. Minimum standards for accommodation have also been issued by the Australian Government (see section 4.3 of this report).</i></p>	MOU, section 6.1(d)
Article 16	Settlement of disputes	<ul style="list-style-type: none"> Migrants have access to the Fair Work Ombudsman and appropriate courts in accordance with the laws and regulations of the territory of immigration in the event of a dispute with employers. 	<ul style="list-style-type: none"> Provision is made for review of the MOU, but not for a dispute settlement mechanism between the States Parties. 	MOU, section 6.1(d)
Article 17	Equality of treatment	<ul style="list-style-type: none"> The IA commits the Australian Government to establishing a monitoring and reporting programme to ensure that seasonal workers are employed in accordance with Australia's fair work, occupational safety and health, and workers' compensation laws. Equality of treatment is applied with respect to remuneration and conditions of work. 	<ul style="list-style-type: none"> The IA commits the Australian Government to establishing a monitoring and reporting programme to ensure that seasonal workers are employed in accordance with Australia's fair work, occupational safety and health, immigration, tax and workers' compensation laws, but does not account for the ways in which Australian immigration laws, in particular employer sponsorship, may affect equality of treatment. SWP workers are not afforded equality of treatment with nationals regarding taxation arrangements. 	MOU, sections 4.1(f), 5.1(e) IA, section 8



Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 18	Access to trades and occupations and the right to acquire property	n/a	n/a	IA, section 8
Article 19	Supply of food	None	<ul style="list-style-type: none"> Food supplies are not expressly mentioned in the MOU or IA. <p><i>Note: SWP employers are required to ensure the welfare of workers and access to shops.</i></p>	
Article 20	Housing conditions	<ul style="list-style-type: none"> The IA refers to “suitable accommodation”. 	<p><i>Note: Minimum standards for accommodation are established in guidelines provided to Approved Employers under the Deed of Agreement and Employer Guidelines. Consultations with government officials in PICS conducted for this report indicated that some LSUs had not been provided with copies of the SWP accommodation guidelines and were not aware that minimum standards had been established. The accommodation guidelines should be specifically referred to in the IA.</i></p>	IA, section 1
Article 21	Social security	None	<ul style="list-style-type: none"> No measures have been taken to grant workers equality of treatment, subject to permissible limitations (see section 4.4 of this report). 	
Article 22	Contracts of employment	<ul style="list-style-type: none"> Information regarding the content of the offer of employment (which serves as a contract) is contained in the IA. LSUs must explain the offer of employment to the worker. 	<ul style="list-style-type: none"> The requirements for offer of employment do not require it to indicate the “conditions of renewal and denunciation of the contract”. No express requirement that the contract is to be translated. 	IA, section 6
Article 23	Change of employment	<ul style="list-style-type: none"> Unemployment is not anticipated since the IA require a minimum of 30 hours of work per week on average over the course of the contract. The recruitment process established in the IA should prevent a situation in which a migrant who has been recruited does not have the necessary physical capacity or occupational requirements. 	None	IA, sections 2, 6

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 24	Employment stability	<ul style="list-style-type: none"> The IA indicate that the Australian Government will require employers to provide a minimum of 30 hours of work per week for the duration of the contract. 	<ul style="list-style-type: none"> The minimum 30 hours on average throughout the period in Australia required under the SWP is not stipulated in the offer of employment to workers. The MOU and IA do not indicate that transfer between employers may occur. Provisions regarding transfer of workers to alternative employers are contained in the Deed of Agreement for the SWP signed between the Australian Government and Approved Employers. 	
Article 25	Provisions concerning compulsory return	None	<ul style="list-style-type: none"> No provision is made to ensure that workers will not be returned to the territory from which they emigrated unless they so desire, if, because of illness or injury, they are unable to follow their occupation. No express provision is made to prevent return for political reasons. 	
Article 26	Return journey	<p><i>Note: According to the DESE, if an SWP worker has not repaid the cost of their airfare and is terminated, injured/ill or chooses to return home, the Approved Employer bears the remaining costs. To mitigate this risk, Approved Employers try to recoup their costs as soon as possible in SWP placements (Correspondence with the DESE, 2021). This information is not contained in the Deed of Agreement or Guidelines for Employers.</i></p>	<ul style="list-style-type: none"> No specific terms are included in the MOU or IA to prevent migrants from being held responsible for the cost of return travel when forced to return for reasons for which they are not responsible. No supplementary bilateral agreement has been created that specifies the method of meeting the cost of this return journey in this circumstance. If this situation occurs after the worker has paid their debt, it appears that the worker will be responsible for meeting these costs. 	
Article 27	Double taxation	<p>None</p> <p><i>Note: Only the obligations of employers with respect to taxation is covered in the IA.</i></p>	<p><i>Note: Australia only has separate agreements on taxation with Kiribati and Papua New Guinea. These MOUs were not available for review, so it is not known if this is mentioned.</i></p>	
Article 28	Methods of cooperation	<ul style="list-style-type: none"> The MOU indicates that variations/amendments/additions may be made at any time by mutual agreement between the parties and that the MOU will be subject to review. Methods of consultation and cooperation to implement the MOU are set out in the IA (note, however, that these exclude a number of issues identified here). 	None	MOU, sections 7.3, 11, 12; IA, all sections

n/a = not applicable. References: MOU = Australia, Department of Employment 2017; IA = Australia, DESE 2018.

► Annex 2. Consistency of RSE bilateral agreements with the ILO Model Agreement on Temporary and Permanent Migration for Employment (Recommendation No. 86, Annex)

The table below indicates the degree to which the RSE scheme is consistent with ILO Model Agreement based only on the text of the Inter-Agency Understanding (IAU) and Schedule 1: Facilitation Arrangements (FA). The table identifies articles where the IAU/FA are silent and where the content of the article is dealt with in other New Zealand Government policies, guidelines or legislation relevant to the RSE. Consistency with the ILO Model Agreement indicates that New Zealand and countries of origin have made a formal bilateral commitment to uphold certain standards. It is recommended that the topic areas of the ILO Model Agreement that are currently unilaterally decided by New Zealand should be negotiated and included in a revised MOU.

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 1	Exchange of information	<ul style="list-style-type: none"> Department (currently MBIE) must provide to PIC info sheets on requirements for applications to work for a Recognised Seasonal Employer. Department must promptly update PIC of changes to RSE policy before they are made public. Department must make available to PIC all info kits and tools used for pre-departure orientation and work with PIC to do necessary translations. Both State Parties must have specific and timely information to ensure the PIC can participate effectively in the RSE scheme. 	None	IAU, section 6(1); FA, sections 2,3,6
Article 2	Action against misleading propaganda	<ul style="list-style-type: none"> The FA outlines steps in the recruitment process for each PIC. Only specifies cooperation is required regarding the sharing of information concerning recruitment licences (where applicable). 	None	FA, section 1
Article 3	Administrative formalities	<ul style="list-style-type: none"> Outlines arrangements for parties to cooperate to assist workers with administrative processes. Provided all necessary info is submitted in an RSE work visa application, the application must be decided within 5 working days. 	None	FA, section 2

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 4	Validity of documents	None	<ul style="list-style-type: none"> Recognition of existing qualifications or previous training is not anticipated by the IAU or FA. <p><i>Note: The conditions to be met for purposes of recognition in the territory of immigration of any document concerning occupational qualifications, general education or vocational training and social security matters are contained in other programme documents issued by the New Zealand Government, not in the IAU/FA.</i></p>	
Article 5	Conditions and criteria of migration	None	<i>Note: This information is contained in documents issued by the New Zealand Government, not in the IAU/FA.</i>	
Article 6	Organisation of recruitment, instruction and placing	<ul style="list-style-type: none"> Recruitment pathways and processes for each PIC are set out in the FA. Charging of recruitment fees to workers is prohibited. 	None	FA, section 1
Article 7	Selection testing	<ul style="list-style-type: none"> Pre-selection and screening to be conducted by village and community committees, district and town officers, and church and community leaders. It will take place at the district level against criteria provided by the PIC. 	None	FA, section 1.1(a)
Article 8	Information and assistance of migrants	<ul style="list-style-type: none"> The PIC, with input from the Department, must provide comprehensive briefings to RSE workers before their departure, with such briefings to cover relevant topics, with translation supplied, if appropriate. Workers receive an induction programme upon arrival. 	None	FA, section 3, 4
Article 9	Education and vocational training	<ul style="list-style-type: none"> General information on the country of immigration is provided to migrant workers. 	<ul style="list-style-type: none"> Does not refer to cooperation between the parties concerning vocational education. 	FA, section 3
Article 10	Exchange of trainees	None	<ul style="list-style-type: none"> IAU/FA is silent on training of RSE workers. 	
Article 11	Conditions of transport	<ul style="list-style-type: none"> Recognised Seasonal Employers' pastoral care must include transportation to and from the port of arrival and departure. 	<ul style="list-style-type: none"> Other than assigning this responsibility to the Recognised Seasonal Employer, the IAU/FA states that workers can bring concerns to their Consul or to the New Zealand Department responsible for the RSE scheme (currently MBIE), and it will be investigated. No specific processes or monitoring are set out in the IAU/FA. 	FA, section 4

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 12	Travel and maintenance expenses	<ul style="list-style-type: none"> If a Recognised Seasonal Employer pays the full travel cost, they can recover up to half from the worker's wages. Workers are covered by the New Zealand Accident Compensation legislation, but are not eligible for free medical services and are liable for their medical costs through insurance. 	None	FA, section 4
Article 13	Transfer of funds	<ul style="list-style-type: none"> Recognised Seasonal Employers' pastoral care must include access to personal banking. 	<ul style="list-style-type: none"> No provision for exchange at the prevailing official rate of exchange. No information on measures for the simplification and acceleration of administrative formalities regarding the transfer of funds. 	FA, section 4
Article 14	Adaptation and naturalisation	n/a	n/a	
Article 15	Supervision of living and working conditions	<ul style="list-style-type: none"> The FA states that workers may bring concerns to the attention of their team leader, employer, trade union rep, Honorary Consul and/or Department staff. The Department will monitor compliance with legislation and RSE Policy and immigration requirements. It will investigate any complaints or issues of non-compliance, and operate a random visit programme to monitor compliance. 	<ul style="list-style-type: none"> Does not include information regarding labour inspection or assistance related to employment and living conditions for migrant workers, or information concerning special assistance in regard to employment conditions during a fixed period. <p><i>Note: The New Zealand Labour Inspectorate has a manager who focuses exclusively on the RSE scheme. The Inspectorate has a team of labour inspectors based in key locations across New Zealand who are responsible for monitoring workplaces, including RSE workplaces, and in 2020 the New Zealand Government announced specific funding to address exploitation of temporary workers (see section 4.4.5 of this report for more information).</i></p>	IAU, section 5(1); FA, sections 4–5
Article 16	Settlement of disputes	<ul style="list-style-type: none"> The IAU is subject to review and notes that "participants will consult as necessary to promptly address and endeavour to resolve any issues". 	None	IAU, section 12
Article 17	Equality of treatment	<ul style="list-style-type: none"> The FA states that "workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates". 	<ul style="list-style-type: none"> IAU/FA does not account for the ways in which New Zealand immigration laws, in particular employer sponsorship, may affect equality of treatment. <p><i>Note: No mention of taxation in the IAU/FA, though equality of treatment with nationals is contained in other RSE programme documents.</i></p>	
Article 18	Access to trades and occupations and the right to acquire property	n/a	n/a	

Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 19	Supply of food	None	<ul style="list-style-type: none"> IAU/FA is silent on access to food supplies. 	
Article 20	Housing conditions	<ul style="list-style-type: none"> The FA refers to employers providing “suitable accommodation”. 	<p><i>Note: Minimum standards for accommodation are established in the Work Health and Safety Act and in written advice to employers. Consultations with government officials in PICS conducted for this report indicated that some LSUs had not been provided with copies of these accommodation guidelines and were not aware that minimum standards had been established. The accommodation guidelines should be specifically referred to in the FA.</i></p>	FA, section 4
Article 21	Social security	None	<ul style="list-style-type: none"> No measures have been taken to grant workers equality of treatment, subject to permissible limitations; though workers were able to access COVID-19-related welfare provisions (see below and section 4.7 of this report) 	FA, section 4
Article 22	Contracts of employment	<ul style="list-style-type: none"> The worker must sign the employment contract before they can submit an application to work under the RSE policy. The employment contract must specify the terms and conditions of employment and must be in accordance with the RSE policy and New Zealand employment law. The FA does not specify which terms and conditions are to be included in the contract, though these are specified in New Zealand law. 	<ul style="list-style-type: none"> No model contract or provision for this to be translated into a language worker understands. Of the IAU/FAs reviewed for this report, the ones for Kiribati and Fiji contained information about the provision of written contracts, but the one for the Solomon Islands did not. 	FA, section 1(3)
Article 23	Change of employment	<ul style="list-style-type: none"> Unemployment is not anticipated since the FA require a minimum of 30 hours of work per week on average over the course of the contract. The recruitment process established in the FA should prevent a situation in which a migrant who has been recruited does not have the necessary physical capacity or occupational requirements. 	None	FA, section 1
Article 24	Employment stability	<ul style="list-style-type: none"> The IAU and FA are silent on unemployment, though RSE employers are required to provide a minimum of 30 hours of work per week, so unemployment contingencies should not arise. 	<p>None</p> <p><i>Note: No information was available on transfer of workers between RSE employers.</i></p>	



Model Agreement article	Model Agreement article title	Consistent with the Model Agreement	Not consistent with the Model Agreement	References
Article 25	Provisions concerning compulsory return	<ul style="list-style-type: none"> The IAU and FA are silent on this point. 	<ul style="list-style-type: none"> No provision is made to ensure that workers will not be returned to the territory from which they emigrated unless they so desire, if because of illness or injury, they are unable to follow their occupation. No express provision is made to prevent return for political reasons. 	
Article 26	Return journey	<ul style="list-style-type: none"> If Recognised Seasonal Employers pay the full travel cost, they can recover up to half from the workers' wages. <p><i>Note: The IAU and FA do not require workers to be provided with detailed information on expected deductions prior to departure.</i></p>	<ul style="list-style-type: none"> No specific terms are included in the IAU or FA to prevent migrants being held responsible for the cost of return travel when forced to return for reasons for which they are not responsible. No supplementary bilateral agreement has been created that specifies the method of meeting the cost of this return journey in this circumstance. If this situation occurs after the worker has paid their debt it appears that the worker will be responsible for meeting these costs. 	
Article 27	Double taxation	<ul style="list-style-type: none"> IAU and FA are silent on this. 	<ul style="list-style-type: none"> Of the PICs participating in the RSE, New Zealand only has double taxation agreements with Fiji, Papua New Guinea and Samoa. New Zealand has tax information exchange agreements with the Cook Islands, Niue and Vanuatu. 	
Article 28	Methods of cooperation	<ul style="list-style-type: none"> A process of review is established in the IAU. 	None	IAU, section 12

n/a = not applicable.

Source: New Zealand and Fiji 2014.; New Zealand and Solomon Islands 2010.

► Annex 3. List of key stakeholders consulted

Fiji

Ministry of Employment, Productivity and Industrial Relations, National Employment Centre, September 2020 (consultation), July 2021 (validation workshop)

Fiji Trades Union Congress (FTUC), September 2020 (consultation), July 2021 (validation workshop)

Kiribati

Ministry of Employment and Human Resource, Labour Division, Employment Unit, September 2020 (consultation), July 2021 (validation workshop)

Kiribati Trade Union Congress (KTUC), September 2020 (consultation)

Samoa

Ministry of Commerce, Industry and Labour, Labour and Employment Export (LEEP) Division, Labour Sending Unit, September 2020 (consultation), July 2021 (validation workshop)

Samoa Workers Congress (SWC), October 2020 (consultation), July 2021 (validation workshop)

Vanuatu

Ministry of Internal Affairs, Department of Labour, Employment Services Unit, September 2020 (consultation)

Vanuatu National Workers Union (VNWU), September 2020 (consultation)

Vanuatu Association of Public Services Employees (VAPSE), July 2021 (validation workshop)

Tuvalu

Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology and Disaster, Department of Labour, October 2020 (consultation)

Australia

Australian Chamber of Commerce and Industry (ACCI), September 2020 (consultation), July 2021 (validation workshop)

Australian Workers Union (AWU), September 2020 (consultation), July 2021 (validation workshop)

Department of Foreign Affairs and Trade (DFAT), November 2020 (interview via Skype), July 2021 (validation workshop)

United Workers Union, September 2020 (consultation)

Department of Education, Skills and Employment (DESE), July 2021 (validation workshop)

Attorney General's Department, July 2021 (validation workshop)

Fair Work Ombudsman, July 2021 (validation workshop)

Australian Council of Trade Unions (ACTU), July 2021 (validation workshop)

New Zealand

BusinessNZ, September 2020 (consultation), July 2021 (validation workshop)

New Zealand Council of Trade Unions (NZCTU), September 2020 (consultation), July 2021 (validation workshop)

Ministry of Foreign Affairs and Trade (MFAT), July 2021 (validation workshop)

Ministry of Business, Innovation and Employment (MBIE), July 2021 (validation workshop)

Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards: Technical report

Promoting the rights of labour migrants and strengthening the sustainable development impacts of labour mobility schemes is a key component of decent work. The ILO Office for Pacific Island Countries has published a technical report reviewing Australia's Seasonal Worker Programme and New Zealand's Recognised Seasonal Employer scheme through the lens of international human rights and labour standards. Within this scope, the report also includes recommendations on promoting the participation of women and marginalized groups. The objective of the technical report is to provide an overview of how seasonal worker schemes in Australia and New Zealand align with international labour standards – both binding and non-binding – and to provide constructive recommendations for areas where the schemes could be more consistent with these standards. The related research and data analysis together with the findings and recommendations are also detailed in the technical report. The report was undertaken as part of the Pacific Climate Change Migration and Human Security (PCCMHS) Programme. The PCCMHS programme is implemented by ILO, the International Organization for Migration (IOM), the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), and the Office for the High Commissioner for Human Rights (OHCHR) along with the Pacific Islands Forum Secretariat (PIFS) and the Platform on Disaster Displacement (PDD). The PCCMHS programme receives funding through the United Nations Trust Fund for Human Security and components of the programme are supported by the New Zealand International Development Cooperation Programme.

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