

Seasonal labour mobility

Responsible business conduct, decent work and
regional engagement

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Acknowledgements

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Introduction

Labour mobility of both skilled and unskilled labour is a critical component of the global economy and is increasingly seen as an important element in trade negotiations. Labour mobility impacts all key stakeholders—governments, business, workers, trade unions, NGOs and communities. In this context, consideration of the governance of international migration, labour rights, and the social impact of labour mobility is highly relevant to the OECD ILO High Level Roundtable on Corporate Responsibility, *'Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy'*, held in Paris, June 2008.

International labour mobility and its governance through global institutional structures, national employment, immigration and security law, and regional arrangements have emerged as a key issue in response to a rapidly growing global economy. For example, many OECD countries face significant challenges in response to the large inflows of irregular migrants who are seeking an alternative to unemployment, wage disparities, civil unrest, natural disasters, poor health and limited education opportunities²—in short, who are seeking a better life.

Policy frameworks are varied and influenced by economic and political circumstance (World Bank, 2006, [1]), but there is an undisputed increase in inflows of seasonal workers around the world (World Bank, 2006, [2]). For example, each year 500,000 seasonal workers from non-EU countries are employed in EU agriculture. The US and Canada rely heavily on seasonal agricultural workers, Thai labourers toil in Israel, Moroccans pick tomatoes in Spain and Chinese harvest apples in Japan (World Bank, 2006 [2]). In the Pacific region, New Zealand engages workers from island states to support horticulture and viticulture, and Australia is considering a similar seasonal migrant worker scheme to meet skills shortages.

Further, the speed of development in the Middle East and parts of Asia, and labour shortages in many industrialised countries have resulted in high demand for skilled, low-skilled and unskilled migrant labour. Much of this is contract work in sectors such as construction, manufacturing, agriculture, horticulture, hospitality and domestic Service. The rapid increase in cross border trade and production has resulted in the employment of migrant workers in the supply chains of OECD based multinational enterprises. The private sector has emerged as an important non-state actor responsible for ensuring workers' rights and those entitlements are respected and delivered throughout the production network, and particularly when operating in developing and emerging economies, with potentially weak regulatory environments and vulnerable workers.

The labour mobility situation is further complicated when consideration is given to regional security, the impact of climate change and economic prosperity. As such, the dimensions of international migration are huge. This paper only addresses the policy response and corporate responsibility implications and opportunities relevant to low-skilled and unskilled seasonal labour migration, with an emphasis on the Pacific

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² The Global Commission on International Migration has developed 'Migration at a Glance' available on their website <www.gcim.org>

region and the Australian and New Zealand response. However, the issues raised are pertinent to the global migration of unskilled and semi-skilled labour, and the fundamental responsibilities of the private sector, governments and civil society in developing an appropriate regulatory framework. National, regional and global governance of international migration is required.

Significant literature exists on labour mobility³. By comparison, there is relatively little literature on regulated unskilled and semi-skilled temporary migration schemes⁴.

The purpose of this paper is to raise the issue of seasonal labour mobility to ensure it is considered in the context of corporate responsibility, regulatory frameworks and the supporting role of non-state actors in responsibly managing labour rights throughout their supply chains.

In this context, the OECD and the ILO have an opportunity to influence the development of OECD members' governance of international migration. They can ensure the principles of both the *OECD Guidelines for Multinational Enterprises* and the *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* are upheld when considering the role of government influence over non-state actors, such as the private sector, in global trade, investment and responsible supply chain management.

OECD Watch position

OECD Watch recognises temporary and seasonal workers as being among the most vulnerable workers in the global economy. They are frequently discriminated against and exploited. Robust regulatory frameworks for both nation states and the private sector are required to ensure workers rights and entitlements are upheld.

OECD Watch's position is that the scope and implementation of the OECD Guidelines for Multinational Enterprises, along with corporate and industry codes of conduct, must apply throughout the global supply chains of OECD based MNEs. Coverage must extend to seasonal, temporary and sub-contracted migrant workers.

Labour mobility, and in particular seasonal and temporary employment schemes, must be designed and regulated beyond the parameters of the General Agreement in Trade in Services (GATS). Governance of international temporary and seasonal migration must not only promote regional economic integration and provision of goods and services, but more importantly, sustainable development opportunities that deliver both economic and social prosperity within a 'rights based' framework to complement Overseas Development Assistance (ODA).

Part one of the paper makes the link between labour mobility, corporate responsibility and responsible supply chain management. Specifically, attention is drawn to the practice and responsibilities of **labour recruitment and labour hire companies, growers and producers, and financial institutions**. The policy and governance considerations in promoting the responsible corporate management of employment, industrial relations and social issues relevant to temporary migration schemes are also raised. Part two focuses on the proposed Australia Pacific Islands seasonal worker scheme, alongside an overview of the New Zealand Recognised Seasonal Employer program.

Part 1: Labour migration and responsible business conduct

Workers' rights and corporate responsibility

Seasonal and temporary migrant workers are important contributors to transnational activity and global economic prosperity. Recognition of this provides an additional framework to assess workers' rights and private sector responsibilities. It links seasonal migration cycles to sector labour needs and responsible business conduct.

In considering seasonal migration in a supply chain context, the opportunity arises for greater synergy and upward harmonisation between the international legal framework for the protection of migrant workers (ILO

³ Organisations such as the International Organisation for Migration, Global Commission on International Migration, the ILO, the World Bank and the Asian Development Bank have published extensively on the issues, as have authors such as and Brown, R, and Bertram, G to list a few.

⁴ Maclelland, N, Mares, P, Firth, S, Bergin, A, and Connell, J have written extensively on the Australia, New Zealand and Pacific Island States migration issues.

and UN Conventions⁵) and private sector responsibility through the OECD Guidelines for Multinational Enterprises and like mechanisms. However, on the down side, seasonal migrant workers risk being regarded as commodities or bargaining chips in free trade negotiations (Maclellan, 2008).

Seasonal workers are at considerable risk of exploitation, discrimination and social isolation. Many labour migrants confront violations of their rights and fundamental freedoms. This risk is exacerbated for unskilled or low skilled workers because these labourers often have limited education, face language and literacy challenges, come from rural and remote villages or have had limited contact with 'foreigners' or a formal work environment. These workers also face health, wellbeing and occupational safety risks, particularly when involved in dangerous industries, such as agriculture (lack of familiarity with hazardous chemicals and use of machinery), and when living in a different social and cultural environment where potential exposure to gambling, HIV-AIDS and substance abuse is high.

Those industries most likely to employ seasonal workers, such as agriculture and horticulture, are precarious in nature with low union representation, limited government regulation, limited training and skill development and a highly casual, mobile, and frequently illegal workforce (Maclellan, 2008). Further, seasonal and temporary workers often fall outside the scope of current corporate social responsibility mechanisms (e.g. corporate and sector codes of conduct) and their social auditing practices. These often deal only with direct first tier suppliers and formal workers, with limited application to second and third tier suppliers, and sub-contracted, temporary and seasonal migrant workers.

If Australia and other OECD countries are to follow the lead of countries such as Canada and New Zealand by implementing a seasonal migration scheme, the dominant questions arising are:

Q: Is it possible to have an ethical program that benefits workers, employers, home and host communities and upholds migrant worker rights?

Q: Is it possible to develop a scheme whereby workers do not incur unreasonable participation costs—effectively paying for the right to work?

Private sector supply chain responsibility

There is value in conceptualising responsible business practice and supply chain management of seasonal workers in the context of both the receiving (host) and sending (home) country. Three key industries emerge at the forefront of international seasonal labour migration:

- Labour recruitment companies and labour hire contractors
- Horticultural growers and producers (and potentially retailers)
- Finance sector

Labour recruitment and hire companies – home /host country

Private sector recruiters are frequently 'a first point of contact' between those seeking seasonal employment opportunities and employers with labour shortages. However, the relationship between recruiter and worker is asymmetric and the risk of moral hazard is significant. It is not uncommon for labour recruiters to charge unreasonable fees and commissions that are frequently borne by the worker.

Recruitment and labour hire companies clearly have a sphere of influence in international labour markets, and as such must be responsible and accountable for upholding ethical business practice. Given the disparity of

⁵ The UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the ILO Migration for Employment Convention, 1949 (Revised) (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

power between employers and migrant workers, and between recruiters and potential employees, transparency, accountability and compensation for poor practice is essential.

The recruitment practices of employment promoters and their agents must be closely supervised and monitored to minimise the potential for abuse of vulnerable workers. Legal and policy frameworks need to be strengthened, and the most severe violations subject to criminal prosecution.

A rigorous system of accreditation and penalties (such as suspension or cancellation of licences) is required to ensure potentially unscrupulous recruiters do not take advantage of global labour mobility and particularly unskilled workers from economically constrained countries. The World Bank report notes the global increase in for-profit private recruitment agencies with a 'general trend' in recruiting migrant labour to shift costs from employers to workers (World Bank, 2006, [2]).

In Sri Lanka, for example, even licensed agents are not required to register the sub-agents they contract to recruit migrant workers, and it is these unregulated sub-agents who are often the perpetrators of illegal and exploitative recruitment activities, particularly at the village level (Human Rights Watch, 2008). Similarly, factories in China's export processing zones rely heavily on the internal migration of rural migrant workers⁶, many of whom are 'recruited' through private labour hire companies that exact excessive recruitment fees and charges associated with obtaining the necessary temporary residential and employment permits.

To address this issue, the recently introduced New Zealand Recognised Seasonal Employer (RSE) program⁷ has stipulated that recruitment agencies operating in Vanuatu must obtain a licence from the Commissioner of Labour, must recruit in consultation with community leaders, must not charge a commission and must issue all RSE employees with a labour contract (Maclellan, 2008). However, regulating private sector recruiters to minimise moral hazard, avoid worker exploitation and limit the potential for corruption is not easy. Maclellan advises:

The regulation and licensing of recruitment agents will be a central feature of ongoing monitoring of workers rights, to avoid any perception of favouritism, corruption or kickbacks in the recruitment of workers (Maclellan, 2008. p.12).

The World Bank Report *At Home and Away, Expanding Job Opportunities for Pacific Islanders through Labor Mobility* goes further:

In an unregulated environment, the North-South disparity in wealth and opportunity creates conditions in which recruitment agencies can extract exorbitant application fees from would-be migrant workers who are hungry for jobs, and then drive down the conditions and pay under which they are expected to work (World Bank, 2006,[2], p.135).

International labour recruitment hire companies are, by their very nature, transnationals, involved in cross-border trade in services. As such, the principles of the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy are highly relevant in ensuring they operate within an internationally recognised framework of responsible business conduct, fairness and transparency.

Horticultural sector –host country

The horticultural sector relies on temporary and seasonal workers, and changing farming practices impact on these workers through production networks. The pressure of international competition and dismantling of protective mechanisms such as tariffs and subsidies and the cost-price squeeze by large supermarkets have resulted in global farming practices to reduce costs, increase output and become more export-oriented. These

⁶ For more detail on China's migrant workers see literature by Anita Chan and Serena Lillywhite.

⁷ For a detailed analysis of the New Zealand program see Maclellan, N, 2008, *Workers for All Seasons? Issues from New Zealand's Recognised Seasonal Employer (RSE) program*. A full list of their publications is available at <http://www.sisr.net/cag/projects/pacific.htm>

pressures are passed down the supply chain to workers. As a result, management structures in the sector are changing:

Traditional family farms are increasingly giving way to industrial-style agriculture that can produce efficiently through economies of scale. For example, in Australia the number of farms has declined by 25% over 20 years to 2002–03, and the average farm size has increased from 2,720 hectares to 3,340 hectares (World Bank, 2006, [2], p.102).

This trend towards large scale 'corporate farms' is being further accelerated by the growing influence of financial institutions that invest in diverse sectors, including horticulture:

There is growth of managed investment schemes providing tax effective investment opportunities for city-based high-income earners, as well as attracting long-term investment from the pension funds industry in Australia... These management investment mechanisms are now being applied to the production of olives, almonds, stone fruit, pistachios and grapes (World Bank, 2006, [2], p.113).

These industries are increasingly characterised by corporate investors, professional managers and low-paid workers with employment being their only connection to the land (World Bank, 2006, [2]).

The global horticultural sector is increasingly reliant on migrant workers to maintain, pick and pack crops and has generally outsourced responsibility for labour supply to contractors (New Zealand Council of Trade Unions, 2008). Employers of seasonal workers have a responsibility to uphold international standards, enforce legislative and contractual requirements and provide decent working conditions, regardless of whether the management structure is that of a traditional owner/ grower or the large-scale 'investment enterprise'.

The protection of workers' entitlements and their health and safety is a major concern in precarious employment such as horticulture. The fundamentals such as wages, hours, and training—particularly with regard to handling hazardous chemicals and operating machinery—are clearly the responsibility of employers. However, Maclellan and Mares (2005-2008) among others articulate consideration of, and responsibility for, additional services including access to decent accommodation, welfare services and 'pastoral care', the development of transferable and useful skills and training, socialisation with the local community and respect for workers' dignity and fundamental rights and autonomy.

The employment of regulated seasonal migrant labour involves transaction costs in addition to wages, and employee entitlements such as work cover insurance. These additional costs (e.g. recruitment, airfares, visa costs, transportation, accommodation, health insurance, and medical checks) are frequently transferred to workers. These workers are not only financially disadvantaged, but also have few avenues to raise grievances and solve disputes. At a minimum, these costs should be more equitably shared between employers and workers—subject to workers fully understanding, in advance, the costs they will incur, including wage deductions.

It is commonly argued that any migrant labour scheme should only be introduced if jobs cannot be filled by local workers. For this reason, experts (Maclellan & Mares, 2005-2008) suggest that growers should directly bear a significant proportion of travel and administration costs for any scheme, rather than recouping these expenses through wage deductions. This would assist in ensuring growers do not hire seasonal migrant labour (and risk undercutting conditions) when local workers are available. However, small growers maintain that the costs associated with a regulated seasonal worker scheme (such as the New Zealand RES program) favour the large 'industrial growers' that have the resources to cover these costs and comply with the registration processes⁸.

In recognising the contribution of seasonal migrant labour to economic prosperity and its importance in the supply chain, issues arise as to who is most responsible for ensuring the rights of seasonal migrant workers are upheld and how far down the supply chain that responsibility should extend. For example, what responsibility

⁸ Comment by Peter Mares in a meeting on the 21 May, 2008, Melbourne.

do the supermarkets and retailers have to ensure their produce is grown and harvested under fair, decent and sustainable conditions? Similarly, what responsibility do financial institutions, such as superannuation and pension funds, have to ensure their investments in large-scale horticulture are responsible and not encouraging poor labour practices or discrimination against vulnerable workers?

In the United Kingdom, the Ethical Trading Initiative (ETI) has made a significant contribution to both consumer awareness of fair trade issues and, more importantly, some retailers take up of responsibility for working conditions in their supply chains. The ETI is an alliance of companies, NGOs and trade unions. It aims to improve implementation of corporate codes of practice covering supply chain working conditions. The goal is to ensure that working conditions of workers producing for the UK market meet or exceed international labour standards (ETI, 2008). Members include retailers and suppliers who source and sell food, clothing and other products. Major participating supermarkets/retailers include Asda, Tesco, Sainsbury's, Marks and Spencer and Waitrose.

One relevant Ethical Trading Initiative was a pilot project that led to the development of the Wine and Agricultural Ethical Trade Association in South Africa in 2002⁹. Further, the Temporary Labour Working Group (2004), a consortium of major retailers, suppliers, labour providers, growers and trade unions, convened by ETI with UK government support, was established in 2002. Its aim was to establish a set of minimum standards for labour providers which could be enforced by new statutory controls. This contributed to the introduction of the Gangmasters (Licensing) Act and a licensing and registration scheme underpinned by a Code of Practice for labour contractors to agriculture and the fresh produce sector (Temporary Labour Working Group, 2004). It required them to secure a licence if they supply labour to any farm, pack house, or food processing and manufacturing facility. These arrangements apply to businesses that supply an estimated 600,000 workers to the sector (Rees, 2007).

Similarly, the UK Minister for Trade and International Development, has announced a £2 million fund (the Food Retail Industry Challenge Fund - FRICH) to help increase the UK market for sustainably produced food from Africa through partnerships that bring retailers and African farmers together¹⁰. These initiatives highlight the growing recognition of responsible supply chain management and corporate responsibility in the sourcing and production of food.

Those countries with an ETI (or similar) still require mandatory regulatory and monitoring mechanisms. However, in the absence of multistakeholder initiatives, such as the ETI, it is imperative that seasonal worker migration schemes have not only an appropriate regulatory and monitoring framework, but also capacity for meaningful collaboration with NGOs, trade unions and community groups at all stages of the migration cycle.

Finance sector – home and host countries

The finance sector, including superannuation and pension funds and insurance, is well positioned to influence responsible business conduct in seasonal migration schemes through:

- affordable and accessible products and services to assist with managing remittances
- financial literacy training
- affordable and accessible loans
- microfinance products and services
- responsible informed investment (through superannuation and pension funds) in the horticultural sector; and
- affordable and accessible medical and travel insurance products.

⁹ See <www.weita.org.za> , viewed 27 May, 2008.

¹⁰ See <www.dfid.gov.uk/news/files/pressreleases/fund4-ethical-products-UK.asp> , viewed 27 May, 2008.

Remittances¹¹ are a major source of national income for many of the world's poorest countries. The links between remittances and development, and their value in consumption and investment, has been well documented, although contested. Maclellan (2008) makes several references to recent World Bank research confirming that, globally, international remittances have assisted in poverty reduction, albeit indirectly.

Over the last decade, the amount of recorded remittances has grown faster than government aid budgets at a global level. Remittances are the largest source of external capital in many developing countries and should total US\$240 billion in 2007...more than twice the level of development aid from all sources and nearly two-thirds of FDI in developing countries (Maclellan, 2008, p.15).

Based on the New Zealand and Canadian¹² experience, seasonal workers returning home are likely to take back a large proportion of their income earned.

In the Pacific as a whole, development aid levels remain greater than remittances, but the growth in remittances to the islands as a proportion of GDP is increasing...for many Pacific countries, remittances make up significant element of the countries GDP (Maclellan, 2008, p.16).

However, it should be noted that this does not always occur through formal banking channels, and it is not always in cash, with household and personal consumer goods popular (Maclellan, N & Mares, P, 2005). Nonetheless, there is a significant opportunity for financial institutions to demonstrate responsible business conduct by participating in international seasonal migration schemes through the provision of financial products and services that allow workers to remit income in an affordable, accessible and efficient manner.

There is an urgent need for policies that encourage remittances through reducing transaction costs, which are currently very high, particularly when remitting small amounts. For example,

Companies like Western Union charge a fee of A\$20 to transfer an amount of up to A\$75 from Australia to Fiji, or A\$22 for amounts between A\$75 and A\$150...making the costs of transmitting remittances higher in the Pacific than anywhere else in the world (Maclellan, 2008, p.16).

For example, there is significant scope for Australia to lead by example in working with Pacific governments and collaborating with banks and other financial institutions to lower the transaction costs for remittances, thereby benefiting both the sender and receiver. Further, significant opportunities exist to develop financial markets and support returning seasonal workers in the region through the increased use of microfinance, especially in rural settings where villages have little access to banking services (ASPI, 2008, Issue 13).

This creates opportunities for financial institutions to activate their corporate responsibility commitments, support the Millennium Development Goals¹³, and engage in regional growth through community partnerships. In particular, banks with experience working with community organisations in developing services (such as financial literacy training, matched savings schemes, and microfinance) to low-income and vulnerable communities could be encouraged to develop similar services to meet the remittance needs and constraints of seasonal workers.

Through banks and community partnerships, these initiatives would contribute to economic growth, improved governance, improved regional relations, community engagement and security through the effective use of remittances. Among others, The World Bank (2006, [2]) raise the potential for using remittances for training, education and community development projects:

¹¹ The International Organisation for Migration defines migrant remittances broadly as monetary transfers that a migrant worker makes to the country of origin.

¹² The Canadian Seasonal Agricultural Workers Program (CSWAP) has been in existence for 40 years. It accepts workers from the Caribbean and Mexico.

¹³ For further information on the Millennium Development Goals see <<http://www.un.org/millenniumgoals/>>, viewed 6 June, 2008.

Community based organisations in both countries could co-operate to develop ways for remittances to contribute to general development activities through micro-finance schemes, small business programs and the education of young women (World Bank, 2006,[2], p.138).

The growth and influence of superannuation and pension funds is an important consideration in the context of corporate responsibility and labour rights. As already mentioned, in Australia these investment funds reflect the changing structure and management of the horticultural sector. As such, they have responsibilities to ensure they are not investing in, or by association complicit in, poor labour practices throughout their investment supply chain¹⁴.

Insurance companies need to be encouraged to offer affordable insurance products (medical and travel) for seasonal workers, and not to take advantage of low-skilled workers. The issues of asymmetric information apply, with many seasonal workers potentially paying high costs for products and services they may not fully understand, and limited opportunities to access benefits, if required, once they return home.

Improved obligations of labour hire contractors, horticultural growers (and their retailers) and financial institutions are required in a supply chain context to help protect seasonal workers' rights. However, it risks having these workers viewed as commodities in international trade, forgetting they are people who must be treated with dignity and respect. Similarly, 'a trade in services' approach is too narrow and limits the potential to link seasonal employment schemes to broader Overseas Development Assistance (ODA) and does not recognise the social cost of such schemes for families and communities left behind.

Seasonal workers and development – more than trade and economics

Remittances and community development

Seasonal worker schemes must be conceived beyond just trade and economics, and foster opportunities (home country) for community development, modernisation, infrastructure development, and skills acquisition. The World Bank broadly supports such a view:

Policy making in the area of labour migration is an inherently moral exercise that involves a discussion of values and ethics, not just of facts. If the issue of labour market access is presented as a trade issue or purely in terms of economic exchange, then this removes the development focus of the process and downplays individual rights and the potential for adverse social impacts (World Bank, 2006 [2], p.137).

A key aim of existing seasonal work programs, such as the New Zealand RSE, is to encourage a greater flow of earnings via remittances into rural communities and villages to fund development programs and projects such as education, housing and small business initiatives (Maclellan, 2008).

These positive impacts of remittances (housing, education and health, financing investments, consumables, and in some cases infrastructure) are often celebrated. However, a report by Hein de Hass (2007), suggests the direct poverty-alleviating impact of remittances is limited. Nevertheless, remittances do have the potential to reduce poverty indirectly through the 'multiplier effects' created by remittance investment and expenditure. For the migration-remittance-development nexus to be most effective, it is, paradoxically, requires the existence of an enabling institutional environment in the labour sending country (De Hass, 2007).

If labour mobility becomes a trade-only issue it undermines the development potential of the process and does not address issues of social cost and social inclusion. Seasonal worker schemes, therefore, should not be introduced with solely economic objectives or used as 'bargaining chips' in trade negotiations, but rather as a development opportunity.

¹⁴ For information on the applicability of the OECD Guidelines for Multinational Enterprises to the finance sector see the OECD Watch finance sector paper prepared for the OECD 2007 Corporate Responsibility Roundtable, and the four Fact Sheets developed by OECD Watch for Eurosif. These are available at www.oecdwatch.org

Such a model exists in Spain, the *Agricultores Solidarios* (Farmers for Solidarity). The Farmers' Unions of Majorca and Catalonia and the Livestock and Produce Farmers of Valencia have established a scheme to meet their seasonal labour shortages while also encouraging human, economic and social development in less-favoured agrarian economies, such as Colombia, Morocco and Romania (Maclellan, & Mares, 2005). The manager of the scheme describes it as:

A two-way exchange that involves civil society, with the temporary workers becoming 'development agents' that boost new processes led by themselves in their countries of origin (Maclellan, & Mares, 2005, p. 28).

The Spanish model (and others in Tonga and Vanuatu¹⁵) reveals the value in collaborative approaches and community involvement in seasonal migration schemes to ensure general development activities are a primary goal, and cultural understanding is fostered, while contributing to the economic prosperity of seasonal workers and meeting labour shortages.

Social costs and social inclusion

In understanding the link between seasonal migrant workers and development it is essential to consider the human dimension of migration. There are significant social costs of seasonal and temporary migration for work. These need to be weighed up against the financial benefits of remittances. Long periods of separation can impact negatively on children's education and welfare, place burdens (childcare, work) on elderly relatives left in the village and change the traditional gender roles in communities (Maclellan, & Mares, 2005).

Social inclusion is an important element for achieving wellbeing and maximising the economic benefits for both worker and employer. However there is a risk of social exclusion of seasonal migrant workers on arrival in the new host country as well as upon return home. New migrants, particularly from different cultural backgrounds, can be confronting for established communities in host countries. So also the return home of workers with larger earnings and new experiences can cause feelings of envy that has the potential to turn into hostility if not addressed effectively through information and training for potential workers, their families, and the wider community in their home and host country.

Support services and pastoral care of seasonal workers are essential to maximise the full economic and development benefits and uphold workers rights and dignity.

The labour migration cycle – transition phases

The social cost of seasonal migration schemes can be significantly reduced by providing accurate and timely information and training for seasonal workers at all stages of the migration cycle¹⁶—pre-departure (home country), post-arrival (host country), and return and reintegration (host and home countries). Information, orientation and induction training is recognised as a critical component of an ethical seasonal migrant worker scheme.

Ideally this would be done by skilled and respected organisations and individuals including government departments, employers (growers), NGOs, and church and village/community leaders. There is also a role for the private sector, particularly labour hire contractors and the finance sector, to provide this information as part of their corporate responsibility to ensure fairness, transparency and mutually beneficial partnerships with local communities. Ideally, experienced seasonal workers would also participate, passing on first-hand insights from working and living abroad.

Appendix 1 demonstrates the needs and rights of seasonal workers at each stage of the migration supply chain cycle in both home and host countries. It also places these workers within a global economy and illustrates the cost price pressures on workers.

¹⁵ See publications by Maclellan and Mares on the Lapaha Town Council (Tonga) and Lolihor Development Council (Vanuatu) (2008).

¹⁶ The migration cycle assumes that seasonal workers will seek work for a limited length of time and potentially return regularly on a cyclical basis, e.g. four months, return home, and then re-migrate the following year, perhaps to the same employer.

Box 1.1 lists the type of information required at each transition to assist workers, employers and communities maximise the benefits of a seasonal labour scheme.

Box 1.1 Types of information required at each of the transition phases

<i>Route</i>	<i>Information required</i>
<i>Pre-departure (Home country)</i>	<ul style="list-style-type: none"> • Understanding workplace rules, rights and entitlements • Understanding costs, fees, charges, deductions • Understanding occupational health and safety • Cultural training (understanding social norms and managing expectations) • Understanding personal health and wellbeing (culture shock, STDs, HIV-AIDS, loneliness, food, alcohol, gambling, substance abuse etc) • Taxation implications • Understanding living arrangements (accommodation, appliances, getting around etc) • Awareness of support networks (pastoral care), welfare and financial services, grievance and dispute resolution mechanisms both in home and host country • Visa requirements
<i>Post-arrival (Host country)</i>	<ul style="list-style-type: none"> • Agreement of workplace rules, rights and entitlements • Occupational health and safety training (first aid, hazardous chemicals, protective clothing and equipment, operating heavy machinery, licensing etc) • Financial assistance (banking, remittance procedures, taxation and insurance) • Accommodation, health care, food and transportation • Support networks (pastoral care) • Welfare and financial services • Grievance and dispute resolution mechanisms • Social support and community based networks • Communication home (homesickness, loneliness)
<i>Return and reintegration (Home and host Countries)</i>	<ul style="list-style-type: none"> • Remitting earnings and goods • Financial literacy and management • Community development and skills development • Community re-engagement, family reunion and managing expectations • Reintegration procedures • Grievance and dispute resolution mechanisms • Health-related information and services

Source: adapted from several of the publications listed in the references and interviews with the Australian Council of Trade Unions, Peter Mares, Rasika Jayasuria and Wei Choong.

The role of public policy in promoting responsible corporate management of employment and industrial relations

The preceding discussion of aspects of labour mobility, particularly seasonal labour migration, clearly defines a responsibility for private enterprise. Experience has shown that reliance solely on voluntary corporate

responsibility mechanisms, such as the OECD Guidelines for Multinational Enterprises¹⁷, does not guarantee enterprises will uphold fair and decent employment practices and respect for human rights. There is a growing 'global push' by many NGOs and labour organisations for mandatory corporate responsibility mechanisms. Further, it is argued¹⁸ that neither the OECD Guidelines nor the ILO conventions adequately address the issue of customary labour exploitation in the south by MNEs, of migrant workers in host countries in the north. In this context, the provision of living wages will contribute to a decent standard of living and purchasing – power-parity.

The existing international frameworks and norms (ILO and UN Conventions) relevant to respect for, and protection of, the labour and human rights of all migrants, lend weight—when ratified. However, these instruments are directed at nation states, not enterprises. Companies need practical mechanisms that enable and require them to comply with national laws and international standards throughout their supply chains and production networks, particularly when conducting business in developing and emerging economies and weak governance zones.

Existing migration policies towards low skilled and un-skilled workers tend to be more restrictive than those aimed at highly skilled workers. For seasonal workers, amongst others, a policy response on a large, cross-cutting, multidimensional scale in recognition of the complex flow of people, money and diasporic linkages is required (Farrant, MacDonald and Sriskandarajah, 2006).

The migration—development nexus, particularly amongst the world's poorer nations, raises challenging public policy considerations. Similarly, the administrative complexity of seasonal worker schemes can result in migrant workers missing their entitlements, such as workers' compensation and tax refunds, because they may lack the skills to negotiate bureaucratic systems, and employers may not have the time to deal with the paperwork (MacLellan, & Mares, 2005). Care is necessary to avoid negative effects of potentially competing policy agendas in migration, development, employment, trade, health, security and social welfare¹⁹.

This OECD Watch position paper supports the participation of all stakeholders in both the design and implementation of seasonal worker schemes, and the policy and legislative framework. Regional and global consultative, multistakeholder processes are best placed to support upward harmonisation of domestic law and policy with the ILO conventions and other international instruments, to learn from each other and develop cohesive approaches to labour migration.

In this context, there is considerable scope for the OECD, the ILO and the UN to encourage countries such as Australia—on the cusp of introducing a seasonal migrant worker scheme with Pacific Island countries—to ensure the international conventions are ratified and applied, a development agenda beyond just trade is prioritised, and private sector participation occurs within a framework of corporate responsibility.

The appropriate policy responses to seasonal worker schemes are complex. However, there are fundamental principles that can be applied.

Box 1.2 below lists some of the key principles.

¹⁷ For information on experience using the OECD Guidelines for Multinational Enterprises complaint mechanism see the OECD Watch and TUAC websites: www.oecdwatch.org and www.tuac.org

¹⁸ The Jus Semper Global Alliance, www.jussempere.org, viewed <12 June, 2008>.

¹⁹ Discussion with Rasika Jayasuriya based on her experiences working with the International Organisation for Migration Mission to Sri Lanka, 2006.

Box 1.2 Seasonal migrant worker scheme policy fundamentals

- Uphold international conventions and norms through ratification and application to national laws
- Ensure the scheme supports a sustainable development model, beyond trade and economics
- Ensure regional, global, multi-stakeholder participation that fosters direct people and community engagement
- Exhaust all opportunities to employ local workers before introducing migrant workers
- Promote a rights-based framework
- Ensure private enterprise operates within the law and a framework of corporate responsibility
- Ensure wages, hours, conditions and entitlements are equitable for all workers
- Ensure minimum payment of a living wage to achieve North-South equality
- Ensure workers' fundamental rights and autonomy are not compromised
- Ensure representation and access to unions
- Establish an independent monitoring, grievance and dispute resolution process
- Ensure the costs of the scheme are not unfairly borne by the workers
- Ensure a rigorous system of accreditation and registration for labour hire recruiters
- Develop penalties for employers and labour hire recruiters who do not honour labour contracts, or provide safe and decent living and working conditions
- Develop tax regimes and access to health care that do not disadvantage seasonal workers or prevent access to entitlements and benefits
- Provide employment contracts stipulating duration of employment, minimum hours of work and pay rates
- Deliver timely and useful information, orientation and training at all of the migration cycle transition phases
- Provide 'pastoral' care and support networks for both the worker and community at home to minimise the social costs of migration
- Provide training that has the potential to build human capital and transfer knowledge that will benefit home communities and regional security
- Develop finance sector initiatives that provide access to affordable and efficient remittance services, financial literacy training, and microfinance.

Source: adapted from several of the publications listed in the references.

Part 2: The case of Australia and the Pacific

Like other industrialised countries, Australia has a skills shortage and is increasingly reliant on international migration to fill the 'skills gap' and to ensure continued productivity and economic prosperity. While much of this is regulated through the temporary skilled migration scheme (Australia's 457 Visa class), there is pressure to develop a seasonal work scheme in Australia (with Pacific island States). The Australian National Farmers Federation has suggested there are approximately 100,000 jobs to be filled across the agricultural sector, and 22,000 in horticulture alone (*The Age*, 2008).

According to Maclellan and Mares (2005), there is a growing international trend to implement 'micro or niche' migration schemes that have been specifically introduced to address labour shortages in particular industries at particular times.

The UN Department of Economic and Social Affairs statistics appear to support this, suggesting that every year half a million seasonal workers from non-EU countries are employed in EU agriculture, especially Germany, which issued 260,000 seasonal work permits in 2001 (Maclellan, & Mares, 2005).

The election of the Australian Labor government in November 2007 has signalled a significant and long overdue change in Australia's response to global issues and responsibilities, international and regional

engagement and support for multilateral institutions. The recent 2020 Summit in Australia²⁰ identified the need for Australia to:

Re-engage pro-actively and constructively with multilateral institutions and UN reform and to sign or ratify outstanding international treaties on human rights, arms control and the environment (Commonwealth of Australia, 2008, p.368).

The intent is to re-position Australia as an effective global citizen through activism, influential and responsible middle power diplomacy and renewed engagement to ensure mutually beneficial regional security and economic and social prosperity.

The Australian political climate is right to rethink the way Australia engages in the region and in particular with the Melanesian countries of Papua New Guinea, Solomon Islands, Vanuatu and Fiji. The Australia 2020 Summit encouraged the mobility of labour, people and ideas as a means of contribution to regional prosperity and new approaches to development assistance. The Summit called for a greater focus on human rights, respect for international law, and greater engagement in international institutions (Commonwealth of Australia, 2008).

Many Pacific Island countries are facing limited rural opportunities (resulting in rural-urban migration and in some circumstances social unrest), a decline in earnings from traditional exports (sugar and textiles in the case of Fiji), significant population growth and high rates of unemployment, particularly youth unemployment, lack of effective governance and poor economic development (Papua New Guinea, Vanuatu and Solomon Islands). These have contributed to poverty and increased security risks (Appleyard, & Stahl, 2007). Climate change poses further risks to livelihood, opportunity and security in the Pacific.

The changed political environment and regional pressures has resulted in

Australia being asked to play an ever increasing role in the Pacific region, both by its Pacific neighbours and by partners in its broader global alliances. The issue of regional security is at the core of that role (Appleyard, & Stahl, 2007, p.65).

Appleyard and Stahl argue that regional mobility of Melanesian (Paua New Guinea, Solomon Islands, Vanuatu and Fiji) labour is arguably one of the most critical issues relating to regional cooperation, and that short term migration can provide a much needed safety valve. The authors conclude that:

Migration is not the solution to development in Melanesia, but can in the short to medium term serve as an important adjunct to development policy (Appleyard, & Stahl, 2007, p.61).

There is growing demand for Australia (from Australian farmers, aid agencies and regional governments) to allow low skilled Pacific Island workers to provide seasonal labour and in turn to be able to access much needed remittances.

Specifically, agreement has been reached between some Australian trade unions (although the issue remains controversial and conditions apply) and the government to develop a scheme for seasonal workers within a 'rights-based' framework²¹. The issue of labour migration and seasonal work is now firmly on the agenda of both Australian and Pacific Island governments.

²⁰ In May 2008, the 'Australia 2020 Summit' was held. 1000 invited participants debated the key issues and policy responses needed to reposition Australia for year 2020. The author of this paper participated in the stream 'Australia's future security and economic prosperity in a rapidly changing region and world'.

²¹ The experience of the New Zealand Trade Union to the New Zealand Recognised Seasonal Employer (RSE) program will influence the Australian trade union response to ensure 'decent work' is provided, workers rights and entitlements upheld, negotiated conditions are not undermined and domestic workers are not displaced or disadvantaged.

In this context, three key issues arise for consideration:

1. International protection

- Will Australia activate its commitment to supporting multilateral institutions and sign and ratify the international instruments that protect the rights of migrant workers? These include:
- UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families²²
- ILO Migration for Employment Convention 1949 (Revised) (No. 97)
- ILO Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143)

2. Responsible supply chain management

- Will this proposed new era of responsible global engagement in Australia extend to the adequate protection of seasonal migrant workers' rights amongst supply chains and global production networks?
- Will the Australian Government actively enforce corporate responsibility through compliance with international standards, industrial law, common law (duty of care) and relevant mechanisms such as the OECD Guidelines for Multinational Enterprises?

3. Sustainable development

- Will the opportunity to develop sustainable wealth creation be realised through a seasonal migration scheme that goes beyond the parameters of the General Agreement in Trade in Services (GATS)²³ and more liberalised trade and investment?
- Will sustainable development that delivers economic and social prosperity, an investment in human capital, strengthened civil society, and robust governance mechanisms that complements Overseas Development Assistance (ODA) be a primary objective?

These questions, while highly relevant in Australia at this point in time, also apply to other OECD country responses (particularly in the EU, USA and Canada) to the governance of seasonal international migration.

The New Zealand Recognised Employer program provides a useful point of reference. Box 1.3 summarises the key facts and learnings.

²² This convention, although adopted in 1990, came into force in July 2003 after drawing its 20th ratification, and thereby creating a treaty monitoring body serviced by the UN High Commissioner for Human Rights.

²³ The GATS makes reference to "temporary movement of natural persons (Mode 4), however it is primarily concerned with skilled workers, without excluding low/unskilled workers.

Box 1.3 New Zealand's Recognised Seasonal Employer (RSE) Program: Facts & Learnings at a Glance

- Introduced in April 2007 for five 'kick-start' countries (Vanuatu, Tonga, Tuvalu, Kiribati and Samoa)
- Principal objective is to create opportunities for development and employment in Pacific Island nations with restricted economic options – including flow of remittances
- Allows NZ employers to recruit overseas workers from the Pacific and South-east Asia for seasonal work in horticulture and viticulture
- Employers require approval as Recognised Seasonal Employers and an Agreement to Recruit
- Recruitment of workers is done by national Labour Ministries and private sector recruiters
- Since commencement in 2007, 92 companies have been accredited as 'Approved Employers' and 3,923 RSE visas approved, demonstrating a strong demand for the scheme
- Introduction of the Transitional RSE policy (September 2007—September 2009) has reduced employer responsibility for management of migrant labour
- Linking the seasonal work to broader development assistance maximises outcomes of increased remittances to rural communities and villages
- Lack of engagement with unions, NGOs and Pacific Diaspora communities has created problems, particularly with monitoring and enforcement
- There are significant social costs of temporary migration for work
- Provision of welfare services and "pastoral care" to workers and their home communities is essential for success
- Pre-departure briefings and orientation of workers is essential
- Seasonal work programs must complement, rather than undercut, investment in workforce development and skills training
- Protection of workers' entitlements and health and safety is a major concern in precarious industries like horticulture and agriculture
- Protection of fundamental rights and autonomy of seasonal workers should not be at the discretion of employers, immigration authorities and trade negotiators

Source: adapted from N Maclellan 2008, *Workers for All Seasons? Issues from New Zealand's Recognised Seasonal Employer (RSE) program*.

Conclusion

Seasonal workers are among the most vulnerable workers in the global economy. They are frequently discriminated against, and exploited. Robust regulatory frameworks for both nation states and the private sector are required to ensure workers rights and entitlements are upheld. National, regional and global governance of international migration is required to ensure that labour rights and the social impact of labour mobility is understood and regulated beyond the parameters of trade only. Governance of seasonal labour mobility must not only promote regional economic integration and provision of goods and services, but more importantly, sustainable development opportunities that deliver both economic and social prosperity within a 'rights-based' framework to complement Overseas Development Assistance (ODA).

This creates an opportunity for the OECD and the ILO to influence the development of OECD member country governance of international migration to ensure the principles of both the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy are upheld when considering the role of government influence over non-state actors, such as the private sector, engaged in global trade and investment.

Both instruments respect ILO Core Labour Standards and both aim to impact the practices of MNEs with respect to labour rights. Greater synergy between these two mechanisms has the potential to encourage promotion and use by MNEs, respect for labour rights (including seasonal and temporary migrant workers throughout supply chains), responsible business conduct and sustainable and productive enterprises.

Recommendations

To assist in ensuring international seasonal labour mobility schemes are developed and regulated within a framework of responsible business conduct which upholds national laws and international standards, and supports development and poverty alleviation, OECD Watch recommends:

Recommendation 1: Ratifying the relevant migrant worker conventions: the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the ILO Migration for Employment Convention, 1949 (Revised) (No. 97), and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Recommendation 2: Promoting the OECD Guidelines for Multinational Enterprises to private sector enterprises involved in seasonal worker schemes (labour hire contactors, horticulture growers and supermarkets and the finance sector) and use of the complaint mechanism for non-compliance with the principles

Recommendation 3: Promoting the use of the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy as a basis for developing multi-stakeholder CSR initiatives that address the global supply chains of OECD based MNEs and seasonal migrant workers throughout the chain.

Recommendation 4: Implementing legislation such as the UK Gangmasters Bill

Recommendation 5: Developing seasonal worker schemes within a 'rights based' framework

Recommendation 6: Developing seasonal worker schemes through active and ongoing consultation with civil society (community leaders, churches, NGOs, development workers, trade unions, and academics).

Recommendation 7: Delivering pre-departure, post arrival, and re-integration information, orientation, training and support programmes to seasonal workers and their communities.

Recommendation 8: Establishing mechanisms for workers to raise grievances and access dispute resolution mechanisms.

Recommendation 9: Providing access to affordable financial products and services including affordable remittance, financial literacy training and microfinance capacity.

Recommendation 10: Influencing superannuation and pension funds to invest responsibly in industries that employ seasonal workers and uphold labour rights.

Recommendation 11: Encouraging the ILO and the OECD Investment Committee to participate in global forums (such as the Pacific Islands Forum in August 2008) to ensure seasonal worker schemes support ratification of conventions, international labour standards and corporate responsibility mechanisms.

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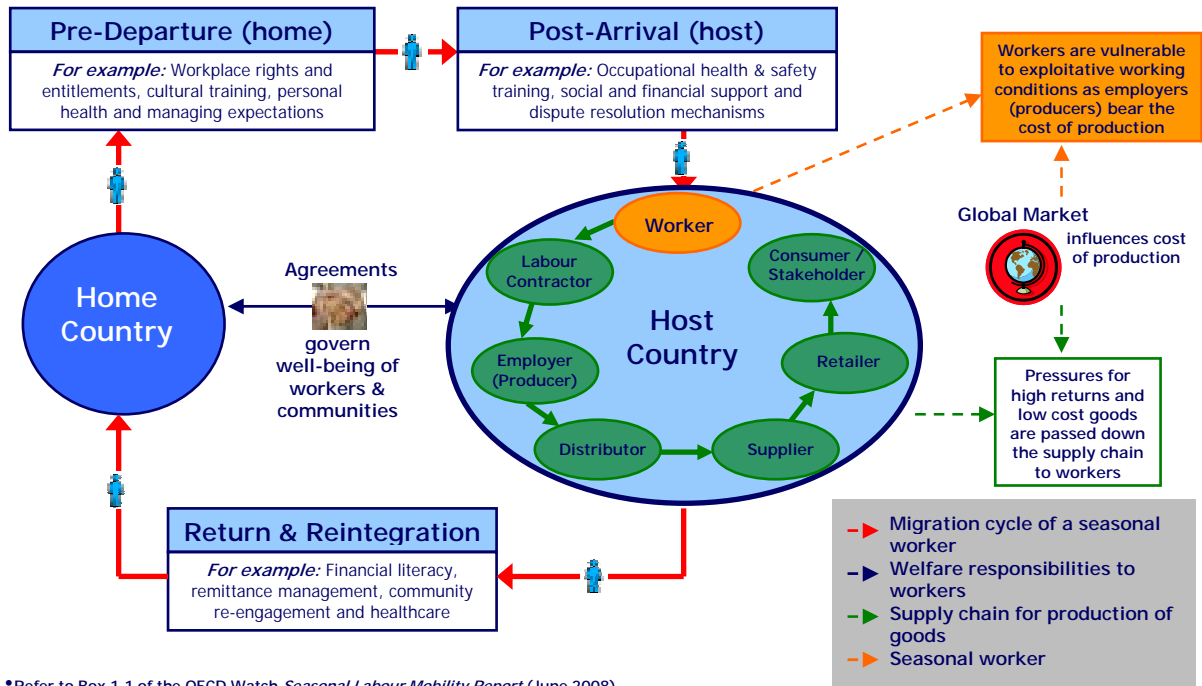
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Appendix 1

Needs and rights of seasonal workers must be addressed at each stage of the migration cycle



*Refer to Box 1.1 of the OECD Watch *Seasonal Labour Mobility Report* (June 2008) for more detail on the needs of seasonal workers. (source: developed by Rasika Jayasuriya and Wei Choong)