

**Migrant Precariousness
in the Time of COVID-19:
Migrant Workers, Risks
and Rights**

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CONTENTS

ACKNOWLEDGEMENTS	2
EXECUTIVE SUMMARY	3
PART 1: COVID-19 AND MIGRANTS ON TEMPORARY VISAS	6
1.1 Why COVID-19 and temporary visa holders?	6
1.2 A human rights issue	9
PART 2: THE SCOPE OF THE STUDY	16
2.1 About sectors and visa types	16
2.2 Differentiated risks: nationality, visa categories and vulnerabilities	18
PART 3: MAJOR DISRUPTION IN THE HOSPITALITY SECTOR	23
3.1 A large and precarious sector, for both locals and migrants	23
3.2 COVID-19: pandemic effects and responses	25
3.3 Policy implications	27
PART 4: INSTABILITY AND HEALTH RISKS IN THE CARE SECTOR	31
4.1 Residential care: feminised and undervalued	31
4.2 COVID-19: pandemic effects and responses	33
4.3 Policy implications	35
PART 5: LABOUR SHORTAGES IN THE AGRICULTURE SECTOR	39
5.1 Heavy dependence on migrants, especially backpackers	39
5.2 COVID-19: pandemic effects and responses	41
5.1 Policy implications	43
PART 6: KEY FINDINGS AND RECOMMENDATIONS	46
6.1 Abandoned, trapped, exploited?	46
6.2 Migrants, temporariness and human rights	47
6.3 Specific health implications	49
6.4 Future outlook: policy choices, resilience and rights	51
APPENDICES	55

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EXECUTIVE SUMMARY

This report maps the significance of the sudden economic and social crisis caused by the novel coronavirus pandemic (COVID-19) for migrants on temporary visas working in hospitality, aged care and agriculture. It focuses on the role of migration status, employment insecurity and lack of social protection in exacerbating the precariousness of migrant workers. Strict border restrictions together with lockdown policies have had severe economic and social impacts on sectors where migrants on temporary visas are employed. The responses to the crisis have only partially addressed the vulnerabilities of migrants on temporary visas, and some measures give limited attention to their longstanding rightlessness and may even entrench precariousness. The project will serve as a basis for a further study on mitigating the precariousness of migrants through better policy measures during times of unexpected crisis.

The global COVID-19 pandemic has had a disastrous effect on many aspects of contemporary human life. Entire sectors of the economy and society have had to shut down or minimise their activity as a result of restrictions adopted to stop the spread of the virus. In March 2020, workplaces across Australia, with the exception of essential services, were ordered to decrease or close their activities in an effort to reduce social interaction and/or physical contact. Variations of policies limiting non-essential movement and community contact were in place for much of 2020. Victoria was particularly affected, given its strict and prolonged second lockdown from July to October 2020.

It was clear early on that the COVID-19 crisis, and associated restrictions and shutdowns, would entail economic and labour market shocks that would result in substantial unemployment and under-employment. While economic hardship touches wide swathes of society, one of the key lessons taken from the previous financial and health crises is that specific segments of the labour force are often disproportionately affected. These include ‘temporary migrants’ or migrants on temporary visas, who are disproportionately working in insecure jobs with little access to social protection, and often first to be laid off work in times of crisis. In the context of combined border and workplace closures that have been part and parcel of the COVID-19 responses, holders of temporary visas are particularly precarious given their insecure status as migrants and their high levels of involvement and pre-existing precariousness in the labour market. Such groups require particular attention and a targeted policy response.

This report outlines the risks to migrants on temporary visas in Australia that are related to their migration status, employment and lack of social protection during the COVID-19 pandemic. This research particularly sought to investigate:

- the state of existing knowledge about the disruption caused by the COVID-19 pandemic in sectors with significant numbers of migrants on temporary visas, including the features of these sectors that may increase or decrease the economic and social vulnerabilities

of temporary visa holders during the pandemic;

- policy responses to pandemic-related hardship for migrants in these sectors and considerations for tackling the crisis that recognise the importance of migrants' safety, access to basic human rights and their general well-being as well as their contribution to Australian society and economy;
- key gaps in the knowledge around this issue, to inform future research priorities.

The hospitality sector was identified as a crucial starting point for the inquiry due to the immediate impacts of the pandemic shutdowns on its migrant workforce, including international students. The aged care sector was included both because of the health facet of the crisis and its role in employing workers from migrant backgrounds. Other sectors that were highly dependent on migrants were also identified as significantly impacted, and the agriculture sector was included because of its heavy reliance on 'backpackers' or 'working holiday makers' (WHM). A review of the literature and policy on issues associated with temporary migration supplements the statistical data.

Key findings and recommendations

This report contributes to ongoing discussions about the disproportionate impacts of the COVID-19 pandemic. The three sectors this report focuses on have each been heavily affected by the pandemic but in different ways.

The hospitality sector, primarily made up of young and casual workers in general, and precarious groups of temporary visa holders in particular, was especially hard hit by the COVID-19 restrictions and

lockdowns which led to widespread unemployment and underemployment. International students working in this sector were particularly affected, and the blanket ineligibility of migrants on temporary visas for social support is extremely problematic in this context. The precariousness of migrants in the hospitality sector continues despite some signs of recovery.

Because of its nature as a public health crisis, the pandemic has disproportionately affected aged care. The sector has been impacted by the extra pressures involved in managing the health risks posed by the crisis, given the risk profile of the virus. The chance of contagion gives rise to risks both to workers and those they care for. Many temporary visa holders fill essential roles in the care sector, including in residential aged care, and the crisis has shown both the importance of this contribution and revealed the dangers of precarious work, raising questions about the need to regulate the sector and improve the status of workers.

The agricultural sector, and especially horticulture, has been heavily dependent on temporary workers, and particularly migrants on working holiday maker visas. Border closures and the loss of WHMs, who were advised to go home, have created a labour shortage, currently only partially made up by efforts to bring in workers via the more limited Pacific programs. Attempts to bring in extra workers with less experience in the sector, such as international students, risk exposing them to harmful practices and show the need to put in place sustainable ways to meet labour demands in the sector.

What all three sectors share, in terms of impacts, is the role of migration status as

an axis of disadvantage that creates an environment for exacerbated employment precariousness through visa conditions that limit migrants' agency and limit their access to effective protection of their human rights. During the pandemic, many migrants remain stuck in Australia, yet are largely excluded from support systems. Some temporary visa holders, such as those concentrated in destroyed hospitality jobs, have been left to sink or swim, while those filling gaps in the residential aged care sector have been inadequately supported from a public health perspective. Migrant exploitation is set to continue in sectors such as hospitality and agriculture.

The crisis has revealed the nation's deep dependence on the labour performed by migrants on temporary visas, including essential work, such as care work and food production, that cannot be done from home. This report therefore contributes to debates over policy developments necessary to alleviate any unnecessary risks to those migrants most at risk during the pandemic. It can also be used to inform policy development aiming for sustainable economic and social recovery, and to build resilience for the future to protect public health and ensure food production.

While providing access to the social safety net for migrants on temporary visas is controversial in ordinary times, the inclusion of migrants on temporary visas within the scope of programs that support

permanent residents and citizens should be considered, especially in the context of a sudden crisis. Unprotected migrant workers are not only at risk themselves but also play a role in ensuring the health of the Australian community, including vulnerable individuals in residential aged care. As the care sector demonstrates, longstanding issues to do with a precarious workforce performing essential yet poorly regulated and poorly paid work have been neglected, with dire consequences. These must be addressed to avoid potentially catastrophic consequences.

These issues are not only important from the point of view of human rights, but from the perspective of building strategies for the recovery and enhanced resilience of the Australian economy and society. The global pandemic has shown that leaving migrants unprotected has both economic and social consequences that spill from one sector to another. For instance, international students who have lost livelihoods not only minimise their consumption, travel and recreation but may terminate their studies, and the long-term damage to the international education sector will take years to repair, especially if migrants consider other markets because of what they hear about international students' experiences during the crisis. Agriculture is a good example of a sector where the crisis provides a critical opportunity to consider what a resilient post-pandemic workforce would look like.



PART 1: COVID-19 AND MIGRANTS ON TEMPORARY VISAS

1.1 Why COVID-19 and temporary visa holders?

Australia was one of the first countries outside China that began recording cases of coronavirus at the end of January 2020.¹ Although it was not recommended by the World Health Organisation (WHO),² Australia decided to prohibit travellers from China from entering Australia from 1 February 2020.³ This helped to prevent a rapid increase in number of cases in Australia until the outbreak of the disease in several other countries, among them Italy, Iran and the United States of America, resulted in renewed spread in Australia in March. Cruise ships were also identified as a source of transmission (Australian citizens were evacuated to Australia from the Diamond Princess, stuck in Japan, and the Ruby Princess, which disembarked in Sydney). Following these events, Australia, along with the majority of world's states, restricted international travel to the minimum, with almost nil numbers of commercial flights in and out of the country for months.⁴ Australia's external borders remained largely closed to non-residents in early 2021.

These travel restrictions most immediately affected sectors such as tourism, the commercial airlines industry and other sectors of the economy that rely on flows of people across international borders. Major Australian companies in the commercial aviation industry, including Qantas and the Flight Centre, began to stand down employees.⁵ As it became clear that community transmission of the coronavirus was a serious threat, the authorities introduced a range of measures to ensure social distancing and restrict non-essential movement, including bans on large gatherings and closures of non-essential businesses.⁶ This resulted, among other limitations, in the shutting down of restaurants, hotels and other services that were associated with physical contact and identified as high-risk locations where the COVID-19 was likely transmitted between humans.

These ‘shutdowns’ quickly led to the loss or reduction of employment, especially in hospitality, arts and recreation sectors.⁷ After the restrictive steps dramatically slowed transmission, some of the restrictions were eased across most of Australia – the main exception being Victoria, where Melbourne began a second lockdown in July 2020 due to a rise in recorded infections.⁸ The Melbourne second-wave outbreak led to other states shutting borders to Victoria. Subsequently, borders between Australia’s States and Territories have been increasingly used to react to outbreaks of the virus. The overall result of various measures adopted to respond to the pandemic was a dramatic rise in jobs lost in the first half of the year, especially in sectors such as hospitality and entertainment.⁹ In addition, Victoria was particularly affected in the second half of the year.¹⁰

Though loss of employment commonly impacts individuals’ standards of living and financial decisions, for some its impact on day-to-day life and future prospects is far greater. Australian citizens are entitled to social assistance payments, such as financial support for those looking for work (and permanent residents gradually become eligible for most benefits after a certain number of years as residents).¹¹ In response to the crisis, the Federal Government introduced a new financial support package, which included a \$550 fortnightly Coronavirus supplement to the JobSeeker Payment. The Federal Government also expanded some of the eligibility criteria (to include e.g. some casual workers) and established a new, time-limited Coronavirus wage subsidy, the JobKeeper.¹² However, migrants on temporary visas were excluded from these forms of federal assistance (apart from some New Zealanders on the temporary 444 visa).¹³

In the context of the pandemic, both the job losses in sectors where migrants commonly undertake casualised, precarious work and the general exclusion of migrants on temporary visas from basic welfare payments point in the direction of heightened vulnerabilities for migrants on temporary visas.¹⁴ This was noted by the Prime Minister who also highlighted the expectation that temporary visa holders be able to support themselves while in Australia: ‘Australia must focus on its citizens and its residents to ensure that we can maximise the economic supports that we have’ and that for those unable to support themselves, ‘there is

the alternative for them to return to their home countries'.¹⁵ The option of 'returning home' was reinforced by the Immigration Minister, who advised international students remaining in Australia to work, rely on family support or access their Australian superannuation.¹⁶

Some support was however available for certain groups of migrants on temporary visas, such as some refugees who were eligible for some payments (Special Benefit, Coronavirus Supplement and Economic Support Payments).¹⁷ In April 2020, the Federal Government also allocated an extra \$7 million to the Australian Red Cross for the delivery of emergency relief and counselling support to vulnerable migrants on temporary visas.¹⁸ States and Territories subsequently stepped in to offer ad hoc financial support, such as Victoria's \$1,100 payment to international students.¹⁹ In addition, some temporary visa holders were eligible to benefit from measures States and Territories introduced to deal with pandemic-related risks, such as the Victorian Coronavirus (COVID-19) Test Isolation Payment (introduced in July 2020, initially \$300, then \$450) and the Worker Support Payment introduced to help people required to self-isolate due to testing positive to COVID-19 (\$1,500).²⁰

Such ad hoc and emergency forms of support were welcome, but do not make up for the exclusion of temporary visa holders from federal support systems. While it is not unreasonable to expect genuinely short-term visitors to leave in the event of sudden health and economic crisis, the fact is that many migrants on 'temporary' permits are temporary in name only.²¹ Many 'temporary' migrants have been living in Australia for several years and significant numbers in categories such as skilled migrants are likely to settle in Australia permanently.²² Given that the number of migrants who have been on temporary visas for eight or more years has increased starkly, visa status alone does not serve as a good or even reasonable indicator of temporariness.²³ Indeed, the introduction of the COVID-19 Pandemic visa shows awareness of the prospect that many migrants on temporary visas would not be leaving Australia (as well as a desire to retain those working e.g. in the aged care sector).²⁴

It is therefore unsurprising that many temporary visa holders have in fact been unable or unwilling to leave Australia, despite the worsening economic situation that has deprived many of livelihoods and left them in precarious circumstances. The reasons for staying range from issues such as lack of flight availability, closed borders and prohibitive travel costs to existing ties to Australia, which make sudden departures difficult.²⁵ Statistics from September 2020 show that many working holiday maker (WHM) visas holders (subclass 417/462) did indeed leave Australia early in the year, but many temporary visa holders remained, especially international students (476,383) and skilled visa holders (136,007).²⁶ This gap between expectations and reality in part explains the reports of temporary visa holders in poverty resorting to food banks and ending up in exploitative jobs that have emerged throughout 2020.²⁷

The intersecting forms of vulnerability that affect, among others, migrants on temporary visas were made particularly clear during the Melbourne public housing tower block outbreak in July 2020, to which the Victorian State Government responded by controversially locking down nine public housing high-rises and confining 3,000 residents, including many migrants, to their homes.²⁸ The outbreak demonstrated how many of the risks associated with the pandemic accumulate for people with limited or no incomes, who are often living in poor housing conditions and in many cases working in crowded or unsafe workplaces and performing essential work that cannot be done from home.²⁹ This focused lockdown highlighted and exacerbated the long-standing unsatisfactory living conditions of these residents, including migrants.

1.2 A human rights issue

The underlying premise of this report is that the impact of the crisis on temporary visa holders is an issue of economic and social importance, but also significant from a human rights perspective.³⁰ The Victorian Ombudsman's critical report based on her investigation into the Victorian Government's response to the high-rise outbreak shows the need for human rights scrutiny of the pandemic response.³¹ In relation to migrants on temporary visas, human rights assessments have been largely absent, in part because of a lack of sufficient data and because debates on temporary migration are often framed in primarily economic terms.³² Indeed, as Australia's approach to migration, traditionally built on permanent migration, has shifted towards temporary migration since the 1990s, migrants have come to be framed mostly in terms of their economic inputs.

However, migrants are more than just factors of production, and it is well known that there are many human rights issues that arise in the context of temporary migration. Much of what is classed as 'unskilled' and/or 'low-skilled' but often essential work is now undertaken by migrants holding temporary visas.³³ These groups include migrant workers on skilled visas but even larger numbers of individuals on visas formally granted for other purposes, such as international students (eligible to undertake part-time work during term and full-time during holidays) and working holiday makers as well as those on bridging visas. Migrants on temporary visas are often precarious as workers as they are concentrated in sectors that are associated with low pay, insecure jobs and poor working conditions.³⁴ Their precariousness is also linked to their temporary status: their residence may be dependent on conditions (such as their link with a designated employer, requirements of self-sufficiency) and they are excluded from many systems of support available to citizens, such as social support payments and student allowances.³⁵

Under international human rights law, migrants on temporary visas, despite not being full members of the Australian community, are recognised as human beings with rights. According to international law, States, including Australia, are under a duty to respect and ensure the

human rights of everyone within their jurisdiction. Even though Australia has not ratified the United Nations' main instrument on migrant workers' rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,³⁶ it is party to both the International Covenant on Civil and Political Rights (ICCPR)³⁷ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁸ as well as a number of other instruments, such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).³⁹

The ICCPR contains rights such as the right to life (Article 6), freedom from torture, inhuman and degrading treatment (Article 7), prohibition of forced labour and slavery (Article 8), freedom of movement within a state (Article 12) and right to privacy and family life (Article 17) and non-discrimination (Article 2 and 26). In terms of obligations that go together with these rights, Article 2(1) of the ICCPR confirms that States undertake to 'respect and to ensure to all individuals' the rights protected under the Covenant. The Human Rights Committee has confirmed that this wording incorporates both negative and positive obligations.⁴⁰ States must thus not merely refrain from violations, but also take positive steps to 'ensure' the enjoyment of these rights through measures to protect individuals against acts committed by private persons and by providing effective remedies.

Under the ICESCR, States have obligations relating to, for instance, rights at work (Articles 6-8), right to social security (Article 9), right to an adequate standard of living, including adequate food, clothing and housing (Article 11) and right to health (Article 12). As per Article 2(1), States must take steps to the 'maximum of available resources' to progressively achieve the full realisation of the rights included in the Covenant. This requires 'deliberate, concrete and targeted' steps, with States moving 'as expeditiously and effectively as possible' to realise rights.⁴¹ The ICESCR, and indeed both covenants, can be conceptualised as containing obligations to respect, protect, and fulfil the relevant rights. So, for instance, in relation to social security, the obligation to respect requires States not to deny equal access to adequate social security; the obligation to protect requires States to prevent private parties from interfering with access to social security; and the obligation to fulfil requires 'the implementation of a social security scheme, directed towards the full realization of the right to social security'.⁴²

The fact that all migrants have the right to life, freedom from ill-treatment, social security, health and housing, as per the International Covenants, does of course not render these rights automatically absolute or signify that differences in treatment between nationals and non-nationals can never be legitimate. Most civil and political rights can be limited in reasonable and proportionate ways when there is a good reason (such as a public health emergency); only a few, such as freedom from torture or from cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR), allow no limitations even when good reasons exist.⁴³ Economic, social and cultural rights in the ICESCR are subject to progressive implementation that is

dependent upon available resources (Article 2(1) above) and may be subjected to ‘such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’ (Article 4).

However, there are also limits. Importantly, both Covenants prohibit, as an immediate obligation, discrimination on a number of grounds, including race, sex, ‘national origin’ and ‘other status’.⁴⁴ ICCPR rights, including the right to life and freedom from torture ‘apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness’.⁴⁵ As to the ICESCR, ‘the Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation’.⁴⁶ Simply put, this means that States must not unduly differentiate between people within their jurisdiction and must be able to justify any differences in treatment. In relation to economic and social rights, this requires showing distinctions are made with reference to a legitimate aim and that the criteria used are reasonable and proportional to the achievement of this aim.⁴⁷ In addition, States should not only refrain from discrimination, but in fact take positive action to *correct* existing conditions that perpetuate or exacerbate the situation of vulnerable populations.⁴⁸

It is important to emphasise that economic and social rights, regardless of their domestic enforceability, are treated in international human rights law as having equal importance as civil and political rights.⁴⁹ Despite the ‘progressive realisation’ requirement, States are expected to provide the minimum essential levels of the rights in the ICESCR.⁵⁰ Failures to comply with these minimum core obligations are regarded as violations of ICESCR, unless a State can demonstrate a clear lack of available resources, despite having made every effort to use all resources that are at its disposition.⁵¹ For instance, in relation to the right to social security, States must:

- ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education...; and
- take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups.⁵²

Determining whether, for instance, the differential treatment of groups such as temporary residents is impermissible requires careful analysis of complex economic and social realities, as well as the content and scope of relevant rights. Given the global and unprecedented nature of the COVID-19 crisis and the need to take emergency measures in order to promote public health, as well as counteract the economic impact on citizens, it is clear that States can argue they are acting in pursuit of a legitimate aim when drawing certain distinctions between migrants, permanent residents and citizens. However, it is also important to note that where

a State seeks to justify not meeting its minimum core obligations, ‘a failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party’s disposition in an effort to address and eliminate the discrimination, as a matter of priority’.⁵³

The question therefore comes down to an assessment of whether the measures adopted are a reasonable and proportionate way of responding to the pandemic and one that does not unduly discriminate or further exacerbate existing vulnerabilities. These questions are particularly difficult in relation to economic and social rights, which have often been inaccessible to many migrant workers even outside times of crisis.⁵⁴ Moreover, any assessment must take into account the fact that minimum subsistence rights (such as health and social security) are interlinked with other rights and may in extremis lead to breaches of absolute rights, such as freedom from cruel, inhuman or degrading treatment or punishment. Despite the generally wide discretion States retain in this area, it is therefore both possible and necessary to ask whether the response to COVID-19, in relation to temporary residents, has been both reasonable and proportionate and how vulnerable migrants ought to be supported in order to comply with Australia’s international obligations.

For that to take place, however, an essential first step is to map the effects of the pandemic on temporary visa holders and to establish how and where the crisis has exacerbated existing vulnerabilities. The evaluation requires data collection about the sectors most impacted and the known risks. This mapping exercise therefore aims to identify the effects of the crisis for migrants, identifying the vulnerabilities and risks impacting on migrants across different sectors, and with attention to the role of migration status, in order to facilitate such an assessment. The remainder of this report advances the position that the long-standing precarious circumstances of many migrants on temporary visas were exacerbated by the COVID-19 pandemic and the measures adopted in response reflect the unpreparedness of institutions to respond to the risks revealed by the crisis.

Notes

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PART 2: THE SCOPE OF THE STUDY

2.1 About sectors and visa types

By late March 2020, there was some evidence as to which industries would be most immediately affected by the pandemic, although the long-term impacts were not apparent at that stage. It was initially unclear also how long any COVID-19-related restrictions would last and to what extent the Federal, State and Territory Governments would be willing and able to support the most affected industries and individuals. Based on existing data, three industries were selected for this study that are common workplaces for migrants, namely hospitality (food and accommodation services), care work (especially aged care) and agriculture (with a focus on horticulture). Each of these sectors is also to varying degrees associated with casual or otherwise insecure forms of labour.¹

Australian Bureau of Statistics (ABS) data gathered during the 2016 census was used at the outset for indications as to the nature of the workforce and the proportion of migrants working in each industry. Occupation codes provided by Australian and New Zealand Standard Classification of Occupations (ANZSCO) were used to find the most relevant types of

occupations for the sectors outlined for our study.² While these categorisations do not encompass all relevant types of work, the numbers provided in the census serve as a starting point for understanding the approximate involvement of migrants employed in each sector. It is also important to note the limitations of the census in capturing information about sectors such as horticulture, where workforce movements and remoteness mean many workers are not counted in the census.

According to the data provided by Australian Bureau of Statistics (ABS), in February 2020, the healthcare and social assistance sector was the largest in terms of people employed (1,800,100) among the selected three industries.³ The hospitality industry employed 934,800 employees. The least numerous compared to these two sectors was the agriculture, forestry and fishing industry (with 337,200 employees).

For this report, several temporary visa statuses in Australia were initially identified as potentially indicating vulnerability due to the sectors worked, numbers of visas granted and migration status.⁴ People on temporary visas represent a very mixed group, including some very vulnerable people, such as individuals seeking asylum and some refugees. However, because of the economic focus of this study, its focus is on individuals who are in Australia in whole or in part to engage in employment, with varying degrees of precariousness in the labour market.

The four categories of particular interest for this study are: international students (who are allowed to work for up to forty hours a fortnight),⁵ so-called working holiday makers (including both subclass 417 and 462 holders),⁶ skilled short-term migrants and their family members (formerly subclass 457 visa holders, now subclass 482 visa holders)⁷ and the large cohort of special category New Zealand visa holders, whose visas are also technically temporary, though they are entitled to reside in Australia indefinitely.⁸ These temporary visa holders' engagement in the industries identified above is the core focus of the study.

Appendix 1 provides detailed data on how many of each visa categories were known to be employed in relevant occupations, but the general patterns are outlined below in relation to each sector. It is worth noting that many temporary visa holders, especially international students and working holiday makers, work in sectors that are not strictly speaking relevant to their skills or studies.⁹

- Based on ABS data, temporary visa holders are commonly found in the food and accommodation sectors, or adjacent fields, including as hospitality managers, hospitality workers, food preparation assistants and food trades workers. New Zealanders (nearly 15,000) and migrants on skilled visas (over 8,000) are most often found among retail and service managers. International students are commonly found working as food trades workers (over 13,000) or as hospitality workers (over 22,000) or as food preparation assistants (16,000). Working holiday makers are also commonly

found working as hospitality workers. Based on the analysis of the relevant subcategories, international students lead in terms of people employed in hospitality sector, especially in work classed as less-skilled.

- Migrants were also commonly working in the care sector, both as professionals (e.g. managers) but particularly less skilled categories. Among carers and aides, international students (12,000) and New Zealanders (15,000) dominate, though smaller numbers of skilled visa holders working holiday makers can also be found. Smaller numbers also work as health and welfare support workers. Some sub-categories of health professionals (e.g. residential nurses) also participate in care work (e.g. in residential care), however they were largely excluded from this study because of the specific focus on aged care work performed by temporary visa holders.
- The agriculture sector, while smaller in numerical terms, employs a high proportion of migrants on temporary visas, especially migrants on working holiday maker visas, and ABS data is less reliable here. Based on ABS data, working holiday makers and New Zealanders were the largest migrant groups among farmers and farm managers and other examined sectors. The numbers suggest that compared with the other two sectors, international students are not usually employed in this sector, though they do often work on related fields like factory work and food preparation.

These sectors have been impacted in various ways during the pandemic. In April 2020, the International Labour Organisation identified the likely short-term economic impacts of the crisis to be high for accommodation and food services, medium or medium low for agriculture, forestry and fishing, and low for human health and social work activities.¹⁰ In Australia, the hospitality sector was hit hard by the lockdowns, deeply impacting a large number of both local and migrant workers. The care sector was impacted because of the health-focused nature of the crisis, which particularly affected aged care due to the age-related risk profile of the virus. Agriculture, though numerically not a large sector, was impacted because of its heavy reliance on migrant workers.

2.2 Differentiated risks: nationality, visa categories and vulnerabilities

Many of the risks caused or exacerbated by the pandemic discussed in this study can be characterised as predominantly economic and social. Job losses have affected many Australians and non-citizens, but unemployment has hit migrants on temporary visas harder in that it has left them to cope on their own with no safety net. Given that not all migrants on temporary visas were willing or able to leave Australia, unemployment and associated problems such as inability to afford housing, food, bills and medication were predicted early on as likely consequences of the exclusion.¹¹ Information about people seeking emergency relief since then has confirmed these fears.¹² It has also become clear that even where people have retained jobs, they may be precarious because of having no entitlements to sick leave or because desperation makes them more open to exploitation.¹³

It is however also important to note that while it is possible to identify heavily impacted sectors of the economy and groups of migrants that have been left particularly precarious by the measures adopted to tackle the pandemic, individual outcomes may vary considerably. Australia's migrants are drawn from a large number of states, with varying levels of economic development (Appendix 2). Precariousness and the extent to which it has been exacerbated by the pandemic depend on, for instance, pre-existing factors causing vulnerability, such as residential security (visa category), sector of employment, economic security (e.g. ability to rely on savings or financial support from family and friends), human capital (skills, language), existence of support networks and other forms of social capital, security of housing, support from country of citizenship, and so on.

Not all risks are economic. Though COVID-19 testing is universally available regardless of Medicare status, other health risks are raised by gaps in access to health care and challenges in being able to afford medications and treatment, given the fact that migrants on temporary visas are largely excluded from access to Medicare and may have poor health insurance policies purchased for visa purposes. There are only 11 States whose citizens can, as temporary visitors, benefit from the Medicare system thanks to Reciprocal Health Care Agreements.¹⁴ Migrants from these countries are in a less precarious situation with regard to access to medical services during the COVID-19 pandemic compared to citizens of other countries not listed. Therefore, for instance, New Zealanders, many of whom are also only 'technically' temporary, are in a less precarious position than some other temporary residents. In contrast, among the top-15 countries by number where international students come from, none have Reciprocal Health Care Agreements with Australia.

In terms of both individual and group-based precariousness, much therefore depends on where migrants are from (both in terms of nationality and socio-economic background), the kinds of visas they hold, as well as the sectors that employ them. Appendix 2 shows the numbers of migrants with temporary visas resident in Australia as of December 2019 from each country according to visa types (top 15 countries included). These numbers are a good starting point for any evaluation of potential and actual vulnerabilities of these groups of migrants (and the prospect of such migrants leaving Australia). Visa conditions, including conditions in relation to employment, mobility, health insurance and access to public forms of support, are important factors structuring migrants' vulnerability.

Despite the much-discussed fall in international student numbers, it is worth emphasising that significant numbers of student visa holders remain in Australia: the numbers declined from 567,000 in March 2020 to 465,000 in November 2020.¹⁵ There are also over 106,000 temporary graduate visa holders still present in Australia. Most international students originate from India (96,938) and China (80,175) and many work part time, given international students are allowed to work 40 hours per fortnight. Those who remained in Australia and

relied on jobs in the hospitality, retail or services sectors were commonly left in situations where they could not work and consequently faced high economic risks. Therefore, international students can be considered a group that is at high risk of social exclusion, despite a common perception that international students are comparatively well-off.

Factors such as citizenship also affect vulnerability. For instance, the large cohort of Chinese international students were impacted by COVID-19-related restrictions from the start. Chinese nationals and other people who resided in or visited China were banned from arriving in Australia at the beginning of the first semester in March 2020, resulting in the majority of Chinese students failing to begin their studies on time.¹⁶ After many years of Chinese students constituting the largest group among international students (Appendix 2), last year, they were outnumbered by Indian students. By 29 March 2020, out of 109,523 Chinese student visa holders 38% remained outside Australia, while out of 105,514 Indian students, only 6% remained outside Australia.¹⁷ The inability of Chinese students to enter Australia impacted not only the education sector, but also had flow-on effects on spending in accommodation and retail sectors.¹⁸ Chinese students and but also other Asians have been targets of discrimination and harassment due to their nationality.¹⁹

Data from March 2020 shows that unlike international students, who have stayed in Australia, many working holiday makers took the Federal Government's advice and promptly returned to their home countries: the numbers decreased immediately by 15.5% or approximately 22,000 people.²⁰ That decrease has continued, so that as of 30 November 2020, there were under 54,000 working holiday makers in Australia, compared to 141,000 in December 2019.²¹ In recent years, most subclass 417 visa holders come from the UK (23,505), France (15,555) and South Korea (14,141), while holders of subclass 462 visas were primarily from China (5,213), USA (4,178), and Argentina (2,277). Among these countries only the UK has a Reciprocal Health Care Agreement with Australia, leaving others to face greater risks in terms of access to health care. The risks vary depending on socio-economic and other indicators. These nuances relating to vulnerability need to be considered in more detailed research.

Finally, temporary skilled visa holders (including secondary visa holders, that is, the family members of the primary worker) also play a key role in sectors most relevant to this study, especially in the care sector. Unsurprisingly, given the long-term plans of most such migrants, involving settlement, many temporary skilled visa holders have also remained in Australia after the onset of the pandemic. The numbers of temporary skilled visa holders resident in Australia have decreased only slightly – from 139,000 in March 2020 to 112,000 in November 2020.²² The top five source countries of Australia's temporary skilled labour are India (13,180), UK (11,050), Philippines (5,610), China (3,410), and Ireland (3,060). Citizens of the UK and Ireland have access to Medicare, however others do not. Socio-economic circumstances of skilled visa holders again differ widely, depending on factors such as country of origin.

Notes

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- ⁴ It should be noted that those without a visa are likely to be even more vulnerable than migrants on temporary visas – however, they are not included in the study because of problems with data availability. For further information, see M. Segrave, *Exploited and Illegal: Unlawful Migrant Workers in Australia* (Melbourne, Monash University, 2017).
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- ⁷ Temporary skilled migrants include, for instance, 65,000 workers on the Temporary Skill Shortage visa (which replaced the 457 Temporary work skilled visa in 2018), plus members of their families. Department of Home Affairs, 'Temporary resident (skilled) report at 31 December 2019', <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-quarterly-report-31122019.pdf>.
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- ¹⁴ Among them are citizens of Belgium, Finland, Italy, Malta, Netherlands, New Zealand, Norway, Ireland, Slovenia, Sweden and the UK.
- ¹⁵ Department of Home Affairs, 'Temporary visa holders in Australia', <https://data.gov.au/dataset/ds-dga-ab245863-4dea-4661-a334-71ee15937130/details>.
- ¹⁶ Melissa Clarke, 'Coronavirus travel ban sees Chinese students miss start of university, Australian tertiary education sector scrambling' ABC News (4 Feb 2020), <https://www.abc.net.au/news/2020-02-04/coronavirus-scare-sees-chinese-students-miss-university/11929948>; 'Coronavirus travel ban extended to 'keep Australians safe', Peter Dutton insists amid Chinese 'dissatisfaction'', ABC News (14 Feb 2020), <https://www.abc.net.au/news/2020-02-14/peter-dutton-defends-government-extending-china-travel-ban/11964916>.
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PART 3: MAJOR DISRUPTION IN THE HOSPITALITY SECTOR

3.1 A large and precarious sector, for both locals and migrants

This report defines the hospitality sector as a combination of primarily accommodation and food services and some additional industrial classes occupations associated with directly interacting with customers. According to Australian and New Zealand Standard Industrial Classification (ANZSIC), Accommodation and Food Services are considered together under Division H. This division includes mainly units that provide short-term accommodation, food and beverages, including alcohol, both on and off-site.¹ Food and beverage services include cafes and restaurants; fast food outlets; takeaway food services, catering services; pubs, bars and nightclubs; and social clubs. Accommodation includes holiday house and flat operation, motels, resorts, serviced apartments and youth hostels. Based on ABS data, the food and accommodation industries are significant contributors to the economy, providing employment for nearly a million workers (June 2019).²

Compared to many other industries, the nature of hospitality work is highly casualised: indeed, in 2019, the occupation groups that recorded the highest prevalence of casual work

were hospitality (79 per cent of all workers) and, relatedly, food preparation assistants (75 per cent).³ Casual work reflects the employment insecurity that is a prominent feature of the sector, especially among young workers and women (though the gender gap is narrower than it used to be). Overall, the hospitality sector is characterised by a large and relatively low-skilled workforce, with a high proportion of unskilled occupations, low barriers to entry, high levels of staff turnover and low investment in staff.⁴ Job insecurity has also been linked to the factors such as particularly weak unionisation, with trade union membership falling under 2% in 2020.⁵ Workers in the hospitality sector are therefore characterised by a relative lack of agency compared to other sectors.

Before the onset of the COVID-19 pandemic, skilled migrants, students and working holidaymakers (WHM) were an essential part of the hospitality sector. Though numbers are difficult to assess with certainty, industry reports suggest a high proportion of workers in the restaurant and cafe industry and the accommodation sector are temporary migrants (12%), with about half of the workers being working holiday makers, along with a sizeable number of international students.⁶ For international students, hospitality work is the most common form of employment, on a par with cleaning, with significant numbers working in food processing.⁷ While those on WHM visas are most often working in agriculture, hospitality-related occupations are also a common place of work.⁸ Skilled migrants in hospitality were concentrated among groups such as chefs and managers, with hospitality employers making extensive use of temporary skilled visas.⁹ It is worth noting that the hospitality sector provides 'refuge employment' to so-called skill-discounted migrants, who may not be working in their area of skills or experience.¹⁰

The hospitality sector is known for exploitation and underpayment, with surveys singling out food services jobs as particularly plagued by widespread and even systemic underpayment of international students, with those from Asian backgrounds most affected.¹¹ In 2018, a Fair Work Office (FWO) audit across Melbourne, Sydney and Brisbane revealed that 72 percent of businesses in the hospitality industry had breached workplace laws, most commonly underpayment of wages, and failure to provide pay slips in the prescribed form.¹² Indeed, according to the FWO, the hospitality industry consistently has the highest number of disputes of any sector, with highest rates of non-compliance in the fast food, restaurants and cafes sector. The FWO notes that a factor in non-compliance is 'a high concentration of young, vulnerable workers, many of whom are on migrant visas'.¹³ The sector (including fast food, restaurants and cafes) continued to generate the most reports about workplace breaches, accounting for 34% of all reports received by the FWO in 2019–20.¹⁴

The FWO has suggested that migrant workers' overrepresentation is in part also due to their more limited knowledge about Australia's workplace rights and entitlements, and language and cultural barriers.¹⁵ A study of employer motivations found that employers' recruitment practices for skilled migrants in the hospitality sector are motivated by a desire to source soft

skills (problem solving, resilience and customer focus) and workers perceived as relatively controllable, productive and reliable.¹⁶ In this regard, international students and those on working holiday maker visas, often working part time, are clearly considered sufficiently controllable to represent 'good value', but even skilled migrant workers are more flexible than many local workers, as sponsorship ties workers to an employer, and potentially constrains a sponsored worker's agency in ways likely to make them more attractive to prospective employers.

3.2 COVID-19: pandemic effects and responses

The International Labour Organisation (ILO) warned in April 2020 that the accommodation and food services sector was likely to be one of the hardest-hit worldwide during the pandemic.¹⁷ It also warned that young people, including young migrants and/or female workers, were likely to be among the most severely impacted workers because of their concentration in types of work rendering them vulnerable to job losses.¹⁸ The situation in Australia followed these patterns. The imposition of COVID-19-related restrictions hit the hospitality sector the hardest.¹⁹ Travel bans and social distancing measures also significantly affected tourism and demand for renting accommodation.

These effects were severe and came early on in the pandemic. In March 2020, the accommodation and food services industry reported over three quarters of businesses (78 per cent) suffering impacts and 96 per cent of businesses reported that they expected impacts in coming months.²⁰ The disproportionate impact on the accommodation and food services industry was shown by the 25.6 per cent fall in the number of jobs between mid-March and early April.²¹ The most dramatic contraction in the labour force in the industry of accommodation and food services took place from late March to April 2020. The various restrictions resulted in 27 per cent of hospitality employees losing their jobs by 4 April 2020. The only other industry that was even near-similarly affected was arts and recreation, with 20.6 per cent loss of its labour force.²² The effects on the hospitality sector were also linked to decrease of demand in transport and recreational services due to the COVID-19 shutdown. By mid-April 33.4 per cent of accommodation and food services jobs had been lost.²³ The June quarter of 2020 saw the Australian economy contract, with hospitality leading the falls.²⁴ Younger age groups and women were disproportionately affected.²⁵

As migrants on temporary visas are overrepresented in hospitality, unsurprisingly surveys suggest they have been heavily affected by shutdowns. Given that statistics show that many of those on working holiday maker visas did indeed leave Australia at the start of the crisis, it is not surprising that most studies suggest international students, who have largely remained, were reportedly particularly badly affected by loss or reduction of employment.²⁶ Those working as waiters, kitchen hands, food servers and chefs were especially likely to lose jobs or hours.²⁷ A union study found that up to 94% of temporary visa holders answering the

survey reported that they had either lost their jobs, been stood down or had their hours cut.²⁸ The same survey suggested migrant hospitality workers were among the first to lose their jobs, with the attendant consequences of financial stress, inability to pay for bills, housing or medications, and for those on sponsored visas, the near impossible task of finding another employer to sponsor them.

Uncertainty in the hospitality sector continued in the second half of 2020. The easing of restrictions led to early signs of a national recovery, but these were tempered by second wave impacts, especially in Victoria, where further tightened pandemic restrictions caused a renewed decline in the September quarter. Indeed, the second wave economic impacts in Victoria were more pronounced than the first wave and brought the state into greater focus.²⁹ However, in December 2020, minor growth was visible in the sector.³⁰ Businesses in accommodation and food services were in fact the most likely (33 per cent) of all businesses to report that they had jobs available and were having difficulty finding workers.³¹ Indeed, articles about staff shortages in the sector have started to emerge, partly also because local workers have moved into other lines of work.³²

In terms of policy responses, the JobKeeper Payment only covered casuals who had been employed for 12 months or more, and this support was not available for migrants on temporary visas. Given the highly casualised nature of the sector, this has had a significant impact on even Australian workers (46 per cent of casual employees in accommodation and food services had been with their current employer for less than 12 months).³³ Given the large proportion of temporary visa holders with working rights in Australia who were employed in the sector, the hardship caused by this general exclusion was severe. The gap in support for international hospitality workers was filled by actors such as restaurants offering food assistance.³⁴ The Australian Red Cross significantly expanded its provision of emergency relief to temporary visa holders, and has reported significant demand for support from international students.³⁵ This is likely explained by the fact that international students often work to pay for their studies and may be economically less secure than migrants on skilled short-term visas.

Some commentators have expressed a fear that many international students will be more vulnerable to exploitation as pandemic restrictions ease, due to their increasingly precarious economic situation and high levels of unemployment.³⁶ As job losses have created desperation, along with associated threats such as homelessness and the inability to buy essentials, many migrants working in the hardest-hit sectors of the economy have agreed to unpaid or underpaid work.³⁷ A union survey found that underpayment in hospitality may be increasing, with a survey of non-English job adverts suggesting 87 per cent jobs were advertised below the minimum wage.³⁸ Some migrants may even be driven into conditions of extreme labour exploitation in order to survive, accounting for reports of migrants who have lost jobs in hospitality taking up further precarious work as food delivery workers (a sector

where many workers are classified as independent contractors with low pay and entitlements).³⁹ At its worst, such work can even lead to risks to health and life, as is demonstrated by the five deaths among food delivery workers between September and November 2020.⁴⁰

3.3 Policy implications

The hospitality sector demonstrates that the combination of a large and heavily pandemic-impacted sector and a workforce made up of predominantly young, female and precarious workers in general, and temporary visa holders in particular, has resulted in tremendous hardship for many workers. Many migrants who work in the sector had already tolerated exploitation in pre-pandemic times out of fear of losing jobs, or due to visa insecurity and barriers to seeking effective remedies. During the pandemic, workers who have lost jobs or hours, again more often than not young and female, have had little access to social security, and in the case of migrants have been excluded altogether, with little attention to their individual circumstances.

The prevalent combination of international students and hospitality workers shows the particular havoc the pandemic has wrought on a group of temporary visa holders heavily reliant on casual hospitality and other service work to finance their studies and lives in Australia. The pandemic has revealed the stretched economic realities behind the ‘success story’ of Australia’s international student migration, and challenged the assumptions underpinning it. These include the expectation that international students should always be financially self-sufficient, even during a crisis of this magnitude, and the assumption that ‘temporary’ migrants, many of whom are building long-term lives in Australia, will be able to return to their countries of origin when so requested.

Temporary residents’ blanket ineligibility for support was and is extremely problematic for migrant workers, as the wholesale destruction of jobs in the hospitality sector reveals the gaps created by the crisis. While hospitality is a sector that has been able to bounce back reasonably rapidly and some ad hoc support has been available (for instance from the States and Territories), the economic recovery has not translated into more security for migrants on temporary visas. In fact, despite the recent calls for more hospitality workers, the high unemployment and underemployment rate means job competition is fierce and is likely to remain so for some time. Economic desperation in turn raises the pressures on migrants, who are more precarious in the aftermath of the shutdowns, to take on even more exploitative work.

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PART 4: INSTABILITY AND HEALTH RISKS IN THE CARE SECTOR

4.1 Residential care: feminised and undervalued

Work falling under the rubric of ‘care work’ encompasses different types of services tightly interwoven with the health care sector (including doctors and nurses) and also the hospitality sector (food preparation). The Australian and New Zealand Standard Classification of Occupations (ANZSCO) broad category of community and personal service workers includes many workers working in ‘care’.¹ Some of these workers are categorised under health and welfare support workers, who assist health professionals in the provision of patient care in hospitals, nursing homes and other health and community-based care facilities, and provide support, information and advice to clients on a range of social welfare matters. Also included are carers and aides providing basic care and other support services, such as personal carers and assistants. Residential care homes also employ some workers providing food-related services and cleaning. These intersecting groups make it difficult to indicate the numbers of workers engaged in each sector, but residential aged care services, covering the largest sector of the welfare workforce, is the core focus of this part of the study.²

Residential care work, and particularly the aged care sector, have been deeply affected by longstanding workforce issues. The shocking stories of neglect and mistreatment exposed by the Aged Care Royal Commission are underpinned by system-wide failings, such as an under-resourced and overworked workforce, poor worker retention and lack of training, insecure employment and poor regulation.³ Aged care is a large and growing industry that is predominantly publicly funded but increasingly outsourced to for-profit providers, with successive reviews and inquiries identifying longstanding problems, which remain largely unaddressed.⁴ Care work is also a highly feminised sector with poor pay and status, suffering from chronic labour shortages.⁵ The aged care industry does offer greater job permanency to workers than sectors like hospitality, but given the size of the sector, casual numbers are still significant.⁶ About 9 per cent of workers hold multiple jobs and employers often use agency workers to meet staff shortages.⁷

As of 2016, migrants made up almost one-third of Australia's direct care workforce, including nurses, allied health workers, and personal and community care workers.⁸ The majority of these employees were already Australian residents, as workers in aged care are rarely recruited directly from overseas. This is because 'care is constructed as "low skilled" within Australia's migration settings', and care workers usually do not qualify for skilled migration, apart from categories such as nurses.⁹ It has been argued that care work is considered 'low-skilled' due to a gendered undervaluation of care, which has arguably produced a temporary migration framework lacking viability.¹⁰ As a result, migrant employees in the sector are a mixed group, and include long-standing migrants, New Zealanders, partners of skilled migrants (whose skills were not assessed upon entry to Australia), international students, as well as migrants holding working holiday maker visas and humanitarian visas.¹¹ The workforce is very diverse, with growing numbers of workers in the sector from Sub-Saharan Africa and South-East Asia.¹²

The fact that migration pathways for care workers are indirect and often result from limited labour market opportunities, translates into degrees of precariousness for many workers in the care sector. Low wages and poorer conditions in the sector correlate with visa holders' degrees of tenure, status and security in Australia.¹³ Factors that constrain agency in the care sector include: migration status, lack of recognition of prior skills and experience, lack of English language proficiency, and existing care responsibilities.¹⁴ Migrant care workers from non-English-speaking background countries (a large proportion of workers in the sector) are the most likely to be employed on a casual basis and to report underemployment.¹⁵ Holding a temporary visa and working in for-profit providers increased the likelihood of job insecurity. Underemployment in frontline aged-care work is also reflected in the high rate of multiple job-holding.¹⁶

4.2 COVID-19: pandemic effects and responses

The importance of the care sector, and particularly the residential aged care sector, has become tragically clear during the COVID-19 pandemic. Nearly 700 elderly people died with coronavirus in residential aged care homes, constituting 75 per cent of the deaths due to the pandemic in 2020.¹⁷ Many of those who lost their lives likely caught it from employees in residential aged care facilities. Working across several places took place during the Victorian second wave outbreak despite early recognition that aged care facilities were particularly at risk from COVID-19 because of workforce movements and the pandemic's elevated threat to older people in general.¹⁸ The Dorothy Henderson Lodge and Newmarch House outbreaks in NSW served as early warnings about the need for extreme care in infection prevention and control in residential aged care.¹⁹

The Federal Government reportedly committed over \$1.5 billion of additional funding measures to support aged care preparedness and response in 2020.²⁰ Much of the early response sought to address possible workforce shortages by ensuring sufficient numbers of workers would be available. Unlike temporary visa holders in other sectors, such as hospitality, workers in aged care facilities, home care providers and other health care workers were quickly identified as essential. In April 2020, the Federal Government relaxed the restrictions applying to international students, allowing visa holders in the care sector to work more than their normal 40 hours per fortnight.²¹ Restrictions on working holiday maker visas were also relaxed in relation to work in the health, aged and disability care sectors.²² The Federal Government also included care work under the COVID-19 Pandemic Event visa (subclass 408) to enable temporary visa holders to work in the sector during the pandemic.²³

In May 2020, the Prime Minister announced the easing of most COVID-19 restrictions in the aftermath of the first wave of the pandemic – though not all restrictions were lifted, including some measures which were maintained in relation to residential aged care facilities in light of the higher risk posed by the virus for the elderly.²⁴ The Communicable Diseases Network Australia's national guidelines provided some guidance on how to prevent and manage outbreaks in residential care facilities, but the responsibility was largely left up to the sector and the guidance did not at that point address crucial issues such as staff rotation, working across sites, supplies of personal protective equipment (PPE) or lack of training on infection control measures.²⁵ Many but not all residential care homes continued to be on high alert and to maintain some restrictions on visits.

In June, Victoria's second coronavirus wave took hold, with deaths in residential aged care accumulating in July-August 2020. Half of active infections linked to aged-care facilities were residents and the other half workers, reportedly often casual workers filling multiple shifts across different sites to make ends meet.²⁶ On July 19, additional support was announced for aged care residents and aged care workers across Victoria. These measures included an industry programme to reduce workforce sharing across sites and more infection control

training.²⁷ However, the spread of COVID-19 continued in several aged care facilities, with a workforce left sick and exposed and quality of care impacted by staff self-isolation.²⁸ The Victorian State government eventually decided to take over the management of some aged care facilities, delivering help by providing additional staff members working in hospitals.²⁹

The reasons for the second outbreak in Victoria have been much analysed. They include, most obviously, quarantine failures, including use of inadequately trained workers (such as casually employed security guards) not equipped to deal with infection control.³⁰ Another identified reason was overwhelmed contact tracing.³¹ In relation to aged care, the Royal Commission noted the lack of new guidance, including on mask recommendations, during the crucial stages of the Victorian outbreak.³² The broader health system's reluctance to engage with aged care and failure to address patterns of ongoing non-compliance with standards in the private care sector were also highlighted, given the poor previous track record of some of the care facilities affected.³³ The pandemic brought to light systemic problems arising from policy decisions made in the last two decades, including poor infection prevention and control, insufficient staff ratios and inadequately trained staff, many of whom became infected.³⁴

The role of migrant workers has been discussed in this respect, but mostly in terms of risks to others.³⁵ The independent review of the two most affected care facilities in Victoria found that some inexperienced agency staff who were hired to fill staffing gaps had little experience in aged care and spoke limited English.³⁶ Little data is available on factors such as ethnicity, migration status or socio-economic background in relation to COVID-19, but some submissions to the Victorian Government's contact tracing inquiry point directly to the link between precariousness stemming from temporary status and working while potentially infected:

Many temporary visa holders and for those in precarious working conditions had feared job loss or reprisal should they test positive to COVID-19, with some continuing to work with symptoms.³⁷

What has been less discussed in this regard is the broader context, which is that workplaces were a key vector of transmission during Victoria's second wave and lockdown, including but not limited to private-sector aged care.³⁸ This means cases in aged care and linked to carers should be considered together with other locations generating significant numbers of cases, such as cleaners working in quarantine and cleaners with contracts in aged care, among others (both often performed by international students).³⁹ The persistent number of cases among front-line migrant workers performing critical work strongly suggests risks to them and to others stem from the nature of their work (essential and requiring presence in the workplace), its organisation (limited stability, working across workplaces) and other socio-economic factors (such as housing). An official from the Department of Health and Human Services noted that COVID-19:

disproportionately impacted people who are living in high-density households, who are working in less structured roles or in short-term, part-time or casualised employment and who sometimes face language and cultural barriers in engaging with the other support that is provided by the state.⁴⁰

This picture raises policy questions related to migrants on temporary visas bearing the burden of essential yet insecure work and the role of women and/or migrants in providing outsourced state functions in accordance with market principles and with limited protections against transmission.⁴¹ The critical health aspect of the crisis underlines the importance of workplace protections, including access to sick leave, and the role of factors such as under-employment (people working multiple jobs to make ends meet). These factors can also be linked to inadequate or unsafe housing conditions and other barriers such as language problems and lack of awareness of the health implications related to COVID-19. The recent Victorian measures to offer vulnerable workers pandemic leave and to invest in public housing go some way to recognising the problem but are far from fixing it, without a general recognition of the intersections of precarious work, under-employment and inadequate housing.

4.3 Policy implications

The COVID-19 pandemic is a public health crisis that has disproportionately affected individuals in residential aged care in Australia as well as many other jurisdictions. Due to the nature of the crisis, the care sector has not been impacted by job losses, but by the extra pressures involved in managing the highly contagious virus, given the age profile of those most affected. The fact that personal care workers are required to work in close proximity to residents in aged care, gives rise to health risks to both workers and those they care for.

The example of the care sector demonstrates many temporary visa holders fill essential and indeed critical roles in the Australian economy and society. Not all precarious workers in the aged care sector are migrants, but many affected by the Melbourne outbreak were migrants working several jobs, which contributed to heightened risks of transmission, with tragic consequences for public health. The gendered workforce in the sector also reflects the few skilled pathways that care workers have to enter Australia. These two issues come together in the use of agencies to address staff shortages in the aged care sector in an emergency ad hoc manner, without proper accountability.

These issues raise a number of public policy considerations. One is how to address the precariousness of workers in the care sector, which not only exposes them to health risks to themselves, but may also endanger the broader community, when, for instance, individual workers are not financially and otherwise secure enough to self-isolate if diagnosed with or exposed to the coronavirus, or when workers do not have access to adequate housing and information. Another is the need to ensure the sufficient regulation of the aged care sector, so that residents are not placed in danger.

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PART 5: LABOUR SHORTAGES IN THE AGRICULTURE SECTOR

5.1 Heavy dependence on migrants, especially backpackers

The Australian agriculture sector, while not numerically large as an employer (326,000 workers on average across 2018–19, including full-time, part-time, casual and contract employees), is labour intensive, with variable seasonal needs and mostly located in regional and remote areas.¹ It employs workers across several subindustries, including sheep, beef cattle and grain farming, fruit and tree nut growing, dairy cattle farming and mushroom and vegetable growing, as managers, labourers including livestock farm workers, crop farm workers and packers, and as technicians and trades workers.² A significant proportion of the agricultural sector, including the horticulture and grain sectors, involves the use of casual workers for relatively labour-intensive operations such as planting and harvest.³ For this study, the horticulture industry, involving the production of fruits and vegetables, is particularly important, as this sector heavily relies on casual and contract labour, with a seasonal peak workforce ‘overwhelmingly composed of temporary migrants’.⁴

According to the 2016 census, people from culturally/linguistically diverse backgrounds represented approximately 11 per cent of all agriculture industry employees, but such figures underestimate the contribution of temporary agricultural workers such as ‘backpackers’ or working holiday makers (WHM), who are more transient and whose formal primary purpose is non-economic (cultural exchange).⁵ Thus the numbers of WHMs likely greatly underestimated in data which shows WHMs and New Zealanders have similar numbers as the largest migrant groups among farmers and farm managers and as factory process workers (compared to students and skilled visa holders), with more working holiday makers among farm, forestry and garden workers (Appendix 1). Industry data is not recorded for the first grants of WHM visas either (in 2019-20, a total of 149,249 first visas were issued).⁶ However, the numbers for second visa grants show the dominance of agricultural work (90 per cent).⁷

Though working holiday makers are the main group of temporary visa holders on Australia’s farms, the Seasonal Worker Programme (SWP) also provides some of the workforce in this sector. The SWP provides employers with access to seasonal workers from Pacific island countries and Timor-Leste for up to nine months and brought over 12,000 workers to Australia in 2018-19.⁸ Just as the alleged primary purpose of WHMs is non-economic, the formal rationale for the SWP is aid-related. The program has been growing rapidly, reaching just over 14,000 visas in the 12 months to the end of January 2020.⁹ However, it is reported that many farmers and farmer associations are still suspicious of the SWP because of concerns over heavier regulation and less control than is the case in relation to workers on WHM visas.¹⁰ The SWP is complemented by the small Pacific Labour Scheme (PLS), which commenced in 2018; filling low and semi-skilled vacancies across all sectors, it has to date placed 350 workers.¹¹

The agriculture and food production sectors are affected by widespread claims of systemic underpayment of workers, especially working holiday makers.¹² Both agriculture and food manufacturing and processing are subject to a high level of complaints about low pay and poor employment conditions.¹³ Breaches of employment standards are attributed both to the nature of the work (often low-skilled and seasonal), the way labour is procured (for instance via labour hire arrangements and other mediators) and the nature of the workforce (often visa-holders looking to meet visa requirements).¹⁴ Unionisation in the sector is very weak.¹⁵ Of all work in the sector, horticultural work in particular has been plagued by claims of mistreatment and underpayment, given its seasonal peak demands, significant reliance on migrant workers and use of illegal labour-hire arrangements, as detailed in the FWO’s 2018 Harvest Trail Inquiry Report.¹⁶

There are therefore a number of factors that make migrants on temporary visas workers more vulnerable than local workers. As one commentator puts it, precariousness is:

partly due to personal characteristics such as inexperience, language barriers and limited knowledge of labour regulations, but also important are features derived from migration processes, including obligations to migration intermediaries and attributes linked to visa conditions, such as exclusion from subsidized healthcare and social security benefits, limited rights of residence and restrictions on work and mobility.¹⁷

For those holding working holiday maker visas, the conditions attached to the program include the possibility of a second (and now also third) year of a working holiday visa if migrants undertake three months of agricultural work.¹⁸ According to the FWO, the structure of the program creates an environment where visa holders are expected to comply with unlawful requirements and wage deductions and may be exploited in isolated and remote workplaces.¹⁹ There are also differences between groups of migrants depending on gender, ethnicity and language competency.²⁰ Some reports suggest, for instance, that WHMs from Asian countries are more vulnerable than other groups.²¹

5.2 COVID-19: pandemic effects and responses

Agriculture as an industry is considered to provide a work environment with low people density (especially outdoors), which imposes much less COVID-19 transmission risk than other industries in urban environments (such as hospitality). However, some agricultural and food production-related work activities remain comparable with urban sectors. A case in point is meat and food processing – meat processing establishments, again often employing temporary visa holders as slaughterers, slicers and boners, experienced COVID-19 outbreaks that were among the notable clusters of disease transmission in Melbourne in May 2020.²²

However, the main way that the pandemic impacted the agriculture sector was through the interruption of supply chains providing seasonal workers, with numbers plummeting after the arrival of new international entrants was paused in March. The vast majority of backpackers on working holiday makers visas left Australia after the start of the coronavirus pandemic, so that in November 2020 there were fewer than 54,000 working holiday makers in Australia (compared to 141,000 in December 2019).²³ Factors apart from border restrictions have also affected the heavily export-oriented sector, including lower purchasing power due to the global economic slowdown and a worsening relationship between China and Australia.²⁴ With significant reduction in the availability of potential pickers affecting horticulture in particular, it was reported that the coronavirus restrictions could lead to 26,000-person shortfall for summer 2020-21.²⁵

The Federal Government's main focus in relation to the agriculture industry was on guaranteeing the continuing operation of the sector by ensuring a supply of workers. The main avenue initially was to extend the stay of workers already present in the Australian territory. Restrictions on working holiday maker visa holders working in agriculture or food processing were relaxed in relation to critical COVID-19 work, allowing for a further visa to

keep working in the sector.²⁶ The Federal Government also announced temporary changes to visa arrangements to allow Pacific workers already present (under the Seasonal Worker Programme and the Pacific Labour Scheme) to continue working in the agriculture sector until the pandemic crisis has passed.²⁷

In an effort to maximise the availability of workers already present in the territory, the National Cabinet also agreed on rules to ensure the continuing mobility of agricultural workers within Australia.²⁸ These provide for various restrictions to suppress the spread of the virus, complemented by state rules. For instance, in the NSW agriculture sector restrictions include social distancing and a 14-day self-isolation period before entering rural areas from a metropolitan area (or a negative COVID-19 test).²⁹ Prospective workers are also not to travel to regional areas unless they have already secured employment and warned that non-compliance with COVID-19 restrictions could result in visa cancellation.³⁰

In the second half of 2020, recruitment of workers from the Pacific was also resumed. In early August 2020, the Federal Government announced a targeted trial in Northern Territory aimed at addressing the labour shortages affecting NT mango farmers, and authorised the arrival of up to 170 workers from Vanuatu.³¹ This was followed by an agreement between the Federal Government and the States and Territories to bring in employees from the Pacific countries via labour hire companies, subject to arrangements to guarantee health and quarantine requirements.³² In December 2020 it was reported that Queensland, the Northern Territory, NSW and Tasmania had already brought in about 1,000 employees on charter flights to worked on farms.³³

Because of the health risks posed by the pandemic, stringent conditions are in place across jurisdictions to ensure workers moving across borders comply with virus-related restrictions – including a 14-day mandatory quarantine and contingency plans in the event of a worker testing positive to COVID-19. While these are sensible from a pandemic control perspective, they also pose additional challenges for the safety and wellbeing of workers. Even in pre-pandemic times, health risks facing seasonal workers, both physical (for instance injuries) and mental (isolation and depression) have been under-recognised.³⁴ Such concerns take a heightened role in the COVID-19 context where focus is on managing the COVID-19 transmission risk, with less attention to other risks such as social isolation.

Even though external and internal border restrictions prompted by the COVID-19 pandemic have led to ‘worker shortages’ across the industry, the sudden push to secure workers has not led to a reduction of reports of poor employment practices, which are still occurring in Australian horticulture, impacting both temporary visa holders and local workers.³⁵ Indeed, there have been media reports even about the Seasonal Worker Program, often considered less risky for workers than working in agriculture while on working holiday maker visas, highlighting the potent link between temporariness and vulnerability.³⁶ These reports

indicate that recruiting new and more inexperienced workers into the sector may exacerbate some of the potential for exploitation that exists under current arrangements.

However, concerns over workers' welfare and vulnerability do seem to be prominent in the search for a new workforce in the sector. In an attempt to secure further pools of workers, in January 2021 it was announced that due to ongoing worker shortages, student visa holders working in the agriculture sector would be allowed to work for more than 40 hours a fortnight.³⁷ This temporary relaxation already applies to for instance aged care workers.³⁸ At the same time, it was also announced that the Federal Government would make it easier for temporary visa holders to access the COVID-19 Pandemic visa pathway, if they choose to work in the agriculture sector.³⁹ The Federal Government has simultaneously pushed for more local young unemployed workers to join the agricultural workforce.⁴⁰

5.1 Policy implications

The agricultural sector, especially horticulture, has been heavily dependent on temporary workers, and particularly migrants on working holiday maker visas, with the local workforce depleted over years. During the pandemic, the sector has been much impacted by the border closures and the loss of working holiday makers, who constitute much of the peak workforce in horticulture. The more limited Pacific programs are now being ramped up to meet the shortfalls, together with attempts to encourage other groups, including international students and local unemployed workers, to take up work in the sector.

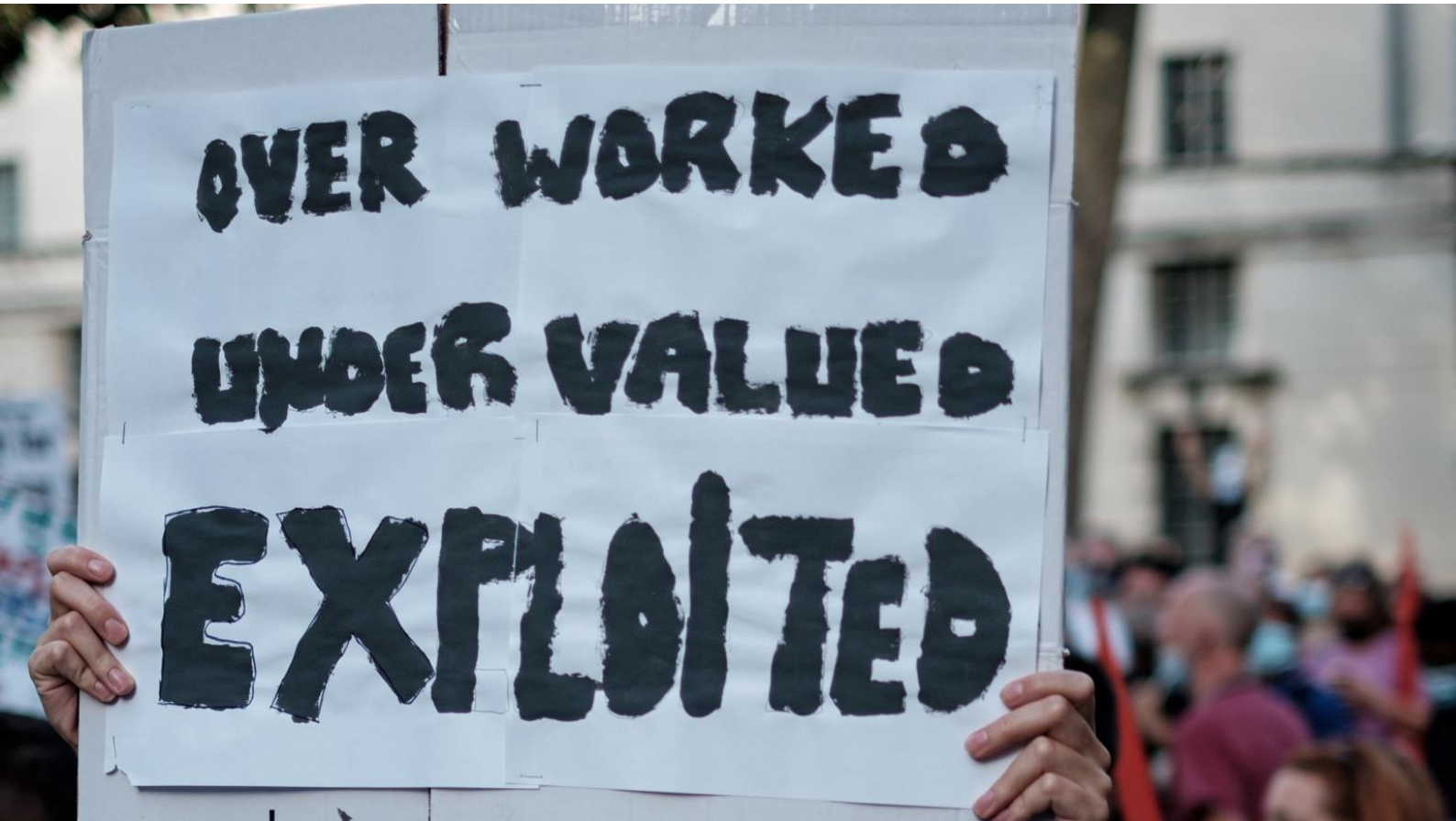
At best, workers on temporary visas working in this sector remain as vulnerable as before, and are possibly further exposed due to visa incentives that encourage them to put up with poor labour practices and isolation. Attempts to bring in additional workers, with heavily limited movement and restrictions to ensure pandemic safety, come with risks related to physical and mental health issues and hyper-exploitation. These concerns are heightened in relation to inexperienced groups of workers, such as some international students, who may have little experience of agricultural work but are pushed to accept such work because they have lost other forms of employment, have no access to social security and are lured to agricultural work with promises of visa extensions.

In public policy terms, the absence of a large cohort of migrant workers on holiday maker visas is also an opportunity to start to rethink the reliance of the sector on a notoriously exploited migrant workforce. The crisis is a critical opportunity to prioritise the resilience of the sector and consider alternatives to remedy some of the structural problems that contribute to current poor practices, such as underpayment. One avenue would be to develop the Pacific programs, while maintaining and improving mechanisms to ensure labour standards, but the crisis may also put downward pressures to deregulate these schemes or to introduce the agricultural visa desired by the agriculture sector.

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PART 6: KEY FINDINGS AND RECOMMENDATIONS

6.1 Abandoned, trapped, exploited?

This report has brought together a variety of sources relating to the impacts of the COVID-19 pandemic. Many international institutions warned early on that migrant workers were likely to be among the most vulnerable groups during the pandemic, as many of them are typically concentrated in sectors of the economy with high levels of temporary, casual or informal employment that is both poorly paid and poorly protected. As the International Labour Organization pointed out:

Migrant workers are often first to be laid-off but last to gain access to testing or treatment in line with nationals. They are often excluded from national COVID-19 policy responses, such as wage subsidies, unemployment benefits or social security and social protection measures.¹

This statement also encapsulates the situation of many migrants on temporary visas in Australia. Though the Federal Government has stepped in to address some issues, such as facilitating regular stay for groups of temporary visa holders who remain in Australia, less attention has been given to the fact that many workers on temporary visas have lost

livelihoods, while others have kept working in essential sectors but in precarious circumstances. As migrants on temporary visas were left ineligible for most Federal Government support, those who have lost jobs or hours have been more vulnerable to risks associated with economic insecurity. Many have turned to even more precarious means to access sources of income, such as platform work (the use of online platforms to provide services).²

The situation of migrant workers in Australia should also be discussed with attention to specific risk factors they face depending on, for instance, their employment sector and visa status. This report has examined three sectors, each with large numbers of workers holding temporary visas, including international students and working holiday makers. In hospitality, the economic effects have been severe, as hospitality accounts for a large proportion of all casual workers across Australia. Many international students were impacted because of their concentration in such jobs. For migrants involved in the care sector, health risks intersect with existing socio-economic precariousness, as demonstrated by the need to work multiple jobs to make ends meet. In agriculture, the fact that working holiday makers have departed Australia has led to a labour shortage that does not however seem to alleviate the risks to workers.

What these three sectors have in common is that they all involve migrant workers engaged in semi- and low-skilled occupations where temporariness (both in terms of job security and visa status) dominates and where poor pay and substandard working conditions were not uncommon even before the crisis. While many working in hospitality have lost their jobs during the pandemic, others, such as those working in fast food and delivery, aged care and food security, have been framed as ‘essential workers’ in the time of COVID-19. Such essential workers, not covered by stay-home directives and often employed by labour hire firms or other intermediaries, also face elevated health risks, and the Victorian outbreak shows the role of lacking sick leave, partial employment and being moments away from economic hardship in driving infection.

6.2 Migrants, temporariness and human rights

The current health crisis has both exacerbated the existing vulnerabilities of many migrants, while generating new forms of vulnerability for some.³ In light of the fluid environment associated with COVID-19 and States’ broad margin of discretion in adapting their response to the health risks posed by the pandemic, conclusions about human rights aspects are still tentative. However, it should be clear that measures adopted in response to the pandemic must also be consistent with states’ obligations under international human rights treaties.⁴ Australia has ratified several international human rights treaties, and accepted binding legal obligations to respect, protect and fulfil a core set of basic human rights for everyone in its territory, including non-discrimination and economic and social rights.

Many of the existing vulnerabilities of temporary visa holders are associated with their limited de facto rights in the workplace. This is not new but deeply rooted in the structures of the economy. Migrant workers' employment precariousness is linked to the 'deficit of rights and entitlements' that is imposed via temporary migration status.⁵ Temporary migratory status imposes a deficit of rights and entitlements compared to those enjoyed by citizens or permanent residents, despite formal access to workplace rights, such as equal pay. These constraints interact with others, such as the role of labour hire agencies, creating complex environments that make it harder to ensure compliance with the law.⁶ Even at the best of times, the low level of regulation of industries where migrant workers are concentrated, combined with their temporary status, has meant that existing labour standards enforcement (such as that provided by the Fair Work Ombudsman) simply is not able to provide effective remedies for wage theft and poor labour conditions.⁷

Though problems such as underpayment and unequal treatment are long-standing issues in relation to migrant workers employment rights, they have been exacerbated by the COVID-19 crisis, as many migrants who have lost livelihoods have had few alternatives but to accept work known to be exploitative, or to work in exchange for food or housing or even perform unpaid work.⁸ Indeed, there is already evidence that the COVID-19 crisis may have intensified some employers' exploitative practices.⁹ Lack of access to workplace rights and the attendant economic insecurity obviously impact on other rights, including the right to an adequate standard of living, via inability to pay for essentials, such as bills. The economic ramifications of the crisis impact on the right to health, when medications and medical treatment are out of reach due to cost. And they also impact the right to housing, in the form of having to reside in precarious conditions or being subject to unreasonable rent payments or forced evictions.

Increased experiences of discrimination are also a serious concern. The pandemic has seen a rise in racism and stigmatisation, for instance in the form of verbal abuse, particularly affecting those from East Asian and South East Asian countries.¹⁰ The Melbourne lockdown has similarly been cited as portraying residents of public housing towers in a negative light.¹¹ The pandemic has also highlighted the strong gender aspect of job insecurity and precariousness, as women are more likely to be working less secure, casual and short-hours jobs, for instance in hospitality, and in occupations that are at the front line of dealing with the pandemic, such as aged care.¹² It is important to note that States are under an obligation to take action to address discrimination *and* pay extra attention to already vulnerable groups. In addition to refraining from measures that foster discrimination, it is important to ensure that public health responses to COVID-19 are taking proactive steps to combat discrimination, racism and address gender-based vulnerabilities at work.

The situation of many migrant workers has been made much worse by their blanket exclusion from social security, as lack of access to social support during a time of high unemployment

and under-employment creates a potent recipe for enhanced vulnerability. Migrants on temporary visas may feel compelled to take whatever work is available or accept under-payment when the alternative is destitution or homelessness. While State/Territory Governments, local councils, community organisations and volunteers have stepped in to provide some relief, this response has been inevitably patchy and ad hoc and cannot make up for temporary residents' ineligibility for federal support. The exclusion from financial support takes no account of how long migrants have lived and worked in Australia and may put some of them at serious risk of harm. In the absence of objective evidence to show that this exclusion was reasonable and proportionate, there is a need to re-examine the Federal Government's view that it 'had to draw the line somewhere'.¹³

Each State has a duty to protect its own citizens, but Australia also owes human rights obligations to those on temporary visas. Meeting these obligations requires accepting responsibility for taking progressive steps to respect, protect and fulfil rights. It requires coordinated measures at Federal, State/Territory and local levels. The Federal Government needs to turn its attention to the essential minimum levels of economic and social rights it is committed to under international human rights law and take targeted steps to ensure temporary residents, especially those left most vulnerable, are able to access minimum levels of support. The welfare of temporary visa holders, who have been made more vulnerable by the crisis, must be addressed in line with a human rights framework that recognises Australia's responsibilities to provide migrants with basic support and address the risks of labour exploitation. Any future recovery efforts must also be designed so as to not exacerbate existing or create new vulnerabilities, barriers and inequalities for migrants.

6.3 Specific health implications

The pandemic has also raised the prospect of new risks to the health of individuals, including essential workers. Migrants employed as front-line health and care workers (often women) are in a particularly high-risk group for COVID-19 and migrants on temporary visas working in other sectors that are considered essential also face elevated risks. The Melbourne outbreak has shown that neglecting the human rights of migrants is counterproductive and arguably dangerous in the midst the health crisis, given that it increases the risk of contagion within the whole population. This aspect thus requires attention to the right to health from the perspective of both individuals and the community as a whole. At its most basic, it entails ensuring essential workers have access to appropriate protective equipment, means of infection prevention and control, as well as accurate and timely information about the disease and how its transmission can be minimised.

Recognising the interdependency of rights, and the fact that the vulnerability of migrants working essential jobs also presents a dangerous health risk to the community, it is also important to review the multiple links between temporary visa holders' insecure status and

limited rights at work as potential drivers of infection/health risks. If migrant workers work several jobs across care homes and other sites where infection risks are high, or fail to divulge details of informal work or extra hours because it may be in breach of their visa conditions, or do not disclose sharing housing or having attended gatherings because of fear of punishment, an environment is created where contagion travels more easily. It is therefore necessary to scrutinise the care sector as very reliant on both insecure work, with inadequate protections, and on the work performed by temporary visa holders. There are also broader questions to be asked about the ability of market-based models to ensure the rights of workers and residents in aged care.

The Victorian Government has started to take some steps in recognition of the complex intersecting health risks revealed by the pandemic, which require attention not just to the right to health but to decent working conditions, pay and housing. Premier Daniel Andrews in July 2020 linked the state's surge in coronavirus cases to insecure work and workers' inability to self-isolate for economic reasons.¹⁴ The Victorian Government's \$1,500 payments to workers unable to work during isolation was supplemented in July by a modest support payment (\$300, later increased to \$450) for casual workers who need to take time off work to isolate after being tested for COVID-19. While union demands for two weeks of universal paid pandemic leave to all workers regardless of employment status have yet been unheeded, the Victorian Government announced in November 2020 its plans for a two-year trial project that would provide casual and insecure workers in 'priority' industries (including hospitality and aged care) paid sick leave and carer's pay.¹⁵

Other health policy issues impacting specifically on temporary visa holders have been raised more indirectly during the pandemic, including in the context of overcrowded housing. A problem specific to temporary visa holders is their inability to pay for health insurance (a visa requirement) during the pandemic, resulting in lack of access to treatment for non-COVID related conditions, including but not limited to mental health conditions. Access to sufficient medical treatment during the COVID-19 pandemic is an important aspect of the right to health, not just for migrants, but for the latter the inability to afford private cover has become an additional challenge. The health insurance issue may also bleed into broader pandemic prevention efforts, given reports that some people are worried that if they present for COVID-19 testing or treatment they will be referred to immigration authorities because they can no longer afford health insurance or may otherwise be in breach of their visa conditions.¹⁶

In recognition of the interconnectedness of various health-related concerns, as well as their connection to migration status and socio-economic factors that create or exacerbate health risks, some other OECD countries have reacted to the COVID-19 crisis by offering free access to healthcare to all categories of migrants. Portugal, for instance, temporarily regularised even irregular migrants to ensure they had free access to healthcare during the pandemic. In Australia, several states, including Victoria, NSW and WA have waived out-of-pocket expenses

for Medicare-ineligible patients for COVID-19 related diagnosis and treatment.¹⁷ However, these measures only apply to COVID-19, and are therefore more limited in addressing the links between health and socio-economic factors.

6.4 Future outlook: policy choices, resilience and rights

The closure of international (and in some cases, internal) borders, together with physical distancing restrictions and other measures to slow the spread of the virus, have given a significant economic shock to Australia. Many of these measures may remain in place until vaccines are widely available. It is already clear there will be significant long-term impacts for the Australian population and the economy from the massive drop in net overseas migration.¹⁸ This means that the situation of temporary migration ought to be considered also from a medium/long-term perspective. Australia's migration system has been transformed in the last decades to prioritise skill and to encourage the growth of temporary migration.¹⁹ The crisis provides an opportunity to take stock of the downsides of this transformation, and consider potential long-term adjustments that are needed to build more resilience into sectors with heavy reliance on precarious temporary labour migrants and heavily commodified international students.

Changes made to Australia's migration regime in the last 20 years have created a system that is effectively operating a 'guest worker' regime, maintaining a large population of temporary visa holders who have work rights but only limited agency and who are concentrated in low-skilled sectors.²⁰ The COVID-19 crisis has shown that many of the assumptions underpinning the growth of temporary migration are open to contestation. Most obviously, the pandemic has revealed that much of temporary migration, even when for formally or primarily for other reasons (such as students or working holiday makers) has an economic component of significant magnitude, with stark consequences for migrants relying on their ability to work in Australia. Similarly, it has been erroneous to expect that 'self-sufficient' groups such as international students are always able work to support themselves and need no financial support, as the jobs destruction in the hospitality sector has demonstrated. Relatedly, the pandemic has also given a lie to the temporariness of 'temporary' migration and challenged the expectation that migrants will be able to simply go home when requested.

As the desire to maximise the economic gains from migration has led to considerable increase in 'temporary' migrants whose reside in Australia for long periods of time but whose right of residence is limited, well known concerns about precariousness have been left unaddressed, despite awareness that these migrants are in many cases in fact filling permanent labour market needs.²¹ As detailed above, migrant workers are particularly at risk of 'wage theft' and poor employment practices when they are concentrated in the lower rung of sectors such as hospitality and horticulture, where labour cost minimisation is a dominant business strategy and leads non-compliance with minimum standards.²² The existing and well-known problems

in these sectors have been brought to even sharper relief by the crisis, and cannot be brushed aside simply by denying responsibility.²³ Indeed, the crisis in the care sector has revealed the intertwining of the economy, society and public health, and underlined the urgency of tackling the sector's chronic undervaluing of care work and its reliance on a low-paid rotating workforce.

In the horticulture sector, the pandemic will fuel ongoing debates over the tension between alleged labour shortages (often highlighted by employer groups) on the one hand and the well-known reliance on the under-payment to migrant workers on the other.²⁴ The pandemic has starkly exposed the sector's deep dependence on precariously placed migrants, which should prompt debate about protecting workers and building resilience in the critical food production sector.²⁵ While the immediate response has been to implement emergency visa changes to incentivise other migrants on temporary visas to work on farms, a long-term solution remains unclear. Is it to build the Pacific seasonal worker program instead, as advocated by policy experts, with an emphasis on labour protections?²⁶ Is it, as a recent unanimous report from a Parliamentary Committee advocates, a further expansion of the WHM program?²⁷ Or is it, as another parliamentary report has urged, to establish a dedicated 'ag visa' for migrants to be employed in the agriculture sector?²⁸

Some of the solutions to the horticultural worker shortage that have been advocated so far do not address the failures to regulate the horticulture sector and ensure effective protection of migrant workers' rights. Instead, they ignore the widespread knowledge of the factors that facilitate worker exploitation, including the role of visa rules in structuring dependency. Some of the suggested means to address labour shortages continue to echo pre-pandemic endorsements of the deregulated guest-worker model, based on the 'definition of migrant workers as, essentially, factors of production'.²⁹ However, keeping migrant workers de facto outside labour standards undermines the economic thesis seeking to justify temporary labour migration as good for everyone (destination countries, migrants themselves and their countries of origin). It is time to recognise that Australia's migrants are, first and foremost, human beings with rights, and that any policy proposals that seek to support genuine recovery and build a sustainable economy need to be built on an awareness of this fact.

Notes

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APPENDICES

APPENDIX 1: The number of workers by visa status employed in different occupations: ABS census data (2016).¹

Occupation category	Temporary Work (Skilled) (subclass 457)	Student ²	Special Category (New Zealand Citizen) (subclass 444)	Working Holiday Maker (subclass 417 and 462)	Other temporary visa ³
<i>Managers</i>	20,925	5,160	42,129	3,099	7,438
Farmers and Farm Managers	504	277	1,897	1,507	401
Hospitality, Retail and Service Managers	8,160	3,404	14,790	916	3,648
<i>Professionals</i>	40,050	1,2594	55,831	4,362	15,512
Health Professionals	7,428	1,224	12,973	571	2,257
<i>Technicians and Trades Workers</i>	24,136	19,830	54,502	6,617	12,935
Food Trades Workers	10,246	13,089	6,490	2,891	4272
Skilled Animal and Horticultural Workers	640	416	4,042	384	389
Other Technicians and Trades Workers	1,810	1,052	6,011	808	948
<i>Community and Personal Service Workers</i>	6,345	41,428	36,574	11,805	11,849
Health and Welfare Support Workers	1,056	2,378	3,475	381	762
Carers and Aides	2,222	11,846	15,498	1,528	4,583
Hospitality Workers	1,899	22,429	8,226	8,558	4,242
Sports and Personal Service Workers	1,068	3,386	5,032	1,337	1,498
<i>Labourers</i>	7,004	54,038	54,320	22,376	16,133
Cleaners and Laundry Workers	2,147	26,351	11,058	3,293	6,039
Factory Process Workers	2,175	4,496	12,713	7,124	3,518
Farm, Forestry and Garden Workers	567	1,129	3,388	6,439	1,236
Food Preparation Assistants	1,013	16,081	4,445	2,900	2,487
Other Labourers	458	3,700	7,948	677	1,340

APPENDIX 2: Number of visa holders by visa type and country of citizenship (2019)

Country of origin (citizenship)	Number of student visa holders (all subclasses) in Australia 31/12/2019 ⁴	Country of origin (citizenship)	Working Holiday (subclass 417) visa holders in Australia 31/12/19 ⁵	Country of origin (citizenship)	Work and Holiday (subclass 462) visa holders in Australia 31/12/19 ⁶	Top 15 citizenship countries for primary visa holders	Temporary Skilled Residents (primary visa holders) in Australia 31/12/19 ⁷
Total	480,545	Total	119,817	Total	21,325	Total	
Primary visa holders⁸	410,206						64,590
India	96,938	UK	23,505	China, PRC	5,213	India	13,180
China, PRC (excl. SARs)	80,175	France	15,555	USA	4,178	UK	11,050
Nepal	57,663	South Korea	14,141	Argentina	2,277	Philippines	5,610
Brazil	19,642	Taiwan	13, 697	Chile	2,110	China	3, 410
Vietnam	16,672	Germany	13, 429	Spain	1,794	Ireland	3, 060
Colombia	15,907	Japan	8, 830	Indonesia	1,487	USA	2,260
Philippines	15,264	Italy	7, 832	Israel	724	South Korea	1,780
Korea, South	14,394	Ireland	7, 649	Thailand	603	Italy	1,780
Malaysia	13, 548	Canada	4, 459	Poland	430	France	1,720
Thailand	12, 712	Netherlands	3, 026	Vietnam	363	South Africa	1,660
Sri Lanka	12,487	Sweden	1, 711	Czechia	343	Brazil	1,280
Pakistan	12,167	Belgium	1, 527	Peru	299	Japan	1,200
Indonesia	11,787	Hong Kong	1, 436	Portugal	269	Canada	1,140
Taiwan	8,295	Estonia	1,148	Singapore	245	Vietnam	1,070
Bangladesh	6,282	Denmark	743	Uruguay	228	Nepal	1,030
Other	86,610	Finland	691	Malaysia	159	Other	13,350
		Norway	259	Slovakia	148		

		Malta	102	Hungary	138		
		Cyprus	32	Austria	136		
		Not Specified	44	Turkey	97		
				Slovenia	48		
				Luxembourg	16		
				Ecuador	10		
				Greece	7		
				Bangladesh	<5		
				Not specified	<5		

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² Student visa holders refers to overseas students who undertake full-time study in registered courses. The following subclasses are included: Student (Temporary) (500); Independent ELICOS Sector (570); Schools Sector (571); Vocational Education and Training Sector (572); Higher Education Sector (573); Postgraduate Research Sector (574); Non-Award Foundation/Other Sector (575); and AUSAID/Defence Sponsored Sector (576).

³ Other Temporary visa holders include e.g. holders of Bridging visas, and Temporary Graduate, Skilled Graduate, New Zealand Citizen (Family Relationship) and Investor retirement visas.

⁴ Department of Home Affairs, 'Student visa and Temporary Graduate visa program report', <https://www.homeaffairs.gov.au/research-and-stats/files/student-temporary-grad-program-report-december-2019.pdf>. The figure at 31 December 2019 (480,543) reflects an increase of 10.8 per cent when compared with the number of student visa holders in Australia the year earlier, and is the highest recorded yearly number of student visa holders in Australia on 31 December. On 31 December 2019, nearly half (48.9 per cent) of student visa holders were from India, China or Nepal. In addition, there were 89,324 Temporary Graduate visa holders in Australia.

⁵ Department of Home Affairs, 'Working Holiday Maker visa program report 31 December 2019', 46, <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>. There 19 are Working Holiday (subclass 417) visa arrangements, Department of Home Affairs, 'Working Holiday Maker visa program report 31 December 2019', <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>.

⁶ Department of Home Affairs, 'Working Holiday Maker visa program report 31 December 2019', 47, <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>. There are 25 Work and Holiday (subclass 462) visa arrangements. The key difference with the subclass 417 arrangements is that subclass 462 visas generally have caps on the number of visas granted annually and additional eligibility requirements.

⁷ Department of Home Affairs, 'Temporary resident (skilled) report at 31 December 2019', <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-quarterly-report-31122019.pdf>.

⁸ Student and skilled visas allow primary applicants to be joined by secondary visa holders (partners and dependent children). Department of Home Affairs, 'Student visa and Temporary Graduate visa program report', 63, <https://www.homeaffairs.gov.au/research-and-stats/files/student-temporary-grad-program-report-december-2019.pdf>; Department of Home Affairs, 'Temporary resident (skilled) report at 31 December 2019', 17, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-quarterly-report-31122019.pdf>.



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