

# **Report of Exploratory Case Study Research into Precarious Employment**

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## **WEB Research**

Centre for Research on Work, Education and Research Limited  
Level 13, 114 The Terrace, PO Box 2855, Wellington, New Zealand  
Phone: +64-04-499 8140, Fax: +64-04-499 7301,  
Email: ken.wilson@webresearch.co.nz



In association with the

## **Labour Market Policy Group**

56 The Terrace, PO Box 3705, Wellington, NEW ZEALAND  
Tel: +64-4-915-4409, Fax: +64-4-915-4040  
Email: mailbox@LMPG.DOL.GOV.NZ



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## **Disclaimer**

The views expressed in this report are the views of the research team. They do not necessarily reflect the views of the Department of Labour. The study was undertaken and the report presented in order to increase the understanding of the Department of Labour and to inform and stimulate wider debate and research.

## Executive Summary

In order to increase the Department of Labour's (DoL) knowledge and understanding of non-standard employment arrangements and the impact that non-standard employment arrangements may have on both workers and employers, exploratory case studies have been undertaken in four industries; call centre, cleaning, labour hire and fish processing. It was also expected that precarious forms of employment may occur for some employees in these industries. The case studies provided an opportunity to gather information on precarious employment and to test a 'working definition' of precariousness developed by DoL in an earlier literature review.

In this study, we found many employees who were prepared to enter casual or temporary employment under a variety of terms to meet their needs. More employees in this study reported feeling overworked or underpaid or felt dissatisfied with their employment than reported experiencing their work as precarious.

Employees reported experiencing their form of work as precarious when they were:

- not getting a fair day's pay for the fair day's work they undertook
- not treated fairly at work
- not able to earn enough to live as they aspired even if those aspirations were modest
- afraid that their family could not survive, or was suffering, because of the state they were in considering their work and home lives.

The impact most frequently reported to us by people in precarious work was their lack of participation in the lives of their children.

The indicators proposed in the literature review assisted in identifying forms of work likely to be precarious. On the basis of the research we suggest that:

- there are further indicators of precariousness that could be integrated with those proposed in the literature review.
- it is the interaction between legal/ economic factors and cultural/social factors that determines people experience of employment and subsequently is what contributes to an employee reporting being in precarious employment.
- the impact of being in precarious work emerges in the degree and quality of an individual's participation in their family and wider social life.
- the New Zealand labour market is in transition from a former relatively ordered state to a more dynamic and differentiated state. The new state appears to be less readily or reliably described by customary understandings and definitions about historical forms of work.

The study also suggested that:

- permanent employment may be experienced as precarious
- casual employment is not necessarily experienced as precarious
- there is an increasing variety of non-standard forms of work but those forms are not necessarily precarious
- precarious employment is not the same as receiving low pay
- being in precarious employment is not the same as possessing low skills

## **1.0 Exploring non-standard forms of work**

### ***1.1 What the Department wished to understand***

This research project was undertaken:

- to increase the Department's knowledge and understanding of non-standard employment arrangements including casual, temporary, contract work and standard work and the factors that lead to some forms of those non-standard employment arrangements to be classed as precarious for an employee;
- to understand issues around the quality of work and work-life balance, and the impact that non-standard employment arrangements may have on both workers and employers, be that impact positive or negative. This included examining current and future choices and constraints facing New Zealand employers and employees in industries where non-standard work arrangements were identified as being prevalent;
- to gather information on precarious forms of employment and consider whether the 'working' definition of precariousness, as outlined in the literature review (Tucker<sup>1</sup>) is useful and appropriate in the New Zealand context.

This was an exploratory study intended to better understand the practices, behaviours and values of employees in non-standard forms of work at the level of their daily work and life. What forms of non-standard work might constitute precarious employment was expected to emerge from the cases studied. The study had no a priori definition of precarious work but selected industries and cases where it might be expected to be present given the definition adopted by the international literature.

The study was intended to identify areas of policy interest for the Department and areas for possible future research.

### ***1.2 What the international literature suggested we would find***

On the basis of her literature review Tucker set out the following broad propositions:

- (a) That precarious work is likely to be work:
- with low wages;
  - where there is little or no access to 'standard' non-wage employment benefits such as sick leave, domestic leave, bereavement leave or parental leave<sup>2</sup>;
  - with low job security. The employment can be terminated with little or no prior notice by the employer;
  - where the employee has little or no control over their workplace conditions or hours of work. Their hours of work are uncertain or can be changed at will by the employer and their earnings are uncertain or irregular;

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<sup>1</sup> Tucker, D. (2002)

<sup>2</sup> This leave is accrual based and therefore a situation may arise where a casual, temporary or fixed-term worker, despite working for the same employer for a year or more, may not meet the qualifying criteria for these benefits if their contract is repeatedly renewed after short intervals.

- where there is limited opportunity for training and skill development; and
- where the task performed or the health and safety practices at the workplace make the job unhealthy or dangerous.

The characteristics of precariousness are not absolute – they are best thought of as a continuum and it is the combination of a number of elements that causes precariousness, rather than any one aspect.

In assessing precariousness, the focus is not solely on the job itself or the nature of the contract but takes into consideration the characteristics of the worker and worker preferences.

There can be significant personal costs associated with precarious work forms with respect to work-life balance issues, quality of working life, worker health and general well being, and personal and family relationships.

(b) That precarious jobs

- are more likely to be found in agriculture and the unskilled, predominantly manual jobs (conventionally held by men);
- in the less skilled service jobs (conventionally held by women);
- in workplaces where the demand is seasonal; and
- that smaller firms are more likely to hire workers on casual or temporary contracts than are medium and large-sized firms. The Department's study of the impact of the Employment Relations Act showed that where smaller firms have any formal contractual arrangements at all they are more likely than larger firms to have informal contracts, rather than written agreements.

(c) That workers in precarious employment or at risk of precariousness are more likely to be:

- women<sup>3</sup>
- youth
- from an ethnic minority
- recent migrants
- less skilled and educated
- less well informed of their employment rights
- less capable of bargaining effectively
- less likely to be unionised
- at greater risk of injury or exposure to health hazards
- less likely to receive training (be it external or employer-supported or in-house training), but may receive informal on-the-job training

(d) That some of the determinants of non-standard employment are likely to be:

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<sup>3</sup> However, the OECD (2002) found that, whilst women are over-represented among temporary workers, gender differences are only large in a few countries. The difference is minimised, given that high concentrations of temporary jobs are in manual jobs that are conventionally held by men.



- Employer motivation for using non-standard work arrangements range from minimising costs to accommodating fluctuations in workload (allowing labour deployment to be tailored to times of peak demand and times of fluctuating demand). To a lesser extent, trialling new workers may also be a motivating factor. Firms' staffing needs – primarily short term – are the main source of demand for casual and temporary workers.
- While supply-side characteristics are not unimportant, demand-side factors appear to provide more likely explanations for the overall level of casual and temporary employment. There are significant associations between the temporary and casual employment share of workplaces and the nature of the product market, skill requirements, technology (i.e. production method employed), and union presence.
- Small firms have more limited choices than large firms – achieving growth by increasing permanent staff is often not financially viable for them; compliance issues around dismissal procedures are seen as more onerous for small firms than for larger firms, which contributes to the desire to employ new staff on a trial basis on temporary contracts.
- Demand side factors are more likely to predominate for precarious jobs, although students, or those in semi-retirement, may be more likely to opt for casual jobs with irregular hours.

### **1.3 Possible indicators to be used to assess degrees of precariousness**

On the basis of the literature review and the propositions above Tucker proposed the following as a set of indicators of the precariousness of some forms of non-standard work.

- |        |  |
|--------|--|
| (i)    | The job can be terminated with little or no prior notice by the employer.  |
| (ii)   | Hours of work are uncertain or can be changed at will by the employer.   |
| (iii)  | Earnings are uncertain or irregular.   |
| (iv)   | Functions of the job can be changed at will by the employer.   |
| (v)    | There is no explicit or implicit contract for ongoing employment.  |
| (vi)   | There is, in practice, no protection against discrimination, sexual harassment, unacceptable working practices.                                  |
| (vii)  | The job is low income – at or below the minimum wage.  |
| (viii) | There is little or no access to ‘standard’ non-wage employment benefits such as sick leave, domestic leave, bereavement leave or parental leave. |
| (ix)   | There is limited or no opportunity to gain and retain skills through access to education and training.   |
| (x)    | The task performed or the health and safety practices at the workplace makes the job unhealthy or dangerous.                                     |

Tucker notes that in assessing precariousness, it is important that the focus is not solely on the job itself or the nature of the employment contract but that the assessment takes into consideration the characteristics of the worker and their preferences. For example, a casual night job with low pay, and irregular hours and earnings may be desirable for a student wishing to combine fulltime study with paid work; however, for a single parent the same arrangement could be considerably more problematic. It is the interaction of the nature of the work and worker preferences that is likely to determine what constitutes precarious employment.

### **1.4 Case study design – where we went to gather information**

As noted above, the international research suggested that precarious work, as defined in those studies, was more likely to be found in:

- agriculture and the unskilled, predominantly manual jobs (conventionally held by men);
- in the less skilled service jobs (conventionally held by women);
- in the workplaces where the demand is seasonal; and
- that smaller firms are more likely to hire workers on casual or temporary contracts than are medium and large-sized firms. The Department’s study of the impact of the Employment Relations Act showed that where smaller firms have any formal contractual arrangements at all they are more likely than larger firms to have informal contracts, rather than written agreements.

The criteria for the industry and case study selection used in this study are set out in Appendix 1. This study focussed on cases in the Cleaning, Financial/Call Centre, Fish Processing, and Labour Hire/Construction industries. While the case centred on an individual, the context was a large organisation. The cases studied and this report are therefore reports of experiences within large, not small, organisations.

The case study design<sup>4</sup> sought to focus upon *the experience of the form of work as reported by the worker within the context* of:

- The regulatory frameworks applying to firms and individuals
- The cultural and historical influence of the owner/employer on the values, practices, and conduct of the firm's daily life
- The business context, HR strategies, production processes and other factors impacting on the firm's decisions to use non-standard forms of work that may be termed precarious
- The private and public context, values and choices made by the employee
- The skills, knowledge and experience of the employee
- The balance of influence between the owner/employer and employee and any mediating influences present or absent.

### ***1.5 Research reports by the Department of Labour***

The experiences of work reported by employers, employees and other participants in this study were consistent with the findings of the two earlier studies by the Department of Labour that examined the impact of employment law changes on workplaces and the people in them.

- Case Study Research in the Accommodation, Wine making and Brewing Industries<sup>5</sup>
- Evaluation of the Short-Term Impacts of the Employment Relations Act 2000<sup>6</sup>

### ***1.6 Limitations of this study***

This was a small, focussed, exploratory study of some workplaces in four industries. The four industries were chosen because we expected that they were most likely to employ people in non-standard forms of work. We also expected that some of those forms of work might be precarious employment as defined and proposed by Tucker.

The report is an accurate account of the experiences of non-standard forms of work reported by a small number of employers, managers, employees and union officials in the workplaces studied. Few broad conclusions about non-standard forms of work or the labour market as a whole can be drawn from this small study. Rather the study illuminates a small part of the labour market and suggests areas for future research and policy interest around precariousness, immigration, the role of the minimum wage and the quality of working life and bargaining.

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<sup>4</sup> Appendix 1

<sup>5</sup> Whatman (1999)

<sup>6</sup> Waldegrave et al (2003)

## **2.0 Case study summary by industry**

### **2.1 Cases in the cleaning industry**

We undertook ten case studies in large organisations in the cleaning industry. The cleaning industry is large, nationwide and largely invisible. Many people are employed as cleaners, as the supervisors of cleaners and as the managers of cleaning contracts, on a wide range of terms and conditions in large and small organisations in almost every city and town.

#### **2.1.1 Employer identified features of the industry**

- a) Contracting out and the advantages of wide acceptance of the regular rotation of a cleaning contract

The conduct of large cleaning contracts appears to dominate industry wide practices and employer and employee expectations. There is broad acceptance and use of a cycle of contracting as the process by which organisations engage cleaning contractors. That there will be a regular (1-3 yr cycle) rotation of cleaning contracts and no ongoing employment obligations for the organisation is a fundamental expectation of organisations seeking to contract cleaning services. Some of the cleaning contractors in this study also believe that they have no ongoing employment obligations when their contract ends. The rotation of cleaning contracts produces effects that impact upon the social and economic lives of cleaning business owners and employees.

- b) Regular rotation induces ongoing uncertainty for contractors and employees

Cleaning contracts are customarily for a fixed term, often up to 3 years but may be terminated by a dissatisfied client earlier if the contractual terms for early termination are met. There is thus uncertainty in the term of cleaning contracts. Larger cleaning companies can manage permanent staff where they have a number of contracts that might be won and lost at staggered intervals. Employees are termed permanent but may be re-allocated to work on a new or different contract. Smaller cleaning companies however, regard employees as permanent only for the term of the contract. But employees in those smaller companies do not understand that they are employed on a fixed term basis because the cycle of contract renewal obscures the technical ending of their employment from them. The threat of the loss of a contract with one month's notice or at its expiry is a constant discipline upon the work, expectations and bargaining behaviour of employees. Most cleaners told us that '...any job is better than no job..' and some regard whatever wage earned as '...more acceptable than being on a benefit.'

- c) Contracting produces distancing of the principal organisation from employment obligations

The contracting model permits the principal organisation to stand at a distance from the operation and effects of the contract upon the contractor and the contractor's employees. One manager of a case study company that employs a multi-national cleaning contractor, noted that the operation of their contract was producing effects upon employees that they were uncomfortable with. The manager did not see that they could take any action however as the issue, e.g. low hourly pay rates, went to the core of the contractor's business not theirs.

Cleaning companies say that they meet a tender by adjusting their major cost component, the hourly rates of cleaners. The cleaners have no power to influence these decisions as they do not participate in the contracting relationship.

d) Tendering strategies are driving wages to the minimum adult wage

Employers (cleaning contractors) reported that they believed that there is a 'drive to the bottom' in the cleaning industry. Their explanation was that the contracting organisation expects to use the market discipline of the contracting cycle to influence contractor pricing and bidding strategies such that the cost of the contract is reduced if possible at each contract renewal. While they say that this is not always the case and that some contracting organisations will accept an increase in costs, the cleaning contractors reported that as the cost of labour is the largest cost in a contract they see themselves as 'having no choice' other than moving to pay the minimum adult wage or reducing hours offered to employees or increasing the tasks to be completed within the same of fewer hours.

e) Employment Agreements – applicable collective agreement

Many large cleaning employers are parties to the New Zealand Cleaning Contractors Multi Employer Collective Employment Agreement (28 February 2002- 31 December 2003) with the Service and Food Workers Union (SFWU). This agreement provides a wage range between \$9.73 and \$10.15 an hour. There is provision for overtime to be paid at time and a quarter in limited circumstances. This collective agreement applied in the larger cases in this study and some of the smaller cases. The agreement provides for the payment of employees as:

- 'hourly workers' where they are engaged for a lesser period than 40 hrs at ordinary time rates in any one week on any five days for no more than 10 hrs in any one day unless agreed between the parties; and
- 'weekly workers' where they are regularly employed for at least 40 hrs at ordinary time rates each week for no more than five days in any one week and for no more than 10 hrs in any one day unless agreed between the parties.

The MECA does not provide for the employment of casual or temporary employees. Employees who have an ongoing employment relationship with the employer are regarded as permanent employees.

Smaller cleaning contractors in this study offered Individual Employment Agreements based on the MECA or no contracts at all.

f) Allocation of cleaning hours generally and educational institutions in particular

These individual agreements permitted the employer to vary the hours of work allocated to a cleaner at any time the employer required. Cleaning is usually undertaken when the site to be cleaned is vacant. This tends to be the afternoon for a small number, early evening for a larger number and after 6 pm up to 6 am for larger organisations. One contractor told us that as the effectiveness of a cleaner diminished after 6 hours he would reduce the allocated hours to 6 hours per day for all employees. Those employees told us that they found that their now 30 hours per week paid them about \$292 per week which was an insufficient sum to live on so they had taken a second cleaning job even later in the evening. The consequences of working in two jobs at non-standard hours for employees and their families are detailed below.

Employees in educational institutions are typically not paid when the institution is shut, or if they do work they are allocated reduced hours. This is a mechanism by which a contractor is able to manage the overall costs of a contract; it is in effect a device to reduce wage costs wholly at the command of the employer. Where cleaning is the sole job of the employee they have uncertain income and disrupted work schedules. The advent of the four-term year has increased the loss and uncertainty of income for cleaners in educational institutions and provided contractors with additional opportunities to make cost savings. In this way the four-term year has assisted the 'drive to the bottom', in the cleaning industry.

g) Transfer of employees at rotation of contract

There were no reports in the cases studied of contractors using the opportunity of a contract renewal or the winning of a new contract to dismiss cleaners they wished to dismiss. One contractor reported that a contracting organisation had required the contractor to dismiss named cleaners or face losing the contract. This was an attempt to take advantage of the contract renewal process; in the event the contractor had other contracts and was able to move the staff.

We have noted that many organisations seeking cleaning services, cleaning contractors and employees share an informal view that employment in cleaning is precarious by its very nature. Many suppliers of contracting services and their employees told us that they understood that if a cleaning contract was lost they would have no job. Others understood that their employment is for a fixed term or would become non-permanent after 1 to 2 to 3 years or on the sale of the business.

h) Changing nature of 'clean'

Cleaning contractors agreed that an increasing number of principal organisations did not, or were unwilling to distinguish, between 'clean, meaning tidy' and 'clean, meaning hygienic'. They suggested that this meant that they had little incentive to invest in training cleaners to produce quality cleaning, accentuated their focus on bottom line costs and accelerated the 'drive to the bottom.'

Contractors attribute this blurring of quality standards to a change in the form of tender specifications. Previously specifications would state, for example, ‘All rooms to be vacuumed 3 nights a week, all rubbish tins emptied daily, dusting done three nights a week (with an oiled cloth) and windows cleaned (inside and out) monthly.’ Present specifications now state, for example, ‘ All rooms are to maintained in a clean state upon inspection.’

Contractors believe the broader specification of an outcome advantages the principal organisation as there are no absolute measures of the quality standard. Unions and cleaners report that they now do more work more often for the same or less pay because contractors attempt to guess when the inspection will be made and what the standard required to be shown will be at the time.

Principal organisations believe that the broader specification of cleaning standards to be reached allows the contractor to arrange their business more effectively and efficiently and so restrain the costs of new contracts.

i) Impact of business systems on culture of cleaning contracts

In large providers of cleaning services, managers may be responsible for many cleaning contracts. The performance management and reward systems of those organisations appeared to be focussed on obtaining a specified rate of return on the contract price, 7-10% for example. Similarly, in organisations that let large cleaning contracts, managers appeared to have the same incentives as the managers in the cleaning service providers, to increase the return on investment by reducing the costs. In following this business strategy, both sets of managers were strongly oriented to reducing the costs of labour and provided strong pressure to drive wages towards the minimum adult wage.

j) Employer suggested remedies to reverse or halt the ‘drive to bottom.’

A number of cleaning contractors they described as ‘bad employers,’ and who were able to avoid meeting statutory minima for terms and conditions of employment, wages and health and safety requirements, were able to enter the industry easily and act unlawfully with little chance of being caught. Acting unlawfully meant they had lower costs and could win tenders. As these ‘bad employers’ tend to maximise their return in the period they hold a contract at the expense of employees. Because these employers may not pay holiday pay or may delay wage payments, they may be dismissed from or quit a contract early, they may receive an additional ‘windfall’ premium for ‘behaving badly.’ As there is always a demand for cleaning services and many new principal organisations focus primarily on price, the ‘bad employer’ simply moves on to the next contract.

We noted that principal organisations and contractors accepted that their industry was ‘driving to the bottom’, that they regretted the effects this produced on cleaners but that they believed that they, and the industry, were ‘helpless’ in the face of the commercial model of the industry.

Some contractors spoke strongly about the value they placed on a skilled cleaner, the importance of retaining skilled cleaners and expressed a desire to pay those cleaners a higher wage. However they saw the downward pressure on wages exerted by the contracting model as preventing that from happening. Some large and most small contractors believed that it was

appropriate for the state to intervene in order to improve the pay of cleaners and suggested two remedies:

- a) raising the minimum adult wage; and
- b) increasing the effectiveness of the enforcement of the existing statutory regime applying to employers with regard to wages, holidays, holiday pay and health and safety.

### **2.1.2 *Who works in this industry?***

- a) The people we met

Most of the people we met who undertook cleaning were mature Pacific Island women. There were fewer Pacific Island men and they were usually supervisors or undertook specialised duties, i.e. operated heavy polishing machines.

Most cleaning contractors in this study reported that ‘..Pacific Island women are more dextrous than men..’ and that ‘..Pacific Island women are uncomplaining about even the most unpleasant of tasks, unlike Asian women.’

In the larger cleaning contracts site supervisors and contract managers tended to be European men. A small number of women manage site contracts or are HR managers in very large national cleaning organisations.

In all cases employees, largely women, assist in the recruitment of new employees, again largely women, from within their communities and families.

The case studies provided examples of recent immigrants from countries other than the Pacific who seek employment as cleaners. In a regional town immigrants sought cleaning positions because the position required little or no English. Some employees in smaller contracts sought employment as cleaners because they believed they were unable to secure employment in any other job. Reasons given for seeking employment as a cleaner included holding a past conviction, an urgent or ongoing need for cash and a view that they could not get other work because they were unskilled or unfit, in their own eyes.

Almost all people in the cleaning industry interviewed in this study were not using it as an entry to the broader labour market. They were people able to ‘tolerate’ working at the rate of pay and the hours who believed they could not get other work; most were mature women.

Many cleaners were the primary income earner in their family. A number of people we talked with either had no partner or their partner was unable to work because of illness or injury.

Employees frequently perceived they did not have any choice of employment other than cleaning because of many factors including their lack of training or qualifications or their being an immigrant. The immigrants in this study spoke of their deep gratitude and respect for New Zealanders because ‘we’ permitted them to come to this country. They reported feeling obliged, to be obedient and loyal to their employer and not to challenge or complain to the employer; they understood bargaining to be a challenge to the employer and union membership to be a sign of disloyalty to the employer. Of primary importance was the need to work to support themselves and their families. Most immigrants believed they were therefore



trapped in this industry and this form of work and that they were unable to influence their form of work through their employment relationship. The broader industry drivers and practices also mean that many employers in the cleaning industry do not have to consider other ways of carrying on their business.

The social networks of people in the cleaning industry appeared to be limited by their hours of work. Many employees reported that their choices and opportunities for involvement in a wider social life were also limited by their hours of work and their general economic position.

### **2.1.3 Employee identified features of the industry**

#### **a) Cleaners as parents, grandparents and carers**

Many of the cleaners interviewed were responsible for caring for older family members; others were responsible for their children and grandchildren. Many cleaners struggled to arrange their daily lives to provide the care and supervision to their family that they felt committed to.

One cleaner began her first cleaning work at 7 pm and finished near 1 am. She then walked through a city at night to her next job at 1 am. She finished the second job at 6 am and walked to the bus stop to wait for the first bus home at 6.30 am. At home she helped wake and feed grandchildren, slept for 4-5 hours then went about her day. She was permanently tired. She had two jobs because her employer had decided that cleaners were not effective after 6 hours and had reduced her hours. She felt she needed a second cleaning job to earn a living wage but said she would rather have one job for 40 hours a week than two jobs.

#### **b) How cleaners saw their job**

Most cleaners interviewed reported that:

- they took pride in their job and were upset when their supervisor or manager failed to support their efforts to do the job well, i.e. no cleaning materials
- any job is better than no job
- earning any wage is better than being on a benefit. This was a strong motivating factor for many of the Pacific Island people in this study. They expressed their appreciation to New Zealand for providing them with an opportunity to improve their family's economic and social status and sought to repay that 'offer' by not becoming a burden to their hosts
- they worked unsociable hours
- employers of cleaners and supervisors also work long and non-standard hours and receive slightly better pay.
- their working day could be very long because they had two jobs, needed to travel and public transport was not available
- they struggled to maintain their household where they relied solely on their cleaning wage
- any small disruption to their life, i.e. a sudden rent increase, large telecom bill, school holiday, could remove their ability to remain financially stable. The studies showed that any event, financial, health or family that upsets the family's routine can quickly become a 'life altering chance' event for that family

- employees not under economic pressure because they have no family or financial responsibilities or are nearing retirement, and who have a good employer, were happy to be working as a cleaner.

c) Role of contract manager/supervisor in reducing feelings of precariousness

Cleaners consistently reported that even if their terms and conditions of employment were unpleasant, the attitude and behaviour of their immediate supervisor or manager towards them could reduce their fear, insecurity, feelings of being exploited and particularly their feelings of unfairness in the treatment of all.

The accounts of the cleaners we interviewed indicated that effective supervisors or managers were able to accommodate the unplanned events and needs of cleaners such that work did not add stress to their home life.

We observed that supervisors or managers who were able to provide their employees with a sense of continuity, a sense of belonging and of being valued personally removed feelings of precariousness even where the job was precarious. Employees typically described these managers as ‘good’ or ‘fair’ managers.

The relationship between the employer and employees can affect the perception and reported experience of non-standard work as precarious or not. Even where the terms and conditions of employment of a cleaner met Tucker’s proposed ten criteria for definition as precarious work, it was apparent that an employer or supervisor or manager who was prepared to meet some of the unplanned needs of employees, i.e. unplanned or planned leave for childcare or elderly parent care, appeared to reduce the likelihood of possible multiple disadvantages compounding into significant stress and precariousness for employees.

d) Health issues

In the cases studied both employees and employers reported that they suffered personal health issues from the form of employment. Employees tend to disguise any illness or impairment from their current employer for two reasons. First to keep their job as their household budget required that there be no unplanned variation in cash flow and second because they do not trust that the accident compensation scheme will apply to them. This was because many do not understand their employment status or their entitlement in law and for some because they have no sense of where to access that information.

Some small employers and some supervisors or managers reported that they suffered stress from the odd hours, the constant fear of loss of employment for themselves or their staff, the constant pressure to lower costs and the daily management of largely unskilled people.

e) Positive impact of income related rentals

Some cleaners reported that the most significant improvement in their household economy and quality of life was effected by the restoration of income related rentals. The greatest improvement reported was by cleaners living in areas where capital values had grown over time and wages had remained essentially static. Market rentals had previously consumed the largest proportion of their income and removed the ability of the household to withstand any financial shocks, such as school fees, doctor’s bills, car repairs or phone bills.

Historical patterns of settlement for migrants and the location of state housing meant that some cleaners in the cases studied were located close to their workplace. Low travel costs and income related rents enabled them to remain in their homes despite rising values and urban renewal pressures.

f) Availability of public transport

Living close to the workplace to reduce the costs of travel, especially where public transport was weak, was an important factor for many cleaners. The cases studied showed that even in a city with a very good public transport system, a cleaner's day of 8 or more hours could be extended by 2-3 hours because public transport was not available at the hours required. The greater the sum required to be spent on travel the less the family income was and the greater the likelihood of overworking or financial stress.

#### ***2.1.4 Union identified features of the industry***

The cycle of bidding for cleaning contracts, including re-bidding for a contract already held, means that the employer can suggest to employees that if they strike or take industrial action or do not accept a reduction in wages that the contract will be lost. Employees who are not in a union or are in a union that has a weak presence in the workplace did not report any participation in their employment relationship.

Some employers and some employees raised the costs of union membership as a proportion of the weekly wage of a cleaner and employers as a good reason for employees to not join a union.

There are unions present in the cleaning industry and there is a national MECA. However the influence of the union appeared to be limited to large cleaning companies. We observed that the costs to a union in providing bargaining or support services to cleaners in small groups appeared to be uneconomical. This suggested to us that the current business model underlying the operation of a union might not be sustainable for cleaners not in large organisations.

Some smaller employers interviewed explained that they wished to be 'good' employers. Larger employers interviewed tended to see labour as their largest variable cost and looked to manage it as freely as they could. In both cases the employer saw little need for their employees to be involved with unions. In one case employees made a formal complaint about wages to a Labour Inspector. An Inspector visited but the employer's assurances about the remedies he would undertake were not followed up. The union reported that employees do not expect Inspectors to remedy matters and that this case reinforced an employee and union view that, 'employers can get away with it.' and that, '...Labour Inspectors can't really do anything...' This report suggests that there are difficulties in enforcing the Minimum Code at the level of small organisations.

#### ***2.1.5 Indicators – rating***

For many employees, particularly those in smaller firms, employment as a cleaner is precarious because the cleaning contract can be lost or terminated with one month's notice and there may be no explicit or implicit expectation for ongoing employment. Employees of larger cleaning companies are not precariously employed as they have an expectation of on-

going employment. Hours of work are can be uncertain and may be changed at will by the employer within the parameters set by the MECA or an Individual Agreement. Cleaning is low paid and income can be uncertain and can be irregular. Employees on the MECA or an IEA based on the MECA have some access to 'standard' non-wage benefits although the service requirements are such (25 years continuous service) that few cleaners will qualify for them. Employers are aware that they must provide for the protection of employees against discrimination, sexual harassment and unsafe work and most have systems in place to do so. However, cleaners report that while there may be formal systems in place, this does not mean operational compliance in their daily work. There is very little opportunity to gain and retain skills through access to education and training.

On these measures many cleaners are precariously employed and some are employed on contracts that, while not harsh and oppressive, are wholly determined by the employer and offer minimal terms and conditions on a take it or leave it basis.

Despite the consequences of their precarious and in some cases, near oppressive forms of employment, few cleaners complained about their lives because they believed any job was better than no job. Many cleaners work long hours for low to modest pay, are sleep deprived and have little opportunity to contribute to the wider life of the community. Many women who are cleaners undertake extensive and demanding caring roles for partners, parents, children and grandchildren in addition to a job that must be performed at nights. Many women in the cases studied demonstrated that managing the demands of work and caring produces ongoing, inexorable and unrelieved stress. Where the women are older and have more health issues they compound the overall precariousness of their lives and the lives of those who rely upon them.

Many cleaners endure a financially precarious and unsociable life. The overall precariousness of their employment and their lives leads them to make choices that are unhealthy (not visit the doctor when indicated), unsafe (not report injury or unsafe conditions at work) or make them even poorer (no car insurance, credit debt) in the medium or long term.

#### ***2.1.6 Policy issues indicated***

In this exploratory study the Department sought to observe the impact of current policies at the level of individual employees and employers. As well, the Department looked for early indicators around its policy programme or matters that might be added to that programme. In the cleaning industry the following policy issues were indicated:

- (a) The contracting model that the industry is based upon provides the government with little leverage for intervention or change.
- (b) The culture and operation of the cleaning industry provides unions with few opportunities or levers to act as an agent of change.
- (c) Unions do not have the resources to help those in smaller firms and those employees are less able to pay union fees where a service could be offered.
- (d) Employees in the cleaning industry are unable to effect change because they:
  - have little or no information about employment

- tend to hold attitudes and values towards work and the employer that mitigate against joining a union
  - do not bargain; and
  - employees tend not to possess the skills required to enter and participate in the employment relationship.
- (e) The introduction of income related rentals has been a significant relief of financial pressures on some families reliant upon income earned from cleaning.
- (f) People in some forms of non-standard work are unlikely to have access to public transport at times and frequencies they require.
- (g) People in some forms of non-standard employment feel that any job is better than no job. Even if that job is economically very insecure or untenable in the medium to long term, they will persist. This can lead to health and safety issues for themselves and for their family.

## 2.2 *Cases in the finance/call-centre industry*

We undertook three case studies in the call-centre industry. Call centres are an emerging industry in New Zealand. There is a mature call centre industry in Australia from which some managers in New Zealand have been recruited and from which models of service delivery are frequently drawn. New Zealand call centres compete internationally and told us that our time zone and our communications technology with the rest of the world, particularly its speed and reliability, are key enablers of their internationally competitive services.

One call centre studied was an outsourced provider of financial product support services to customers of a principal organisation. The call centre receives calls from the financial institution's customers about their everyday financial matters; this is described as an 'in-bound' call centre. The other two call centres made calls to customers and are described as 'out-bound' call centres. Operators in the in-bound call centre in this study saw themselves as part of the principal organisation even though they were employees of a contracting agency. Operators in the out-bound call centres saw themselves as salespeople.

Financial institutions have moved from a face-to-face delivery of services to customers to a call centre based model. To promote this shift in contact modes branches were closed, 0800 numbers provided and telephone banking encouraged by the customer fee structure. In a second shift in service delivery processes currently underway, customers are being encouraged to use the Internet to obtain financial services and call centres are moving to include product sales. Operators are moving from in-bound to out-bound calling and from service to sales. Operators still provide support services to existing customers but now also seek to sell them products when customers call or are called.

We approached call centre service providers in the public sector but found that all employees are permanent employees. Employees in the cases studied were temporary or casual employees. Some caution is required however as what constitutes 'casual' in the call centre industry included people working on contract for three years with a strong expectation of renewal. Because staff develop and hold extensive and detailed knowledge of their services public sector agencies seek to retain staff by offering permanent employment and terms and conditions of employment valued by staff. We did not undertake any case studies in the public sector because the conditions under which non-standard forms of work were predicted to show precariousness, were not indicated.

From public information we identified a small private call centre that met our criteria and approached the owner to invite them to participate in the study. However a representative of some employees informed us that our invitation to the employer had resulted in some employees feeling exposed to possible retaliation by their employer. We accepted the owner's considered decision not to participate.

A feature of all call centres in this study was the integration of the work of the operator with Computer Aided Telephone Interviewing (CATI) technology and with individual monitoring and control systems. Call centre operators are aware that they are always being 'watched' and judged on their 'performance.'

### ***2.2.1 Employer identified features of the industry***

#### **a) Expectation of limited service**

There is a broad expectation and acceptance by employers and employees in the call centre industry that employees will work for 12-18 months at most and then move to other employment. The rationale appears to be that call centre work is repetitive and becomes unsatisfying after 12-18 months. That most employees are on Individual Employment Agreements and are not offered permanent appointment is seen by employees as confirming the transitory nature of their employment.

This expectation enables the employer to recruit, trial and keep or release employees on a continual basis.

One experienced manager expressed frustration at the persistence and extent of the view in New Zealand that call centre work is transitory. She observed that in Australia employees could expect to develop a career in the call centre industry. That development is supported by training and promotion opportunities for staff. There was evidence of training in the cases studied but no sense of a national industry or national pathway. The call centre organisations in the study appeared to have very flat management structures with opportunities for some employees to become team leaders.

#### **b) Alignment of hours of work with availability of customers**

Call centres appeared to align their calling hours with the availability of their customers. Some call centres appeared to align their hours of work with times that their preferred employees would be available.

The financial call centre (in & out bound financial services) operated for 24 hrs a day seven days a week but where it used 250 employees during the day used only 2-4 staff for the late evening and early morning shift. The recruitment call centre (out bound recruitment and subscription sales) began work at midday in order to synchronise its operations with the start of the working day in the country it targeted. The third call centre (out bound market research) began work in the afternoon when its target audience was likely to be available and receptive to calls and when its preferred employees were likely to be available.

#### **c) Personal qualities and skills required**

In all of the cases studied the personal qualities, characteristics and skills required of employees appeared to be high. All employers sought engaging, energetic operators. In addition the financial service call centre required operators to have an extensive knowledge of their range of products, the market research call centre required operators to observe standardised research methods and the recruitment call centre required operators to manage cross cultural issues.

Staff turnover rates were higher in call centres where operators can be trained quickly for a specific task; those centres are more dependent upon a constant turnover of staff to find recruits. In centres where staff require detailed knowledge of services or products employers prefer to retain staff so target their recruitment process at groups of people they have identified as likely to stay for one to two years.

d) Cost of labour

All operators in the cases studied were employed on individual employment agreements and were not permanently appointed.

The recruitment call centre has paid very well (earnings are directly influenced by exchange rate) and offers excellent working conditions but still expects operators to leave after 18 months and is not contemplating altering that arrangement. In the cases studied call centre work was paid relatively well and consistently attracted staff. The industry did not appear to have any incentive at this time in its development, to offer permanent employment or to create an industry career path.

e) Individual performance management

All operators have their individual performance monitored on a continuous basis. Calling targets, sales targets, response times, response modes and customer feedback are set, monitored and assessed continuously. The assessment may lead to rewards, to training, to a warning and in a few cases to dismissal. Monitoring, assessment and responding are the functions of supervisors and are enabled by software.

f) Active opposition to union presence

Call centre employers actively opposed the entry of unions to their workplace. Most asserted that their employees could see no value in joining a union or that their employees opposed the presence of the union because it was a possible source of conflict in the workplace.

### **2.2.2 *Who works in this industry?***

a) More women than men work in call centres

The financial call centre is seen as an entry point to the principal organisation for new entrants to the workforce and an appropriate starting point for male and female graduates. The market research call centre employs students, mothers, some people returning to the workforce and some people happy to be out of society for a while. The recruitment call centre employs men and women who have a lively, confident personality. Overall there were more women than men working in the cases studied.

The senior managers in the financial services and market research call centres were women as were the team leaders or supervisors.



### **2.2.3 *Employee identified features of the industry***

a) Not a real job

Operators reported that they were not in real jobs when they were working in the call centre. Operators in the market research call centre were students, young mothers and new entrants to the workforce who were prepared and able to work the non-standard hours for the pay for a finite period because they expected to move to other employment.

b) Better than working in some other workforce entry industries

Working in a call centre provided employees with a relatively stable, clean, well-paid job. Many operators in the market research call centre noted that their alternative was employment in a less well-paid job, might involve direct contact with the public, might be dirtier and noisier and might have equally non-standard hours; they felt better off where they were at present. One or two operators hoped that if they demonstrated their value to the owner that they would be promoted to a permanent position on the staff and work for the company in another capacity on a permanent basis.

Operators in the recruitment call centre focusing on the international service were very well paid. There was a small possibility of promotion to work other than calling in the company for a high performing employee but most employees expected and intended to move to other work.

Many operators in the financial call centre reported that they intended to acquire and demonstrate such knowledge of the core products and services that they would be appointed as permanent employees of the principal organisation out of the call centre.

c) Matching opportunity with choice

Call centre operators appeared satisfied that they had a choice of employment and had chosen to work in the call centre. Many had chosen the call centre they worked in because the hours, conditions and pay suited or were acceptable to them at present.

d) Acceptance of impact of unsociable hours

Most operators accepted that they must work at the hours set for the business and that there is an impact upon their social and family life. There are a variety of possible shifts offered by a range of call centres that operators can choose to accept. Some mothers seek to work a day shift, some students seek afternoon and weekend shifts at some times of the year.

e) Weak orientation to investing in training

Because they did not see themselves as being in a real job and because they saw themselves as getting a real job next, some operators did not seek additional training or qualifications in the industry.

f) Hygiene and health and safety

Work is typically carried out by an operator sitting in at a desk with a VDU screen, using a keyboard while wearing a headset that enables the operator to listen and speak to customers. In some call centres operators were concerned:

- that their workstation was not ergonomically safe for them; or
- that their headset was shared with another person, a practice they experienced as unhygienic.

g) Response to monitoring

Some operators indicated that they would leave their position because of the manner in which their supervisor monitored their work; others felt it was of no significance provided they met their targets.

h) Energy for change

Very few operators were motivated to seek to change their terms and conditions of employment. Some operators were dissatisfied with the relationship between their work and the rest of their relevant organisation. Some staff were not satisfied with aspects of their work environment or terms and conditions but they were not inclined to initiate a process for engaging the employer in change. Some felt that they carried out work that was of significant value to the principal organisation but that they were not accepted as valued members of the organisation. One group saw confirmation of this in their drab surroundings, not being invited to the Christmas party and not enjoying the additional benefits permanent employees enjoyed.

That almost all employees expected to work in the industry for a limited time also contributed to the low energy for change many held. It suited as many call centre operators to 'just do my job' as it suited many call centre operators to employ them with no ongoing commitment. To this extent both parties were using each other in the context of the industry's employment practices and norms.

i) Discomfort with increasing requirement to sell products by in-bound operators

Some call centres that largely provided in-bound support to customers have required operators to use the in-bound call as an opportunity to sell a product. Operators in this situation reported that they enjoyed their work better when they saw themselves as 'helping people' and had a 'no pressure' relationship with callers. However the operators reported that they were so personally uncomfortable now at having to 'use the relationship' to sell products that to reduce their discomfort they tended to side with the customer rather than with their employer. We have reported on this because it suggests that employees bring values to their practices and that in some of the cases studied the loyalty was higher to the caller/customer than to the business to the detriment of the business. While employees may have low energy for change they have other levers through which they can influence the success of the business.

#### **2.2.4 Union identified features of the industry**

a) Employer opposition to union presence

Unions described actions taken by employers in the cases studied to oppose, frustrate and undermine union efforts to enter the workplaces in order to recruit members. One union has ceased its efforts to recruit or offer services to members in call centres because of the opposition of the employer and for the reasons that follow.

b) Turnover of employees a barrier to recruitment and retention

While a union may recruit members at a workplace the constant rate of staff turnover soon undermines the viability of the service. The unions reported that the costs of recruiting and servicing members are not met by the payments they make so there are few incentives for the union to offer services in call centres.

c) Diminished perception of the relevance or value of unions

The broad change in social values and attitudes to unions, as reported in the *Evaluation of the short-term effects of the Employment Relations Act 2000*<sup>7</sup>, has meant that a growing proportion of employees and employers have little knowledge, experience, sympathy for or understanding of the role, purposes, relevance or value for them of unions. Where employees feel satisfied in their employment joining a union is not seen as desirable or necessary. Where employees in the call centre industry feel dissatisfied they are not inclined to seek change as they expect to move to other employment.

d) Focus of activity

The union indicated that it could only afford to focus on large organisations where a collective agreement could be secured and maintained. The union could not afford to seek to organise in smaller organisations where operators were less well paid and turnover would undermine the collective.

#### **2.2.5 Indicators – rating**

While most employees are not permanent most have an expectation of ongoing employment. Hours of work in the cases studied tended to be non-standard but were predictable and earnings were certain and regular. There were opportunities for performance based increases for many employees. Wage levels in market research are around \$10 an hour (about \$20,000+ p.a.), in financial services wages are aligned with customer service officers in the principal organisation (about \$24-\$32,000 p.a. ) and in the recruitment call centre, wages are a proportion of the value of the employee recruited and can reach about \$50,000 p.a.

Only a few employees have some access to ‘standard’ non-wage employment benefits. There are some opportunities to gain and retain knowledge about products and services but much of the work requires personal attributes and skills that many people possess prior to entry. Workplaces are managed to protect against discrimination, sexual harassment and

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<sup>7</sup> ibid

unacceptable work practices. There are well-known health and safety risks arising from the nature of call centre work that employers reported that they have systems in place to address.

The employees in this industry in the cases studied did not report that they felt they were in precarious employment.

### **2.2.6 Policy issues indicated**

- (a) There is a small risk of OOS from keyboard and voice overuse beginning for some employees in call centres but not becoming manifest in their current employment because the employee moves to other work.
- (b) There is also a small risk of OOS emerging where an employer seeks to restrain or reduce costs by increasing the performance targets for repetitive work.
- (c) There is potential for health and safety issues arising from the physical surroundings used in some call centres, e.g. lighting, space, but employees have no motivation to effect changes because of the expected short duration of their employment.

### **2.3 Cases in the fish processing industry**

We undertook eight case studies in the fish processing industry. The fish processing industry is a mature industry strongly influenced by a small number of large companies, a strict regulatory regime, a number of strong personalities, intensive capital demand and a focus on exporting a processed product. New products are being developed from new fish or shellfish types and processed in a variety of processes for new and established markets.

Fish is a perishable product and the need to catch and process it as quickly as is possible dominates the production methods. One owner in a case studied reported that his father advised him, ‘the product drives the industry’ and that this was indeed his experience.

#### **2.3.1 Employer identified features of the industry**

- a) Managing product supply variables

The seasonal nature of some products, the weather and fluctuations in volume presenting for processing require large flexibility in the supply and costs of labour. Fish processing companies in the cases studied used a variety of employment and remuneration strategies to attract and retain an adequate processing capacity to meet expected and unexpected demand. Those strategies included the employment of different numbers of permanent, temporary, casual and on-demand forms of employees. Some employment agreements set out a flexible arrangement whereby staff were not paid if there was no product, or were required to take annual leave if there was a break in supply.

- b) Local labour market factors

Fish processing is located close to where fish are landed from the fishing grounds. Two processing plants in the cases studied were in regional locations where it was unlikely that the plants would be able to secure enough people with the right skills from the small local population. One area has attracted people seeking to work on a seasonal basis as they can

secure other seasonal work in the fish processing off-season. Changes reported in the local housing market appear to be driving rent beyond the affordability of seasonal workers. Some employers reported that they are recruiting increasing numbers of migrants from Asia but they did not report having taken any actions to stimulate this.

The processing plant in a large city recruited largely from the local Pacific Island community. This plant had a narrower range of processing requirements than the large processor.

c) Urgency to process perishing product

There are a variety of processing methods at sea and on land, but fresh fish must be processed within 10-12 hours to retain freshness, thus processing capacity must be ready on call. Where a company processes locally sourced and caught wet fish from many small boat owners it is unable to control the supply. Employment agreements (collective and individual) in the industry that we reviewed all included provision for 'regular' hours but allowed the employer to require employees to attend earlier, later or for longer if a catch needed it to complete processing. Some agreements included a provision for overtime to be paid after a specified time in this case.

d) Paying for reserve capacity

In this industry employers need to have some processing capacity on standby almost all of the time, especially during a busy season. However employers said that they were not able to afford to pay for a 24 hour a day seven days a week standby capacity. The applicable employment contracts in the fish processing industry permit a wide range of non-permanent employment relationships paid at hourly or piece rates. Only one contract provided for the payment of overtime and that was under rare circumstances. Some employers interviewed agreed that the ECA had enabled them to secure greater flexibility in working hours and lower costs for the non-standard forms of work in this industry.

e) Capital intensive industry

Catching, processing and exporting fish was described by employers as a capital intensive export oriented industry. The high capital costs, currency fluctuations and other market factors required a constant focus on costs, in particular the cost of labour in the industry. The running costs of expensive equipment was also a factor. One employer estimated the cost of operating a large processing ship was about \$25,000 a day.

f) Meeting regulatory requirements

Employers advised us that fishing is a very highly regulated industry where compliance costs are high and the costs of breaching regulations are also high. Employers advised us that complying with regulations and avoiding a breach of regulations, including employment regulations, was a strong focus of their business.

g) Engagement with unions

Some employers interviewed understood the impact of their processing model upon the lives and health of employees and undertook strategies to mitigate those effects. All of the cases had at least some union presence. Some employers sought to work with the union or employees to schedule shifts that fitted with childcare requirements for women. Other employers required employees to attend work at short notice and paid no regard to family requirements. A large employer with a collective agreement sought an active engagement with the union. A small employer, with a small number of employees on a collective agreement, was discouraging of the presence or activity of the union.

h) Supply of trained employees

Employers noted that they prefer to hire trained employees, particularly skilled filleters. The industry standard measure of productivity is yield per kilogram. We were told that fish processing is a commodity processing industry with low margins and an historical reluctance by owners to increase the proportion of profit allocated to labour. One employer saw the minimum adult wage as an artificial barrier to his employing staff at \$3 or \$4 an hour especially while they learned to fillet efficiently. The owner could not understand why he should be compelled to pay people whose productivity was less than the yield he required any wages at all until they were competent filleters. The employer suggested that it was the government's role to ensure people presented for work with the skills required, not the employer's role to train such people.

i) Advantages of employing immigrants

One employer noted that the benefit of employing migrants was that they provided him with the opportunity to recruit other new migrants or family members of existing employees at little or no cost. Some of the migrants interviewed told us that they preferred any work to no work, that they preferred not to draw attention to themselves at work by not complying with instructions. The union advised us that most migrants have little or no knowledge of employment matters, that they do not seek to join or support unions and that they believe they must tolerate almost any terms and conditions of work. Our interviews supported these broad ascriptions of behaviour, values and motives.

j) Health and safety management

The larger processing companies have more formal human resource management capability and processes than small processing companies. Health and safety issues were more explicitly managed in the larger companies. One large plant requires regular factory wide micro pauses during which all activity ceases as employees could not be relied upon to take the required breaks themselves.

### **2.3.2 *Who works in this industry?***

#### **a) Men and women**

There is strong gender differentiation in roles in the fish processing industry. There is a hierarchy of positions in workplaces. Men tend to undertake filleting and women, trimming, sorting and packing though some women do fillet. In the shellfish industry women were the primary openers and men did more of the ‘outside’ work. In some workplaces we visited, the desire to be a top performer, a ‘gun’, also leads to a worker’s placement in the processing line. Good workers may get first pick of the product on one line or the best position may be shared around on another.

One small employer observed that men from the Pacific Islands were particularly skilful at filleting fish. He encouraged his current staff to recruit new male staff from their family and social contacts.

Some tasks in the fish processing industry require low skills. However fast, efficient shellfish openers and accurate fish filleters who can sustain productivity over 8-12 hours a day, are critical if fish processing companies are to meet their target price/volume ratios. Thus we found that employers sought to retain skilled staff and, in the large companies where a preferred employee wanted seasonal or casual or temporary arrangements or shifts to fit childcare, the employer would generally seek to accommodate those requirements.

#### **b) Immigrants**

Two employers we interviewed, one large and one smaller, recruit from immigrant populations. The smaller company recruits Pacific Island peoples. The company advertises widely in a city but reports few replies. It finds that Europeans or students, who might be expected to seek such work, do not stay if they are recruited because of the unpleasant work, the smell or the hours worked for the wages paid. The larger company has begun to employ an increasing proportion of Asian people but had no explanation for this trend which it regarded as external to its actions.

People in the fish processing industry hold a shared view that women are more dexterous and better suited to multi-tasking at the processing tables than men, however men are preferred for filleting on account of their strength and endurance. Women therefore do trimming, sorting and filleting on land and below decks at sea on factory ships. We were also told that Pacific Island men like to fillet fish. The Pacific Island men told us they did this work because it was work they were familiar with and could get as there were few others competing with them to do the work.

### **2.3.3 *Employee identified features of the industry***

#### **a) Importance of supervisor**

In the larger processing plants employees rated the day-to-day management by the supervisor as very important. The supervisor makes decisions about placement of casual employees on pay scales, makes judgments about performance and quality for piece rate pay and allocates positions on the processing table. When opening shellfish the closer you are allocated to the head of the table, that is nearer the supply of the shellfish, the more you are able to choose to

avoid poor quality shellfish, the faster you can open them, the easier it is to maintain the 10,000 opened per day standard set for the higher pay scale. In the smaller plant the employees saw the supervisor as being little different from their strong minded employer.

b) Pressure of seasonal work doubles intensity of annual work cycle

Employees who rely on seasonal work in fish processing and horticulture report that the employer in each industry tends to focus intently upon completing their work and demands extra effort from employees to do so. The effect, however, is that such seasonal workers then work two highly pressured seasons a year under the control of insistent and demanding employers and can become exhausted much more rapidly than employees in standard employment. They say that the employer forgets that the employees are going on to the next job.

c) Weak engagement between employee and employer

Seasonal workers, including those who work for the same employer each year for many years, do not feel that they have an ongoing employment relationship with their employer. They tend to tolerate conditions and behaviour or deal with disputes by recalling that the matter needs to be tolerated for the season only. Employees report that employers feel the same way and will also sometimes tolerate behaviour from seasonal workers and not from permanent employees.

d) Stability and uncertainty for seasonal employees

Ongoing seasonal workers have a degree of stability in their employment and can, broadly, expect to return for a number of seasons. Their uncertainty is around the length of the season and the number of 'down days' caused by product flow, weather and unforeseen events. Where those 'down days' are high, ongoing seasonal workers lose income, must use their savings and use their paid holiday entitlement where they have one. These factors, and other factors such as local rental costs, the costs of transport to work, can eliminate any advantage earned from long hours at higher rates.

e) Ability to choose shifts

One of the large processors where there is a union present and active, has re-ordered shift times in order to assist parents to work and meet their needs as supervisors and caregivers of their children. Employees valued this flexibility very highly.

f) Immigrants are able to enter workforce

Pacific Island employees in a small processing plant in a city reported that they saw themselves as not possessing qualifications or skills to seek employment in many other industries than cleaning, fish processing or manual work. They are strongly motivated to seek employment for three reasons:

- i) to provide financial assistance to their wider family
- ii) to support their children gaining qualifications in New Zealand and having a better life than their parents; and
- iii) to avoid being stigmatised as 'beneficiaries' within their own community and the broader community.



The fish processing industry offers them work, there is very little competition for the work and they can receive a relatively good wage albeit for hard work in unpleasant conditions over long hours.

g) Immigrants have low labour market power and low power in the workplace

Immigrants do not bargain and do not expect to bargain when they begin work. They reported that:

- i) they saw their presence in New Zealand as a generous offer by New Zealanders that they wished to respect by working and contributing
- ii) they saw their employer as entitled to run the business and challenging that authority as inappropriate irrespective of the circumstances
- iii) they were reluctant to join a union where the employer was clear that this was offensive or frowned upon, either formally or informally. On the other hand some employees did join the union where a community leader showed the way and saw membership as an extension of existing cultural values around wider family and obedience to elders.

In the workplace employees who are immigrants often believe that they have little power in the workplace and show little energy for challenge or changing the working terms and conditions and thus little interest in a union which might seek to interest them in making changes. Such employees are vulnerable because of their lack of English and their lack of knowledge of the labour market. As their employment can be family based, they also avoid being identified as 'trouble' for fear of all losing their jobs or being 'blacked' informally.

h) Employees can become locked into seasonal or permanent work

A number of groups of employees appear to become locked into working as seasonal or permanent employees in fish processing for a number of reasons. The effects are more common than the reasons for the effects. Thus employees:

- i) tend not be able to retire if they are near retiring age and have worked in the industry for many years as they have not been able to save
- ii) tend not to be able to change jobs and guarantee that they can secure employment at their current income level
- iii) tend to find other jobs are not available on an ongoing basis in their regional centre
- iv) where they live in small rural or provincial towns they find that they are unable to afford to shift to more expensive housing stock because they have no savings or assets of comparable value to sell or exchange to fund their move.

Some migrants stated that they did not expect much of a life and that they were working to ensure their children had a better life, they therefore accepted starting work at 3 or 6 am and finishing at 5 or 6 pm up to six days a week and spending Sunday at Church. They accepted that it was their choice to remit funds to parents and other family members but said that as they had the ability to earn money they felt obliged to increase their contribution to the life of the whole family. Seasonal workers in the large and small processing plants choose to work in this manner as it suited their lifestyle.

i) Management of health and safety risks

The threat of an acute or chronic injury is always imminent in fish processing. Employees appeared to be very aware of the risk but traded off what they saw as the reality of doing the work and earning the pay with work practices. In larger processing plants health and safety is a visible priority; there are resources to support the development of a safe culture and a union presence to prompt the employer if required. One large plant has instituted micro pauses factory wide in order to ensure safe practices irrespective of employee attitudes or preparedness to comply.

High performing processing staff engaged in repetitive actions are at risk of chronic injury and adopt three strategies. They either:

- i) respond to an initial injury by altering their performance targets and that usually implies earning less money per week thereafter; or
- ii) continue to work at a high rate in the belief that they are not likely to be injured; this is called frequency gambling and is a common psychological response in such a situation; or
- iii) they hide any injuries or impairments.

Two strong motivators for these strategies are:

- i) many families working in fish processing exist at the margin of economic viability. They are therefore highly dependent upon regular cash flow and can not afford ill health or any unplanned expenditure; or
- ii) they are uncertain as to who their employer is and whether that employer is legally responsible for their rehabilitation. Perhaps more pragmatically some appeared to believe that if they did report an injury, the employer would seek to excuse themselves from ongoing support by legal, illegal and unpleasant actions that the employee could not resist or tolerate.

j) Quality of life

Many employees in the fish processing industry have a physically exhausting working life. At one plant employees are told the day before whether they will start work the next day at 3 am or 6 pm and must make arrangements for their children to be woken and transferred to a bed at a relative's in order for the parents to go to work.

Other employees work long or unsocial hours and spend little time with their partners or children. In the larger processing plants there is greater regularity of hours of work and choice of hours offered by shift work.

Many of the people in the cases studied reported being tired or weary and expecting to wear out or be forced to quit the industry at some time in the future, however few appeared to have been able to save or have other work planned. One was undertaking further study.

k) Movement to other work

Some Pacific Island men and women reported that they would prefer to do other work but did not believe there was other work that paid as well and for which they were suited. Some also believed that their family could not afford for them to earn less or risk earning less by shifting jobs therefore for their families' sake they were resigned to working as fish filleters for the foreseeable future.

#### **2.3.4 Union identified features of the industry**

a) Not all employers actively oppose a union presence

Some of the larger employers in the fish processing industry are parties to a collective agreement and work with the union nationally and with delegates on the site. Where there are sufficient permanent workers who are also members of the union then the union has an economic base that will fund organiser support for the employees at that workplace. Where there is a large proportion of seasonal workers then that base is less likely. Some of the larger employers have benefited from a constructive engagement with site-based delegates.

b) Consistent turnover of employees

The consistent turnover of employees is a barrier to the recruitment of employees to a union. Turnover imposes very high costs on a union and those costs are not always recovered by way of subscriptions from people earning modest wages. Public companies faced much the same unrecovered costs when, as a requirement of listing, they were required to report to every single shareholder on a range of matters annually; those reporting requirements were reduced.

c) Powerlessness of immigrants

The union reports that it struggles to persuade some groups of employees that it is appropriate for them to contribute to the employment relationship or to join or support a union.

d) Enduring rather than living

The union strongly believed that many employees in the fish processing industry, especially immigrants and employees in economically marginal families, 'endured rather than lived' their lives.

e) Collective bargaining

The union is seeking to improve some terms and conditions for members through the collective bargaining process.

The union believes that if the term 'collective' once had a shared meaning around *..all of us, everywhere in New Zealand including strangers who may not have contributed to the terms and conditions we enjoy..*, it now has a narrower shared meaning that is more around *..all of us in this place or firm..*, that the altruistic dimension has gone.

### **2.3.5 Indicators – rating**

There are some permanent employees in the fish processing industry and they enjoy the protections all permanent employees enjoy. There are also many categories of non-standard employment wherein employees may be terminated with little or no prior notice by the employer.

Hours of work are long for all employees. Shift work is the basis of all processing. Some workers are able to influence the timing of shifts and to choose shifts to work, other employees have no choice and are regularly coerced into working shift times that alter with less than 24 hours notice.

Earnings are relatively settled for all employees but are subject to uncertainties and interruptions because of the nature of fishing, weather and many other possible random events that will disrupt planned schedules. The larger companies have retained penal rates for overtime or call back under specified circumstances, the smaller company did not even if it required employees to work at any time within its authority under the applicable individual or site agreement.

Most of the functions around fish processing are well established and settled and the employer retains the authority to allocate staff to those functions, to positions of status and privilege or to refuse to do so. This is the risk for non-permanent employees, that they may not be re-hired in the next season or they may be placed at lower on a scale, for reasons not always declared to them.

Only in the small workplace was there any suggestion of racial discrimination; there were no instances reported to us of sexual discrimination although we noted the gender differentiated work allocation practices in all plants. There was evidence of unacceptable working practices in the small plant and there were complaints about sharp or unfair practices in other plants. The large employers appeared to seek to comply with regulatory requirements around health and safety and employment subject always, to sustaining the business.

Hourly rates for adults in the cases began at \$9.00 an hour and reached \$14.28 for the highest performing night shift workers. The maximum pay for day shift workers across the cases was \$12.73. Wages are low but are above the minimum wage. Employees are able to increase their take home pay by working overtime, when it is available, or by working at higher rates. There are social and health and safety consequences for both strategies.

A person with knowledge of the industry and its economics, advised us that despite the highly capital intensive costs of equipment and operating catching and processing plant, there are substantial profits being made from fish. Their view was that historical attitudes and practices about fishing and processing, established by the pioneering fishing families they described as ‘old fashioned capitalists’, have determined the production model and set the share of profit allocated to labour. They pointed to new entrants to the industry that invest strongly in staff skills and health and safety in order to service high quality global niche markets. These companies vary the traditional fish processing industrial model but retain a focus on costs and the sustainability of the resource and their staff.

Permanent full time employees receive at the least the statutory minima entitlements of leave. The administration of leave for these staff however can deprive employees of the intended benefit of that leave. For example, a small employer requires a medical certificate for sick leave. This imposes two burdens on the worker and their family, first they must take time off work to attend the doctor and second they must pay for the visit. Both the time away from work and the cost of the doctor's visit are reported as penalties by the family, thus employees do not take sick leave but go to work unless they are very ill indeed. If they are ill their family budget suffers. We have already noted that even permanent full-time employees may lose their holiday entitlement if there are too many rain days during the season.

Non-standard employees do not have access to non-wage benefits such as sick leave, domestic leave, bereavement or parental leave.

Attitudes and approaches to training in the fish processing industry vary considerably. There is an Industry Training Organisation that provides advocacy and leadership for the value of training and provides relevant training and certification. Broadly the industry continues to regard labour as a cost. There has been an increase in training in the workplace around health and safety but the model of the repetitive processing of a bulk product by a replaceable workforce, for many employers but not all, appears to influence the role of training. New entrants have adopted a more investment than cost based approach to training and this is having a demonstration effect in the industry and assisting the ITO to effect a shift more widely in the industry.

Fish and shellfish processing on land take place in wet, cool, noisy rooms where many people stand around tables using sharp knives at a rapid pace for long hours; it is an inherently unhealthy and dangerous job. Some danger is always immediate but in the cases studied work safety practices were at least formally present to guard against such danger. Some employees understand informally that it is permissible to take risks; this appears to be a consequence of performance management and reward systems or poor supervision practices at the operational level. Unhealthy practices can have an immediate impact but in the cases studied, the effects of unhealthy work practices appeared to be more of a long-term nature. Some employees perform the same physical manoeuvre 10,000 or more times a day 5 days a week for years on end. These employees appear to expect to 'wear out.' They accepted that they might not be able to undertake any manual work thereafter but have no alternative plans for employment should they be so harmed that they are unable to work. These people appeared to hope, very strongly, that they would not be affected, but if they were, appeared to accept that they would live a different life; there were no happy endings expected.

### ***2.3.6 Policy issues indicated***

#### **a) Quality of life**

There is a wide range of non-standard forms of employment in the fish processing industry. There are significant differences in the production methods, practices and management of people in the larger companies compared to the smaller companies. Some of the forms of work experienced by employees in fish processing cause them to describe their lives as precarious. Some of the forms of work are experienced as oppressive, of very poor quality and inimical to a wider social life as a consequence of low wages, long hours, an inability to save, persistent health and safety risks, the financial precariousness of the family and unequal employment relationships.

Some employees in the cases studied experienced the same unpleasant working conditions as those in precarious work but they had consistent wages and predictable hours of work or were in seasonal employment by choice; these groups did not report their work as precarious.

b) Health and safety

The current policy framework contemplates a more direct employment relationship between an employee and an employer, however non-standard forms of employment relationships have emerged that mean that there is ambiguity as to the awareness of where responsibility for health and safety and rehabilitation rests in such employment relationships. The ambiguity and lack of awareness appears to encourage employees in non-standard employment to not raise or address health and safety issues at work and to be resigned or fatalistic about the risk to their personal health in the medium and long term.

c) Remuneration strategies

A feature of the remuneration strategies set out in collective or individual agreements in the fish processing industry is that the employer does not have to take into account the experience or training of seasonal or casual employees when considering their pay rate. The employer may start the employee at the beginning of the scale every year; note that some employers do recognise the experience and training of workers they wish to retain. Employees in smaller plants who are dependent upon this form of employment find themselves unable to exert any labour market power. The result is similar for employees who are migrants, who have language issues or employees who have little knowledge of the employment relationship.

d) Size of business and the emergence of non-standard forms of employment that are precarious

The case studies suggested that non-standard forms of work in the fish processing industry that would be reported as precarious were more likely to emerge in smaller firms. We noted that in larger firms there was an awareness of human resource management and usually a person with that task. A health and safety orientation appeared to be linked to human resource capacity. Flexibility in hours of work was more systematic in larger firms and more arbitrary in smaller firms.

## **2.4 Cases in the labour-hire/construction industry**

We undertook three case studies in the Labour hire/Construction industry. Two were large employers and one was smaller, all were in major cities. The growth of labour hire companies indicates the emergence of new patterns of employment relationships in a sector traditionally associated with unskilled and semi-skilled working men. The evolution of the industry has been influenced by the boom-bust cycle in large scale property development, particularly in Auckland, the more permissive employment regime of the Employment Contracts Act 1991 and changes to the training and certification pathways for trades people in construction oriented industries.

All Labour Hire companies in this study expressed frustration that they could not recruit enough suitably qualified and skilled tradesmen. Some companies had undertaken the

training of apprentices but were frustrated to find that industry drivers induced employees to quit before completing their apprenticeship.

Some Labour Hire companies expressed frustration at the ‘drive to the bottom’ pressure exerted by companies able to avoid statutory obligations or that engaged in unsafe or ‘sharp’ practices. The compliant companies suggested that the minimum adult wage could be raised because, as one owner observed, ‘*..employees in this industry are not well paid enough at present and there is no risk of inflation.*’

We were advised by owners, unions and large companies in the sector that there is stronger competition between labour hire companies in Auckland than in Wellington or Christchurch. Labour hire companies in Wellington and Christchurch appear to have fewer competitors and benefit from long and close relationships with the key large construction clients still active. This relative stability has enabled labour hire companies in Wellington and Christchurch to invest in training and apprenticeships. The labour hire companies in Auckland did not invest in apprenticeships at the time of the field work but were considering a range of strategies to combat labour shortages that included training and apprenticeship schemes.

#### ***2.4.1 Employer identified features of the industry***

##### **a) Employment Contracts Act 1991 enabled daily hires and business model**

Labour hire companies maintain that they are not employers but that they are brokers who match demand for labour from organisations with offers to work by individuals. Owners acknowledged that this form of employment relationship was permitted and enabled by the ECA and they prefer to retain it. Some labour hire companies do have a number of permanent employees. Most employees are required to agree in writing that they are daily hires whether they work for one day or five years for the organisation.

##### **b) Labour Hire as a form of temping**

Labour Hire companies charge out an employee at an hourly rate to an employer and say that the employee pays the labour hire company a fee for the service. If a carpenter is charged out at around \$27 per hour then the fee paid to the Labour Hire company could be around \$12 per hour and the payment to the employee \$15 per hour. Some Labour Hire companies see themselves as temping agencies and claim that the same rules around employment obligations as apply to other traditional temping agencies should apply to them.

##### **c) Mediating between the direct relationship between the employer and employee**

The understandings behind existing statutory and regulatory provisions that define or apply to standard forms of work presume a direct employer/employee relationship exists between the provider of work and the seeker of work. In the labour hire industry the company in the most direct relationship to the employee is argued to be not the legal employer of the employee because that company does not ‘employ’ the employee or pay his/her wages. The labour hire firms assert that those duties and responsibilities are passed on to the entity where the employee works for any period whatsoever, and it is a fact that that entity pays the employee. The labour hire company acts only as an agent of the employee for the purposes of charging and receiving wages from the legal employer. The view that this may be the case on a daily basis for an indefinite period is a view that follows from understandings labour hire

companies reported they came to under the provisions of the Employment Contracts Act 1991.

d) Transferring costs of employment to employee

Most employees are employed on daily individual employment agreements and are expressly responsible for complying with PAYE, GST, ACC matters and providing their own safety equipment and tools and their own transport. Some employees of labour hire companies believe that they are independent contractors. Owners advised us that when the construction industry contracted suddenly many tradesmen were encouraged to go into business on their own but did not manage the transition successfully and now work in labour hire. In these ways many of the costs of employment have been transferred to an employee who already earns a modest wage and may have it reduced further where s/he bears these costs. Some labour hire companies provide transport for some employees. Some labour hire companies in the cases studied also have a scheme by which they supply basic safety equipment to workers, e.g. hard hat, gumboots and safety jacket (fluorescent). The company deducts any costs of the supplied equipment or lost or damaged equipment, from wage payments it receives on behalf of the employee. One company supplied some tools to employees but noted that it ceased to do so when fringe benefit tax issues emerged. There were issues raised by some employees and the union about the fairness of the administration of some labour hire in-house funding schemes to purchase safety equipment. This was in circumstances where the employer alone determines the basis and amount of deductions and makes them before the employee is paid; the employment agreement is the basis for this authority.

Owners in the cases studied were considering how best to stock, store, supply and secure the return of safety equipment they are now required to supply employees with. For those with a large daily workforce, there are storage issues and the possible loss of equipment everyday because workers for one or two days may not return equipment such as boots, jackets and earmuffs. Employers were concerned about the operation of this requirement.

One labour hire company advises potential employers that if they employ people from their company there will be:

*'No recruitment costs, No down time, No redundancy, No ACC, insurance, sick or holiday pay.'*

These costs are borne by the employee rather than the employer, who would be the labour hire company in the customary employment relationship.

e) Avoidance of the ordinary obligations of an employer

The terms of trade of a labour hire company in the cases studied included the following two clauses. These clauses illustrate the view held by the labour hire companies in this study that they are not the employer of temporary workers and are not responsible for those employees.

*s.4 The Temporary Worker shall be under the direction and control of the Hirer from the time of commencement of duties for the duration of the engagement. The Hirer is responsible for all acts, errors or omissions whether wilful or negligent or otherwise of the Temporary*



*Worker and the Supplier does not accept any liability for any loss, expense or damages arising from any failure by the Temporary Worker howsoever arising.*

*s.6 Temporary Workers supplied by the Supplier to carry out the work shall at all times be employees of the Supplier and not of the Hirer and the Supplier shall pay all wages required by law to be paid by the Supplier in respect of such Temporary Workers and shall make all appropriate deductions from their wages in respect of PAYE and other contributions.*

f) Training by labour hire companies is oriented to and driven by compliance with health and safety frameworks

The labour hire companies in this study preferred to hire trained and qualified staff because there was a strong demand for them and because they attract a premium over less skilled staff. Owners reported that they provided some initial training for most employees that focussed upon compliance with health and safety requirements but that the responsibility for site specific health and safety requirements remained the obligation of the employer.

The consequences of being found to have breached health and safety requirements or being required to contribute to the rehabilitation of an injured employee are seen as a costly risk by labour hire companies and employers. In this study both groups sought to demonstrate a record of proper and compliant actions.

At the time of this study we were advised that a national working party consisting of representatives of the On-Hire industry, the New Zealand Branch of the Recruitment Consultants Services Association, ACC, the CTU, and OSH had been formed to promote and encourage best practice health and safety within the industry.<sup>8</sup> A key question considered by the forum was the application of the Health and Safety in Employment Act (1992). The draft suggested that the labour hire company was an agency and that it meets the definition of an employer for the purposes of the HSE Act.

Our study suggests that there will be ongoing ambiguity around where responsibility falls for health and safety in employment for people in the labour hire industry who present for work on an irregular or infrequent basis. These people do not possess nor have access to advice that will clarify the critical differences for them between common employment practices and the subtleties of the HSE and ERA.

The terms of trade of some labour hire companies in this study required employers to employ an employee for a minimum of four hours in any day. For short term or single day workers there are few incentives for an employer to spend time on induction or thorough safety training if that training is likely to form a significant part of the time the employee is on site that day.

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<sup>8</sup> 'On-Hire Safer Industry Forum' 2003

A significant number of people employed in the labour hire industry on a daily basis have English as a second language and may not be expected to understand, to a level that enables them to practice safely, a single 10 minute explanation of the safe operation of a chainsaw at 7 a.m on their first day of work at the new site. Employers noted that all staff are briefed on health and safety either first thing in the morning or in particular practices around specific tools on-site where required. Employees told us that such training was largely verbal, was very fast and sometimes left them feeling they needed to get advice from a more experienced person on the site.

g) Sophisticated management systems

Labour hire is a complex and fast moving daily cycle of managing mostly working men and keeping records of their rates, times, deductions and payments. Most workers are paid weekly which requires skillful cash flow management.

The companies in this study were able to offer employment flexibility to employers and to meet their legal requirements, PAYE, GST etc, because they had developed fast and reliable software based management and record keeping systems. Two companies had developed their own proprietary systems over time and regarded those as a significant intellectual asset and a business advantage.

h) Exercise of authority

The operational model of labour hire requires the daily management of men (almost exclusively) either at a dispatch place or on worksites. Management appeared to be very 'blokish' with experienced older or more powerful men organising others. The ability to manage men is critical as is the strength to cope with verbal and physical intimidation.

Management is assisted by the ease of entry and exit to work and by the absolute control exercised by the hire companies over the work hours allocated to intending workers. This discipline is used to ensure compliance, to discipline and to exert pressure on individuals.

#### **2.4.2 Who works in this industry?**

a) Predominantly men

Most workers in the cases studied in the labour hire industry were men. The greatest demand for labour comes from the construction industry but all companies in this study supplied a very wide range of skills.

Some labour hire firms told us that they are seeking to broaden their services in order to protect themselves from future possible boom and bust cycles in the construction industry. As part of that broader strategy some firms now seek to supply labour to a growing range of markets where women dominate, for example warehousing, shelf restacking and logistics. One owner could see his business expanding into new segments of the labour market in the near future should he elect to pursue that goal.

b) Variety of terms to describe forms of employment

The emergence of new forms of work has required new terms to describe categories of workers. In the cases studied in the labour hire and construction industries we found the following categories of employees all essentially termed *casual* or *temporary*. These were employees:

- who work nearly every day, most of the year, most years and for whom this is their only paid employment;
- who work on a project or for a period but then leave to do something else;
- who work for short periods, take short or long breaks, but have no other paid employment so return; and
- employees who work for one or two days or even a week and never return.

c) Range of ethnicities, immigrants and back packers

Some immigrants use labour hire as an entry point to work in New Zealand. Those immigrants can earn an income from their general physical abilities and do not need to speak English well; they also receive some socialisation into work and work culture by working with other people in this form of work.

One feature of the Auckland labour hire industry is the practice of recruiting immigrants and holiday makers by word of mouth from 'well known' pick up points early in the morning, around 6.00 a.m. These people are transported to a site and returned in the evening. This is a ready source of payments for those people who may work for one day only or more days over a period.

d) Labour hire meets a variety of employer and employee needs

A number of employees in this study valued labour hire as a re-entry point to the workforce after they had left prison, were recovering from binge drinking, had tried other work but not succeeded, had been through a divorce or separation or had been obliged to shift to a city to look for urgent cash or for a variety of other individual reasons.

Tradesmen in the cases studied were middle aged or older and were pakeha, Maori and Pacific Island. A number of tradesmen, e.g. carpenters, electricians, plumbers, plasterers etc, who do not wish to run their own business but continue to undertake private work when available, work in labour hire and do their own work when they wish. Others do not wish to work for themselves any longer and now do labour hire work only. The labour hire companies value tradesmen as they attract a premium paid by the employer.

The labour hire companies showed us that they are developing skill level classifications and training and certification pathways for unskilled labourers. They said that this was a response to the labour shortage for skilled tradesmen, health and safety management reasons and a reflection of what they reported was the gap in training caused by the shrinking of the apprenticeship scheme in the 1990s.

Many of the employees in the cases studied were single men, or men who had no dependents.

One large company studied placed an average of 500 workers daily and over a year placed some 6,000 *different* workers.

Owners reported that individual IRD numbers and a view that non-compliance on their part will be detected and punished, means that many of the practices of the past, such as '*phantoms and under the table cash payments*,' are no longer as prevalent as they were. Companies in this study complained that small, transitional non-compliant companies exert market pressures to 'drive wage rates to the bottom' because they appear, do not incur the costs of compliance, make money then exit the industry.

### **2.4.3 Employee identified features of the industry**

#### a) Need to work long hours

Employees reported that they must work a long day 5-6 days a week to earn a living wage. Their long day includes travel to and from work or to and from the pick up points if the company provides transport. A relatively skilled 'hand' took home \$391.00 for a 53 hour week at \$10.50 per hour. His gross earnings were \$556.50 for the week (including 6% holiday pay paid weekly) and deductions were PAYE and repayment of an advance. He had received a daily advance of \$10 from the company to be spent on transport, coffee, tea and food while he was waiting for work. He repaid the advance and was charged interest on it. The 53 hours were the paid time he was at work. His time away from home over the six days included an estimated 2 hrs a day making a total of 65 hrs. Note that the minimum adult wage, a gross figure, was at that stage \$340.00 for a 40 hr week. This has increased to \$360.00 from 1 April 2004.

#### b) Hours may vary and weekly wage may vary

Uncertainty in hours worked was an issue for those workers in this study who relied upon their wages to support their family. If they had not been allocated to a medium to longer term project and relied on being offered work on a daily basis they had little certainty of income and might incur higher costs in seeking and travelling to many work sites.

#### c) Inability of household to withstand economic shocks

As we observed with cleaners in this study who were the sole or main wage earner in their family, the household budget of many labour hire employees is always very tightly constrained and unable to withstand unplanned expenditures such as health and education costs. Some employees in this study and the union reported that many households that go into debt struggle to ever return to financial viability. Those households may go into debt very easily, even accidentally. Such households do not expect to save and may have to rent accommodation at a distance from the workplace and pay a greater proportion of their income on travel at hours outside those supported by public transport.

#### d) Low wage better than no wage

Some workers in the cases studied reported that they preferred to work for a living than to be on a benefit even if their earnings were on or about the minimum wage. They agreed that they were able to 'get by' financially but could not afford to change their job or interrupt their income flow to seek other work. If they earned more in a good week, then their quality of life

improved for that time but they went back to 'getting by,' or a level of subsistence for the family, when the higher earnings ceased. This was more the case for unskilled employees or those skilled tradesmen who were not able or willing to work for 40 hours a week.

e) Inappropriateness of labour hire in the longer term for some workers

The casual, relatively low skilled but cash based features of labour hire work suit many groups of employees as a point of entry to the labour market. However some more skilled employees, those who are unable or unwilling to seek work on their own behalf as a self employed person for example, noted that they found it hard to source work other than through the labour hire company. One employee suggested that in his city this was a reflection of the dominant position and efficiency of a labour hire company.

Some employees in this study believed that they were 'trapped' in labour hire work because they and their family had established financial commitments that they could not contemplate or afford not to meet.

f) Absolute authority of the labour hire company

Workers and the union in this study understood that as temporary or casuals, workers had no voice or relationship with the labour hire company. As they were not employees the company asserted that there was no employment relationship in terms of the Employment Relations Act 2000 and thus the provisions therein did not apply.

Whether workers were allocated any work at all depended entirely upon the labour hire company's pleasure. Workers were strongly motivated to comply and agree with the company's instructions and views on any matter, including not joining unions and accepting being stood down from job allocation for informal disciplinary reasons.

Employees in the study reported that compliance and obedience were expected, that punishment for challenges or improper actions, such as advocating talking to a union, was swift and usually meant no work for as long as the labour hire company elected not to offer them work.

Employers reported that they needed to be very firm with some employees who they felt would be unable to work in any other form of work. This was demonstrably the case for a small group of employees who were described to us. Labour hire is a 'no questions asked' and 'no reference required' recruitment opportunity for a very small group of employees. Some of those employees 'come right' others do not and are either dropped off, or return to an institution or in rare cases may be closely supervised because the company chooses to stand by them for a period.

#### **2.4.4 Union identified features of the industry**

##### **a) Active opposition to union presence**

The union and labour hire companies in the three cases studied agreed that the companies actively oppose the presence of unions on their premises and the access of unions to their employees.

##### **b) Barriers to collective bargaining**

The turnover of casual employees is high, wages are low and many workers are employed for so little time that the union is not aware of their presence; these factors militate against organising collective bargaining. The union struggles to gain access to workers who may seldom assemble in one place or may be spread over many worksites. The labour hire companies did not support the collection and payment of union fees.

Only the older workers in these cases demonstrated an awareness of and a wish to join a union. The union and some workers in this study reported that awareness of unions and employment rights generally were very low for younger employees and immigrants and that most day workers had no interest in joining a union whatsoever.

##### **c) Powerlessness of employees**

Very few workers in the cases studied had any knowledge about employment relationships, could identify sources of advice or understood what is or is not proper or appropriate behaviour by the employer or them. They had little knowledge of their entitlements and were reluctant to raise any issue at all, preferring to move on or take the view that in the end everything works out.

##### **d) Formal compliance, formal language and worker understanding**

Labour hire companies do provide advice and information to workers about their rights and obligations to the organisations that employ them, however the form and language used is frequently difficult for workers to understand.

Few workers understand the intricacies of their employment status and most rely upon either the shared common sense of the workplace or the advice the labour hire company gives them.

In matters of health and safety the labour hire companies in this study undertook some initial and general training on health and safety matters for staff and all produced guidelines and information sheets and attached those to individual agreements. One company created an innovative personal health and safety passport that served as a record of training and certification and a CV; the cost was charged to the worker.

The union in this study asserted that the health and safety training provided by labour hire companies was largely superficial, that immigrants and workers with weak English skills did not understand the material and that site employers were often reluctant to spend the time of 'hands' on training when they arrived at 7.30 am.

The union also asserted that the actual practices and behaviours of the labour hire industry encourage employees to understand that a prudent focus on health and safety is seen by site managers as distracting or obsessive or even unmanly. In this way the critical outcome of a safety oriented culture is undermined. The union was also clear that larger, more formalised construction companies have a genuine commitment to a safety oriented culture and that they endeavour to create and sustain that culture.

Workers in this study reported that some labour hire companies and employers said one thing, i.e. *be safe and refuse to work in an unsafe environment*, but did another, i.e. *just be careful and stop complaining about everything*, in health and safety matters.

#### **2.4.5 Indicators – rating**

Work, for all workers other than the small number of permanently appointed employees, is wholly at the pleasure of the labour hire company on any day. The daily hire arrangement means that hours of work and earnings are uncertain and are able to be changed at will by the employer.

The functions of the job are broadly understood but vary on employer demand or labour hire company allocation and there is no explicit or implicit contract for ongoing employment for most employees. There is an explicit and constant assertion that employment is temporary or casual.

The hourly rates are low. One large company informed its clients in writing that it had not increased its charge out rates for ten years; that company pays most of its workers on or about the applicable minimum adult wage rate.

Discrimination and sexual harassment were not raised with us. Unacceptable working practices are regarded as an inevitable consequence of casual work by workers in the industry. The union in this study suggested to us that there appears to be an assumption that a casual worker is easily substituted for at no cost and there is no cost for loss or damage to the casual worker to the labour hire company.

Casual workers do not have access to ‘standard’ non-wage benefits such as sick leave, domestic leave or parental leave. Some labour hire companies have begun to offer some benefits, such as enabling workers to ‘bank’ holiday pay for use during periods off work, but most casual employees have no non-wage benefits.

For general workers there are few opportunities to gain and retain skills through access to education and training. Some labour hire companies offer apprenticeships and work closely with established clients to advance the skills and knowledge of tradesmen using the New Zealand Qualifications Framework. Most casual workers however, have no opportunities to gain and retain skills through access to education and training. They are able to acquire skills and knowledge by working alongside others, however that is a weak learning model and may result in learning bad habits as easily as they might learn good habits.

The casual nature of labour hire and the transient nature of many employees creates a culture of ‘getting the job done today’ that readily permits the development of a culture that results in health and safety practices that make the jobs unhealthy or dangerous. The ambiguity over

where liability vests for health and safety is too hard to grasp for workers who reported that they adopt a ‘look after myself’ approach.

Workers in the cases studied appeared to engage in pattern matching and frequency gambling as a means of managing risks to them. In the former workers interpret new risks in terms of previous situations and experiences, they do much the same thing as they did in that situation last time. Thus faced with the need to store an excess of solvent and no supervisor or specific training about solvent management, a worker might place it in the nearest container not realising that the container may explode. In the latter there may be an instruction that nail guns are not to be used over wiring covered by gib board without a wiring diagram but a worker in a hurry may do it anyway as they have never had problems before and leave a live nail or get a shock.

The precarious nature of this industry is obscured by the current high demand for labour. Most employees have no tenure, must work long hours for modest wages and if they are supporting a family, will spend little time at home and not be able to save for their futures or unexpected events.

There are however, sufficient people who are able and prepared to work on temporary or casual basis, and a pervasive anti union culture, to prevent pressure on labour hire companies to raise wages or improve terms and conditions of employment.

Labour hire companies meet a demand from clients who have reduced their permanent labour force or who require overflow labour from time to time. They also meet a demand from groups of men who, for a variety of reasons, do not wish to be in permanent employment.

For those men and some women who wish to work in these areas as permanent employees for a variety of reasons including because they have a family to support, labour hire is a precarious form of work in terms of tenure, income and quality of life.

#### **2.4.6 Policy issues indicated**

##### **a) Employment model**

The view that there is legislative support for daily fixed term contracts for any term mean that the labour hire industry is not founded upon a direct employment relationship between workers and the labour hire company. Barriers to collective bargaining and the low knowledge about employment matters held by people typically seeking employment in labour hire mean that the relationship is ambiguous and unequal. The outcomes of the relationship do not advance the welfare or quality of life of employees.

But short to medium term temporary employment does meet the needs of a number of groups of employees. Labour hire companies might be considered as operating at the edge of the labour market. That edge is a space where the many regulatory frameworks are largely observed but where daily practices may shade into informal and unenforceable arrangements that suit a very small number of people. Having such a space may be a necessary requirement of a functioning labour market.



b) Effect of minimum adult wage

The minimum adult wage sets the wages floor in this industry. Some labour hire companies in this study expressed frustration that the minimum wage was not set higher. They believed that workers ought to be paid more but said that employers had a cost focus and would always employ cheaper labour if it were offered. As there were, in the larger cities, new labour hire firms or informal organisations that came and went and allegedly did not comply with legislative requirements and who could therefore afford lower charge out and wage rates, there was a 'drive to the bottom' in the wages paid in this industry that the compliant companies could not resist.

c) Health and safety in employment

Employees are uncertain as to which body, the labour hire company or the owner of the place they work at, is their employer and who is then responsible for the safe systems of work. Many employees prefer not to think about health and safety issues beyond elementary safe practices; this pragmatic view of getting on with the job, is reinforced by their experience of the behaviour of site level managers.

In the event of injury or impairment the labour hire companies believe that the responsibility will lie with the employer.

There are health and safety risks around the practices used to brief, advise and train a large number of casual workers and immigrants employed on an hourly wage. An labour hire company may find that it invests more than a worker earns in his or her health and safety briefing and training.

d) Economic participation

This study suggests that when demand for on-hire labour is low, there may be little incentive for a labour hire company to invest in training, the hours offered will be low or directed to skilled workers and wages will be low.

### **3.0 Across case themes**

#### ***3.1 New forms of employment and employment relationships emerged***

The Employment Contracts Act 1991 (“ECA”) introduced new forms of employment and new employment relationships to the labour market.

The new forms of employment permitted included individual employment contracts, site based collective employment contracts and fixed term employment for any period agreed between the parties. In 1991 these new forms of employment may all have been regarded as non-standard forms of employment.

The new forms of employment relationships were indicated, facilitated or enhanced by the sense employers and employees made of the principles, powers and processes set out in the ECA. As those presumptions became actions taken by employers, as they were reported upon and supported by the early case law and the experiences of unions, a new shared understanding about the nature and conduct of the employment relationship emerged for employees and employers. In essence the new form of employment relationship provided that:

- the employer could finally determine the form, process and outcome of bargaining and the terms and conditions of employment
- an employee could be offered employment on any terms and conditions including being a temporary employee permanently
- bargaining was a notional concept for employees who were not members of a union.

In the cases studied employers who established site or individual contracts under the ECA prefer to retain those arrangements and looked to avoid re-entering collective agreements. Many employees in the cases studied prefer their individual or site based arrangements to any other arrangement. Employees in the cleaning and fish processing cases were more likely to elect to join an existing site or national collective agreement. Few employees in the labour hire industry elected to join a union and no employees in the call centre cases studied were members or sought to join a union.

Employers are stronger in their preferences for non-standard forms of employment than employees. Employees in the cases studied tend to accept whatever form of employment they were offered. Some reasons for this were:

- acceptance of the authority of the employer to determine employment terms and conditions
- acceptance that there were no other terms and conditions to be offered
- a view that the terms and conditions were fair or the same as others
- a view that if things didn’t work out the employee would move on.

There appeared to be a broad acceptance by employers and employees in the cases studied that there are no longer any non-standard forms of employment. As the law is understood to sanction any, other than illegal, form of employment then it follows that there is no standard form of employment now.

As the Department of Labour reports in its study of the impact of the Employment Relations Act 2000<sup>9</sup>, (“ERA”) a new shared understanding of the principles, values, processes and conduct of an employment relationship are emerging as a consequence of the ERA.

The report suggests that while there was no change to the forms of employment caused by the ERA, there are indications of a change in understandings about the employment relationship from the understandings that emerged under the ECA. The emerging understandings suggest that:

- it is appropriate for employees to bargain with their employer and make some choices that must be respected by the employer
- employees have some legal basis for asserting that they are participants in the employment relationship
- employment is a form of relationship. It is not only or simply a contract for the exchange of labour for consideration. Both parties are expected, by law, to pay attention to maintaining the employment relationship.

The case studies were conducted in the context of these emergent forms and understandings about employment. The effect was that no legal form of employment was described as precarious in itself for all of the employees in that form of work.

Some employees reported that their experience of fixed term or non-permanent employment caused them to feel their employment and ability to earn an income to support their life and family was precarious and they lived under constant stress.

Some employees in the cases studied in the cleaning, fish processing and labour hire industries described a hard life of long hours, unpleasant conditions, repetitive work, no benefits and oppressive employment relationships.

The accounts of the working life of some people in this study were distressing, in particular the impacts they reported that their form of work had upon their children and dependents and in extinguishing their aspirations of ever achieving a modest quality of life for themselves. This was not the same however as precarious employment.

### ***3.2 Historical alignment of technical and cultural vocabulary about forms of work***

The vocabulary and legal framework for describing forms of work is no longer adequate to describe the forms of work in workplaces. There is significant confusion and a lack of knowledge about key matters in the employment relationship because practices are not described by the current terminology. Some employers in this study were able to exploit that confusion where employees lack knowledge themselves or have no access to information or support.

The only employees in the cases studied able to describe their legal employment status with accuracy and confidence were some of those employed on the applicable site based collective agreement MECA in the fish processing and cleaning industries. Few other employees could tell us their status or appreciate why it was a significant matter in the employment

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<sup>9</sup>ibid

relationship. Most employers could describe the status of their employees accurately. The ECA continues to shape formal and informal understandings of the employment relationship for most employers and employees.

### **3.3 *Distancing the employer in the employment relationship***

A standard historical form of employment included a direct relationship between an employer and an employee; this remains the employment model for many permanent employees in the four industries in this study. Some employees in non-standard forms of work and some employees in permanent positions in this study are part of a longer chain of employment relationships. In the cleaning industry, a principal organisation lets a contract to a cleaning contractor who employs cleaning staff. In the labour hire industry, an organisation seeking labour contacts a labour broker who directs workers who have approached it, to that organisation. In the financial services industry a principal organisation outsourced its product support to a third party and that party employed staff.

In the cases studied the indirect form of employment appeared to remove an employer's employment relationship and personal knowledge of employees. This appeared to confuse the legal understandings and expectations between the now three parties to the employment relationship. A principal organisation in the cleaning cases in the study indicated that they did not condone the actions of the contractor and would prefer employees were treated in a better way, however they felt that it was not their business to instruct the contractor on how to run their business.

As with the cleaning industry the contracting model of employment in the labour hire cases studied exerted a downwards pressure on labour costs.

### **3.4 *Barriers to collective bargaining***

This study identified four barriers to collective bargaining:

- a) Employer opposition. Employers in the call centre and labour hire cases in this study were strongly and actively opposed to the presence of unions and collective employment contracts. Larger employers in the cleaning and fish processing cases were open to the involvement of unions, but smaller employers in both tended to be more firmly opposed to union involvement.
- b) Employee opposition. A shift in the values and understandings about the role and relevance of unions held by employees means that in many workplaces there is little or no interest, or opposition, to the presence of unions or collective employment contracts. There was small residual interest in unions in the call centre and labour hire cases in this study. In this study cleaners were interested and active in their union and there was some union interest and activity in all of the fish processing plants.
- c) Absence of unions. Many employees in this study other than in the cleaning and fish processing cases, have had no experience of a union and are unlikely ever to do so. Only some employees in industries in this study with established unions or collective agreements had access to a union.
- d) Costs of providing union services. Some employees in some of the cases in this study had considered joining a union but had decided that the cost of union fees was a cost their family budget could not afford. One union in the study reported that organising

and supporting small numbers of low paid workers was a difficult business model to sustain.

The presence and effectiveness of unions across the cases was small and appeared to be diminishing even in the cleaning and fish processing industry cases studied where there has been an historical union presence. There are no unions active in the call centre cases in this study. In the labour hire industry there are a number of regionally based unions. Two of the labour hire unions in this study reported that they are increasing membership very gradually and that they were seeking to act nationally with an industry group to improve the safety of the labour hire industry.

### ***3.5 Training is superficial or compliance oriented***

Most employers in cases studied reported that they were committed to training employees, especially in health and safety. Many employees in the cleaning and labour hire cases studied could not recall their training or said that it was a single event at the start of their employment. There was strong evidence of more systematic training in health and safety in the fish processing industry in larger organisations. The Industry Training Organisation is active in fish processing and there was evidence of some skill training in some of the cases studied. Temporary or casual employees may be excluded from training schemes and, as in one case studied, they find that the pay or reward system fails to recognise their acquired expertise because it applies only to permanent employees.

One large labour hire company studied undertook apprenticeships and encouraged trade training because it had identified skills shortages in some of the industries it serviced. That company recognised that the likely employers of its workers now ran minimum internal staff complements and that it could work with those principal organisations to address the strategic issue of the supply of skilled staff.

Some call centres offer employees an opportunity to acquire broad sales and marketing skills and in one case the company offered training in the products of the principal organisation. This offered employees a pathway to promotion and permanent employment and was a critical recruitment, retention and motivational factor for employees.

In the cases studied the skills of individuals tend not to expand to enable them to move to different jobs. In two call centre case studies employees did expand their knowledge and skills and move to other jobs.

### ***3.6 Impact of supervisor or manager***

Employees reported across the cases studied that the way their immediate supervisor or manager treated them was a critical factor in their report of their experience of the form of work they were in. It was generally the case in the cases studied that a 'good' supervisor or manager could ameliorate an employee's experience of work such that the employee might not report precarious work as being experienced as precarious.

This study suggests that irrespective of the legal, technical and material circumstances of their form of employment, precariousness is directly influenced by the behaviour of the supervisor or manager as experienced by a worker. This is consistent with the findings reported in the ERA<sup>10</sup> report and the studies by Human Synergetics.<sup>11</sup>

### **3.7 Social engagement at work**

Generally the workplace provides people with opportunities for social contact. This appeared to be the case in the call centre, fish processing and labour hire cases studied. It was not the case for many of the women in the cleaning industry who worked at night and could work alone for many hours.

### **3.8 Exhaustion**

In the cases studied we interviewed many people who were either:

- a) exhausted from sleep deprivation caused by long hours of hard work or intensive family commitments in addition to their work; or
- b) who were engaged in demanding repetitive work that was wearing out their physical capacity.

People in the cleaning industry cases were often tired and where they had family dependents reported having little or no opportunity to sleep and no opportunity to rest or take holidays.

Some people in the labour hire industry cases presented as old beyond their years as their bodies were wearing out from the very physical demands of much labour hire work.

We met some people in the fish processing cases who carry out the same manual operation 10,000 times or more a day. Despite preventative measures some of those people reported that they knew that they were wearing out their body and that when that happened they would not be able to work again. The pay and reward systems of the production system encourage sustained peak productivity as do workplace cultural norms of being the 'gun' performer.' Employers in the cases were mindful of this risk and seek to prevent it, however it appears to persist as a fundamental and necessary artifact of the production system and workplace culture.

People in the call centre industry did not report any concerns about exhaustion. Employers offer a range of shifts and working times that employees reported that they felt free to choose. There were some concerns reported in the cases around the monitoring, performance management and reward systems found in the call centre industry. The concern was that they can stimulate over working and lead to unergonomic practices and eventually harm through OOS and related injuries.

Where employees move jobs frequently the current employer is more aware of avoiding taking on responsibility for work related problems suffered in previous employment.

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<sup>10</sup> ibid

<sup>11</sup> McCarthy (2003)

### **3.9 *Quality of working life and quality of private life***

A small number of employees in the cases studied, frequently those with children, reported that they had little time to contribute to or participate in any community activities. The most common participation in a wider social life for Pacific Island parents was church on Sundays. In one case where both parents worked in the same company but might stop and start at different times, the parents reported that they may have to take less well paid jobs because their elder children were approaching adolescence and would require post-school supervision. Their current employer expects them to complete a 12-hour shift so they are unable to provide supervision of their children at present.

Many of the people we talked with in the cases studied in all industries demonstrated a resilient stoicism in the face of what was recognisable as a 'hard' life. Even though they could not see any path to improving their lot, not one person complained except about the fairness of the workplace. Some showed resignation and acceptance that the choices they had made meant that their life would be as it was; for some this was endurable because they believed that the lives of their children would be better.

Very few people across all of the cases studied were active in seeking to alter the working lives of themselves and others; those few people were employees of unions or delegates in a large workplace where a collective agreement applied. Some of those people had had an experience of engaging with an employer, and possessed sufficient knowledge and confidence to act in an assertive, and in one or two cases, confrontational, manner.

Almost all of the people we talked with demonstrated personal pride in their work. Employees in the most precarious of employment expressed the same pride in their work.

### **3.10 *Choice and bargaining***

This study supports the findings of the LMPG report<sup>12</sup> on the short-term impacts of the ERA that few employees are able to exercise a choice of employment agreement or take part in bargaining.

Most employees in the cases studied, not in a collective contract, reported that they did not bargain at all. Most reported that they were offered an employment contract on a take it or leave it basis. Others, especially in the labour hire industry, understood that they were not employees at all and thought they had no employment contract. In order to earn enough for their families to live on in an economy where costs are rising, many employees observed that they feel obliged to take any job even if they might prefer to have another job.

Immigrants in the cases studied, did not possess the set of understandings and values about how things are done in New Zealand workplaces typically held by New Zealand workers or employers.

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<sup>12</sup> *ibid*

### ***3.11 Source of advice and guidance for employees***

The presence and activities of unions as sources of advice, support and advancement for employees in the cases studied was very low. Most employees have no access to advice about entering or maintaining an employment relationship. Many union members reported receiving no assistance from the union other than obtaining access to an existing collective agreement as the primary benefit of membership.

Some employers in the study reported their concerns about the emergence of a small number of workers and immigrants who do not appear to have learned or acquired the cultural values and behaviours required to enter and remain in work. Employers believe these people are not ready for work and may never be and noted that they are often the people referred by WINZ. Many employers reported that they no longer preferred to place job seekers referred by WINZ because an earlier experience had been poor for them or a valued client. Some employers in the cases studied were happy to place job seekers referred by WINZ because they had found the people ready and prepared to work.

Employees and unions in the study and some employers described their experience of the emergence of a growing number of owner/employers who believe that the ECA and the ERA have greatly enhanced their roles, rights and powers to be formally and informally beyond challenge or moderation by employees and unions in the workplace.

In the cases studied we met some employees who were members of unions and some union officials. The union organisers reported that much of their work was not the services contemplated by the schema of employment law (i.e. bargaining or advocacy). Their work on behalf of low paid employees was directed largely at ameliorating or addressing social and economic pressures on individuals and their families; the union officials were friends and mentors.

We observed one union that was able to exert some bargaining power on behalf of members in the fish processing industry. The cleaning industry MECA was in place at the time of the study and was taken as evidence of the presence and bargaining power of the union. However employees in three cases in the cleaning industry reported that the union had to work hard just to hold existing conditions, that some former benefits had been lost and that they had little expectation of improving their terms and conditions of employment through collective bargaining.

In the cases studied:

- many employees had not or would not consider joining a union
- some who were sympathetic were never likely to be contacted by an organiser
- others were members but could not be said to have a union awareness or be prepared to act collectively against their employer, especially immigrants in the study
- some were active union members.



## 4.0 Alignment with the propositions from the literature review

The literature review drew on the evidence in the international literature to set out four propositions (c.f. section 1.2), with respect to precarious employment, about what we might broadly expect to find in New Zealand. This section considers the alignment between those propositions and the experiences reported in the study.

### 4.1 *Characteristics of work that is likely to be precarious*

- a) it will be work with low wages

Wages were low and tended to approach the minimum adult wage in the cleaning and labour hire industry cases in this study. The charge-out rate for some skilled tradesmen in the labour hire industry was greater than the hourly rate paid to the same tradesmen working for a construction company. However the labour hire employees receive only a proportion of that fee determined by the labour hire company; they earn less than their peers in the construction company and this causes some resentment.

Wages were low and approached the minimum adult wage for some employees in the call centre industry cases in this study; other employees in one call centre case were very well paid.

Basic hourly rates were low in the fish processing industry but employees in the study who worked long hours or who achieved performance goals received higher wages.

- b) it is work where there will be little or no access to ‘standard’ non-wage employment benefits such as sick leave, domestic leave, bereavement leave or parental leave.

Employees in the cleaning and fish processing cases who were members of the union and were permanently appointed were employed on a collective employment agreement that contained at least the statutory minimum ‘standard’ leave provisions and provision for redundancy payments. Employees in those cases in this study who were not in the union were employed on individual employment agreements with the identical leave provisions.

Seasonal employees in the fish processing industry in this study did not accumulate entitlements and did not have access to ‘standard’ leave provisions.

All employees in this study in the labour hire industry were not employees of the labour hire company and had no access to ‘standard’ leave provisions.

Employees in this study in the call centre industry who were deemed to be casual employees had no access to ‘standard’ non-wage benefits. Some employees in this study in the call centre industry did receive some of the minimum leave provisions.

There was provision for over-time to be paid in the fish processing industry agreements sighted in this study. Employees at one processing plant reported that to access the over time rates they would first need to work 50-60 ordinary hours that week.

No employee in any industry in this study reported that they received any other non-wage benefit.

- c) it is work where there will be low job security (can be terminated with little or no prior notice by the employer)

Employees in the cleaning and fish processing cases who were employed on a collective employment agreement enjoyed a measure of job security.

Casual or seasonal employees in the fish processing industry had low job security.

All employees in this study in the labour hire industry had no job security, they were daily hires.

Some employees in the call centre industry in this study had no job security, others had some job security.

- d) it is work where there will be little control over workplace conditions or hours of work (hours are uncertain and can be changed at will by the employer and earnings are uncertain or irregular).

Workers in the labour hire industry had no control over workplace conditions or hours of work other than electing not to accept the work offered. Their earnings were uncertain and could be irregular by choice, circumstance or by the action by the labour hire company.

Employees in the cleaning industry in the study accepted that their hours of work are non-standard and that their workplace conditions and hours of work may be varied by the employer subject only to any requirements of the applicable collective agreement. Cleaners in educational institutions in this study reported that they have their earnings varied by the employer in holidays.

Employees in the fish processing industry in this study agreed, subject to the applicable collective agreement and individual agreements, that the employer has control over workplace conditions and hours of work in order to ensure fish or shellfish are processed promptly. This can result in call outs, changed shifts and disruptions to family lives for some employees at times of high processing demand.

Employees at one fish processing plant in this study noted that the formal requirement of their agreement was that they would work an 8 hour shift, however they understood and felt compelled to obey the owner's expectation that they would work 10 hours a day at least.

Almost all employees in the call centres in this study worked in regular shifts at settled rates of pay for the period of their engagement.

- e) it is work where there will be limited opportunity for training and skill development

We have noted earlier in this report that training in the cases in this study was largely compliance oriented and focussed on health and safety matters. We were also advised by many employers and employees in this study that to establish and maintain a healthy and safe

workplace at all times requires a certain measure of skill of every employee even if it only the skill of being safe.

Every employer in this study described the staff they required as skilled; no employer agreed that they would choose to employ unskilled workers. All employers expressed a strong preference for skilled staff who were reliable and did good work. However few employers provided systematic opportunities for training and skill development for permanent employees. Casual employees in all cases in this study had very limited access to opportunities for training and skill development.

The larger employers in the fish processing industry in this study provided some training and skill development for permanent employees in part under the broad stimulus of the industry training organisation. One small employer in the fish processing industry reported that he should not pay employees while they were in training because they were not achieving the minimum cost/yield ratio and that ensuring people were skilled in fish processing prior to employment was an appropriate role for government.

In the finance/call centre industry this study found that all tasks required skilled labour. Some employers in the call centre industry provided some training and skill development for employees intending to advance in sales and marketing or call centres. One call centre offered its employees training in product knowledge of a large principal financial institution and some generic skill development that prepared them for possible recruitment into a new career. Another call centre employer offered casual employees no training or skill development opportunities.

In the cleaning industry all employers said they valued cleaners who could complete their work to a high standard. Employers all said that they required skilled staff because to clean effectively and efficiently and reliably at the same time is a skill they value because it secures cleaning contracts and reduces the need for supervision. No employee in the cleaning cases studied reported that they had received opportunities for training or skill development.

Some tasks in the labour hire industry do not require skilled labour. Employers assured us that there were very few such tasks and that those tended to be undertaken by people at the very edge of the labour market or by backpackers. One employer in the labour hire industry undertakes and supports apprenticeships to meet a shortage of skilled labour. A second employer is actively seeking to amend current immigration policy in order to recruit skilled tradesmen from Europe.

f) it will be work where the task performed or the health and safety practices at the workplace make the job unhealthy or dangerous

Employees were most at risk from unhealthy or dangerous work in the labour hire and fish processing industries. Casual employees in non-standard forms of work in these industries were likely to perform unhealthy or dangerous work. In fish processing this was not because of the form of work, but reflected the nature of the processing process. Casual employees in fish processing were less protected from the effects of the processing process.

There was little protection for employees in this study in the labour hire industry. This was not simply because much of the work could become unhealthy and dangerous but also because of the ambiguity about who constitutes the employer and how the obligations of the employer in health and safety matters is discharged. This confusion and the 'day here day

there' nature of much of the employment permits of a 'get on with it and don't complain' attitude.

The intensity of some call centre work in the study suggested that there were risks of OOS, however the larger employers were clear that they understood and guarded against that risk. The casual employees of one employer reported that their employer was slow to respond to health and safety concerns.

- g) the characteristics of precariousness are not absolute and are best thought of as a continuum and it is the combination of a number of elements that causes precariousness, rather than any one aspect.

This study supports this proposition and discusses the matter in greater depth in Section 6 following.

- h) there can be significant personal costs associated with precarious work forms with respect to work-life balance, quality of working life, worker health and general well being and personal and family relationships.

This study supports this proposition. Many of the observations about work-life balance, quality of working life, worker health and general well being and personal and family relationships arising from the cases studied have been made in earlier sections.

#### **4.2 *Location of work that is likely to be precarious***

- a) Precarious jobs are more likely to be found in agriculture and the unskilled, predominantly manual jobs (conventionally held by men); in the less skilled service jobs (conventionally held by women); and in workplaces where the demand is seasonal.

For the reasons explained in Appendix 1 this study sought case studies in the cleaning, call centre, fish processing and labour hire industries. This study found that in New Zealand some non-standard forms of work that are reported as being experienced as precarious by the employee were to be found in the labour hire, cleaning and fish processing industries.

- b) Smaller firms are more likely to hire workers on casual or temporary contracts than are medium and large sized firms. Smaller firms are more likely than larger firms to have informal contracts, rather than written agreements.

In this study there were no casual employees in the cleaning industry. However all cleaning contracts in this study were regarded by their contractors as being technically fixed term. Contractors in the study dependent upon one contract reported a sense of precariousness and regarded employees as permanent only for the term of the contract.

This study suggests that the nature of the product and its processing was the significant cause for the employment of casual and seasonal employees in the fish processing industry. The employment law framework assisted the offering of those forms of work preferred by the employers. The local labour market behaved in different ways at each of the fish processing cases studied. In the city there appeared to be little competition for the work. In the smaller regional town the local labour market was small and competition for work was low. In the

larger regional city climate, reputation, tourism and seasonal portfolio workers created a unique local labour market, however there were suggestions in the interviews that this mix was changing.

The size of the call centres in this study did not influence the hiring of casual or temporary employees. The largest call centre hired staff on individual agreements and preferred not to employ casual employees. A second large national organisation operated a call centre to undertake contracts it won and preferred to employ all staff on temporary agreements. These examples suggest that the nature of the business for call centres in this study is a more significant indicator of their propensity to employ casual or temporary employees than the size of the organisation. The call centres were in a large city and expected to have access to a large and diverse labour market.

In the labour hire industry a specific understanding of permitted forms of employment and a strategy to minimise or avoid completely the costs of employment was the significant cause for the employment of casual or temporary employees. The two labour hire companies in the large city had a different recruitment strategy because they targeted different segments of their local labour market. The labour hire company in the other large city was the dominant supplier of labour to three local cities drawn from a regional labour market.

All employers in the cases studied in the cleaning, call centre and fish processing cases had written collective or individual employment agreements for employees. There was no contract of employment between labour hire employers and workers who were not permanent employees. Some companies promulgated Terms of Trade that purported to be a minimal agreement between the labour hire company and the employer of the worker about terms and conditions of employment; the worker was not a party to this agreement. Some large employers actively sought to recruit people other than Pacific Islanders as cleaners but reported that they were unable to attract other groups of people. They also reported that they had found that other groups, e.g. students, Pakehas, Asian people, were unwilling or unable to undertake the same work as Pacific Island people or to perform as well.

**4.3 Characteristics of workers likely to be engaged in work that is precarious**

The case study research team explored four identified industries where there was expected to be precarious work; it did not however presume that all work in this industry would be precarious. This section therefore describes the characteristics of the people in the cases studied, some of whom reported that they experienced their form of work as precarious.

The propositions suggested that precarious workers, or those at risk of precariousness, are more likely to be: women, youth, an ethnic minority, recent migrants, less skilled and educated, less well informed of their employment rights, less capable of bargaining effectively, less likely to be unionised, at greater risk of injury or exposure to health hazards, less likely to receive training (be it external or employer-supported or in-house training) but may receive informal in-the job training.

The following table summarises the gender, ethnicity and role in the workplace of the participants in the case studies.

Industry	M	F	Pakeha	PI	Maori	Other	Owner	Manager	Employee	Union	National Agency	Principal Client
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Cleaning	9	12	13	7	0	1	1	5	11	2	0	2
Call centre	3	8	7	1	2	1	1	4	4	2	0	0
Fish processing	8	8	11	4	1	0	1	2	9	2	2	0
Labour Hire	16	1	14	1	2	0	3	1	4	3	5	1
Total	36	29	45	13	5	2	6	12	28	9	7	3

**Figure 1: Summary of characteristics of participants**

a) People in the cleaning industry

Pacific Island women with dependents were the largest group of cleaners. Pacific Island men tended to hold supervisory positions in the cleaning cases in this study. Most cleaners had immigrated to New Zealand over a number of years and were well established here with children at school. The women did not hold formal qualifications and some told us that they were not skilled enough to do work other than cleaning. Some had been in the clothing industry in Fiji or other islands but reported that the pay was better here. Most cleaners were members of a union but were not well informed or knowledgeable about their employment rights.

The union officials in the cleaning industry were Pacific Island people. One had been a successful business person but been obliged to immigrate because of political unrest in Fiji. The union officials drew on cultural mores to support their role as advocates, supporters and guardians of their members. Employees in the cases studied described union membership as a community like commitment.

b) People in the call centre industry

Women constitute a significant proportion of employees in the call centre industry. In the cases studied they tended to be students, young mothers or career-oriented women entering the workforce. In one large call centre the employer reported that they sought to attract male and female graduates entering the workforce. Employees in the call centre industry were better informed about their employment rights but were unlikely to be unionised and not likely to bargain collectively.

c) People in the fish processing industry

There were differences in the regional labour markets that the fish processing companies operated in. In the city Pacific Island men and women comprised the largest group of employees. These employees reported that they sought or were recruited to employment in fish processing when they arrived in New Zealand because it was familiar work, offered relatively high wages and was available work; many were recruited by family or friends.

In the regional fish processing plants a more international labour market operated that included seasonal portfolio staff and immigrants from regions other than the Pacific. Men and women were represented in the cases studied with more women than men.

Employees in the fish processing industry cases studied were relatively well informed about their employment rights and some were unionised and bargained collectively. Some of the

older workers were well qualified and had sought local employment in the industry in order to support their retirement or life style.

In one case we were advised that the employer was recruiting a growing number of Asian immigrants, however we did not interview any of those people and the employer could not attribute the phenomenon to any cause.

d) People in the labour hire industry

The labour hire industry is a male dominated industry. There were at least six groups of employees in the cases studied.

- Skilled tradesmen who tended to be older and unprepared or unwilling to maintain their own business or to seek work with other contractors;
- Relatively unskilled but experienced men who also tended to be older and for whom labour hire meets their needs for earning and effort. For some this was not their preferred working option but they reported that they accepted that this was how they would live the rest of their life;
- A very small number of younger men with partial qualifications seeking to gain work experience before moving to permanent employment;
- Men seeking earnings or relative anonymity during a transition period in their life;
- Young men on holidays or seeking the odd day's work;
- Immigrants seeking earnings and a first entry to the workforce.

Few employees in the cases studied were well informed of their employment rights. Workers are very unlikely to be unionised or to bargain collectively. Few workers are likely to be wholly unskilled and few are less well educated.

Some skilled tradesmen in the construction cases who had become independent contractors in the past when made redundant or by choice were reported as being worse off financially than previously. Owners of the labour hire companies told us that these men were a supply of labour because their alternative was to work as a sub-contractor on private building sites where they might, for example, work for 60-70 hours a week but earn only an effective \$7-\$8 an hour.

e) Other characteristics observed

Some employees in casual employment were satisfied with the form of work as it provided them with a re-entry point to work and society. Some people in the cases valued the 'no questions asked' and on/off nature of some forms of casual work that provided some cash when required.

Many employees in the cases across the industries who were middle aged or older were concealing health issues that might reduce their employability.

#### **4.4 *Some characteristics of immigrants***

In the cases studied the attitudes and values held by immigrants towards employers, their work and their place in New Zealand economic and social life were reported to us; these were largely from a Pacific Island perspective. Some of the values, attitudes and beliefs about themselves held by immigrants and understandings about how they should behave at work increase the likelihood that their employment will be precarious.

The relationship between the employee and their (extended) family produces differences in the experiences of the same form of work for men and women. Some of the women interviewed appeared to be ‘worn down’ when working long hours and in work where wages may be uncertain or irregular because the family, including extended family, expected a great deal more from her than if she was a man.

Immigrants in the cases studied were very mindful and appreciative of their status as ‘guests’ in NZ. They stressed to us how grateful they were to have the opportunity to come to New Zealand and many indicated that they were prepared to endure any life here if their children would benefit from a good education. They also reported that:

- they felt a powerful obligation to secure work
- they strongly did not wish to become beneficiaries and a burden to their hosts
- they felt they should be respectful towards their employer and not question or complain at work
- if they understood or were told that their employer did not favour the involvement of a union at the workplace they should not go against that wish
- they felt obliged to work hard and honestly no matter what they were paid
- they accepted that the employer was entitled to run the business and make decisions about the business and those including putting them off if required
- they did not wish to lose their job by annoying their employer.

#### **4.5 *Determinants of non-standard forms of work likely to be precarious***

a) The proposition is that employer motivation for using non-standard work arrangements ranges from minimising costs to accommodating fluctuations in workload (allowing labour deployment to be tailored to times of peak demand and times of fluctuating demand). To a lesser extent, trialling new workers may also be a motivating factor. Firms’ staffing needs – primarily short term – are the main source of demand for casual and temporary workers.

This study has noted that what constitutes non-standard employment is a question that itself presumes a state of order that no longer exists in the forms of employment. This study suggests that there is no longer a standard form of employment and so no non-standard form, instead there is now a wide range of employment forms that produce different effects for employers and employees.

This study suggests that the overall legal framework of employment and how that is understood at the operational level of a firm, has been a strong factor in the choice of forms of employment by employers in the labour hire, call centre and to a lesser extent the fish processing cases. This factor is in addition to the finding that minimising costs,



accommodating fluctuations in workload, trialling new workers, managing the effects of technology and the nature of the business model (contracting) are also factors in the demand for casual and temporary workers. Casual and temporary forms of work are likely to be precarious forms of work.

b) The proposition is that while supply-side characteristics are not unimportant, demand-side factors appear to provide more likely explanations for the overall level of casual and temporary employment. There are significant associations between the temporary and casual employment share of workplaces and the nature of the product market, skill requirements, technology (i.e. production method employed), and union presence.

This study suggests that the labour market is in transition from a former relatively ordered state to a more dynamic and differentiated state. The new state appears to be less readily or reliably described by the aggregated propositions or analytical frameworks that applied to the former state; that is terms such as standard and non-standard are not as useful analytical tools as they were. The social, economic and cultural nexus (taken to include values, attitudes, behaviours of people and their families and the family accumulation strategy) in which people live emerged from these cases as a factor influencing the labour market and requiring further understanding.

This study suggests that the context within which supply and demand side factors operate shifted to strengthen the demand side under the Employment Contracts Act 1991. That many employees employed in casual work across the cases studied would prefer permanent employment or reported that they were unhappy with the quality of their employment, also suggested that demand side factors were stronger in the cases studied.

However there were employees in all industries who sought casual employment in order to accommodate their needs for lifestyle, dependent care, study, holiday work. This suggests that supply side factors remain a contributing factor and underscores the complexity of the dynamics of this emerging labour market.

c) The proposition is that small firms have more limited choices than large firms – achieving growth by increasing permanent staff is often not financially viable for them. Compliance issues around dismissal procedures are seen as more onerous for small firms than they are for larger firms and this contributes to the desire, for small firms, to employ new staff on a trial basis on temporary contracts.

This study did not include small firms.

d) The proposition is that demand side factors are more likely to predominate for precarious jobs, although students, or those in semi-retirement, may be more likely to opt for casual jobs with irregular hours.

As we have noted in b) above, the labour market appears to be in a transitional phase. The study design presumed that what constituted precarious employment in the current New Zealand labour market was not settled. The findings from the cases studied suggest that what constitutes precarious work can only be described broadly and is, for individual firms and employees, always the product of very complex national and local dynamics.

The study identified some supply side factors influencing employment patterns. In the cases studied some students, some migrants and some people in semi-retirement did seek casual jobs with irregular hours. There were also some people who sought portfolios of seasonal work.

- The students in the cases studied expected to work in this form of work for a short (one term) or medium period (three or four terms) only.
- Migrants in the cases studied found employment in the labour hire, cleaning and fish processing industries because there was less competition for the work and because language was not a barrier to earning wages. There were two groups of migrants, those from the Pacific and those from Asia and Europe. Pacific Island migrants were found in cleaning (more women than men) and fish processing (men and women). European migrants were found almost entirely in labour hire (men) and Asian migrants in fish processing (men and women).
- The semi-retired people in the cases studied reported that they had no choice about the form of work because there were no other jobs in their area and that they needed to work because they had insufficient retirement savings.
- Seasonal portfolio workers said that this form of work was for a finite time, even if that was 10-15 years, because they wished to 'settle down' at some time.

We noted that employees accept that jobs with irregular hours or without tenure are no longer non-standard forms of employment. Participants in the study reported that they understood that non-standard forms of work are part of 'the way the world is now'. Many employees in the cleaning and fish processing cases reported that they would prefer to be able to move into other jobs or to a job with more regular and sociable hours that paid about the same wages. They said that they were happy to do this work to get established or to get ahead but that they would not like to do this work forever. This was less the case in the labour hire industry and call centre industries where employees expected to move on to other jobs. Students and younger women working in call centres in the cases valued not having to work in the retail or service sectors.

Employers in the labour hire cases reported a very strong demand for labour. Employers reported a constant demand for labour in the fish processing, cleaning and call centre cases studied and a demand for skilled employees able to provide a quality service. A degree of employee 'churn' was expected and accepted by employers and employees in the labour hire, fish processing and some types of call centre cases; this was especially the case for non-tenured employees. Cleaners in the cases studied were mature women and tended to remain in their positions if they could.

Employers, in the cases studied, did not report employment agreements were barriers to the flexibility the required from employees. Almost all employees reported that they did not bargain and that they accepted the employment agreement they were offered. Where there was an applicable collective agreement, fish processing and in cleaning, some employees elected to join the union and access the agreement; they too reported that they did not bargain.

The opportunity for wage progression in the labour hire, fish processing and cleaning employment agreements was small for permanent employees. In one labour hire agreement almost no employee could meet the service requirements for progression as the scale was based on the service of a permanent employee. Similarly in one fish processing plant the

agreement referred to overtime but set no rate as the owner did not pay it. Wage progression for casual employees tended to be at the employer's discretion. In the case of call centre employees who had employment agreements but were all classed as temporary, there was some provision for progression for skill acquisition, promotion and experience.

At the time of this study our view was that demand side factors, supported by the employment law framework, production modes and product markets, were stronger influences on the creation of non-standard forms of work than supply side factors.

## **5.0 Answering the research questions**

### **5.1 *What is it that makes work precarious?***

People in the cases studied who reported that they experienced their form of work as precarious described a range of forms of work and contributing factors. Those factors were a combination of:

- predisposing factors. These were features of the broad social and business environment that emerged as influences on the understandings and actions of firms and individuals. Examples were demand and supply side drivers and the overall legal framework of forms of work
- experiences of work factors. These were features of the specific work place, of the work itself and of work systems. Examples were the appointment processes experienced by employees including bargaining, the management practices and, for many employees, how their experience of being employed differed from what employees thought was the proper way employers and employees should behave at work; and
- compounding factors. These were features of the firm or private life of employers and employees that could make the experience of the form of work deteriorate or improve rapidly. Examples were a lack of public transport, income related rentals, childcare responsibilities, caring for parents or partners or children and the inability of the family unit to survive income shocks.

While these factors apply to all forms of work and not simply to non-standard forms of work, the impact of these factors in the cases studied appeared to higher for employees in non-standard forms of work. This impact increased the likelihood that those employees would report their experience of non-standard forms of work as precarious. Employees in the cases studied were likely to report that they were in precarious work if they:

- made a weak entry into an unequal employment relationship with uncertainty of tenure, fluctuating hours, low hourly wages; or
- were in an employment relationship where they believed or learned that they were unable to contribute (bargain) to the relationship in any way; or
- had no control over the hours they worked or the times they were required to attend work where those hours were varied by the employer; or
- were paid low hourly wages even if they worked long hours; or
- experienced the management of flexibility at the operational level by managers as unfair - they did not feel valued, respected and treated equitably and fairly at work; or
- held values about people, work and life that were inimical to the behaviours and expectations of their workplace and managers; or
- they were unable to see how they could improve the quality of their working life or the economic future of their family; or
- even if they were unhappy in their whole situation did not feel that they could secure any other employment.

### **5.2 *Is casual and temporary work more likely to be more precarious than other forms of non-standard and standard work?***

Some forms of casual or temporary work are likely to be more precarious than other forms of non-standard and standard work. This study has noted that there are serious issues around the currency or adequacy of the definitions used and implied in the question above. In the cases studied employees with tenure or an ongoing expectation of work had a legal status in the employment relationship that employees who had no tenure did not have. That status could be described as an objective or *external* indicator of a lack of precariousness. The corollary, is that a lack of that legal status could be described as an objective or external indicator of precariousness.

The study suggests that any form of work may be experienced by an employee as precarious and that that is the nature of the range of subjective experiences of work and life. The study also suggests that forms of work identified by the proposed indicators, are more likely to be described as precarious by the people in it. The cases studied indicate that it is the experience of the form of work, in its whole work context and in the life of the employee, which leads to the feeling of being in precarious employment. There is thus a subjective, or *internal* indicator of precariousness.

In the cases studied an employee with family responsibilities described his employment as precarious because he could not guarantee his earnings in the medium term and because he was concerned about his health. Yet a second employee in exactly the same objective form of work but in different material circumstances in his life, described his employment as exactly what he wanted for a period.

This study has noted earlier that subjective reports of precariousness may be strongly influenced by the treatment of employees in precarious (objective) circumstances. Some employees in the cases studied knew they were in precarious employment, they preferred not to be, but they were not unhappy because the owner or supervisor treated them well and kept them informed of the health of the business so that they could adjust their expectations and make other plans if required.

### **5.3 *What are the current and future choices and constraints facing New Zealand employers and employees in industries where non-standard work arrangements (such as casual, temporary and contract work) are prevalent; what drives employer/employee behaviour?***

In this study objective casual and temporary forms of work were most prevalent in the cases drawn from the labour hire industry. There were degrees of casual and temporary forms of work in the fish processing and call centre cases and there were no casual and temporary workers in the cleaning cases in this study.

Some employees in the fish processing, call centre and cleaning cases reported that they experienced their form of employment as precarious. The reasons included not being able to live on their wages, not being able to secure a better-paid job, becoming too old for seasonal work and feeling that the employer was treating them unfairly because he/she did not recognise their efforts. In the call centre, fish processing and labour hire cases some employees chose this form of work as it met their needs. Some employees in the cleaning cases also chose the form of work, however there were more employees in the cleaning cases who would prefer other forms of work.

In the cases in this study, the ability of employers to:

- enter individual employment agreements for specified terms;
- determine the terms and conditions of employment; and to
- reserve the right to vary those terms and conditions during the term of the contract;

meant that the nature of an employee's tenure, i.e. permanent or casual, was not as significant as it may have been formerly. An employment agreement for permanent employment now may confer no more benefits than one for casual employment and employment may last only as long as the principal organisation holds a contract for which the employee is employed.

There appeared to be no formal or legal constraints preventing employers and employees agreeing on any form of work. Experienced and larger employers in the cases studied were clear that they believed that they had formal legal approval to create unequal employment relationships and wished to retain or regain those powers.

Almost all employees in the cases studied agreed that the employer is always the final arbiter of the needs of the business. However those employees expected that in return the employer would act fairly and to treat employees as people deserving of respect, not as disposable 'hands' or exploit them. In section 6 we discuss aspects of the informal employment agreement that emerged in the cases studied.

Employees in the fish processing cases, where there was a collective agreement, were most aware of and sought to exercise their choices under the ERA. Employees in the call centre and labour hire cases did not seek to join or involve unions in their employment relationship. Employees in the cleaning cases, where there was a MECA, showed some interest in joining or involving the union in their employment relationship; this was largely where there were large numbers of employees at a single site.

Employer behaviour in the cases studied appeared to be driven by business needs (broadly understood), local labour market conditions, an employer's decision about what forms of employment the employment law framework permitted and how far they were prepared to apply their view.

Employers in the fish processing and cleaning cases reported that they believed that they should respect the existence of the union but did not report that they were constrained by the presence or bargaining power of the union. Employers in the labour hire and call centre cases successfully opposed the presence of unions.

**5.4 *What is the impact of product type, production processes, as well as work design and management, on types of work arrangements used and employment relations? What are the pressures faced by industry in response to changing product demand and market pressure? What is the impact of Government legislation for employers?***

This study suggests that product type, production process, work design and management have an impact on the types of work arrangements used in firms and the conduct of employment relations.

Fish processing is a bulk processing industry that requires an extremely flexible labour supply. Fast, high volume processing tends to be organised to use hierarchical and authoritarian management systems of readily substituted labour, although some employees are very highly skilled and valuable. There appeared to be little pressure for improving wages or benefits to employees in the fish processing industry. The existing agreements that provide for a number of forms of employment appeared to enable the employers to respond to changing product and market pressures.

Where a fish processing plant was located in a small town or regional city, the small local labour market meant that job seekers had few other employment options. The plant located in a large city secured no advantage in having a large local labour market because the work was seen as unattractive.

Ensuring that the workplace was safe appeared to be a significant issue for large employers in the fish processing and call centre cases. Health and safety was an issue in the cleaning industry but not as strongly as in the fish processing industry. One labour hire company made an effort to raise health and safety issues with its constantly changing workforce, whereas other companies appeared to be satisfied when they had met their formal obligations.

A severe shortage of skilled labour in a variety of trades in some regional local markets has led to immigration policy becoming an issue of interest for some companies in the labour hire cases.

The minimum wage was a critical issue for employers in the cleaning and labour hire cases as they believed its existence prevented them from being obliged to pay still lower wages.

In the cleaning and labour hire cases the contracting model enabled the effective, but once removed, employer to benefit from the contractor keeping wages down without having to face the impact upon their effective employees.

### **5.5 *What are the pressures faced by industry in response to changing product demand and market pressure?***

In the cleaning industry the strongest market pressure is the pressure to reduce the costs of cleaning contracts to principal organisations. Employers in the study agreed that this pressure resulted in a reduction in wages, hours and terms and conditions of employment.

In the call centre industry one company has broadened its products in order to respond to changing product demand and it has re-negotiated its individual employment agreements to reduce the costs of re-assigning or releasing staff. One principal organisation has outsourced its call centre business in order to avoid passing on collective terms and conditions to those employees if they were in-house; it has thus sought to respond to changing product demand by expanding services at a lower cost. A third company competes for contracts for its call centre and has responded to market demands for lower costs by not increasing wages, by accepting a higher turnover of young staff and by intensifying work.

In the fish processing industry product development appeared to be relatively stable and the companies appeared able to respond to changing product demand without requiring an increase in precarious forms of work.

Labour hire is a growing industry and there is both a demand for new and different skill sets and an absolute demand for skilled labour. Some labour hire companies have responded to the demand for more labour by increasing their recruitment efforts, others by seeking changes to current immigration policy and one by undertaking apprenticeships. Two companies in the study were investigating the possibility of becoming Private Training Enterprises and registering with the Tertiary Education Commission and NZQA to offer training and certification.

One labour hire company had responded to the increased demand for labour by raising the rates charged to employers for the first time in ten years from \$13.80+GST to \$14.45 + GST an hour. The base rate paid to employees remains \$9 an hour but an employee who holds a Site Safe passport will be paid \$9.50 an hour.

We have noted earlier in this report that in the cleaning and labour hire cases where competition is reportedly very healthy, employers reported that the effect is to reduce wages to the level of the minimum adult wage.

**5.6 *What are the issues around work-life balance and quality of working life? What are the impacts, both positive and negative, that these different employment arrangements may have on the worker and/or their family/household/wider relations?***

Many people in the cases studied worked hard for long hours in unpleasant conditions irrespective of whether they experienced their form of work as precarious or not. Other people who worked at non-standard times reported that they had accepted that they would have no social life for a few years. Some employees in the call centre cases agreed that they were only able to undertake this work because they had effective childcare by a partner or family or employee. Many of the cleaners reported that they have learned to live with much reduced sleep.

For the people in the cases studied the issues around work-life balance and quality of working life included:

- whether they could earn a living wage; not earning a living wage increased stress on the family and might limit the educational, health and future needs of the family
- the number of hours a week they needed to work to earn a living wage. Where wages are low and a family has commitments the hours worked can exceed 60-70 leaving little time for any other life at all
- the level of the minimum wage had a significant impact on wage rates, living standards and quality of life of many employees in the cases studied
- many of the employees in the cases were too tired to contemplate social or sporting involvement



- some employees were employed by choice in order to enjoy other aspects of their life. Thus seasonal work in fish processing, term work in call centres for students and daily work as and whenever it suited for holiday makers, tourists and some few men at the edge of the workforce suited these workers.

The highly paid employees in the call centre cases reported that they were able to consider saving for their retirement but very few other employees across the cases believed that they could expect to save for their retirement.

**5.7 *Do precarious workers, as proposed, have low bargaining power and limited knowledge of employment rights and, if so, why? What are the issues around bargaining power and unionisation (such as whether significant differences exist between unionised and non-unionised sectors)?***

Employees in the cases studied reported having little bargaining power and very low knowledge of their employment rights or entitlements. Union organisation or presence in the cases was weak or absent.

There is a MECA in the cleaning industry but employees and employers in the cases studied did not view the union as a bargaining force at present. There is an active union in the fish processing industry but in the cases studied the union is able to operate only in one large plant. There are unions active in the labour hire industry and they report an increase in interest and membership, however employees in the cases studied showed low interest in or knowledge of the union. There are no unions active in the call centre industry and employees in the cases studied showed low interest in or knowledge of the union.

Findings about bargaining power and unionization from the cases studied were consistent with those reported in the Department's earlier study of the ERA (Waldegrave et al 2003). Bargaining typically does not take place, unions are struggling to recruit and retain sufficient members to form an economically viable service, and few younger workers have any conceptual awareness of or interest in the role of a union.

There appeared to be new shared understandings and expectations about the role, purpose and relevance of unions emerging for individuals at work in the cases studied; the reason for and the role of unions is being 'forgotten' and the relevance lost. A large proportion of employees in the cases studied did not intend to join or support a union. Many employees and some managers and supervisors held dated or inaccurate understandings of the role, purpose and relevance of a union in the workplace.

**5.8 *Are employers, as proposed, less likely to invest in the training of precarious workers and, if so, why? How does this impact on both workers and employers?***

The rationale for and the practices of training non-standard employees in the four industries varied. Much training, where it exists in these industries for any employee, is instrumental, that is employees are 'trained' in the performance of tasks to the extent required to perform the tasks. There was little evidence of any higher-level training or systematic learning supported or provided in any industry even for permanent employees.

One labour hire company in the study undertook training and one call centre sought to provide broader and ongoing training through its registered PTE. There were no reports of ongoing training, that is other than instrumental training as defined above, being undertaken in the fish processing and cleaning cases in the cases in this study.

**5.9 *Are precarious workers at greater risk of injury or exposure to health hazards? If so, why is this; how does this impact on workers and employers; and what are the implications?***

Precarious workers in this study were at greater risk of injury or exposure to health hazards because:

- employers of casual or temporary workers appear to ensure that the agreed legal basis of the employment relationship excludes or minimises their responsibilities for health and safety as an employer in law
- the work undertaken in some industries is undertaken by people with low labour market power, low knowledge of employment rights, there are typically no unions or other sources of advice or support and there appears to be a tacit understanding that the employee is readily replaced if harmed or injured
- precarious workers are disinclined to raise health and safety concerns because they are relatively powerless and because they do not understand who their employer is. Precarious employees also appear to accept the risk of immediate or longer-term harm as a consequence of working in the manner they work.

**5.10 *Is there mobility into permanent jobs higher for more educated, skilled and younger workers and lower for less educated, less skilled, older workers? If not, what is it that differentiates workers who may get trapped? What are the worker attitudes and preferences – does their work arrangement suit them or would they prefer an alternative/permanent work arrangement?***

We found very few more educated, skilled and younger workers in the labour hire, fish processing and cleaning cases. We consider that these industries are not entry points to the labour market for those workers and so few move out of them. Workers in an industry tended not to move out of that industry because the reason they began work in that industry has not altered and was unlikely to alter. The employees in the study were older and mature and were not seeking to move to higher skilled employment for reasons including the following.

Where people were unable to conceive of themselves as moving to another job in the cases studied it was because they:

- a) held a low estimation of their own competencies or how other people, primarily a possible employer, would see or experience them
- b) had established an economic basis for their family life that could not withstand a lower income or any disruption such as a period of unemployment
- c) were or chose to be immobile.

Employees could also become ‘trapped’ by these factors, especially those with ongoing financial commitments or convictions.

The labour hire industry provides a service to the labour market that meets the demands of some people and some employers. It is clear that it has a role at the edge of the labour market for some groups of men and women that is not provided for elsewhere in the labour market.

Some employees in the labour hire industry move to permanent employment in related firms and may increase their formal skills and qualifications. Others, such as highly skilled immigrants, may eventually move to professional employment or choose to remain as day labourers.

The call centre industry attracts better educated, skilled and younger women but fewer men, because the pay, conditions of work and the work itself appear to be more attractive than the other options young people identified as their choices; that is working in a bar, café, restaurant or in a retail outlet. Some employees in call centres move into permanent employment in related areas but most move to a variety of other work in other industries.

***5.11 Are those who are more likely to get trapped prevented from developing human capital over the longer term? What are the opportunities for these workers to establish a career and experience wage growth over their working lives?***

Employees who reported that they felt trapped tended to be in jobs that did not provide for growth in the base wage paid other than:

- a) general adjustments - which are not currently possible. There is no mechanism for a general wage adjustment or adjusting wages other than the minimum adult wage for many employees in this study
- b) improvements secured by a union – which were extremely limited as most people with limited labour market power in the cases studied were not members of a union
- c) progress through a scale – scales are short and the annual increment is typically 6-8 cents per annum. One scale in the study provides for a raise of an employee’s hourly rate by 73 cents after 9 years service.

Agreements in all cases included provisions for wage increases for productivity, performance, completing approved training courses or experience. However there was a tension between the length of service required to secure the benefit and the demanding nature of the work that suggested that few employees would be able to acquire the benefit.

Few employees in the cleaning and labour hire cases are likely to acquire human capital over the longer term or establish a career and experience wage growth over their working lives.

Some employees in the fish processing industry may develop human capital but in the cases studied few were likely to establish a career or grow their wage significantly over their working life.

Many employees in the call centre industry do develop human capital and are likely to establish a career and wage growth over their working life.

## 6.0 Discussion

### 6.1 *Is there an existing instrument that will identify precarious employment?*

This study found that there are forms of work that are experienced as precarious by employees. The study identifies some characteristics of those forms of work and of the people who work in them, however not all forms of work with those characteristics are reported as precarious by employees.

The study suggests that in addition to the individual subjective measures of precariousness there are objective measures of the precariousness of a form of work.

The study suggests that the indicators proposed in the literature review (Tucker, 2003) may operate sufficiently well for policy purposes, to enable research and monitoring of factors and sectors of the labour market that are likely to produce precarious employment.

### 6.2 *Are there factors identified in the literature review and this study as likely to promote precarious employment?*

On the basis of the reported experiences of the forms of work in the cases studied we suggest the following as additional indicators of precarious work. The first two indicators are culturally and historically constituted in the law and commercial norms and practices of the New Zealand economy. While these norms and practices tend to be resistant to change the study suggests that the impact of the ECA and the ERA has influenced those norms and practices.

The second two indicators are culturally and historically more dynamic and contestable. They are influenced by the formal indicators but are also strongly influenced by popular and personal culture.

We suggest that these indicators be integrated with the indicators proposed in the literature review and derived from the international research literature.

#### a) Nature of employment arrangement

- how it was entered – this will reflect the balance of power & knowledge in the employment relationship including consistency with the ERA
- how it is carried out – this will also reflect the balance of power & knowledge in the employment relationship including consistency with the ERA
- beliefs and values held about work and towards an employer – this will map the cultural and historically determined beliefs and values of the employer and employee

#### b) Nature of employment relationship

- influence of relationship with manager – this relationship emerged in the study as a significant indicator of precariousness. The relationship is a source of socialisation into the work place and may also demonstrate industry or firm level expectations about management practices

- dispute resolution tools – this will indicate the parties’ knowledge and use of the tools provided by the ERA including the role of Labour Inspectors
- personal beliefs and values about appropriate behaviour at work –this will map possible sources of conflict from different socialisation (immigrants), values and expectations.

c) Nature of experience of work/life factors

- hours and pay – weekly earnings and costs of working such as tools, expenses, travel, economic status of family, discrimination
- experience of choice and bargaining – how real their choices were and whether there was any actual bargaining, influences on their expectations will inform overall sense of fairness of the employment relationship
- family and community life – how many hours they work and sleep, spend with family, are able to contribute to caregiving or wider support of family
- cultural influences – both of a national character and specific to person.

d) Nature of life opportunity

- features of current life – eg debt, housing
- features of future life evident – is this a viable social unit for person, children, employment path?

It appeared that if an employee’s experience of employment is that it is fair, respectful of them and that the employer is plain dealing and honest then precariousness is less likely to be reported as present or significant irrespective of the form of work.

We found more employees who complained of being treated unfairly, being treated disrespectfully or not being paid a fair day’s wage for a fair day’s pay than who complained of being in precarious employment. For some employees this view reflected their understanding that they should not expect to have a participatory role in the labour market or workplace or employment relationship because that was the way the world was; they had come to hold a pragmatic or fatalistic view of employment.

Some employees in the cases studied were prepared to accept their insecure tenure and possible redundancy as regrettable but an unavoidable fact of economic life. This was especially the case in small to medium enterprises where staff tended to believe that they understood the state of the business and accepted that the owner should properly make decisions about the business.

Many of the employment issues that emerged in this study as being present in the forms of employment reported as precarious appear to be able to be addressed by enforcing existing policy goals and objects.

Possible actions might include:

- clarifying the legal status of some forms of employment
- extending ACC cover to people in new forms of employment including casual or temporary forms of employment

- retaining a legal focus on entering and maintaining an employment relationship rather than a focus on a contractual relationship
- review the minimum adult wage to improve the quality of life of low paid employees
- note that some employers in low paid industries see the minimum adult wage as acting as a barrier to the entry of non-compliant businesses that are able to drive down pay rates across the industry
- recognise that the practices of supervisors and managers are significant factors in people experiencing work as precarious or reporting a poor quality working life
- consider the implications for current employment policy if the private sector continues the trend identified in this study and becomes largely un-unionised
- note the impact of state house rentals and public transport which ameliorate or exacerbate precariousness or its consequences. There are not only labour market factors at play in the dynamic that brings about precarious work.

### 6.3 *Rating the reported experiences against the indicators*

As we have noted, no assessment of the formal features of an employment arrangement will finally determine precariousness.

The central issue for this project was that as we did not have an a priori definition of what constituted precarious employment thus we needed to choose cases where the phenomenon was likely to be present.

The literature review suggested:

- What characteristics precarious employment might have
- Where precarious employment might be found
- Who might be expected to be so employed; and
- Gave some reasons as to why it would be found in those places in terms of demand and supply side factors.

Guba & Lincoln<sup>13</sup> observe that, "...whereas positivists began an inquiry knowing (in principle) what they don't know, constructivists typically face the prospect of not knowing what it is they don't know. What is needed under these circumstances is a highly adaptable instrument [the case study approach in the case of the Precarious Employment study] that can enter a context without prior programming, but that can, after a short period, begin to discern what is salient."

On the basis of the reports about their form of work by the case study participants and our observations we suggest that:

- some of the proposed indicators are likely to indicate the possibility of the employee being in precarious work
- there are further indicators of precariousness that could be integrated with the indicators proposed in the literature review

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<sup>13</sup> Guba & Lincoln (1989)

- it is the dynamic interplay of formal (legal/economic) and informal (cultural/social) factors that constitutes the experience of employment subsequently reported by individuals as precarious
- the impact and consequences of being in precarious work emerges in the degree and quality of the individual's participation in their family life and the wider social and economic life of the nation.

#### 6.4 Describing current forms of employment arrangements in existing terms

This study anticipated using the following definitions from Brosnan and Walsh's<sup>14</sup> New Zealand workplace surveys to categorise the employment arrangements in the cases studied.

<b>Permanent workers</b>	Employees who work all year and have an expectation of continuing employment.
<b>Casual workers</b>	Employees hired on a periodic basis as need arises.
<b>Temporary workers</b>	Employees taken on for a relatively short but unspecified period.
<b>Fixed term workers</b>	Employees on a contract with a specified expiry date or employed to complete a specific project.
<b>Contractors/consultants</b>	Persons not your direct employees who contract to provide labour services to your organisation (whether or not they own their own tools or equipment).

**Figure 2: Definitions of employment categories**

We understood that different forms of non-standard employment are not mutually exclusive and frequently overlap. For example, casual workers may be employed on an ongoing or temporary basis, and temporary workers may be casual or full-time.

We found that only the well-informed employer or union official was able to describe accurately to us the category of employment an employee was in. We found a great deal of misunderstanding and absence of knowledge about:

- *the categories (forms) of employment that are legally permissible.* Some employers and employees held the view that after a period of time all temporary positions were deemed to be permanent; others simply felt that it would be 'fair' if this were the case. The common view in workplaces is that 'fixed term' employment agreements, while permissible under the ECA are no longer possible under the ERA. Casual employment is still possible but for short periods only.
- *the employment arrangement that applied to the employee.* Only those employees with knowledgeable employers or who were union members were able to describe their personal employment arrangement accurately. Most employees in the cases studied could only guess at their employment arrangement and most guessed that they were temporary even if this was not the case.
- *whether there was any difference in meaning between the terms 'casual' and 'temporary.'* In the absence of a formal, accurate or shared record of an individual's employment

<sup>14</sup> Brosnan & Walsh (1996)



arrangement employers and employees believed that the arrangement was temporary. There were likely to be no records to that effect but the arrangement tended to be accepted by employees if that was what the employer said it was. This was not the case for employees on collective agreements where casual and temporary were expressly defined.

We anticipated that employment arrangements able to be termed 'permanent' employment would be a relatively bounded and stable class but this was not the case. For example, cleaning contracts may last for 12 or 36 months and in some companies employees are permanent but only for that period. As the contract may be terminated with one month's notice during its term, and this does happen, then 'permanent' is a comparative term, not an absolute term. Similarly some employees undertake seasonal work under the same arrangements for many years and, with their employer, regard themselves as 'permanent seasonal' workers. We also met employees with 5+ years service for the same employer but who, along with their employer, believed that they were and had been 'daily casuals' for that entire period.

The terms 'casual' and 'temporary' were wholly confused in workplace understandings and practices. As many of the people we met who could be said to be in precarious employment were termed, treated and behaved as temporary employees we explored the source of the shared view of what being temporary meant for employers and employees.

Some employers understand very clearly the categories of employment contemplated by the ERA and seek to balance their business requirements with current employment law; this is the case in the labour hire industry. Employee knowledge of how the employment relationship is intended, expected or might possibly be conducted is extremely weak; it was little more than hearsay for most of the people we met, and that included some of the smaller employers.

Under the ECA some employers employed a proportion of their staff on temporary contracts and the belief grew that there was no limit on the nature or time of that temporary employment. This view persists strongly so that understandings about the employment relationship that came from the legal framework of the ECA continue to influence and shape conduct under the ERA.

In the labour hire industry, two businesses did not see themselves as the legal employer of staff. In their view they provided a broking service between individual work seekers, sometimes described as private contractors, and work providers who were also the legal employer. All of their staff, irrespective of their length of service, were deemed to be daily casuals and there were written agreements to that effect with each person. The third labour hire business operated in a like manner but noted that consistent with its business strategy of finding and keeping a cadre of skilled workers it did offer permanent employment to those qualified and effective employees it identified after 6 month's service. The employee we spoke with suggested that this was the case only for a few valuable and compliant employees who were likely to be charged out at the highest rate thus maximising the return for the agency.

In the cleaning industry, cleaning contractors know that all contracts end after a specified finite period. This means that provided employees are employed by the company for the purpose of undertaking a specific contract, then the technical category of employment is of no consequence. The agreement may provide that all employees are able to be 'released' upon the ending of the contract at no cost to the employer. This cycle of employment may be

repeated when one company purchases another cleaning company and may seek to ‘release’ all existing staff and either ‘cherry pick’ preferred employees or insist that any entitlements or accrued benefits be reset to zero for existing staff as if they were technically new entrants.

In the call-centre industry cases studied there were some permanent employees however most employees were casual.

In the fish processing industry the nature of the product strongly influences the design of work and production systems. Fish is perishable and needs to be processed within 10-12 hours of catching or it begins to deteriorate.

The employment agreement of one company required staff to report for work at either 3.00 am or 6.00 am daily, (the employer notifies them of the start time around midday the day before). The timing is varied in order to process fish being landed from large trawlers. The single daily shift also processes fish caught locally and supplied for processing. The employment agreement states that this shift ends after 8 hrs but employees reported that there was a strong expectation that they would work for 12 hours to complete the processing. The variable start and finishing times make childcare arrangements extremely difficult for parents. Staff are permanently employed but their unsociable hours can be varied at the employer’s complete discretion.

The other two processing plants were larger and processed different products and this enabled them to maintain a more consistent supply of product and regular shifts. Both had seasonal demands but met those by altering the tasks of the permanent workforce, hiring established seasonal staff or new seasonal staff, or a small number of casual staff. Being larger organisations they had formal human relations and employment systems that provided clear and accurate information for employees about their employment status.

## **6.5 Definitions of precarious employment**

The US Bureau of Labour Statistics Report<sup>15</sup> profiles ‘contingent workers’ and defines them as individuals who do not have an explicit or implicit contract for ongoing employment. The search for a definition of ‘precarious’ tends to take as a given that the substantive basis for entering an employment arrangement is a contractual relationship.

The vocabulary and technical terms commonly used to describe and define contractual relationships carry legal and historically determined meanings that preserve elements of a master and servant relationship, thus the terms ‘contract of service’ or ‘contract for services.’

Current workplace regulation gives greater weight to the quality and authenticity<sup>16</sup> of the relationship between the owner and worker and seeks to avoid a presumption of a master and servant relationship. The growing irrelevance of formal technical terms to describe employment arrangements in medium and small workplaces suggests that new employment

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<sup>15</sup> Polivka, 1996

<sup>16</sup> This term seeks to convey the sense that there exists a set of deeply held attitudes and values about work and the respective rights and obligations of owners and workers that underpin the sense making and behaviour of New Zealanders at work. These ‘cultural imprints’ are deeply embedded, are both resistant to change but are also an enormously powerful capacity for change if understood and used.

arrangements are emerging ahead of new terms, and thus both formal and informal rules, to describe them.

We came to the view that we should not seek to define precarious work in terms of a category of employment drawn from terms derived from the historical legal-economic framework. The study showed that:

- permanent employment may be experienced as precarious
- casual employment is not necessarily experienced as precarious
- precarious employment is not the same as receiving low pay
- being in precarious employment is not the same as possessing low skills.

## 6.6 *Cultural imprints*

That the ERA is built upon the requirement that the parties to an employment relationship conduct themselves in good faith is a profound and significant break with the historical legal/economic basis for the employment relationships. This study suggests that most employees and small employers will not be concerned if good faith is not defined in the ERA, because for them good faith is recognizable or determinable by everyone, it is common sense. Good faith is an attribute of people in relationships with other people, their neighbours, their family members etc, it is a way of being that is beyond the prescription of the law. To shift the basis of the employment relationship to its quality over time, and away from the power of the parties at the point of entry and during the relationship, was a policy innovation that this study suggests is in alignment with practices and beliefs in New Zealand workplaces.

Some participants in the employment relationships in this study, both employer and employee, continue to seek to retain and preserve the levers of advantage they held under that historical legal/economic framework; they behave as if that framework continues. But some people in the cases studied, both employer and employee, were prepared or were conducting their employment relationship in a new and different way and reported that they were satisfied with focus on the quality of the relationship being the focus of the formal framework.

In earlier studies<sup>17</sup> the research team has suggested that there appear to be an identifiable set of core values about work, workplace behaviour and the roles and duties of individuals, bosses and unions that are so deeply ingrained across the community that they can be called cultural imprints. These values and beliefs form the context for all workplace behaviour. They are the standards that others and their actions are measured by, they are not formalized and they are not fundamentally altered by laws or regimes that come and go, they persist, are pervasive and they are determining of sense making at the level of individuals and their families and businesses.

Perhaps the most readily identified values and beliefs from this study are:

1. **Fairness.** The people we met in the cases studied expect to be treated fairly, they do not expect to be always treated the same as everyone else, but they will not tolerate unfairness. Fairness is a measure that always applies in every workplace, it applies to pay, leave, anything at all and to everyone. Once something is judged to be unfair by

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<sup>17</sup> Whatman (1999) & Waldegrave et al (2003)

many then there is a change in the workplace and resistance and sabotage may emerge.

2. **Fair day's work for a fair day's pay.** The people we met expected to work hard and honestly for their employer. They were critical of 'slackers and spongers,' they were equally critical of unfair or authoritarian employers. This is a strong ethic that is particularly vulnerable to being undermined by the actions of ineffective managers in small organisations.
3. **Quality.** Every person we met in the cases we studied preferred to do a good job than to do a bad job. Employees and supervisors can learn to do a bad job for a variety of reasons, but few people we met, even those in the worst of circumstances, would consider doing a poor job at work.
4. **Change.** This is not a word New Zealanders respond positively to because it suggests that if what they have been doing is required to change then what they were doing may not be valued or was wrong or was being done poorly.

## 7.0 Conclusion

In this study employees in non-permanent, low paying, poorly supervised forms of work with unequal employment relationships reported that they experienced their form of work as precarious; more women than men reported their work as precarious.

Some employees in the cases studied were prepared to enter casual or temporary employment under a variety of terms to meet their needs.

Employees reported that they experienced their form of work as precarious when they felt that:

- they were not getting a fair day's pay for the fair day's work they undertook
- they were not treated fairly at work
- that they were not able to earn enough to live as they aspired even if those aspirations were modest
- they were afraid that their family could not survive, or was suffering, because of the state they were in considering their work and home lives.

The formal legal basis of their employment was not a significant factor in their perception of their precariousness.

Where we found work that was precarious we also found people with little or no labour market power, powerful employers, an absence of bargaining, low knowledge of employment relations, no access to information about employment, low wages, unsociable hours and reduced participation in family and economic life.

The impact most frequently reported to us by people in precarious work was their lack of participation in the lives of their children.

More employees in this study reported that they felt overworked or underpaid or were dissatisfied with their employment than reported that they experienced their work as precarious.

The indicators proposed in the literature review assisted in identifying forms of work likely to be precarious. However this study suggests that the New Zealand labour market is in transition from a former relatively ordered state to a more dynamic and differentiated state. The new state appears to be less readily or reliably described by customary understandings and definitions about historical forms of work.

This study suggests that the social, economic and cultural nexus (taken to include values, attitudes, behaviours of people and their families and the family accumulation strategy) in which people live and work are factors influencing the labour market and a dynamic that requires further investigation.

If it is now the case that the legal framework for employment permits any arrangement or form of work other than illegal forms, and even if that is not the case but it is what employers and employees believe and act upon, then this study suggests that a focus on improving the quality and practice of employment and how the parties enter and maintain their employment relationship is appropriate.

Forms of work can be defined as precarious if the criterion is whether the employment is permanent or not. However this study demonstrated that some forms of permanent work are precarious in the medium to long term, thus what might now be meant by the term permanent is also in transition.

The study suggested that:

- permanent employment may be experienced as precarious
- casual employment is not necessarily experienced as precarious
- there is an increasing variety of non-standard forms of work but those forms are not necessarily precarious
- precarious employment is not the same as receiving low pay
- being in precarious employment is not the same as possessing low skills
- there are factors outside of the employment relationship and the labour market that may produce a feeling of precariousness in employment.

In this study we met people working in low quality jobs, we met people and their families in distress, we met people engaged in unsafe and unhealthy work and we met many people who took no part whatsoever in the employment relationship. Our view was that many of the employment, social and economic issues that emerged around non-standard forms of work in this study that were reported as precarious, could be remedied by the application of current policies and regulatory frameworks.

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## **Appendix 1            Case study methodology**

### **1.1    Case definition**

The case was defined as *the experience of the form of work as reported by the worker, co-workers, employer and union officials (where relevant) within the context of:*

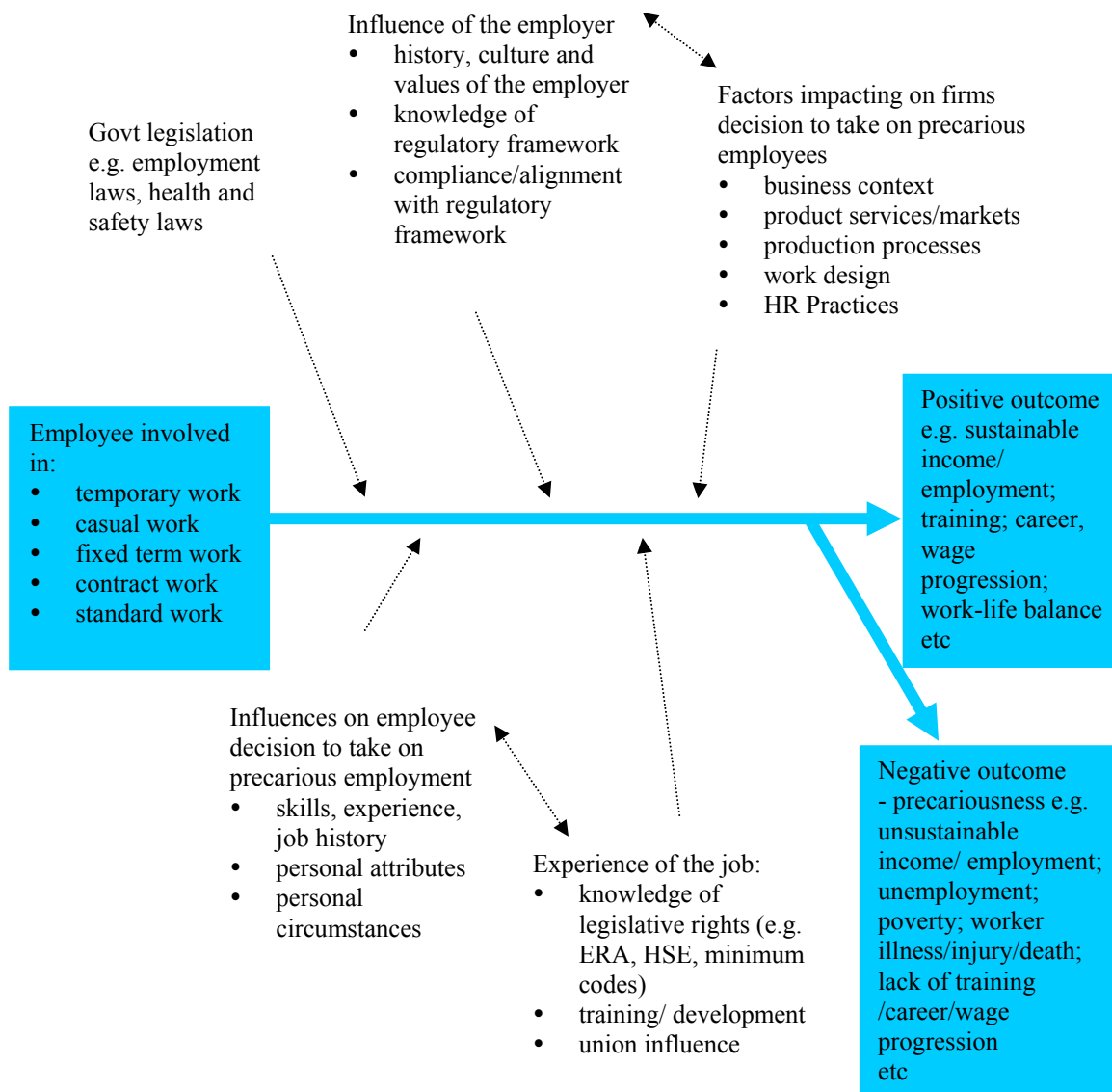
- The regulatory frameworks applying to firms and individuals
- The cultural and historical influence of the owner/employer on the values, practices, and conduct of the firm's daily life
- The business context, HR strategies, production processes and other factors impacting on the firm's decisions to use non-standard forms of work that may be termed precarious
- The private and public context, values and choices made by the employee
- The skills, knowledge and experience of the employee
- The balance of influence between the owner/employer and employee and any mediating influences present or absent.



In summary, we sought to explore:

- what the mechanisms are that encourage people into or out of precarious employment
- the conditions that are necessary for the mechanisms to operate and how they differ in different contexts
- the experience of precarious employment for the employee and his/her family, whanau and household

Figure 1 - shows how we conceptualised these relationships at the outset of the fieldwork.



**Figure 3:** Mechanisms and conditions that encourage people into or out of precarious employment

## 1.2 Research questions

Based on the literature review and indicators (Tucker, 2003), we initially developed 10 research questions to guide the exploratory case studies. These questions were subsequently

prioritised and refined before fieldwork began.

- i) What is it that makes work precarious?
- ii) Is casual and temporary work more likely to be precarious than other forms of non-standard and standard work?
- iii) What are the current and future choices and constraints facing New Zealand employers and employees in industries where non-standard work arrangements (such as casual, temporary and contract work) are prevalent; what drives employer/employee behaviour?
- iv) What is the impact of product type, production processes, as well as work design and management, on types of work arrangements used and employment relations. What is the impact of Government legislation?
- v) Do precarious workers, as proposed, have low bargaining power and limited knowledge of employment rights and, if so, why? What are the issues around bargaining power and unionisation (such as whether significant differences exist between unionised and non-unionised sectors)?
- vi) Are employers, as proposed, less likely to invest in the training of precarious workers and, if so, why? How does this impact on both workers and employers?
- vii) Are precarious workers at greater risk of injury or exposure to health hazards? If so, why is this, how does this impact on workers and employers and what are the implications?
- viii) What are the issues around work-life balance and quality of working life? Is there a social or psychological impact associated with these various work arrangements on the worker and/or their family and wider relations?
- ix) Is mobility into permanent jobs higher for more educated, skilled and younger workers and lower for less educated, less skilled, older workers? If not, what is it that differentiates workers who may get trapped? What are the worker attitudes and preferences – does their work arrangement suit them or would they prefer an alternative/permanent work arrangement?
- x) Are those who are more likely to get trapped prevented from developing human capital over the longer term? (given the limited access to employer-funded training). What are the opportunities for these workers to establish a career and experience wage growth over their working lives?

### 1.3 Specific criteria for case/site selection

We developed the criteria for case and site selection from these research questions and the case definition. A decision was made to carry out exploratory multiple case study research on four industry groups within the primary processing, manufacturing and services sectors: cleaning; fish processing; labour hire – construction; and the financial sector – call centres. These industry groups covered a broad range of factors thought to be significant as well as allowing us to gain insight into the influence of product type, production process, work design and management

The industry groups covered a broad range of worker characteristics, including the demographic groups most likely to be in precarious work, as well as including ‘standard employment’ and more highly skilled and educated workers. Table 1 summarises the criteria.

**Table 1:** Criteria for industry, site and case selection

<b>Industry:</b>	<b>Gender</b>	<b>Age and Education</b>	<b>Ethnicity</b>	<b>Recent Migrants</b>	<b>Sectors</b>	<b>Forms of employment</b>
<b>Cleaning</b>	Predominantly women (MWA, 2001).	Broad range of age groups. Lower skilled; range of less educated and higher educated (particularly migrant) workers.	According to MWA (‘Occupational Segregation’, 2001) study, cleaner is the second most common occupation for Maori women. For Pacific women it is the most common. For Pacific men it is the 5 <sup>th</sup> most common occupation.	We would expect to find a significant component of recent migrants in this group.	Service	This industry group has been identified in international findings and through New Zealand anecdotal evidence as having disproportionate shares of casual, temporary and contract workers. The industry also involves non-standard working hours and shift work.

<b>Industry:</b>	<b>Gender</b>	<b>Age and Education</b>	<b>Ethnicity</b>	<b>Recent Migrants</b>	<b>Sectors</b>	<b>Forms of Employment</b>
<b>Finance/ Call Centre</b> <sup>18</sup>	Predominantly women?	Broad range of age groups; combination of less skilled and higher skilled, and white collar workers.	Broad range		Service	Combination of standard and non-standard workers. The sector involves non-standard working hours and shift work.
<b>Fish Processing</b>	Both men and women – occupational segregation exists.	Broad range; less educated / lower skilled.	Considerable Maori and Pacific component.	New migrants. No. of Somali workers.	Primary production & manufacturing.	Range - many permanent workers with irregular hours.
<b>Labour Hire/ Construction</b>	Predominantly male	Broad range of age groups / less educated; combination of less skilled and higher skilled but primarily blue collar workers.	Significant occupation for European men ('builder' is the 5 <sup>th</sup> most common occupation; 'general labourer' 'carpenter/joiner' are 8 <sup>th</sup> and 9 <sup>th</sup> respectively). General labourer highly significant for Maori men (2nd		Predominantly manufacturing.	Identified as having disproportionate shares of casual and temporary workers. The labour hire industry by its very nature is temporary.

<sup>18</sup> Currently obtaining further information on these industries from peak organisations – industry/union (key informants).

			<p>most common occupation), and carpenter/ joiner and builder are 8<sup>th</sup> and 9<sup>th</sup> respectively. General labour is the most common occupation for Pacific men, but builder or carpenter do not feature in the top 10 (MWA, 2001).</p>			
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### 1.3 Reliability and validity issues

The overall research design was a comparative case study of forms of employment likely to contain indicators of precariousness, comprising 27 multiple exploratory case studies of 28 employees. This involved triangulating a range of data from the following:

- a range of sources (employers, co-workers, union officials, industry spokespersons, industry data, literature)
- using a range of methods (observations, interviews, document analysis)
- across locations (North and South Island, city, provincial capital, rural centre)
- different groupings of researchers (eg interviewing in pairs across a number of industries)
- different cases within and between industries (fish processing, labour hire, cleaning, call centres) and work-sites.

Case study research involves analysing these 'layered sources of data' (Leibrich, 1993) to reveal patterns and causal connections. Unlike survey research which relies on statistical analysis to make statistical generalisations, case study analysis relies on combining techniques of triangulation and analytic-induction to produce analytical generalisations. It is not the numbers that make data valid under the case study process, but the logical integration of data from different sources and different methods into a single, consistent interpretation.

### 1.4 Fieldwork

The substantial fieldwork was carried out by a team of five interviewers using semi-structured interview schedules; six other interviewers attended a small number of interviews. Training was provided to help standardise the approach. Cases typically involved 4-5 interviews and observations at a work-site, augmented by interviews with relevant union and industry personnel. Researchers used a structured approach to write-up the case study data.

The research team was: Dr.Roberta Hill, Phillip Capper, Ken Wilson (WEB Research) Deborah Tucker, Karen Wong, Diane Anderson, Celia Galbraith, Jenni Norris, Heather McDonald and Brian Johnson (Department of Labour)

### 1.5 Team analysis

Researchers followed a structured process of paired analysis to draw out key themes, patterns and trends. Case study teams presented these in a one-day team workshop, which was designed for comparative analysis within and across industries.

## Appendix 2 Sample letter to employer



WEB Research  
PO Box 2855  
Wellington

3<sup>rd</sup> June 2003

Manager  
Making and Doing Ltd  
Main St  
Wellington

Dear <manager/owner>

### **CASE STUDY RESEARCH INTO DIFFERENT WORK ARRANGEMENTS**

Thank you for talking with us and indicating that you might be interested in taking part in our research. Here is the information I promised when I talked with you. Please contact Deborah Tucker or me if you have any questions when you read this letter.

#### **What are we doing?**

The Department of Labour (DoL) advises the government about matters that affect firms and employees. The Department is working on this research project with the Centre for Research on Work, Education and Business Ltd (WEB Research), which is an independent research company.

The intention of the research is to increase the Department's knowledge and understanding of different employment arrangements, including casual, temporary, contract work and permanent work. We are aware that the number of non full-time and permanent jobs is increasing in the workforce. However, we have little information about the nature of these jobs, the reasons why workers are in them and why employers use them.

We want to increase our understanding of the choices and constraints that might exist for employers (eg, having to respond to changes in product demand and market pressure). The Department also wants to understand issues around the quality of work and work-life balance, and the positive and negative impacts that different work arrangements may have on workers and employers.

## **How we do this research**

We are interviewing a number of employers and employees in the cleaning, fish processing, labour hire-construction and call-centre industries. In large organisations we would also try to speak with a team leader, manager, or human resources person, and a union official if there is one.

## **What do you do in this research?**

The interview is an informal conversation with you, me and another researcher. It takes about 30-40 minutes. Your participation is voluntary and all interviews are confidential. You do not have to discuss anything that you do not want to discuss, and you can withdraw from the research at any stage. We will not repeat what you say to anyone other than the research team and anything you tell us will not be used for purposes other than this research. Neither you nor your workplace will be able to be identified in any reports about this research.

We will meet you at a time and place convenient for you.

## **What do you get from participating?**

We have done case study research with employers on several topics now. The people and workplaces in those studies told us after our visit that they appreciated the chance to talk about their experiences as well as helping to inform government policy.

When we finish our research we will write a summary report. If you would like a copy, please ask our research team when they meet with you. The information we gather will be used in a number of reports to the Government relating to employment issues.

## **What happens next?**

We really appreciate you saying you are happy to talk with us. I will contact you to check that this is still okay and, if so, we can make arrangements to meet.

Remember you can say no at any time and if you have any questions contact Deborah or me.

Yours sincerely

Ken Wilson  
WEB Research  
PO Box 2855  
Wellington  
04-499-8140  
0800477343  
[ken.wilson@webresearch.co.nz](mailto:ken.wilson@webresearch.co.nz)

Deborah Tucker  
Labour Market Policy Group  
Department of Labour  
PO Box 3705  
Wellington  
04-915-4376  
[deborah.tucker@lmpg.dol.govt.nz](mailto:deborah.tucker@lmpg.dol.govt.nz)



## Appendix 3 Sample information sheet for all interviewees



### CASE STUDY RESEARCH INTO DIFFERENT WORK ARRANGEMENTS

#### *Information Sheet for Participants*

*The Department of Labour (DoL) is undertaking case study research in order to increase understanding and knowledge of different employment arrangements in New Zealand workplaces. The Department wants to understand issues around quality of work and work/life balance, and the choices and constraints that exist for employers and employees.*

*You are one of a number of people who have agreed to participate in our research. We propose to talk with a range of people at your workplace (e.g. employees, employers/managers and union officials if you have any). Your participation involves meeting with researchers from the Department of Labour and WEB Research (WEB) for about 30-40 minutes to talk about your work and its impact on you and, in the case of employees, your family.*

We have done similar case study research several times now and the people and workplaces that have participated in these other studies have found their participation to be an interesting and valuable experience. They have told us they also appreciate a chance to talk about and reflect on their experiences and help to inform government policy.

As a voluntary participant in this research you do not have to discuss any issues that you do not wish to discuss and you may withdraw from the research at any stage. The information you provide will be confidential to the project team. It will not be available to others in your workplace and you will not be able to be identified in reports about the research. The information will not be used for purposes other than this research project.

If you have any questions at any time please contact Deborah Tucker (LMPG) on 04 915 4376 or [deborah.tucker@lmpg.dol.govt.nz](mailto:deborah.tucker@lmpg.dol.govt.nz) or Ken Wilson (WEB Research) on 04 499 8140 or 0800 477 343 or [ken.wilson@webresearch.co.nz](mailto:ken.wilson@webresearch.co.nz).

Thank you for helping us with this research.