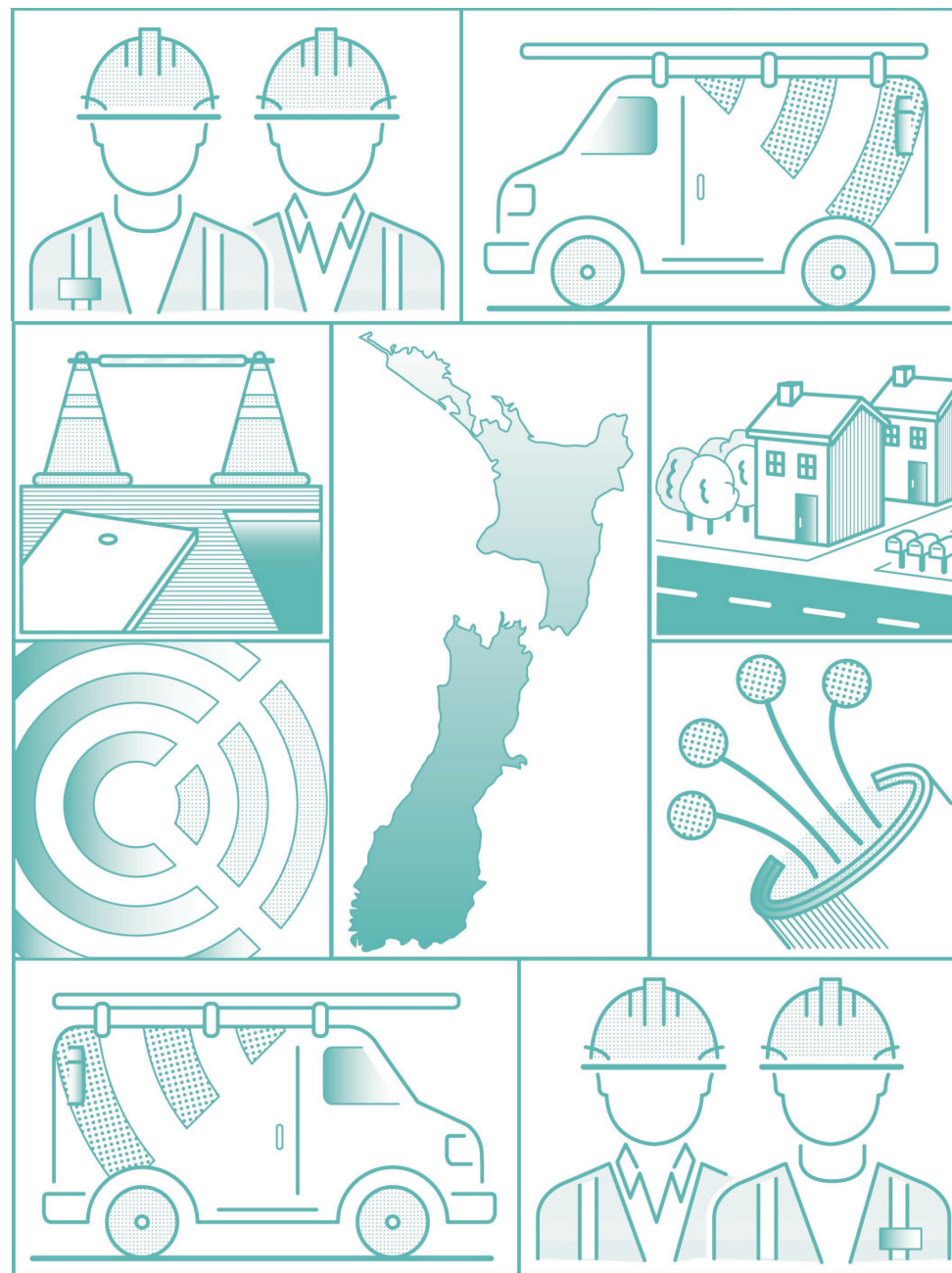


INDEPENDENT REVIEW OF CHORUS' NEXT GENERATION NETWORK CONNECTION CONTRACTING MODEL

APRIL 2019

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**MARTIN
JENKINS**



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PREFACE

This report has been prepared for Chorus Ltd by Doug Martin, Sarah Baddeley, EeMun Chen and Ben Craven from MartinJenkins (Martin, Jenkins & Associates Limited).

MartinJenkins advises clients in the public, private and not-for-profit sectors. We provide advice and support to clients in the following areas:

- labour market analysis
- employment relations
- strategy and investment
- evaluation and research
- performance improvement and monitoring
- business improvement
- organisational improvement
- economic development
- financial and economic analysis.

MartinJenkins is a privately owned New Zealand limited liability company. We have offices in Wellington and Auckland. The company was established in 1993 and is governed by a Board made up of executive directors Kevin Jenkins, Michael Mills, Nick Davis, Allana Coulon and Richard Tait, plus independent director Sophia Gunn and chair Hilary Poole.

Disclaimer

This Report has been prepared solely for the purposes stated herein and should not be relied upon for any other purpose.

Our analysis has relied on information provided to us by Chorus Limited and its contractors. We have not been required, or sought, to independently verify the accuracy of information provided to us. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied.

To the fullest extent permitted by law, we accept no duty of care to any third party in connection with the provision of this Report. We accept no liability of any kind to any third party and disclaim all responsibility for the consequences of any third party acting or refraining to act in reliance on the Report.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise. We reserve the right, but will be under no obligation, to review or amend this Report if any additional information, which was in existence on the date of this Report, was not brought to our attention, or subsequently comes to light.



FOREWORD

This report responds to the terms of reference set for us by the Chorus Board, on the recommendation of the Chief Executive, in relation to the concerning allegations of worker and migrant exploitation in the Chorus supply chain. The company asked us to look into how the issues emerged, how well Chorus anticipated and responded to labour force risks, and whether these actions were adequate. The company also asked us to advise it on how it could improve its approach.

When it asked us to do this review, the company expressed its significant disappointment that this kind of exploitation may have occurred. We were given a clear mandate by the company to make recommendations on how to better ensure that workers throughout the Chorus supply chain are treated fairly.

Our review has been future-focused. We did not intend to replicate the Labour Inspectorate's detailed investigation into specific regulatory breaches. Instead, we sought to work with Chorus and its main service companies to understand how issues arose, the role played by Chorus and its service companies, and how they can work together to better manage these types of risks in the future.

We were assisted in understanding emerging trends in employment and immigration case law by Simon Mount QC and Alison Mills of Bankside Chambers.

We would like to acknowledge the support we were given by staff from Chorus led by Chief Executive Kate McKenzie, as well as by representatives from each of the Chorus service companies. We also acknowledge the input provided by unions, whistleblowers, and people who spoke on behalf of the workers themselves. We have been heartened by the commitment shown by all parties in the Chorus supply chain to addressing these issues, and their acknowledgement that the status quo is not acceptable.

EXECUTIVE SUMMARY

1. In October 2018 the Board of Chorus New Zealand Ltd, on the recommendation of the Chief Executive, engaged MartinJenkins to review the subcontracting model used to deliver the significant programme of work to construct the national next-generation fibre network often referred to as Ultra-Fast Broadband (UFB).
2. The review was commissioned following receipt of a series of allegations of breaches of labour standards and migrant exploitation in the Chorus supply chain. These allegations ranged from poor labour standard practice through to a small number of serious allegations of exploitation. All allegations related to the treatment of migrant workers engaged at the third tier of engagement in the subcontracted workforce. The company was motivated by a genuine desire to do the right thing for these workers further down the supply chain. The review focused on the following key questions:
 - How did the issues emerge?
 - Were there adequate systems to address this form of exploitation?
 - How effectively did Chorus manage the issues once they arose?
3. We also researched and reviewed alternative models to inform our recommendations to the Board about the steps Chorus and its service companies could take through the supply chain to better manage this risk in the future.
4. It is important at the outset to emphasise that there are few examples, either nationally or internationally, of companies who have successfully fully mitigated the exploitation risk in their supply chain, particularly given the complex and often hidden nature of migrant exploitation.
5. When it asked us to do this review, the company expressed their significant disappointment that this type of exploitation had been alleged. Exploitation of this type is a long way from the values the company aspires to, and is inconsistent with the standards expected by a major infrastructure provider in New Zealand. We were given a clear mandate to make recommendations on how to better ensure that workers throughout the Chorus supply chain are treated fairly. Our work was fully supported by Chorus executives and by the leadership of the key service companies involved.
6. The work of the Labour Inspectorate of the Ministry of Business, Innovation and Employment (MBIE) and internal work by Chorus and its key service companies has confirmed that one part of the wider Chorus supply chain is vulnerable to widespread breaches of labour standards at the third tier of subcontracting, including migrant exploitation.
7. There is evidence that the 'UFB Connect' part of the UFB work programme is where the model is exposed to breaches of labour standards and migrant exploitation. These problems relate to services delivered by two of the service companies, Visionstream and UCG, through a range of subcontracted delivery partners.
8. Our review indicated the majority of alleged breaches were low level, however we could not rule out the vulnerability of the model to more serious breaches occurring. This meant that our recommendations are designed to guard against the potential for serious migrant exploitation consistent with the company's desire to take the necessary steps to ensure all workers are treated fairly throughout the supply chain.
9. Chorus has not been the recipient of any improvement or infringement notices by the Labour Inspectorate. The issues related to those parties engaged further down the supply chain. Of the approximately 900 subcontracting parties working on the UFB work programme, 365 of are engaged to deliver UFB Connect through two service companies, Visionstream and UCG. The Labour Inspectorate has identified 76 subcontractors with potential breaches, meaning that more than one in five sub-contracting companies involved in UFB Connect may have breached labour standards.¹ Furthermore, internal work by Chorus and the service companies Visionstream and UCG identified an additional 33 subcontractors with potential breaches that are being actively investigated. The total number of subcontractors with potential breaches is therefore close to one in three of the UFB Connect subcontractors engaged by Visionstream and UCG. This was sufficient for us to form a view that there was potentially a systemic issue that needed to be addressed.
10. We considered the original rationale for the subcontracting model adopted by Chorus. The large-scale construction project was a once-in-a-generation

¹ It should be noted that six allegations have been found subsequently not to have breached legislation.



transformation and required a different delivery model to meet the demanding timetable. Chorus is now in year 8 of a 12-year build that has been characterised by much higher levels of demand for connectivity than originally anticipated. The original target of 20 percent was achieved in 2016, four years ahead of schedule.

11. The peak of the UFB programme also coincided with tight labour market conditions across the country. The Chorus field workforce has nearly doubled, growing from approximately 2,000 before the UFB programme to nearly 3,800 in 2018. This period of work coincided with record growth in the wider building and construction industry, stimulated by the Canterbury rebuild, large-scale infrastructure investment, and commercial and residential construction.
12. We examined the way in which Chorus worked with Visionstream and UCG to anticipate strategic workforce risks to the delivery of the wider UFB work programme. We found, with the benefit of hindsight, that Chorus relied too heavily on a model whereby workforce risk, including the risk of migrant exploitation, was managed by the service companies without sufficient oversight. The contracts with

the service companies relied on an orthodox approach to the risk and required those companies to meet legal minimums. This was standard commercial practice at the time the contracts were struck. Chorus also relied heavily on the fact that both companies were internationally reputable and experienced in delivering services of this kind in a sub-contracted operating model.

13. The practices put in place by Visionstream and UCG did not fully anticipate that the model would evolve into one that relied on a largely migrant workforce. Today well over 50 percent of the UFB Connect workforce engaged by Visionstream and UCG are migrants working on temporary migrant visas, and more than 70 percent of the UFB Connect workforce has English as a second language. Within the past two years, both Visionstream's and UCG's workforce have rapidly grown, predominantly through an increased use of Indian and Filipino workers.
14. Despite this growth, Visionstream's and UCG's practices were not sophisticated enough to protect workers in their contracted supply chain from exploitation. Adequate protection would have included

addressing migrant workers' fear that complaining about labour standards could threaten their right to work in New Zealand.² We also received some feedback that a number of delivery partners (the subcontractors to Visionstream and UCG who distribute and deliver the work) faced high capital costs in being eligible to carry out work on the network and that the associated debt limited their ability to exit.³

15. Chorus' consideration of strategic workforce risks was focussed on the steps required by its service companies to drive recruitment to meet the burgeoning demand for connections to fibre. Second order risks such as the composition of that workforce, particularly the use of migrants, was not clearly identified as a key risk to the UFB delivery programme at a Board or Executive level within Chorus. The productivity improvements delivered by the subcontracted workforce were prioritised by all parties in the supply chain as service companies struggled to keep up with demand while also ensuring that quality standards and customer experience remained high.
16. With the benefit of hindsight, our review found evidence that should have been sufficient to raise potential

exploitation as a potential corporate risk in early 2016. This evidence included reports to the Board of concerns about quality of work and feedback from end-user focus groups following technicians commenting on poor working conditions.

17. Chorus, Visionstream and UCG did put a number of mechanisms in place to support workers, in order to satisfy the technical, health and safety and quality components of delivery of the UFB Programme. This included training, technical advice, and quality audits. We also found that this training was appropriately adjusted as the workforce became increasingly diverse.⁴ However, the support provided did not extend to service companies clearly setting expectations of delivery partners in the treatment of workers. We had indications from a number of workers and stakeholders that the capability of service companies delivery partners to run an efficient business and be good employers is relatively poor. This, in part, is attributed to the fact that many of the delivery partners are themselves migrants and may have limited understanding of minimum legal obligations, including labour standards.

² Such a threat could be based in fact if the worker was working outside visa conditions or more likely a fear based on misinformation.

³ Primarily costs associated with the purchase of a vehicle and tools.

⁴ Through use of video-based training materials and plain English standard setting.

18. A critical component of managing the risk of this form of labour exploitation is having a robust view of the participants in a supply chain. We found that Chorus had a high-level view of the participants in their supply chain and that this was a requirement of their standard terms and conditions. We also found that the information provided by Visionstream and UCG to Chorus about those participants was not of a quality we would expect to satisfy those contract provisions. Quality of information was a challenge for all parties through the course of our review. While Chorus did have systems in place relating to quality and health and safety, this data issue was compounded by the inadequacy of Chorus' contract management systems and processes to adequately monitor changes throughout the supply chain.

19. In light of this our key review findings are as follows:

- a. The adoption of a subcontracting model for the delivery of the UFB programme was appropriate given the challenges of meeting the volume and productivity requirements of the build and connect activity.
- b. The use of migrant workers by Visionstream and UCG to deliver the UFB programme was both expected and reasonable given the

significant demand for labour and the time-limited and one-off nature of the work required.

- c. As the proportion of migrant workers increased, the Chorus subcontracting model became increasingly vulnerable to the risk of labour exploitation. This risk was not well understood nor adequately managed by Chorus, Visionstream or UCG.
- d. The risk approach taken by the companies was not sufficiently adequate given the particularly complex nature of migrant exploitation as a form of labour exploitation, with labour and migrant exploitation still subsumed within broader risk-management for Chorus.
- e. The subcontracted model has been applied by Visionstream and UCG in such a way that the risks associated with volatility of demand for UFB connection may be disproportionately borne by the end technician. Chorus and the service companies would benefit from a more joined-up approach to workforce strategy and a shared understanding of needs, pressures and risks, with a particular focus on potential impacts on the viability of individual crews.

- f. Chorus relied on assurances provided by Visionstream and UCG in response to specific complaints. However, the quality of the process followed by these two service companies was inconsistent in the information we reviewed. The service companies also relied too heavily on assurances provided by subcontracted delivery partners or by potentially exploited migrants, some of whom are now involved in the Labour Inspectorate's investigation.
- g. The quality of certain information that Chorus, Visionstream and UCG had about the workers contributing to the UFB Connect work programme was poor. In particular, we found that Visionstream and UCG did not have robust information about which workers were working for different delivery partners and whether they were in employment or contractor relationships. This extended to poor information being provided to Chorus about the status of different visa conditions under which workers were employed.

Recommendations

20. There are few national or international examples of where organisations or projects have fully mitigated the labour and migrant exploitation risk well. Our review of these models identified the following key features.

- Significant upfront investment in understanding the state of the supply chain and likely future concerns or issues, as well as strategies to avoid or mitigate them (for example predicted periods of reduced demand)
- Ensuring the procurement approach is the 'best fit' for the specific project, rather than just 'best practice'
- An openness to reviewing the approach over the life of the contract – either through creating new channels (such as help desks) or tightening the settings (such as a stronger employment relations focus later in the contract)
- Strong ongoing engagement with the main contractors in order to strengthen interpersonal links. This relationship results in a better flow of information, which can help mitigate and manage issues as they arise.
- A commitment to focusing on labour market risk matters,



including locating a workforce related function appropriately within the organisational structure (for example, with personnel reporting directly to one or more senior executive members).

21. Chorus executives and senior managers from Visionstream and UCG fully supported the review process. Each company is clearly committed to sector-wide leadership and to introducing appropriate safeguards for the remainder of the UFB build in order to ensure that the end worker can make a decent living. Further, Chorus' view is that these safeguards should extend to all its supply arrangements, not just to the UFB Connect work programme.





22. In the future, a mature approach to mitigating the risk of breaches of labour standards and migrant exploitation must include design principles that address four core sources of risk through the Chorus supply chain.

23. In this context, a mature response from Chorus and their service companies must, at the very minimum, include:

- a clear statement of leadership that sets expectations for how suppliers treat workers
- clearer accountability at executive level in Chorus, and through key contracting parties to ensure that

labour market risk is jointly governed more effectively

- adopting a more strategic and longer term approach to sector-wide strategic workforce planning, with a focus on the next two to five years
- a more mature approach to risk management, audit and monitoring that reflects the complex nature of labour exploitation, particularly migrant exploitation
- better support for workers, including improved information, better reporting systems, and more investment in lifting the capability of delivery partners.

| Risk factors | Design principles | Suggested response |
|---|--|---|
|  <p>Risk factors relating to workers' personal situation</p> | <p>All workers engaged in the Chorus UFB supply chain should be able to earn a decent wage for a fair days work.</p> | <p>Take steps to address structural factors such as visa/migration status, language, lack of political agency, cultural norms, age and gender, geographical isolation, conditions relatively better than home, barriers to accessing remedies.</p> <p>This includes ensuring there is a single and known platform to report non-compliance, an environment where workers feel safe to report non-compliance, and where Chorus and service companies are held to account for labour practices in their supply chain.</p> |
|  <p>Risk factors relating to legal and institutional frameworks</p> | <p>Suppliers must respect the labour rights of workers and take steps to ensure their supply chain is free from discrimination, harassment, corruption and bribery.</p> | <p>Clearly map the full worker supply chain. Transparency is critical to protecting a supply chain against particular forms of poor practice such as use of phoenix companies as a form of regulatory evasion or where workers are engaged without proper employment agreements in place. Chorus and the service companies should also work with Immigration New Zealand to take a sector approach a review of essential skills in demand listings.</p> |
|  <p>Risk factors created by employers</p> | <p>Suppliers must handle all business dealings and transactions with the highest standards of integrity, transparency and honesty. Management systems must support good practice and clear accountability.</p> | <p>Increase the business capability and compliance of delivery partners. This includes the creation of a broader license to operate on the network that includes technical, health and safety and managerial competencies (including meeting labour standards).</p> |
|  <p>Risk factors relating to workplace</p> | <p>Productivity improvements in the supply chain should strike the appropriate balance the needs of the customers and the end worker.</p> | <p>Better integrate information associated with allocation of work including dispatch, geographical allocation, travel time, and uncertainty.</p> <p>Continuously review the viability of model for ongoing technician sustainability.</p> |

Adapted from European Union Agency for Fundamental Rights 2015

OUR APPROACH TO THE REVIEW

Our Brief

24. MartinJenkins was asked by Chorus to review their contracting model after the Labour Inspectorate indicated its initial inquiries had revealed a series of allegations of breaches of labour standards in the Chorus supply chain. These allegations ranged from poor labour standard practice through to a small number of serious allegations of exploitation. All allegations related to the treatment of migrant workers engaged at the third tier of engagement in the subcontracted workforce. The purpose of our review was to help the company understand:
- How these issues emerged?
 - Whether Chorus had appropriately addressed the risk of labour exploitation, specifically of migrant workers?
 - How effectively Chorus managed the issues once they arose?
25. We were also asked to review alternative models of supply chain management in similar sectors and make recommendations on what actions Chorus could take throughout its supply chain to better manage risks of this type.

How we went about this

26. We carried out this review collaboratively, with strong engagement and support from both Chorus and the service companies who were its key contractors.⁵
27. We, and Chorus, acknowledged the importance of the Labour Inspectorate's investigations and enforcement actions against third tier sub-contractors. We did not seek to replicate the Inspectorate's work by looking in detail at specific cases. Instead, our emphasis was forward-looking, directed at preventing future breaches of this type.
28. It was apparent early on that the workforce issues faced by Chorus and its service companies were the result of a complex mix of incentives and challenges. As such, the issues need to be considered by the supply chain as a whole, rather than by Chorus or its service companies in isolation. We worked collaboratively with all parts of the supply chain – though in particular, with Chorus and its main service companies that connect end users to the new fibre network.
29. Our work relied on the information identified and supplied by both Chorus and its service companies. However,

the findings and recommendations presented in this report are our own.

What we looked for

30. Our review considered three key dimensions to the question of how workforce risks were addressed and managed:
- Legal compliance**
Did Chorus and the service companies satisfy minimum legal obligations?
 - Ethical standards**
Aside from legal compliance, did Chorus and the service companies meet a higher test of corporate social responsibility consistent with the standards expected from a major New Zealand infrastructure provider?
 - Management of the risk of migrant exploitation**
Was the response from Chorus sufficient, especially given the company's role and the nature of migrant exploitation?

THE LEGAL FRAMEWORK

31. Labour relations and minimum employment standards are governed by six key pieces of legislation:
- The Employment Relations Act 2000** is the primary legislation governing employment

⁵ By 'service companies' we mean those contracted to Chorus to deliver the Ultra-Fast Broadband network. The main service

companies engaged to deliver the UFB Connect component of the programme, which was the focus of our review, are the service

companies Visionstream NZ Limited and Universal Communications Group NZ Limited (UCG).



relationships in New Zealand. It provides a structure for employers and unions to negotiate and enter into collective agreements, and for employers and employees to enter into individual agreements. The Act requires all employment agreements to be in writing and imposes a number of mandatory obligations on employers including keeping written records of employees' personal details, time and wages and other matters. The Minimum Wage Act 1983, providing that employers must pay at least the minimum wage even if an employee is paid by commission or by piece rate.

b. **Minimum Wage Act 1983** sets the minimum wage that an employer must pay an employee, including those paid by commission or by piece rate.

c. **The Wages Protection Act 1983** sets out how wages must be paid, and prohibits unlawful deductions from wages. The fundamental principle is that employers must pay workers their entire wage owed without deductions unless the deductions are permitted under the Act.

d. **The Holidays Act 2003** provides minimum holiday entitlements for all employees, including public holidays, sick leave and annual leave and how this must be calculated

e. **The Health and Safety at Work Act 2015** establishes a framework to secure the health and safety of workers and workplaces. It places the primary duty of care on a 'Person Conducting a Business or Undertaking' (PCBU). This requires them to ensure, so far as is 'reasonably practicable', the health and safety of their workers and of other workers who are influenced or directed by the PCBU.

f. **The Immigration Act 2009** and associated Regulations are the primary source of New Zealand immigration law. They establish a system of entry permits and visas for non-New Zealand citizens to enter, stay in, or work in New Zealand. Of particular relevance, the Act establishes various classes and conditions of temporary work visas and longer term residence. It also creates a number of employment related offences, including exploitation of an unlawful or temporary worker by an

employer who is in serious breach of minimum employment law standards.

CONTRACTORS AND EMPLOYMENT GENERALLY

32. One of the key issues to consider in subcontracted supply chains is the difference between contractors and employees. Contractors and sub-contractors are self-employed and earn income by invoicing the principal for their services.

33. Chorus' contracting model means that Chorus is not a direct employer of those working on the front line UFB programme.

34. Chorus undertook a rigorous procurement process and engaged expert reputable Australasian companies to partner as head contractors to deliver services to customers. These companies had specific experience in managing a subcontracted workforce and in dealing with a volatility in workload similar to that required by the UFB Connect work programme.

35. The Labour Inspector has not alleged that Chorus or the head contractors have been in breach of labour

standards. The allegations relate to the actions of sub-contracted parties at the third tier of the supply chain.

36. In general, contractors are not covered by most employment-related laws. This means they are not entitled to minimum provisions under the Holidays Act such as sick or annual leave, the Minimum Wage Act does not apply to contractors, and they cannot bring personal grievances to enforce their rights under the Employment Relations Act. Contractors are required to pay their own tax, and businesses do not have to hold contractor records. General civil law determines most of their rights and responsibilities.

37. A head contractor is engaged by the principal and is responsible for the overall control and management of a project, including monitoring health and safety issues onsite and ensuring that the health and safety policy is followed. While the head contractor will usually be responsible for ensuring that the relevant industry codes, regulations and project requirements are complied with⁶, the orthodox view is that the head contractor is not responsible for the employment practices of any subcontractors, other than ensuring they comply with health

⁶ Brett Carrington & Nicolette Carrington v David Easton & Ors 2013 (NZHC).

and safety requirements. Any dispute with a subcontractor is resolved through ordinary contract law and the civil court process.

38. However, in certain situations when a written agreement that purports to establish a contractor relationship, the Courts will determine that the contractor was in fact an ‘employee’^{7,8}. The Employment Court has sole jurisdiction to determine whether an employment relationship existed.⁹ When such a determination is reached, the party deemed to be an ‘employer’ can also be held liable for breaches of employment law. The tests considered by the Courts in determining this are set out in Appendix 1.

39. It is noted in this regard that the Labour Inspectorate’s investigations were in respect of employees in the conventional sense.

ETHICAL STANDARDS – BEING A GOOD EMPLOYER

40. The nature of the allegations have raised the company’s concern in terms of wider ethical tests and the high standards it holds itself to. Chorus and the service companies have received

criticism from customers, the media, unions, and other stakeholders.

41. Treatment of workers throughout the Chorus supply chain and the potential for exploitative practices in the manner that has been alleged is contrary to Chorus’ employment and contracting values. Chorus prides itself on being a preferred employer. It has been recognised over the last six years in the Aon Hewitt Best Employer Awards, including being accredited Aon Hewitt Best Employer in Australasia 2012–2017 and Aon Hewitt Best of the Best Employers in Australasia 2015. Its reputation as an ethical employer and good corporate citizen is important to the company.

MANAGING THE RISK OF MIGRANT EXPLOITATION

42. Migrant exploitation, as a particular form of labour exploitation, is particularly complex and difficult to detect. It has a range of mixed incentives and risk factors along the different parts of the supply chain, and therefore it is challenging risk for large organisations to consider and plan for.

43. Notwithstanding the challenge of managing this risk, we took the view

that Chorus should have a mature approach to considering the potential risks posed by the model of service delivery it has in place because:

- a. Chorus itself is a large employer by New Zealand standards, directly employing approximately 800 staff, and with a supply chain with a subcontracted field workforce approaching 4,000. Chorus has high standards, mature processes, and well-resourced human resources and corporate functions.
- b. Chorus is a major infrastructure provider, with a sophisticated understanding of the industry, and the capability to plan and deliver a significant investment in new infrastructure for New Zealand and to consider the ongoing sustainability of its workforce.

sustainability of that workforce in the short, medium, and long term.

44. Given these factors, we undertook the review with a focus on examining the company’s contracting practices, the quality of information and oversight of its head contractors (the service companies) responsible for more directly managing workforce risk, the maturity of understanding its supply chain, the overall composition of its supply chain workforce, and the

⁷ Employment Relations Act 2000. Section 161(1)(c) and sections 6(5) – (6).

⁸ Bryson v Three Foot Six Ltd (2005) 234 (NZSC). An action seeking determination of this matter can be brought by the individual concerned or the Labour Inspector.

⁹ Employment Relations Act. Section 161(1)(c)



WHAT IS MIGRANT EXPLOITATION?

45. The employment of migrant workers is a legitimate and much-used employer response to labour and skills shortages.¹⁰ The labour and skills shortages in the construction and infrastructure sectors have been widely reported on in New Zealand and internationally.¹¹ Employers do not usually set out to recruit migrants, but it is an option when other strategies are not viable – such as changing production processes, relocating to where labour costs are lower, or upskilling the local workforce or those not in employment, education or training.¹²

46. However, abuse of migrant workers is an emerging business risk locally and an established risk internationally. For example a recent Australian Government Report of the Migrant Workers' Taskforce identified that the underpayment and exploitation of temporary visa holders is a significant problem that has adverse effects on individuals, law-abiding employers and the community in general.¹³ Risk and harm is also suffered by legitimate businesses that are undercut by exploitative employers and exploited vulnerable migrants.¹⁴ For many

companies, it is the lack of mapping beyond suppliers at the first tier that leads to a hidden part of their supply chain where companies are vulnerable to human rights abuses and migrant exploitation.

47. Under the UN Guiding Principles on Business and Human Rights, companies are expected to carry out due diligence on their supply chains including having a clear view of who the workers are engaged in a company's supply chain.

48. There are also shifting consumer expectations – that companies should have an ethical duty of care extending beyond their direct employees. Internationally, this ethical expectation has become particularly important for retail-orientated products, as consumers begin to express a preference for ethical supply chains. There has also been some evidence of this trend emerging locally¹⁵.

49. Locally, regulatory efforts to support the enforcement of labour standards and the protection of vulnerable migrant workers have also grown. The Labour Inspectorate and Immigration

New Zealand (both business units of the Ministry of Business, Innovation and Employment) are taking a joint, multi-regulatory enforcement approach to migrant exploitation. An overview of their key activities is included in Appendix 2.

50. This multi-regulatory approach is consistent with the findings of the Australian Taskforce report which identifies that migrant worker exploitation is a complex and multi-faceted issue where employment, migration, corporations, taxation and other laws intersect. That report identifies that employers that underpay overseas workers may also engage in other undesirable practices such as avoidance of tax obligations, sham contracting, or phoenixing to avoid employee entitlement obligations.

10 Bridget Anderson and Martin Ruhs, 'Reliance on Migrant Labour: Inevitability or Policy Choice?' (2012) 20 Journal of Poverty and Social Justice 23; EM Chen and R Ward, 'Employers' Role and Influence in Migration: A Literature Review' (Ministry of Business, Innovation & Employment 2013); S Yuan, T Cain and Paul Spoonley, 'Temporary Migrants as Vulnerable Workers: A

Literature Review' (Ministry of Business, Innovation and Employment 2014).

11 M Farmer, 'The Farmer Review of the UK Construction Labour Model' (Construction Leadership Council (CLC) 2016); Immigration New Zealand, 'INZ to Establish Construction and Infrastructure Skill Shortage List' (News centre, 12 December

2018) <<https://www.immigration.govt.nz/about-us/media-centre/news-notifications/inz-to-establish-construction-and-infrastructure-skill-shortage-list>>.

12 Chen and Ward (n 9).

13 Report of the Migrant Workers Taskforce, March 2019

14 Fudge (n 12).

15 https://www.tearfund.org.nz/getattachment/Get-Involved/Ethical-Fashion-Guide/FashionReport_2018_with-TF-Logo_FINAL_compressed.pdf.aspx

4.0 WHAT IS MIGRANT EXPLOITATION?

What can migrant exploitation look like?

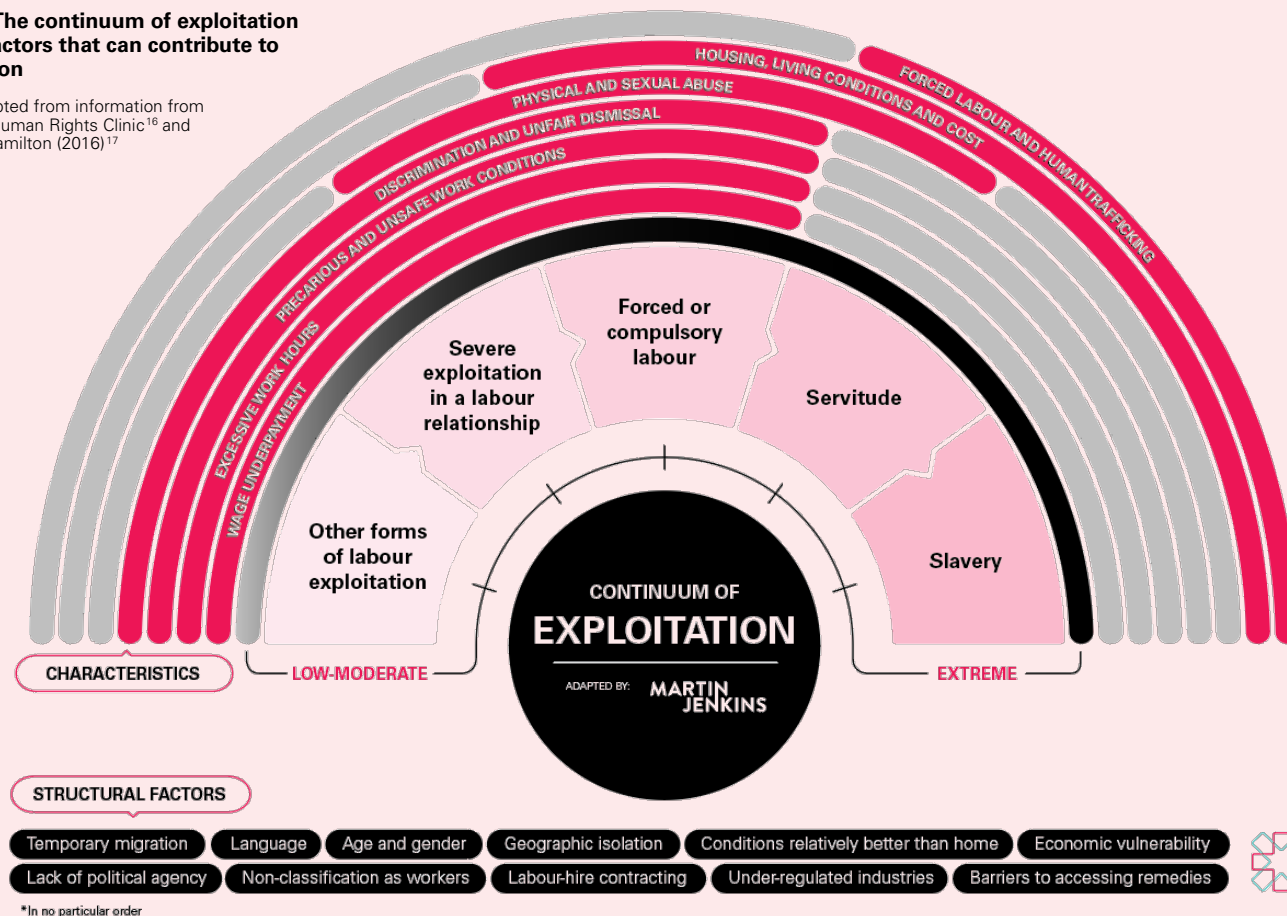
There are many different terms used in relation to migrant exploitation, including 'precarious employment', 'forced labour', 'modern slavery', 'trafficking', and 'volunteerism'.

In New Zealand, exploitation of unlawful employees and temporary workers is a crime under the Immigration Act. There is a continuum of exploitation that ranges from underpaying wages, to forced labour and people trafficking. There are a range of structural factors that can contribute to the vulnerability and exploitation of migrant workers, such as language, age and economic vulnerability (Figure 1).

This diagram is illustrative of the range of possible migrant exploitation, it is not intended to represent the allegations made towards Chorus' subcontractors.

Figure 1. The continuum of exploitation and the factors that can contribute to exploitation

Source: Adapted from information from the UNSW Human Rights Clinic¹⁶ and Dearing & Hamilton (2016)¹⁷



16 UNSW Human Rights Clinic, 'Temporary Migrant Workers in Australia' (UNSW Human Rights Clinic 2015) Issues Paper.

17 A Dearing and A Hamilton, 'Severe Labour Exploitation: Workers Moving within or into the European Union – the SELEX-

Project' (European Union Agency for Fundamental Rights, 2 June 2015).



Precarious employment

Employment can be defined as being precarious or non-precarious as set out in Table 1.

Table 1. Index of precarious employment

| | Precarious | Non-precarious |
|--|---|--|
| Contact type | - No contract - Verbal contract - Short-term contract | - Written contract - Long-term |
| Terms of employment | - Day labourer - Home-based - Seasonal - Temporary - Casual - Part-timer - Temporary agency worker - Unpaid family worker - Self-employed | - Full-time - Permanent |
| Predictability or control of schedule | Unable to plan schedule a week in advance | Can plan schedule a week in advance (always, usually or at least half of the time) |
| Basis for pay | - Piecework - Contract | - Hourly wage - Salary |
| Benefits | - No deductions | - Deduction from pay for benefits |
| Place of work | - Employer's home - Own home - Multiple sites | - Work premises - Single location |
| Unionisation | - Non-union | - Unionisation |

Source: Yuan, Cain and Spoonley (2014) adapted from Goldring and Landolt (2012)

PARTICULAR RISKS FOR MIGRANT WORKFORCES

51. Migrant workers face a particular set of risk factors that make them vulnerable to labour exploitation.
52. Furthermore companies with subcontracted workforces are particularly vulnerable to the risk of labour and migrant exploitation in their supply chains.¹⁸

| Risk factors | Examples |
|---|--|
|  <p>Risk factors relating to workers' personal situation</p> | Relatively better than home, barrier to accessing remedies |
|  <p>Risk factors relating to legal and institutional frameworks</p> | Immigration policy, visa requirements, labour and employment policy, health and safety 'person conducting a business or undertaking', modern slavery, international UN and ILO conventions |
|  <p>Risk factors created by employers</p> | Business models (for example, sub-contracting and piece rate), worker engagement and voice, power balance |
|  <p>Risk factors relating to workplace</p> | Business models (for example, sub-contracting and piece rate), worker engagement and voice, power balance |

18 A Stewart and R Owens, 'Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience,

Internships and Trial Periods in Australia' (University of Adelaide 2013) Report for the Fair Work Ombudsman

THE CHORUS MODEL

The next-generation fibre network programme

53. In 2011, the government entered into a ground-breaking agreement with the then-Telecom, awarding a significant component of the construction of a national next generation fibre network (often referred to as 'Ultra-Fast Broadband' or 'UFB') that would reshape the telecommunications industry and market (Figure 2). The objective of the investment was to enable 75 percent of New Zealanders to connect to an ultra-fast broadband network by the end of 2019. The government of the day considered access to ultra-fast broadband to be essential infrastructure for a productive and growing economy.¹⁹ Once the full UFB programme is complete, New Zealand should be in the top five countries in the OECD for the proportion of the population that can access fibre.
54. Telecom submitted a bid for the largest share of the network build, ultimately entering into a contract to build approximately 70 percent of the network, across 24 towns and cities. This contract required significant

changes to how Telecom delivered services, most notably the structural separation of Telecom's existing retail and infrastructure arms. Telecom demerged (supported by legislation) into two separate companies: the retail-focused Spark New Zealand (which took all existing customer relationships with end users), and the regulated infrastructure company, Chorus, which was responsible for building, maintaining, and providing access to Telecom's existing copper-based network and the future fibre network.²⁰

55. Chorus entered into a contract with Crown Fibre Holdings (CFH), a Crown-owned company, to deliver its part of the UFB build by the end of 2019.²¹

BUILDING AND CONNECTING TO THE NETWORK ARE DIFFERENT TASKS

56. Constructing the network includes two key tasks – the physical **building of the network** (running the fibre down the street), and **connecting end users** to that fibre.

57. The two activities are quite different:

i. Building the network

'Build' mostly involves installing new fibre optic cable, which may require significant civil works (digging up the sidewalk, laying the cable, and reinstating the sidewalk, for example). This is work that can be planned in advance and that operates to a defined and agreed schedule.

ii. Connecting to the network

'Connect' is demand- and consumer-driven. Connections are of varying complexity depending on the individual property and where the fibre connection point is located. Common examples include aerial connections from a street-side pole to a household, or blowing a fibre connection through an existing duct. More complicated installations include digging trenches down driveways. Work is therefore reactive, responding to individual demand and circumstances.

58. Our focus has been on the 'connect' work programme and service companies, as this was where the issues related to labour and migrant exploitation were identified.

19 Communications and Information Technology Minister, 'Ultra-Fast Broadband Investment Proposal Finalised' Beehive media release (Wellington, 16 September 2009) <<https://www.beehive.govt.nz/release/ultra-fast-broadband-investment-proposal-finalised>>.

20 Crown Fibre Holdings, 'Fact Sheet: Agreement with Chorus' (Crown Fibre Holdings Ltd 2011) <<https://www.crowninfrastructure.govt.nz/wp-content/uploads/2018/07/fact-sheet-agreement-with-chorus.pdf>>. Chorus was awarded 69.4% of the build. For the purposes of the

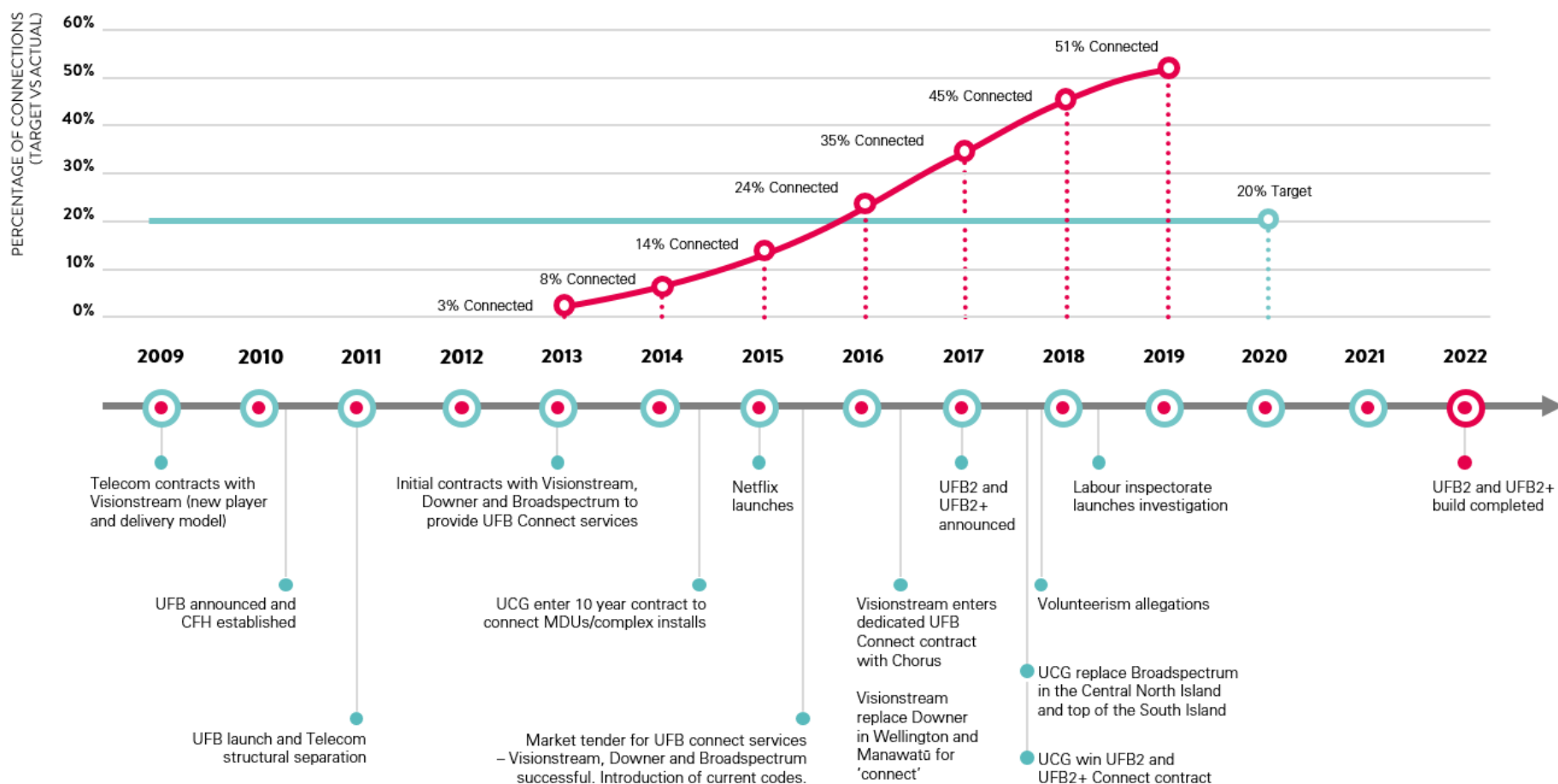
UFB initiative, 'ultra fast broadband' was defined as 100 megabits per second downstream, and 50 megabits per second upstream. 21 Office of the Auditor-General, 'Annual Review Briefing to the Commerce Committee: Crown Fibre Holdings Ltd' (Office of the Auditor-General 2015) <https://www.parliament.nz/resource/en-nz/51SCCO_ADV_00DBSCH_ANR_66089_1_A455362/88f5be82dfadbb36bceb058f58c6b6ccc9cd334>.

nz/51SCCO_ADV_00DBSCH_ANR_66089_1_A455362/88f5be82dfadbb36bceb058f58c6b6ccc9cd334>.



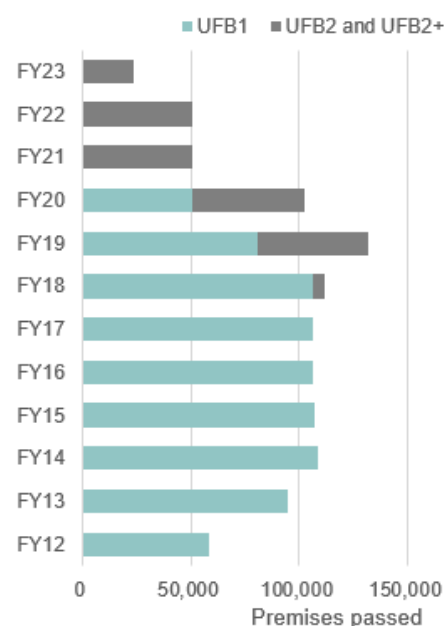
Figure 2. Chorus UFB build timeline

Source: adapted from Chorus documents



A ONCE IN A GENERATION PROJECT DELIVERED AT SCALE AND PACE

Figure 3. Chorus fibre deployment schedule²²



Source: Adapted from Chorus document

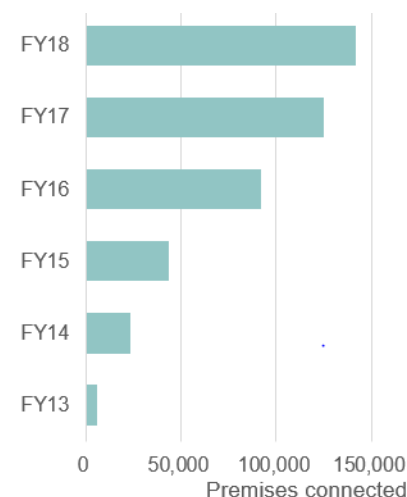
59. Both the network build and the end user connections have been delivered at significant scale and pace.
60. The programme was twice extended in 2017 (UFB2 in April, and UFB2+ in August), extending the programme's total reach to 87 percent of all New Zealanders. Chorus is responsible for building the network to up to a million properties. This has resulted in a once-in-a-generation build happening across the country over 12 years.²³
61. Chorus is now in year 8 of the 12-year programme. Connections to the fibre network are customer-driven and significant but unpredictable volumes of fibre connection activity will continue following completion of the communal build in December 2020. In the long run Chorus expects connection volumes to return to a long-term predictable trend and its focus will be on ongoing maintenance and the operation of the network.

With surging demand for connections

62. Connections to the network got off to a slow start: in the first four months only 200 homes were connected out of the 42,000 that had fibre past the property.²⁴ Following this, Chorus

experienced considerable year-on-year growth in uptake, far more than the original expectations or targets. This high demand has been driven by increasing consumer demand for high-speed internet – probably in response to the availability and mass uptake of online data-intensive media streaming services such as Netflix, and the increasing development of plans and marketing by retail service providers.

Figure 4. Premises connected per year



Source: Adapted from Chorus document

63. Original targets for 20 percent to be connected by 2020 have been considerably overshoot – the numbers reached 21 percent in 2016 and more than 50 percent by January 2019. As shown in Figure 4, in the year to June 2016, Chorus more than doubled the number of connections to its network: it added more than 90,000 connections in a single year, compared to 72,000 connected since the build began.²⁵

²² Chorus, 'Subcontractor Management – Contract Background' (Chorus New Zealand Limited 2018).

²³ Chorus, 'Annual Report – 2017' (Chorus New Zealand Limited 2017). UFB2 includes an additional \$291 million split between 25% debt and 65% equity.

²⁴ 'Chorus Boss Confirms Ultraslow Fibre Uptake' The National Business Review (Auckland, 27 August 2012)

<<https://www.nbr.co.nz/article/chorus-boss-confirms-ultraslow-fibre-uptake-ck-126904>>.

²⁵ Chorus, 'Chorus Submission on Review of Essential Skills in Demand Lists' (Chorus New Zealand Limited 2016).

Delivering through a contracted model

64. Chorus contracts with five service companies to both maintain the existing copper network and deliver the various phases of building and connecting to the UFB network. These arrangements are set out in Figure 5.

Figure 5. Chorus' contract model

Source: adapted from Chorus document

| | | | | |
|---|--|--|--|---|
| <p>PROJECT</p> <p>MAINTENANCE AND CONNECTION CHANGES ON COPPER</p> <hr/> <p>TERM Expiry June 2019</p> <hr/> <p>SCOPE</p> <ul style="list-style-type: none"> • Provisioning • Maintenance • Build • Copper network • Fibre network (except UFB Connect and UFB2/2+ Build) • By geographic area <hr/> <p>PARTIES</p> <ul style="list-style-type: none"> • Broadspectrum • Downer • Visionstream | <p>PROJECT</p> <p>UFB FIBRE NETWORK BUILD</p> <hr/> <p>TERM Expiry on Build Complete (Target Dec 2019)</p> <hr/> <p>SCOPE</p> <ul style="list-style-type: none"> • Build Fibre Communal Network • By Candidate area within FSA geographic area^a <hr/> <p>PARTIES</p> <ul style="list-style-type: none"> • Broadspectrum • Downer • Visionstream | <p>PROJECT</p> <p>CONNECTING PREMISES TO THE FIBRE NETWORK</p> <hr/> <p>TERM Visionstream expiry 2020 (subject to extension by agreement to 2024). UCG 2024 expiry.</p> <hr/> <p>SCOPE</p> <ul style="list-style-type: none"> • Fibre network only • Connect Fibre UFB1 areas • Connect Fibre UFB2 and UFB2+ areas • Nationwide within UFB areas <hr/> <p>PARTIES</p> <ul style="list-style-type: none"> • UCG • Visionstream | <p>PROJECT</p> <p>UFB2 BUILD</p> <hr/> <p>TERM Expiry on Build Complete (Target Dec 2022)</p> <hr/> <p>SCOPE</p> <ul style="list-style-type: none"> • Build UFB Fibre Communal Network in specified UFB2 areas • Nationwide in specified Candidate Areas <hr/> <p>PARTIES Broadspectrum^b</p> | <p>PROJECT</p> <p>UFB2+ BUILD</p> <hr/> <p>TERM Expiry on Build Complete (Target Dec 2022)</p> <hr/> <p>SCOPE</p> <ul style="list-style-type: none"> • Build UFB Fibre Communal Network in specified UFB2+ areas • Nationwide in specified Candidate Areas <hr/> <p>PARTIES Visionstream^b</p> |
|---|--|--|--|---|

NOTES:

- Broadspectrum was formerly Transfield.
- Broadspectrum is the principal UFB2 build contractor and Visionstream is the principal UFB2+ build contractor. ElectroNet is the contractor for both UFB2 and UFB2+ on the West Coast.
- While UFB1 Build closely follows FSA boundaries, the UFB1 Build contract included exceptions that didn't follow the FSA patches.

| | |
|----------------------------|--|
| SPECIAL PROJECT | UFB2/2+ BUILD & CONNECT (SOUTH ISLAND WEST COAST) |
| TERM | Contract expires Sep 2020, with connect services in UFB1 areas expiring June 2019. |
| SCOPE & PARTIES | Hybrid localised contract covering the West Coast of the South Island only. Electronet provided all the services in the UFB connect, UFB2 and UFB2+ Build contracts. |

65. These service companies have contracts to deliver various components of the work around the country. All draw on varying proportions of directly employed and subcontracted workforces.

i. **Visionstream**

A subsidiary of Australian company Ventia Pty Ltd, Visionstream entered the market in the 2000s, with Telecom aiming to introduce a new service model into the market and decrease its reliance on a perceived duopoly of providers. Visionstream brought a model that relied on a high proportion of contractors and that promised significant overhead savings.

ii. **Universal Communications Group (UCG):**

Also Australian-based, UCG contracted with Chorus to provide specific expertise on connecting complicated multi-dwelling units (MDUs) to the UFB network. UCG entered the market in 2014, and picked up additional contracts both in building the network and in connecting premises in 2016 through UFB2 and UFB2+. UCG operates a subcontracted workforce model that is similar to Visionstream.

iii. **Downer**

An Australian owned infrastructure company, Downer designs and builds infrastructure and provides integrated services in both Australia and New Zealand. Its workforce model is based mainly on direct employees; it uses subcontractors for specialist skills or to manage capacity when needed.

iv. **Broadspectrum**

Broadspectrum, formerly known as Transfield Services Ltd (TSE), is a corporation operating in Australia but owned by Spanish company Ferrovial since June 2016. Broadspectrum delivers UFB and UFB2 Build services, as well as copper maintenance and connection. The majority of its workforce is directly employed.

v. **ElectroNet Services**

ElectroNet is mainly an electrical contractor, owned by Westpower. It has a modest telecommunications division that holds a hybrid build and connect contract for UFB2 and UFB2+, providing all the services in the UFB Connect, UFB2 Build, and UFB2+ Build for the West Coast of the South Island. ElectroNet has a directly employed workforce, and is typically able to manage variations in

demand by drawing on its electricity lines workforce.²⁶

A SHIFT TO A SUB-CONTRACTED WORKFORCE

66. Each of Chorus' service companies operates its own employment and contractor model. All use a mix of employees and subcontractors.²⁷

67. The shift to a contracted workforce occurred before the structural separation of the then-Telecom. In 2009, Chorus (as a business unit of Telecom) awarded a contract for network maintenance and operations to Visionstream. Before this, Chorus' main contractors had been Downer and Transfield (now Broadspectrum); Chorus was seeking to inject additional competition into the market and improve productivity, quality and customer experience.

68. Visionstream differed from Downer and Broadspectrum in that it operated a mainly subcontracted workforce model, where the majority of its workforce were independent subcontractors. Rather than directly hiring technicians, Visionstream contracted with 'delivery partners', which consisted of crews of typically two people – a skilled 'lead' worker,

and a 'crew' member who works under supervision. Typically, the lead worker will be an owner-operator, and responsible for buying their own van and tools (with specific requirements set out in contracts) and for and covering all operating expenses.

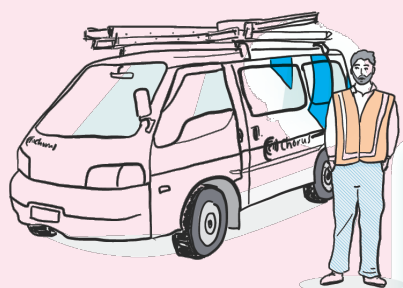
69. Over time, Chorus' workforce has become increasingly reliant on subcontractors, as Visionstream and UCG, who operate mainly with subcontracted 'owner-operators', have picked up more of the work. Since 2016, Visionstream and UCG have been the main service companies for connecting end users to the new network across the country, apart from the West Coast of the South Island. While Downer and Broadspectrum were previously involved in the connect work, they exited these contracts because of difficulties meeting volume and productivity requirements.

26 ElectroNet, MartinJenkins Chorus Review: One on one interview, 13 December 2018

27 Chorus contracts for outcomes and does not specify an employment model to be used.



“A man and a van”



The Chorus vans have become a common sight across the country as they connect end users to the network. Many of these workers are individual owner-operators subcontracting from Visionstream and UCG.

Our focus is mainly on this subcontracted workforce model as operated by Visionstream and UCG. Visionstream sums this up as:

“Our model is simple. We contract with owner operators with skills, experience, and a customer service focus, supported by Visionstream’s systems and work management experts; so that we can all perform at our best and be successful together.”

70. The contracted workforce model allows Chorus to better be able to scale up and down as required with the volume of the build. Through the review process we were informed that the subcontracted workforce have delivered higher productivity in response to the high demand for next generation connections.

A CONTRACTED WORKFORCE IS NOT A PROBLEM IN ITSELF

71. Typically, large infrastructure projects are procured from main contractors (or ‘tier 1’ contractors), who are then responsible for managing contracts at the sub-contractor level and below. Contracts are often for fixed amounts, which means that responsibility and risk are managed at the main contractor level. This also means that the legal requirement to meet labour standards is managed by the main contractors downwards.
72. Subcontracting usually comes in two forms:²⁸
- a. **Capacity contracting** – where the procurer may carry out the same or similar activities but needs additional capacity to respond to short-term fluctuations in demand
 - b. **Specialty contracting** – where the procurer does not undertake the activities in house, and is contracting an external provider to deliver specialist skills the procurer does not hold.
73. We heard through our review that Chorus sought, through competitive tender processes, the expertise that internationally experienced main contractors could provide. Chorus’ motivation was increased competition, capability, and sustainability leading to improved productivity and customer experience.
74. The use of this type of subcontractor model is not new in New Zealand. The wider New Zealand construction sector has long used subcontracted supply chains to manage project risk and fluctuating demand. In New Zealand, sub-contracting arrangements do shift resourcing risk away from principals, particularly where the risk results from an underlying demand or volume that is difficult to predict.²⁹
75. The subcontractor model brings benefits to the procurer, reducing the risks posed by volatility in demand and

enabling the procurer to more easily scale their workforce up or down to meet immediate needs. The model also provides the subcontractor with more flexibility than direct employment, as the subcontractors can work across multiple parties within relevant industries, spreading their risk and taking as little or as much work as they choose.

76. We found Chorus’ use of a subcontractor-led model to be appropriate given:
- a. the significant volatility in demand for connections, which stems from the one-off nature of the work, the uncertain demand at the outset coupled with unforeseen significant demand, and the reactive rather than planned nature of the work.
 - b. the need to develop and refine methods of connecting properties to the new Fibre network. Chorus sought to draw on expert multi-national infrastructure companies that could develop and refine their approaches to the connection work, and review and refine their costs throughout.

28 C Guers, C Martin and JL Wybo, ‘The Impact of the Use of Subcontracting on Organizational Reliability and Safety’ (Taylor 2014) <<https://hal-mines-paristech.archives-ouvertes.fr/hal-01063681/document>>.

29 IS Piri, Y Chang-Richards and S Wilkinson, ‘Skills Shortages in the Christchurch Subcontracting Sector’, ANDROID Residential Doctoral School Proceeding (University of Newcastle, the School of Architecture and Built Environment 2015)

<https://www.resorgs.org.nz/wp-content/uploads/2017/07/Skills_Shortage_Christchurch_Subcontracting_Sector_Piri_2015.pdf>.

Delivery in a period of skill and labour shortages

77. A significant workforce was needed to both build and connect this infrastructure. Chorus' field workforce nearly doubled, growing from approximately 2,000 before the UFB programme to 3,800 in 2018.³⁰ Chorus and its service companies needed to scale up rapidly to meet demand, both to support the build and, more pressingly, to provide adequate service times and experiences for customers wanting to connect to the new network.
78. Throughout this period of workforce growth, Chorus was competing in a tight labour market that was recovering from the global financial crisis. Unemployment was trending down, and it was becoming increasingly difficult for firms to find the skills and labour that they needed. More specifically, Chorus was competing for labour with other major developments, including:
- Significant demand for civil and construction workers to support the Canterbury rebuild, where the

number of construction workers increased by 13,700 between September 2012 and September 2017 (up 46%).³¹

- Increasing demand for workers to support major infrastructure and construction projects (including houses) in Auckland. In 2013, the value of construction activity in Auckland was forecast to increase by 44% by 2018, driven by strong residential growth as well as a large number of civil projects including roading, electricity, and water.³² MBIE is continuing to project significant demand for construction-related occupations, with an additional 56,000 workers needed between 2016 and 2022.³³
 - The development of the National Broadband Network ('nbn') in Australia, which was seeking to increase its workforce by more than 4,500 and competing for similarly skilled telecommunications technicians.³⁴
79. Feedback from Chorus and its service companies suggests that their workforce, while having specialised telecommunications skills, has some overlap in skills with general civil

construction workers. In the building of the network, 60 to 70 percent of the deployment costs have related to civil construction work.³⁵

USING MIGRANT WORKERS TO ADDRESS SHORT-TERM SKILL AND LABOUR SHORTAGES

The use of a migrant workforce in these circumstances is both reasonable and unsurprising.

80. Industry often turns to migrant labour to resource significant one-off projects when local labour and skills are hard to find.
81. The use of a largely migrant workforce to connect the UFB network is both unsurprising and reasonable given the time-limited and one-off nature of the work, and given the significant demand for labour in a period of tightening labour markets across a number of comparable industries.
82. There are New Zealand precedents for drawing on migrant labour to support

one-off skills and labour needs – for example:

- The Canterbury rebuild, which required significant numbers of construction workers within a short time.
- Seasonal labour shortages in sectors such as horticultural and viticulture harvesting, where significant numbers of workers are required for a short time.

30 Chorus, 'Subcontractor Management – Contract Background' (n 32). NB – differing estimates in different papers. Dated 17 October 2018 suggests ~5,000, up from ~2,000 pre UFB.
31 Stats NZ, 'Canterbury: The Rebuild by the Numbers' (Statistics New Zealand 2018) <<https://www.stats.govt.nz/reports/canterbury-the-rebuild-by-the-numbers>>.

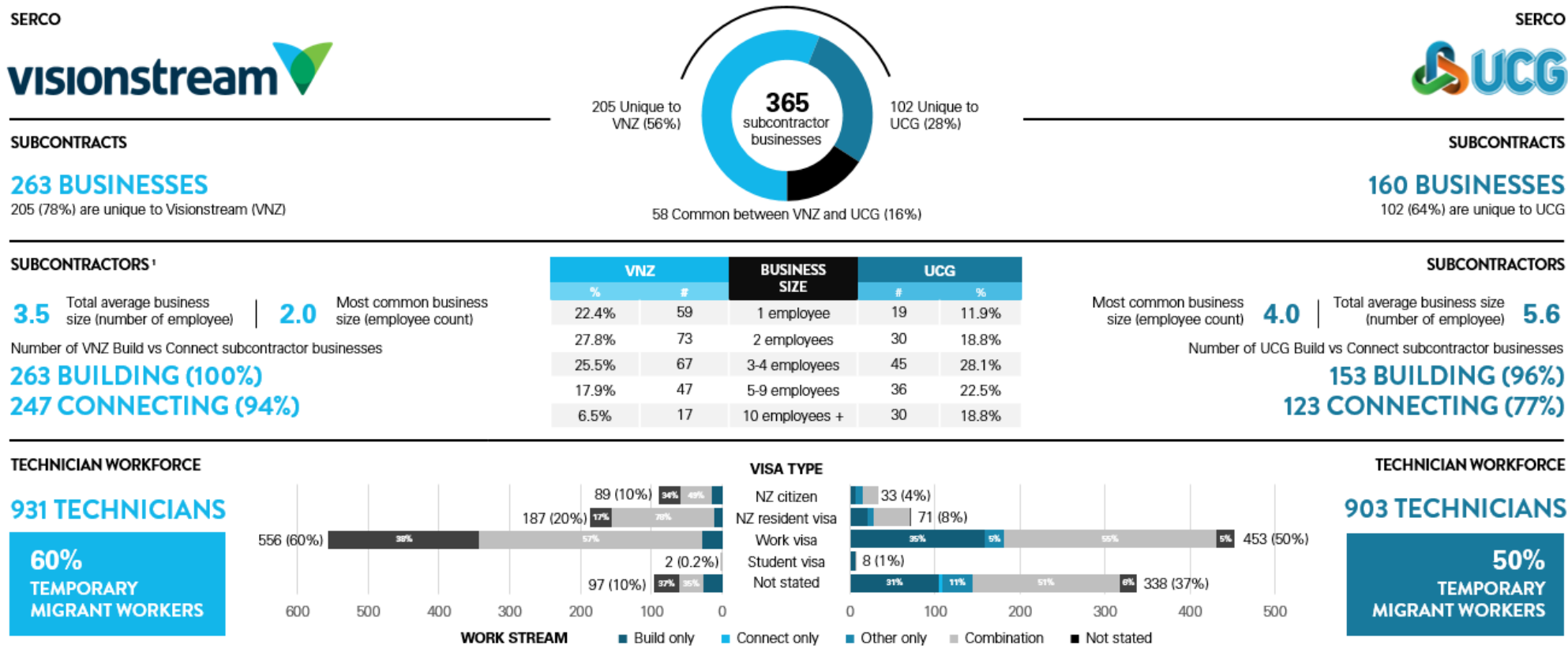
32 Construction and Infrastructure Sponsor Group, 'Workforce Skills Roadmap for Auckland Construction Sector (2013-2018)' (Auckland Construction Sector 2014) <<https://www.bifnz.co.nz/documents/Workforce%20Roadmap%20Summary.pdf>>.

33 Ministry of Business, Innovation and Employment and Market Economics, 'Future Demand for Construction Workers: Projections from the National Construction Occupations Model' (Ministry of Business, Innovation & Employment 2017) 2nd edition <<https://www.mbie.govt.nz/assets/e80cc701a0/future-demand-for-construction-workers-2017.pdf>>.

34 Chorus employee, 'Chorus Submission to MBIE Review of Essential Skills in Demand Lists' (Chorus NZ Limited 2016) Memo.
35 Chorus, 'Annual Report 2012' (Chorus New Zealand Limited 2012).



Figure 6. Chorus UFB Workforce composition



Source: adapted from Chorus, UCG and Visionstream documents (subject to change)

LABOUR EXPLOITATION ALLEGATIONS IN THE CHORUS SUPPLY CHAIN

The current investigation by the Labour Inspectorate

83. In mid-to late 2017, a smaller number of allegations began to emerge of poor labour practices involving migrants employed by subcontractors engaged by Visionstream and UCG. Initially, allegations focused on the use of unpaid volunteers in Nelson, where workers undertake unpaid work or training in the hope of securing long-term employment. Chorus initially thought these were isolated cases of poor practice.

84. Chorus was then contacted by MBIE's integrated intelligence unit in late 2017 to support its investigation into the allegations. Chorus sought to provide support and information to support MBIE in its investigation, and encouraged its main contractors to do the same. This included Chorus hosting MBIE's investigators to give them an overview of the fibre work programme, and how it is undertaken.

85. After investigating throughout 2018, MBIE announced in October 2018 that its Labour Inspectorate had found issues with the employment practices of 73 subcontractors investigated. That number has since increased to 76. All

have been working in the 'connect' side of the business.

Labour Inspectorate allegations by Service Company

| | |
|-------------------|----|
| Visionstream only | 43 |
| UCG only | 8 |
| Both | 25 |

86. By this stage the number of cases being considered began to indicate that the labour practice issues may be systemic. It was at this point that this independent review was commissioned.

87. Of the roughly 900 subcontracting companies working on UFB, around 365 are working in UFB Connect,³⁶ and so the Labour Inspectorate's findings suggest that more than one in five companies working in UFB Connect may have breached labour standards.

88. Since that time, Chorus and its service companies have proactively identified an additional 30 possible breaches, which they are currently investigating internally and sharing this information

with the Labour Inspectorate. If these investigations confirm the allegations, this would bring the total number of subcontractors that have potentially breached labour standards to 109.

89. Many of the allegations that have emerged remain unproven, and the full extent of exploitation (rather than poor practice or a misunderstanding of the law) is uncertain. However, nearly one in three subcontractors working in the UFB Connect programme face allegations of breaches of labour standards. Our view is that this is a clear indication that the third tier of Chorus' supply chain is systemically vulnerable to poor employment practice and this may include breaches of labour standards and/or likely other forms of migrant exploitation.

Nature of the allegations

90. The range of allegations includes varying levels of seriousness. The original issue to come to light related to issues raised by technicians who alleged they were expected to effectively work for free, either during a training period, or in hopes of gaining a full-time position. Other allegations range from poor labour standard practice through to a very small number of serious allegations of

exploitation. All allegations related to the treatment of migrant workers engaged at the third tier in the subcontracted workforce.

91. The list of issues at the lower end of exploitative labour practice included:

- **Poor record keeping** – Employers failing to maintain employment records or provide employment agreements.
- **Underpayment** – where workers have not been paid for the hours completed, have been paid below minimum wage, or have not been paid holiday entitlements.

92. There have also been a very small number of allegations related to more serious forms of exploitation including:

- **Volunteerism** - where workers are expected to effectively work for free, either during a training period, or in hopes of gaining a full-time position.
- **'Cash back' requirements** – where workers are required to hand money back to their employer, thus keeping records clear. Similar practices can also happen through non-cash means, for example workers being required to buy goods or services, or being

³⁶ Chorus, 'Internal Analysis on Labour Inspectorate Investigation for Board Update' (Chorus New Zealand Limited 2019) Unsubmitted background paper. This includes 249 subcontractors

with Visionstream, and 152 subcontractors with UCG. Approximately 60 of these companies work for both. Numbers are changing at any given point.



beholden to provide 'favours' to their employer.

- **Bribery** – a worker making payments to their employers in exchange for a sponsored work visa, so that the worker can remain in the country.³⁷
- **Conflicts of interest** – Allegations of conflicts of interest within the supply chain, including of how work is allocated to different delivery partners

93. Feedback from the service companies emphasised challenges around management capability for small companies (particularly the 'man and a van' model, or where the employers are migrants themselves).

Incidents unlikely to be isolated

94. The literature on migrant exploitation suggests that exploitation tends to be under-reported, with the true number likely to be unknown.³⁸ There are a number of reasons for this, which include:
- a. Exploitation can be hidden and 'off book', not showing up in standard audit and examination processes.
 - b. Detecting exploitation often requires the workers themselves to

speak up – but they often lack incentives to do so, either because losing the current job is a worse outcome, or because they fear other reprisals.

- c. Incentives are tied to immigration settings, with temporary migrant work visas linked to specific employers, so that those employers have significant leverage over their temporary migrant staff.
95. While the majority of alleged breaches have been relatively low level there have been a small number of more serious allegations. We have been unable to rule out the vulnerability of the model to these more serious breaches.

Setting expectations with its contractors

THE RESPONSIBILITY OF THE SERVICE COMPANIES

96. Chorus has contracts with the service companies that set clear expectations and requirements for subcontracting and expectations on training and capability of the workforce. Through these contracts, Chorus has outsourced its field workforce to be managed by its service companies.
97. Based on these contractual arrangements, Chorus saw employment and employment relations as squarely an issue for its service companies.
98. The contracts set expectations around compliance, such as:
- a. Extensive health and safety requirements, ranging from defining roles and responsibilities, to setting out key procedures, in line with the Health and Safety at Work Act.
 - b. Extensive training and competency requirements to ensure the safety of technicians, protect the integrity

of Chorus' network, and increase productivity and quality.

99. The contracts include a general clause specifying that the service companies must ensure that their personnel, subcontractors and technicians comply with all laws "relevant to the services being performed." While not specifically set out, this would include immigration and employment relations law.
100. It is not extraordinary that the contracts do not explicitly refer to labour relations, employment or immigration law, as the current labour relations frameworks in New Zealand do not extend through the supply chain in the same way that the health and safety legislation does. Legally, employment relations issues are between an employee and an employer – a relationship that Chorus is not party to. However, Chorus sees employment issues as covered by the blanket requirement to comply with all legislative requirements, meaning that a breach of employment or immigration law would be a breach of the service company's contract with Chorus.

³⁷ Chorus and UCG, 'FW: Serious Fraud (Bribery and Black Money) at Chorus New Zealand' (October 2018).

³⁸ C Stringer, 'Worker Exploitation in New Zealand: A Troubling Landscape' (University of Auckland Business School 2016) for the Human Trafficking Research Coalition.

Supporting the broader supply chain

101. Chorus' contracts with service companies establish a number of mechanisms which would enable it to monitor the ongoing health and capability of its broader workforce supply chain, including:³⁹

- a. A requirement for the service companies to develop a register of subcontractors and technicians – a 'complete and accurate database ... of the Subcontractors and Technicians it uses to provide and perform services', including the employer, the roles and scope of contract, tenure and experience, and training information (cl 15.1).
- b. The right to approve any person, and a requirement that each subcontractor or technician must agree to provide relevant information to Chorus (cl 15.2).
- c. A requirement that service companies ensure their subcontractors do not further subcontract without Chorus' prior written consent (cl 15.8).
- d. Training and competency requirements that promote

continuous improvement for the workforce (cl 16).

- e. Decoupling Chorus' payment relationship with its service companies, and its service companies' relationships with their subcontractors, specifying that the service companies must pay their subcontractors (cl 24.10).

Dealing with issues that arise

102. Chorus has extensive auditing rights, specifically for health and safety, as well as service company management of its personnel, subcontractors and technicians. This right also flows up to Crown Fibre Holdings (now Crown Infrastructure Partners), which may initiate an external audit of service company performance, or direct a service company to carry out a self-audit.

THE IMPLEMENTATION OF THESE CONTRACTS NEEDS TO IMPROVE

103. While Chorus sets expectations for its service companies about its workforce, these expectations were not matched by an underpinning

investment in systems and processes. Through interviews with Chorus staff we established that this likely resulted from the greater priority being given to delivering the work programme because of the higher than expected levels of demand.

Understanding the supply chain

104. Despite the provisions in its contracts, the arms-length approach that Chorus has taken has meant that Chorus and its service companies do not have a shared understanding of the supply chain, the particular risks it involves, and needs for the future. This manifests in a variety of ways:

UNDERSTANDING THE EXTENT OF SUBCONTRACTING WITHIN THE SUPPLY CHAIN

105. Our review established that Chorus expected contractual compliance but did not put in place systems and processes of a sufficient robustness to achieve compliance.
106. Chorus has not implemented the systems and processes provided for by the contracts that would enable it to better map its supply chain and understand the extent of subcontracting within it. Although the

contracts required approval of subcontractors, we received feedback that this was done in an ad hoc, unsystematic way, and that no central register was maintained.⁴⁰

107. The service companies, Visionstream and UCG, noted that they had provisions in their contracts with delivery partners (their subcontractors) requiring approval for subcontracting, and were not aware of a significant use of further subcontracting.⁴¹

PROVIDING A SUSTAINABLE REVENUE STREAM FOR TECHNICIANS

108. The ability for subcontractors and technicians to make a decent living from working in the UFB Connect work programme is informed by three key drivers:

- a. The rates – or 'codes' – at which connections are paid
- b. How the codes flow through the system to the end workers
- c. The efficiency with which coded jobs are allocated.

109. These factors are independent of the individual technician productivity

39 Chorus, 'Chorus New Zealand Limited and Visionstream Pty Limited UFB Connection and Work Management Services Agreement' (Chorus NZ Limited 2016).
40 Interview with Chorus employees (n 38).

41 Chorus, 'RE: Subcontractor Model Review - Additional Information Requested' (14 February 2019).



which can impact income but was not analysed in our review.

Are the Codes fair?

110. Chorus' contracting model uses a code-based approach to paying for completed jobs. Different jobs are assigned a 'code' with a set price depending on the complexity of the job. For example, when customers are connected to the fibre network there is a different code for an aerial connection compared to the fibre being blown through ducting.
111. Following an extensive time and materials based estimation process, the codes were agreed with the service companies in 2014/15. Chorus also took some steps to satisfy itself that an efficient and skilled crew would be able to make a decent living under the agreed model, with the potential to earn more than if they had been directly employed. Financial modelling underpinning this assertion had apparently been carried out, but unfortunately is no longer available.⁴²
112. Chorus also completed high-level modelling of the revenue that individual crews would receive (assuming an average of one install a day, completed for an average price

per job and an assumed service company overhead).

113. We were also provided with analysis (undertaken by a third party) that was commissioned by Visionstream, in 2016, to satisfy the service company that technicians could make a comfortable living reflective of the salary of a skilled tradesperson.⁴³ Visionstream is in the process of updating that analysis as the result of the review⁴⁴ UCG has also commissioned applied financial analysis through the course of our review that is not yet finalised. We consider that the steps taken to review and update this financial analysis by both service companies is appropriate.
114. The original Visionstream modelling was based on an assumption of 'man and a van' model. It also excluded the potential for delivery partners to earn revenue from other Visionstream contracts. Visionstream's recent analysis indicates that up to 39% of their delivery partners earn revenue outside of the original Connect contracts.

115. Also relevant to our review was the preliminary analysis undertaken by Visionstream that there did not appear to be a correlation between size of a delivery partner company and those companies alleged to have had poor labour practices or more serious forms of migrant exploitation. This warrants further analysis.
116. Representatives of both Visionstream and UCG contended that the original model as developed a number of years ago was viable, being based on the original design of a number of two-person crews (a 'lead' worker and a 'crew' member), where subcontractors are doing the work and also directly employing an assistant. The model does not provide for overheads for larger subcontractors, although a number of larger subcontractors did enter the supply chain during the effort to meet increased demand.

How the codes system flows through the supply chain

117. Chorus emphasised that the codes were designed to be an efficient mechanism for managing its contracts with its service companies. The design included a minimum number of codes to maximise efficiency in

contract management, while also acknowledging that there would be volatility driven by volume and efficiency within the bounds of risk that large experienced contractors would be able to manage. However, Chorus expressed some concern that Visionstream and UCG had passed those codes through to the end technician in a way that the original model had not envisaged. The passing of this volatility risk to delivery partners by service companies may have contributed to the end worker managing a greater proportion of volume-based risk than was ever envisaged. The cases of breaches of the Minimum Wage Act highlighted by the Labour Inspectorate are potential examples of the consequences of this poor practice.⁴⁵

118. This evolution at the third tier of the contracting approach may have contributed to an inefficient allocation of risk between Chorus, its service companies, delivery partner subcontractors and the end workers.

The efficiency with which coded jobs are allocated

119. Given the importance of work allocation for the technicians, we worked with Chorus to model the

42 ibid.

43 Visionstream –Report on the Feasibility of the Owner Operator Contractor Model 30 June 2016

44 Visionstream: UFB Connect Contractor Earnings Analysis March 2019

45 ibid; Chorus employee to MartinJenkins, 'Re: Modelling' (8 March 2019).

process from the perspective of a ‘ticket’ – that is, the connection request from the time it is made by the end user/customer to a retail service provider⁴⁶, until the connection is completed. This identified a number of potential pain points for technicians, including:

- a. A reactive demand for work outside of the control of Chorus, service companies and delivery partners.
- b. A reliance on the service companies with expertise in dispatching and managing workloads efficiently.
- c. Limited control over the type of work done – technicians are required to be masters of all connection types so that they can tackle any problem. This limits opportunities to specialise, and also ties productivity and profitability to the mix of jobs they are allocated.
- d. Complex billing relationships between delivery partners, service companies and Chorus, though theoretically decoupled in the contracts.

- e. Delivery partners do not receive payment for jobs until they are completed, that is, when the connection occurs and the customer can use the service.
- f. Significant impacts on technician costs and time when customers or retail service providers reschedule or cancel. This has been a key area of focus for Chorus and its service companies over a number of years (although the shift to a ‘fibre in a day’ service has reportedly increased this number).

120. We received feedback from some service companies that Chorus can make process and service changes without adequately considering the impact on its workforce.⁴⁷ We also received feedback from Chorus that the service company value proposition was that this risk is managed at the contractor level. This tension in incentives was evident. There was limited evidence of either party having the kinds of information available that would enable them to arrive at a shared view of the potential workforce implications of changes to standard operating practice and the potential flow-on to the technicians.

121. Ultimately we formed the view that the subcontracted model has evolved in such a way that risks associated with volatile demand may have been borne disproportionately by the end technician. Chorus and both service companies would benefit from a more joined-up approach to workforce strategy and a shared understanding of needs, pressures, and risks, with a particular focus on potential impacts on the viability of individual crews.

How well were the risks to its workforce anticipated?

RESPONSE TO INCREASED DEMAND DID NOT ANTICIPATE WIDER LABOUR MARKET RISKS

122. Although it was clear early on that growth in demand for connections to the network was significant, Chorus and the service companies approach to managing labour-related risk to delivery throughout the supply chain was lacking – specifically, risks that may come from an increased use of migrant labour.

123. The higher than anticipated demand for connections created difficulties for both Chorus and service companies. Although from a high-level viewpoint demand grew solidly over the period, we heard from the service companies that demand was volatile and dispersed, so that it was not always where it was expected to be. Demand was initially concentrated in smaller towns and regions rather than Auckland, where it had been expected. For example, we heard from one service company that a relatively small town with three

⁴⁶ Retail service providers are telecommunication companies who use Chorus’ optical fibre network to create retail UFB-based services which are sold to residents, businesses, schools and

health premises. Examples are Spark, Vodafone, Slingshot, 2Degrees, Flip and Trust Power

⁴⁷ This was challenged by Chorus, which pointed to examples of testing new products (such as fibre in a day) with a small number of crews from both service companies.

technicians received 120 connection requests in one week.⁴⁸

124. Chorus attempted to proactively manage the sustained high levels of demand for connection. This included the following steps:

- In 2014, Chorus began modelling the financial impact if the connection rate were to reach 50 percent by 2019.⁴⁹ This analysis did not appear to cover workforce impacts.
- Chorus worked with service companies with a significant focus on increasing the recruitment and retention of technicians expanding capacity throughout 2015 and 2016.⁵⁰ Chorus' management reported regularly to its Board on the service companies' recruitment progress, and their ability to bring in additional workers. Chorus also invested in local training and apprenticeship programmes,⁵¹ and worked with local employers to support the employment of workers facing redundancy.⁵²
- In support of an application led by Visionstream, Chorus worked with

Immigration New Zealand to add Telecommunications Technician and Telecommunications Cabler to the Skills Shortage lists, as part of the Essential Skills in Demand review in 2016. This made it easier for employers in the Chorus supply chain to bring in overseas workers.⁵³

125. This rapid response to increased demand resulted in a near doubling of the workforce over the period of the work programme. The pressure on Chorus, through its service companies, to bring in new workers resulted in a shift away from the 'man and a van' model that had been the underpinning feature of UCG and Visionstream's subcontracted workforce approach.

Responding to reputational risks

126. As demand continued to exceed expectations, Chorus was criticised for delays in connecting end users to the network. The median time for connections of differing types (SDUs, MDUs, or right of ways) were regularly reported to the Board, and in some cases were also discussed in the media. Chorus also faced service

level agreement penalties with its retail service providers and with Crown Fibre Holdings.

127. The clear focus for Chorus was on how to improve these delivery times and meet increasing demand. This included a focus on improving the productivity of the workforce, through increased training, emphasis on quality, and recruitment drives.⁵⁴

128. This focus appears to have resulted in Chorus overlooking early indicators of poor worker conditions including:

- a. End users, through focus groups, told Chorus that technicians' remuneration had been a recurring theme when technicians spoke to customers during connection work. Chorus reported this issue to the Board, noting that it was a complex area, with income depending on a number of variables.⁵⁵
- b. Public perceptions, as a result of their interactions with the technicians, were often that the technicians were overworked and rushed, and that they delivered poor quality, with little support

from Chorus. Chorus considered that those perceptions also significantly shaped the public's perception of Chorus itself.⁵⁶

129. In response to these issues, Chorus considered designing a proactive campaign to improve the technician experience, largely focused on improving technician engagement and public perceptions.

SIGNIFICANT RISKS ARISE FROM A SHIFT TO A MIGRANT WORKFORCE

130. Our review of management and Board papers from this period did not reveal evidence of analysis of the additional risks that arise through the use of a migrant workforce.

131. The composition of the workforce shifted significantly from 2016 to 2018. Based on Chorus' survey of technicians over these years, the workforce both grew rapidly, and became increasingly dominated by migrant workers. Note that the following statistics are likely to under-report the situation, as response rates

48 Interview with Service companies, 'MartinJenkins Review: One-on-One Interviews' (December 2018).

49 Chorus, 'Infrastructure Group July Monthly Update to the Board' (Chorus NZ Limited 2014) Board paper.

50 Chorus, 'Monthly Executive Update NGA' (Chorus NZ Limited 2016) Board paper. noting increasing demand and a lack of

supply. Reporting on increase in crew numbers and the need to work with Service Companies to augment their capacity in line with demand

51 Chorus employee (n 45).

52 Chorus, 'Chorus Submission on Review of Essential Skills in Demand Lists' (n 34). Chorus worked with Fisher and Paykel to

help find placements for redundant staff following the closure of their East Tāmaki manufacturing plant.

53 Chorus employee (n 45); Chorus, 'Chorus Submission on Review of Essential Skills in Demand Lists' (n 34).

54 Chorus, 'Chorus Looking for 250 More Technicians and Support Staff by End of 2016' (Media release, 22 July 2016)

<<https://company.chorus.co.nz/chorus-looking-250-more-technicians-and-support-staff-end-2016>>.

55 Chorus, 'Monthly Executive Update NGA' (Chorus NZ Limited 2016) Board paper.

56 Chorus, 'Monthly Executive Update NGA' (Chorus NZ Limited 2016) Board paper.

to the survey in those years range from 39 to 50 percent:

- a. Workers subcontracted to Visionstream increased from 256 to 574, within which the proportion of:
 - i. those of New Zealand descent decreased from 22% in 2016 to 9% in 2018
 - ii. Indian ethnicity increased from 16% to 55%
 - iii. workers with English as a second language grew from 54% to 72%.
- b. Workers subcontracted to UCG increased from 82 to 320, within which the proportion of
 - i. those of New Zealand descent decreased from 20% in 2016 to 8% in 2018
 - ii. Indian ethnicity increased from 17% to 54%
 - iii. workers with English as a second language grew from 55% to 71%.

132. Our interviews with Chorus and employees from Visionstream and UCG, as well as comments received

via the TechEx survey of technicians, suggest these other risk factors:

- a. Language – English is not a first language of most technicians (in 2018, 60 percent of the industry had English as a second language – 71 percent of UCG technicians and 72 percent of Visionstream technicians)
- b. Age – the majority of technicians are aged 20–29 (in 2018, 55 percent of Visionstream technicians were in this age group, and 59 percent of UCG’s)
- c. Visa status – on the best available data provided to us, only 11.6 percent of UCG technicians and 29.7 percent of Visionstream technicians had New Zealand citizenship or permanent residence
- d. Lack of usual family and community support.

“ Majority of techs are immigrants so we are not live with our families. ”

– Comment from TechEx 2018 survey

Compounded risks through the high use of migrant labour in a subcontracted supply chain

133. Chorus and the service companies did not adequately anticipate the impacts of shifting to a heavily migrant workforce and put appropriate safeguards in place. The relevant risks are compounded in a subcontracted supply chain.

DELIVERY PARTNER CAPABILITY – AWARENESS OF OBLIGATIONS AND RESPONSIBILITIES

134. We heard feedback that delivery partners contracted to the service companies may lack management capability, including knowledge of minimum labour standards and how to implement them. In some cases, delivery partners were unaware of legal minimum standards and obligations, particularly related to record keeping (including timesheets, payroll, and employment contracts).

DIFFERING CULTURAL NORMS

135. The cultural and other norms in migrants’ countries of origin present a more complex risk. As Taran and Geronimi have noted, major incentives for exploitation of migrants

include lower labour standards and minimum protections in their countries of origin.⁵⁷

136. The literature, media reports, the Chorus experience, and our own experience show that there is often a co-ethnic dimension to exploitation, where migrant workers tend to be exploited by employers within their own ethnic community.⁵⁸ We understand that this is related to a complex interaction of factors, including class/caste structure, power, accepted practice, and employers having been exploited in the past themselves.⁵⁹

INSTITUTIONAL SETTINGS THAT TIE MIGRANT VISAS TO PARTICULAR EMPLOYERS

137. An employment relationship is considered precarious when the worker has little or no control over their employment conditions, such as wages; certainty of employment; hours of employment; their place of work; and the regulatory protection available for the particular employment sector.
138. A number these elements are directly linked to national policies and laws. In some cases, government policy has

57 PA Taran and E Geronimi, ‘Globalization, Labour and Migration: Protection Is Paramount’ (International Labour Office 2013) Perspectives on Labour Migration 11.
58 S Kilgallon and D Fonseka, ‘The Big Scam: The Tip of an Immigration Scam Iceberg’ Stuff.co.nz (Auckland, 21 September

2018) <<https://www.stuff.co.nz/national/crime/107073384/the-big-scam-the-tip-of-an-immigration-scam-iceberg>>; M Ram, P Edwards and T Jones, ‘Employers and Illegal Migrant Workers in the Clothing and Restaurant Sectors’ (DTI Central Unit Research 2002); W Searle, K McLeod and N Ellen-Eliza, ‘Vulnerable

Temporary Migrant Workers: Canterbury Construction Industry’ (Ministry of Business, Innovation & Employment 2015).
59 C Stringer, ‘Worker Exploitation in New Zealand: A Troubling Landscape’ (University of Auckland Business School 2016) for the Human Trafficking Research Coalition.



contributed to the creation and maintenance of precarious employment relationships. Work visas come in various forms and may either permit unrestricted employment commonly known as an “open” visa or specifically restrict employment to an identified position, employer and location. Workers on ‘essential skills work visas’ are restricted to a specific occupation, employer and location.⁶⁰

139. The linking of a visa to a specific employer creates a situation where workers experiencing exploitation may believe they have limited choices. This linkage reduces their bargaining power against employers who may feel a sense of proprietorship over their workers. While the New Zealand immigration system does allow migrant workers to apply to change the conditions of their visa, including their employer, workers are often not informed of this and may also be concerned that doing this may place their visa status at risk.⁶¹ As long as employer sponsorship is the dominant entry pathway to New Zealand in both the temporary and permanent migration programmes, visa holders will be more likely to remain in

employment relationships marked by pronounced dependency.

Opportunity to address risk with the winding down of build activity

140. As the UFB build begins to wind down over the next few years, Chorus and the service companies face even greater risks around migrant exploitation, particularly if workers are bound to specific employers by their visa.
141. To mitigate those risks around migrant worker exploitation as connection volumes decline, Chorus and the service companies should conduct more detail analysis and longer term planning to:
- a. The size of the workforce that will be needed.
 - b. How to transition declining volumes through the supply chain, given how closely technician profitability is linked to high levels of utilisation.
 - c. Support that may be needed to support workers seeking to change employers or move into

other related areas facing skill shortages.

142. There is a risk that any scaling down of the workforce will increase the precariousness of an already vulnerable workforce, as temporary migrants seek opportunities to remain in the country, and subcontractors compete for a reducing amount of work.

Responding to the specific allegations

AN EARLY ARMS-LENGTH APPROACH

143. When detailed allegations began to arise in 2017 and then into 2017/18, Chorus focused mainly on ensuring that the relevant service companies, Visionstream and UCG, were taking what it considered to be appropriate steps to manage the issue. Chorus’ response largely consisted of seeking and receiving assurances from the service companies that they were meeting the terms of their contract with Chorus and that their subcontractors were complying with the law.
144. In its communications about these issues with MBIE and Crown Infrastructure Partners Ltd (CIP – the former Crown Fibre Holdings), Chorus was responsive, but continued to emphasise that the issues were mainly ones for its service companies or their contractors.⁶² Ultimately, Chorus’ view was that it had contracted with major international

⁶⁰ It is understood that a number of the Chorus technicians were on the “essential skills visa”.

⁶¹ For example if a worker is aware that the original job offer was on false or overstated pretence or they may have family members or friends who are in precarious situations. In addition, some

exploited migrants may be threatened about the consequences of moving employers.

⁶² Chorus to Crown Infrastructure Partners, ‘Re: Chorus Sub-Contractor Pay and Training Issues’ (7 December 2017).

companies that should have been able to manage these issues.⁶³

145. In response to queries from CIP, Chorus passed on its service companies' initial high-level responses without appearing to critically test those responses in detail. This prompted CIP to ask for further clarification about the allegations.⁶⁴

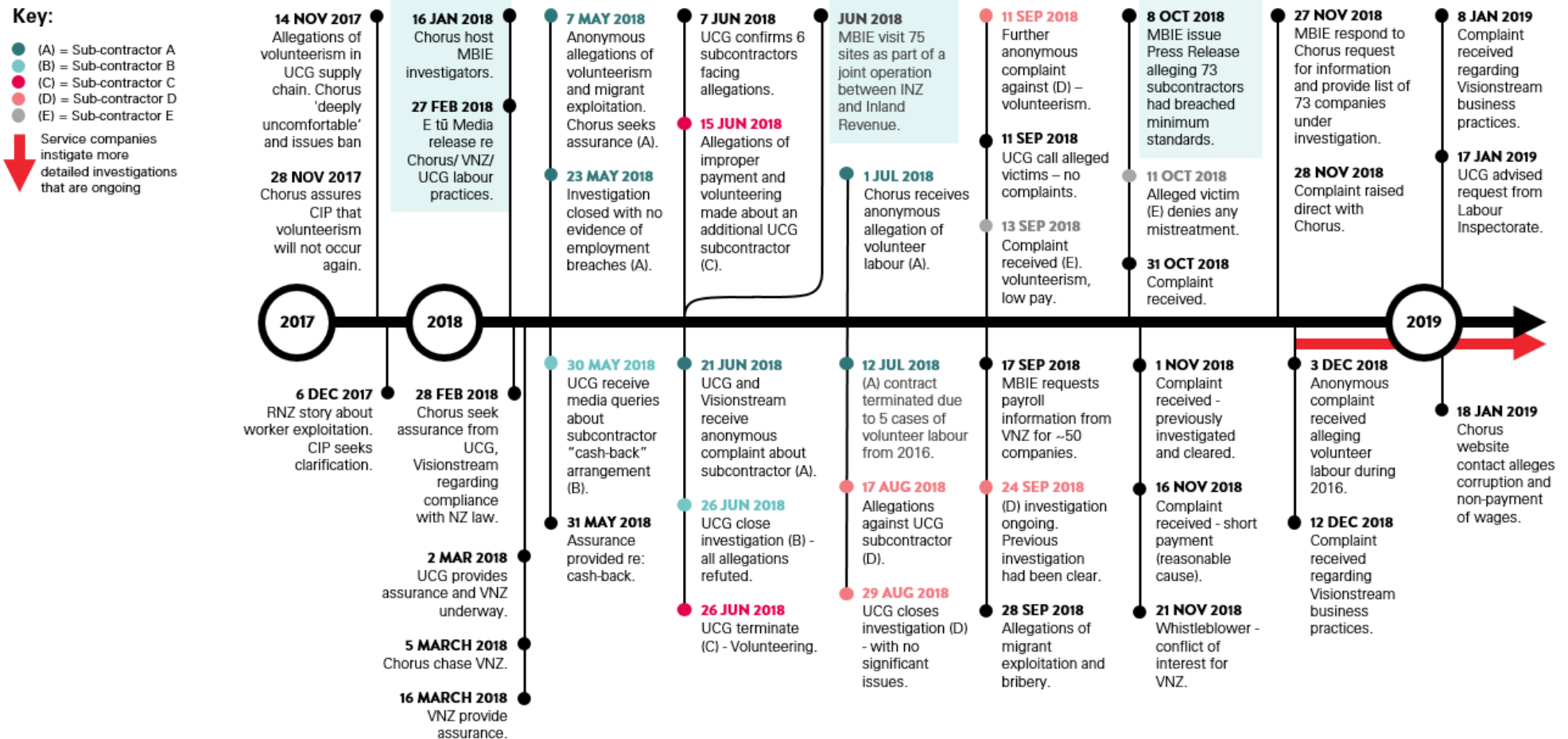
field representatives of Chorus or the services companies. Although Chorus attempted to seek certifications from its service companies on compliance by all subcontractors within its supply chain, it did not consistently get the detailed responses it sought from its service companies, leading to a case-by-case reaction.

AN EMPHASIS ON ISOLATED ALLEGATIONS

146. Chorus and its service companies' initial reactions to the early allegations show that they did not initially see the issues as likely to be systemic or widespread. In responding to queries from CIP and MBIE, Chorus pointed to the strength of their contracts with service companies, including their focus on both supporting technicians and ensuring compliance.
147. Chorus, Visionstream and UCG continued to respond reactively throughout 2018, looking into allegations as they arose. Allegations were made directly to Chorus by informants (usually anonymous emails) or through complaints to

⁶³ This theme was made explicit in Chorus employee to Chorus employees, 'Re: MBIE Investigation – Volunteer Labour Issue – Update' (9 March 2018); Interview with Chorus employees (n 38).
⁶⁴ Chorus to Crown Infrastructure Partners (n 78).

Figure 7. Chorus timeline of response to allegations



VARIABLE QUALITY OF ASSURANCES

148. Chorus made contact with MBIE's integrated investigation team at the suggestion of Crown Infrastructure Partners in December 2017. Following this initial contact, Chorus sought detailed assurances from Visionstream and UCG that all their subcontractors were complying with the law. This was intended to demonstrate to MBIE that Chorus had taken 'reasonable steps' to ensure there were no breaches of labour laws.⁶⁵
149. It should be noted that Chorus emphasised the importance of co-operating fully with MBIE to address any issues. Visionstream, UCG and Chorus all engaged with MBIE and Chorus received feedback that MBIE were satisfied with the information they had been given.⁶⁶
150. However, the quality of responses that Chorus received from its service companies varied. For example, Chorus' management wrote to Visionstream expressing their concern

at its slow response to requests for information. Chorus sought a commitment from Visionstream to work with Chorus on media issues, and to certify that the company and its contractors complied with the contract with Chorus.⁶⁷

151. Both UCG and Visionstream provided assurances that their contracts with subcontractors required the subcontractors to comply with the law. For example, UCG specified that the contracts explicitly prohibited subcontractors from employing illegal workers, and required them to provide employees with wages and conditions that meet legal requirements, and required them to obtain approval to sub-contract further.⁶⁸ Visionstream asked all its subcontractors to confirm and declare that they were adhering to their obligations under the contracts.^{69,70}
152. Despite these internal audits and requests for certification, Chorus, UCG and Visionstream identified far fewer than the 74 cases identified by the Labour Inspectorate. Only 18 subcontractors were identified to have cases of alleged poor labour

practices across UCG and Visionstream before the Labour Inspectorate's announcement.

153. The majority of these cases were identified by informants rather than through the internal process. While we accept that detection of serious migrant exploitation is challenging, the majority of the allegations uncovered by the Inspectorate's investigation relate to lower level breaches of labour standard including poor record keeping which is somewhat easier to detect.

RESPONSES THAT FOLLOW TRADITIONAL EMPLOYMENT PRACTICES

154. Each time it was made aware of an allegation, Chorus sought assurances from the service company that everything was in hand, and asked them whether they had identified any issue.
155. The service companies' actions typically included:

- Obtaining verbal and/or written assurances from subcontractors.
- An audit of payroll and workforce records (selecting particular weeks at random), carried out internally by service company staff.⁷¹
- Speaking to specific workers who were alleged to have been underpaid or exploited.

156. Where evidence of a breach of labour standards (or use of volunteerism following the ban) was identified, subcontractors were stood down or 'blacklisted' from working on the Chorus network.

157. However, in at least one instance, a subcontractor was audited and cleared, and later had similar allegations made against them.⁷² This suggests that the assurance process was not robust to the complex nature of migrant exploitation. In our experience, dealing with allegations of labour and migrant exploitation is not as simple as asking delivery partners, or individual technicians, whether the alleged behaviour occurred. It is

65 Chorus to UCG and Visionstream, 'Re: MBIE Labour Inspection. Detailed Response' (28 February 2018).

66 Chorus employee to Chorus employees (n 79).

67 Chorus to Visionstream, 'Subcontractor Issues' (2 March 2017).

68 Visionstream and Chorus, 'RE: Subcontractor Issues' (16 March 2017); UCG and Chorus, 'Proposal Re Ongoing

Management of UCG Delivery Partners' (13 March 2017).

69 Visionstream and Chorus (n 86).

70 Chorus sought detailed assurances from UCG again in June 2018, including declarations from all UCG subcontractors that they complied with employment, immigration, and health and safety law. UCG provided a relatively high-level response, pointing to 'robust contractual arrangements in place with Subcontractors and the policies and procedures in place to address Chorus' concerns'.

Email from Chorus to UCG, 7 June 2018; Letter from UCG to Chorus 26 June 2018.

71 For example, requesting employment contracts and payroll and time sheet records for the last 12 months, examining 12 random weeks for 7 random persons. Email from UCG to Chorus, 31 May 2018.

72 UCG to Chorus, 'Re: Contacts with Whom You Can Know More about Companies S**t' (2 July 2018). "Given the earlier anonymous complaint ... we reopened our investigations into (x). Prior to that, we had audited their payroll for a 14 day period in April which showed no irregularity". The allegations were both historical and recent. Neither Visionstream nor UCG identified recent breaches, but did find evidence of volunteerism from 2016.



unlikely that assurances can be taken at face value.

158. The assurance process undertaken by service companies and passed on to Chorus for further scrutiny was not sufficient to uncover the complex and often hidden nature of migrant exploitation and the mixed incentives involved. In our view, the process could have benefited from:

- a. Less reliance on self-declarations as a means to convey legal compliance.
- b. Improving processes that anticipate or allow for the lack of incentive for exploited workers to speak up or admit to exploitation, because of a possible fear of reprisal or loss of employment (and therefore loss of their visa), or because they do not see themselves as exploited.
- c. Improved ability to triangulate data from payroll records, employment contracts and other sources of personnel related data.

AN IMPROVING APPROACH TO AWARENESS

159. As issues continued to arise, Chorus and the service companies took a number of steps throughout 2018 to improve processes and arrangements in order to minimise the risk of migrant exploitation. These are particularly key given the extensive use of migrant small businesses, with the majority of subcontractor businesses consisting of one to three technicians. The service companies expressed concerns about subcontractors' management capability and the potential for mistakes because of a lack of familiarity with local laws.

160. The steps taken through the period from original allegation through to the commissioning of our review included:

- a. A clear ban on volunteerism, informing all subcontractors that the use of volunteers was not acceptable on Chorus' network.⁷³
- b. Standing down any subcontractors with identified

breaches of employment standards or migration settings.

- c. Working with Immigration New Zealand to support exploited migrant workers to come forward without penalty, and to allow them to quickly change their visa and shift to other employers.⁷⁴
- d. An increased focus on ensuring workers and employers are aware of relevant rights and legislation, as well as how to raise issues using whistleblower policies through a series of 'toolbox talks' with their workforces in mid-2018 and a review of induction policies.⁷⁵
- e. Developing improved audit policies, including rolling annual audit of delivery partners and a requirement for delivery partners to declare each time they submit an invoice that all remuneration and payments to its employees and subcontractors meet legal and contractual requirements.⁷⁶
- f. Chorus seeking detailed assurance from tenderers (while retendering its Field Services Agreement, which covers maintenance of the existing

copper network) about the processes and systems they would put in place to ensure their workforce complied with employment law.⁷⁷

73 UCG to all Delivery Partners, 'IMPORTANT: Unpaid Labour at UCG' (15 November 2017). Chorus also emphasise that volunteerism was not previously acceptable on their network.

74 Interview with Chorus, Visionstream and UCG (n 37) 2.

75 UCG, 'UCG Delivery Partner – Employee Rights (Wages and Legal Right to Work)' (UCG 2018).

76 UCG, 'Delivery Partner Wage Complaints and Audit Policy, 27 June 2018.' (Universal Communications Group Ltd 2018) Policy.

Note that this policy, while a useful first step, suffers from similar shortcomings as highlighted in the previous section.

77 Chorus to MartinJenkins, 'Re: Doug Martin Independent Review of Contracting Model' (28 November 2018).

ALTERNATIVE MODELS

161. Our review, and particularly our interview with the researcher currently heading the Government's research into migrant exploitation, confirmed that there are few examples, either nationally or internationally, of companies who have successfully fully mitigated the exploitation risk.⁷⁸ The risk is complex and hard to deal with.

162. For example a recent Australian Government Report of the Migrant Workers' Taskforce acknowledged that there can be difficulties in detecting, proving and quantifying workplace exploitation of workers generally. In Australia, the Fair Work Ombudsman has also undertaken a number of formal inquiries and investigations into the treatment of visa holders in Australian workplaces. For example in 2017–18, they audited over 4,500 workplaces using intelligence-led targeted campaigns to examine specific industries, regions and businesses across Australia. Migrant workers and temporary visa holders continue to be one of the Australia's most vulnerable worker cohorts, and are continually over-represented in disputes as well as compliance and enforcement outcomes.⁷⁹

163. However, we reviewed a number of projects similar to Chorus' work programme that sought to address and mitigate labour exploitation. We identified the following key features:

- a. Significant upfront investment in understanding the state of the supply chain and likely future concerns, as well as strategies to avoid or mitigate them (for example predicted periods of reduced demand).
- b. Ensuring the procurement approach is the 'best fit' for the specific project, rather than just 'best practice' given the complexity of some of the labour market issues identified through our review.
- c. An openness to reviewing the approach over the life of the contract – either through creating new channels (such as help desks) or tightening the settings (such as a stronger employment relations focus later in the contract).
- d. Strong ongoing engagement with the main contractors in order to strengthen interpersonal links. This relationship results in a better flow of information, which can

help mitigate and manage issues as they arise.

- e. A commitment to focusing on labour market issues, including locating the workforce related function appropriately within the organisational structure (for example, with personnel reporting directly to one or more senior executive members).

164. One useful and practical example is Crossrail's approach to employment relations in the UK (Example 1). While it is an example of a response to managing labour exploitation risk within a large construction project, the scale of the construction and resources available to mitigate risks are not completely analogous to New Zealand or the specific challenges in the Chorus supply chain.

⁷⁸ Interview with Stringer (n 75).

⁷⁹ Report of the Migrant Workers Taskforce, March 2019



Example 1. Employment relations in the Crossrail project

What is Crossrail?

Crossrail Limited is the company set up to build the new railway that will become known as the 'Elizabeth line' when it opens through central London. It is a wholly owned subsidiary of Transport for London (TfL) and is jointly sponsored by TfL and the Department of Transport.

The new railway is to be high frequency and high capacity, linking 41 stations over 100 kilometres from Reading and Heathrow in the west, through central London, to Shenfield and Abbey Wood in the east. The project required 42 kilometres of new tunnels, 10 new stations, over 50 kilometres of new track, integration of three signalling systems, and upgrades across existing infrastructure.

Crossrail is a multi-billion pound budget project, with high levels of public and media interest. There are multiple main contractors and subcontractors on one project.

Source: Case study: Employment relations on a major construction project.⁸⁰

What did the strategy involve?

| # | Measure | Crossrail |
|----|--|--|
| 1 | Code of Practice | <ul style="list-style-type: none"> • Code developed at later stages of the project, by agreement and covered procedural requirements only. • No Tier 1 contractual obligation. |
| 2 | Procurement | <ul style="list-style-type: none"> • Crossrail Head of ER interviewed preferred bidders. • Tier 1 contractors encouraged to check prospective subcontractor's ER resources and understanding of procurement. |
| 3 | Reporting | Tier 1 monthly ER reports submitted every eight weeks. |
| 4 | Information and coordination meetings | Monthly meeting, chaired by client and attended by all Tier 1 ER leads. |
| 5 | Performance reviews | Regular contract-level meetings, attended by client and Tier 1 project managers, as well as respective ER personnel. Held as part of a more formalised ER performance assurance framework process. |
| 6 | Payroll audits | <ul style="list-style-type: none"> • Regular audits of Tier 1 and subcontractor employers' compliance with minimum employment standards. • Responsibility for subcontractor audits assigned to Tier 1s from the outset, although coverage, quality and outcomes of Tier 1 audits checked as part of performance assurance process. • Occasional direct audits of Tier 2 labour suppliers by client cost verification team, especially during tunnelling phase of project. |
| 7 | Helpline | Confidential workforce complaints received via client's public helpline, rather than dedicated concerns service. Cases referred on to relevant Tier 1 for investigation and report back. |
| 8 | Risk management | <ul style="list-style-type: none"> • Client kept main ER risks under review as part of its own formal risk management process. • Performance assurance process used to encourage Tier 1s to manage ER risks more systematically as well. |
| 9 | Executive level involvement | ER matters one of the topics covered in regular exchanges between client and Tier 1 executives. Specific performance concerns escalated to client Programme Director and/or Construction Director where necessary. |
| 10 | Intermediate level involvement | Regular contact (both formal and informal) between ER specialists, project managers and other relevant functions (e.g., health and safety, security, employment and skills, legal, procurement and commercial). |
| 11 | Trade union liaison | Thrice yearly information sharing meetings. Client represented by Delivery Director, Talent and Resources Director and Head of ER. London-based local officials represented all three (subsequently two) remaining construction trade unions. |
| 12 | Demonstrations and disputes | Off-site demonstrations managed at contract-level by Tier 1 contractor(s) affected. Notification procedure operated by client to advise site teams and external stakeholders (e.g., Transport for London) about any anticipated demonstrations. |

80 A Eldred, 'Crossrail Learning Legacy: Employment Relations on a Major Construction Project' (Crossrail Limited 2018) Case study.

Risk factors that need to be mitigated

165. Based on our review of the experience in the Chorus supply chain, there are a number of specific risks that we believe need to be mitigated across the supply chain requiring a system based approach from the various participants. These relate to workers' personal situations, broader supply chain management, the capability of the delivery partners, and broader institutional settings.

THE WORKER'S PERSONAL SITUATION

166. Chorus' workforce in its UFB Connect programme relies heavily on migrant labour, with well over half of the technicians in both UCG and Visionstream being on temporary work visas. This leads to a number of risks:

- a. Lack of awareness of rights and entitlements under New Zealand legislation.
- b. High proportions of workers who speak English as a second language.

- c. A perceived inability to raise issues safely – essentially the fear of being deported if they speak out.

Whistleblower platforms

167. These risk factors suggest that migrant workers need a safe environment for reporting non-compliance, that there should be visible action if non-compliance has been identified, and that education and training on labour rights would be valuable (Example 2).

168. Chorus and its service companies already operate whistleblower platforms, although there is an opportunity to improve how these are aligned and provide a clearer single approach for Chorus technicians.

Example 2. Whistleblower platforms, seminars and roadshows

Panasonic

Panasonic organised a series of human rights seminars for its suppliers and established a confidential whistleblowers' hotline to report alleged abuse. Yet, not all migrant workers have a personal phone to make such reports.⁸¹

Crossrail Limited

Grievances are resolved either informally, or through formal grievance procedures, or through site safety forums and observation/feedback schemes. Crossrail also became aware of these issues from personal contacts with Tier 1 ER leads, or the latter's formal ER reports every eight weeks.⁸²

In 2013, Crossrail established a system for managing employment and related concerns from workers who were starting to call the project's public Helpdesk. This system involved Helpdesk staff first taking down a worker's details and account of the complaint, and passing these on to the Crossrail Head of ER. He then forwarded the complaint to the Tier 1 contractor concerned for further investigation, anonymising it if appropriate. On receiving the Tier 1 contractor's account of the outcome of its investigation, the Head of ER drafted a short summary response, which Helpdesk staff finally relayed back to the complainant.

From 2015 Crossrail began to analyse worker concerns more systematically, reporting the findings to Crossrail's Executive Committee every six months. Employees of employment businesses and labour-only subcontractors were far more likely to contact the Helpdesk than those working for the Tier 1 contractor or specialist trade subcontractors.

Adidas and Marks & Spencer

Companies like Adidas and Marks & Spencer are using technology such as mobile applications to enable workers to anonymously report working conditions in real time.⁸³

Unseen UK

Unseen operated the UK Modern Slavery Helpline and Resource Centre. It provides victims, the public, statutory agencies and businesses with a way to report concerns and get help, support and advice on a 24/7 basis.

The Helpline is fully independent and confidential. The Unseen App enables individuals to spot the signs of modern slavery and report concerns using the App

Issara Strategic Partners Programme

Issara Institute is an independent NGO based in Southeast Asia and the United States, tackling issues of human trafficking and forced labour through technology, partnership and

81 EB Mutisya, 'Corporate Responsibility to Migrant Workers: Preventing Exploitation in Your Supply Chain' (International Business Blog, 27 March 2018) <<https://www.parkerpoeinternational.com/2018/03/corporate-responsibility-to-migrant-workers-preventing-exploitation-in-your-supply-chain/>>.

82 Eldred (n 98).

83 Balch (n 12); B Goldsmith, 'Adidas' Slavery Buster Hopes Technology Can Give Workers a Voice' Thomson Reuters Foundation (London, 24 May 2017) <<https://www.reuters.com/article/us-slavery-adidas-technology/adidas-slavery-buster-hopes-technology-can-give-workers-a-voice-idUSKBN18K0Y8>>.



innovation. The Institute was established in 2014 by a team of anti-trafficking experts coming out of the United Nations who created an alliance of private sector, civil society, and government partners to address labour issues in global supply chains. In the last four years, Issara has linked over 150,000 migrant workers into Issara's Inclusive Labour Monitoring system, a channel for worker voice, information, assistance and remediation.

The Strategic Partners Programme includes:

- increased visibility of labour conditions across a supply chain, using technology
- technical support and training for suppliers to mitigate risk and strengthen systems
- Issara-managed helplines, worker voice channels, and independent grievance mechanism across entire supply chains, with technical support to strengthening the grievance mechanisms of suppliers and recruitment agencies in the supply chain
- ongoing monitoring of the supplier base, as compared with point-in-time audits
- risk reporting across the entire supply chain and strong analytics, data-driven research and advice.

Employment agreements in the worker's native language

169. The Responsible Business Alliance (a global industry coalition dedicated to responsibility in the electronics supply chain) sets the bar for international companies by including employment agreements in the worker's native language.
170. Service companies should consider promotion of employment contracts written in each worker's native language and should be signed by both the worker and the delivery partner. Further, the contract terms should confirm that the worker earns at least minimum wage (or wage consistent with Visa type whichever is the higher) and permits freedom of association.⁸⁴

RISK FACTORS RELATED TO THE LEGAL AND INSTITUTIONAL FRAMEWORK

171. Visas tie a worker to an employer. Visionstream and UCG have been working with Immigration New Zealand to support whistleblowers or workers affected by identified exploitation or breaches of labour standards to adjust their visa and move to another employer.

Reintegration and recovery

172. The current setting where exploited workers cannot simply transfer to other employers can be a barrier to reintegration and recovery for those being exploited. We note that Chorus and the service companies have been working with the Labour Inspectorate and MBIE to transfer exploited workers to better employers – however, this system does not operate as a matter of course and requires both Visionstream and UCG to work proactively with policy and operational agencies.
173. There is potential for this to be approached more systematically and proactively, and potential for Chorus and the service companies to work with MBIE and Immigration New Zealand on policy changes that better empowers migrant workers.

RISK FACTORS RELATED TO THE EMPLOYER

174. Employer-related risks in the Chorus situation act on three levels:
- a. Chorus, who contracts service companies UCG and Visionstream.

- b. The service companies, UCG and Visionstream.
- c. Delivery partners, owner-operators and subcontractors to UCG and Visionstream, who manage and direct the work.

Chorus

175. For Chorus, adequate supply chain management and contract management should be in place. As discussed previously, we find that systems and processes were not adequate to identify and remediate potential systemic labour standard breaches including migrant exploitation both as a corporate risk and as a supply chain risk. This goes to the lack of maturity in audit systems appropriate to the nature of the migrant exploitation risk. Because of the nature of migrant exploitation, data and information from multiple sources is needed in order to triangulate and identify exploitation, and to set up consistent remedies and measures to prevent it in the first place.

SUPPLIER CODES

176. As part of supply chain management, many companies institute a Supplier Code. This is an agreement that

84 Mutisya (n 99).

companies and their suppliers can sign up to. It relies on goodwill and self-declaration of performance (unless they are formally incorporated into contracts, a practice used by Australia's 'nbn'). They go by a variety of names, including 'code of conduct', 'charter', 'standards', and 'code of practice'.

177. Supplier Codes usually include the following principles: Human rights and labour practices; Health and safety; Governance; Environmental responsibility; and Supplier management.
178. Chorus does not currently have a Supplier Code. By developing one collaboratively, Chorus and its suppliers could ensure that they are striving to achieve common goals, reducing the risk to both.
179. However, it is being increasingly recognised that, by themselves, Supplier Codes are relatively ineffective in raising employment standards in supply chains.⁸⁵
180. As such, a supplier code should be seen as a first step, leading to greater partnership between Chorus and its service companies in tackling exploitation issues.

Service companies

181. For the service companies, there should be more comprehensive audit systems and processes in place to identify and mitigate labour and migrant exploitation, while ensuring commercial returns. When potential exploitation incidences were identified, Chorus sought assurances from the service companies, and the service companies investigated and either exited the delivery partners or gave assurances that nothing was untoward. Investigations need to be thorough and tailored to the nature of labour and migrant exploitation.
182. For example dispatchers within the service companies also have considerable power to determine where work is undertaken, and therefore pay, is distributed. There is a risk that those powers if abused, can make the system vulnerable to non-performance based work allocation to delivery partners and technicians, and at worst risk of bribery and corruption.

ROLES DEDICATED TO FIGHTING EXPLOITATION

183. In the Crossrail example, a new full-time Crossrail Head of ER was appointed. Adidas was one of the first companies to have a role dedicated to

fighting slavery. In Chorus' service companies, and within Chorus, establishing a similarly dedicated role or dedicated competency would need to be appropriately scoped to assess how it may impact on their legal relationship with the sub-contractors.

Delivery Partners

184. In assessing this risk, we considered the capability and knowledge of delivery partners in relation to their employment obligations, and whether they had access to appropriate systems and support. Service companies acknowledged that they did have a role to mentor and support the delivery partner businesses in understanding their obligations in relation to owning and operating a New Zealand business.

“ We’ve got a mix of skills and knowledge. Some of the people we’re dealing with are immigrant visa holders who are now sub-contractor principals. We need to enable skills and provide the tools, we have the obligation to grow those guys. Business mentors.... We need to make sure they are capable of managing their work and meeting their obligations. ”

- Service company interview

185. Chorus and the service companies have invested heavily in training and capability lifting in relation to health and safety, and this could be applied to labour standards.

“ We rank our delivery partners – gold, silver, bronze. Gold are those with good health and safety outcomes and quality. They are experienced. Silver are on a journey. Bronze have just started or we are about to exit them out of our supply chain. ”

- Service company interview

186. International examples of approaches to improving capability include Adidas's training of suppliers to identify and address labour exploitation, and Crossrail's performance assurance framework (Example 3).

⁸⁵ EY, 'Human Rights and Modern Slavery Policy Update: What Does It Mean for New Zealand Businesses?' (Ernst & Young New Zealand 2018) <<https://www.ey.com/Publication/vwLUAssets/EY->

[human-rights-and-modern-slavery-policy-update/\\$FILE/EY-human-rights-and-modern-slavery-policy-update.pdf](https://www.ey.com/Publication/vwLUAssets/EY-human-rights-and-modern-slavery-policy-update/$FILE/EY-human-rights-and-modern-slavery-policy-update.pdf).



Example 3. Crossrail Employment Relations Performance Assurance Framework

The Employment Relations (ER) Performance Assurance Framework covering various disciplines, including health and safety, environmental, quality and commercial performance.

Approximately every six months, Tier 1 contractors' management of site ER was scored against pre-agreed criteria, based on contractual minimum requirements – “basic” compliance – and accepted good/ best practice – “value-added” and “world-class” compliance. The introduction of levels of performance above mere contractual compliance helped to overcome gaps and weaknesses in some of the original contractual requirements.

The four themes on which Tier 1 contractors' performance was assessed were:

1. ER risk management, including a more proactive approach to specific workforce risks (value added) and identifying specific ER opportunities (world class);
2. Minimum employment standards, recognising stronger policies on some contracts with regard to supply chain PAYE direct employment and health and safety compliance (value added/ world class);
3. Workforce engagement, including relations with trade unions; and
4. ER governance, both at contract level (strengthening relations between Tier 1 ER leads and other disciplines) and in relation to the client and other Tier 1 contractors (underpinning the collective coordination mechanisms).

SUPPLY CHAIN MAPPING

187. Our review confirmed that neither Chorus nor service companies have full visibility over the supply chain in a manner that would assist in detecting migrant exploitation. This would include names and numbers of delivery partners and whether the sub-contracting chain extends beyond into tier 3 suppliers and the nature of the relationship between these parties. For public accountability and

transparency, Adidas publishes a list of names and addresses for its main factories, subcontractors and licensees, a practice that has since been adopted by many companies in the apparel and electronics sectors.⁸⁶

OTHER POTENTIAL FORMS OF EXPLOITATION

188. While we found no cases of some of the worst form of migrant exploitation, it is important that a future system nonetheless is

designed to mitigate against future risk:

- **Recruitment fees** - For some migrants, exploitation begins before they set foot in New Zealand. Excessive recruitment fees lock migrant workers into cycles of debt that cause and exacerbate vulnerability to exploitation. Sponsorship schemes that tie a migrant's legal immigration status to a particular job for a particular period are also used to exploit vulnerable and isolated workers.⁸⁷
- It has been stated that the only way to address the issue is to deal with the source – that is, recruitment agencies.⁸⁸ The International Labour Organization's Forced Labour Protocol and Recommendation, and the Private Employment Agencies Convention state that recruitment fees should be met by employers, not workers.⁸⁹
- The Responsible Business Alliance is a global industry coalition dedicated to responsibility in the electronics supply chain. It now includes more than 140 electronics, retail,

auto and toy companies, including BT plc, Cisco and Qualcomm. The Alliance's Responsible Labor Initiative includes the expectation that:

- a. No employer or agency recruitment fees should be paid by workers.
 - b. Recruitment fees already paid by workers should be reimbursed.
- We found no evidence of the use of recruitment fees as a form of exploitation in the Chorus supply chain, but systems should be put in place to guard against it.
 - **Storing of passports** - Again, while we found no evidence of the storing of passports as a form of exploitation in the Chorus supply chain, safeguards should be put in place. Companies should prohibit the confiscation of passports and should provide safe storage that workers have unlimited access to.⁹⁰

RISK FACTORS RELATED TO THE WORKPLACE

189. There are a number of factors related to installation sites and the nature of

86 Mutisya (n 99).
87 Gallagher (n 19).

88 Balch (n 12); Gallagher (n 19); Lauren Renshaw, 'Migrating for Work and Study: The Role of the Migration Broker in Facilitating Workplace Exploitation, Human Trafficking and Slavery'

(Australian Institute of Criminology, Australian Government 2016) 527.
89 International Labour Organization (n 17).

90 Mutisya (n 99).

the work that make the potential for exploitation higher:

a. Geographical isolation

This acts in two ways. Technicians may be working in areas away from any support. Additionally, many are working and living away from their families and usual support system.

b. Lines of accountability

There are many Chorus and service companies personnel involved at various stages of a technician's job. Chorus Delivery Specialists check for quality and health and safety, service company field managers check for quality and health and safety, and Chorus checks invoices submitted by service companies. This may blur lines of accountability for technicians.

c. Travel time

Technicians can be dispatched to any site that requires the building and connecting of UFB. Particularly in Auckland, this can be to locations on the opposite side of a region, which results in considerable travel times, which erode margins and pay for technicians.

d. Seasonality

While there is a backlog of customer requests for broadband connection, there appears to be a

consistent 'seasonality' dimension in the allocation of jobs to technicians. In December, January and February there tends to be less or no work for technicians. Technicians on migrant visas may be restricted in their ability to work outside of the terms of their visas. In situations where they do undertake such work, they run the risk of losing their right to work. This may contribute to a fear of whistleblowing on exploitative practice.

e. Uncertainty

The dispatching process provides little certainty to delivery partners and technicians as to whether they will be allocated enough jobs, and the right types of jobs, to sustain their income.

Key design parameters

190. In line with the terms of reference, we considered whether an alternative to the sub-contracting model is required and we found that the original intent behind the model to be sound and the adoption of the subcontracting model to be appropriate given the challenges of meeting the volume and productivity requirements of the build and connect activity.

191. There are also aspects of Chorus' situation that constrain moving back to an employment model, or to an alternative model:

- The labour market continues to be tight.
- The programme is drawing to a close, with the fibre to the home (FTTH) network project in year 8 of the 12-year programme.
- There are contractual obstacles to changing the model in the short term.

192. Given the nature of the risk of labour and migrant exploitation, and the higher test with which the company holds itself to, it is important that Chorus not rely solely on legal and contractual provisions. Indeed the breaches of standards were all provided for within the scope of current contracts. What is preferred is

a systems approach to improving arrangements, with strong leadership from Chorus and its service companies.

Chorus and its service companies should take a systems approach to improved arrangements that focus on the welfare and viability of the end technician

193. We used the following design parameters to arrive at a recommended approach for Chorus. The design parameters and the initiatives can be dialled up, or down, based on: the nature of the risks, drivers and opportunities; the likely effectiveness of the approach; financial sustainability; and legal considerations (Figure 8).

a. Leadership

To what extent does Chorus want to show customers, partners and government that it is leading the way in responding to these issues?

b. Strategic commitment

What measures would signal Chorus' strength of commitment to reducing the risk of labour market exploitation?

c. Procurement

What could be done to improve procurement practices (both within current contracts and future arrangements)?

d. Monitoring and audit

What kind of monitoring and audit regime would manage risks effectively?

e. Culture

What kind of culture would safeguard against risks, and what key activities would support cultural change?

f. Risk management

What kind of integrated risk management approach should be considered?

Figure 8. Key choices: Risks, drivers and opportunities

*Options are not mutually exclusive

○ recommendations

Leadership

To what extent does Chorus want to show leadership to respond to these issues for customers, partners and for government?

Strategic commitment

What kinds of instrument should signal Chorus' strength of commitment to reducing labour market exploitation risk?

Procurement

What steps could be taken to enhance procurement processes?

Monitoring and audit

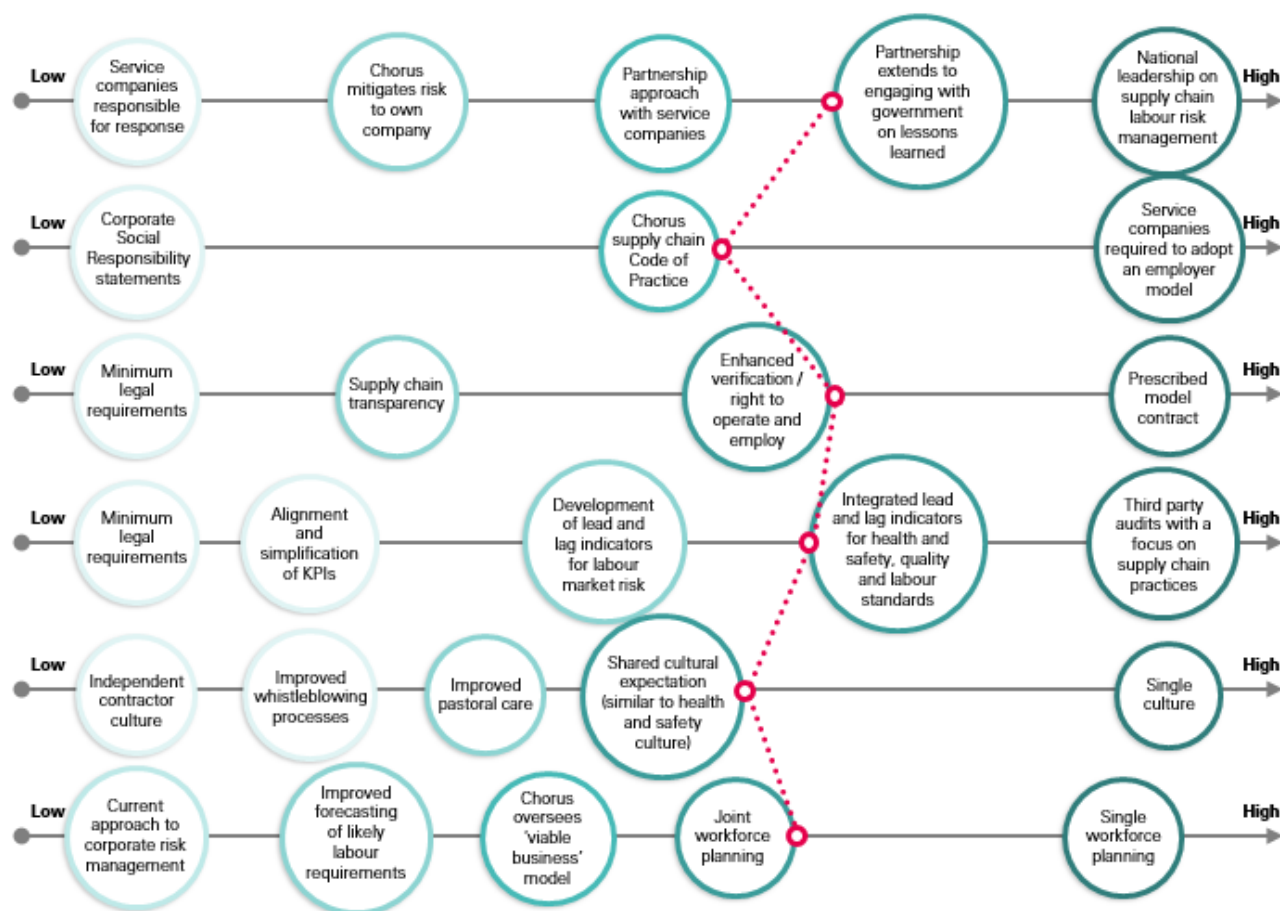
What kind of monitoring and audit regime would manage risks?

Culture

What kind of culture safeguards risks and what are key activities that would support cultural change?

Risk management

What kind of integrated risk management approach should be considered?



LEADERSHIP

194. Chorus' response requires a strong tone at the Board and Executive levels, as well as industry and national leadership. We recommend that Chorus operate with full transparency and publicly release this report and any associated management response.
195. We also recommend that Chorus work with government and Immigration New Zealand to develop a more systematic approach to ensuring that those who are exploited can transition to good employers and can maintain their visa status. This could mean introducing a fast-track system for workers under the Chorus banner, or a visa that is industry or project-based, rather than employer-based.
196. This would also provide a clear signal to workers that reintegration and recovery is a priority for Chorus, reducing the fear among workers that they will be deported if they report abuse.

STRATEGIC COMMITMENT

197. Throughout our review, Chorus' Board and Executive team, as well as leadership within Visionstream and UCG, have consistently stated their desire to be industry leaders in removing worker exploitation from

their supply chain. As shown in Figure 8, appropriate measures can range from corporate social responsibility statements to reverting to an employment model. The measure that is most appropriate in Chorus' situation, at this stage of the UFB programme and given the findings of the Labour Inspectorate, is to develop and implement a Supplier Code throughout their whole supply chain (which includes much more than just Visionstream and UCG).

PROCUREMENT

198. The capability of delivery partners can be enhanced, or verified, in a number of ways, ranging from minimum legal standards (which is the current approach) to model contracts where provisions are standardised across partners and technicians. We believe that an appropriate middle-ground at this stage of the UFB programme is a standardised approach across the service companies that would provide delivery partners with a 'licence to operate' once they satisfy requirements related to knowledge and implementation of employment and labour law in their businesses.

MONITORING AND AUDIT

199. We identified an opportunity to improve the maturity of Chorus' approach to contract management,

given the organisation's size and scale. The shortage of robust data and information on a profile of the delivery partners and technicians, and on what was being done where and how, presents a platform for improvement. Chorus and each service company have their own data points, but systems do not 'speak to each other' and no-one has an overall view of how the system looks from the worker's point of view, nor a way to adequately identify and address areas of risk.

200. We recommend that Chorus and the service companies integrate a number of lead and lag indicators of health and safety, quality and labour standards, and that these indicators then be shared across Chorus and with Visionstream and UCG.
201. A move towards a greater partnership based contracting model between Chorus, Visionstream and UCG is also likely to result in gains across all three companies, with upside benefits for workers also. Workshops with the parties identified that the checking and rechecking of connections by Chorus and the service companies for quality and health and safety results in duplication of work, and these resources could be deployed elsewhere.
202. A systematic monitoring and audit programme within Chorus as well as Visionstream and UCG should be

hardwired into key systems and processes.

CULTURE

203. Through the process of our review Chorus, Visionstream and UCG were committed to create and maintain a mature culture where labour and migrant exploitation is not tolerated, and where workers experiencing this exploitation feel safe in speaking out. Workers' fear of speaking out can stem from a belief that they will be deported, a lack of awareness of their rights, or a lack of awareness that they are being exploited.
204. Leading by example or modelling is one way in which this type of culture is created and maintained. Some whistleblowers came forward after hearing of others being moved to better employers and/or seeing that Chorus and the service companies are exiting employers who do not comply.
205. Clear and appropriate mechanisms for reporting and investigating incidents would be another positive initiative, as in many cases it is not clear to the exploited worker who they should be speaking to. There are also platforms that provide more anonymity and confidentiality, and some workers might be more comfortable with these. The language used by a platform may also be a factor – for

example, communicating via an English-language hotline might be an additional hurdle for some.

RISK MANAGEMENT





206. Given the size of the challenge Chorus and the service companies faced when the programme started and the later, almost wholesale change, in the technician workforce, it would be prudent to have a sophisticated approach to identifying and mitigating systematic labour and migrant exploitation as a corporate risk. Mitigations should have included in-depth workforce planning beyond the current short term horizons that are in place, particularly given it was likely that there would be a peak (even though the peak demand demonstrated was never envisaged) as well as a wind-down. We recommend that Chorus, Visionstream and UCG work together on longer term workforce planning, particularly on how the technicians will be transitioned in the next three years.

RECOMMENDATIONS

207. In the future, a mature approach to mitigating the risk of breaches of labour standards and migrant exploitation must include design principles that address four core sources of risk through the Chorus supply chain.

208. In this context, a mature response from Chorus and their service companies must, at the very minimum, include:

- A clear statement of leadership that sets expectations for how workers are treated
- Clear accountability including at Executive level in Chorus, and through key contracting parties, to ensure that labour market risk is jointly governed more effectively.
- Adopting a more strategic approach to sector-wide strategic workforce planning, with a focus on the next two to five years.
- A more mature approach to risk management, audit and monitoring that reflects the complex nature of labour exploitation, particularly migrant exploitation
- Better support for workers, including improved information, better reporting systems, and more investment in lifting the capability of delivery partners.

| Risk factors | Design principles | Suggested response |
|---|--|---|
|  <p>Risk factors relating to workers' personal situation</p> | <p>All workers engaged in the Chorus UFB supply chain should be able to earn a decent wage for a fair days work.</p> | <p>Take steps to address structural factors such as visa/migration status, language, lack of political agency, cultural norms, age and gender, geographical isolation, conditions relatively better than home, barriers to accessing remedies.</p> <p>This includes ensuring there is a single and known platform to report non-compliance, an environment where workers feel safe to report non-compliance, and where Chorus and service companies are held to account for labour practices in their supply chain.</p> |
|  <p>Risk factors relating to legal and institutional frameworks</p> | <p>Suppliers must respect the labour rights of workers and take steps to ensure their supply chain is free from discrimination, harassment, corruption and bribery.</p> | <p>Clearly map the full worker supply chain. Transparency is critical to protecting a supply chain against particular forms of poor practice such as use of phoenix companies as a form of regulatory evasion or where workers are engaged without proper employment agreements in place. Chorus and the service companies should also work with Immigration New Zealand to take a sector approach a review of essential skills in demand listings.</p> |
|  <p>Risk factors created by employers</p> | <p>Suppliers must handle all business dealings and transactions with the highest standards of integrity, transparency and honesty. Management systems must support good practice and clear accountability.</p> | <p>Increase the business capability and compliance of delivery partners. This includes the creation of a broader license to operate on the network that includes technical, health and safety and managerial competencies (including meeting labour standards).</p> |
|  <p>Risk factors relating to workplace</p> | <p>Productivity improvements in the supply chain should strike the appropriate balance the needs of the customers and the end worker.</p> | <p>Better integrate information associated with allocation of work including dispatch, geographical allocation, travel time, and uncertainty.</p> <p>Continuously review the viability of model for ongoing technician sustainability.</p> |

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Employment Relations Act 2000

APPENDIX 1: DETERMINING AN EMPLOYMENT RELATIONSHIP

In undertaking an assessment of whether an employment relationship existed between the parties, the Court must determine the real nature of the relationship.⁹¹ In doing this it will look to the following aspects of the relationships:

INTENTION

The intention of parties is relevant but not decisive. The original intention of the parties can change and not reflect the reality of the working relationship.

CONTROL VERSUS INDEPENDENCE TEST

Under the 'control' test, the Court will look at the degree of control exercised by the 'employer' over the alleged employee's work. Relevant factors may include:

- Who sets the hours of work;
- The degree to which the 'employee' works under direction or supervision of the "employer";
- The control the 'employee' has over what work they do and where they work;
- Whether the 'employee' is able to work for other people; and
- Whether the 'employee' is required to apply for leave.

INTEGRATION TEST

This looks at the degree to which the 'employee' is integrated into the business, and whether they are performing tasks similar to employees or undertaking a roll that is "part and parcel of the organisation". Usual indicators of integration can include:

- the use of the 'employer's' tools or equipment;
- the length of time the 'employee' had been working for the 'employer';
- the allocation of an office;
- wearing of uniforms or other insignia of the 'employer'
- the use of the 'employer's' email address;
- the provision of a business mobile phone, equipment or business cards; and
- How the 'employee' is held out or portrayed to the public.

THE FUNDAMENTAL TEST

This looks at whether an alleged employee is actually in business in their own right. The court will look at facts such as whether:

- The 'employee' were promoting or advertising their services;
- The 'employee' had business assets.
- there was scope for the 'employee' to undertake other business activities;
- the 'employee' held themselves out as an independent contractor, and were working for other businesses as well.

⁹¹ Employment Relations Act. Section 6(2)

APPENDIX 2: TACKLING MIGRANT EXPLOITATION

MBIE, the Labour Inspectorate, and Immigration New Zealand are working to tackle migrant exploitation in the following ways:

RAISING AWARENESS

MBIE is working with the non-government sector and community groups to raise awareness of migrant exploitation

BOLSTERING REGULATORY POWERS AND PENALTIES

Work is underway to bolster the ability of the regulator, the Labour Inspectorate, to investigate, and to increase the penalties for non-compliance.

Employers who exploit migrants can be imprisoned for up to seven years and/or fined up to NZ\$100,000. They can also be punished for failing to meet their obligations as an employer. Infringement Notices and Banning Orders can also be implemented, which may mean that offenders can no longer hire migrant workers for a set period.

One of the Labour Inspectorate's three key priorities is combating non-compliant business models – a good example of which is firms falsely treating their workers as contractors when they should have all the entitlements of an employee.⁹² Older data on the Labour

Inspectorate's investigations found that of about 180 complaints involving migrant workers, exploitation appeared to be more prevalent with business models that involve extensive labour subcontracting.⁹³

High-profile prosecutions include:

- Burger King: This employer is on the stand-down list for businesses that have breached minimum employment standards, and is barred from hiring migrant workers for a year (until 17 July 2019).
- Binde Enterprises: A Labour Inspectorate investigation uncovered nearly \$210,000 in wages owed to 75 migrants working on a vegetable farm in the Bombay Hills. The business was ordered to pay a penalty of nearly \$430,000.
- Masala restaurant chain: Three defendants were charged with underpaying and exploiting migrant workers and other immigration breaches. Migrant workers were forced to under-record the hours they worked and return some of their pay to their employer and they were not paid any holiday pay.
- Six months' home detention and an order to pay \$2,500 in reparation

- 11 months' home detention, 220 hours' community work and an order to pay almost \$58,000 reparation
- Four and a half months' home detention and an order to pay almost \$5,000 reparation.

RESEARCH

Research has been commissioned from UniService/ University of Auckland to provide a better understanding of migrant exploitation. The research is intended to identify gaps and opportunities where exploitation can be reduced, and to make recommendations on potential regulatory, policy or operational changes, including labour market protections, to reduce exploitation.

⁹² Ministry of Business, Innovation and Employment, 'Regulatory Impact Statement: Clarifying Inspectors Ability to Investigate

Whether Workers Are Employees' (Ministry of Business, Innovation & Employment 2017).

⁹³ Yuan, Cain and Spoonley (n 9).





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