

Acknowledgements

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Otherwise, the mistakes are my responsibility. It has been an honour to research and write about such an important subject where there remains a global gap, which this report hopefully goes some way to starting to fill.

A handwritten signature in blue ink, appearing to read 'Mai Chen', on a light-colored background.

Mai Chen
Chair

Superdiversity Institute for Law, Policy and Business

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Overview

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- 1 Established under the WorkSafe New Zealand Act 2013, WorkSafe New Zealand (“WorkSafe”)’s main objective is to “promote and contribute to a balanced framework for securing the health and safety of workers and workplaces.”¹
 - 2 New Zealand’s level of work-related harm remains high by international standards² and WorkSafe is anxious to ensure it is proactively understanding and redressing areas of greatest worker injuries or death.
 - 3 WorkSafe has commissioned this research to get the benefit of a wide-ranging review of the challenges faced and lessons learned about improving health and safety outcomes in a superdiverse context by the regulators in three superdiverse Commonwealth countries (the United Kingdom, Australia, and Canada) who also have the Robens system³ for health and safety, but who have had their legislation for longer.⁴ The objective of the research in drawing on this experience is to assist WorkSafe in devising strategies for non-English speaking and non-New Zealand European workers in New Zealand. The research includes analysis of legislative frameworks, commentary and research undertaken in the various jurisdictions, and interviews with officials of the overseas regulators and other experts.
 - 4 As Sawrikar and Katz state, the term “Culturally and Linguistically Diverse” or “CALD”, has been commonly used in Australia (in particular) in research, practice, and policy to refer to all “non-Indigenous ethnic groups other than the English-speaking Anglo-Saxon majority.”⁵ They note that indigenous groups are generally excluded from this definition “because their experiences and needs as first nation people are seen as significantly different from other groups.”⁶
 - 5 Similarly we use the term “CALD” to refer to: new migrants; “visually diverse” 1.5 generation (young people between the ages of six and 18 who migrate to another country with their parents),⁷ second and third generation migrants; refugees; and temporary foreign workers.
 - 6 However, we also touch on the experiences of indigenous people, who (as discussed above) are not usually identified as CALD, but who often experience similar vulnerabilities which can result in greater injury and illness at work.
 - 7 Therefore, throughout this report, we highlight findings and recommendations which are also relevant to indigenous people globally and to Māori in New Zealand.
 - 8 We note that WorkSafe is already engaged in work programmes designed to meet its obligations under the Treaty of Waitangi, and to reduce the incidence of workplace injury and illness among Māori workers. The Maruiti 2025 strategy in particular is discussed in detail later on in this report.

¹ Worksafe New Zealand Act 2013, s 9.

² New Zealand Government “Health and Safety at Work Strategy 2018 – 2028 | Background Information for Consultation” (April 2018) <www.mbie.govt.nz> at 5.

³ See Appendix A for discussion of the Robens model of health and safety regulation.

⁴ Since 1974 in the United Kingdom, since the 1980s in Canada, and since harmonisation efforts in Australia in 2011.

⁵ Pooja Sawrikar and Ilan Katz “How useful is the term ‘Culturally and Linguistically Diverse’ (CALD) in Australian research, practice, and policy discourse?” (paper presented to the 11th Australian Social Policy Conference, An Inclusive Society? Practicalities and Possibilities, University of New South Wales, July 2009) at 1.

⁶ At 1.

⁷ Mai Chen *Superdiversity Stocktake* (Superdiversity Centre, Auckland, 2015) at 63.

- 9 Accident Compensation Corporation (ACC) claims data shows the following number of claims per 1000 full-time employees, by ethnicity:⁸

Ethnic group	Incidence rate
Other ⁹	207
Māori	103
Pacific peoples	100
European	83
Asian	63

- 10 These figures show a significantly elevated incidence rate of work-related claims for injury and illness among Māori, Pacific peoples, and people identifying as Middle Eastern, Latin American or African (“MELAA”), as compared to European people. Research has found barriers to accessing ACC services among Māori and Asians.¹⁰ In respect of the incidence rate for people identifying as Asian above, research has found that these barriers to access may explain the low claim rate among Asians (rather than a lower incidence of injury).¹¹
- 11 These figures and New Zealand’s increasing superdiversity means that the issues considered in this report are urgent. New Zealand is already superdiverse – for example, 44% of Auckland’s population were not born in New Zealand, 25% of New Zealanders were not born in the country, and there are over 200 ethnicities according to the 2013 Census. New Zealand’s superdiversity is also increasing. People of different national origins and cultures are increasingly part of the workforce in New Zealand, and they are also employers, which presents its own unique challenges. Also, we have the additional element of being a multicultural society on a bicultural base. In the 2013 Census, Māori comprised 15% of the total New Zealand population, compared to the total indigenous population in Australia at 2.8%, and in Canada, 4.9%).¹² Indigenous populations are growing in both Australia (an increase of 0.3% from 2011 to 2016),¹³ and Canada (an increase of 1.9% from 2006 to 2016).¹⁴ New Zealand is unique in the degree of growth of its indigenous population: 20% of New Zealand’s population will identify as Māori by 2038, while 21% will identify as Asian and 11% as Pacific peoples.¹⁵
- 12 There has also been a noticeable growth in temporary migration to New Zealand. The Ministry of Business, Innovation and Employment (“MBIE”)’s 2016/2017 Migration Trends report found that at 152,432, the number of temporary workers present in New Zealand on 30 June 2017 was 16% higher than the year before.¹⁶
- 13 Similarly, the structure of work is changing. In a “VUCA” (volatile, uncertain, complex, and ambiguous) world, labour markets are following suit.¹⁷ New technology and the gig economy are creating new ways of working, many of which are precarious and do not accord to established conceptions of what it means to “go to work.” As will be seen in this report, CALD workers are

⁸ Statistics NZ “Injury Statistics – work-related claims: 2017” (August 2018) <www.stats.govt.nz>. Note that this data is for **claims** for work-related injuries and is not a definitive count of all work-related injuries. Not all work-related injuries result in a claim to ACC.

⁹ “Other” refers to people identifying as Middle Eastern, Latin American, and African, abbreviated to “MELAA”.

¹⁰ Jamie Hosking and others “Social and geographical differences in road traffic injury in the Auckland region” (report prepared by the University of Auckland for Auckland Transport, 2013) <www.at.govt.nz> at 17.

¹¹ At 17.

¹² Chen, above n 7, citing “2013 Census Quickstats about Māori” (3 December 2013) Statistics NZ <www.stats.govt.nz>; Australian Bureau of Statistics “2016 Census shows growing Aboriginal and Torres Strait Islander population” (27 June 2017) <www.abs.gov.au>; Statistics Canada “Aboriginal peoples in Canada: Key results from the 2016 Census” (25 October 2017) <www.statcan.gc.ca>.

¹³ Australian Bureau of Statistics “2016 Census shows growing Aboriginal and Torres Strait Islander population” (27 June 2017) <www.abs.gov.au>.

¹⁴ Statistics Canada “Aboriginal peoples in Canada: Key results from the 2016 Census” (25 October 2017) <www.statcan.gc.ca>.

¹⁵ Chen, above n 7, citing Statistics NZ “National Ethnic Population Projections: 2013 (base) – 2038” (press release, 21 May 2015).

¹⁶ Ministry of Business, Innovation and Employment “Migration Trends 2016/2017” (March 2018) <www.mbie.govt.nz> at i.

¹⁷ Nathan Bennett and G James Lemoine “What VUCA Really Means for You” *Harvard Business Review* (online ed, January-February 2014).

disproportionately impacted by these changes, which themselves create health and safety risks and exacerbate other risks.

- 14 For regulators, these factors converge to create new and significant challenges. Regulators could encounter new convergences of risk, such as a new migrant working all day in a fish processing plant, leaving work, and going straight into a 14-hour shift as a driver using a ride-sharing app as a platform. Or they could encounter a nurse, who is the only Māori in a team comprising Pakeha and internationally qualified Filipino nurses, experiencing stress as a result of social isolation and challenges to their cultural safety on top of the unique pressures of that profession. There are a host of health and safety challenges among these examples, both to the workers themselves, their colleagues, others in the workplaces, and the public.
- 15 As will be seen in this report, many regulators have responded to the urgency of the changing structure, organisation, nature of work, and demographic changes to the workforce in a reactive and ad hoc manner. But when new challenges are appearing so rapidly these reactive approaches are inadequate to secure the health and safety of workers and workplaces.
- 16 For WorkSafe to effectively secure the health and safety of all workers and workplaces, it needs to understand how the changing structure, organisation, and nature of work, affects the changing nature of the New Zealand workforce and the new and different challenges which arise as it becomes more and more superdiverse. There is a need to undertake more work to understand the challenges facing CALD workers.
- 17 This report has been designed to align to the framework of the Health and Safety at Work Strategy 2018 – 2028. This design assists WorkSafe to use the lessons learned from the overseas regulators to inform its implementation of the strategy. It demonstrates where WorkSafe is behind, commensurate with, or ahead of other regulators in addressing the needs of CALD workers.

Strategic context

- 18 The issues, focus areas, goals, and priorities in the Working Safer blueprint, Reducing Harm Action Plan, Strategic Plan for Work-Related Health, and Health and Safety at Work Strategy 2018 – 2028 (discussed below), confirm many of the challenges identified and lessons learned from the Canadian, United Kingdom, and Australian regulators in this report.
- 19 In this section, we set out in detail the aspects of each strategic document which are relevant to CALD workers. From this platform we can confirm the degree to which WorkSafe is already addressing the challenges and lessons learned from the overseas regulators. We can also use existing frameworks to contextualise our recommendations by reference to existing strategic directions.

Working Safer: A blueprint for health and safety at work

- 20 The 2013 “Working Safer: A blueprint for health and safety at work” document (“the blueprint”) set the direction for a new workplace health and safety system in the wake of the Pike River disaster, stating:¹⁸

Working Safer outlines the Government’s plan to improve New Zealand’s workplace health and safety system with the involvement and support of businesses and workers. The Government has set an ambitious target of at least a 25% reduction in workplace injuries and fatalities by 2020 – it’s going to take us all working together to make this happen.

¹⁸ Ministry of Business, Innovation and Enterprise “Working Safer: A blueprint for health & safety at work” (August 2013) <www.mbie.govt.nz> at 5.

- 21 The blueprint noted that while New Zealand was operating a Robens model of health and safety regulation, the expression of this model in the then Health and Safety in Employment Act 2002 was weak. It was not supported by the level of regulation and codes of practice which were required for a fully-fledged Robens system.
- 22 The blueprint set out wide-ranging reforms which included an overhaul of the law (following the Australian model legislation (see discussion at Appendix A: The Robens Model)), additional funding, and better coordination between government agencies.
- 23 The direction set by the blueprint continues in the Reducing Harm in New Zealand Workplaces Action Plan 2016 and the Health and Safety at Work Strategy 2018 – 2028.

The Reducing Harm in New Zealand Workplaces Action Plan 2016

- 24 Section 264A of the Accident Compensation Act 2001, confirmed by section 196 of the Health and Safety at Work Act 2015 (“HSW Act”), requires the ACC and WorkSafe to have a joint workplace injury prevention action plan.
- 25 The Plan is an important contributor to, and is consistent with, the Working Safer blueprint, and must be consistent with any new strategy developed.¹⁹
- 26 The Reducing Harm in New Zealand Workplaces Action Plan (“the Action Plan”), published in July 2016, outlines how ACC and WorkSafe will work together to prevent workplace injury. As the Action Plan states, both agencies share the goal of reducing workplace fatalities and serious injuries.
- 27 Though ACC has a broader injury prevention focus beyond the workplace, WorkSafe performs the role of both educator and enforcer and has system leadership responsibilities for workplace health and safety.
- 28 The Action Plan emphasises the importance of collaboration in achieving health and safety outcomes. It states: “The biggest improvements will come when people in workplaces manage risks effectively and agencies work together to contribute to injury prevention and a positive health and safety culture.”²⁰
- 29 The intent of the Action Plan is to contribute to the goal of reducing serious injuries and fatalities in the workplace by at least 25% by 2020. The Action Plan emphasises the importance of “working together,” “working smarter,” and “targeting risks” in achieving that goal. The Action Plan reflects all the programmes that ACC and WorkSafe are undertaking in the three years from the publication of the Action Plan.
- 30 The focus of the Action Plan is on:
 - (a) Five sectors: agriculture; construction; forestry; manufacturing; healthcare and social assistance;
 - (b) Four cross-cutting risks: slips, trips and falls; working in and around vehicles; body stressing; and clean air;
 - (c) Three areas to support all businesses to reduce injuries: education and awareness; incentives; enabling workforce development and worker engagement;
 - (d) Increasing the focus on work-related health; and
 - (e) Working alongside businesses with high injury and harm rates.

¹⁹ Accident Compensation Corporation and WorkSafe New Zealand “Reducing Harm in New Zealand Workplaces Action Plan” (July 2016) <www.acc.co.nz> at 6.

²⁰ At 3.

- 31 All of the focus areas highlighted are valuable for addressing health and safety risks of CALD workers, as those workers:
- (a) Tend to be over-represented in high-risk industries;²¹
 - (b) Attitudes and behaviours may be affected by different levels of risk perception towards those cross-cutting risks;²²
 - (c) Are not always served by mainstream approaches to education and awareness and workforce development and worker engagement, owing to language barriers and different cultural norms;²³ and
 - (d) Have been shown to have greater work-related health needs than others (including higher risks of mental harm, particularly as targets of discrimination).²⁴
- 32 Throughout the Action Plan, there are references to CALD workers or issues affecting CALD workers:
- (a) To “vulnerable workers” on page 25;
 - (b) To the “diverse construction industry” on page 26;
 - (c) To the “Māori strategy” on page 31;
 - (d) To the “diverse... cultural representation” in the manufacturing sector on page 33;
 - (e) To “staff demographic factors (for example literacy levels...)” in the healthcare and social assistance sector on page 37;
 - (f) To “demographic challenges that include age, low functional language and low literacy and numeracy skills, including issues faced by some of those with English as a second or other language” on page 70;
 - (g) That “research shows that older workers, Māori and Pacific Island workers, men and temporary and migrant workers are more likely to be injured or harmed at work” on page 73;
 - (h) To the “Puataunofu Come Home Safely...collaborative initiative with a range of government and non-government agencies, supporting workplace health and safety for Pacific workers” on page 74;
 - (i) To WorkSafe’s “developing Māori Strategy, ‘Maruiti 2025’” on page 75; and
 - (j) To an outcome of “Māori workplace injuries, ill-health and fatality rates... equal to or lower than non-Māori rates by 2025” on page 75.
- 33 These references demonstrate that CALD workers are actively being considered by both ACC and WorkSafe. Although specific programmes are highlighted for Māori and Pacific Island workers, there do not appear to be targeted programmes for other CALD workers within this Action Plan.

WorkSafe’s Strategic Plan for Work-Related Health 2016 to 2026.

- 34 WorkSafe’s Strategic Plan for Work-Related Health 2016 to 2026 (“Healthy Work Plan”) supports WorkSafe’s vision: “everyone who goes to work comes home healthy and safe.” It has three strategic themes:
- (a) Industry leadership (engaging and influencing industry to enable system-wide action);

²¹ See, for example, the discussion in Appendix A of the following Cabinet Paper: Office of the Minister of Labour, Cabinet Economic Growth and Infrastructure Committee “Improving Health and Safety at Work: Overview” (July 2013) and discussion regarding the gig economy preceding Recommendation 15.

²² See paragraph 181(a).

²³ See, in particular, discussions preceding Recommendations 8 and 9.

²⁴ See discussion preceding Recommendation 3.

- (b) Regulatory effectiveness (WorkSafe continuously improving its capabilities for engaging, educating, and enforcing); and
 - (c) “Step change” (targeted intervention programmes/embedding meaningful and significant change in the way that prioritised risks are managed).
- 35 The Healthy Work Plan notes at page 20 that in taking action to improve work-related health, WorkSafe will:
- (a) Develop evidence-based interventions through research and intelligence-led analysis;
 - (b) Take a high-engagement approach with social partners, key stakeholders, workplaces, agencies and communities;
 - (c) Use our levers of educate, engage and enforce transparently and proportionately;
 - (d) Proactively consider the perspectives of those we are aiming to support;
 - (e) Recognise and focus on groups who are vulnerable to work-related health risks, including Māori and other ethnic groups.
- 36 The Healthy Work Plan also sets out a vision of “what [the health and safety system in] 2026 will look like”. In this vision, “all of industry will be working more collaboratively and effectively to manage work-related health and health-related safety risks,” and “WorkSafe’s education, engagement and enforcement levers will have been used routinely to sustain change in how work-related health and health-related safety risks are identified, assessed and managed” by Persons Conducting a Business or Undertaking (“PCBUs”).
- 37 In Appendix A: Work-related Disease and Illness, Risks, and Exposures, WorkSafe has already identified Māori as being at greater risk of work-related ill-health. WorkSafe has also identified work-related mental health as a relevant work-related health issue. CALD workers’ elevated risk of work-related mental harm is discussed in detail later in this report.
- 38 We consider that a vision of work-related health for 2026 includes the incorporation of a superdiversity lens at the regulatory level but also across the whole system, to achieve the outcome that CALD workers are no more vulnerable to injury or ill-health than anyone else.
- 39 Similarly, in applying a superdiversity lens to the Healthy Work Plan, the following could be considered:
- (a) Partnering with CALD organisations or where CALD employers and employees are (strategic theme 1, focus area 2);
 - (b) Building WorkSafe’s cultural intelligence (“CQ”) capability (strategic theme 2, focus area 5); and
 - (c) Targeting research efforts towards CALD workers (strategic theme 2, focus area 7).

The Health and Safety at Work Strategy 2018 - 2028

- 40 Section 195 of the Health and Safety at Work Act 2015 (“HSW Act”) requires the Minister responsible for the legislation (today, the Minister for Workplace Relations and Safety and ACC) to publish a strategy that sets out the Government’s overall direction in improving the health and safety of workers. The strategy must be developed jointly with WorkSafe. It must identify and plan to address any significant capacity or capability issues in the work health and safety system, and take account of ACC’s injury prevention priorities.
- 41 The Government’s Health and Safety at Work Strategy 2018-2028 (“the Strategy”) covers the whole health and safety at work system, meets the requirements of section 195, and replaces the Working Safer blueprint in setting the strategic direction for the health and safety system.

- 49 The rationale for these requirements is noted on page 13: “workplaces in which workers and their representatives actively contribute to health and safety are safer workplaces with lower occupational illness and injury rates.”²⁵
- 50 This therefore requires WEPR to be a supported part of the workplace culture. The Good Practice Guidelines note that “legislation will not achieve a culture change by itself” and that “New Zealanders’ attitudes to health and safety in the workplace need to change” to achieve a workplace culture that supports effective WEPR. The guidelines define workplace culture as “the beliefs and practices that everyone shares.” However, as noted above at paragraph 11, New Zealand workplaces are superdiverse, and have workers from many different national cultures. We therefore cannot presume, even within workplaces with a strong organisational culture, that all workers share the same views, attitudes and behaviours towards workplace health and safety.²⁶
- 51 Similarly, on page 16 where the Good Practice Guidelines highlight what a positive workplace WEPR culture looks like, there are a number of elements that take on additional importance when considering CALD workers. In particular the Good Practice Guidelines set out that in a positive workplace WEPR culture, workers:
- (a) Know why and how to report health and safety matters;
 - (b) Know that their concerns will be listened to and responded to in a positive way; and
 - (c) Trust managers and know managers trust workers.
- 52 As will be elaborated on later in this report, at Recommendation 9 in particular, these elements may well be more difficult to achieve for CALD workers.
- 53 On page 22 of the Good Practice Guidelines, WorkSafe demonstrates an understanding of the barriers facing CALD workers. In its guidance about considering what is “reasonably practicable” in the WEPR context, it suggests that PCBUs consider “the languages workers speak, and their reading and writing skills.”²⁷
- 54 The Good Practice Guidelines set out on page 26 a guide for PCBUs about how best to engage with workers. In line with the flexible, self-regulatory Robens model, the Good Practice Guidelines suggest that in considering how best to engage, employers should “be flexible, innovative and responsive to workers’ needs and preferences” and “regularly review...approaches to engagement to make sure that they are still effective.” These are clearly relevant to workplaces with CALD workers, where PCBUs may need to depart from or supplement established practices to ensure that their WEPR approach is appropriate for their workers.
- 55 The Good Practice Guidelines also provide guidance to PCBUs about communicating with workers, which address a number of issues relevant to CALD workers including: the use of plain language; the use of diagrams, photos, signs and symbols in place of written information; how strong workers’ literacy and numeracy skills are; what languages workers speak and understand; and the languages used in the workplace.
- 56 These challenges have been highlighted by all the regulators we have examined. They are the most obvious symptoms of health and safety risk amongst CALD workers.

²⁵ WorkSafe New Zealand “Good Practice Guidelines: Worker Engagement, Participation and Representation” (March 2016) <www.worksafe.govt.nz> at 13.

²⁶ This point is supported by research from the United Kingdom regulator. See Andrew Smith and others *Ethnicity, work characteristics, stress and health* (HSE Research Report 208, 2005 at 53–54), as discussed at paragraph 410. Note also discussion of “hyper-diversity” from paragraph 358.

²⁷ WorkSafe New Zealand, above n 25, at 22.

- 57 The Good Practice Guidelines also highlight the issue of cultural attitudes influencing workers' contributions to safety discussions (i.e. noting that "respect for leaders or elders could mean that workers are reluctant to challenge unsafe practices.")²⁸
- 58 Notably, the Good Practice Guidelines have a detailed section on translating health and safety information into other languages, which highlights the benefits of using experienced and competent translators, and the risks associated with using bilingual workers to translate and interpret.
- 59 The Good Practice Guidelines also highlight under specific headings "overcoming barriers to engagement," "engaging vulnerable workers," "Māori workers," and "migrant workers." Each specific heading gives guidance to how PCBUS can best ensure effective WEPR in these circumstances, including addressing communication barriers and cultural beliefs and practices.
- 60 The guidelines also suggest to PCBUs at Appendix B "things to consider" in making sure that they have effective engagement and participation, which include "worker involvement," "workers contribute to decision-making on health and safety matters," and "awareness and recognition of role of HSRs (if chosen as a participation practice)." The guidelines provide an example of "what this might look like when things are working well." Appendix B says that when things are working well, workers can, among other things, "explain how the PCBU engages with them," "workers feel confident about approaching the appropriate person about a health and safety issue", and "workers understand why health and safety decisions have been made". For workplaces with CALD workers who may have language barriers, and particular cultural attitudes and behaviours (including deference and loyalty to authority), achieving a situation where "things are working well" with respect to engagement, participation, and representation, may be more difficult.²⁹
- 61 However the Good Practice Guidelines also highlight the importance of "acknowledg[ing] and respond[ing] to workforce diversity" in ensuring effective WEPR, suggesting that "the PCBU takes into account the needs of different groups when engaging with workers" and that it should have processes for engaging with vulnerable workers.

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²⁸ See also Department of Labour, Labour & Immigration Research Centre "In Harm's Way: A case study of Pacific workers in Manukau manufacturing" (March 2012) <thehub.superu.govt.nz> at 40.

²⁹ See discussions at paragraphs 593 to 596 regarding CALD workers' raising/reporting health and safety issues; see discussion at Recommendation 10 regarding communication and language; and see Recommendation 12 for discussion about guidance to employers' about overcoming cultural difference to ensure better engagement, participation, and representation.

Key Findings and link to Strategy

- 62 Our research is timely and consistent with the Strategy’s framework for action (noted at paragraph 45 of this report).
- 63 In this section, we relate the challenges and lessons learned from the overseas regulators to the framework for action, goals, and priorities set out in the Strategy. We also make recommendations about how best to implement the Strategy, using a range of levers, so that WorkSafe can ensure that CALD workers are not more vulnerable to injury and illness at work than all workers.
- 64 This section only addresses those aspects of the Strategy where the challenges and lessons learned from overseas regulators are relevant. Parts of the Strategy that do not relate to challenges or lessons learned by the overseas regulators are not discussed.

The Strategy

- 65 The Strategy is set at a principles level. In the Minister’s Foreword to the Strategy, he states that he expects the Strategy to be underpinned by action plans, and a “structured conversation between all of the main players in the system.”³⁰ This report is designed to inform those action plans and conversations between main players in the system.
- 66 The Minister states that “although we have made significant progress in reducing work-related harm since the Pike River tragedy, New Zealand’s rates of work-related harm are still high by international standards.”³¹ Given New Zealand’s superdiverse population, it is likely that increased susceptibility to workplace injury and illness among CALD and Māori workers is contributing to these high rates. With New Zealand’s CALD and Māori population set to increase, it is crucial that proper safeguards and approaches to mitigating risk for these workers are in place to prevent these rates from climbing even higher.³²

Goal A: Focusing on what will make the biggest impact to reduce harm

- 67 **Priority 1** is “Work-related health, including mental health.” This reflects the definition of ‘health’ in the HSW Act, which includes both physical health and mental health.³³
- 68 In prioritising work-related health, including mental health, WorkSafe will need to consider the unique risks to CALD workers. As our findings demonstrate, CALD workers are at greater risk of mental health issues stemming from downward mobility, exacerbation of pre-existing trauma (especially for refugees), racial discrimination and harassment,³⁴ and lack of cultural safety in the workplace.

Racial discrimination and harassment

- 69 Racial discrimination and harassment are issues with overlapping effects on both human rights and occupational health and safety. Whereas a siloed view of discrimination sees racial discrimination and harassment as a human rights issue, it is also an employment relations issue **and** a health and safety issue. Therefore it is a cross-cutting issue that is relevant to the many participants in the health and safety at work system identified at page 5 of the Strategy, and to government agencies which may not usually be considered as participants in the system, i.e. the

³⁰ New Zealand Government *Health and Safety at Work Strategy 2018-2028* (13 December 2018) at 1.

³¹ At 1.

³² See the discussion at paragraphs 10 and 329.

³³ Health and Safety at Work Act 2015, s 16.

³⁴ For example, Andrew Smith and others, above n 26.

Human Rights Commission. We discuss the opportunity for WorkSafe to collaborate with the Human Rights Commission in Recommendation 3.

- 70 A case decided by the Human Rights Review Tribunal in 2015 illustrates the effect that discrimination in the workplace can have on workers' health. In *Satnam Singh v Shane Singh and Scorpion Liquor (2006) Ltd*, racial harassment against the plaintiff from his employer resulted in clinical findings of depression (including suicidal ideation) and anxiety, which were treated with medication and prescribed time off work.³⁵ The facts of the case indicate that these human rights breaches are also health and safety issues, which challenge the Strategy's vision that "Work must be healthy and safe for everyone in New Zealand."
- 71 Beyond the overt discrimination highlighted in the *Singh* case, subtle and indirect discrimination also poses risks to the mental health of CALD workers. An issue raised by both the Northwest Territories and Nunavut regulator, and the Queensland regulator, was a lack of "cultural safety" in the workplace; a form of discrimination which may be direct or indirect, and which can amount to a psychosocial risk to CALD workers health and safety.

Cultural safety

- 72 "Cultural safety" is defined as: "an environment which is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity, and truly listening."³⁶ Cultural safety is an issue particularly for indigenous workers. Indeed, the concept of "cultural safety" originated from considering the health care experiences of Māori from the perspective of nursing practice.³⁷
- 73 "Cultural safety" is important in a health and safety context as research has found that lack of cultural safety contributes to high levels of occupational stress (a psychosocial risk factor for mental harm) amongst indigenous workers.³⁸ As with discrimination and racial harassment, lack of cultural safety in the workplace is also a cross-cutting issue with human rights implications, as well as health and safety risks.

Section 20, New Zealand Bill of Rights Act 1990

- 74 Section 20 of the New Zealand Bill of Rights Act 1990 (NZBORA) states that "A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority."
- 75 Infringement of section 20 rights in the workplace may amount to "an assault, challenge or denial" of CALD workers' identity (an element of cultural safety). The infringement of section 20 rights may arise from direct action, or by virtue of workplace arrangements or practices which indirectly prevent workers from enjoying their culture, professing and practicing their religion, or using their own language. As noted above, a lack of cultural safety can amount to a psychosocial risk to CALD workers health and safety.
- 76 While section 20 of NZBORA was not considered in the *Singh* case, the facts illustrate how we might consider cultural safety as a cross-cutting issue for both human rights and health and safety. In *Singh*, the employers' derogatory comments towards the workers' beard and turban (forming part of the racial harassment at issue in the case) resulted in the worker cutting his hair and trimming his beard in contravention of the tenets of his Sikh faith, causing the worker considerable

³⁵ *Satnam Singh v Shane Singh and Scorpion Liquor (2006) Ltd* [2015] HRRT 8 at 5.

³⁶ Robyn Williams "Cultural Safety – what does it mean for our work practice?" (1999) 23(2) *Australian and New Zealand Journal of Public Health* 213 at 213.

³⁷ Above n 36.

³⁸ Victoria Simon "A snapshot of Māori nurses' health and safety issues" *Kai Tiaki: Nursing New Zealand* (online ed, Auckland, 2004). Refer also to the discussion at paragraph 171 regarding Professor Margaret Brunton's findings in relation to internationally qualified nurses.

distress and contributing to the mental harm found to have resulted. The derogatory comments (in combination with the employer’s other offensive behaviours) created an environment clearly lacking in cultural safety, causing harm to the worker’s mental health.

Section 28(3), Human Rights Act 1993

77 Additionally, employers also have obligations under section 28(3) of the Human Rights Act 1993 to accommodate practices that are required by an employee’s religious or ethical belief, so long as any adjustment of the employer’s activities “does not unreasonably disrupt the employer’s activities.”³⁹ A breach of this obligation is likely to contribute to a workplace environment lacking in cultural safety, with the resulting health and safety risks discussed above.

78 As will be highlighted at Recommendation 3, the significant overlap between human rights and health and safety in the context of workplace discrimination suggests that collaborative activities between WorkSafe and the Human Rights Commission would be an efficient means of addressing workplace discrimination as a health and safety issue for CALD workers.

79 **Priority 2** is “Businesses with greater need.” This priority highlights the needs of SMEs and sectors with the highest harm, i.e. agriculture, forestry, construction and manufacturing.

80 As is highlighted in the evidence section of this report, CALD workers are over-represented both as workers and employers in SMEs, and as workers in high-risk sectors.

SMEs

81 WorkSafe’s identification of SMEs as enterprises requiring greater support reflects findings from overseas that “people in small enterprises face proportionately greater physical risks than do workers in larger businesses.”⁴⁰

82 Research from the United Kingdom regulator suggests that this risk is exacerbated in the case of ethnic and minority businesses (EMBs) owing to poor awareness, attitudes and behaviour towards health and safety.⁴¹

83 Ethnic minority small businesses were less likely than the control group of “white-owned” small businesses to be able to identify relevant health and safety regulations (35% compared to 45% of those surveyed).⁴² Similarly, ethnic minority small businesses were less likely than the control group of white-owned small businesses to have a designated employee safety representative (27% compared to 33%).⁴³ In sum, “EMBs as a whole were significantly less aware of the health and safety regulations than their white control counterparts.”⁴⁴ EMBs also “perform[ed] more poorly compared to the white control on a number of indicators relating to health and safety management and improvement measures.”⁴⁵

84 The research suggests that this poorer performance could be attributed to:⁴⁶

- (a) “The formative influence of prior experiences in different national/cultural contexts;”
- (b) “The unfamiliarity of recent immigrants with the UK system and its expectations;” and
- (c) “Language barriers.”

85 It is likely that these causes are equally appropriate to the New Zealand context.

³⁹ Chen, above n 7, at 191.

⁴⁰ Ian Vickers and others *Cultural influences on health and safety attitudes and behaviour in small businesses* (Heath & Safety Executive Report, 150, 2003) at 1.

⁴¹ At 2.

⁴² At 19.

⁴³ At 31.

⁴⁴ At 103.

⁴⁵ At 104.

⁴⁶ At 104.

86 The health and safety of workers in SMEs is also affected by ethnic and minority SMEs' greater propensity towards non-compliance with other standards and regulations that can contribute to health and safety outcomes. For example, a recent MBIE study into exploitation of vulnerable temporary migrant workers in the New Zealand hospitality industry found that exploitative practices were most commonly found among ethnic- and migrant-owned hospitality businesses, and small businesses.⁴⁷

High-risk sectors

87 The high-risk sectors identified by WorkSafe have also been identified as high-risk by the overseas regulators surveyed. Within those high-risk sectors, foreign or migrant workers have also been identified as being at greater risk.

88 In the United Kingdom, foreign and migrant workers were identified as being especially vulnerable within the construction industry, owing to language barriers; lack of awareness of health and safety standards; and cultural differences.⁴⁸

89 In Canada, migrant workers in the high-risk agricultural sector were found to have a heightened vulnerability to health and safety risks than other workers for a host of reasons including language barriers, working long hours for financial reasons, and increased incentives not to report health and safety concerns to their employers (for example, where workers could lose their job for raising health and safety concerns, and where their visas are tied to a single employer, raising a health and safety concern could mean not only that that worker has lost employment but also that they have lost their right to remain in the country).⁴⁹

90 This would tend to indicate that the inherent risks of the work are exacerbated for CALD workers in high-risk sectors, who are additionally vulnerable because of practical barriers, their vulnerability to exploitative practices, and push factors that induce them to take on additional risks.

91 Therefore in addressing this priority and to "Support business with greater need", WorkSafe must apply a Superdiversity Framework to its education, engagement, and enforcement activities with SMEs and high-risk sectors. What we mean by a "Superdiversity Framework" is addressed at Recommendation 1.

92 **Priority 3** is "Workers with greater need: Māori and other workers at greatest risk." This priority is about making sure that the health and safety system works for everyone. The Strategy highlights Māori, Pasifika, migrant and seasonal, younger and older workers in particular. This priority indicates the emergence of a superdiversity lens on health and safety.

93 In considering CALD workers as those with greater needs, what we have learned from the overseas regulators is that it is important to understand the factors that contribute to these greater needs, which for CALD workers includes language barriers, different views of risk, health and safety culture, religion, personal protective equipment issues, and structural issues.

Language barriers

94 The overseas regulators have indicated (and confirm WorkSafe's understanding as noted in its WEPR Good Practice Guidelines, March 2016⁵⁰) that language barriers are themselves a risk factor for CALD workers' health and safety. Beyond issues such as understanding training, instructions, and signage, language barriers can also contribute to psychosocial risk factors such as poor

⁴⁷ Wendy Searle, Keith McLeod and Christopher Stichbury *Vulnerable Temporary Migrant Workers: Hospitality Industry* (Ministry of Business, Innovation and Employment, August 2015) <www.mbie.govt.nz> at 8.

⁴⁸ Health and Safety Executive "Migrant Workers: Industries -Construction" (undated) <www.hse.gov.uk>.

⁴⁹ See Gerardo Otero and Kerry Preibisch *Farmworker Health and Safety: Challenges for British Columbia* (WorkSafeBC, August 2010) <www.worksafebc.com>.

⁵⁰ WorkSafe New Zealand, above n 25.

support and poor workplace relationships.⁵¹ Language barriers can also increase the risk of verbal and physical abuse, particularly in frontline roles.⁵²

95 Language barriers between inspectors and CALD employers and workers can also impede effective inspections. Safe Work Australia has previously noted that language barriers are a major impediment in many inspection visits as they limit dialogue and the possibility of providing advice, persuasion, and assisting with compliance.⁵³

96 Language barriers can also prevent uptake by CALD employers of financial assistance with measures to improve health and safety compliance. This was highlighted in HSE (the United Kingdom regulator)’s Research Report 150, which found that “businesses were disadvantaged in their ability to take advantage of grant funded opportunities to assist with compliance due to the language barrier.”⁵⁴

Cultural factors

97 The overseas regulators also identified cultural factors as a challenge to effective health and safety awareness and compliance amongst CALD workers. “Risk blindness” was cited as a particular issue amongst new migrants, whereby because of their cultural background, workers either do not see risk or see it as inherently acceptable.⁵⁵

98 Other cultural and religious factors include workers seeing accidents as inevitable, i.e. karma, fate, God’s will, not preventable, and an expected part of work, which can affect their commitment to reducing or controlling risks; assuming accidents are their own fault; or finding it difficult to ask questions and get clarification because of a culture of unquestioning attitude to those in authority.⁵⁶

99 Some CALD workers also have a greater sense of loyalty to their employers, which can be a barrier to reporting.⁵⁷

Personal protective equipment

100 Ethnic, cultural, and religious differences can also cause practical difficulties for CALD workers, and ill-fitting personal protective equipment (PPE) is a particular issue. PPE may not fit those with different body sizes or shapes, including women and ethnic minorities.⁵⁸ PPE may also not fit those who are required for religious or cultural reasons to maintain particular styles of hair or dress – for example, orthodox Sikhs who must keep a full beard.⁵⁹ As Flynn explains, poor fitting PPE “not only reduces the PPE’s ability to protect the worker as designed, it may also cause a worker to reduce or eliminate its use because the gear is perceived to be either ineffective or uncomfortable.”⁶⁰

Structural issues

101 The overseas regulators highlighted structural issues (including the increase in precarious work and the gig economy) as causes of deterioration in occupational health and safety across the

⁵¹ WorkCover Queensland “Mentally healthy workplaces toolkit” (23 August 2018) <www.worksafe.qld.gov.au> at 12.
⁵² Interview with Teegan Modderman, Manager, Psychological Health Unit, Workplace Health and Safety Queensland (conducted by Mai Chen, 26 July 2018). See also Ha do Byon and others “Language Barrier as a Risk Factor for Injuries from Patient Violence Among Direct Care Workers in Home Settings: Findings from a U.S. National Sample” (2017) 32(5) *Violence and Victims* (ePub).
⁵³ Liz Bluff “Something to Think About – Motivations, Attitudes, Perceptions and Skills in Work Health and Safety”(September 2011) Safe Work Australia <www.safeworkaustralia.gov.au> at 50.
⁵⁴ Vickers, above n 40, at 78.
⁵⁵ See paragraph 264.
⁵⁶ See paragraph 265.
⁵⁷ See paragraphs 482 and 595.
⁵⁸ Michael Flynn “Safety and the Diverse Workforce” (2014) 59(6) *Prof Saf* 52 at 6.
⁵⁹ See paragraph 411 and the Superdiversity Institute’s report to ACC (December 2018, forthcoming) which discusses this issue in greater detail.
⁶⁰ Flynn, above n 58, at 6.

board, which disproportionately impacts CALD workers when combined with their other risk factors. CALD workers are more likely to be in precarious work.

- 102 The overseas regulators also highlighted downward mobility (a complex, and unfortunately common phenomenon relevant to migrants stemming from credentialing issues (the inability to get their prior qualifications recognised in some cases, but mostly from discrimination)) as a serious issue for CALD workers. Downward mobility has been shown to have significant effects on immigrants' physical and mental health.⁶¹
- 103 Similarly, a range of visa conditions contribute to workers' hesitance to report health and safety breaches, and willingness to undertake unsafe work.⁶²
- 104 WorkSafe has an express function under section 10(k) of the WorkSafe New Zealand Act 2013 to "promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way."⁶³ Therefore WorkSafe is able to, and should, raise these issues (which impact on the health and safety of CALD workers) with agencies that do have jurisdiction to deal with credentialing and immigration issues, such as professional bodies and Immigration New Zealand.

Addressing these risk factors

- 105 WorkSafe is already delivering targeted approaches to supporting Māori and Pasifika workers through the Maruiti 2025 strategy and Puataunofo Come Home Safely initiative. WorkSafe is also delivering health and safety literacy and numeracy training in partnership with the Tertiary Education Commission, which has benefits for a wide range of workers.
- 106 Maruiti 2025 is WorkSafe's strategy to reduce fatalities, serious harm and health impacts on Māori in the workplace (2016-2025). The focus for WorkSafe is on building internal capability and capacity regarding Te Ao Māori. WorkSafe has developed WorkSafe's own Te Ao Māori digital application 'Te Kete Maruiti' (Basket of Knowledge).⁶⁴
- 107 The Puataunofo Come Home Safely initiative is an education programme that delivers tailored health and safety messages to Pasifika workers in English, Samoan and Tongan, through workplace sessions facilitated by WorkSafe inspectors. Established in 2006 under the Department of Labour and other partner agencies, the programme has continued, despite funding and resource constraints, owing to high demand for the programme from Auckland businesses and positive feedback. The programme is currently being externally evaluated by Pacific Perspectives Limited, and early findings indicate that:⁶⁵
 - (a) The programme solves two interconnected problems:
 - (i) Raising workers' engagement with health and safety; and
 - (ii) Directly supporting businesses to adapt to their workforce's growing diversity.
 - (b) Its effectiveness comes from its person- and community-centred approach to health and safety promotion; and its "evolving, adaptive approach [and] reliance on a particular combination of cultural and technical expertise."⁶⁶
- 108 Pacific Perspectives Limited echo the recommendations of this report in suggesting that WorkSafe could have a "portfolio of diversity responsiveness strategies".⁶⁷

⁶¹ See discussion at paragraphs 102, 131, 169(c), 208–212, and from 524.
⁶² See the discussion of the "88 days" issue in Australia at paragraph 644, and the Seasonal Agriculture Worker Program in Canada from paragraph 574.
⁶³ WorkSafe New Zealand Act 2013, s 10(k).
⁶⁴ WorkSafe New Zealand "Maruiti – Safe Haven" (19 October 2017) <www.worksafe.govt.nz>.
⁶⁵ Pacific Perspectives Limited, Puataunofo Programme Evaluation, draft report (unpublished, 25 September 2018).
⁶⁶ At 4.
⁶⁷ At 24.

- 109 These extant efforts to improve outcomes for Māori and Pasifika workers are to be commended; however, they are not enough. More needs to be done to understand the challenges facing all CALD workers and what can be done to address them.
- 110 The lessons learned from the overseas regulators are that to effectively support CALD workers with greater need than all workers, a multi-pronged approach is required which targets both upstream and downstream factors.
- 111 It requires WorkSafe to:
- (a) Firmly identify who it is looking at by **properly defining** CALD workers across the health and safety system;
 - (b) Address the **structural issues** that increase the likelihood of CALD workers experiencing greater risks in the workplace; and
 - (c) Ensure that it considers CALD workers in all its work by applying a **Superdiversity Framework** to all its functions.

Properly define CALD workers

- 112 Despite evidence that CALD workers from across the spectrum (from temporary foreign workers to visually diverse people born in the subject country) have worse occupational health and safety outcomes, the majority of regulators have concentrated their focus only on new migrant workers, or in some cases, temporary foreign workers as a distinct subset of the migrant category. This is despite findings in HSE Research Report 221 that the reported accident rate may actually rise with increased length of residency.⁶⁸ Moreover, even within that focus, there are inconsistencies around definitions of who constitutes a “migrant” for the purpose of relevant initiatives.⁶⁹ Indeed, within the work of seven different New Zealand public sector bodies considered in this report at Appendix F, nine separate definitions of a ‘recent migrant’ can be found, ranging from less than two to less than ten years of residence. This lack of consistency, and lack of a broad understanding, means that regulators are focusing only on a narrow part of the spectrum of CALD workers who are more vulnerable to injury, to the detriment of other parts of that spectrum, who similarly have greater needs, and who would also benefit from being viewed through a CALD lens.

A Superdiversity Framework for Health and Safety

- 113 In considering the lessons learned from how the United Kingdom, Australian, and Canadian regulators have dealt with the structural issues affecting CALD workers, a key theme emerges. To ensure that CALD workers are not at greater risk of workplace injury or death, WorkSafe needs to understand health and safety issues which arise when you apply a superdiversity lens. This means:
- (a) Understanding that health and safety can mean something different depending on where you come from (for example risk blindness), and that it may not be valued in the same way (for example you may come from a country that does not have many health and safety protections);
 - (b) Understanding the whole spectrum of CALD workers (from temporary guest workers, to visually diverse workers born in New Zealand).
 - (c) Understanding the intersectional and overlapping nature of risk (for example the elevated risk of a young, migrant worker over a young worker or a migrant worker).

⁶⁸ Professor Ala Szczepura and others *Review of the occupational health and safety of Britain's ethnic minorities* (Health and Safety Executive, Research Report 221, 2004) at 84. The report posits that this phenomenon may either be due to: less safe behaviour with time; improved reporting behaviour; differences in composition of the ethnic population (and its safety profile) which has been in residence for more than 10 years; the poorer health of the older ethnic minority workforce and changes in continued fulltime employment.

⁶⁹ See discussion at paragraphs 102, 131, 169(c), 208–212, and from 524.

- 114 Some CALD workers are coming from an “under-par” starting point when it comes to health and safety. They may need to be educated not just about specific hazards, but about health and safety as a concept and a value to be upheld. They need to be educated about their rights and duties in respect of health and safety, in a way that makes sense to them. They may first need language tuition so they can understand English, or have education in their own language.
- 115 To meaningfully support CALD workers as workers with greater need, WorkSafe needs to (similarly to the Maruiti 2025 strategy and Puataunofu programmes) invest in targeted interventions for other groups, such as new migrants; “visually diverse” 1.5 generation, second and third generation migrants; refugees; and temporary foreign workers.
- 116 WorkSafe also needs to develop cultural competence in its staff and processes and to resource it properly. This will mean training staff in cultural intelligence, so that they have the ability to see and understand the issues arising for CALD workers that increase vulnerability to injury, and to deal with people who are not like them in a respectful and empathetic way that draws on understanding of other cultures and the nuances of inter-cultural communication. WorkSafe has started this work in respect of Te Ao Māori with its Maruiti 2025 programme. It will also mean prioritising diverse recruitment, including recruiting bilingual staff or those who have particular cultural capabilities.
- 117 WorkSafe also needs to ensure effective communication with CALD workers and employers through appropriate translation and interpretation, whether that is through published guidance in multiple languages, or by direct engagement with a bilingual inspector. As suggested by Caroline Gall, Manager Guidance Products at WorkSafe, it is likely to mean considering whether guidance should be translated at the same time as the guidance is developed.⁷⁰ An effective communication strategy could mean a mix of “quick wins”, like the creation of a multilingual health and safety awareness poster, and longer-term efforts like co-designing health and safety programmes for specific CALD audiences (similar to the Puataunofu programme).
- 118 WorkSafe also needs to engage directly with CALD workers, to target its education and awareness efforts in a way that might not be necessary for other workers. The regulator needs to use targeted channels, like ethnic media and relevant ethnic or partner organisations. It may need to go into communities, whether that is a specific industry sub-sector such as immigrant-run businesses, or it may need to go to remote indigenous communities. It may need to leverage other initiatives like English-language and literacy training to ensure that health and safety messaging is being understood.
- 119 Finally, the regulator needs to help employers deal with the challenge of CALD workers, especially in high-risk areas like construction (particularly with the current boom in Auckland), agriculture, and the health sector. It needs to provide specific guidance about how to assess and mitigate the risks to migrant workers and workplaces which have a range of diverse workers or people.

Goal B: Building everyone’s capability to do this well

- 120 Achieving this goal requires all actors in the system to understand their roles and accountabilities in improving health and safety at work, and how these link in with others’ roles and accountabilities. This is particularly crucial for CALD workers and employers who may be coming from a lower base level of knowledge than other workers and employers.⁷¹

⁷⁰ Email from Caroline Gall to Jacob Daubé, dated 6 September 2018.

⁷¹ Interview with Meta Antolin, Manager, Occupational Health and Safety Programs, Workers’ Safety and Compensation Commission of Northwest Territories and Nunavut (Mai Chen, 16 August 2018).

Priorities

- 121 **Priority 1** is “Encourage leaders at all levels to integrate health and safety.” The Strategy describes leadership as coming from all levels and parts of the system, stating that leadership means:⁷²
- Owners and directors of businesses ensuring their business decisions support better health and safety outcomes, including in contracting and supply chain management;
 - Workers, worker representatives and unions engaged and participating in improving health and safety in their work;
 - Sector groups supporting their businesses – both large and small – to improve health and safety across their sector by sharing what works;
 - Māori and community organisations working with businesses and government to find what works for their whānau and championing health and safety;
 - Government leading by example, providing practical guidance and support, and ensuring legislation is fit for purpose and proportionate; and
 - Educators and practitioners supporting high standards for health and safety advisors.
- 122 In implementing this priority, it is useful to consider that leadership means different things to different people. Specifically, depending on the national culture of workers, it may be more effective to have leadership come from a particular person or part of the system than others.⁷³
- 123 Beyond specific cultural influences, research has shown that “foreign/migrant workers are more likely to respond to and take advice from their peers and people within their community. They are less likely to seek advice from central/local government or official agencies.”⁷⁴ Therefore leadership from government and public sector agencies may be less effective for CALD employers and workers than education delivered by CALD peers.
- 124 The Strategy also talks about strengthening the capability of leaders within the system. An important part of this is strengthening the capability of PCBUs to manage risks, and specifically, to manage risks arising from ethnic, linguistic, and cultural diversity in the workplace. WorkSafe’s WEPR Good Practice Guidelines are a great example of how PCBUs can be supported to manage these risks. In strengthening leaders’ capability, it is also important to support those PCBUs who have CALD leaders to effectively prioritise health and safety, even though, due to their cultural background, they may have a different understanding of, or accord different or no weight to, such considerations.
- 125 The challenges identified and lessons learned from the overseas regulators suggest that more needs to be done to help employers of CALD workers, and employers who are CALD, to meet their obligations in respect of their workers. Practically, this requires them to:
- (a) Take steps to understand the cultural and linguistic composition of their workforce;
 - (b) Develop cultural capability to address those cultural factors; and
 - (c) Take steps to mitigate the effect of language barriers in the workplace.
- 126 We expand on these steps at Recommendations 12 and 13.

⁷² New Zealand Government, above n 30, at 3.

⁷³ For example, a Samoan worker may be more likely to follow the leadership of a Matai (loosely translates as “Chief”, a position of power and responsibility within the fa’amatai system in Samoa) colleague, than that of their Samoan boss who is not a Matai. Refer to the Superdiversity Institute’s report to ACC (December 2018, forthcoming) for a comprehensive discussion of the impact of national culture on health and safety attitudes and behaviours.

⁷⁴ Kevin Fear *Report of the Vulnerable Workers Working Group* (report to the Construction Industry Advisory Committee, Health and Safety Executive, 17 March 2009) <www.hse.gov.uk> at 5.

- 127 **Priority 2** is “Enable workers to be represented, engaged and to participate.” WorkSafe is already taking steps towards this priority through its WEPR Good Practice Guidelines, which elaborate on how PCBUs can enable workers to be represented, engaged, and to participate (as discussed in paragraphs 46 to 61).
- 128 In enabling CALD workers to engage, be represented, and participate in making their work healthier and safer, the lessons learned from the overseas regulators show that it is important, firstly, to understand the degree to which workers are aware of relevant health and safety regulations and practices, and secondly, to understand cultural and environmental influences, attitudes, and behaviours which might prevent them from speaking up. While the Good Practice Guidelines flag these as issues, they only provide very high-level guidance as to how PCBUs can overcome these barriers to ensure effective WEPR.

Current levels of health and safety awareness among CALD workers and employers

- 129 Research undertaken by the regulators we have studied has found a range of gaps in health and safety awareness, and in familiarity with relevant legislation and regulations, among both CALD workers and CALD employers.
- 130 This lack of awareness results from a range of factors, including language barriers, poor literacy levels, and insufficient training being provided (as discussed further at Recommendations 9 and 10).
- 131 However, this lack of awareness may also stem from over-qualification and downward mobility, as noted at paragraph 102. Overqualified migrants are often found doing dirty, dangerous, and difficult jobs (sometimes conceptualised as dirty, dangerous and demeaning).⁷⁵ Overqualified migrants can find themselves performing physically demanding manual labour for the first time in their new country, putting them at risk of physical injury. As Premji and Smith put it “the risk of sustaining a work injury is higher among those whose education exceeds that of job requirements.”⁷⁶ Premji and Smith’s study suggests that the causes of this include (among others) “skills obsolescence,” which means that “workers may not fully understand the risks connected to their job and may underestimate the knowledge and experience needed to perform their job safely.”⁷⁷
- 132 With respect to employers, in research from the United Kingdom relating to small business, “EMBs [ethnic minority businesses] as a whole were significantly less aware of the health and safety regulations than their white control counterparts.”⁷⁸ The qualitative evidence suggested that this resulted from “the aversion of some EM groups in particular to government intervention in their affairs and a lesser familiarity with the expectations of the United Kingdom regulatory system, compared with their white counterparts. The latter point was seen to apply particularly in the case of more recent immigrants and where there may be language barriers affecting the ability of some managers to make use of official sources of guidance.”⁷⁹

Attitudes and behaviours

- 133 A theme that arose from the research was the either apathetic or negative views of both CALD workers and employers towards health and safety regulators. Some employers and workers had not even heard of the relevant regulator’s existence. Where they were aware of the relevant regulator, some held feelings of alienation and hostility, and a desire to minimise contact with regulatory officials, due to the role comparable institutions played back in their birth countries.

⁷⁵ Joan Benach, Carles Muntaner, Carlos Delclos and others “Migration and ‘Low-Skilled’ Workers in Destination Countries” (2011) 8(6) *PLoS Med*, and see Philippe Legrain “Hiring Refugees Works for Business” *National Business Review* (11 August 2018, online ed).

⁷⁶ Stephanie Premji and Peter M Smith “Education-to-job mismatch and the risk of work injury” (2013) 19 *Injury Prevention* 106 at 106.

⁷⁷ Premji and Smith, above n 76, at 109.

⁷⁸ Vickers and others, above n 40, at 103.

⁷⁹ At 103.

- 134 CALD workers were reluctant to engage with the regulator during inspections. They feared retribution from speaking up about health and safety breaches. Many were not aware of legislative provisions prohibiting dismissal or other retributive actions.
- 135 At a New Zealand Asian Leaders' health and safety event on 20 September 2018, at which the Minister for Workplace Relations and Safety and ACC spoke, one of the speakers, Mikee Santos, Chair of Migrante Aotearoa (an advocacy organisation for Filipino workers), noted that workers are too scared to speak up about workplace issues which hinders their effective engagement and participation.⁸⁰ Many other Asian employers present at the event agreed. This suggestion is supported by research which has found that "temporary migrant workers depend on their employer for their work visas" and that accordingly, they felt unable to complain to authorities about poor treatment.⁸¹
- 136 **Priority 4** is "Develop and share better data and insights to improve decision making." As is demonstrated throughout this report, this issue is fundamental. It is the platform on which all other recommendations hinge. As stated in the consultation document for the development of the Strategy, "Good quality and timely information is crucial to identify risks and understand the drivers of harm. Mechanisms for sharing information across the health and safety at work system need to be strengthened to support better risk management practices including evaluation and alignment of effort."⁸²
- 137 The Working Safer blueprint suggested that as a response to data quality issues, WorkSafe would "augment its own data with information from other agencies (MBIE, Statistics NZ, ACC, and other regulators)."⁸³ WorkSafe's Regulatory Intelligence team has advised us that it is working to achieve this goal where possible. This is an important priority for improving WorkSafe's data on CALD workers, to better understand any challenges to injury and illness prevention and to devise effective solutions.
- 138 Similarly to WorkSafe, all the regulators surveyed had insufficient data regarding the vulnerability of CALD workers to confirm the precise scope and nature of the anecdotal evidence of problems. Often there was no matching of data between the regulator and the workers' compensation authority, where this could be a useful starting point for evidence. Also, many data sources do not capture information about ethnicity or language.
- 139 This is a significant challenge for health and safety regulators in identifying the vulnerabilities of different sorts of CALD workers and consequently, in identifying where effort is best directed. The data is also essential in identifying the causes of CALD workers' vulnerability.

Measurement

- 140 The Strategy states that "measuring how well we are doing is a key part of the Strategy," and that "we need to improve our ability to measure what matters."⁸⁴ To accurately measure progress towards the Strategy's vision, goals and priorities, government agencies will develop "a dashboard with an integrated set of indicators and insights that track the key things New Zealand needs to understand how we are making progress and where we need to focus our efforts."⁸⁵ The Strategy states that key work-related injury and health indicators will be broken down by sector and demographic groups (for example age, gender and, relevantly, ethnicity), so that outcomes

⁸⁰ More of Mikee Santos' views on this topic are available in the Superdiversity Institute's report to ACC (December 2018, forthcoming).

⁸¹ Christina Stringer "Worker Exploitation in New Zealand: A Troubling Landscape" (Human Trafficking Research Coalition, December 2016) <www.hagar.org.nz> and see Catriona MacLennan, "Migrant Filipino Workers in the Construction Industry" (a report funded by the New Zealand Industrial Relations Foundation Inc, July 2018).

⁸² New Zealand Government "Health and Safety at Work Strategy 2018 – 2028 | Background Information for Consultation" (April 2018) <www.mbie.govt.nz> at 21.

⁸³ At 10.

⁸⁴ At 6.

⁸⁵ At 5.

under the Strategy’s first goal can be tracked. The Strategy says that there will also be capability indicators which track progress against the priorities listed under the second goal.

- 141 The lessons learned from the overseas regulators are, as the Strategy puts it, “improv[ing] our ability to measure what matters” and are crucial to successfully reducing the risks to CALD workers of increased injury and illness in the workplace. Improving WorkSafe’s ability to measure what matters in the context of issues specific to CALD workers will require:
 - (a) Improved data collection on the health and safety risks, behaviours and attitudes of CALD workers;⁸⁶
 - (b) Flexible engagement with CALD communities to receive advice, feedback and input;⁸⁷
 - (c) Making decisions based on ‘good evidence’ by ensuring that:
 - (i) Policymakers have a consistent understanding of what constitutes ‘good evidence’;
 - (ii) Change is checked by assessing evidence from two different sources, rather than relying on self-reported evidence;⁸⁸
 - (d) Conducting ex post and ex ante reviews on research and interventions;⁸⁹ and
 - (e) Using clear and consistent definitions of different groups of workers.⁹⁰

Implementation

- 142 As New Zealand’s primary health and safety regulator, WorkSafe has a number of levers available to implement the vision, framework to action, goals, and priorities set out in the Strategy. These levers include:
 - (a) Regulatory activity;
 - (b) Engagement and education;
 - (c) Sector owned action plans;
 - (d) Incentives;
 - (e) Targeted programmes and interventions; and
 - (f) Partnerships with other government agencies and stakeholders.

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⁸⁶ See discussion at Recommendation 4.

⁸⁷ See discussion at Recommendation 8.

⁸⁸ Institute for Employment Studies *What works in delivering improved health and safety outcomes* (Health and Safety Executive, Research Report 654, 2008) at x.

⁸⁹ Above n 88, at x.

⁹⁰ See discussion at Recommendation 2.

Recommendations

- 143 This section makes high-level recommendations. Each recommendation is followed by a detailed discussion of the rationale for that recommendation. This discussion is followed by more detailed “action steps”, which go towards ensuring that CALD workers are not more vulnerable to injury and death in the workplace. The recommendations are set out in order of priority.
- 144 While the majority of the recommendations align to the implementation levers outlined above at paragraph 142, the first set of recommendations are relevant to WorkSafe’s internal capability, which is placed outside of the framework. We have not addressed the “incentives” lever as we do not have any recommendations relevant to that lever.
- 145 On the whole, while the overseas regulators have taken some good steps towards reducing injury and illness amongst CALD workers, there is a real opportunity for WorkSafe and New Zealand to show international leadership in this area by going beyond the steps taken overseas. These recommendations and action steps take the best lessons from the overseas regulators, but also include novel steps that could be taken by WorkSafe as a world leader in reducing injury and illness amongst CALD workers.

Recommendation 1: Apply a Superdiversity Framework to WorkSafe, including prioritising diversity in recruitment and training

- 146 To ensure that CALD workers are not more vulnerable to injury, ill-health and death at work, WorkSafe urgently needs to ensure a Superdiversity Framework is applied to its role to identify the issues specific to CALD workers and employers, including prioritising diversity in its own recruitment and in CQ and unconscious bias training given to its own staff.
- 147 **Superdiversity Framework:** WorkSafe should apply a superdiversity lens across the whole organisation.
- 148 In New South Wales (NSW), the requirements of the Multicultural NSW Act 2000 resulted in the implementation of a Multicultural Policies and Services Programme to ensure that WorkCover NSW’s planning, development and delivery of services was inclusive of the cultural, ethnic and religious needs of NSW.
- 149 New Zealand does not have equivalent legislation which requires public authorities to generally observe multicultural principles in conducting its affairs (although there are 330 specific references to multiculturalism and ethnic diversity in extant legislation and Bills before Parliament, which place their own specific obligations on public authorities).
- 150 Although, as detailed later in this section of the report, section 36(3)(f) of the Health and Safety at Work Act 2015 does require PCBUs to ensure that all persons are provided with necessary information, training, instruction and supervision to protect them from risks to their health and safety arising from work), neither the WorkSafe New Zealand Act 2013 nor the Health and Safety at Work Act 2015 explicitly require WorkSafe to take account of ethnic, cultural and linguistic diversity in its own activities and practices.
- 151 However, there is nothing prohibiting WorkSafe from doing so. To do so by applying a Superdiversity Framework across WorkSafe and its activities and practices, supports the Strategy’s Goal A / Priority 3 of supporting workers with greater need.
- 152 To most effectively apply a Superdiversity Framework across WorkSafe, the initiative should be “owned” by a senior leader and/or business unit. Staff supporting the initiative should have time allowed for that purpose, rather than just having to fit it in around other responsibilities.

- 153 All of the recommendations and action steps in this report flow from applying a Superdiversity Framework lens to WorkSafe and its activities. In other words, a Superdiversity Framework will assist WorkSafe to identify the impact of superdiversity on its activities (such as those impacts identified throughout this report). The action steps below regarding recruitment and training are designed to assist WorkSafe to build internal capability to continue to effectively apply a Superdiversity Framework lens to its current and future activities, beyond those identified in this report.
- 154 **Recruitment and leveraging existing CALD staff:** recruiting CALD staff (particularly multilingual staff), and improving their pipeline to leadership, should be a priority for WorkSafe. The overseas regulators suggested a number of reasons why recruitment should be a priority.
- 155 An identified challenge from the United Kingdom in Vickers’ research was the need to “improve the image of inspectors and the HSE, particularly with respect to those EM [ethnic minority] groups who have experienced the greatest difficulty around compliance and appear most mistrustful of government officials and bodies.” Having CALD staff who can communicate with those workers in their own language and in accordance with their cultural norms, can help overcome CALD workers’ and employers’ distrust of WorkSafe as a government agency, and encourage and empower workers to report breaches. In other words, workers being able to see themselves reflected in the organisation enhances trust. Useful case studies of steps taken by other New Zealand government departments (including the New Zealand Police and New Zealand Customs Service) to recruit and leverage CALD staff can be found in the *Superdiversity Stocktake*.⁹¹
- 156 An identified lesson learned from the Ontario bilingual summer student programme was that speaking to employers and workers in their own language can assist with drawing out useful health and safety insights that those workers would struggle to communicate in English, i.e. the distinction between the abstract notion of a right to refuse unsafe work, and the practical effect of being able to enforce that right.
- 157 What we learned from the overseas regulators was that diverse recruitment should be prioritised for the following reasons:
- (a) Firstly, it is a matter of equity. In a superdiverse city, your workforce should reflect your community, and this includes having CALD staff throughout the organisation, including in leadership roles.⁹² This increases trust in the institution from CALD people.
 - (b) Secondly, it has practical effects on education, investigation, and enforcement, both by direct interface of CALD staff with the community and by improved cultural capability of non-CALD staff. In respect of non-CALD staff, greater and more frequent exposure by staff to the populations they serve (by way of CALD colleagues) will improve their understanding of those populations and make initiatives more appropriate and responsive.⁹³
 - (c) In respect of CALD staff, particularly multilingual staff, they can use their innate understanding of ethnic groups and awareness of cultural norms to improve engagement with workers and employers; use their networks to more effectively gain access to ethnic communities, both to educate those communities and to identify compliance issues; and use their multilingual skills to overcome language barriers to ensure that messages are being effectively delivered.⁹⁴ We note that the New South Wales regulator specifically recruited ethnic applicants for their 2009 inspector recruitment round, using targeted advertising to encourage applicants from diverse backgrounds, including those with bilingual skills, to apply.⁹⁵

⁹¹ See Chen, Above n 7, at 244-324.

⁹² Interview with Jules Arntz-Gray and William Roy, Director of the Training and Awareness Branch and Director of the Strategy and Integration Branch, Prevention Office, Ontario Ministry of Labour (Mai Chen, 17 August 2018).

⁹³ Above n 92.

⁹⁴ Simon Hester “The London Outreach Worker Project” (paper presented to Construction Industry Advisory Committee, London, July 2010).

⁹⁵ See discussion at paragraph 657(b)(i).

Recommendation 1: Apply a Superdiversity Framework to WorkSafe, including prioritising diversity in recruitment and training

Action Step	Rationale	Link to goal or priority	Overseas or new initiative recommended by the Superdiversity Institute	Link to other recommendations and action steps
<p>Undertake a Superdiversity Framework Analysis of the whole WorkSafe organisation, by:⁹⁸</p> <ul style="list-style-type: none"> Identifying the specific issues that having a CALD workforce raises Ensuring WorkSafe has sufficient internal capacity to address these issues, by recruiting and leveraging CALD staff and training staff in cultural capability Determining how WorkSafe can fully perform all aspects of its statutory role to safeguard the health and safety of all New Zealanders. 	<p>A Superdiversity Framework Analysis will:</p> <ul style="list-style-type: none"> Strengthen leadership and accountability for CALD population initiatives within WorkSafe Improve strategic decision-making with regards to addressing the challenges faced by CALD workers. 	<ul style="list-style-type: none"> Goal A: Focusing on what will make the biggest impact to reduce harm Goal A / Priority 3: Workers with greatest need Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	<p>New initiative, however see “Cultural Safety Advancement” initiative of the Northwest Territories and Nunavut regulator.</p>	<p>The application of a Superdiversity Framework informs the application of all of the recommendations and action steps in this report.</p>
<p>Training:</p> <ul style="list-style-type: none"> Implement CQ training, including unconscious bias training, for WorkSafe staff, particularly those involved in policy or research design and frontline inspectors. 	<p>CQ training will:</p> <ul style="list-style-type: none"> Help WorkSafe staff ensure that they are effectively engaging with and educating CALD duty holders. 	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greatest need. 	<p>Adapted from initiative of the Northwest Territories and Nunavut regulator and building on the work of the Maruiti 2025 programme.</p>	<p>See Recommendations 7 and 8.</p>
<p>Recruitment and leveraging existing CALD staff:</p> <ul style="list-style-type: none"> Recruit CALD staff across the organisation in numbers at least commensurate with the indigenous/ethnic mix of New Zealand’s population Recruit CALD staff for specific positions as outreach workers and multilingual inspectors Improve the pipeline of CALD staff into leadership roles. 	<p>Recruitment of (and leveraging of existing) CALD staff will:</p> <ul style="list-style-type: none"> Address equity issues and help WorkSafe reflect the community it serves. <p>Recruitment of outreach workers and multilingual inspectors will:</p> <ul style="list-style-type: none"> Education: Help WorkSafe with effective outreach into ethnic communities, increasing/improving its profile with ethnic communities Engagement: Will enable more effective consultation and engagement with ethnic communities Enforcement: Improve the efficacy of responsive regulation efforts (through cultural sensitivity and speaking to employers and workers in their own languages, or offering them interpreters). 	<ul style="list-style-type: none"> Goal B: Building everyone’s capability to do this well. 	<p>Initiative of the Ontario regulator, in particular.</p>	<p>See Recommendations 7 and 8.</p>

⁹⁸ The Superdiversity Institute could undertake this work as part of the next proposal of work for WorkSafe.

Recommendation 2: Defining the problem, and consistency of definitions

- 160 This recommendation relates to the “partnerships with other government agencies and stakeholders” lever.
- 161 As is discussed in the ‘Definitions’ section of this report at paragraph 357 onwards, the term “CALD” encapsulates many different types of people, from temporary guest workers, and refugees at one end of the spectrum, new migrants in the middle, and 1.5/second/third generation migrants and the “visually diverse” at the other end.
- 162 It is important to have accurate definitions and to determine who is included/excluded in each definition, to determine the real size of the problem. The full range of CALD workers are not usually considered in discussions about “vulnerable workers”. These discussions have tended to be confined to “migrants” (usually new migrants). The definition of migrant also varies significantly.⁹⁹
- 163 The definitions used also have an important effect on what data is collected and the analysis generated from such data. It is also important that these definitions are used consistently, not just within WorkSafe but also in other government agencies.
- 164 Cross-government coordination in this respect can be difficult, but at the very least WorkSafe needs to ensure its definition includes all relevant vulnerable CALD workers. Internally, it also needs to use this definition consistently. WorkSafe should show leadership in getting consistent definitions across the sector.

⁹⁹ See paragraphs 112, 381–389, and Appendix E.

Recommendation 2: Defining the problem, and consistency of definitions

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
Clarify definitions – make clear that we are not only talking about new migrants or temporary foreign workers when we talk about CALD workers.	The term 'CALD' includes many different types of people. To have more accurate ideas about who is included in certain definitions and in assessing the extent of certain issues, clear definitions should be agreed.	<ul style="list-style-type: none"> Goal B / Priority 4: Develop and share better data and insights to improve decision making Goal A: Focusing on what will make the biggest impact to reduce harm. 	New initiative, based on challenges identified in approaches by overseas and New Zealand agencies.	See Recommendation 4.
Agree consistent definitions for different groups of CALD people, especially "migrants", across government agencies that WorkSafe interfaces with, if possible. If not, at least agree consistent definitions within WorkSafe.	Definitions of different groups are not always consistent between agencies and even within bodies. Given the impact of definitions on data, analysis and understanding of the size of certain problems, it is important that consistent definitions are employed.	<ul style="list-style-type: none"> Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative, based on challenges identified in approaches by overseas and New Zealand agencies.	See Recommendation 4.

Recommendation 3: Prioritise mental health of CALD workers arising from discrimination

- 165 This recommendation relates to the “targeted programmes and interventions” lever.
- 166 In the course of this research we have determined that mental health is the most urgent issue and gap facing CALD workers, mainly due to unlawful discrimination such as on the basis of ethnicity, race, and religion. The Health and Safety at Work Act 2015 has given increased visibility to mental health as a component of health and safety, and the need for associated risks to be managed.¹⁰⁰
- 167 For WorkSafe, mental health issues are just as important as physical health problems; under its legislation, and the two are actually linked. This point is well-made in the April 2017 issue of *Safeguard* magazine, which notes that “psychosocial risks are a work risk in the same way that biological, chemical or physical risks are, and the focus on eliminating or minimising them should therefore be the same.”¹⁰¹
- 168 WorkSafe has already recognised the need to focus more on mental health by commissioning a horizon scan on psychosocial risk factors, which will be an important foundation piece for the development of a broader focus by WorkSafe on mental health.¹⁰²
- 169 Our research and discussions with the overseas regulators have identified the following challenges in relation to the mental health of CALD workers:
- (a) Discrimination is a significant mental health risk factor for ethnically, culturally and linguistically diverse workers, particularly visually diverse workers;¹⁰³
 - (b) When considering discrimination in this context, it is crucial to recognise its many and varying impacts. Discrimination is a human rights issue, an employment issue, but also a health issue;¹⁰⁴
 - (c) Discrimination (as well as structural issues) can result in migrants performing jobs they are overqualified for, which impacts detrimentally on their mental health. Chen, Smith and Mustard found that “over-qualification, assessed in a variety of ways, is associated with declining mental health status over a four-year period among initially healthy immigrants.” Therefore new migrants’ downward mobility increases their risk of both physical and mental injury (an issue raised by several of the Canadian regulators).¹⁰⁵
 - (d) Racial discrimination in the workplace increases occupational stress for visually diverse workers in particular,¹⁰⁶ and in some cases, leads to severe mental injury;¹⁰⁷
 - (e) As a result of language barriers, CALD workers can suffer psychosocial risks such as poor support and poor workplace relationships, which affects their mental health (as highlighted by the Queensland regulator’s *Mentally Healthy Workplaces Toolkit*);¹⁰⁸

¹⁰⁰ See the meaning of “health” in the Health and Safety at Work Act 2015, s 16.

¹⁰¹ Chris Jones “Risks to mental health” *Safeguard Magazine* (online ed, March/April 2017).

¹⁰² Interview with WorkSafe staff (Mai Chen, 27 June 2018).

¹⁰³ See paragraphs 548 and 666–669.

¹⁰⁴ See paragraphs 69–78.

¹⁰⁵ See discussion at paragraphs 102, 131, 169(c), 208–212, and from 524.

¹⁰⁶ See Emma Wadsworth and others “Racial discrimination, ethnicity and work stress” (2007) 57(1) *Occupational Medicine* 18. The study “reported racial discrimination among black African–Caribbean females was strongly associated with high perceived work stress,” and cited previous research which had also identified racial discrimination as a contributory factor to stress among minority ethnic workers.

¹⁰⁷ A particularly illustrative example is found in the New Zealand Herald, “Māori man given ‘black guy repellent’ takes employer to court” (13 August 2018) New Zealand Herald <www.nzherald.co.nz> which describes the experiences of a Māori Niuean man working in Queensland who was “racially vilified on numerous occasions” by his colleagues and has claimed to need “extensive psychiatric support” following diagnoses of severe depression and agoraphobia resulting from the abuse. The outcome of the case is not yet known. Workplace racism is not confined either to discrimination by Pakeha against the visually diverse. The case of *Satnam Singh v Shane Singh and Scorpion Liquor* (2006) Ltd [2015] HRRT 8, discussed at paragraph 70 onwards, shows the devastating effect of racism by ethnic minorities against ethnic minorities, culminating in serious mental injury.

¹⁰⁸ Professor Margaret Brunton and Catherine Cook “Dis/Integrating cultural difference in practice and communication: qualitative study of host and migrant Registered Nurse perspectives from New Zealand” (2018) 83 *International Journal of Nursing Studies* 18–24.

- (f) Pre-existing trauma, especially of refugees, is exacerbated by the nature of work and workplace conditions in which CALD workers find themselves (an issue highlighted by the Queensland regulator);¹⁰⁹
 - (g) Lack of cultural capability in the workplace from employers, fellow employees, and in the health care context, patients;¹¹⁰ and
 - (h) Lack of cultural safety in the workplace, including not being able to use their own language or practise their religion.¹¹¹ This issue was highlighted by both the Queensland regulator, and Northwest Territories and Nunavut regulator. New Zealand studies support the concern that lack of cultural safety can cause “high levels of occupational stress.”¹¹²
- 170 To address the effects of workplace discrimination on the health, and especially on mental health, of CALD workers, it is crucial to make this issue visible, define it, collect data, and create targeted solutions that prevent it, and address its effects.
- 171 Drawing all these threads together, we suggest that a concept of mental health that is truly responsive to CALD workers should include the following:
- (a) An ability to be yourself at work, and an awareness of the impact this has on self-esteem and mental well-being.¹¹³ The ability to be yourself at work is something that has been shown by research to be exceptionally difficult for CALD workers. In Professor Margaret Brunton’s recent research into internationally qualified nurses, a Samoan internationally qualified nurse “spoke of having to sacrifice preferred communication patterns in order to fit in”; a Chinese internationally qualified nurse feared being misunderstood; and a Māori nurse said “I sometimes feel out of depth working in my own work environment and feel like I’m a minority.”¹¹⁴ Professor Brunton’s research suggested that increased cultural capability in the workplace could mitigate the frequency and degree of these difficulties.
 - (b) An awareness of the importance of connection and collegiality in the workplace. Quality and quantity of individuals’ social relationships has been linked not only to mental health but also to both morbidity and mortality.¹¹⁵ Being “acutely lonely” has been found to be as stressful as experiencing a physical assault.¹¹⁶ Given the bulk of time spent by most working-age adults is at work, it goes without saying that workplace relationships are a significant aspect of most individuals’ social relationships, and that a lack of collegial impacts in the workplace will affect your propensity to be “acutely lonely”.¹¹⁷ Professor Margaret Brunton’s study has shown that migrant nurses struggle to integrate in the New Zealand context as a result of language barriers, and even perceived language barriers, and this has negative effects on their workplace experience, and likely on their mental health.

¹⁰⁹ See paragraph 669.

¹¹⁰ See paragraphs 665-668 and see Brunton and Cook, above n 108.

¹¹¹ See paragraph 72 onwards.

¹¹² Lisa Stewart and Dianne Gardner “Developing Mahi Oranga: A Culturally Responsive Measure of Māori Occupational Stress and Wellbeing” (2015) 44(2) New Zealand Journal of Psychology 79, citing Victoria Simon, above n 38.

¹¹³ See paragraph 70 onwards for an illustrative example in Satnam Singh v Shane Singh and Scorpion Liquor, above n 35.

¹¹⁴ Brunton and Cook, above n 108.

¹¹⁵ Julianne Holt-Lunstand, Timothy B Smith, J Bradley Layton “Social Relationships and Mortality Risk: A Meta-analytic Review” (2010) PLOS Medicine.

¹¹⁶ Johann Hari Lost Connections (Bloomsbury, New York) at ch 7.

¹¹⁷ At ch 7.

Recommendation 3: Prioritise mental health of CALD workers

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
Urgently prioritise mental health as an area of significant risk for CALD workers: make the problem visible, both internally at WorkSafe, and in external communications.	Given the particular risks to mental health faced by CALD workers, it is crucial to make the issue visible, define it, collect data. While workplace discrimination is an employment and human rights issue, it affects health in a serious way and should therefore be a priority for WorkSafe to target it along with other participants in the health and safety system.	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	New initiative.	See Recommendations 2, 5, and 6.
In line with section 10(k) of the WorkSafe New Zealand Act 2013, partner with the Human Rights Commission to address workplace discrimination (including interference with rights under section 20 of the Bill of Rights Act 1990), or the causes of mental health issues.	Discrimination is a significant mental health risk factor for ethnically, culturally and linguistically diverse workers, particularly visually diverse workers. Partnering with the Human Rights Commission will allow WorkSafe to adopt a cross-sectoral approach to addressing a key cause of mental health risk for CALD workers.	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	New initiative.	See Recommendations 8, 9, 11, and 12.
Determine a definition of mental health which is appropriate to the circumstances of CALD workers, and incorporates the ability to be yourself at work, and a focus on connection and collegiality.	As part of prioritising mental health as an area of significant risk for CALD workers, it is important that the definition of mental health chosen is responsive to the particular needs of CALD workers. The definition must address the particular difficulties for CALD workers, including being yourself at work and finding connection and collegiality in the workplace.	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	New initiative.	Recommendations 2 and 5.
Collect data on the links between workplace discrimination and physical and mental injury and illness.	Mental health is an emerging priority area for regulators, both in New Zealand and overseas. More research on the links between workplace discrimination and physical and mental injury is required to ensure that WorkSafe’s response is as effective as possible in this area.	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative.	See Recommendation 4.

Recommendation 4: Improving the data collected about CALD workers

- 172 This recommendation relates to the “partnership with other government agencies and other stakeholders” lever.
- 173 In discussions with the overseas regulators, many advised that they had insufficient data regarding the vulnerability of CALD workers to confirm anecdotal evidence of problems. Often there was no matching of data between the regulator and the workers’ compensation authority, where this could be a useful starting point for evidence. Also, many data sources do not capture information about ethnicity or language.
- 174 As discussed previously at paragraph 137, the Working Safer blueprint suggested that as a response to data quality issues, WorkSafe would “augment its own data with information from other agencies (MBIE, Statistics NZ, ACC, and other regulators).”¹¹⁸ WorkSafe’s Regulatory Intelligence team has advised us that it is working to achieve this goal where possible. We confirm that a key lesson to be learned from the overseas regulators is the urgent importance of improving WorkSafe’s data on CALD workers, to better understand any challenges to injury and illness prevention and to devise effective solutions.
- 175 The first step is to determine whether or not CALD workers in New Zealand are more vulnerable to injury and illness in the workplace than other workers. There is strong evidence, both published and anecdotal, from across the jurisdictions surveyed to suggest this is the case.¹¹⁹ In New Zealand, WorkSafe must improve data collection to determine whether or not these anecdotal suspicions are confirmed by hard evidence (and this data analysis must account for the likelihood of underreporting from CALD workers). This will require working with ACC to expand the capture and disaggregation of information in accident reporting data collection. In line with Recommendation 2, ACC will also need to adopt a similarly broad definition of CALD workers. It will also require WorkSafe to amend incident reporting forms to include information about the nationality, country of birth, first language and/or year of entry into New Zealand of the employers and workers involved.
- 176 This information will help contribute to the comprehensiveness and accuracy of the dashboard report, which will be built by government agencies over the next few years, as set out in the Strategy.¹²⁰ By ensuring that the data collected and displayed in the dashboard is sufficiently inclusive of CALD workers, we will be able to easily see trends and adjust policies and processes to reduce the risk of workplace injury and illness for those workers.
- 177 Secondly, WorkSafe should improve analysis of existing data to determine the factors that contribute to CALD workers’ injury and illness. The challenges identified by the overseas regulators suggest the following priority areas for research:
- (a) CALD worker awareness of the regulator and its functions;
 - (b) CALD worker attitudes towards the regulator;
 - (c) The extent to which language barriers contribute to non-compliance;
 - (d) The most effective education and awareness mechanisms for CALD workers;
 - (e) The extent of understanding by CALD workers of their rights; and
 - (f) The extent of understanding by CALD employers of their duties.

¹¹⁸ Ministry of Business, Innovation and Employment, above n 18, at 10.

¹¹⁹ See paragraph 329 for published evidence, and refer to each country section for further information for each jurisdiction.

¹²⁰ New Zealand Government, above n 72, at 6.

- 178 The relevant challenges identified suggesting that such research is necessary are:
- (a) Research from the United Kingdom regulator suggesting that:
 - (i) CALD workers' awareness of the existence of the regulator is low,¹²¹ and attitudes towards that regulator are dim;¹²²
 - (ii) Language difficulties may have sometimes been exaggerated by ethnic minorities as an excuse for non-compliance. Inspectors however, were more likely to identify language as a barrier with respect to the comprehension of employees.¹²³ This suggests that more research may be required about the extent of language barriers in such interactions;
 - (iii) Foreign/migrant workers are more likely to respond to and take advice from their peers and people in the community, rather than from government,¹²⁴ and
 - (b) Research from Canada suggested that some CALD workers did not properly understand their right to freedom from reprisal for a health and safety reason.¹²⁵
- 179 WorkSafe already collects useful data about awareness and attitudes through its Attitudes and Behaviours Survey, but this survey has not resulted in suitable data about CALD workers' awareness and attitudes. WorkSafe should therefore prioritise the collection and analysis of information about CALD workers' and employers' awareness and attitudes, as a baseline to develop relevant awareness, education, and engagement programmes. In designing data collection methodologies, WorkSafe should use culturally appropriate survey designs in order to be able to make validated findings.
- 180 Finally, there are areas in which new research is required (i.e. which cannot be understood by improving data capture, matching, or analysis through existing means). These include:
- (a) The impact of traumatic experiences on levels of risk perception / risk blindness among migrant workers, especially refugees;¹²⁶
 - (b) The extent to which language barriers contribute to non-compliance with health and safety legislation and regulations by CALD employers and employees;
 - (c) The most effective education and awareness mechanisms for CALD workers; and
 - (d) The extent of understanding by CALD workers of their rights.
- 181 The relevant challenges identified from overseas regulators suggest that the following areas need to be researched in the New Zealand context:
- (a) Anecdotal evidence from the Queensland regulator that African (particularly Sudanese) workers and others from war-torn regions were likely to have suffered trauma which impacted their understanding of Australian workplace health and safety culture. For instance, workers with a lower level of risk perception did not comprehend smaller risks to be issues, such as bending and lifting, slips, trips and falls. This adds to the difficulty of ensuring that culturally diverse workers fully understand prevention messages. With New Zealand's refugee quota set to rise to 1050 by 2020, this is a live issue for New Zealand.

¹²¹ Vickers and others, above n 40, at 94.

¹²² At 75.

¹²³ At 75.

¹²⁴ Fear, above n 74, at 5.

¹²⁵ Angela Robertson and others "Executive Summary for CTCHC's Healthy Nail Salon Workers Project" (2015) <www.pgwhc.org>.

¹²⁶ See the Superdiversity Institute's report to ACC (December 2018, forthcoming) for further information about risk perception and risk blindness in different ethnic groups and cultures.

Recommendation 4: Improving the data collected about CALD workers

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
Work with ACC to expand the capture of information in accident reporting data collection to include nationality, country of birth, first language or year of entry into NZ.	In order to confirm anecdotal evidence that CALD workers in New Zealand are at greater risk of injury and illness in the workplace, WorkSafe must improve data collection to obtain hard evidence in this area. This will require working with ACC to expand the capture of information in accident reporting data collection.	<ul style="list-style-type: none"> Goal A: Focusing on what will make the biggest impact to reduce harm Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative; Based on challenges faced by overseas regulators	Supports Recommendations 1, 3, 5, and 6 in particular.
Amend incident reporting forms to require information about the nationality, ethnicity, country of birth, first language or year of entry into New Zealand of employers and workers involved.	To obtain this hard evidence, data collection should capture information on language and ethnicity. Incident reporting forms should be amended to require ethnicity information of both employers and workers to be included.	<ul style="list-style-type: none"> Goal A: Focusing on what will make the biggest impact to reduce harm Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative; Based on challenges faced by overseas regulators	Supports Recommendations 1, 3, 5, and 6 in particular.
Improve data-matching between WorkSafe and relevant agencies such as ACC, MBIE, Immigration NZ, Department of Internal Affairs, and Statistics NZ (this includes working from the same base assumptions, i.e. definition of “migrant”).	Data matching is an important priority for improving WorkSafe’s data on CALD workers, to better understand any challenges to injury prevention and to devise effective solutions.	<ul style="list-style-type: none"> Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative; Based on challenges faced by overseas regulators	Supports Recommendations 1, 3, 5, and 6 in particular.
Crioritise the collection and analysis of information about CALD workers’ awareness and attitudes, as a baseline to develop relevant awareness, education, and engagement programmes.	In order to develop appropriate and effective awareness, education and engagement programmes for CALD workers, WorkSafe needs to have accurate information about CALD workers’ awareness of and attitudes towards WorkSafe. WorkSafe should use culturally appropriate survey designs in order to be able to make validated findings	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative; Based on challenges faced by overseas regulators	Supports Recommendations 9, 11, and 14 in particular.
Commission research to improve the knowledge base around factors that contribute to CALD worker vulnerability.	Drawing from the work in New Zealand and by overseas regulators, certain areas for further research can be identified. These include: i) the impact of traumatic experiences on risk perception/blindness; ii) the relationship between language barriers and non-compliance with health and safety legislation; iii) the most effective education and awareness mechanisms for CALD workers; iv) the extent of understanding of CALD workers of their rights; v) the role of advice given by peers and people in the community; and vi) the understanding of the right to freedom from reprisal; WorkSafe should develop a research programme addressing how these issues affect CALD workers in New Zealand.	<ul style="list-style-type: none"> Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	New initiative; Based on areas for research identified by overseas regulators	Supports Recommendations 1, 3, 5, and 6 in particular.

Recommendation 5: Take an intersectional approach to vulnerable work factors

- 183 This recommendation relates to the “targeted programmes and interventions” lever.
- 184 All of the overseas regulators’ surveyed used concepts of “vulnerability” when talking about CALD workers. In our view, the Ontario Vulnerable Worker Task Group expressed the concept in the best way. They found that there are three types of vulnerability characteristics: individual, workplace, and work activity, and that, “depending on the circumstances, the significance of each characteristic changes in contributing to a worker’s overall vulnerability.”¹²⁷
- 185 In considering all of these factors, the Ontario Vulnerable Worker Task Group identified the following groups of workers as having the greatest vulnerability to injury and illness at work:
- (a) Foreign workers hired to address temporary or seasonal labour shortages;
 - (b) Workers with very low wages holding multiple part-time jobs;
 - (c) Recent immigrants;¹²⁸
 - (d) Workers in the temporary staffing industry; and
 - (e) Workers engaged in high hazard work.
- 186 Moreover, a recent Canadian study found that “most newcomers experience multiple forms of vulnerability – the jobs described [by participants in the study] involved poor working conditions and unsafe situations without adequate policies and procedures related to OHS, had limited knowledge of OHS and their rights in the workplace and felt uncomfortable questioning their working conditions or reporting hazards or respond to OHS issues.”¹²⁹
- 187 The benefit of the Ontario Vulnerable Worker Task Group’s approach is that it addresses the underlying reasons that make CALD workers more vulnerable, while avoiding stereotyping. The Ontario Vulnerable Worker Task Group made this point explicit with the following example: “a newcomer starting a full-time office-based job may be less vulnerable than someone who speaks English as a first language and is in the first 30 days of a contract job that requires operating heavy machinery.”¹³⁰
- 188 This is important as it suggests that a strategy focusing purely on CALD workers’ individual attributes may not be as effective as one that also focuses on workplace attributes that are common to CALD workers, or work activities that are disproportionately undertaken by CALD workers.¹³¹
- 189 This approach also recognises the intersectional nature of workplace vulnerability. The concept of intersectionality (discussed in detail in the Superdiversity Institute’s *The Diversity Matrix: Updating What Diversity Means for Discrimination Laws in the 21st Century*) means taking into account multiple aspects of a person’s demographic characteristics where these converge and intersect. So not just considering (for example) ethnicity in isolation, but considering ethnicity in combination with gender, sexuality, age, religion (or lack of religious belief) and (dis)ability.

¹²⁷ See paragraph 466.

¹²⁸ The report did not specify if these “recent immigrants” had any other common characteristics, i.e. visually diverse, or from distant cultures.

¹²⁹ Basak Yanar, Agnieszka Kosny, and Peter Smith “Occupational Health and Safety Vulnerability of Recent Immigrants and Refugees” (2018) 15(9) *International Journal of Environmental Research and Public Health* 2004 at 2014.

¹³⁰ Vulnerable Worker Task Group “Report and Recommendations to the Chief Prevention Officer” (December 2015) at 10.

¹³¹ See paragraph 466.

- 190 A particular intersection of vulnerability identified by the overseas regulators was ethnic women, who are particularly prevalent in particular industries, such as nail salon workers,¹³² and aged care workers.¹³³ Ethnic women also often earn the least of all groups,¹³⁴ which contributes to their increased vulnerability.¹³⁵
- 191 Intersectionality is relevant to workplace health and safety in recognising that vulnerability factors will have a more adverse impact on some workers more so than others. A useful example is precarious employment. While precarious employment is “an everyone problem” (as Associate Professor MacEachen put it), the adverse effects of precarious employment are compounded for CALD workers because of other factors. For example, many migrant workers face unique economic pressures, such as a requirement to send remittances home on top of using income to support themselves. Therefore, the impact of precarious work (low-waged and unstable) when combined with a requirement to send home remittances, can incentivise workers to engage in unsafe practices such as multiple back-to-back shifts, thereby having an adverse effect on their workplace health and safety.¹³⁶ These factors mean that workers can feel unable to walk away from unsafe jobs. The concept of intersectionality is also particularly relevant to discrimination, which is addressed in more detail in the mental health section of these recommendations.¹³⁷
- 192 Intersectionality is also relevant to considering the reach of interventions. In British Columbia, the First Nations Youth project was implemented in order to address a gap in WorkSafeBC’s Young and New Worker programme. They found that the Young and New Worker programme, which was aimed at young and new workers via their school teachers, was not reaching indigenous youth because teachers of independent First Nations Youth were not represented at the teacher association conferences WorkSafeBC was attending to deliver the programme. They also found that indigenous youth had a lower graduation rate, and dropped out earlier. This meant that they were missing out on health and safety education which was being delivered in the later years of high school. Therefore this sort of intersectional analysis is very relevant to ensuring that interventions are reaching CALD and indigenous workers.

¹³² See paragraph 482.

¹³³ See paragraph 686.

¹³⁴ Mai Chen “The Diversity Matrix: Updating What Diversity Means for Discrimination Laws in the 21st Century” (2016) <www.superdiversity.org> at 13.

¹³⁵ See discussion on precarious work at paragraph 549.

¹³⁶ Otero and Preibisch, above n 49, at 37.

¹³⁷ See Recommendation 3.

Recommendation 5: Take an intersectional approach to vulnerable work factors

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Use the Ontario Vulnerable Worker Task Group approach to worker vulnerability in analysing CALD workers, which is to understand the three types of vulnerability characteristics (individual, workplace, and work activity), and to synthesise these to determine which workers are most vulnerable.</p>	<p>This approach has two main benefits. First, it addresses the underlying reasons that make CALD workers more vulnerable, while avoiding stereotyping. Second, it recognises the intersectional nature of workplace vulnerability.</p> <p>This sort of analysis will be benefited by, and will itself benefit, improved data collection.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Initiative of the Ontario Vulnerable Worker Task Group.</p>	<p>See Recommendations 2 and 4.</p>
<p>Understand all the factors that make CALD workers vulnerable and how to provide support.</p>	<p>Improved understanding and synthesis of these types of vulnerability, and how they interrelate, will aid strategic decision making and targeted intervention.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Build on research already undertaken by overseas regulators; for example, HSE research reports.</p>	<p>See Recommendations 2, 3, 4, 6, and 8.</p>
<p>Use an intersectional lens when identifying gaps and developing initiatives for interventions addressed towards CALD workers, but also in other initiatives where an intersectionality lens could reveal double disadvantage effects on CALD workers.</p>	<p>Focussing on intersectionality will allow WorkSafe to consider how multiple aspects of a person’s demographic characteristics where these converge and intersect. This is particularly relevant in the health and safety context for identifying where workers may be suffering under greater disadvantage, and for tailoring initiatives to make sure that they are accessible to all CALD workers.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Broaden programmes undertaken by other regulators; for example, the First Nations Youth project in British Columbia.</p>	<p>See Recommendation 4 and 9.</p>

Recommendation 6: Taking a strategic and system-level approach to upstream factors

- 193 This recommendation relates to the “partnerships with other government agencies and stakeholders” lever.
- 194 While our review found that the regulators’ initiatives to address the health and safety of CALD workers has tended to relate mainly to downstream interventions such as translation of relevant health and safety materials, the lessons learned from other regulators suggest the structural issues discussed below are a significant cause of greater health and safety vulnerability, such as labour market stratification and credentialing. These factors particularly affect temporary foreign workers and new migrants.
- 195 While some of these structural factors are out of scope of WorkSafe’s functions, it is important that WorkSafe is aware of these factors, given their impacts on health and safety of CALD workers. Consistent with its statutory functions in sections 10(b),(i) and (k) of the WorkSafe New Zealand Act 2013, WorkSafe can also take steps to engage and advocate with other agencies which do have the ability to address the relevant issues. For example, WorkSafe’s response to the request for information from the Government’s Inquiry into Mental Health and Addiction 2018 shows that responding to similar opportunities of relevance to CALD workers may effectively allow WorkSafe to contribute its expertise in areas where it has no direct regulatory role.
- 196 Particular structural issues affecting CALD workers are discussed below.

Precarious employment

- 197 The International Labour Organisation (ILO) has characterised “a precarious job” as one “defined by uncertainty as to the duration of employment, multiple possible employers or a disguised or ambiguous employment relationship, a lack of access to social protection and benefits usually associated with employment, low pay, and substantial legal and practical obstacles to joining a trade union and bargaining collectively.”¹³⁸
- 198 Precarious employment has been associated “with a deterioration in occupational health and safety (OHS) in terms of injury rates, disease risk, hazard exposures, or worker (and manager) knowledge of OHS and regulatory responsibilities.”¹³⁹ Lewchuck’s research “suggests that increased overall employment insecurity in labour markets will be associated with poorer health outcomes, increased anxiety at home, delayed household formation and greater social isolation.”¹⁴⁰
- 199 CALD workers are overrepresented in precarious employment (which includes the gig economy). The term “gig economy” usually refers to types of work where a company provides a digital platform which is used by individuals to engage in short-term or “payment by task” jobs.¹⁴¹ The digital platform is usually a website or app.¹⁴² However, the term has also been used to describe labour markets which are mainly characterised by freelance work and/or short-term contracts (regardless of whether a digital platform is used) rather than permanent jobs.¹⁴³
- 200 Research from Oxford University has found that the benefits of the flexibility and autonomy of the gig economy are accompanied by downsides such as “long, irregular and anti-social hours, sleep

¹³⁸ International Labour Organisation *From Precarious Work to Decent Work: Outcome Document to the Workers’ Symposium on Policies and Regulations to combat Precarious Employment* (International Labour Office, Geneva, 2012).

¹³⁹ Michael Quinlan, Claire Mayhew, and Philip Bohle “The Global Expansion of Precarious Employment, Work Disorganization, and Consequences for Occupational Health: A Review of Recent Research” (2001) 31(2) *International Journal of Health Services* 335.

¹⁴⁰ Wayne Lewchuck “Precarious Jobs: Where are They, and How Do They Affect Well-Being?” (2017) 28(3) *Economic and Labour Relations Review* 417.

¹⁴¹ James Ainsworth “Gig Economy: Introduction” (November 2017) House of Lords at 1; Department for Business, Energy & Industrial Strategy “The Characteristics of those in the Gig Economy: Final Report” (February 2018) <www.natcen.ac.uk> at 4.

¹⁴² At 1.

¹⁴³ At 1.

deprivation and exhaustion.” Additionally, “more than half of the 700 online white-collar workers in Southeast Asia and Africa that it interviewed complained they had to work ‘at very high speeds’ and nearly a quarter reported experiencing pain as a result of their work.”¹⁴⁴

Young workers

201 Gig workers are disproportionately young: The United Kingdom Royal Society for the Encouragement of Arts, Manufactures and Commerce (RSA) found that 86% of gig workers are under the age of 55, and that “when contrasted with the rest of the labour market, the gig economy is especially young. Gig workers are more likely to be between the ages of 16 – 30 (34 percent) than employees (26 percent) or other self-employed workers (11 percent).”¹⁴⁵ Given this age distribution, and taking into account the fact that the ethnic population of the United Kingdom is disproportionately young, it is likely that gig work is also disproportionately ethnic. This is supported by findings of research conducted by the United Kingdom’s Trades Union Congress (TUC), based on the Office for National Statistics’ Labour Force Survey, which found that casualisation has a disproportionate effect on young black and minority ethnic (BME) workers, with 15.2% of young BME workers working in non-permanent jobs compared to 8.4% amongst young white workers.¹⁴⁶ Research from the United States suggests that gig work may be disproportionately taken up by ethnic people: “fourteen percent of African Americans and 11% of Latinos reported doing gig work in the last year compared with 5% of whites.”¹⁴⁷ Therefore, it is likely that people working in precarious employment have multiple vulnerability factors (i.e. young and migrant), thus increasing their risk of workplace injury and illness.

202 New Zealand’s ethnic population is disproportionately young. The median age for each of the key ethnic groups in 2013 was: European, 41 years; Māori, 23.9 years; Pacific people, 22.1 years; and Asian, 30.6 years.¹⁴⁸

203 Associate Professor MacEachen highlighted that precarious employment is becoming more common (by way of example, between 1997 and 2011, the number of workers with temporary jobs in the Toronto area increased by 40%).

204 The regulators we spoke to had not considered precarious work as an issue of concern affecting CALD workers. However given precarious work is a factor for increased worker vulnerability,¹⁴⁹ and given CALD workers are overrepresented in precarious employment (as above), we recommend WorkSafe focus on precarious employment and the gig economy as areas of high-risk for CALD workers. Other organisations, such as the Ontario Institute for Work and Health, have recognised precarious employment as an emerging issue and one which particularly affects migrant workers, in 2018 sponsoring “Work, Migration and Health: A Forum on Precarity, Vulnerability, Health and Safety among Newcomers and Temporary Foreign Workers in Canada”.¹⁵⁰

Shadow economy

205 A 2017 OECD report defines the “shadow economy” as “economic activities, whether legal or illegal, which are required by law to be fully reported to the tax administration but which are not reported and which therefore go untaxed unlike activities which are so reported.”¹⁵¹ The shadow economy is also known as the “underground economy” or “hidden economy”. In New Zealand,

¹⁴⁴ Tom Pullar-Strecker “The dark side of the gig economy” *New Zealand Herald* (26 August 2018), citing Alex Wood, Vili Lehdonvirta and Mark Graham “Workers of the Internet unite? Online freelancer organisation among remote gig economy workers in six Asian and African countries” (2018) 33(2) *New Technology, Work and Employment* 95.

¹⁴⁵ Brhmie Balaram, Josie Warden and Fabian Wallace-Stephens “Good Gigs: A fairer future for the UK’s gig economy” RSA Action and Research Centre (2017) <thersa.org>.

¹⁴⁶ TUC “Living on the Margins: Black Workers and casualization” (20 April 2015) <www.tuc.org.uk> at 10.

¹⁴⁷ Aaron Smith “Gig Work, Online Selling, and Home” Sharing PEW Research Center (17 November 2016).

¹⁴⁸ Statistics NZ “2013 Census: Cultural Diversity” (3 December 2013) <www.stats.govt.nz>.

¹⁴⁹ See Elsa Underhill and Michael Quinlan “How Precarious Employment Affects Health and Safety at Work: The Case of Temporary Agency Workers” (2011) 66(3) *Relations industrielles* 397.

¹⁵⁰ Work, Migration and Health Forum (2018) <www.wmhforum2018.ca>.

¹⁵¹ OECD “Shining Light on the Shadow Economy: Opportunities and Threats” (29 September 2017) <www.oecd.org>.

while Inland Revenue has not estimated the size of the hidden economy, it has identified sectors of the economy where it considers non-compliance with tax regulations to be more likely, namely the hospitality industry, agriculture and horticulture sectors, which are sectors with large numbers of temporary migrant workers.¹⁵²

- 206 The Ontario Vulnerable Worker Task Group identified participation in the “underground economy” as a contributing factor to worker vulnerability, stating “by its very nature, the underground economy operates outside of the occupational health and safety system, and therefore places workers at increased vulnerability.”¹⁵³ It recommended a campaign that (a) raised awareness about the consequences and risks of participating in the underground economy and (b) educated consumers about the impact of their behaviour on the underground economy. The Ministry of Labour accepted these recommendations, and runs such a campaign. This awareness campaign does not highlight the risks to workers in the underground economy, rather focusing on the impact of the loss to government of tax revenue.
- 207 While the campaign has not been evaluated, we suggest that the campaign as currently framed is not an appropriate mechanism for addressing the impact on CALD workers of participation in the underground economy. Should WorkSafe run such a campaign, there could be an opportunity to be more explicit about the adverse effect on workers, including CALD workers, who work in sectors prone to non-compliance with tax regulations, of participation by consumers in the underground economy. This could be beneficial both for those workers, but also in addressing the underground economy more generally, because it would go some way to addressing the perception of participation in the underground economy as a “victimless” crime. There is also scope to engage directly with workers working in the underground economy to inform them of their rights (for example, by conducting inspections “after-hours”, as discussed at Recommendation 5).

Over-qualification

- 208 Both the United Kingdom and Canadian regulators highlighted the issue of CALD workers being overqualified. “Over-qualification” describes the situation where new migrants from professional backgrounds are unable to find jobs commensurate with their professional experience. In its 2013 concluding observations on New Zealand, the Committee on the Elimination of Racial Discrimination also expressed concern at the persistent discrimination against migrants, particularly of Asian descent, in the labour market, including reports of inadequate recognition of their educational qualifications.¹⁵⁴ Asians with a Bachelor’s degree were three times more likely to be working as clerical or administrative than the New Zealand average (33% versus the national average of 11%).¹⁵⁵ Pay equity is also a challenge for ethnic minorities in the employment context. Research conducted in 2009 concluded that the “migrant effect” meant overseas-born Pacific peoples earned 31% less than New Zealand-born Europeans, and overseas-born Asians earned up to 24% less.¹⁵⁶
- 209 This can stem from credentialing issues, whereby overseas professional qualifications are not recognised in the receiving country. Statistics from a 2013 biotechnology industry Foreign Professional Labour Market Report in Canada illustrate the issue of credentialing for migrant workers. One of the top two reasons Internationally Educated Professionals (IEPs) go to Canada is job opportunities, and yet the unemployment rate is high after arrival (44.3% among respondents).¹⁵⁷

¹⁵² Ministry of Business, Innovation and Employment “The rise of temporary migration in New Zealand and its impact on the labour market” (2013) <www.mbie.govt.nz>.

¹⁵³ Vulnerable Worker Task Group, above n 130, at 22.

¹⁵⁴ Chen, above n 7, at 108.

¹⁵⁵ At 109.

¹⁵⁶ At 109.

¹⁵⁷ Biotalent Canada “Talent Opportunities: Bringing Newcomers to Canada’s Bio-economy” (November 2013) <www.biotalent.ca>.

- 210 Often, however, over-qualification results from discrimination, particularly demands for local work experience as a prerequisite for most jobs (as in the dishwashing job example highlighted in this report's section on Canada).
- 211 Overqualified migrants are often found doing dirty, dangerous, and difficult jobs (sometimes conceptualised as dirty, dangerous and demeaning).¹⁵⁸ Overqualified migrants can find themselves performing physically demanding manual labour for the first time in their new country, putting them at risk of physical injury. As Premji and Smith put it, "the risk of sustaining a work injury is higher among those whose education exceeds that of job requirements."¹⁵⁹ Premji and Smith's study suggests that the causes of this include (among others) "skills obsolescence" which means that "workers may not fully understand the risks connected to their job and may underestimate the knowledge and experience needed to perform their job safely."¹⁶⁰
- 212 Over-qualification also has a significant impact on mental health. Chen, Smith and Mustard describe over-qualification as "a chronic work stressor created by the inability of an individual to exercise control over deficiencies in their employment status." Chen, Smith and Mustard found that "over-qualification, assessed in a variety of ways, is associated with declining mental health status over a four-year period among initially healthy immigrants." Therefore new migrants' downward mobility increases the risk of both physical and mental injury. This is supported by the findings in the HSE Research Report 308, that work stress can be associated with certain work characteristics like 'control', 'higher effort reward imbalance', shift work and long, unsociable hours, which are common to new migrants who are more likely to be overqualified.
- 213 While none of the regulators surveyed in this report have conducted campaigns specifically targeting the issue of under-qualification, other organisations (such as the Hire Immigrants Ottawa initiative (funded by the Ontario government)) have taken steps to encourage employers to hire skilled immigrants. This project included: creating a cross-sector Employer Council of Champions, who promote the integration of skilled immigrants within their organisations; creating sector-specific working groups that look to address the barriers and systemic challenges that employers face when attempting to hire and integrate skilled immigrants into the workplace (including by hosting events that connect employers with skilled immigrants; promoting the adaptation of human resource policies and practices to promote hiring and integrating skilled immigrants); and creating an *Employers Guide to Integrating Immigrants into the Workplace*.¹⁶¹ The Ontario government has also created a "Federal Internship for Newcomers" programme which gives new migrants valuable temporary Canadian work experience and training opportunities with federal, provincial and municipal organisations.¹⁶²
- 214 Accordingly, in line with its function under section 10(k) of the WorkSafe New Zealand Act 2013, WorkSafe should partner with relevant qualification and credentialing bodies, and settlement agencies, to assist migrants to find work commensurate with their skills, and address discrimination factors that prevent this. This could include an education campaign highlighting the value of global experience, or an internship programme for new migrants.¹⁶³ It could also include working with Immigration NZ to match migrants with actual job opportunities in the market.

¹⁵⁸ Joan Benach and others "Migration and 'Low-Skilled' Workers in Destination Countries" (2011) 8(6) PLoS Med, and also see Philippe Legrain "Hiring Refugees Works for Business" National Business Review (online ed. 11 August 2018).

¹⁵⁹ Premji and Smith, above n 76.

¹⁶⁰ At 109.

¹⁶¹ Hire Immigrants Ottawa "Engaging Employers: Building Capacity for Immigrant Employment, A Five-Year Success Story 2006-2011" <www.hireimmigrantsottawa.ca>.

¹⁶² Government of Canada "Federal Internship for Newcomers Program: About the Program" (2 August 2018) <www.canada.ca>.

¹⁶³ Similar to the Superdiversity Institute's Global Talent Intern programme, see above n 96.

Recommendation 6: Taking a strategic and system-level approach to upstream factors

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
Target precarious employment and the gig economy as areas of high-risk for CALD workers.	Precarious work is a factor for increased worker vulnerability, ¹⁶⁴ and CALD workers are overrepresented in precarious employment. WorkSafe should consequently target precarious employment and the gig economy as areas of high-risk for CALD workers.	<ul style="list-style-type: none"> Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal B: A capable system where everyone plays their part. 	New initiative.	See Recommendations 4, 5 and 15.
In line with section 10(k) of the WorkSafe New Zealand Act 2013, collaborate with Inland Revenue to implement a targeted awareness campaign to inform workers, employers and consumers of the risks of participating in the underground economy, highlighting the adverse effect on workers and highlighting to workers that they have rights, even if working in the underground economy.	Participation in the “underground economy” is a contributing factor to worker vulnerability. Partnering with the Inland Revenue would provide an opportunity to explicitly address the adverse effect of participation by consumers in the underground economy on workers, including CALD workers, who work in sectors prone to non-compliance with tax regulations, This could have the dual benefits of aiding these workers and addressing the underground economy more generally.	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal B / Priority 1: Encourage leaders at all levels to prioritise health and safety. 	Adapting the campaign run by the Ontario regulator.	See Recommendations 7, 9 and 12.
Engage and advocate appropriately with other agencies regarding structural and system-level labour market issues that affect the health and safety of CALD workers.	Structural issues are a significant cause of greater health and safety vulnerability, which particularly affect temporary foreign workers and new migrants. WorkSafe should be aware of these factors and, in line with its statutory functions in sections 10(b),(i) and (k) of the WorkSafe New Zealand Act 2013, take steps to engage and advocate appropriately with other agencies which have the ability to address the relevant issues.	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal A / Priority 1: Encourage leaders at all levels to integrate health and safety. 	New initiative.	See Recommendation 8.
Be a world leader in addressing over qualification as a risk factor for both physical and mental health.	Over qualification is a significant risk factor for mental and physical health. None of the regulators surveyed in this report have conducted campaigns specifically targeting the issue of over qualification, so there is scope for WorkSafe to become a world leader in this respect.	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	New initiative; drawing on work by, for example, the Hire Immigrants Ottawa initiative.	See Recommendation 8.
Partner with relevant qualification and credentialing bodies, and settlement agencies, to ensure that migrants can apply for work commensurate with their skills. This could include an education campaign highlighting the value of global experience.	Over qualification can often be the result of credentialing issues. WorkSafe should therefore partner with the relevant qualification and credentialing bodies to minimise the risk of over qualification.	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	New initiative.	See Recommendations 8 and 12.

¹⁶⁴ See Underhill and Quinlan, above n 149.

Recommendation 7: Use inspections and investigations to improve outcomes for CALD workers

215 This recommendation relates to the “regulatory activity” lever.

Investigations

216 Investigations carried out by WorkSafe inspectors assist WorkSafe to achieve its priority of preventing workplace injury and illness.

217 The lessons from the overseas regulators are that there are a number of factors WorkSafe must take into account to ensure that investigations are appropriate in situations involving CALD workers and employers.

218 WorkSafe’s Regulatory Function Policy dated July 2016 on Investigations (“the Investigations Policy”) states that an “investigation is a reactive intervention initiated in response to past events and in accordance with the legislation we administer”. As well as establishing facts and identifying breaches of law, the Investigations Policy states the purpose of an investigation is “to prevent recurrence, to recommend an appropriate response to any breaches identified, and to understand the causes and lessons learned where possible.”¹⁶⁵

219 Specifically in relation to undertaking investigations, in order to effectively achieve the purposes referred to above, it is crucial that WorkSafe inspectors understand how the different cultures of CALD employers or workers may have contributed to certain accidents or incidents. While cultural values of CALD employers or workers may be irrelevant when determining whether enforcement and subsequent prosecutions take place, it is extremely relevant to:

- (a) Understanding the causes of the incident;
- (b) Determining the lessons learnt; and
- (c) Preventing recurrence by recommending appropriate responses, which take into account any cultural values of CALD employers or workers that may have contributed to the incident.

220 Accordingly, in addition to the cultural capability training discussed under Recommendation 1, WorkSafe should also develop guidance to assist investigators to effectively take account of cultural factors when investigating health and safety incidents.

Inspections

221 In relation to inspections, the lessons learned by the overseas regulators are as follows:

- (a) Inspections may be a powerful tool for increasing health and safety compliance among ethnic and minority businesses;¹⁶⁶
- (b) Language barriers can be a major impediment to effective “responsive regulation” in inspection (in other words, initially using an educative/cooperative style to a progressively more deterrent approach if cooperation and dialogue fail), as they limit dialogue and the possibility of providing advice, persuasion, and assisting with compliance.
- (c) Workers in ethnic minority owned businesses (usually ethnic minorities themselves) are particularly reluctant to speak to inspectors, owing to fear of retribution from employers. Research noted that “this feeling of insecurity and ‘having a lot to lose’ was felt to be particularly prevalent amongst workers from minority ethnic groups, particularly where they are employed on a casual or illegal basis.”¹⁶⁷ Therefore inspectors need to be conscious of

¹⁶⁵ WorkSafe New Zealand “Investigations policy” (4 September 2017) <www.worksafe.govt.nz>.

¹⁶⁶ See paragraph 409.

¹⁶⁷ Vickers and others, above n 40, at 88.

the need to engage with employees about health and safety concerns in ways that do not threaten their future prospects within an establishment.¹⁶⁸

222 The initiatives used by these regulators to respond to these challenges and lessons learned are as follows:

(a) The United Kingdom regulator:

(i) Published a 'Migrant working intervention manual', targeted at HSE and local authority inspectors, which sets out the approach for inspectors to take to ensure that migrant workers are protected, not only from a health and safety perspective, but also in relation to illegal practices amounting to abuse and exploitation. It includes prompts for inspectors to ensure that a) risk assessment takes into account migrant workers' needs, i.e. language issues, and cultural attitudes; and b) that migrant workers have acceptable and appropriate accommodation, transport, personal protective equipment, and that language issues are appropriately addressed.¹⁶⁹

(ii) The regulators' inspectors used a variety of ad hoc strategies to encourage effective information gathering from migrant workers, such as:¹⁷⁰

- Conveying information to the workforce as a whole rather than to selected individuals who might then be victimised for drawing attention to an issue; and
- Openly leaving contact details so that employees could contact the inspector in confidence outside of the workplace.

(iii) The inspectors used ad hoc strategies to overcome language barriers, such as routinely arranging for somebody to help with translation – often another nearby business owner with whom they had already established a good relationship.

(b) The Ontario regulator:¹⁷¹

(i) Piloted extended inspection times, expanding its hours for construction workplace inspections, to target workers in the underground economy. Inspectors visited construction sites seven days a week, including early mornings, evenings and weekends; and

(ii) Implemented inspection blitzes to raise awareness and increase compliance with health and safety legislation (some of these have been specifically targeted at CALD workers but others have captured CALD workers indirectly owing to the sectors focused on, i.e. construction).

(c) The New South Wales regulator:¹⁷²

(iii) Actively encouraged applicants from Arabic, Chinese, Greek, Italian, Spanish, Vietnamese and other diverse backgrounds, including those with bilingual skills, to apply for inspector positions.

223 The learnings for WorkSafe from the overseas regulators' approaches to inspection are that the efficacy of inspections, particularly as an educational tool, is compromised by language barriers, but also by information gathering strategies that do not take account of workers', particularly migrant workers, cultural attitudes and behaviours, due to fear of adverse consequences as a result of speaking up about health and safety.

¹⁶⁸ See discussion at paragraph 406.

¹⁶⁹ See discussion at paragraph 431.

¹⁷⁰ See discussion at paragraph 406.

¹⁷¹ See discussion at paragraphs 499 and 502–510.

¹⁷² See discussion at paragraph 657.

- 224 In respect of language barriers, WorkSafe should prioritise the recruitment of bilingual staff. Inspectors should not be put in the position of those in the United Kingdom who have to rely on neighbouring business owners to translate. Such an approach is fraught with risk, as it is impossible for inspectors speaking only English to know whether the information is being translated correctly in either direction.
- 225 Regarding barriers to effective information gathering from CALD staff, it is crucial that WorkSafe inspectors are equipped with appropriate strategies to mitigate issues like the fear of retribution (such as those used by the United Kingdom inspectors). Cultural capability training (as mentioned previously in the section on training) is useful to help inspectors recognise situations in which such strategies may be necessary. However, it is also useful to give inspectors guidance that they can refer to, such as the United Kingdom’s Migrant Worker Intervention Manual.
- 226 While the Ontario regulator’s inspection blitz approach did not target CALD workers or employers, there is an opportunity for WorkSafe to use such an approach as a tool to improve education, awareness, and compliance among CALD workers and employers. This approach fits in well with WorkSafe’s current inspection policy, which is similarly proactive and planned.¹⁷³
- 227 Whereas at least 80% of workplace assessments currently being undertaken by WorkSafe are targeted towards the industries identified in the Reducing Harm in New Zealand Workplaces Action Plan as high-risk, which includes agriculture, forestry, construction and manufacturing, there is an opportunity here for WorkSafe to target other industries with a high proportion of CALD workers. Alberta Labour identified that workplaces that typically employ “at-risk workers” (which includes CALD workers) include hotels, arenas, and restaurants (among others).¹⁷⁴
- 228 In line with the Ontario regulator’s approach, we also recommend that inspection hours be extended to early mornings, evenings, and weekends, to increase the likelihood of detecting employers operating in the underground economy.

¹⁷³ WorkSafe New Zealand, above n 165.

¹⁷⁴ See discussion at paragraph 619.

Recommendation 7: Use enforcement processes to improve outcomes for CALD workers

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
Investigations				
Develop guidance to investigators on how to identify cultural attitudes and behaviours of employers and employees which contribute to accidents or ill-health.	Investigators need to be aware of the ways in which cultural attitudes and behaviours contribute to accidents in order to effectively establish the facts in relation to a health and safety incident; to identify any breaches of the law; to prevent recurrence; to recommend an appropriate response to any breaches identified; and to understand the causes and lessons to be learned.	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	New recommendation.	See Recommendation 1.
Inspections/workplace assessments				
Develop guidance to inspectors, regarding: <ul style="list-style-type: none"> Undertaking workplace assessments in a culturally responsive manner, to limit employer intimidation and reprisal and to incentivise reporting of breaches Conducting “responsive regulation” during inspections despite language barriers. 	As inspections are a powerful tool to increase health and safety compliance among ethnic minority businesses, it is important that they are as effective and efficient as possible. This requires in particular: <ul style="list-style-type: none"> An awareness among inspectors of the ways in which cultural influences can impact upon health and safety attitudes and behaviours That inspectors are equipped with strategies to mitigate issues like the fear of retribution That language and communication barriers are minimised; for example, by recruitment of bilingual inspection staff. 	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk Goal B / Priority 1: Encourage leaders at all levels to prioritise health and safety. 	See various initiatives of the United Kingdom regulator.	See Recommendation 1.
Target inspections to sectors or workplaces with high proportions of CALD workers.	While WorkSafe currently undertakes assessments targeted towards ‘high-risk’ industries (indirectly capturing CALD workers), WorkSafe should expand this focus to other industries by determining what sectors have a high proportion of CALD workers and targeting them for inspections.	<ul style="list-style-type: none"> Goal A / Priority 2: Businesses with greater need: sectors with highest harm and small businesses Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	New recommendation.	Supported by guidance to inspectors above.
Consider an “inspection blitz” of sectors with a high proportion of CALD workers to increase awareness among employers and workers.	Inspection blitzes directly focussing on sectors with a high proportion of CALD workers provide an opportunity to improve education, awareness and compliance among CALD workers and employers.	<ul style="list-style-type: none"> Goal A / Priority 2: Businesses with greater need: sectors with highest harm and small businesses Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	Following an initiative of the Ontario regulator.	Supported by guidance to inspectors above.
Undertake inspections after normal working hours to target CALD employers and workers operating in the underground economy.	Workers operating in the underground economy are particularly vulnerable to health and safety risks. Extending inspection hours would increase the likelihood of detecting employers operating in the underground economy, and preventing such risks from occurring.	<ul style="list-style-type: none"> Goal A / Priority 2: Businesses with greater need: sectors with highest harm and small businesses Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	Initiative of the Ontario regulator.	See recommendation 15 on preventing underground economy work.

Recommendation 8: Engaging with CALD communities

- 229 This recommendation relates to the “engagement and education” lever.
- 230 The challenges identified and lessons learned from the overseas regulators’ suggest that regulators need to take a more strategic and targeted approach when engaging with CALD communities. The research outlined in this report shows that tailored arrangements are needed when engaging with CALD communities, due to language barriers, viewing or listening to different media, and different cultural attitudes and behaviours that mean they require a more direct engagement than non-CALD workers and employers. These tailored arrangements are also needed to ensure that WorkSafe is receiving accurate information about the health and safety practices of CALD workers and employers that is not currently being received through traditional mechanisms, either because of underreporting, poor English, or because of survey design and analysis that does not focus on cultural differences.
- 231 For WorkSafe, this strategic approach includes considering advice from and consulting with CALD communities about how best to engage; engaging directly with CALD communities at community events, hosting targeted information sessions, and going to remote communities, and crucially, leveraging ethnic media to target CALD communities in their own languages and in the publications that they consume on a daily basis.

Advisory committees

- 232 Hard data is critical to ensuring CALD workers are no more vulnerable to injury and death than other workers, but it is also important to be able to identify issues, test assumptions, and get advice from CALD people in a more agile and responsive manner.
- 233 When recommending the appointment of a vulnerable worker advisory committee, the Ontario Expert Advisory Panel on Occupational Health and Safety described it as “a standing forum for consulting parties who are knowledgeable about vulnerable workers and have a role in protecting them... Specific matters about which the committee could provide advice include... improving enforcement strategies and developing and distributing awareness materials.” In that case, the resultant advisory committee, the Ontario Vulnerable Worker Task Group, produced a significant report (which is canvassed in later in this paper from paragraph 465) which identified a number of issues facing, and solutions for, vulnerable workers.
- 234 Section 8(2) of the WorkSafe New Zealand Act 2013 permits WorkSafe to establish one or more advisory groups to provide advice to it on matters relating to its functions.¹⁷⁵ WorkSafe has previously used advisory committees. It appointed the Diving Industry Advisory Group (DIAG) in 2015. The scope of DIAG’s work is to provide advice to WorkSafe on relevant sector issues; provide a channel for sector representation, communication and consultation; collaborate on documents for communication across the industry; and provide comment and guidance on industry health issues, and on guidance and good practice material developed by WorkSafe.¹⁷⁶
- 235 There is also precedent for CALD advisory committees in other sectors in New Zealand, for example in local government, where Auckland Council has an Ethnic Peoples’ Advisory Panel whose role is to “identify the issues that are important to people from ethnic cultures, provide advice on our regional strategies, policies and plans, and help us effectively engage with people from ethnic cultures.”¹⁷⁷
- 236 We recommend that a similar advisory committee could also be a useful resource for WorkSafe. Given that New Zealand is overwhelmingly a country of small businesses (97% of enterprises

¹⁷⁵ WorkSafe New Zealand Act 2013, s 8(2).

¹⁷⁶ “Diving Industry Advisory Group Formed” (May 2016) Worksafe New Zealand <www.worksafe.govt.nz>.

¹⁷⁷ Auckland Council “Ethnic Peoples Advisory Panel” (2018) <www.aucklandcouncil.govt.nz>.

have fewer than 20 employees)¹⁷⁸, and that anecdotally many small businesses in New Zealand are owned and operated by CALD people, it would be useful to have one or more representatives from small businesses on that committee. We note that Hon Stuart Nash, Minister for Small Business, has ethnic representatives on his Small Business Council: Jerry He, Chairman of the Asia Pacific MSMEs Trade Coalition, and Tania Siladi, Co-Owner/Director of Dragonfly Hospitality Group Limited and of Asian Food Republic. Maybe they could be approached to input into this committee.

Education and outreach needs to be targeted, face-to-face, and in multiple languages

- 237 The HSE Research Report 150 identified that inspectors were a commonly used source of information and advice for small ethnic minority businesses.¹⁷⁹ Nevertheless, there was need to “improve the image of inspectors and the HSE, particularly with respect to those EM groups who have experienced the greatest difficulty around compliance and appear most mistrustful of government officials and bodies.” The report suggested that this could be done “simply through [inspectors] being more visible as sources of help and advice in the context of small business and EMB events and also through a more widespread dissemination in the positive benefits of improved health and safety within the small business community and amongst EMBs.”¹⁸⁰ This is where it would be valuable to have inspectors who reflect those being inspected, especially those who can converse in other languages.¹⁸¹
- 238 Ontario’s Expert Advisory Panel on Occupational Health and Safety similarly found that “active outreach” methods were needed to reach vulnerable workers.¹⁸² Safe Work Australia in its model Code of Practice on Construction work suggested that face-to-face consultation is more effective than phone, fax, email, or other networks for CALD workers.¹⁸³
- 239 The overseas regulators’ surveyed had implemented the following initiatives in respect of these themes:
 - (a) The United Kingdom regulator, through its London Outreach Worker Project, organised Safety and Health Awareness Days aimed at Polish and Romanian construction companies, site managers and other construction professionals;¹⁸⁴
 - (b) The Ontario regulator:
 - (i) Used bilingual summer students to facilitate surveys of ethnic businesses;¹⁸⁵
 - (ii) Partnered with the Nookiiwin Tribal Council to co-design health and safety training based on the “seven teachings of the grandfather”;¹⁸⁶
 - (iii) Sent staff to community events for new immigrants and temporary foreign workers, and distributed information to help them understand their workplace rights and responsibilities;¹⁸⁷ and
 - (iv) Conducted a needs assessment with Chinese immigrant women in the nail salon industry in central Toronto, and developed education resources, training modules, and workshops, available in English, Chinese, and Vietnamese, specifically to support these nail salon workers.¹⁸⁸

¹⁷⁸ Ministry of Business Innovation and Employment Small Business in New Zealand Factsheet 2017 (June 2017) <www.mbie.govt.nz>.
¹⁷⁹ Vickers and others, above n 40, at ix.
¹⁸⁰ Vickers and others, above n 40, at 112.
¹⁸¹ See Recommendations 1 and 10.
¹⁸² See paragraph 458.
¹⁸³ See paragraph 650.
¹⁸⁴ See paragraph 421(h).
¹⁸⁵ See paragraph 492.
¹⁸⁶ See paragraph 484.
¹⁸⁷ See paragraph 491(a).
¹⁸⁸ See paragraph 482.

- (c) An Ontario research project collaborated with the Nookiiwin Tribal Council to increase indigenous workers' awareness of workplace rights via an e-mental health intervention;¹⁸⁹
- (d) The Northwest Territories and Nunavut regulator noted that their staff spend fifty per cent of the time travelling to remote communities for face-to-face education efforts;¹⁹⁰
- (e) The British Columbia regulator:¹⁹¹
 - (i) Developed a targeted occupational health and safety programme to be delivered in Arabic and English for the large number of Syrian immigrants coming to British Columbia at that time; and
 - (ii) Visited First Nations (indigenous) schools in remote areas to deliver presentations and share resources with school administrators.
- (f) The New South Wales regulator:¹⁹²
 - (i) Held Work Health and Safety workshops with community groups including the Chinese Migrant Welfare Association, Chinese Youth League, and the Migrant Settlement Services team; and
 - (ii) Set up a Migrant Community Project, in consultation with Griffin City Council, after an overseas labour hire worker was injured. The project involved hosting information sessions for workers and employers on legal obligations for work, health and safety, workers' compensation and injury management.

240 The overseas regulators' experiences show how crucial it is that health and safety regulators are able to engage directly and appropriately with ethnic communities (including by seeking input on programme design). Staff, but especially those engaged in prevention efforts, need to travel to the right places (whether those are ethnoburbs, or remote communities), attend community events, and make connections with the communities they are serving. This is a crucial part of understanding the issues, educating workers, but also of improving reporting by making the regulator more visible and approachable.

241 WorkSafe already develops educational material and case studies for its website, sector roadshows and newsletters, social media, unions and presentations. The key for WorkSafe is to make sure that these education and outreach methods are appropriate for CALD communities. The lessons learned from the overseas regulators suggest that to be appropriate, this education and outreach needs to be at least one of the following:

- Targeted;
- Face-to-face; and
- In the languages spoken by employers and workers.

Leverage existing and new connections to distribute information material to the right people

242 The jurisdictions surveyed used existing and new partnerships to increase outreach to CALD workers and employers and to provide occupational health and safety awareness material. This included pursuing non-traditional partnerships to reach CALD workers.

243 Interviewees highlighted that it is crucial that health and safety information is systematically and sustainably delivered, and that all parties and agencies are clear about who has responsibility for delivering health and safety information.

¹⁸⁹ See paragraph 553.

¹⁹⁰ See paragraph 611.

¹⁹¹ See paragraph 561 and 584–588.

¹⁹² See paragraph 656.

- 244 Some of the existing and new partnerships included:
- (a) Literacy organisations (the British Columbia regulator);
 - (b) Churches and temples (the United Kingdom regulator);
 - (c) Indigenous communities (the Northern Territory regulator);
 - (d) Schools (the British Columbia regulator)
 - (e) Consulates (the United Kingdom, Ontario, and British Columbia regulators); and
 - (f) Overseas governments (the British Columbia regulator).
- 245 **Literacy organisations:** In recent years, WorkSafeBC has partnered with Decoda Literacy Solutions, the leading literacy-based skills organisation in British Columbia to deliver occupational health and safety training as part of Decoda’s curriculum. WorkSafe has been involved in a similar project, “Pathways Awarua”, discussed in further detail at paragraph 277.
- 246 **Churches and temples:** As part of the London Outreach Worker Project, outreach workers from the United Kingdom regulator distributed pocket information cards containing basic health and safety information in the relevant languages, advertising dedicated helplines, email addresses and webpages, at Polish and Romanian churches and spoke to congregations.¹⁹³
- 247 **Indigenous communities:** In 2016, NT Worksafe designed, developed and implemented the Remote Community Work Health and Safety Initiative in partnership with North East Arnhem Land Aboriginal community stakeholders. As part of this programme, NT WorkSafe developed three “culturally appropriate” short films (which were produced locally, and featured local workers and residents), as well as other guidance and educational material. These films are available on Safe Work Australia’s website.
- 248 **Schools:** WorkSafeBC’s First Nations Outreach Project delivered presentations to schools, and shared resources with school administrators and other relevant agencies such as universities’ Offices of Indigenous Affairs.¹⁹⁴ An Ontario initiative targeted at young workers, a student video contest which provides students with an opportunity to share their health and safety knowledge with other students, also targets culturally diverse workers indirectly through their children who bring home health and safety messages.
- 249 **Consulates:** the London Outreach Worker Project pocket cards were also made available at consulates where workers queued every day for passport and immigration issues.¹⁹⁵
- 250 **Overseas governments:** WorkSafeBC partnered with the Mexican government to create a Mexican-based health and safety awareness training programme for the approximate 3,500 seasonal agricultural workers who come from Mexico annually to work in British Columbia.¹⁹⁶ Since the launch of the programme in 2012, more than 18,000 workers have undertaken the programme.¹⁹⁷ Prior to their arrival, workers received health and safety education to prepare them for farm work in British Columbia. Conducting the programme while workers were still in Mexico allows for workplace health and safety education at the earliest opportunity. The programme covered injury prevention training, information on cultural differences and worker safety rights.
- 251 **Settlement agencies:** Dr Agnieszka Kosny (as discussed in the Canada section) identified a challenge that, although settlement services (which were used by 83% of newcomers to Ontario within the last ten years) were an ideal place to begin educating migrant workers on health and safety, practically speaking, these agencies tend to lack the funding and expertise required to effectively deliver health and safety information.

¹⁹³ Hester, above n 94.

¹⁹⁴ See paragraph 586.

¹⁹⁵ Hester, above n 94.

¹⁹⁶ WorkSafeBC “2011 Annual Report and 2012-2014 Service Plan” (2011) <www.worksafebc.com> at 27.

¹⁹⁷ WorkSafeBC “Temporary Foreign Workers” (unpublished paper provided by Angelique Prince, August 2018).

Existing New Zealand initiatives

- 252 In New Zealand, MBIE and Immigration New Zealand have developed materials aimed at raising awareness of workplace health and safety rights. MBIE sends one settlement information email to new migrant workers shortly after their visas are approved and then sends a series of five emails during their first weeks in New Zealand. The contents and order of the emails is based on MBIE's research of what information migrants require and when. If migrants work in a key skill shortage industry (aged care, construction, dairy and hospitality), they receive a link to a specific guide, which includes a specific section on health and safety.¹⁹⁸
- 253 Immigration NZ also has a website directed at international students, www.nzstudywork.com. Available in English, Chinese, and Korean, the website contains information about health and safety. Immigration NZ's "New Zealand Now" website, which is directed towards all foreign workers, also contains health and safety information, but does not have a translation option.
- 254 Other agencies including Migrant Connect (located in 30 Citizen Advice Bureau offices throughout New Zealand), Language Connect, and CNSST Foundation's Chinese Settlement Information Service also offer occupational health and safety information to new migrants.
- 255 WorkSafe must be strategic and creative in where and how it distributes health and safety information to CALD workers and employers. It should leverage existing partnerships (i.e. working with MBIE and Immigration NZ to improve the level and reach of the health and safety information provided on its websites and as part of its settlement information emails), and should create new partnerships with relevant groups as part of an ethnic community outreach strategy.

Use ethnic media

- 256 It is also crucial to "go where the people are" when it comes to media channels. A survey by Niche Media and the Office of Ethnic Affairs found that the consumption of ethnic media is very high in ethnic communities:¹⁹⁹
- (a) 78% of the Chinese respondents consumed at least half their media in Mandarin or Cantonese;
 - (b) For Indian, Pacific and Korean respondents, this figure ranged from 56% to 78%;
 - (c) 81% of Korean respondents preferred their advertising in Korean;
 - (d) 76% of Chinese respondents preferred their advertising in Mandarin or Cantonese; and
 - (e) 32% of Pasifika respondents preferred their advertising in Samoan or Tongan.
- 257 It is important to use ethnic media when seeking to communicate with migrant communities, as they may not see or understand communications via mainstream media. This will worsen as migrant numbers increase to a sufficiently critical mass that ethnic groups can command more services specifically in their native language and the need to read mainstream English media will continue to decrease.
- 258 The overseas regulators implemented the following initiatives using ethnic media:
- (a) The United Kingdom regulator:²⁰⁰
 - (i) Ran daily adverts and fortnightly talk shows on Panjab Radio (a community-based radio station in Southall) and on Romani Radio (a web-based Romanian radio show); and

¹⁹⁸ Interview with Dr Anne-Marie Masgoret, Associate at Victoria University of Wellington's Centre for Applied Cross-Cultural Research (Mai Chen, 23 July 2018).

¹⁹⁹ Creative NZ "Auckland ethnic media fact sheet" (2018) <www.creativenz.govt.nz>.

²⁰⁰ See paragraph 421(d).

- (ii) Placed weekly adverts and advertorials in two Romanian newspapers, four Polish newspapers and three Indian newspapers;
- (b) The Ontario regulator:²⁰¹
 - (i) Conducted an advertising campaign to help vulnerable workers understand their workplace rights. The month-long “Know Your Workplace Rights” campaign featured advertisements in 27 languages on television, digital media and in ethnic print publications; and
 - (ii) Regularly uses ethnic media for outreach, highlighting in their interview their frequent use of Chinese newspapers.
- (c) The British Columbia regulator:²⁰²
 - (i) Instituted a long-term “ethnic community outreach strategy”; and
 - (ii) Initiated a 12-week radio campaign on three Lower Mainland Punjabi-language radio stations to raise awareness among Punjabi-speaking farm workers about their basic safety rights.

259 The key lesson learned from the overseas regulators is the importance of using ethnic media to communicate with CALD workers and employers. The United Kingdom regulator’s London Outreach Worker Project’s use of ethnic media (while not evaluated) anecdotally resulted in significant benefits. The representatives of the Ontario regulator also spoke to us in great detail about the benefits they saw in using ethnic media to improve outreach and health and safety awareness amongst CALD workers and employers.

260 The Superdiversity Institute has previously hosted “ethnic media summits” for government departments. In our experience, these ethnic media summits are usually the first time a government department has engaged with those media organisations. This is an urgent gap that needs to be filled, given the growing superdiverse population.

²⁰¹ See paragraphs 490 and 491(c).

²⁰² See paragraphs 558 and 560.

Recommendation 8: Engage with CALD communities

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Appoint an advisory committee to provide advice on occupational health and safety of CALD workers.</p>	<p>Good evidence is key to ensuring that CALD workers are no more vulnerable than other workers. Use of an advisory committee to identify issues, give advice, and provide feedback will complement the use of hard data in developing the required knowledge base.</p> <p>WorkSafe should also consider having a small business representative on that committee, since a significant proportion of SMEs have CALD employers and employees.</p>	<ul style="list-style-type: none"> Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	<p>Initiative of the Ontario regulator (appointment of the Ontario Vulnerable Worker Task Group).</p>	<p>See Recommendation 4.</p>
<p>Develop an ethnic community outreach strategy, which should include:</p> <ul style="list-style-type: none"> Using ethnic media channels to engage directly with CALD workers and employers in channels they use Encouraging staff to travel for direct face-to-face engagement with CALD communities Having a presence at ethnic community events, including cultural festivals, business fairs, etc. Targeted information sessions for specific communities, especially new migrants and refugees, in multiple languages, or combining this with English tuition Leveraging diverse networks to distribute information material to the right people Co-designing health and safety training with and for ethnic and indigenous communities. 	<p>When engaging with CALD communities, research has shown that a tailored response is required. This is due to: language barriers, usage of different media, and different cultural attitudes and behaviours requiring more direct engagement.</p> <p>Given the problems associated with traditional methods of data collection in the context of CALD workers, adapted arrangements are also required to ensure the accuracy of data collected by WorkSafe regarding the health and safety practices of CALD workers.</p>	<ul style="list-style-type: none"> Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. Goal B / Priority 2: Enable workers to be represented, engaged, and to participate. 	<p>Initiative of the following regulators:</p> <ul style="list-style-type: none"> Ontario Northwest Territories and Nunavut British Columbia. 	<p>See Recommendations 1, 10, and 11.</p>

Recommendation 9: Educate CALD workers

- 261 This recommendation relates to the “engagement and education” lever.
- 262 A key challenge identified by all of the regulators surveyed was that CALD workers lack awareness and understanding of their rights under health and safety legislation (and workers’ compensation legislation). They also lack awareness of health and safety hazards, and of health and safety attitudes and behaviours.
- 263 This lack of awareness has several causes. For new migrants, seeking occupational health and safety information is time consuming and may be a low priority, given all the other pressures of settlement for themselves and their families.²⁰³ Health and safety information is often forgotten or not prioritised.²⁰⁴ Language barriers, low literacy and national culture are also relevant. Often training provided by employers is inadequate. An Australian study found that most international students did not receive any health and safety training before commencing work.²⁰⁵
- 264 The national culture of workers is also relevant to their awareness of hazards. Risk blindness, which “arises from a cultural bias whereby individuals ‘either cannot see it [risk] or consider it inherently acceptable’”,²⁰⁶ requires specific education that may not be required for other workers. This risk blindness can be seen in workers who do not recognise “obvious” rules for equipment (as noted in the United Kingdom regulator’s guidance to employers of migrant workers).²⁰⁷
- 265 National culture also impacts health and safety attitudes and behaviours. The challenges identified by the overseas regulators are that:
- (a) Workers from some cultures may assume accidents are their own fault;²⁰⁸
 - (b) They may assume that accidents may also be an inevitable part of work (this can affect their commitment to reducing or controlling risks);²⁰⁹
 - (c) Workers may have cultural assumptions about fellow workers i.e. older workers may not respect younger interpreters, or experienced workers do not want to be distracted by a new starter;²¹⁰
 - (d) Workers may also find it difficult to ask questions and receive clarification because of an unquestioning attitude to those in authority;²¹¹ and
 - (e) Foreign/migrant workers are “less likely to seek advice from central/local government or official agencies.”²¹²
- 266 To remedy these challenges, the overseas regulators implemented the following initiatives:
- (a) The United Kingdom regulator:

²⁰³ Institute for Work & Health “Prevention is the Best Medicine: A toolkit for teaching newcomers” (January 2011) <www.iwh.on.ca> at 11-12.

²⁰⁴ Interview with Agnieszka Kosny, Associate Scientific Director & Senior Scientist, Institute for Work and Health, Ontario, Canada (Mai Chen, 21 July 2018).

²⁰⁵ Yahya Thamrin “Occupational health and safety awareness among international students as a diverse group of young workers in Australia” (PhD thesis, University of Adelaide, 2016).

²⁰⁶ Susanne T Bahn “Risk blindness among temporary migrant workers in Australia” (paper presented to 27th Australian and New Zealand Academy of Management Conference, Hobart, December 2013) citing Steve Frosdick “The techniques of risk analysis are insufficient in themselves” (1997) 6(3) Disaster Prevention and Management 165. This issue is also discussed in detail in the Superdiversity Institute’s report to ACC (forthcoming).

²⁰⁷ HSE “Protecting migrant workers” (2010) <www.hse.gov.uk> at 3.

²⁰⁸ HSE “Migrant workers” (undated) <www.hse.gov.uk>.

²⁰⁹ HSE, above n 207, at 4.

²¹⁰ At 4.

²¹¹ At 4. See also the Superdiversity Institute’s report to ACC (December 2018, forthcoming).

²¹² Sonia McKay, Marc Craw and Deepta Chopra “Migrant workers in England and Wales: An assessment of migrant worker health and safety risks” (HSE, Research Report 502, 2006).

- (i) Launched migrant worker webpages and published specific guidance for migrant workers, available in multiple languages and as a downloadable “pocket card”;²¹³ and
- (ii) Added translated material in Polish, Romanian, Gujarati, Punjabi and Hindi on the construction section of the HSE website.
- (b) The Australian federal policy arm:
 - (i) Published information sheets for migrant workers translated into 11 languages, which contain information about employer and employee duties, what to do when injured at work, and a checklist for starting work to ensure employees are aware of basic policies and procedures.
- (c) The New South Wales regulator:
 - (i) Replaced a written induction course with an interactive online course that used graphics and voiceovers to accommodate those with difficulties understanding English. Posters and information sheets that communicated the priority hazards via graphics and key messages were also developed.²¹⁴
- (d) The British Columbia regulator:²¹⁵
 - (i) Collaborated with four immigrant-focused social service organisations to produce a “Small Business Primer” pamphlet in traditional Chinese, Arabic, Punjabi, and English, to ensure small businesses are aware of occupational health and safety rights and obligations;
 - (ii) Established the BCFED Health & Safety Centre to provide workers with health and safety training which has since become the primary provider of targeted occupational health and safety education for migrant workers. Migrant workers can learn about their safety rights and hazard identification through customised workshops conducted in the workers’ first language;
 - (iii) BCFED hosts workshops in partnership with contacts in the Latin American and Filipino communities; and
 - (iv) As of August 2018, WorkSafeBC was working with the Jamaican Liaison Office to create health and safety resources specifically for workers coming from Jamaica.
- (e) The Ontario regulator implemented the following:²¹⁶
 - (i) Published the “Health & Safety at Work: Prevention Starts Here” poster in 20 languages. It is mandatory under relevant legislation to post this in all workplaces, in English and in the majority language of the workplace if that is not English;
 - (ii) The Institute of Work and Health in Ontario (funded by the Ontario regulator) designed the “Prevention is the Best Medicine” toolkit to facilitate the transmission of health and safety advice to new migrants. The toolkit includes information on injury prevention, hazards at work, occupational disease, rights and responsibilities under a provincial Occupational Health and Safety Act, and workers compensation. It essentially aggregates information that was already publicly available and packages it in a user-friendly format to facilitate delivery of the information to new migrants.

²¹³ Health and Safety Executive “Working in Great Britain from overseas” (undated) <www.hse.gov.uk>.

²¹⁴ WorkCover NSW “Annual Report 2011-12” (26 September 2012) <www.safework.nsw.gov.au> at 18. There is no publicly available information which determines the effect of these changes.

²¹⁵ See paragraphs 558, 571, 573, and 583.

²¹⁶ See paragraphs 488, 534, and 474.

Requirement for mandatory basic training

- (iii) Ontario instituted, via their Regulation 297/13, a requirement for mandatory basic training which covers the duties and rights of workers under their health and safety legislation; the duties of employers and supervisors under their health and safety legislation; the roles of health and safety representatives and joint health and safety committees; the roles of relevant agencies; common workplace hazards; information and education requirements for hazardous materials; and occupational illness.
- (iv) The Ontario regulator designed and made available a free training programme (in multiple languages) that meets the requirements of the regulation, available as a printable workbook or as an e-learning module, which received very positive feedback (79% found the e-learning module “useful” or “very useful”, and 75% found it “easy” or “very easy” to use).
- (v) In New Zealand, section 36(3)(f) of the HSW Act 2015 requires a PCBU, so far as is reasonably practicable, to provide “information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.” This section is commonly interpreted as requiring information, training, instruction, or supervision on the *specific workplace hazards* found in the relevant workplace. This is because the section refers to risks to a person’s health and safety “arising from work carried out as part of the conduct of the business or undertaking.”
- (vi) It is possible that the reference in section 36(3)(f) to protecting “all persons” from any risks to their health and safety may be construed as requiring consideration of superdiversity. Therefore, when dealing with CALD workers (who may be unaware of their basic rights and duties under health and safety legislation), section 36(3)(f) could be interpreted as requiring training designed to enhance knowledge of basic health and safety rights and responsibilities, as well as awareness of basic workplace health and safety issues. This could be considered fundamental foundational knowledge of which any specific training must be based, in order to fulfil the PCBU’s primary duty of care to ensure, so far as is reasonably practicable, the health and safety of its workers.
- (vii) However, to avoid any doubt, and to assist PCBUs to appropriately ensure the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking, WorkSafe should clarify this requirement by publishing an Approved Code of Practice (ACOP), or guidance, which sets out the basic health and safety rights and responsibilities that all workers must be made aware of (inclusive of the matters covered by Ontario’s Regulation 287/13), and suggest ways in which this training could be made most appropriate to CALD workers (this could include preparing and distributing a basic training resource as done by the Ontario regulator).

267 WorkSafe has already recognised the value of targeted health and safety awareness programmes for particular ethnic and cultural groups through the use of the Puataunofu Come Home Safely programme. As discussed at paragraph 107 onwards, this programme is effective both in raising workers’ engagement with health and safety, and supporting businesses to adapt to their workforce’s growing diversity.

- 268 However, the programme’s modest allocation of staff means that it depends on a few key individuals who have the necessary cultural, interpersonal and professional expertise.²¹⁷ It has been suggested that the key supply constraints of the programme are the time available to the staff and the number of staff.²¹⁸ The programme also lacks funding to enable it to visit more businesses. WorkSafe should engage more staff to help deliver this programme and investigate additional funding streams. This will enable the programme to cater to more businesses and allow for better customisation of presentations. Alternatively, to broaden the reach of the programme, WorkSafe could consider adapting the Puataunofu programme to follow a “train the trainer” model, through which qualified WorkSafe staff could train Pacific workers, employers, or union representatives to deliver the workshops.²¹⁹
- 269 The Puataunofu programme also faces the challenge of opportunity costs associated with participation. During busy periods, businesses may not have capacity to release staff for health and safety training.²²⁰ Further, subcontractors are not paid for their time to participate in the programme and therefore businesses are reluctant to “overwhelm” subcontractors by requiring them to participate.²²¹ To address this, WorkSafe should educate businesses on the importance of health and safety training and the value it holds. Businesses need to understand that the benefits of effective health and safety outweigh the opportunity costs, and should take steps to demonstrate this to their workers (which may include arranging for subcontractors to be paid for their time) .
- 270 Given the demonstrated benefits of the programme, WorkSafe should consider adapting the programme for other ethnic and cultural groups. Demographic changes over time mean that there will be an urgent need for such a programme for Asian workers; by 2038, one in three Aucklanders are likely to identify with an Asian ethnicity,²²² and nationally, the proportion of the population identifying as Asian is projected to grow to 22% by 2038, compared to 12% in 2013. By way of comparison, those identifying as Pacific peoples will account for 10% in 2038, compared with 8% in 2013.
- 271 WorkSafe should take the following steps to improve CALD workers awareness and understanding of their rights under health and safety legislation, awareness of health and safety hazards, and of health and safety attitudes and behaviours.

²¹⁷ Pacific Perspectives Limited, above n 65, at 23.

²¹⁸ At 23.

²¹⁹ The Workers Compensation Board of Manitoba developed a “First Language Health and Safety Training for Newcomers”, whereby 14 trainers from five language/cultural groups completed an in-depth Train the Trainer Program to equip them to deliver workshops on health and safety rights, and resources to their coworkers in the food processing industry in their first languages. The project received “overwhelmingly positive” post-workshop evaluations. More information is available from www.wcb.mb.ca.

²²⁰ Pacific Perspectives Limited, above n 65, at 23.

²²¹ At 24.

²²² Statistics NZ “Subnational Asian projections” (19 February 2016) <www.stats.govt.nz>.

Recommendation 9: Educate CALD communities

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Improve awareness of occupational health and safety rights and responsibilities among CALD workers, by:</p> <ul style="list-style-type: none"> • Publishing targeted (and translated) guidance • Extending the Puataunofu programme and adapting it for other ethnic groups. 	<p>Given lower levels of health and safety awareness amongst CALD workers, and given there are some barriers to health and safety awareness that are more prevalent amongst CALD workers, it is important to meet CALD workers “where they are”, by developing education and awareness programmes targeted towards their needs.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 2: Enable workers to be represented, engaged and to participate. 	<p>Drawing together strategies adopted by multiple regulators.</p>	<p>See Recommendations 8 and 10.</p>
<p>Publish an ACOP, or guidance, which clarifies the requirement for training about the basic requirements of the Health and Safety at Work Act 2015 (as set out at paragraph 266(e)(v) – (vii)).</p>	<p>The ACOP should set out the basic health and safety rights and responsibilities that all workers must be made aware of, and suggest ways in which this training could be made most appropriate to CALD workers.</p> <p>This could be supported by an occupational health and safety toolkit, modelled after the Prevention is the Best Medicine toolkit mentioned at paragraph 266(e)(ii).</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 2: Enable workers to be represented, engaged, and to participate. 	<p>Adapted from initiative of Ontario regulator.</p>	<p>See Recommendations 11 and 12.</p>
<p>Develop an occupational health and safety toolkit to inform immigrants (before and when they enter the labour market).</p>	<p>The toolkit should make sure that new migrants have access to appropriate basic information about health and safety rights in New Zealand. It should allow workers entering the labour market to inform themselves in a way which is user-friendly, easily available and accessible for persons with lower levels of literary or whose first language is not English.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 2: Enable workers to be represented, engaged, and to participate. 	<p>Initiative from Ontario (see the “Prevention is the Best Medicine” toolkit).</p>	<p>See Recommendations 6 and 10.</p>
<p>Partner with Immigration New Zealand and settlement agencies to ensure that new migrants receive appropriate health and safety information, in the right languages, at the right time.</p>	<p>It is crucial that new migrants receive health and safety information prior to commencing employment in New Zealand. Partnering with Immigration New Zealand and settlement agencies will ensure that occupational health and safety is not side-lined and becomes an established part of the settlement process.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Initiative from Ontario (see the “Prevention is the Best Medicine” toolkit), adapted for NZ context.</p>	<p>See Recommendations 6, 8 and 10.</p>

Recommendation 9 continued

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Collaborate across government and the non-profit sector to coordinate services to meet the education and awareness needs of vulnerable workers:</p> <ul style="list-style-type: none"> • Work with international education providers and organisations (including Education New Zealand and Study Auckland) to build health and safety information into guidance material for international students • Work with business associations to ensure that CALD employers receive health and safety education when starting a business • Collaborate with other government departments, embassies and consulates to develop and deliver appropriate training for temporary foreign workers such as those coming in under the Regional Seasonal Employer programme • Support / fund health and safety organisations to take a broader multilingual/ multi-ethnic approach. 	<p>Given the particular challenges and risks for migrant workers, it is important that gaps in training, comprehension and education are addressed. From the experience of overseas regulators and in New Zealand, areas of particular concern include:</p> <ul style="list-style-type: none"> • International students • Temporary foreign workers • Language barriers • Different cultural understanding of health and safety. <p>The proposed partnerships would address these areas of concern.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety • Goal B / Priority 3: Lifting capability of health and safety practitioners. 	<p>Building on the Initiative from Ontario.</p>	<p>See Recommendations 6, 8, 10 and 11.</p>

Recommendation 10: Focus on communication and language

- 272 This recommendation relates to the “engagement and education” lever.
- 273 For all jurisdictions surveyed, where there were strategies in place to address the vulnerability of ethnically, culturally and linguistically diverse workers, these overwhelmingly related to language. The reasons for this are obvious. In order to effectively communicate health and safety information, both the provider and recipient of the information must be capable of understanding it. If the information is delivered in English, and the recipient speaks only Mandarin or Samoan, the information will not be effectively communicated.
- 274 Despite this, throughout the research we found that most overseas regulators have no translation or interpretation strategy. Their approaches tend to be ad hoc, which this is not conducive to an effective, or cost-effective, approach. There is a lack of strategic approaches when it comes to addressing language barrier issues.
- 275 The ad hoc approaches the overseas regulators had implemented were as follows:
- (a) The United Kingdom regulator:²²³
 - (i) Put in place dedicated multilingual helplines for the HSE London office for the duration of the London Outreach Worker Project;
 - (ii) Had multilingual outreach workers assist inspectors on site visits and with accident investigations, as part of that project;
 - (iii) In their “Protecting migrant worker” guidance, suggested that employers could:
 - Ask an employee who speaks good English to act as an interpreter for an employee with low English, or seek outside help;
 - Provide written information in a relevant language using a competent translator for any technical terms;
 - Employers should encourage workers who are less confident communicating in English to refer concerns to a colleague who can represent them;
 - (iv) In its webpage about consulting employees whose first language is not English, recommends that:
 - Employers consider providing English for Speakers of Other Languages (ESOL) courses for workers who need to improve their English, either in the workplace or locally.
 - (b) The Ontario regulator:²²⁴
 - (i) Enables its Health and Safety Contact Centre to provide services in 23 different languages;
 - (ii) Made its “Health & Safety at Work: Prevention Starts Here” poster available in 20 languages;
 - (c) The British Columbia regulator:²²⁵
 - (i) Offers general occupational health and safety information, online resources and forms in seven languages – Korean, French, English, Chinese – simplified and traditional,

²²³ See paragraphs 421(f), 421(h), 423, and 428.

²²⁴ See paragraphs 487 to 488.

²²⁵ See paragraphs 564 to 566, and 571 to 572.

Spanish, Vietnamese and Punjabi. The languages were chosen based on the frequency of calls and requests received by WorkSafeBC. WorkSafeBC's website includes 199 translated health and safety publications and videos.

- (ii) Offers telephone interpretation in 170 languages across all WorkSafeBC service areas;
 - (iii) Has Punjabi speaking inspectors;
 - (iv) Has partnered with Decoda, the leading literacy-based skills organisation in British Columbia to deliver occupational health and safety training as part of Decoda's curriculum;
 - (v) Through the BCFED Health & Safety Centre, provides customised workshops conducted in the workers' first language;
 - (vi) BCFED also hosts a free 12-week English as a Second Language (ESL) programme aimed at educating migrant workers about workplace health and safety. Participants in this programme have the opportunity to improve their English while learning about health and safety;
- (d) The Manitoba regulator:²²⁶
- (i) Translated safety resources into 18 languages, as part of its "Safety is a language we can ALL speak" campaign;
- (e) The Northwest Territories and Nunavut regulator:²²⁷
- (i) In Nunavut, issues publications in all four official languages, owing to legislative requirements;
 - (ii) In the Northwest Territories, published a graphic poster in all 11 official languages.
- (f) The New South Wales regulator:²²⁸
- (i) Produced "Watching out for you" posters displayed in all NSW workplaces in Mandarin, Cantonese, Italian, Arabic, Vietnamese, Greek, Croatian, Macedonian, Spanish, Maltese, Serbian, Turkish, Hindi, Swahili, Dinka and Urdu;
 - (ii) Installed on its website a rolling language bar offering 27 different languages;
 - (iii) Produced flyers in 16 key languages;
 - (iv) Translated important communication materials. For example, its "Come home safely kit" was made available in 15 languages, the "contact us" section of WorkCover NSW's website was made available in 27 languages, and information specific to the wood products manufacturing industry project was translated into other languages including Arabic, Korean and Cantonese;
 - (v) Supported the Community Language Allowance Scheme (CLAS) with 16 officers offering services in 12 languages. CLAS draws on the language skills of existing employees, and remunerates them for using second language skills, as part of or in addition to their normal duties. CLAS recipients assist in the communication between other English speaking employees and clients who do not speak English well or at all;
- (g) The Queensland regulator:²²⁹

²²⁶ See paragraph 607.

²²⁷ See paragraph 613.

²²⁸ See paragraph 657.

²²⁹ See paragraph 664.

- (i) Enables callers to use the Translating and Interpreting Service (a Language Line equivalent) to have multilingual access to WHSQ, including translation of the website.
- (h) The Victorian regulator:²³⁰
 - (i) Made available posters and information sheets about the main duties, obligations and rights under the Occupational Health and Safety Act 2004 in Chinese, Greek, Italian, Arabic, and Vietnamese;
- (i) The Western Australian regulator:²³¹
 - (i) Enables callers to use the Translating and Interpreting Service (a Language Line equivalent) to have multilingual access to WorkSafe WA’s phone line; and
 - (ii) Has made its non-binding guidance document “Understanding the safety and health needs of your workplace | Migrant workers: a guide for employers” (2010) available in 8 languages: Arabic, Bosnian, Burmese, English, Chinese, Swahili, Tagalog, and Vietnamese.

Literacy

- 276 There has been reasonable progress overseas in the three jurisdictions surveyed in recognising the importance of literacy and its impact on workers’ and employers’ understanding of health and safety messaging.
- 277 In New Zealand, WorkSafe is already promoting literacy as an essential factor in safety, having worked with the Tertiary Education Commission’s “Pathways Awarua” to develop health and safety information to be delivered as part of literacy and numeracy training. Having developed this resource, it is important to make sure that those who would benefit from it are aware of it and are able to make use of it. For example, WorkSafe could promote the Employer-led Workplace Literacy and Numeracy Fund (which subsidises this training) to employers with high numbers of migrant or linguistically diverse staff.

Summary

- 278 The above initiatives demonstrate a low level of maturity in terms of approaches to translation and interpretation. While some translated material is available, it is not easily accessible to those with English as a second language. For example, although WorkSafe WA has migrant-specific guidance available in 8 languages, the website’s landing page has no option to choose a language other than English.²³² Therefore to find the guidance, a website user must know and use the keyword “migrant” and then work through a range of search results, not all of which are relevant. This would not be accessible to migrants speaking little or no English. Similarly, the approaches to interpretation have also tended to be ad hoc. Some have leveraged off existing staff’s bilingual capabilities (i.e. New South Wales’ CLAS programme); others have aimed to recruit bilingual inspectors (British Columbia). In many cases, access to interpretation is via a Language Line equivalent.
- 279 What WorkSafe should take from this section is that translation and interpretation are “must-do’s” in New Zealand to break down the barriers to better health and safety outcomes for CALD workers which arise as a result of communication and language issues. But translation and interpretation, while essential, are not sufficient. There is a need to progress knowledge on the much more difficult challenge of values and beliefs that limit good health and safety outcomes for CALD workers (as considered in Recommendations 3, 9, 10, and 11, in particular).

²³⁰ See paragraph 677 onwards.

²³¹ See paragraph 694 onwards.

²³² This was a problem common to many of the websites of the regulators surveyed.

Recommendation 10: Focus on communication and language

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Develop a translation and interpretation strategy to determine what material should be translated, into what languages, and when; and when interpretation should be used and how.</p>	<p>An overall strategy is key to ensuring that the benefits of translation and interpretation are delivered in the most effective, and cost-effective, manner.</p>	<ul style="list-style-type: none"> • Goal A: Focusing on what will make the biggest impact to reduce harm • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk 	<p>New initiative, based on <i>ad hoc</i> approaches from multiple regulators .</p>	<p>See Recommendation 8.</p>
<p>Translate information into multiple languages and formats for distribution through various media and organisations to raise awareness of occupational health and safety among vulnerable workers.</p>	<p>Translation and interpretation are prerequisites to effective communication of health and safety information. Translation, and distribution of translated material, is crucial to improving understanding and awareness of health and safety rights and responsibilities.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk 	<p>Adapting the work of multiple regulators in translation</p>	<p>See Recommendation 8.</p>
<p>Make the WorkSafe website more accessible to users who have English as a second language by translating material, and allowing for preferred language to be chosen from the website landing page.</p> <p>Make sure that the website is accessible for people with low literacy in English.</p>	<p>In order for translated materials to be effective tools for improving health and safety knowledge, they must be easily accessible to those with English as a second language. This should be recognised in WorkSafe’s website design.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk 	<p>Building on the work of regulators who have included translated materials on their websites</p>	<p>See Recommendations 8 and 11.</p>
<p>Ensure translated material is available and make sure it is reaching the right people, that it is being used, and understood.</p>	<p>As part of a strategy regarding translation and interpretation, it is critical to ensure that the translated materials produced are effective, available and accessible.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 2: Enable workers to be represented, engaged, and to participate 	<p>Adapting the work of multiple regulators in translation</p>	<p>See Recommendation 8 and 9.</p>
<p>Continue to emphasise literacy as an essential factor in safety, including by:</p> <ul style="list-style-type: none"> • Promoting TEC’s Employer-led Workplace Literacy and Numeracy Fund to employers with high numbers of migrant or linguistically diverse staff; • Partnering with literacy organisations to offer free ESOL training that focuses on health and safety. 	<p>Literacy is key to ensuring that both workers and employers have a strong understanding of health and safety messaging. Promoting the Literacy and Numeracy Fund and partnering with literacy organisations is therefore important to making sure that literacy support is reaching those who need it.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk 	<p>Following the overseas regulators and building on New Zealand’s current work in this area</p>	<p>See Recommendations 8, 9, 11, and 12.</p>

Recommendation 11: Provide more guidance to CALD employers

- 280 This recommendation relates to the “engagement and education” lever.
- 281 A lesson learned from the United Kingdom regulator in particular was that employers who are culturally and linguistically diverse themselves also need more guidance. HSE’s Research Report 150 which considered cultural influences on health and safety attitudes and behaviour in small businesses found that: “EMBs [ethnic minority businesses] as a whole were significantly less aware of the health and safety regulations than their white control counterparts.”²³³
- 282 This was attributed to the aversion of some ethnic minority groups in particular to government intervention in their affairs and a lesser familiarity with the expectations of the UK regulatory system, compared with their white counterparts. The latter point was seen to apply particularly in the case of more recent immigrants and where there may be language barriers affecting the ability of some managers to make use of official sources of guidance.²³⁴
- 283 The Research Report 150 suggested that “most EMB groups have a low propensity to look towards formal sources of business information and advice, preferring instead to rely more on informal sources and/or professionals (such as accountants) from within their own communities.”²³⁵ The report suggested that the regulator should work flexibly with a broad range of intermediaries (including ethnic minority business associations, and sector specific organisations), as part of a wider ethnic minority business outreach engagement strategy. We note there are many ethnic minority business and other organisations, such as the Chinese Chamber of Commerce in New Zealand, India New Zealand Business Council, and Multicultural New Zealand. One notable example is Migrante Aotearoa, a migrant-led organisation established to advance the rights and welfare of Filipinos and other migrants in New Zealand.²³⁶
- 284 In British Columbia, a representative of the regulator noted in an interview that many injunctions (an enforcement tactic issued when businesses have failed to comply with a shut work order) issued as a last resort by the regulator in the face of health and safety legislation breaches have tended in recent years to be from employers who are of an ethnic minority.²³⁷
- 285 The overseas regulators highlighted the following initiatives to improve CALD employers’ awareness of and commitment to health and safety:
- (a) The United Kingdom regulator:²³⁸
 - (i) Organised Safety and Health Awareness days aimed at Polish and Romanian construction companies, site managers, and other construction professionals;
 - (b) The British Columbia regulator:²³⁹
 - (ii) Published a “Small Business Primer” pamphlet in traditional Chinese, Punjabi, Arabic, as well as English.
 - (c) Researchers from Ontario, in developing the “Prevention is the Best Medicine” toolkit discussed above, suggested that a useful next step would be to develop one for employers.²⁴⁰

²³³ Vickers and others, above n 40, at 103.

²³⁴ At 78.

²³⁵ At 112.

²³⁶ Migrante Aotearoa “About” (undated) <www.migrante.org.nz>.

²³⁷ Interview with Angeliqe Prince, Manager of New & Young Workers/Small Business, Industry & Labour Services, WorkSafeBC (conducted by Mai Chen, 21 August 2018).

²³⁸ See paragraph 421(g).

²³⁹ See paragraph 558.

²⁴⁰ See paragraph 539.

Recommendation 11: Provide more guidance to CALD employers

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Develop a “Prevention is the Best Medicine” type toolkit for employers who are CALD, and distribute this to ethnic business associations and other relevant organisations.</p>	<p>According to research, employers who are culturally and linguistically diverse themselves also need more guidance to enable compliance with health and safety law. This is especially important given the role of PCBUs in the New Zealand health and safety legislation as the primary duty holder. Providing a specifically developed toolkit will aid CALD employers in fulfilling their health and safety responsibilities.</p>	<ul style="list-style-type: none"> • Goal A / Priority 2: Businesses with greater need: sectors with highest harm and small businesses • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety 	<p>Adapting work of Ontario regulator to specific context of CALD employers</p>	<p>See Recommendations 8, 9, and 12.</p>
<p>Partner with ethnic business and advocacy associations to develop and deliver resources and training.</p>	<p>Given the identified propensity of CALD employers to rely on advice by intermediaries from their own communities, it is important to have the input of ethnic business and advocacy associations at both the development and delivery stage of training and resources.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety • Goal B / Priority 2: Enable workers to be represented, engaged, and to participate 	<p>Adapting work of Ontario regulator to specific context of CALD employers</p>	<p>See Recommendation 8.</p>

Recommendation 12: Provide more guidance to all employers

- 288 This recommendation relates to the “engagement and education” lever.
- 289 The challenges identified and lessons learned from the overseas regulators suggest that more needs to be done to help employers to meet their obligations in respect of their CALD workers, in a superdiverse country such as New Zealand. Practically, this requires employers to:
- (a) Take steps to understand the cultural and linguistic composition of their workforce;
 - (b) Develop cultural capability to address those cultural factors; and
 - (c) Take steps to mitigate the effect of language barriers in the workplace.
- 290 Most employers will have staff members from different cultural backgrounds to them (whether they are aware of it or not), and it is therefore important that all employers are, firstly, aware of the cultural elements among their workforce, and secondly, that they have the capability to deal with the effect of those cultural factors and of any language barriers that may exist.
- 291 Understanding the cultural and linguistic composition of an employer’s workforce was highlighted by both the Victorian and United Kingdom regulators:
- (a) WorkSafe Victoria has published guidance that suggests that employers “identify the range of languages spoken in the workplace as well as employees’ preferred modes and forms of communication. One way to do this for new workers is to collect the information during induction. This process can also help you identify employees who are bilingual and may assist you to communicate with staff whose English skills are limited.”²⁴¹
 - (b) In their guidance “Protecting migrant workers”, HSE suggests that employers “do a skills audit to show where other workers are on site who can help if a worker has difficulty communicating.”²⁴²
- 292 The second point regarding cultural capability was suggested in brief by the United Kingdom regulator in guidance to employers of migrant workers, which noted that supervisors should be given guidance on cultural differences that affect working relationships.^{243 244}
- 293 Just as it is important for WorkSafe staff to have cultural capability, employers must also develop cultural capability to be able to assess the risks to their workforce (including risks stemming from different cultural attitudes and behaviours) and to appropriately mitigate those risks.
- 294 The overseas regulators gave the following guidance to employers regarding cultural capability:
- (a) The United Kingdom regulator recommended to employers that:²⁴⁵
 - (i) Employers should emphasise to workers the importance of reporting accidents and near misses;²⁴⁶
 - (ii) Employers should make sure to explain that accidents and near misses are investigated to stop more people being injured and improve conditions for all workers, and aren’t used to blame or sack people;

²⁴¹ See paragraph 673 - 675.

²⁴² See paragraph 423(e).

²⁴³ See paragraph 424(a).

²⁴⁴ Note also that cultural capability training has also been suggested for health and safety professionals. See paragraph 596(a). This could be a useful initiative in line with the Strategy’s goal 2 / priority 3.

²⁴⁵ See paragraph 424.

²⁴⁶ Emma Brookes, who conducted a research study on “How National Culture Influences Worker Attitudes towards Workplace Safety: Informing a Step Change in our Approach to Workplace Safety in Developing Countries” (using Fonterra staff as the research subjects) has advised that in Fonterra’s experience, CALD+ workers respond well to “low threat/no blame” methods of reporting H&S issues (for example, they report ‘suggestions’ rather than events or risks).

- (iii) Employers should thoroughly investigate accidents, specifically to ensure underlying causes such as behaviours and attitudes are picked up; and
 - (iv) Employers should explain clearly, during training, your responsibilities for risk assessment and control measures as an employer, and workers' responsibilities for their own health and safety too.
- (b) The Manitoba regulator published guidance to employers about "hiring new workers" with a substantial focus on CALD workers. This guidance suggests that employers should consider cultural values and behaviours that may affect worker safety and health.²⁴⁷
- 295 Employers of CALD workers should be encouraged to take up training; for example, by considering grants or subsidies (see 'Lever 4: Incentives' section below). In guidance to employers, the overseas regulators suggested that the following could help mitigate the effect of language barriers in the workplace:
- (a) The United Kingdom regulator suggests that employers could:²⁴⁸
 - (i) Use translated materials²⁴⁹ (for simple, short phrases, using sites like Google Translate or Babel Fish) or an interpreter;
 - (ii) Use a 'buddy' system, pairing less experienced workers with experienced co-workers who speak the same language;
 - (iii) Use DVDs or signs instead of written information/instructions;
 - (iv) Provide clear explanation of signs (including hand signals) and instructions for emergencies;
 - (v) Train supervisors in how to communicate clearly. Supervisors also need to monitor the effectiveness of training – for example, by questioning workers about the training or instruction given, or watching how well they follow it in practice;
 - (vi) Arrange for competent checking of the quality of interpreting or translation;
 - (vii) Put flexible arrangements in place to allow attendance at courses in 'workplace English' for speakers of other languages; and
 - (viii) Create a site 'map' and display for workers which shows where other workers are on site who can help if a worker has difficulty communicating.
 - (b) The Québec regulator:²⁵⁰
 - (i) Developed a Spanish-language video called "Working in Québec" which explains health and safety in Québec, and made this available to employers via YouTube and in a downloadable version available on the regulator's own website;
 - (c) The Victorian regulator:²⁵¹
 - (i) Developed a Compliance Code for employers on "communicating occupational health and safety across languages," which suggests that:
 - Using bilingual employees or health and safety representatives to facilitate consultation with non-English speakers

²⁴⁷ See paragraph 599.

²⁴⁸ See paragraph 295.

²⁴⁹ This is a recommendation of the United Kingdom regulator, however we note paragraph 380 on the risks associated with improper or poor translation. This suggestion should be approached with caution.

²⁵⁰ See paragraph 592.

²⁵¹ See paragraph 673 to 675.

- Making sure written information is translated into or explained in appropriate languages; kept simple, clear and brief; and is supported by a summary in plain English or translation.
- (ii) The Compliance Code includes a “compliance checklist” for communicating health and safety across languages, which includes:
 - Working out how to consult (involving employees who do not speak English)
 - Knowing the workforce (building a language profile of the workforce)
 - Making a plan (setting out procedures and budget and assessing current information)
 - Communicating for understanding (using appropriate forms of communication, plain language, translations, and checking that employees understand)
 - Providing language support (providing interpreters and using bilingual facilitators)
 - Providing training (including English language training).
- (d) The ACT regulator:
 - (i) Has published guidance to PCBUs about how to comply with their obligations in respect of migrant and other workers facing cultural and linguistic barriers, which suggests that employers:²⁵²
 - Consider how to convey information about safety to those with a limited knowledge of English;
 - Consider accessing English language support for workers;
 - Encourage supervisors to be understanding and approachable;
 - Demonstrate skills thoroughly rather than giving verbal instructions; and
 - Use pictures rather than words as reminder prompts.
- (e) The Western Australian regulator:²⁵³
 - (i) Has published a non-binding guidance document “Understanding the safety and health needs of your workplace | Migrant workers: a guide for employers” (2010) includes an “employer checklist” and gives the following examples of things employers can do to improve mitigate language barriers:
 - Providing language support through interpreters or bilingual facilitators;
 - Using multiple forms of communication (verbal, visual and practical);
 - Using short simple English phrases and avoiding jargon or technical / unfamiliar terms.
- (f) The Tasmanian regulator:²⁵⁴

²⁵² See paragraph 682.

²⁵³ See paragraphs 681 to 698.

²⁵⁴ See paragraph 703.

- (i) Published guidance for PCBUs engaged in farming that advises employers that they must ensure that workers from non-English speaking backgrounds understand the information and training given, and that this might require “closer supervision, an interpreter, instructions translated into different languages or more photos/pictures.”

296 While the overseas regulators have made a start in their advice to employers of CALD workers, there is an opportunity for WorkSafe to provide more in-depth guidance, particularly in respect of the impact of cultural differences on working relationships, as well as on health and safety attitudes and behaviours.

297 WorkSafe has already begun promoting the impact of cultural differences to employers in an indirect fashion through a recent enforceable undertaking accepted by Woods Glass following an incident in January 2017 where a Filipino worker was injured. Among a host of initiatives, Woods Glass has undertaken to revise its induction programme so that it is more effective for workers who are not native to New Zealand, including presenting it in a more digestible and comprehensible manner, offering interpretation services on request, and addressing the cultural differences between New Zealand and other ethnicities with particular regard to health and safety and employer expectations.²⁵⁵ It has also undertaken to erect multi-lingual signage; ensure that translation service is provided, if required, for employees taking a first aid course; and to engage an external specialist to develop an inclusion and diversity training programme, tailored to the cultural and ethnic diversity of its staff. It will also produce a pamphlet on inclusion, diversity and discrimination in the workplace and measures to deal with and prevent discrimination. The aim is for this pamphlet to be provided by Employee Assistance Programme Services Ltd (EAP) as a free resource for other New Zealand employers, and to community centres in South Auckland and the South Auckland Community Law Centre.

298 WorkSafe has also emphasised the importance of cultural difference in its WEPR Good Practice Guidelines (discussed at paragraphs 46 to 61 of this report), which highlights that different methods for engaging CALD workers may be required to ensure effective participation.

299 Immigration New Zealand too has already published some guidance for employers about the impact of cultural value differences in the workplace, in relation to migrant workers and to Pacific migrants specifically.²⁵⁶ Immigration New Zealand has also created a website that is designed to mitigate communication challenges between employers and migrant employees, called “Work Talk: NZ Workplace Communication”. It provides examples of common communication challenges and allows employers and workers to test their skills at communicating interculturally.²⁵⁷

300 Both Immigration New Zealand’s cultural value difference guidance and the Work Talk website could be used to educate employers about the impact of culture on effectively communicating health and safety. Both sets of guidance could also be adapted for WorkSafe’s purposes with specific health and safety content and examples. WorkSafe will need to make sure that it is actively promoting this guidance to relevant employers.

301 WorkSafe should also consider the impact of “zero tolerance” aspects of PCBUs’ health and safety policies on the attitudes and behaviours of CALD workers, where “zero tolerance” means that breach of those policies can amount to serious misconduct, and likely termination. These policies can impact employees’ propensity to report health and safety incidents (including near-misses) – for example, being unwilling to “dob in” themselves, a colleague, or a boss. In the context of Samoan workers, for example, where “older workers are automatically given respect by younger

²⁵⁵ WorkSafe New Zealand “Enforceable undertaking – Woods Glass” (31 July 2018) <www.worksafe.govt.nz>.

²⁵⁶ Immigration New Zealand “The Employer Toolkit: Have you recruited staff from overseas... is it working well?” (2018) <www.immigration.govt.nz> and Immigration New Zealand “The Employer Toolkit: Are you employing Pacific migrants?... is it working well?” (October 2016) <www.immigration.govt.nz>.

²⁵⁷ Immigration New Zealand “Work Talk: NZ Workplace Communication “Questions and Answers” (undated) <www.worktalk.immigration.govt.nz>.

workers”, those younger workers are less likely to “dob in” an older worker, as that could have significant impacts on that older worker’s continuation in their job. WorkSafe may consider it useful to work with representative PCBUs to determine whether these “zero tolerance” policies are effective in CALD working environments.

- 302 WorkSafe can also use its discretion under section 10(b) of the WorkSafe New Zealand Act to make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes, to ensure the health and safety of CALD workers.
- 303 We referred above at paragraph 266(e)(v) to (vii) to the requirements of section 36(3)(f) of the HSW Act 2015, under which, a PCBU is required to ensure, so far as is reasonably practicable, the provision of any information, training, instruction, or supervision that is necessary to protect *all persons* from risks to their health and safety. In addition to the requirements discussed above to provide basic health and safety training, there is also an implied requirement within that provision that the information/training/instruction or supervision provided is delivered in such a way that it can be understood by all persons, including those coming from different cultural or linguistic backgrounds.
- 304 There is scope in New Zealand to make PCBUs’ obligations in respect of CALD workers clearer to employers, through the use of Approved Codes of Practice (ACOPs). In Australia, the regulators used ACOPs to set out more explicitly PCBUs’ obligations in respect of CALD workers, for example, in respect of consultation. The New Zealand regulator similarly has the ability to develop an ACOP for Ministerial approval.²⁵⁸ In New Zealand, as in Australia, the ACOP is non-binding guidance but is admissible in proceedings as evidence of whether or not a duty or obligation under the Act has been complied with.²⁵⁹
- 305 Given that “all persons” necessarily includes CALD workers, and given the function of ACOPs is to provide guidance about how to comply with the legislation, WorkSafe could develop an ACOP, which provides more guidance to PCBUs about how to ensure CALD workers are provided with appropriate information, training, instruction and supervision to protect them from health and safety risks at work. Only if the ACOPs are ineffective at reducing the injury rates of CALD workers down to the same level as all workers, would consideration of further law reform be warranted to consider specific primary legislation to protect CALD workers.
- 306 We therefore recommend a number of actions to encourage employers of CALD workers to better assess and mitigate relevant risks.

²⁵⁸ Health and Safety at Work Act 2015, s 222.

²⁵⁹ Health and Safety at Work Act 2015, s 226.

Recommendation 12: Provide more guidance to employers of CALD workers

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Encourage employers of CALD workers to take cultural capability training.</p> <p>This could include referrals to existing resources such as the “Work Talk: NZ Workplace Communication” website.</p>	<p>Cultural capability is important to ensure that employers are adequately assessing the risks to their workforce (including risks stemming from different cultural attitudes and behaviours) and appropriately mitigating those risks. Employers of CALD workers should be encouraged to undertake training to equip them to make these assessments.</p>	<ul style="list-style-type: none"> • Goal A / Priority 2: Businesses with greater need: sectors with highest harm and small businesses • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Building on guidance and advice currently provided by overseas regulators.</p>	<p>See Recommendations 9, 11 and 12.</p>
<p>Use ACOPs as a tool to provide more guidance to PCBUs about how to ensure CALD workers are provided with appropriate information, training, instruction and supervision to protect them from health and safety risks at work, including basic training about the operation of the health and safety system in New Zealand and rights and duties under the HSW Act 2015.</p> <p>This could include developing a video which could be adapted for different languages.</p>	<p>The ACOPs should provide guidance to PCBUs about how to comply with their duties under New Zealand health and safety legislation in respect of CALD workers.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	<p>Building on ACOPs developed by the Australian regulators in particular, and the Québec regulator in respect of the video.</p>	<p>See Recommendation 9.</p>

Recommendation 12 continued

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Develop appropriate guidance for employers of CALD workers, including:</p> <ul style="list-style-type: none"> • A checklist to help them consider the health and safety needs of their CALD employees. The checklist should help them assess their workforce across a range of injury vulnerability factors and prompt necessary next steps to mitigate risk. The factors include: literacy, numeracy, physical attributes (relevant to PPE), general health and relevant work experience, and their understanding of New Zealand workplace health and safety culture • Guidance on cultural differences that affect working relationships, between employers and their workers and between co-workers and CALD workers, noting that working relationships are an important part of effective health and safety • Guidance on the impacts of different national cultures on health and safety attitudes and behaviours. This should emphasise that workers from other cultures may perceive reporting accidents and near misses to be unwelcome, and thus fear reprisals from doing so. It should help employers emphasise that reporting and investigations are intended to improve conditions for all workers, not to blame them. 	<p>In addition to cultural capability training, guidance for employers of CALD workers can enable employers to more accurately assess and mitigate workplace risks.</p> <p>WorkSafe should provide more in-depth guidance, particularly in respect of the impact of cultural differences on working relationships, as well as on health and safety attitudes and behaviours.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Developing on guidance and advice currently provided by the Australian regulators.</p>	<ul style="list-style-type: none"> • Work in tandem with Recommendation 11 on better protection from reprisals • Support focus on structural issues identified in Recommendation 15, especially precarious employment.

Recommendation 13: Encourage high risk sectors to take the lead on addressing increased vulnerability of CALD workers

- 307 This recommendation relates to the “sector owned action plans” lever.
- 308 WorkSafe could encourage high risk sectors with high proportions of CALD workers to take the lead on addressing the increased vulnerability of CALD workers. This is a good opportunity to link in with the Strategy’s Goal B / Priority 1, “Encourage leaders at all levels to integrate health and safety,” and encourage PCBUs in high-risk sectors to set an example about how best to ensure CALD workers are no less vulnerable to injury and illness than all works.
- 309 Until more data is identified about what sectors CALD people tend to work in, WorkSafe could encourage the high risk sectors set out in the Reducing Harm in New Zealand Workplaces Action Plan (agriculture, construction, forestry, manufacturing, and healthcare and social assistance) to develop sector-owned action plans for CALD workers.
- 310 In particular, construction appears to be a sector that could easily show leadership in reducing injury and illness amongst CALD workers. Overseas, many of the initiatives targeting CALD workers have taken place in the construction sector, for example:
- (a) The United Kingdom regulator’s London Outreach Worker Project;²⁶⁰
 - (b) The Ontario regulator’s extended inspection hours;²⁶¹
 - (c) The British Columbia regulator’s “Safety Initiative Symposium”;²⁶² and
 - (d) Safe Work Australia’s model Code of Practice on Construction work.²⁶³
- 311 In New Zealand, WorkSafe has already done a significant amount of work in and with the construction sector. The construction sector already has a leadership body, Construction Health and Safety NZ, who would be well-placed to deliver an action plan. Anecdotal evidence suggests that there are a large number of CALD workers in the construction industry, particularly migrant workers. Additionally, New Zealand is currently experiencing a construction boom, and the shortage of skilled tradespeople means that migrant labourers are increasingly being tapped to fill this gap.
- 312 The Construction Industry is therefore a good candidate for a sector owned action plan to address CALD workers health and safety.

²⁶⁰ See paragraph 429 onwards.

²⁶¹ See paragraph 508.

²⁶² See paragraph 568.

²⁶³ See paragraph 660.

Recommendation 13: Encourage high risk sectors to take the lead on addressing increased vulnerability of CALD workers

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Work with high risk sectors to develop action plans addressing the health and safety of CALD workers.</p>	<p>WorkSafe should encourage high risk sectors with high proportions of CALD workers to take the lead on addressing their increased vulnerability. This links in with other aspects of the Strategy and follows the focus on high-risk sectors shown by the overseas regulators.</p> <p>In particular, the Construction Industry is a good candidate for a sector owned action plan to address CALD workers health and safety, given its already high level of engagement, high proportion of CALD workers, and evidence of relevant initiatives conducted overseas that could be adapted for a New Zealand context.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Following prioritisation by the United Kingdom and Ontario regulators in particular.</p>	<p>See Recommendations 5, 6, 8 and 10.</p>

Recommendation 14: Strengthen protections from reprisal

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Conduct research on the prevalence of adverse conduct for a prohibited health and safety reason in New Zealand.</p>	<p>No actions have been brought for adverse conduct by WorkSafe under Section 143 Health and Safety at Work Act or by individual employees section 103(j) of the Employment Relations Act 2000 since their respective enactments.</p> <p>Research is therefore required to determine the extent of the problem and to inform WorkSafe’s response to this.</p>	<ul style="list-style-type: none"> • Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	<p>New initiative.</p>	<p>See Recommendation 4.</p>
<p>Educating CALD workers and employers on their rights regarding adverse conduct for prohibited health and safety reasons, including publicising the ability to report concerns or incidents confidentially</p>	<p>Without advice on what adverse conduct for a prohibited health and safety reason is or the process for employees to follow, CALD workers may not be aware that they have avenues to pursue if they have been subject to adverse conduct. WorkSafe should make sure that this is available and accessible to CALD workers.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 2: Enable workers to be represented, engaged, and to participate. 	<p>Building on work by Ontario regulator.</p>	<p>See Recommendations 9, 11, and 12.</p>
<p>Encouraging workers to contact WorkSafe if they consider they have been subject to adverse conduct for a prohibited health and safety reason. MBIE encourages employees to call their support centre if they are a victim or have witnessed behaviour that could be considered exploitation. WorkSafe could do the same.</p>	<p>Under the current system, there is very little support for CALD workers in raising concerns. WorkSafe could strengthen the protection offered to such workers by offering a support centre service.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk. 	<p>Building on work by Ontario regulator.</p>	<p>See Recommendation 9 and 10.</p>
<p>Work with Immigration NZ to determine whether a system/process can be created which protects immigrants on temporary visas, in situations where their employment has come to an end due to adverse conduct for a prohibited health and safety reason.</p>	<p>Migrants may be more likely to not complain about adverse conduct due to concern about risks to their visa. Partnering with INZ to create a temporary visa system could remove this disincentive for workers.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety. 	<p>Building on work by Ontario regulator.</p>	<p>See Recommendation 6.</p>

Recommendation 15: Better measurement of the effectiveness of CALD specific initiatives

- 322 This recommendation relates to the “partnership with other government agencies and stakeholders” lever.
- 323 Another challenge raised by the overseas regulators was a lack of analysis and evaluation of initiatives implemented to address CALD workers health and safety. Many of the initiatives that have been implemented have not been evaluated at all. Others have been evaluated purely based on the staff’s subjective view of how the project went. Canadian research in 1999 found that “many interventions in occupational safety are implemented with the sincere hope that they work, but with a lack of solid evidence of their effectiveness.” That research further notes that evidence from road accident studies found that the actual effect of safety measures can sometimes be to make the situation worse, and that for obvious reasons we should aim to avoid that effect in occupational safety.²⁶⁵
- 324 The issue of insufficient evaluation persists: in 2018, regulators from the United Kingdom, Australia, and Canada confirmed that a lack of measurement of intervention effectiveness is still hindering efforts to design and implement successful interventions for CALD workers.²⁶⁶
- 325 The New Zealand Health and Safety at Work Strategy 2018 – 2028 recognises the need to track the performance of the health and safety at work system as a whole through its focus on measurement and its action of developing an annual dashboard report.
- 326 However, it is also important to emphasise the importance of building outcome and output measures into specific programmes and interventions from the planning stage, to make sure that their efficacy can be properly evaluated.
- 327 The United Kingdom regulator, in its HSE Research Report 654, provides some suggestions as to how best to develop effective evaluation systems for health and safety interventions. This research highlights:²⁶⁷
- (a) The need for a common understanding of what constitutes ‘good evidence’; and increasing internal awareness of, and access to, such evidence;
 - (b) Bolstering ex-ante evaluation and strategic approaches through a ‘rigorous commissioning process’ for interventions and research, considering a ‘broader evidence base before and during commissioning of research, design and evaluation of policy interventions’
 - (c) Making greater use of ‘longitudinal independent checks on behavioural change’, as opposed to relying solely on self-reported evidence in evaluations, to improve the quality of evidence and information of sustainability of impact. This can be realised through ‘person-triangulation’, whereby change is checked by assessing evidence from two different sources.
 - (d) Prioritising the quality of output by considering whether to undertake ‘fewer, more focussed evaluations’ and more ‘small scale studies, secondary reviews or meta-analyses of ‘what works’
 - (e) Reviewing the approach used in the health sector or “‘realistic evaluation’ approach (Pawson and Tilley, 1997)’ to see if these can provide helpful models in the health and safety context.
- 328 Beyond intervention analysis, it is important to track outcomes and outputs even for small operational decisions such as putting translated guidance online. In those scenarios, it is useful to capture information such as website hits, visits, page views and traffic sources, to set the degree of usage and reach of such initiatives.

²⁶⁵ Harry Shannon, Lynda Robson, and Stephen Guastello “Methodological criteria for evaluating occupational safety intervention research” (1999) 31 Safety Science 161.

²⁶⁶ See paragraph 413, and interview with Jules Arntz-Gray and William Roy, above n 92.

²⁶⁷ Institute for Employment Studies, above n 88, at x.

Recommendation 15: Better measurement of CALD specific initiatives

Action Step	Rationale	Link to goal or priority	Overseas or new initiative	Link to other recommendations and action steps
<p>Build outcome and output measures into health and safety interventions for CALD workers at the beginning to make sure they can be properly evaluated.</p>	<p>A lack of measurement of intervention effectiveness hinders efforts to design and implement successful interventions for CALD workers. Building outcome and output measures is therefore crucial for a successful strategic approach to health and safety for CALD workers.</p>	<ul style="list-style-type: none"> • Goal A / Priority 3: Workers with greater need: Māori and other workers at greatest risk • Goal B / Priority 1: Encourage leaders at all levels to integrate health and safety • Goal B / Priority 4: Develop and share better data and insights to improve decision making. 	<p>New initiative; based on challenges faced by overseas regulators.</p>	<p>See Recommendation 4.</p>
<p>Track outcomes and outputs even for small operational decisions such as putting translated guidance online (i.e. by capturing website hits, visits, page views and traffic sources)</p>	<p>This will assist WorkSafe to see the degree of usage and reach of such initiatives, to determine their efficacy and value.</p>	<p>As above.</p>	<p>New initiative; based on challenges faced by overseas regulators.</p>	<p>Particularly relevant to Recommendation 10.</p>

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Problem definition

- 329 In recognition of WorkSafe’s vision that “everyone who goes to work comes home healthy and safe”, WorkSafe is now turning its attention to one group of the most vulnerable New Zealand workers. International research shows that while incidence of fatal occupational injuries has decreased over time in many countries, it has increased in the migrant, foreign born and ethnic minority worker population. Studies have shown that ethnically, culturally and linguistically diverse workers have a higher risk of workplace injury than non-diverse workers. The following studies are particularly relevant:
- (a) 1994: An Australian study based on an investigation of all work-related fatalities that occurred during 1982-1984 concluded that fatalities in rural and mining occupations significantly increased among workers who were born overseas, when compared to Australian-born rural and mining workers. The mortality ratios showed significantly elevated mortality for workers who had resided in Australia for less than five years, particularly for persons of a non-English speaking background.²⁶⁸
 - (b) 2004: The findings of an American study demonstrate that Hispanic construction workers face significantly higher risks in the workplace than non-Hispanic construction workers, even within high-risk occupations. The study found that Hispanic construction workers consistently faced higher relative risk for every year from 1992 to 2000 and for every age group, when compared to non-Hispanic construction workers. In 2000, Hispanic construction workers were nearly twice as likely to be killed by occupational injuries as their non-Hispanic counterparts.²⁶⁹
 - (c) 2009: Smith and Mustard’s research confirms the significance of the first five years of residence. The study found that immigrant men in their first five years in Canada are at an increased risk of work-related injuries that limit activities and require medical attention, compared to Canadian-born workers.²⁷⁰
- 330 New Zealand’s migrant, foreign born and ethnic minority population born in New Zealand is significant (especially in Auckland), and is forecast to increase. Therefore there is significant urgency in making sure that WorkSafe’s efforts are fit for purpose for these populations.
- 331 To assist WorkSafe in this goal, this research looks to other “superdiverse” countries to determine what challenges were faced and what lessons were learned by their health and safety regulators, regarding the protection of these vulnerable workers. In this research project, we consider the challenges and lessons learned by the regulators of the United Kingdom, Australia, and Canada.

Superdiversity

- 332 The Superdiversity Stocktake defines superdiversity as being “the substantial increase in the diversity of ethnic, minority and immigrant groups in a city or country, “especially arising from shifts in global mobility””. Superdiverse cities have been defined as those where migrants comprise more than 25% of the resident population, or where more than 100 nationalities are represented.²⁷¹

²⁶⁸ CF Corvalan, TR Driscoll and JE Harrison “Role of migrant factors in work-related fatalities in Australia” (1994) 20 Scand J Work Environ Health 364 at 368.

²⁶⁹ XW Dong and JW Platner “Occupational fatalities of Hispanic construction workers from 1992 to 2000” (2004) 45 Am J Ind Med 45.

²⁷¹ PM Smith and C Mustard “Comparing the risk of work-related injuries between immigrants to Canada, and Canadian-born labour market participants” (2009) 66 Occup Environ Med 361.

New Zealand

- 333 Although the 2018 Census has been taken, the results are not yet available. The 2013 census recorded that 74% of the New Zealand population identified as European, 14.9% as Māori, 11.8% as Asian, 7.4% as Pacific people and 1.3% as MELAA.²⁷² According to figures sourced from the 2013 census, New Zealand has more than 213 ethnic groups.²⁷³ That census also showed that 25.2% of New Zealand residents were born overseas, which is the fifth highest proportion in the OECD.^{274 275} The most common birthplace for people living in New Zealand but born overseas was Asia at 31.6%, the UK and Ireland at 26.5%, India at 6.7%, and Australia at 6.3%.²⁷⁶
- 334 According to the 2013 Census, Auckland had the highest proportion of overseas born people: almost 2 in 5 people (39.1%), followed by Wellington (roughly 25%), and Nelson (roughly 21%).²⁷⁷ Auckland is the fourth most superdiverse city in the world.²⁷⁸ It is the biggest Polynesian city in the world, and also has a uniquely large indigenous component (10.7% of Auckland’s total residents in 2013 were Māori).²⁷⁹
- 335 New Zealand’s population speaks 160 different languages,²⁸⁰ of which the six most common in the 2013 census were English, te reo Māori, Samoan, Hindi, Northern Chinese (including Mandarin), and French.²⁸¹
- 336 The proportion of the population identifying as Māori, Asian and Pacific populations is projected to grow between 2013 and 2038 because of their higher relative birth rates and natural increase (births minus deaths).²⁸² Those identifying as Māori are expected to make up 18% of New Zealand’s total population in 2038, compared with 16% in 2013. Those identifying as Asian will make up 22%, compared with 12% in 2013, and those identifying as Pacific peoples will account for 10%, compared with 8% in 2013.²⁸³ The number of people identifying with a European ethnicity or as a “New Zealander” is projected to increase, but at a relatively slow rate. As a result, the proportion identifying with these ethnicities is projected to drop from 75% in 2013 to 66% in 2038.²⁸⁴ Note that “people can and do identify with multiple ethnicities, especially people aged under 30 years.”²⁸⁵

United Kingdom

- 337 The United Kingdom has 270 nationalities and its population speaks more than 300 languages.²⁸⁶ The 2011 census found that the top five main languages in England and Wales other than English were Polish, Punjabi, Urdu, Bengali, and Gujarati.²⁸⁷ The 2011 census recorded that 87% of the population of the United Kingdom identified as “White”, 7% as Asian/Asian British, 3% as Black/African/Caribbean/Black British, 2% as mixed and 0.1% as gypsy, traveller, or Irish traveller. As of 2017, 14% of the British population were not born in the United Kingdom and 10% were non-British nationals.²⁸⁸ For the 14% of United Kingdom residents born outside the United

²⁷² Chen, above n 7, at 32. Superdiversity as defined in Steven Vertovec “Super-diversity and its implications” (2007) 30(6) *Ethnic and Racial Studies* 1024, is “distinguished by a dynamic interplay of variables among an increased number of new, small and scattered, multiple-origin, transnationally connected, socio-economically differentiated and legally stratified immigrants who have arrived over the last decade.”

²⁷³ Statistics NZ “2013 Census QuickStats about culture and identity” (15 April 2014) <archive.stats.govt.nz>.

²⁷⁴ “Census 2013: More ethnicities than the world’s countries” (11 December 2013) NZ Herald <www.nzherald.co.nz>.

²⁷⁵ Statistics NZ, above n 272.

²⁷⁶ “Foreign Born population (indicator)” (2013) OECD <data.oecd.org>.

²⁷⁷ Statistics NZ, above n 272.

²⁷⁸ Chen, above n 7, citing “Examining Super-diversity on a Global Scale” (November 2014) Massey University <www.massey.ac.nz>.

²⁷⁹ Chen, above n 7, citing Statistics NZ, above n 272.

²⁸⁰ Royal Society of New Zealand “Languages in Aotearoa New Zealand” (March 2013) <royalsociety.org.nz >.

²⁸¹ Statistics NZ, above n 272.

²⁸² Statistics NZ “National Ethnic Population Projections: 2013 (base)–2038 (update)” (18 May 2017) <archive.stats.govt.nz>.

²⁸³ Statistics NZ, above n 272.

²⁸⁴ Statistics NZ, above n 272.

²⁸⁵ Chen, above n 7, citing Statistics NZ “National Ethnic Population Projections: 2013 (base) – 2038”, above n 282.

²⁸⁶ Jonathan Prynn “270 nationalities and 300 different languages: how a United Nations of workers is driving London forward” (1 March 2011) *Evening Standard* <www.standard.co.uk>.

²⁸⁷ Angela Potter-Collins “Language in England and Wales: 2011” (4 March 2013) Office for National Statistics <www.ons.gov.uk>.

²⁸⁸ Nicola White “Population of the UK by country of birth and nationality: 2017” (24 May 2018) Office for National Statistics <www.ons.gov.uk>.

Kingdom, the most common birthplace was Poland, followed by India, Pakistan, Romania, and the Republic of Ireland.²⁸⁹

338 These figures do not paint a complete picture of the United Kingdom's superdiversity. Superdiversity is geographically concentrated. Statistics show that London is one of the most superdiverse cities in the world.²⁹⁰ In 2017, the largest non-United Kingdom born populations in the United Kingdom were in London.²⁹¹ Over one in three London residents were born in a country outside of the United Kingdom, with the top non-UK countries of birth in 2011 being India, Poland, Ireland, Nigeria, Pakistan, Jamaican, and Sri Lankan.²⁹² This is consistent with diversity being concentrated in major cities around the world, as populations are most concentrated in urban areas.

339 The 2011 Census also indicated that only 45% of residents in London identified as White British, with the remainder identifying as "White other", "mixed", "Asian", "black" or "other."^{293 294}

340 Similarly to New Zealand where the median ages for Māori, Pasifika, and Asian ethnic groups are significantly lower than Pakeha people,²⁹⁵ minority ethnic groups in the United Kingdom "also have a younger age structure than the white (UK born) population, reflecting past immigration and fertility patterns."²⁹⁶ As the definition of 'vulnerable workers' includes 'young workers', it is notable that young workers are disproportionately likely to belong to a minority ethnic group.

341 The University of Leeds projects that over the next 40 years the United Kingdom will become more ethnically diverse and geographically integrated.²⁹⁷ The research finds that ethnic minorities will make up one-fifth of the total British population by 2051, with the mixed ethnic population expected to treble in size. Ethnic groups are predicted to disperse throughout the country, becoming more integrated than at present. Project lead Professor Philip Rees states that "Groups outside the White British majority are increasing in size and share, not just in the areas of initial migration, but throughout the country".²⁹⁸

342 The 2010 report by the University of Leeds was conducted prior to the Brexit vote. The full impact of Brexit on ethnic diversity within Britain is currently hard to predict, due to the large number of variables. Three areas can be identified which may affect the diversity of the UK workforce, and challenges faced by United Kingdom health and safety regulators, post-Brexit:

- (a) The kind of immigration policy adopted post Brexit. For example, this may affect the proportion of non-United Kingdom born or non-United Kingdom nationality workers in certain employment sectors.²⁹⁹
- (b) The impact of Brexit on rates of immigration and emigration of both European Union ("EU") and non-EU citizens to and from the United Kingdom.³⁰⁰
- (c) The offer of 'settled status' to EU citizens currently resident in the United Kingdom and the risk of eligible EU citizens failing to secure 'settled status' due to certain vulnerabilities (including linguistic or social) or being unaware of the need to register (including children of United Kingdom citizens). One example of a future challenge faced by United Kingdom

²⁸⁹ White, above n 288.

²⁹⁰ London had the 8th highest percentage of foreign-born residents out of the global cities surveyed in June JH Lee (ed) World Migration Report 2015 – Migrants and Cities: New Partnerships to Manage Mobility (International Organization for Migration, Geneva, 2015) at 39.

²⁹¹ White, above n 288.

²⁹² Census Information Scheme "Diversity in London – CIS2013-04" (June 2013) <data.london.gov.uk>.

²⁹³ White, above n 288.

²⁹⁴ Census Information Scheme, above n 292.

²⁹⁵ Statistics NZ, above n 272.

²⁹⁶ Wadsworth and others, above n 106, at 18.

²⁹⁷ Phillip Rees and others "Ethnic population projections for the UK, 2001–2051" (2012) 29(1) Journal of Population Research 45.

²⁹⁸ University of Leeds "UK in 2051 to be 'significantly more diverse'" (13 July 2010) <www.leeds.ac.uk >.

²⁹⁹ Madeleine Sumption, "Labour Immigration after Brexit: Trade-offs and Questions about Policy Design" (27 January 2017) The Migration Observatory (The University of Oxford) <www.migrationobservatory.ox.ac.uk>.

³⁰⁰ "What to look for in the quarterly migration statistics after the referendum" (23 Feb 2017) The Migration Observatory (The University of Oxford) <www.migrationobservatory.ox.ac.uk>.

health and safety regulators may, therefore, be a possible increase in the illegally resident working population of the United Kingdom as a result of eligible EU citizens failing to secure 'settled status'.³⁰¹

Australia

- 343 Australians now come from nearly 200 countries, and represent more than 300 ethnic ancestries.³⁰² 28.5% of the resident population was born overseas in 2017 (6.7m).³⁰³ The most common birthplace was the United Kingdom which was 5% of the total population, 2.5% from New Zealand, 2.2% from China, and 1.9% from India.³⁰⁴
- 344 Australia records ancestry rather than ethnicity data in its census to provide an indication of ethnic background. Their Census asks to provide no more than two ancestries and is designed to identify the respondent's ethnic origin, rather than a self-identification approach.³⁰⁵
- 345 In 2016, there were over 300 different languages spoken in Australian homes. The top 5 languages spoken were English (72.7%), Mandarin (2.5%), Arabic (1.4%), Cantonese (1.2%) and Vietnamese (1.2%).³⁰⁶
- 346 Australia ranks third proportionally in the OECD in their foreign-born population, behind Luxembourg and Switzerland. New Zealand comparatively ranks fifth (after Israel), and the United Kingdom ranks 16th.³⁰⁷
- 347 Victoria is the most diverse state within Australia, with more than 30% of Victorians born overseas.³⁰⁸
- 348 Australia is the only country of the three that records generational migration. Their 2016 results revealed that 49% of Australians were born overseas (first generation), or have at least one parent born overseas (second generation).³⁰⁹
- 349 Australia's indigenous population is growing rapidly. In 2016 Aboriginal and Torres Strait Islander people accounted for 2.8% of the population, representing an 18% increase from the 2011 Census.³¹⁰ New South Wales had the highest count of Aboriginal and Torres Strait Islander people at 33% of the national total, followed by Queensland (29%) and Western Australia (12%). Together, these three states made up almost three-quarters of Aboriginal and Torres Strait Islander people.

Canada

- 350 In Canada, the population of foreign-born people has been continually rising, from 19.8% in the 2006 Census and 20.6% in the 2011 National Household Survey.³¹¹ Asia (including the Middle East) remains the top source continent of recent immigrants. In 2016, the majority of newcomers were born in Asia (61.8%); Asian countries accounted for seven of the top ten countries of birth of recent immigrants in 2016: the Philippines, India, China, Iran, Pakistan, Syria and North Korea. Statistics Canada predicts that if current immigration trends continue, 55.7% to 57.9% of all immigrants would be born in Asia from 2036, and from 15.4% to 17.8% would be born in Europe.

³⁰¹ Madeleine Sumption and Zovanga Kone, "Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?" (12 April 2018) The Migration Observatory (The University of Oxford) <www.migrationobservatory.ox.ac.uk>.

³⁰² Australian Bureau of Statistics "2024.0 = Census of Population and Housing: Australia Revealed, 2016" <www.abs.gov.au>.

³⁰³ Australian Bureau of Statistics "3412.0 Migration, Australia 2015-2016" (March 2017) <www.abs.gov.au>.

³⁰⁴ Australian Bureau of Statistics, above n 303.

³⁰⁵ "2008.0 Census of Population and Housing: Nature and Content, Australia, 2006" (20 August 2015) Australian Bureau of Statistics <www.abs.gov.au>.

³⁰⁶ "Media release: Census reveals a fast changing, culturally diverse nation" (27 June 2017) Australian Bureau of Statistics < www.abs.gov.au>.

³⁰⁷ OECD, above n 275.

³⁰⁸ Australian Bureau of Statistics, above n 303.

³⁰⁹ "2011.0 – Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016" (28 June 2017) Australian Bureau of Statistics <www.abs.gov.au>.

³¹⁰ Australian Bureau of Statistics, above n 309.

³¹¹ Statistics Canada "Immigration and ethnocultural diversity: Key results from the 2016 Census" (25 October 2017) <www.statcan.gc.ca>.

For the first time, as a source continent of recent immigrants to Canada, Africa ranks second, ahead of Europe, at 13.4% in 2016.³¹² Nigeria, Algeria, Egypt, Morocco and Cameroon were the top five countries of birth of recent African-born immigrants in 2016.³¹³

- 351 The 2011 Canadian National Household Survey estimated that Canadians have more than 200 languages as a mother tongue, in addition to English and French. The top four common mother tongues of recent immigrants were English, Chinese (including Chinese and Mandarin), Tagalog and Spanish.³¹⁴
- 352 Toronto (Ontario), Vancouver (British Columbia) and Montreal (Québec) continue to be the place of residence for over half of all immigrants and recent immigrants to Canada. Together, these three census metropolitan areas are the place of residence of over half of all immigrants (61.4%) and recent immigrants (56%) in Canada. In comparison, just over one-third (35.7%) of Canada's total population lived in these three areas.³¹⁵
- 353 First- and second-generation children of immigrants also contribute to the diversity of Canada's population. According to the 2016 Census, almost 2.2 million children under the age of 15 were born outside Canada (first generation) or had at least one foreign-born parent (second generation), representing 37.5% of all Canadian children. In 2016, the majority (74%) of these first- or second-generation children had cultural ties to countries in Asia, Africa, the Caribbean and Bermuda, Central and South America.³¹⁶
- 354 4% of the total Canadian population had an Aboriginal identity in 2011.³¹⁷ Aboriginal people made up the largest shares of the population in the Northwest Territories and Nunavut. Aboriginal people accounted for half of the population in the Northwest Territories (52%)³¹⁸ and the majority of the population in Nunavut (86%).³¹⁹
- 355 According to Statistics Canada, Canada's diversity is set to increase. Their projection shows the proportion of people born outside of Canada continuing to rise, reaching between 25% and 28% in 2031.³²⁰ By 2031, it is likely that at least one person in four living in Canada will have been born overseas.³²¹
- 356 Statistics Canada projects that in the long-term, as one generation is replaced by another, the diversity within the Canadian-born population will increase. By 2031, nearly one in two Canadians aged 15 years and over are expected to either be born outside Canada or have at least one parent who was born outside Canada.³²²

Definitions and factors relevant to analysis

The superdiverse workforce

- 357 A superdiverse workforce includes both *migrants*, generally defined as “a person who moves from one country to another, especially in order to find work or better living conditions”,³²³ but also people who were *not* born overseas or who moved at a very young age, but who are nevertheless aligned to a different nationality or identity from the mainstream (this may include indigenous people who, despite being “native” to a country, operate outside of the mainstream as a result of

³¹² Statistics Canada, above n 304.

³¹³ Statistics Canada “Immigration and ethnocultural diversity: Key results from the 2016 Census” (25 October 2017) <www.statcan.gc.ca>.

³¹⁴ Statistics Canada, above n 313.

³¹⁵ Statistics Canada, above n 313.

³¹⁶ Statistics Canada, above n 313.

³¹⁷ Statistics Canada “Aboriginal Peoples: Fact Sheet for Canada” (15 August 2018) <www.statcan.gc.ca>.

³¹⁸ Statistics Canada “Aboriginal Peoples: Fact Sheet for Northwest Territories (15 August 2018) <www.statcan.gc.ca>.

³¹⁹ Statistics Canada “Inuit: Fact Sheet for Nunavut” (15 August 2018) <www.statcan.gc.ca>.

³²⁰ Statistics Canada “Projections of the Diversity of the Canadian Population” (15 August 2018) <www.statcan.gc.ca>.

³²¹ Statistics Canada “Analysis of Results” (30 November 2015) <www.statcan.gc.ca>.

³²² Statistics Canada, above n 304.

³²³ Oxford Living Dictionaries “migrant” (2018) <<https://en.oxforddictionaries.com>>.

historical factors and discrimination). In other words, we are looking at the full spectrum of people who are ethnically, culturally, “visually” or linguistically diverse.

Hyper-diversity

- 358 We also wish to draw your attention to the term ‘hyper-diversity’. This goes beyond ethnic, social and socio-economic diversity, and encompasses differences related to lifestyle, attitudes and activities. People who at first may appear to belong to a fixed homogenous group may have very different orientations, values and activity patterns. Professor Ronald van Kempen gives the example of a group of young poor Indian-born men living in London. While at first sight they may appear to be a homogeneous group, on deeper examination they are not. They have different values and interests. Van Kempen’s example is that some of those men like watching sports on television at home, others may regularly contact their family in India, whereas others hang around the neighbourhood square and mostly talk to native Londoners. The point is that “people belonging to the same population or ethnic group may show quite different attitudes in the work place, school, or at home towards other groups; and they may have very different daily and lifetime routines that should be taken into account.”³²⁴
- 359 Therefore in considering diverse populations in New Zealand, it is important to recognise not only the diversity within the population as a whole, but the diversity *within those sub-populations and identified groups*. In other words, analyses at an ethnic group level are inadequate from a hyperdiversity perspective. In responding to *superdiversity*, policymakers need to be aware of *hyperdiversity* and build this in to policy design. Van Kempen suggests that generic policies cannot suffice in a hyperdiverse context and that “more diverse and more tailored arrangements are needed.”³²⁵ We return to this point in our recommendations, where we advocate a tailored approach to engaging with and educating CALD workers.
- 360 The relevance of the hyperdiversity thesis for WorkSafe is that homogeneity cannot be assumed within a culture. For example, research done by Mr Benjamin Lin Boon Tan on “Researching Managerial Values: a cross-cultural comparison” surveys Chinese managers in the People’s Republic of China, the United States of America and Singapore. Mr Tan notes that a major problem with cross cultural research is that culture is often equated with a country, even though the two concepts are not necessarily the same. He refers to the “convergence hypothesis” which proposes that individuals in the context of industrialised nations will embrace common attitudes and behaviours despite cultural differences.
- 361 In regard to this particular study by Benjamin Lin Boon Tan, he finds that Singaporean managers displayed similar cultural values with the American managers on all the measures. This could be due to the environmental variables present in both the United States of America and Singapore, and that both countries have evolved out of the Western legal and political systems that are highly democratic in nature, and the business environment has been capitalistic with optimal technological development. The education systems in the two countries, using English as the medium of instruction, are also largely westernised with western management theories widely taught to the people. Chinese managers in the People’s Republic of China differ significantly from managers in the USA and Singapore. This is despite the common cultural heritage of Singapore and the People’s Republic of China. Mr Tan’s study supports the convergence hypothesis.
- 362 That is the polar opposite to proponents of the divergence approach who argue that national culture instead of economic ideology drives value systems, such that they will remain largely unchanged even if a country adopts capitalism. They emphasise the uniqueness of each culture and the need to adapt management practices to the local environment. Hofstede’s (1980) study

³²⁴Ronald van Kempen and Others “Hyper-diversity: A new perspective on urban diversity” (13 September 2013) European Commission <<https://ec.europa.eu>> at 4.

³²⁵At 4.

provides strong evidence that cultural differences persisted over time, even for members of the same multi-national corporations. Similarly, Kelly, et al, (1987) noted that cultural differences persist even after controlling for individual, organisational and occupational variables. Other studies also support the contention that the cultural beliefs and values are so deeply rooted in individuals that they remain intact for different cultures despite the impact of western style industrialisation.

- 363 There is a third view called “crossvergence”. This argues that neither the convergence nor the divergence view is adequate to explain the dynamic interaction of economic ideology and national culture. The crossvergence view reiterates that some new cross-bred forms of values result when two cultures meet (Beals, 1953). Therefore, complete convergence or divergence may not occur.
- 364 The Superdiversity Institute inclines more towards the divergence approach than the convergence approach. Superficially, employers or workers may embrace attitudes to survive, but underneath the appearance, the unique national cultures they were raised in are likely to persist in being strongly influential in a particular person's view of say, health and safety. Crossvergence will occur. It does, particularly as time spent increases in a new adopted country.
- 365 In the following section, we consider the different types of people to whom this report relates, those who make up the superdiverse population. It is important to tease out the differences between the many types of people who make up the superdiverse population, for the reasons described above, and because each will have different characteristics and experiences that impact on their health and safety risk.

Ethnically, culturally, and linguistically diverse people, whether migrants or non-migrants

- 366 For ethnically, culturally, and linguistically diverse people in general, whether migrants or non-migrants, there are a range of factors that can affect the way they experience workplace health and safety differently from “mainstream” workers and/or thereby increasing their risk of injury or death in the workplace. These include race and ethnicity, religion, culture, and language.
- 367 **Race and ethnicity:** Race and ethnicity are “contested concepts” in that there are “equally plausible rival interpretations [of their meaning]” and that “debates concerning the (‘right’) meaning and definition are therefore ongoing and sustained by respectable arguments and evidence.”³²⁶ They are also frequently used interchangeably.³²⁷
- 368 The elision and interchangeable use of these concepts should be borne in mind when reading and analysing relevant research, as it will impact on the assumptions and findings. It is important to consider these distinctions because the risk factors differ when we consider people of a different “race” or “ethnicity”. For example, a White (race) South African (ethnicity) in New Zealand is likely to have different experiences and outcomes from a Black (race) South African (ethnicity) in New Zealand.
- 369 While conducting the research, we found that there are significant differences in the categories of analysis used in this regard across different jurisdictions, particularly in census data. For example, the New Zealand census has an “ethnicity” measure but not a “race” measure. This means that “visual diversity” is not measured.
- 370 In Canada, the census asks about “ethnic or cultural origins of a person’s ancestors”, but also asks about “population group” i.e. “race.” Examples of population groups include “White,

³²⁶ Chris Lorenz “Representations of Identity: Ethnicity, Race, Class, Gender and Religion. An Introduction to Conceptual History” in Stefan Berger, Chris Lorenz, and Chris Lorenz The Contested Nation: ethnicity, class, religion and gender in national histories (Basingstoke, Palgrave Macmillan, 2008) at 30.

³²⁷ For example, in Canada, the census asks about “ethnic or cultural origins of a person’s ancestors”, but also asks about “population group” which appears to relate to the category considered as “race” (i.e. “examples of population groups include White, South Asian, Chinese, Black...”). By contrast, Statistics NZ only asks about ethnicity in the census and does not ask about race, on the basis that “the relatively high rate of intermarriage and degree of interaction between population groups in New Zealand ha[s] weakened the relevance of concepts of race-based concepts of ethnicity.” See “Review of the Measurement of Ethnicity” (September 2001) Statistics NZ <<http://archive.stats.govt.nz>>.

South Asian, Chinese, Black...”³²⁸ Canada uses the population group question to report on the “visible minority” variable.³²⁹ “Visible minority” refers to “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.”³³⁰ They have separate questions relating to Aboriginal people (First Nations (North American Indian), Métis (mixed indigenous and French) or Inuk (Inuit)).

371 In Australia, the census asks about ancestry but limits that to two ancestries. It does not ask about ethnicity or race.³³¹ In the United Kingdom, the census asks about ethnic group but refers to the following “race” categories “White,” “mixed/multiple ethnic groups,” “Asian/Asian British,” “Black/African/Caribbean/Black British,” “other ethnic group”.³³²

372 It is useful to be aware of the muddling of these definitions as it is particularly relevant to discrimination (including racial discrimination, which Statistics NZ has found to be “the most common form of discrimination people experience”), and thus relevant to physical and mental health and safety, and injury prevention.³³³ Discrimination in the workplace is a psychosocial risk to workers’ health and safety, and it is therefore crucial that WorkSafe understands the relevant contributory factors, as this will have a bearing on measures to address discrimination.³³⁴

373 In this report, we will use the term “visually diverse” to refer to non-White workers (i.e. persons whose origin is not predominantly European).

374 **Religion:** Religion may impact workers’ attitudes and behaviours towards health and safety, as well as appropriate methods for delivery of health and safety information and appropriate equipment. Fatalistic attitudes are common in many religions: “the three main religions, Christianity, Judaism, and Islam, share the belief that major life occurrences are in God’s hands and out of personal control.”³³⁵ Studies have shown that fatalistic beliefs negatively influence the acceptance of safe work practices.³³⁶ Additionally, the appropriate mode of delivery of information can be impacted by religious requirements. For Muslim women, it is more appropriate for information to be conveyed to them by women than men.³³⁷ In terms of equipment, there may be practical barriers for a Sikh person to wear head protection in relevant workplaces i.e. construction sites. This is because “in accordance with their religion, baptised Sikhs are required to wear their hair uncut and wrapped in a turban,” over which the hard hat cannot fit. To ensure that turban-wearing Sikhs are appropriately protected, but also are not penalised for non-compliance with regulations as a result of their religious practice, regulators may need to take steps such as in the United Kingdom, where Sikhs are exempted from the requirements for using head protection set out in the Personal Protective Equipment Regulations 1992.³³⁸

375 **Culture:** Following Kouabenan’s definition, culture is the “system of beliefs, values, representations, and shared experiences among the members of a given social group”.³³⁹ The broad definition therefore includes national cultures, ethnic cultures, religious cultures, organisational cultures,

³²⁸ Statistics Canada “2016 Census of Population Long-form guide” (5 July 2016) <www23.statcan.gc.ca>.
³²⁹ Statistics Canada “Definitions and concepts” (25 October 2017) <www12.statcan.gc.ca>.
³³⁰ Ontario Ministry of Finance “Census 2001 Highlights: Factsheet 6: Visible Minorities and Ethnicity in Ontario” (7 October 2009) <www.fin.gov.on.ca>.
³³¹ Australian Bureau of Statistics “2016 Census Sample Household Form” <www.abs.gov.au>.
³³² United Kingdom Office for National Statistics “2011 Census Questions – England” <www.ons.gov.uk>.
³³³ Statistics NZ “Working together: Racial discrimination in New Zealand” (September 2012) <http://archive.stats.govt.nz> Note, referring to the discussion above, that this finding resulted from combining two response categories: “skin colour” and “nationality, race, or ethnicity.”
³³⁴ See R Harris and others “The pervasive effects of racism: experiences of racial discrimination in New Zealand over time and associations with multiple health domains” (2012) 74(3) Soc Sci Med 408.
³³⁵ Miri Cohen “Cancer Fatalism: Attitudes Toward Screening and Care”, in Brian I. Carr and Jennifer Steel (eds) Psychological Aspects of Cancer: A Guide to Emotional and Psychological Consequences of Cancer, Their Causes and Their Management (Springer Science+Business Media, Berlin, 2013) at 92.
³³⁶ Fariba Kiani and Mohammad Reza Khodabakhsh “The Relationship between Safety Climate with Fatalism and Perceived Helplessness among Workers: Implication for Health Promotion” (2013) 2(3) Journal of Community Health Research 196 – 207 at 197.
³³⁷ Sarah Wylie “Best Practice Guidelines: Engaging with Culturally and Linguistically Diverse (CALD) Communities in Times of Disaster” (report to Christchurch City Council, July 2012) at 29.
³³⁸ Health and Safety Executive “Operational Guidance: Head Protection for Sikhs wearing turbans” (23 October 2015). Available at www.hse.gov.uk.
³³⁹ DR Kouabenan “Role of beliefs in accident and risk analysis and prevention” (2009) 47 Safety Science 767, at 771.

and indeed any set of shared beliefs, norms and experiences which constitute a “collective programming of the mind” and distinguish and demarcate one group from another.³⁴⁰

- 376 Cultural difference is inherent in a superdiverse workforce and may also affect health and safety practice. As Helmreich puts it: “Effective efforts to achieve safety must recognize the importance of culture. Organisations must have a full understanding of cultural influences on their operations if safety efforts are to succeed.”³⁴¹
- 377 As Professor James Liu explains, “research shows that comprehension and behaviour during interpersonal transactions are generally influenced by cultural beliefs.”³⁴² He explains that “a deference to and respect for authority is characteristic of people raised in Chinese cultural environments.” Thus, “in some circumstances a Chinese speaker may be keen to give the impression of understanding even if that understanding is superficial or imprecise.”³⁴³ While there has not been any research conducted on the impact of this on workplace injury rates, a study of intercultural communication difficulties in aviation found that the issue of “pretend understand” was a “great threat to flight safety.”³⁴⁴ In the health and safety context, this presents a significant challenge in understanding whether health and safety information has been effectively received.
- 378 Note too that the level and nature of cultural difference changes the longer a migrant has been in their adopted country. Martin and Nakayama describe five different types of “migrant-host relationships”, i.e. the way in which migrants relate to or value the majority culture of the host country, and their own minority culture. These are: assimilation (where migrants value the majority culture and devalue their own minority culture); integration (value the majority culture and value the minority culture); marginalization (devalue the majority culture and devalue the minority culture); separation (devalue the host culture and value the minority culture), and hybridity (where the migrant shifts from one to the other depending on the context).³⁴⁵ Martin and Nakayama note however a study of South Asian Indian immigrants to the United States, which considers cultural adaptation in the context of religion. The study found that even children raised in the same house could adapt differently, giving the example of two sisters who were raised by “moderately” religious parents, one of whom followed the parents’ traditions and the other who is not religious.³⁴⁶ This is relevant to the hyperdiversity concept discussed at paragraph 358.
- 379 **Language:** Language is an obvious barrier to the effective communication of health and safety information. This can take many forms including: workers or employers who do not speak or share the same language as each other; employers who do not speak English which is the main language in which WorkSafe communicates; workers or employers who do speak English but with a strong accent that others may not comprehend; or workers or employers who simply have variable levels of English comprehension or a low rate of literacy. As Wylie states: “there is no point translating a resource into another language if the speakers of that language have a very low rate of literacy.”³⁴⁷
- 380 Language is more than translation, it is culture also. Cultural norms also regulate the effectiveness of communication in ways distinct from mere language differences. Simply put, communication is about more than language, and so translation of materials may elide important divergences in conceptual understandings between cultures. As Flynn (2014) explains, “a fixation on language

³⁴⁰ Geert Hofstede *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organisations across Nations* (2nd ed, Sage, Thousand Oaks, CA, 2001) at 9.

³⁴¹ Robert L Helmreich “Building Safety on the Three Cultures of Aviation” (paper presented to Proceedings of the IATA Human Factors Seminar, Bangkok, Thailand, August 1998) at 39.

³⁴² Affidavit of Professor James Liu, 9 March 2018 at 7 (unpublished, emphasis added).

³⁴³ Liu, above n 342.

³⁴⁴ Ziyang Cheng “Intercultural communication difficulties and their effects on flight safety” (Masters of Intercultural Communications thesis, University of Jyväskylä, 2015).

³⁴⁵ Judith N Martin and Thomas K Nakayama *Intercultural Communication in Contexts* (5th ed, McGraw Hill Higher Education, 2010) at 310.

³⁴⁶ At 319.

³⁴⁷ For example, Dinka, a South Sudanese language. See Wylie, above n 337.

can cause other cultural differences to be overshadowed”.³⁴⁸ Other differences may include a rejection of Western medical ideas (Flynn and others (2014)) or a more general rejection of modern, scientific understandings of event causality (Hewstone (1994)).³⁴⁹

Spectrum of CALD workers

381 In this report, we consider the whole spectrum of CALD workers. These range from new migrants, to 1.5, second and third generation migrants (especially if they are visually diverse), refugees, and temporary foreign workers.

Migrants³⁵⁰

382 The term “migrant” is the one most commonly used by the health and safety regulators surveyed in this paper to refer to ethnically and culturally diverse workers. However, definitions of “migrant” differ between the jurisdictions surveyed, and even between relevant agencies in those jurisdictions.

383 In the United Kingdom, the Health and Safety Executive define ‘migrant workers’ as people who have come to work in Great Britain in the last five years and are working legally or otherwise.³⁵¹ However, Office for National Statistics (ONS) migration statistics of flows into and out of Britain use the UN recommended definition of a long-term international migrant: “A person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence.”³⁵²

384 In New Zealand, Statistics NZ has recently changed how they classify migrants. Previously Statistics NZ relied on arrival and departure cards, using passengers’ stated intention on the cards to determine their migrant status. If a passenger stated that they intended to stay in New Zealand for a year or more, they were classified as a migrant. Now, Statistics NZ uses the “12/16-month rule” that identifies an individual’s migrant status after observing their travel history and their length of stay in New Zealand over a 16-month follow-up period. This measure provides a clearer picture of migration patterns in New Zealand, and is compatible with the Australian measure of migration.³⁵³

385 The Office of the Auditor General has previously recommended that Immigration New Zealand ensure that the different definitions of “recent migrants” used to report on settlement outcomes are made clear and are understood, in order to prevent misinterpretation. They gave the example of the 2013 census defining “recent migrants” as migrants who have been in New Zealand for five years or less, and the New Zealand General Social Survey defining “recent migrants” as migrants who have been in New Zealand for 12 years or less.³⁵⁴ Further detail about the different ways New Zealand government departments have defined “recent migrants” is located at Appendix E.

386 The Australian Bureau of Statistics (“ABS”) defines migrant as “a person who was born overseas whose usual residence is Australia. A person is regarded as a usual resident if they have been (or are expected to be) residing in Australia for a period of 12 months or more.” It notes however that some ABS surveys (i.e. Characteristics of Recent Migrants) restrict the definition of migrants to include only migrants who arrived in Australia during a particular time period (for example, recent migrant in the last 10 years) and who were aged 15 years or more on arrival.³⁵⁵

³⁴⁸ Flynn, above n 58.

³⁴⁹ Tim O’Connor and others “Occupational safety and health education and training for underserved populations” (2014) 24(1) *New Solut* 83; “Societal attribution: collective beliefs and the explanation of social events” in Hewstone (eds) *Causal Attribution. From Cognitive Processes to Collective Beliefs*, (Blackwell, Oxford, 1994), at 205.

³⁵⁰ In this report, where we refer to migrants in relation to an initiative of WorkSafe or an overseas regulator, that should be taken to reflect WorkSafe or the overseas regulators’ usage of the term in context.

³⁵¹ Health and Safety Executive, above n 207, at 1.

³⁵² United Kingdom Office for National Statistics “Statistical bulletin: Migration Statistics Quarterly Report: November 2017” <www.ons.gov.uk>.

³⁵³ Statistics NZ “Defining migrants using travel histories and the ‘12/16 month rule’” (May 2017) <www.stats.govt.nz>.

³⁵⁴ Office of the Auditor-General “Immigration New Zealand: Supporting new migrants to settle and work” (June 2016) <www.oag.govt.nz>.

³⁵⁵ “Australian Bureau of Statistics 3415.0 – Migrant Data Matrices, 2012 – Glossary” (26 July 2012) <www.abs.gov.au>.

- 387 The characteristics of a migrant will depend significantly on that person's age at migration. A person who migrated at age 30 (first generation) will be very different from a person who migrated at age 8 (1.5 generation), both in their language fluency and their cultural attitudes. Note that "1.5 generation" describes young people between the ages of six and 18 who migrate to another country with their parents.³⁵⁶ Evidence from Professor James Liu, Professor of Psychology at Massey University, indicates that people who immigrate to an English-speaking country when they are at an adult stage in life are particularly unlikely to achieve fluency in English. Proficiency in a second language among adult immigrants is strongly related to age at migration.³⁵⁷ Professor Liu's evidence also indicated that, in the context of a Chinese migrant, "the different legal and cultural background can...have a significant impact on the way people raised in a Chinese cultural setting think, act, and engage when they are in dealings with government officials in other countries."³⁵⁸
- 388 Migrants of the 1.5 generation are quite different from first generation. As Dr. Hyeeyun Kim explains, "Even though they are technically first generation migrants, their socio-cultural experiences are different from those of the first and second generations. The 1.5 generation often face ambiguity and confusion as they are usually perceived by the first generation as second generation, [and] are seen as first generation by the second generation."³⁵⁹
- 389 As a briefing from The Migration Observatory at the University of Oxford notes, "the definition of 'migrant' is not simply a technical problem, but has an important effect on migration data and analysis generated from such data."³⁶⁰ It is important for WorkSafe to bear in mind what is meant by "migrants" and "migrant workers," and to be aware of the lack of conformity of definitions of "migrant" even within a jurisdiction, as this will have a bearing on how WorkSafe chooses to implement the recommendations of this report.

Refugees

- 390 A refugee is defined in the Convention and Protocol relating to the Status of Refugees 1951 as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."³⁶¹ Hudspath-Nieme and Conroy describe the refugee experience as follows: "Often times, refugees arrive having experienced significant physical and psychological trauma. They may have experienced stressful events such as loss of home, personal belongings, or family members; damage to property; enemy attacks, as well as death of friends and family."³⁶²
- 391 Although refugees are classed as migrants, they may be considered as a separate category with different and usually greater needs, which make them even more vulnerable than other CALD workers. Refugees will be discussed in detail later on in the evidence section of this report.

Indigenous people

- 392 Indigenous people are also a unique category of analysis in the context of this paper. In the New Zealand context, WorkSafe has already identified that Māori workers continue to face a disproportionate risk of injury. Statistics NZ's latest data shows that the rate of serious injury for Māori workers is 33% higher than for the total population.³⁶³

³⁵⁶ Chen, above n 7, at 63, citing A Bartley and Paul Spoonley "Intergenerational transnationalism: 1.5 generation Asian migrants in New Zealand" (2008) 46 *International Migration Review* 63 at 68, citing PG Min and R Kim (eds) *Struggle for Ethnic Identity: Narratives by Asian American Professionals* (AltaMira Press, California, 1999) and K Park "I really do feel 'I'm 1.5!': The construction of self and community by young Korean Americans" (1999) 25(1) *Amerasia Journal* 139.

³⁵⁷ Liu, above n 342.

³⁵⁸ Liu, above n 342.

³⁵⁹ Hyeeyun Kim "Parenting patterns of '1.5 generation Kowis' in New Zealand: "Take Best of Both Worlds to Raise the Next Generation" (2013) 15:2 *New Zealand Journal of Asian Studies* at 79.

³⁶⁰ Professor Bridget Anderson and Dr Scott Blinder "Who Counts as a Migrant? Definitions and their Consequences" (11 January 2017) The Migration Observatory at the University of Oxford <migrationobservatory.ox.ac.uk> . .

³⁶¹ Convention and Protocol relating to the Status of Refugees 1951 189 UNTS 137.

³⁶² Holly S Hudspath-Nieme and Mary Lou Conroy *Implementing Response-to-Intervention to Address the Needs of English-Language Learners: Instructional Strategies and Assessment Tools for School Psychologists* (Routledge, 2013) at page 15.

³⁶³ New Zealand Government, above n 82, at 5.

393 In considering indigenous people’s vulnerability to injury and illness, it is also important to recognise that vulnerability will be impacted by a range of factors, not least the sector or type of employment in which the worker is engaged. For example, Māori have high rates of participation in high hazard occupations such as forestry. However it is also important to remember that indigenous people can have unique risks even in comparatively low hazard sectors. By way of example, Māori lawyers may be at risk of a higher degree of occupational stress and burnout than non-Māori, as a result of unique stressors including working within and having to continually adapt to a monocultural system (i.e. a lack of cultural safety at work); self-expectations and the expectations of whanau, hapu, and iwi; and racism from other lawyers, judges and clients.³⁶⁴ We discuss indigenous people in detail later on in the evidence section of this report.

Concept of vulnerable workers

394 Many of the regulators surveyed in the course of our research use the concept of “vulnerability” when talking about workers. The term “vulnerability” suggests an increased risk of injury or illness in the workplace.

395 What makes a worker “vulnerable” differs according to each regulator in Canada, the United Kingdom, and Australia, but usually includes one or more of the following groups: women (especially pregnant women), solo parents, people of colour, new immigrants, temporary migrant workers, agency workers, indigenous people, young people, people with disabilities, and those working illegally.³⁶⁵ Additional to these demographic factors are other factors that make workers more vulnerable including shift work, and lone work, and “DDDD” (dirty, difficult, dangerous, and dull) work, as put by Philippe Legrain.³⁶⁶

396 Many workers will fit into multiple categories of vulnerability. For example, a worker may be: young, migrant, coloured, a woman, and working illegally. Thus in analysing the challenges and lessons learned by each regulator, it is relevant to note that many workers may fit into multiple categories of analysis and may experience “double (or triple) disadvantage.”³⁶⁷

397 We note that some interviewees identified a reluctance to categorise workers as “vulnerable”, fearing stereotypes or a discriminatory effect from such labelling,³⁶⁸ preferring instead to refer to factors of vulnerability. Note the definition of the Ontario Vulnerable Workers’ Task Group, discussed at Recommendation 5.

Legislation comparison

398 The purpose of the legislative comparison below is to ensure the relevance of the challenges and lessons learned by overseas regulators operating under similar laws.

399 The New Zealand HSW Act 2015 is based on the Australian Model Work Health and Safety Act, with modifications to take account of differences in the New Zealand context.³⁶⁹ The HSW Act 2015 is largely the same as the Australian model Act, with minor differences around phrasing and the New Zealand Act being more detailed in some provisions (refer to the below chart).

400 The United Kingdom’s, the Health and Safety at Work etc. Act 1974 (“the United Kingdom Act”) is quite different, even though it is also based on the Robens model. It omits many of the concepts that are key to the New Zealand Act and Australian model Act. There is no general duty to manage risks, no concept of a PCBU, no “officers”, no primary duty of care, and no categorisation of breach of duty offences by seriousness. There is also no requirement to consult, no right to cease work,

³⁶⁴ Moana John Eruera “Māori Lawyers and Stress” (a thesis presented in partial fulfilment of the requirements for the degree of Master of Business Studies in Human Resource Management, Massey University, 1999).

³⁶⁵ See discussions at paragraph 221 in particular.

³⁶⁶ Legrain, above n 75.

³⁶⁷ Chen, above n 134.

³⁶⁸ Interview with Anne Tennier, President and CEO, CCOHS (Mai Chen, 27 July 2018).

³⁶⁹ Health and Safety Reform Bill, explanatory note.

and no requirement to notify incidents. However, there are regulations in the United Kingdom which incorporate some of these requirements. Two key regulations in the United Kingdom are: the Management of Health and Safety at Work Regulations 1999 (regarding risk assessment and training) and the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, addressing risk assessment and training and reporting requirements respectively.

401 In Canada, each province and territory has its own legislation, and there is federal jurisdiction which is only applicable to a small number of workers, outside the jurisdiction of the provinces and territories (this is examined in further detail in Appendix C). As in the United Kingdom, the Canadian legislation is quite different conceptually, lacking concepts of general duties to manage risks, the concept of a PCBU, “officers”, and a primary duty of care. Canadian legislation also does not use the “reasonably practicable” concept. The chart below explains the federal legislation (the Canada Labour Code) in more detail; highlighted provincial legislation is addressed in more detail in Appendix B.

Comparison of key legislation

	New Zealand	Australia (model legislation)	United Kingdom	Canada
Regulator's functions	<p>Among others (s 190, HSWA 2015):</p> <ul style="list-style-type: none"> • Monitor and enforce compliance • Develop codes of practice and safe work instruments³⁷⁰ • Publish information about enforcement and performance standards • Provide guidance, advice, and information to duty holders • Promote research, education and training regarding health and safety. 	<p>Largely similar to NZ Act (s 152, WHSA 2011) with additional:</p> <ul style="list-style-type: none"> • To advise and make recommendations to the Minister and report on the effectiveness of the Act (s 152(a), WHSA 2011). <p>Does not have an express function to develop codes of practice and safe work instruments. The Minister may approve codes of practice (s 274(1), WHSA 2011).</p>	<p>General duty to do such things and make such arrangements that further the general purposes (s 11(1), HSWA 1974), being to secure the health, safety and welfare of persons at work (s1(1)(a), HSWA 1974).</p> <p>Limited express functions around research, providing information and advice, and assisting and encouraging persons concerned with relevant matters (s11(2), HSWA 1974).</p> <p>Regulator shall submit "from time to time" to the Secretary of State proposals for regulations (s 11(3), HSWA).</p>	<p>The role of the regulator is not defined in the Code.</p>
Duty on Employer	<p>PCBUs have a primary duty of care to ensure the health and safety of workers of the PCBU while at work (s 36(1), HSWA 2015). Also have a primary duty to ensure that non-workers are not put at risk from work carried out by the PCBU (s 36(2) HSWA 2015).</p>	<p>Same provision as New Zealand Act (s 19, WHSA 2011).</p>	<p>There is no primary duty holder. Instead, employers have a general duty to ensure, so far as is reasonably practicable, the health, safety at welfare at work of all employees (s 2(1), HSWA 1974).</p>	<p>There is no primary duty holder. Instead, employers have a general duty to "ensure that the health and safety at work of every person employed by the employer is protected." (s 124, CLC 1985).</p>
Standard of Care in relation to duties of relevant persons in respect of health and safety	<p>Standard is 'reasonably practicable', which is defined in the Act (s 22, HSWA 2015). Definition is subjective but provides a non-exhaustive list of factors to consider. Used throughout the Act in reference to duties.</p>	<p>Standard is 'reasonably practicable', which is defined in the Act (s 18, WHSA 2011). Same definition as New Zealand Act, including same factors. Used throughout the Act in reference to duties.</p>	<p>Standard is 'reasonably practicable', which is not defined in the Act. UK regulator's guidance³⁷¹ refers to UKCA definition from <i>Edwards v. National Coal Board</i> [1949] 1 All ER 743 at 747 (Asquith LJ).³⁷² Used throughout the Act in reference to duties.</p>	<p>The general duty of the employer is to "ensure" the health and safety of the persons employed. The term 'reasonably practicable' is used elsewhere in the code but not with reference to duties. It is not defined in the code.</p>
Duty to manage risks	<p>All persons that have duties under the HSW Act must eliminate (or if not reasonably practicable, minimise) risks to health and safety, so far as is reasonably practicable (s 30 HSWA).</p>	<p>Same provision as New Zealand Act (s 17, WHSA 2011).</p>	<p>No equivalent provision in the Act. The MHSWR 1999 make the requirements of the health and safety duties of employers under the HSWA (above) more explicit, for example, imposing a requirement to undertake risk assessments (Reg. 3)</p>	<p>No equivalent provision.</p>

³⁷⁰The purpose of a safe work instrument is to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.

³⁷¹Health and Safety Executive, "Principles and guidelines to assist HSE in its judgements that duty-holders have reduced risk as low as reasonably practicable" (13 December 2001) HSE Guidance <www.hse.gov.uk>.

³⁷²"Reasonably practicable" is a narrower term than 'physically possible' ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them." (Cited from *Edwards v National Coal Board* [1949] 1 All ER 743 (KB)).

Comparison of key legislation continued

	New Zealand	Australia (model legislation)	United Kingdom	Canada
Duty of officers	“Officers” (directors and CEOs) must exercise due diligence to ensure that PCBU complies with primary duty (s 44, HSWA 2015).	Same provision as NZ Act (s 27, WHSA 2011).	No concept of “officers of PCBU” in the Act. Employers have a general duty (see, ‘Duty of Employers’). Directors, managers, secretaries or similar officers of a body corporate (or person purporting to act in such capacity) can be prosecuted individually where the act was committed with their ‘consent’, ‘connivance’ or ‘neglect’ (s 37, HSWA 1974). This section does not impose a due diligence requirement.	No concept of “officers of PCBU”. Employers have a general duty (see, ‘Duty of Employers’). The term due diligence is not used.
Duty of workers	To take reasonable care for their own health and safety and to ensure that their acts or omissions do not affect the health and safety of other persons (s. 45, HSWA 2015).	Same provision as NZ Act (s 28, WHSA 2011).	Slight phrasing differences, but otherwise equivalent to NZ Act (s. 7, HSWA 1974).	Employees have ten duties which relate to ensuring their own safety and those of others (s. 126, CLC 1985).
Levies	PCBU must not levy workers for any health and safety related action taken by the PCBU (s. 27, HSWA 2015).	Same as NZ Act although less detail (s 273 WHSA 2011).	Slight phrasing differences, but otherwise equivalent to NZ Act (s 9 HSWA 1974).	No equivalent provision.
Consultation	PCBUs must consult with other PCBUs that have duties in relation to the same matter. Each PCBU must, so far as is reasonably practicable, consult, cooperate, and co-ordinate with the other PCBU (s 34, HSWA 2015).	Same as NZ Act (s 46, WHSA 2011).	No such provision in Act. Under MHSWR 1999, employers/self-employed persons (Reg. 11(2)) sharing a workplace must cooperate, co-ordinate, and inform of risks caused by their own conduct or that of their undertaking.	No equivalent provision.
Offences in respect of breach of duties	Three categories of offences relating to duties, by level of seriousness of breach (ss 47-49, HSWA 2015). 1) Reckless conduct 2) Failure to comply that exposes an individual to risk of death or serious injury/illness 3) Failing to comply with duty (simple breach).	Same as NZ Act (ss 31-33, WHSA 2011).	Offence to fail to discharge general duties (s 33(1)(a) HSWA 1974) (no differentiation on seriousness of breach). ³⁷³	Three categories of offences (s 148, CLC 1985). 1) General offence (contravening a relevant provision) 2) If death or injury (where contravention results in death, serious illness or injury to an employee) 3) Risk of death or injury (where wilful contravention knowing that contravention is likely to cause death, serious illness or injury to an employee).

³⁷³Severity of breach, judged according to harm and culpability, will have an impact on the sentencing decision. See: Sentencing Council Guidelines: ‘Individuals: Breach of duty of employer towards employees and non-employees/ Breach of duty of self-employed to others/ Breach of duty of employees at work/ Breach of Health and Safety regulations/ Secondary liability’ (Effective from 1 Feb 2016) <www.sentencingcouncil.org.uk>

Comparison of key legislation continued

	New Zealand	Australia (model legislation)	United Kingdom	Canada
Workplace participation	PCBU has a duty to engage with workers on health and safety matters (s 58 HSWA 2015). "Engage" not defined. Workers may elect health and safety representatives (s 62 HSWA 2015) or create health and safety committees to facilitate this engagement (s 66, HSWA 2015).	PCBUs have a duty to consult with workers. "Consult" not defined (s 47, WHSA 2011). See however provisions on nature of consultation (s 48, WHSA 2011). Same as NZ Act in respect of election of representatives to facilitate consultation (s 50, WHSA 2011). PCBUs must facilitate determination of "work groups" when requested (s 51 WHSA 2011).	No general requirement for engagement/consultation by employers with workers under the Act. In practice, there will be a duty to consult in most workplaces ³⁷⁴ , either under the Safety Representatives and Safety Committees Regulations 1977 or the Health and Safety (Consultation with Employees) Regulations 1996. Where the 1977 regulations apply, the HSWA 1974 provides that the employer must consult with the union-appointed safety representatives (s 2(5) HSWA 1974). If the representatives so request, the employer must establish a safety committee (s 2(6) HSWA 1974).	Health and safety committees or representatives are required for all work places. In work places where there are 19 employees or less or in workplaces exempted from the committee requirement, there must be a health and safety representative (ss 135 and 136, CLC 1985).
Right to cease work	A worker is entitled to cease work or refuse to carry out work if that worker believes that carrying out the work would expose the worker to serious risk to either their health, or the health of another person (s 83, HSWA 2015).	Equivalent to NZ Act. Has less detail than NZ Act about when a worker may continue to refuse to carry out work (s 84 WHSA 2011).	No equivalent provision in the Act. Employees have negative right not to be subjected to detriment by their employer for, in circumstances of danger which the employee reasonably believed to be serious and imminent, leaving, proposing to or refusing to return to their place of work or for taking appropriate steps to protect themselves or others (s 44(1)(d) and (e), ERA 1996).	Equivalent to NZ Act (s 128, CLC 1985). Additional specific provision regarding employees who are pregnant or breastfeeding children (s 132 CLC 1985).
Incident notification	PCBU has duty to notify regulator as soon as possible after becoming aware of a "notifiable incident," such as death, serious injury or illness, or a dangerous incident (s 56, HSWA 2015). Notifiable injury, illness and incident are all defined (ss 24, 25 HSWA 2015).	Equivalent provisions in Act, including of definitions (s 35 – 38 WHSA, 2011).	No equivalent provision in Act. Under RIDDOR 2013, the 'responsible person' (employer (Reg. 3(1)(a)) to report to the regulator in the case of work-related fatalities (Reg. 6), certain prescribed non-fatal injuries (Reg. 4), dangerous occurrences (Reg. 7), occupational diseases (Reg. 8) and exposure to carcinogens, mutagens and biological agents (Reg. 9).	Employers must report serious injuries to the regulator within 24 hours (Reg. 15.5 OHSR). Employers must also submit written investigation reports to the regulator, for all temporary and permanent disabling injuries, within 14 days of occurrence (Reg. 15.8, OHSR).

For the purpose of the table, the following abbreviations are used:

- HSWA 2015: Health and Safety at Work Act (2015), New Zealand
- WHSA 2011: Work Health and Safety Act (2011), Australia
- HSWA 1974: Health and Safety at Work etc Act (1974), United Kingdom
- MHSWR 1999: Management of Health and Safety at Work Regulations 1999, United Kingdom
- RIDDOR 2013: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, United Kingdom
- ERA 1996: Employments Rights Act (1996), United Kingdom
- CLC 1985: Canada Labour Code (1985), Canada
- OHSR: Occupational Health and Safety Regulations, Canada

³⁷⁴Health and Safety Executive "Consulting employees on health and safety: A brief guide to the law" (April 2013) <www.hse.gov.uk>.

United Kingdom

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- 402 As the United Kingdom is the birthplace of the Robens model, and has experienced significant immigration prior to and continuously following the Robens report,³⁷⁵ we had expected to see significant attention paid by the United Kingdom regulator, the Health and Safety Executive (HSE), to issues of ethnic, cultural and linguistic diversity.³⁷⁶
- 403 However, our research and discussion with Dr Bev Bishop, Chief Social Researcher at HSE indicated that ethnic, cultural and linguistic diversity is not a focus of HSE’s strategic policy work, although there are some relevant initiatives taking place in the HSE’s Field Operations Directorate.
- 404 As a starting point, we identified useful research commissioned by HSE between 2003 and 2009 on the impacts of ethnic, cultural and linguistic diversity on health and safety, particularly with regard to migrant workers. The most significant research reports (of which the findings will be discussed further in this section) were:
- (a) Research Report 150 (2003): *Cultural influences on health and safety attitudes and behaviour in small businesses*;
 - (b) Research Report 221 (2004): *Review of the occupational health and safety of Britain’s ethnic minorities*;
 - (c) Research Report 308 (2005): *Ethnicity, Work Characteristics, Stress and Health*;
 - (d) Research Report 502 (2006): *Migrant workers in England and Wales: An assessment of migrant worker health and safety risk*; and
 - (e) Research Report 691 (2009): *Improving the reliability of estimates of migrant worker numbers and their relative risk of workplace injury and illness*.
- 405 The HSE Research Report 150 about cultural influences suggested that some ethnic minority groups (specifically mentioned were African/Caribbean and Bangladeshi groups) hold particular feelings of alienation and hostility towards ‘officialdom’, and a related desire to minimise contact with regulatory officials. The report, drawing on evidence from support providers, inspectors and trade union representatives, suggests that those feelings are based on “feelings of discrimination and unfair treatment as a result of prior experiences, but also on the extent to which a business owner is knowingly engaged in illegal practices.”³⁷⁷
- 406 The same report, through interviews with managers and employees, also identifies cultural influences on attitudes and behaviour, specifically for individuals who have grown up in a different national culture with “a different business environment and more minimal regulatory expectations.”³⁷⁸ Inspectors noted a frequent reluctance from workers in ‘non-unionised’ workforces or small businesses to speak to inspectors “due to their not wishing to be seen by the owner/manager as ‘troublemakers’ and thus endangering their positions.”³⁷⁹ The regulators’ inspectors used a variety of ad hoc strategies to encourage effective information gathering from migrant workers despite these barriers, such as conveying information to the workforce as a

³⁷⁵ See “Origins of Commonwealth immigration” United Kingdom National Archives <www.nationalarchives.gov.uk>; Immigration from the colonies was approximately 2,000 per year in 1953, but increased to 135,000 annually by 1961. The Immigration Act 1971 tightened immigration controls was passed during the drafting of the Robens report.

³⁷⁶ Note that local authorities are the main enforcing authority in retail, wholesale distribution, warehousing, hotel and catering premises, offices, and the consumer/leisure industries, pursuant to the Health and Safety (Enforcing Authority) Regulations 1998. HSE is the regulator for the following high-risk sectors: agriculture, forestry, construction, healthcare, and manufacturing.

³⁷⁷ Vickers, above n 40, at 75.

³⁷⁸ At 56.

³⁷⁹ At 106.

whole rather than to selected individuals who might then be victimised for drawing attention to an issue, and openly leaving contact details so that employees could contact the inspector in confidence outside of the workplace.³⁸⁰

- 407 Ethnic and minority intermediaries (such as chambers of commerce or ethnic advocacy groups) interviewed also suggested that HSE needed to be more visible to ethnic and minority businesses.³⁸¹ A survey by a London-based HSE inspector of Turkish and Kurdish workers in the Boroughs of Hackney and Haringey in January/February 2001 found that 75% of respondents had never heard of the HSE.³⁸² Intermediaries also suggested that HSE needed to appear “less threatening and forbidding” and that inspectors needed to be more approachable.³⁸³
- 408 Interestingly, the HSE Research Report 150 also found “certain differences between inspected and non-inspected businesses, which were more commonly identified in the case of ethnic and minority businesses (EMBs) than in white-owned businesses.
- 409 For example, inspected EMBs were significantly more likely to have made some health and safety improvements in the previous five years than non-inspected EMBs, as well as more likely to view them as being financially beneficial. At the same time, there was a greater tendency for inspected businesses to judge that the health and safety regulations were too burdensome.”³⁸⁴ This finding suggests that inspections may be a powerful tool for increasing health and safety compliance among ethnic and minority businesses, but that this may have an impact on those businesses’ perceptions of WorkSafe.
- 410 The report also found significant variation between ethnic minority groups in the context of working with intermediaries to increase engagement with various ethnic minority groups.³⁸⁵ This highlights the need to be ‘sensitive to the differences between ethnic minority groups, rather than treating [ethnic minority businesses] as a homogenous group’³⁸⁶ in the implementation of health and safety legislation.³⁸⁷ Moreover, Research Report 308 stresses the importance of ensuring the effectiveness and relevance of policies and practices across different ethnic groups when developing new approaches to Health and Safety regulation.³⁸⁸
- 411 The report also highlighted practical difficulties for protecting ethnically and culturally diverse workers, specifically “the particular difficulty of finding protective headgear that could be used by orthodox Sikhs” in respect of the religious requirement to have a full beard.³⁸⁹
- 412 The HSE Research Report 308 about the relationship between ethnicity and work stress, found there was a significant association between work stress and ethnicity.³⁹⁰ Factors found to be influential in work stress included: racial discrimination and particular work characteristics. While the associations between work stress and certain work characteristics (a higher effort reward imbalance, higher job demand and less control over work) were similar for all ethnic groups, significant differences between the ethnic groups for control, shift work and long or unsociable hours were found.³⁹¹ The report suggests that these differences probably reflect occupational differences between the groups.

³⁸⁰ At 89.

³⁸¹ At 93.

³⁸² At 94.

³⁸³ At 93.

³⁸⁴ At 106.

³⁸⁵ At 113.

³⁸⁶ At 113.

³⁸⁷ See also, Smith and others, above n 26, at 53-54.

³⁸⁸ At 53-54.

³⁸⁹ Vickers, above n 40, at 57.

³⁹⁰ McKay, Craw and Chopra, above n 210, at 21.

³⁹¹ At 31-32.

- 413 Many of the research reports highlighted the lack of evidence regarding ethnically, culturally and linguistically diverse workers, including migrant workers, as a problem impacting the development of responsive harm prevention strategies.³⁹²
- 414 A report published by HSE in 2008, Research Report 654, *What works in delivering improved health and safety outcomes: A review of the existing evidence*, confirmed the existence of barriers to the use and generation of evidence about health and safety interventions at HSE.³⁹³ These findings were generic, and not specifically directed to CALD worker-specific interventions.
- 415 The research report found, despite the limitations of the evidence which it defined, at HSE's request, as "any kind of data which is used to justify whether a particular intervention affects health and safety, obtained from any source... [including] oral information passed on from colleagues through internal and external networks...",³⁹⁴ that "at some level" the following types of interventions were effective:³⁹⁵
- (a) Inspection and awareness-raising face-to-face events, as part of large scale multi-method campaign activities;
 - (b) Regulation, which provokes improved health and safety practice among those who are willing to comply;
 - (c) Safety and Health Awareness Days (practical demonstrations covering everyday hazards), for willing and committed employers;
 - (d) Worker involvement techniques such as worker health and safety representatives, which improve dissemination of health and safety messages and generate behavioural change; and
 - (e) Initiatives targeted towards particular sectors, which built the health and safety commitment of relevant organisations.³⁹⁶
- 416 In respect of migrant workers, the 2009 HSE Research Report 691 stated that "there is no substantive evidence that provides robust and representative data to improve existing estimates of migrant numbers and their relative health and safety risk," and that "there remain significant difficulties associated with the capture of new and reliable data on the geographical distribution and socio-economic profile of migrant workers."³⁹⁷ The HSE's Research Report 691 explains that these difficulties arise from the "difficulty of capturing a representative sample of the target population and due to continuing change in the dynamics and profile of the migrant worker labour force".³⁹⁸ In other words, the situation is changing so quickly that what may have been a representative sample at the time the study is conducted would no longer be considered representative at the time the study is published. This problem does not appear to have improved since 2009.³⁹⁹
- 417 Since 2009 HSE has lessened its focus on ethnic, cultural and linguistic diversity, especially migrant workers, as a priority area. This change can be attributed to a decision made by the HSE Board in November 2008 to cease further large-scale research on migrant workers. The Board considered that the work completed to date had "mainstreamed" consideration of migrant workers within the organisation (to the extent that operational work, not just policy, was considering the issue),

³⁹² Health and Safety Executive "Improving the reliability of estimates of migrant worker numbers and their relative risk of workplace injury and illness" (Research Report RR 691, 2009). See also, the methodological concerns in Smith and others, above n 30, at 13 and McKay, Crow and Chopra, above n 212, at 13-14.

³⁹³ Institute for Employment Studies, above n 88.

³⁹⁴ At 3.

³⁹⁵ At vii.

³⁹⁶ I.e. initiatives designed for particular sectors.

³⁹⁷ Health and Safety Executive, above n 392, at vii.

³⁹⁸ At xi.

³⁹⁹ See, for example, limitations of the Labour Force Survey in Dr Cinzia Rienzo, 'Migrants in the UK Labour Market: An Overview' (31 July 2018) The Migration Observatory (The University of Oxford) <www.migrationobservatory.ox.ac.uk>.

and that it was more appropriate to re-focus on the broader category of “vulnerable” workers.⁴⁰⁰ HSE defines vulnerable workers as “those who are at risk of having their workplace entitlements denied, or who lack the capacity or means to secure them.”⁴⁰¹

418 During and following this period, HSE:

- (a) 2008: Launched migrant worker webpages containing health and safety information in English, Polish, Russian, Punjabi, Chinese, Romanian, Urdu, Bengali, Portuguese, Turkish, Hindi, Lithuanian, Czech, Slovak, Kurdish, Albanian, Latvian, Arabic, and Gujarati;⁴⁰²
- (b) 2009: Set up the London Outreach Worker Project to address the vulnerability of migrant construction workers (this project is discussed in more detail further below);
- (c) 2010: Published specific guidance to employers about “Protecting migrant workers” which identifies risks specific to migrant workers, and recommendations for mitigating these risks (discussed below);⁴⁰³
- (d) 2015/16: Compiled a ‘Migrant working intervention manual’ which details all relevant information about migrant workers for all HSE and Local Authority inspectors (discussed further below);⁴⁰⁴ and
- (e) Undated: published on its website information about consulting employees whose first language is not English (discussed below).

419 Research funded by HSE in 2008 indicates that “foreign/migrant workers are more likely to respond to and take advice from their peers and people within their community. They are less likely to seek advice from central/local government or official agencies.”⁴⁰⁵

London Outreach Worker Project

420 As a result of this research, HSE’s Construction Division funded a six month London Outreach Worker project in London, which trialled the concept of “independent multilingual outreach workers talking to foreign migrant construction workers in their mother tongue.”⁴⁰⁶

421 The project employed 3 multilingual outreach workers for a 12 month project from May 2009, targeting Polish, Romanian and Indian languages.⁴⁰⁷ They trialled a range of outreach methods including:⁴⁰⁸

- (a) Pocket information cards containing basic health and safety information in the relevant languages, advertising dedicated helplines, email addresses and webpages.
 - (i) Outreach workers distributed these at Polish and Romanian churches and spoke to congregations; the cards were also made available at consulates where workers queued every day for passport and immigration issues. NGOs and charities dealing with Eastern European migrants also distributed the pocket cards
 - (ii) The project found it more difficult to distribute the cards at Hindu and Sikh temples. They noted there was “suspicion from temple communities” but that that seemed to be mellowing at the time the report was written;

⁴⁰⁰ Health and Safety Executive “Vulnerable (including migrant) workers: an update” (HSE/08/79, 26 November 2008). This detailed all existing and future work as of 2008 regarding migrant workers.

⁴⁰¹ Health and Safety Executive “Vulnerable workers” (undated) <www.hse.govt.nz>.

⁴⁰² Health and Safety Executive, above n 400, at 2.

⁴⁰³ Health and Safety Executive, above n 401.

⁴⁰⁴ Health and Safety Executive “Migrant working intervention manual” (undated) <www.hse.gov.uk>.

⁴⁰⁵ Kevin Fear, above n 74, at 5.

⁴⁰⁶ Kevin Fear “Construction Industry Advisory Committee: Report of the Vulnerable Workers Working Group” (26 March 2009).

⁴⁰⁷ Hester, above n 94, at 1.

⁴⁰⁸ Hester, above n 94, at 2 – 4.

- (b) Placing weekly adverts and advertorials in two Romanian newspapers, four Polish newspapers and three Indian newspapers;
- (c) Placing adverts and web links on 7 Romanian and Polish websites. Data showed significant uptake: for example, on www.londynek.net (a Polish website), they recorded 562,000 “impressions” and 614 clicks through to the HSE website;
- (d) Running daily adverts and fortnightly talk shows on Panjab Radio (a community-based radio station in Southall) and on Romani Radio (a web-based Romanian radio show);
- (e) Adding translated material in Polish, Romanian, Gujarati, Punjabi and Hindi on the construction section of the HSE website;
- (f) Putting in place dedicated multilingual helplines for the HSE London office. For the period September 2009 to April 2010, they received:
 - (i) Romanian: 140 calls (80 dealing with construction issues), 10 emails (6 dealing with construction issues)
 - (ii) Polish: 67 calls (half dealing with construction issue), 35 emails (most dealing with construction issues)
 - (iii) Indian: 51 calls (overwhelmingly about non-construction issues), 3 emails;
- (g) Organising Safety and Health Awareness Days aimed at Polish and Romanian construction companies, site managers and other construction professionals. These were described as the largest ever gathering of Romanian and Polish construction professionals in Britain ever, and were extremely well-received by the attendees; and
- (h) Having outreach workers assist inspectors on site visits and with accident investigations. It is noted that the outreach workers were able to explain the role of inspectors to people who were suspicious or nervous of HSE, which is particularly relevant when taking into account the recommendation from intermediaries interviewed in HSE’s Research Report 150 that HSE needed to appear “less threatening and forbidding” and that inspectors needed to be more approachable.⁴⁰⁹

422 HSE stated that as a result of the London Outreach Worker Project:⁴¹⁰

- (a) They had learned about the lives of migrant construction workers and their communities;
- (b) The outreach workers were able to open doors that HSE did not know about; their language skills and community knowledge enabled effective engagement with the target audiences;
- (c) The project enabled an intensive awareness raising campaign and created networks of contacts and stakeholders and improved the capacity of frontline staff by helping with site inspections and accident investigations.

Guidance: “Protecting migrant workers”

423 In its “Protecting migrant workers” guidance (2010), HSE suggests employers use a range of approaches to ensure there is adequate communication, such as:⁴¹¹

- (a) Asking an employee who speaks good English to act as an interpreter, or seeking outside help;
- (b) Using a ‘buddy system’ i.e. putting an experienced worker with a new or inexperienced migrant worker that speak the same language;

⁴⁰⁹ Vickers and others, above n 40, at 93.

⁴¹⁰ Hester, above n 40.

⁴¹¹ Health and Safety Executive “Protecting migrant workers” (February 2010) <www.hse.govt.nz>.

- (c) Providing a clear explanation of signs and instructions for emergencies and generally preferring non-verbal communication over written communication i.e. signs, symbols, DVDs;
 - (d) Training supervisors to communicate clearly, consider strengthening supervision;
 - (e) Doing a skills audit to determine who can help if a worker has difficulty communicating.
- 424 It also suggests that employers must grow their cultural intelligence (“CQ”), suggesting that:⁴¹²
- (a) Supervisors should be given guidance on cultural differences that affect working relationships, noting that working relationships are an important part of effective health and safety;
 - (b) Employers emphasise the importance of reporting accidents and near misses;
 - (c) Employers make sure to explain that accidents and near misses are investigated to stop more people being injured and improve conditions for all workers, and aren’t used to blame or sack people;
 - (d) Employers should encourage workers who are less confident communicating in English to refer concerns to a colleague who can represent them;
 - (e) Employers thoroughly investigate accidents, specifically to ensure underlying causes such as behaviours and attitudes are picked up; and
 - (f) Explain clearly, during training, your responsibilities for risk assessment and control measures as an employer, and workers’ responsibilities for their own health and safety too.
- 425 In the same guidance, HSE suggests use of the National Recognition Information Centre to check whether overseas training is equivalent to Great Britain qualifications. They also suggest that qualification certificates are translated in order to check their relevance. They suggest that the most important thing to do is to carry out practical assessments under supervision to demonstrate competence where there are doubts.⁴¹³
- 426 That guidance also suggests that employers should endeavour to develop their workers’ capacity around health and safety i.e. encourage migrant workers to become safety representatives.⁴¹⁴
- 427 The guidance, in order to remedy confusion and unfamiliarity issues, recommends that:⁴¹⁵
- (a) Labour providers/agencies and businesses using temporary workers supplied by them have clear, co-ordinated arrangements for sharing health and safety information before temporary/short-term cover workers start;
 - (b) Employers make sure that employment agencies supplying temporary workers have carried out suitability checks where relevant;
 - (c) Plan induction carefully, including photos of hazards where possible, and provide good-quality information in plain, simple language;
 - (d) Employers check that supervisors are familiar with the possible problems arising from confusion, unfamiliarity and inexperience, their effects and how to manage them; and
 - (e) Employers take time to walk around the workplace or site with workers and show them where the main hazards exist (eg falls, slips and transport), or use a simple colour-coded site hazard map to do this.

⁴¹² At 4.

⁴¹³ At 4. While there is merit in the HSE’s suggestions that employers check the equivalence of the workers’ qualifications, translate certificates to determine their relevance, and carry out a practical assessment under supervision to demonstrate competence, it is important to ensure that these initiatives are warranted and are not based on unconscious bias about the quality of “foreign” qualifications and workers. See the discussion on over qualification at paragraph 208 onwards.

⁴¹⁴ At 4.

⁴¹⁵ At 4.

428 In its webpage about “consulting employees whose first language is not English”, HSE recommends that providers consider providing English for Speakers of Other Languages (ESOL) courses for workers who need to improve their English, either in the workplace or locally. HSE notes there are a range of flexible and work-focused ESOL qualifications available, which include health and safety content.⁴¹⁶ Although this is not mandatory, it aligns with the United Kingdom Act’s requirement to ensure employees’ health and safety by providing such information, instruction, training and supervision as is necessary, so far as is reasonably practicable.⁴¹⁷ We consider employers’ obligations under the New Zealand legislation in this regard at Recommendation 9.

Joined-up working across government

429 While HSE is the United Kingdom’s occupational health and safety regulator, other agencies also play a role, and in this regard their commitment to “joined-up working across Government” is relevant to preventing harm to ethnically, culturally and linguistically diverse workers.

430 Some relevant initiatives include a Pay and Work Rights Helpline,⁴¹⁸ Operation Safe Haven, representation on the Gangmasters Licensing Authority Board (GLA), and regular meetings with Employment Agency Standards inspectorate on issues of mutual interest.⁴¹⁹ As part of HSE representation the GLA now has a ‘Strategy for Protecting Vulnerable and Exploited Workers 2015-2018’.

431 The HSE published a ‘Migrant working intervention manual’, targeted at HSE and local authority inspectors, which sets out the approach for inspectors to take to ensure that migrant workers are protected, not only from a health and safety perspective, but also in relation to illegal practices amounting to abuse and exploitation. It includes prompts to inspectors to ensure that migrant workers have acceptable and appropriate accommodation, transport, personal protective equipment, and that language issues are appropriately addressed.⁴²⁰

432 HSE also has a “Joint working and intelligence sharing protocol” which explains in what situations HSE should work with other agencies to keep workers safe, both from a health and safety perspective, but also from labour abuse.⁴²¹

Summary

433 The United Kingdom has conducted a substantial amount of useful research to assist WorkSafe New Zealand in preventing disproportionate workplace injury and illness to CALD workers.

434 Useful challenges and lessons learned from the United Kingdom include:

- (a) That data collection has to date been insufficient to accurately understand migrant numbers and their relative health and safety risk (because accident reporting forms do not capture information about nationality, country of birth, or first language; there is considerable under-reporting of accidents; and there is a lack of United Kingdom studies that make an explicit link between migrant workers, the workplace and health outcomes);⁴²²
- (b) That it remains difficult to capture new and reliable data on migrant workers “due to poor rates of survey participation and the complexities involved in trying to achieve a representative research sample of the diverse migrant community”;⁴²³

⁴¹⁶ Health and Safety Executive “Migrant workers: Advice for employers” (undated) <www.hse.gov.uk>.

⁴¹⁷ Health and Safety at Work etc Act 1974 (UK), s 2(2)(c).

⁴¹⁸ See, United Kingdom Government “Pay and work rights helpline and complaints” (undated) <www.gov.uk>.

⁴¹⁹ Institute of Safety and Health (South Cumbria District Manchester and NW Districts’ Branch) and South Cumbria Occupational Health and Safety Group “November Meeting Minutes: Managing vulnerable employees, such as migrant workers, agency workers and young people” (17 November 2011) <www.iosh.co.uk>.

⁴²⁰ Health and Safety Executive, above n 431.

⁴²¹ Health and Safety Executive, “Tackling labour abuse – joint working and intelligence sharing” (undated) <www.hse.gov.uk>.

⁴²² Health and Safety Executive, above n 392, at vii.

⁴²³ At viii.

- (c) That it is crucial that employers know and understand their workforce, including cultural and literacy factors (for example, by conducting a “skills audit” as recommended in guidance to employers of migrant workers);
- (d) That it is helpful to have more specific guidance to employers of migrant workers, both as to issues and solutions to cultural and language barriers;
- (e) That cultural factors can negatively affect employers and workers’ trust and confidence in the regulator;
- (f) That direct engagement with CALD workers is more effective for education and engagement efforts with CALD workers than more arms-length approaches (for example, the London Outreach Worker Project equivalent);
- (g) The value of government agencies working together in a “joined-up” fashion to keep workers safe in all aspects of working life, for example, in both health and safety and employment rights.

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Canada

435 We were extremely encouraged by our research and interviews with the regulators and researchers in Canada. Canada, particularly Ontario, is more advanced in its strategic thinking and use of targeted interventions to improve the health and safety of ethnically, culturally and linguistically diverse workers. Our findings are set out in this section by reference to both the federal jurisdiction and then to each relevant provincial or territorial jurisdiction, beginning with those provinces that proved most instructive, Ontario and British Columbia. The other provinces are then examined in less depth owing to smaller populations and lower levels of diversity.

Federal

436 The federal government has responsibility for the health and safety of its own employees and federal corporations, plus workers in certain interprovincial and international industries.⁴²⁴

437 Approximately 6% of the Canadian workforce falls into the federal jurisdiction. The remaining 94% of Canadian workers fall under the legislation of the province or territory where they work.⁴²⁵

438 The Labour Program is the regulator in the federal jurisdiction. As part of the ongoing overhaul of occupational health and safety, in 2018-19 the Labour Program will enhance safety standards in federally regulated workplaces by implementing new compliance and enforcement measures under the Canada Labour Code. The legislative changes address long-standing concerns about the lack of adequate tools to bring about greater compliance by employers, particularly those who have been repeat offenders.

439 The measures include an Administrative Monetary Penalty (AMP) system to better protect vulnerable workers against employers who violate the Canada Labour Code.⁴²⁶ The new AMP regime features significant penalties for non-compliance. Employers who commit violations will be liable for a penalty not exceeding \$250,000.

440 The Labour Program is also addressing harassment and sexual violence in the workplace. A public consultation held by the Canadian government in 2016 found that members of visible minorities are more likely to experience harassment than any other group.⁴²⁷

441 In response, the Labour Program has committed to supporting the passage of Bill C-65 that includes legislative amendments to the Canada Labour Code to protect federally regulated employees from incidents of harassment and violence in the workplace through enhanced prevention, response and support measures.⁴²⁸

442 With support from Canada's 2018 Budget, in 2018-19, the Labour Program will launch an awareness campaign to challenge misconceptions and stereotypes and develop educational materials and training tools. An outreach hub will be established to help employees better understand their options and support employers in the implementation of policies and processes. It is anticipated that these initiatives will especially benefit indigenous workers, who have an elevated risk for violent victimisation.⁴²⁹

443 These initiatives and others will be assessed in the evaluation report on occupational health and safety due in November 2018, completed by the larger government portfolio, Employment

⁴²⁴ Including: railways, highway transport, canals, airports, and banks.

⁴²⁵ Canadian Centre for Occupational Health and Safety "OH&S Legislation in Canada – Introduction" (20 June 2016) <www.ccohs.ca>.

⁴²⁶ Employment and Social Development Canada "2018-19 Departmental Plan" (2018) <www.canada.ca> at 43.

⁴²⁷ Government of Canada "Harassment and sexual violence in the workplace" (2017) <www.canada.ca>.

⁴²⁸ Employment and Social Development Canada, above n 426, at 43.

⁴²⁹ Employment and Social Development Canada "Departmental Evaluation Plan 2018-19 to 2022-23" (2018) <www.canada.ca> at 44.

and Social Development Canada. Considering the report’s recommendations for improvement, ‘Management Responses’ will be developed to integrate the recommendations into practices, policies and initiatives.⁴³⁰

- 444 Many of the links from the Labour Program’s website re-direct to the website of the Canadian Centre for Occupational Health and Safety (CCOHS). CCOHS is a statutory body, established in 1978, which is Canada’s national resource for the advancement of workplace health and safety. Its objects are, *inter alia*, to promote health and safety in the workplace and the physical and mental health of working people in Canada; and to assist in the development and maintenance of policies and programmes aimed at the reduction or elimination of occupational hazards.⁴³¹
- 445 As part of examining the federal jurisdiction in Canada, we spoke to Anne Tennier, the President and CEO of the CCOHS. Ms Tennier advised us that CCOHS has not done much work in relation to the broader category of CALD workers.
- 446 However, temporary foreign workers are a strategic priority for CCOHS, particularly farm workers. These workers are commonly from the United States and Mexico and are hard to reach because they tend to work in small operations.
- 447 Ms Tennier also stated that language barriers and the remoteness of some communities were significant challenges in improving the health and safety of indigenous workers. This is corroborated by the comments of the regulator in Northwest Territories and Nunavut (which are the provinces that have the greatest proportion of indigenous population in Canada), discussed at paragraph 610.
- 448 The federal jurisdiction in Canada has not focused on the issue of CALD workers, and accordingly they have identified few challenges or lessons learned of relevance to WorkSafe New Zealand.

Ontario

- 449 The regulator in Ontario is the Ministry of Labour. The Ministry of Labour is also responsible for promoting and enforcing employment standards, and labour relations.⁴³²
- 450 In our opinion, Ontario is the most advanced jurisdiction in the world for meeting the challenges of CALD workers, and this may be attributed to its extremely high levels of superdiversity. 46.1% of Toronto’s population was not born in Canada (compared to 44% of Aucklanders not being born in New Zealand).⁴³³ Ontario accepts the greatest share of immigrants out of all the provinces and territories.⁴³⁴ More than 250 ethnicities were reported in the 2016 Census, and 29.3% of Ontario’s total population (3.9 million people) identify as visible minorities (defined by the Government of Canada as “persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour”). The four largest visible minority groups in 2016 were South Asian, Chinese, Black and Filipino.
- 451 While Ontario has a long history of occupational health and safety regulation, with its first Act being enacted in the 1970s, it appears that there has been a renewed focus on health and safety in the last decade.
- 452 This renewed focus was precipitated by a horrific workplace accident in December 2009 where a swing-stage platform snapped 13 stories above ground. In that accident, four migrant construction workers died and a fifth was seriously injured. A sixth worker, the only one properly wearing a full-body safety harness, was pulled to safety unharmed.

⁴³⁰ At 17.

⁴³¹ Canadian Centre for Occupational Health and Safety Act 1985 (Ca), s 5.

⁴³² Ontario Government “Ministry of Labour” (26 September 2018) <www.ontario.ca>.

⁴³³ Ontario Ministry of Finance “2016 Census Highlights: Factsheet 8” (21 November 2017) <www.fin.gov.on.ca>.

⁴³⁴ Ontario Ministry of Finance, above n 433.

Expert Advisory Panel on Occupational Health and Safety

- 453 Following the accident in 2010, the Minister of Labour appointed an Expert Advisory Panel on Occupational Health and Safety to conduct a review of Ontario’s occupational health and safety system. The Panel was asked to recommend structural, operational and policy improvements to Ontario’s OHS system. The Panel viewed this as an “opportunity to take a broad look at the OHS system from end to end,” and stated that “[this] system involves a complex and dynamic interplay of legislation, regulations, institutions, people and a variety of workplace cultures.”⁴³⁵
- 454 The Expert Advisory Panel’s report reinforced the importance of the Internal Responsibility System (IRS). The IRS was the term coined by Dr James Ham when developing Ontario’s first Occupational Health and Safety Act in the 1970s. Dr Ham’s *Report of the Royal Commission of the Health and Safety of Works in Mines* (1976) was influenced by the *Robens* report, and the IRS aligns with the Robens’ self-regulatory model.⁴³⁶
- 455 The Expert Advisory Panel recommended reinforcement of the three fundamental requirements of a successful IRS: the right to know, the right to participate, and the right to refuse unsafe work.⁴³⁷
- 456 In reinforcing this IRS, the Panel identified a large number of structural, operational, and policy issues requiring improvement, and in particular dedicated a whole section of the report to what they termed “vulnerable” workers. The Panel identified the following subgroups of the general workforce as being vulnerable: young workers; recent immigrants; workers new to their jobs or in new firms; foreign workers hired to address temporary or seasonal labour shortages, and employed primarily in agriculture, the hotel/hospitality and construction sectors; workers with very low wages holding multiple part-time jobs; and workers in the temporary staffing industry.⁴³⁸
- 457 The Panel also identified changes to the structure and nature of workplaces, work, and the workforce as a major issue affecting vulnerable workers, noting the increasing prevalence of contract and part-time work, and the underground economy as particular issues.⁴³⁹
- 458 The Panel summarised the measures needed to respond to worker vulnerability as a “multi-pronged approach” that includes:⁴⁴⁰
- (a) Active outreach efforts to vulnerable work communities;
 - (b) Providing information in multiple languages and through simple and low-cost mechanisms such as posters, websites and call centres;
 - (c) Coordination with the Government of Canada on temporary foreign worker issues; and
 - (d) An investigation into employment brokers who recruit undocumented workers to perform vulnerable underground jobs.
- 459 Specific recommendations made by the Expert Advisory Panel which are relevant to CALD workers are that:
- (a) The Ministry of Labour should require mandatory health and safety awareness training for all workers (recommendation #14);
 - (b) The Ministry of Labour should require mandatory health and safety awareness training for all supervisors who are responsible for frontline workers (recommendation #15);

⁴³⁵ Expert Advisory Panel on Occupational Health and Safety “Expert Advisory Panel on Occupational Health and Safety: Report and Recommendations to the Minister of Labour” (16 December 2010) <www.labour.gov.on.ca> at 4.

⁴³⁶ Paul Gallina “A Managerial Guide for Understanding Occupational Health and Safety Legislation” (2016) *European Scientific Journal* 155 at 159.

⁴³⁷ Expert Advisory Panel on Occupational Health and Safety, above n 435, at 6.

⁴³⁸ At 46.

⁴³⁹ At 7.

⁴⁴⁰ At 7.

- (c) The Ministry of Labour should develop mandatory entry-level training for construction workers as a priority and consult with stakeholders to determine other sectors that should be subject to mandatory training for workers (this is particularly relevant to CALD workers because of their overrepresentation in the construction industry) (recommendation #16);
- (d) The Ministry of Labour should develop mandatory fall protection training for workers working at heights as a priority and consult with stakeholders to determine additional high-hazard activities that should be subject to mandatory training for workers (recommendation #17);
- (e) The Ministry of Labour should target workplaces and sectors operating in the underground economy for proactive inspections after normal working hours (recommendation #21);
- (f) The Minister of Labour should appoint a committee under Section 21 of the Occupational Health and Safety Act to provide advice on matters related to the occupational health and safety of vulnerable workers (recommendation #29);
- (g) The Ministry of Labour should carry out more proactive inspections and periodic enforcement campaigns at workplaces and in sectors where vulnerable workers are concentrated (recommendation #30);
- (h) The occupational health and safety system should develop information products in multiple languages and formats for distribution through various media and organizations to raise awareness of occupational health and safety among vulnerable workers (recommendation #31);⁴⁴¹
- (i) More work needs to be done to protect workers from reprisal. The regulator should improve policies and guidance and provide additional support to workers or employers involved in a reprisal complaint (recommendations #33, 34, and 35);⁴⁴² and
- (j) The Minister of Labour should create a small business committee under Section 21 of the *Occupational Health and Safety Act* and appoint members that can represent the needs and interests of employers and workers in small businesses (recommendation #36).

460 These recommendations align to the following themes: mandatory awareness training, awareness of CALD workers specifically, the underground economy, the necessity of a multilingual approach, and the fear of reprisal. We will return to these themes later in this section.

Ministry of Labour: strategy

461 In 2013, in line with the requirements of section 22.3(3) of the Occupational Health and Safety Act (Ontario) and the recommendations of the Expert Advisory Panel, the Ministry of Labour released *Healthy and Safe Ontario Workplaces: A Strategy for Transforming Occupational Health and Safety*. The first goal in the strategy was to “target the areas of greatest need,” one of which was identified as being “vulnerable workers.”

462 The strategy’s conception of vulnerability differs slightly from the Expert Advisory Panel’s, identifying the following factors as increasing a worker’s vulnerability: age, literacy level, length of time in Canada; experience of racialisation,⁴⁴³ physical and mental ability, newness of job tasks,

⁴⁴¹ The Panel recommended distributing information through public and private organisations to reach people with poor language or literacy skills as well as those who may be reluctant to visit government offices, and noted the following organisations: settlement and service agencies for newcomers; on government websites aimed at prospective immigrants; through federal administrators and offshore recruiters of temporary workers; at consulates; in ethnic newspaper, radio and television ads; public places like libraries, buses/subways and community centres; at legal aid clinics; part of the curriculum in English or French as a Second Language courses; through the school system, recognising that children will take information home to their parents.

⁴⁴² New Zealand also has provisions in its legislation prohibiting reprisal, see ss 88 – 90 of the Health and Safety at Work Act 2015.

⁴⁴³ The term “racialisation” comes from sociology and reflects the socially constructed nature of the concept of “race”. Racialisation is defined in the American Heritage Dictionary of the English Language as differentiation or categorisation according to race. Garner describes racialisation as a concept that exists within the “context of unequal power relations” between those racialized and those not racialized. See Steve Garner *Racisms: An Introduction* (second ed, United Kingdom: SAGE) at page 40.

hours of work, wage/earnings; level of employment stability; knowledge of occupational health and safety rights and responsibilities; fear of reprisal; personal occupational health and safety skills; and informal arrangements in the underground economy.⁴⁴⁴

463 The strategy also states that some workers are at greater risk because they are coping with multiple factors that simultaneously affect their vulnerability.⁴⁴⁵ For example, a recent immigrant new to a job, with limited English or French language skills, and little knowledge of occupational health and safety, would be at greater risk.

464 The strategy identified four high level actions necessary to assist the most vulnerable workers:

- (a) **Understand all the factors that make workers vulnerable and how to provide support.** This included conducting research and seeking expert advice about the personal and workplace characteristics that contribute to vulnerability; seeking input and advice from vulnerable worker groups about specific programmes and policies to meet their needs, and how to improve outreach;
- (b) **Improve awareness of occupational health and safety rights and responsibilities among vulnerable workers.** This included using existing and new partnerships to increase outreach and provide occupational health and safety awareness material, and pursuing non-traditional partnerships to reach vulnerable workers (e.g. community organizations, faith-based organizations, immigrant service organizations, youth and student organizations);
- (c) **Improve programs and services for vulnerable workers.** This included collaborating across government to coordinate services to meet the needs of vulnerable workers; tailoring programmes and supports to be inclusive of multiple cultures, languages and literacy levels; and applying relevant research findings to design better programmes for vulnerable workers; and
- (d) **Improve occupational health and safety outcomes among industries with high proportions of vulnerable workers.** This included targeting enforcement to workplaces with high proportions of vulnerable workers (e.g. underground economy, temporary agencies); and developing materials to help inspectors, industry and labour organizations educate vulnerable workers and employers of vulnerable groups about their rights and responsibilities.

Vulnerable Worker Task Group

465 The Vulnerable Worker Task Group (which was established in 2012 in response to recommendation #29 of the Expert Advisory Panel) found in its 2015 report that “there are three types of vulnerability characteristics: individual, workplace, and work activity.”⁴⁴⁶ The individual attributes listed largely conform to those vulnerability factors suggested in the Ministry of Labour’s 2013 strategy, discussed above. However the workplace characteristics and work activity characteristics are equally important indicators of vulnerability and include such matters as organizational culture, newness of job tasks, working alone or in remote/isolated locations, level of worker autonomy; and specific actions including performing high hazard activities, lifting/moving material, or working at heights.⁴⁴⁷

466 The Task Group makes the point that “depending on the situation, the significance of each [set of] characteristic[s] may vary in contributing to the overall risk of occupational injuries, illnesses and fatalities... in other words, in some instances, work activity characteristics may contribute more heavily to raising vulnerability than individual characteristics.”⁴⁴⁸ This is important as it suggests

⁴⁴⁴ Ontario Ministry of Labour “Healthy and Safe Ontario Workplaces: A Strategy for Transforming Occupational Health and Safety” (16 December 2013) <www.labour.gov.on.ca>.

⁴⁴⁵ See discussion about intersectionality at paragraphs 189 – 192.

⁴⁴⁶ Vulnerable Worker Task Group, above n 130.

⁴⁴⁷ At 9.

⁴⁴⁸ At 10.

that a strategy focusing purely on CALD workers' individual attributes may not be as effective as one that also focuses on workplace attributes that are common to CALD workers, or work activities that are disproportionately undertaken by CALD workers.

- 467 The Task Group report summarised the challenges in reaching vulnerable workers as:
- (a) Lack of OHS awareness, including of rights and obligations; perception among workers that injuries are "accidents" and are not preventable; lack of awareness of free resources and support services; lack of awareness of risks associated with work in the underground economy;
 - (b) Ontario's diverse population, including difficulty communicating workers with limited English-language proficiency, and literacy;
 - (c) Fear of reprisal and mistrust of government;
 - (d) Reaching workers in remote locations or precarious employment, including in the underground economy.
- 468 It summarised the challenges in reaching employers as:
- (a) Lack of awareness;
 - (b) Limited time and human resource capacity to develop policies and practices;
 - (c) Lack of awareness of the business benefits and long-term cost savings of improved occupational health and safety;
 - (d) As with workers, a perception that workplace injuries are "accidents" and are not preventable; and
 - (e) Lack of a health and safety culture that emphasizes everyone's role in ensuring healthy and safe workplaces.
- 469 The Vulnerable Worker Task Group made a number of recommendations, including:
- (a) The development of an orientation guide for workers engaged in precarious employment on their occupational health and safety rights and responsibilities;⁴⁴⁹
 - (b) Targeted awareness campaigns to inform workers, employers, and consumers of the risks of participating in the underground economy; and
 - (c) Taking steps to improve the evidence base around worker vulnerability.
- 470 The Ministry of Labour developed the *Vulnerability in the Workplace Action Plan*, to address the recommendations of the Vulnerable Worker Task Group. The Action Plan had a "Newcomer and Migrant Work" stream, for which the goal was "newcomers and migrant workers are made aware of their OHS rights and responsibilities to help them safely transition into Ontario workplaces. The Action Plan focused on four actions:⁴⁵⁰
- (a) Expanding the internet presence of OHS throughout network of intermediaries;
 - (b) Targeting outreach to specific newcomer and migrant worker groups;
 - (c) Facilitating inclusion of NCMW stakeholders in ministry consultations; and
 - (d) Educating newcomers and intermediaries through webinars.

⁴⁴⁹ This differs from the "Prevention is the Best Medicine" toolkit developed by the Institute of Work & Health.

⁴⁵⁰ Ontario Ministry of Labour "Progress Update: Vulnerability in the Workplace Action Plan, Newcomers and Migrant Workers Stream, CPO Progress Update: 2016" (sliddeck provided by William Roy by email, unpublished, October 2016) at 3.

- 471 The Ministry of Labour evaluated the success of the Newcomer and Migrant Work stream in October 2016. It identified as the key lessons learned that:⁴⁵¹
- (a) It is beneficial to partner with “large newcomer organisations” as they transmit information to smaller newcomer organisations, are better resourced and have more capacity to partner and collaborate, and receive high traffic/click-throughs from government immigration websites;
 - (b) It is useful to educate intermediaries on health and safety, i.e. to “train the trainer.” This “extends the reach of the system and supports sustained impact”; and
 - (c) Resources should be provided both in newcomers’ first languages and in English.
- 472 They also found that consulates are not an effective avenue for outreach, as they tend only to provide services to temporary guest workers, not to new migrants.⁴⁵²

Steps implemented by the regulator to address key themes raised by the Expert Advisory Panel

- 473 As mentioned above, four key themes emerged out of the 2010 Expert Advisory Panel report. These are explained in detail below.

Mandatory awareness training

- 474 In 2013, a new regulation under Ontario’s Occupational Health and Safety Act, Ontario Regulation 297/13 – Occupational Health and Safety Awareness and Training, was passed. As of 1 July 2014, the regulation requires all workers and supervisors in Ontario to have completed basic health and safety awareness training. The training is designed to enhance knowledge of basic rights and responsibilities under the health and safety legislative framework, as well as awareness of basic workplace health and safety issues. Workers receive this information at the entry level, prior to being exposed to workplace hazards. We consider employers’ obligations under New Zealand legislation in this regard at Recommendation 9.
- 475 In Ontario, the training for workers must cover:
- (a) The duties and rights of workers under the Occupational Health and Safety Act;
 - (b) The duties of employers and supervisors under the Act;
 - (c) The roles of health and safety representatives and joint health and safety committees under the Act;
 - (d) The roles of the Ministry, the Workplace Safety and Insurance Board and other relevant entities regarding occupational health and safety;
 - (e) Common workplace hazards;
 - (f) Information and education requirements for hazardous materials; and
 - (g) Occupational illness, including latency.
- 476 The Ministry of Labour designed and made available a free training programme that meets the requirements of the regulation. This is available either as a printable workbook, or as an e-learning module. The workbook is available in English, French, Traditional Chinese, Simplified Chinese, Hindi, Punjabi, Portuguese, Spanish, Urdu and Thai.⁴⁵³

⁴⁵¹ At 14.

⁴⁵² At 14.

⁴⁵³ Ontario Ministry of Labour “FAQs: Regulatory Requirements for Mandatory Worker and Supervisor Awareness Training” (May 2016) <www.labour.gov.on.ca>.

- 477 Employers are not required to use these resources, however their training programme must align with the regulations' requirements. The Ministry of Labour supplies tools to help employers assess their existing programmes for alignment with the requirement of the regulations.⁴⁵⁴
- 478 The regulation also requires records to be kept of completion of the training.
- 479 In 2016, the Ministry surveyed the success of the training. 106 employers representing 90,325 workers and 16,193 supervisors who used the free Ministry-developed resources participated in the survey.⁴⁵⁵ The survey found that 79% found the awareness e-learning modules "very useful" or "useful", and that 75% found the awareness e-learning modules "very easy" or "easy" to use. There has not been any evaluation of whether the mandatory training has resulted in a decrease in workplace injury or illness.

Awareness of CALD workers, specifically

- 480 In 2016, the Ministry of Labour funded two projects investing in workplace safety for migrant workers, through its Occupational Health and Safety Prevention and Innovation Program. The success of these programmes is noted in the Ministry of Labour's *Occupational Health and Safety in Ontario: 2015 – 16 Annual Report*.
- 481 The first project involved workshops for migrant workers on key occupational health and safety issues, hosted by the Occupational Health Clinics for Ontario Workers. The Occupational Health Clinics for Ontario Workers also hosted the first Ontario Migrant Farm Worker Health Forum, engaging those working with and delivering services to migrant farm worker communities in developing practical solutions to safety problems. The forum was hosted in partnership with the International Migration Research Centre at Wilfrid Laurier University, the Balsillie School of International Affairs and the Association of Ontario Health Centres.⁴⁵⁶ The outcome of the Forum is not known, however the forum was held again in 2017.
- 482 The second programme involved conducting a needs assessment with Chinese immigrant women in the nail salon industry in central Toronto. A large proportion of Toronto nail technicians are immigrant women and nail salon technicians are at higher risk of work-related diseases, including skin disease, respiratory illness, musculoskeletal disorders, cancer, reproductive issues and infections.⁴⁵⁷ The findings indicated that many women were most worried about chemical exposures related to hypersensitivity and pregnancy, musculoskeletal disorders related to ergonomics, and communicable diseases associated with the cleanliness of equipment. The study also found that many women had little to no workplace health and safety training, possessed a strong sense of loyalty to the owner and considered adverse health systems a normal part of the job. Participants reported that they feared raising questions about health and safety due to reprisals.⁴⁵⁸ These findings were corroborated in another recent study from Ontario, which found that "participants who found their jobs through community connections or service providers faced the challenge of damaging their personal connections if they spoke up...They felt that they should be grateful for the opportunity given and did not want to damager their relationships with their employer."⁴⁵⁹
- 483 This project has led to the development of education resources, training modules, and workshops to specifically support nail salon workers in their workplace health and safety. The resources are

⁴⁵⁴ Ontario Ministry of Labour "Health and Safety Awareness Training for Workers and Supervisors" (June 2014) <www.labour.gov.on.ca>.

⁴⁵⁵ Ontario Ministry of Labour, above n 444, at 41.

⁴⁵⁶ Ontario Ministry of Labour Occupational Health & Safety in Ontario: 2015 – 16 Annual Report (March 2017) <www.labour.gov.on.ca> at 18.

⁴⁵⁷ At 18.

⁴⁵⁸ Angela Robertson and others, above n 125.

⁴⁵⁹ Yanar, Kosny, and Smith, above n 129, at 2014.

available in the main languages of immigrant nail technicians - English, Chinese and Vietnamese. Information included in the resources include:⁴⁶⁰

- (a) How nail salons can affect skin;
- (b) How workers can protect their skin; and
- (c) Risks to reproductive health and how to reduce them.

484 Mr Roy also brought to our attention the G'minoomaadozimin ("We are Living Well") Health and Safety Initiative, an initiative of the Nokiwin Tribal Council, a non-profit organization that provides a range of social and community services to six indigenous communities in the Robinson Superior Treaty area (Thunder Bay), which has been funded by the Ministry of Labour since 2015. That initiative aims to strengthen health and safety through a culturally appropriate concept, the Seven Grandfather Teachings. He explained that the project responds to feedback from those communities that health and safety cannot be separated out into work and home, but should be addressed holistically.⁴⁶¹

485 An initiative targeted at young workers indirectly targets culturally diverse workers through their children who bring home health and safety messages. Since 2014, the Ministry of Labour has hosted an annual "It's Your Job" student video contest to provide students with an opportunity to share their health and safety knowledge with other students. Students produce a two-minute video to be shared on social media, demonstrating the importance of health and safety at work.⁴⁶² The 2016-2017 contest theme, "Speak Up! Speak Out," created a platform for students to discuss how to talk to co-workers and employers about workplace safety without fear of embarrassment or reprisal. Although the efficacy of the contest in raising awareness has not been formally evaluated, the Ministry of Labour considered it a "great success", having received 145 entries from 295 Ontario young people.⁴⁶³

Necessity of a multilingual approach

486 In 2011, approximately one in four Ontarians reported that the first language learned at home in childhood and that they still understand (i.e. first language) was neither English nor French.⁴⁶⁴ The three most common first languages other than English and French were Italian (2.1%), Chinese (1.6%) and Cantonese (1.5%).⁴⁶⁵ 14.4% of Ontarians spoke a non-official language most often at home.⁴⁶⁶ As a result of the high rates of English/French as a second language in Ontario, the regulator has implemented a range of initiatives to ensure that all of Ontario's diverse worker population has access to health and safety information.

487 The Ministry of Labour's Health and Safety Contact Centre provides services in 23 different languages.⁴⁶⁷ It is not known why these languages were chosen.

488 In response to the Expert Advisory Panel's recommendation to create a health and safety poster explaining the key rights and responsibilities of workplace parties, including how to obtain additional health and safety information and how to contact a Ministry of Labour inspector, which should be mandatory to post in the workplace (recommendation #10), the Ministry of Labour published in 2012 the "Health & Safety at Work: Prevention Starts Here" poster. Responding also

⁴⁶⁰ Healthy Nail Salon Workers Project Toronto "Reducing Risks to Reproductive Health: A Resource for Women who Work in Nail Salons" (undated) <www.ctchc.org> and Healthy Nail Salon Workers Project Toronto "Healthy Skin, Healthy Nail Technicians: A Resource for Toronto Nail Salon Workers" (undated) <www.ctchc.org>.

⁴⁶¹ Occupational Health Clinics for Ontario Workers Inc. "OHCOW partners with the Nokiwin Tribal Council: G'minoomaadozimin" (8 September 2015) <www.ohcow.on.ca>.

⁴⁶² Ontario Ministry of Labour, above n 456, at 17.

⁴⁶³ Ontario Ministry of Labour Occupational Health & Safety in Ontario April 2016 – March 2017 (April 2018) <www.ontario.ca> at 25.

⁴⁶⁴ Vulnerable Worker Task Group, above n 130, at 12.

⁴⁶⁵ At 12.

⁴⁶⁶ At 12.

⁴⁶⁷ English, French, Arabic, Dari, Farsi, German, Greek, Hindi, Italian, Korean, Pashto, Portuguese, Polish, Punjabi, Russian, Spanish, Tagalog, Tamil, Simplified Chinese, Traditional Chinese, Ukrainian, Urdu, and Vietnamese.

to the Expert Advisory Panel's recommendation to develop information products in multiple languages and formats, the poster is available in 20 languages.⁴⁶⁸

489 This summarises workers' health and safety rights and responsibilities and the responsibilities of employers and supervisors. Mandatory posting in English and in the majority language of the workplace is required by section 25(2)(i) of the Occupational Safety and Health Act.⁴⁶⁹

490 In March 2014, Ontario conducted an advertising campaign to help vulnerable workers understand their workplace rights. The month-long "Know Your Workplace Rights" campaign featured advertisements in 27 languages and reached television, digital media and ethnic print publications.⁴⁷⁰ The campaign sought to raise awareness of workers' rights to be treated fairly on the job, work in a safe and healthy workplace, and to be trained to handle workplace hazards. The campaign was not formally evaluated.

491 In response to the Expert Advisory Panel's recommendation #31:

(a) Ontario government officials attend community events for new immigrants and temporary foreign workers. They distribute information to help these workers understand their workplace rights and responsibilities.⁴⁷¹

(b) The Ministry of Labour works in partnership with the Ministry of Citizenship and Immigration to increase newcomers' access to occupational health and safety information and practices. The Ministry of Citizenship and Immigration's web portal now includes health and safety information and receives more than a million visits per year.⁴⁷² The information on Ministry of Citizenship and Immigration's website includes links to the following:⁴⁷³

(i) The Ministry of Labour's mandatory Health and Safety poster, available in 19 languages;⁴⁷⁴

(ii) The Ministry of Labour's training workbooks for workers and supervisors (their resource to fulfil mandatory training requirements, as discussed above);

(iii) Ministry of Labour's Occupational Health and Safety webpage;

(iv) Office of the Worker Advisor;

(v) Occupational Health Clinics for Ontario Workers; and

(vi) Ontario's Workplace Safety and Insurance Board (WSIB).

(c) The Ministry targets ethnic media channels, including Chinese newspapers.

492 Mr Roy of the Ministry of Labour told us about an outreach project where the Ministry hired summer students with specific language skills to facilitate surveys with small businesses in areas with high proportions of ethnic minority businesses, i.e. "Chinatown". The project initially involved 5000 businesses, but has now grown to 10,000 businesses. Mr Roy gave the example of findings from surveys with the Chinese community. Approximately 97% of the respondents answered that they were aware of the right to refuse unsafe work. However, almost all respondents were not aware that it was illegal to punish them for exercising that right.⁴⁷⁵

⁴⁶⁸ Ontario Ministry of Labour "Other Languages" (January 2017) <www.labour.gov.on.ca>.

⁴⁶⁹ Occupational Safety and Health Act RSO 1990 c O-1, s 25(2)(i).

⁴⁷⁰ Ontario Ministry of Labour "Backgrounder: Protecting Vulnerable Workers" (20 August 2014) <www.labour.gov.on.ca>.

⁴⁷¹ Ontario Ministry of Labour "Other languages", above n 468.

⁴⁷² Ontario Ministry of Labour, above n 444.

⁴⁷³ Ontario Immigration "Your Rights At Work" (July 2016) <www.ontarioimmigration.ca>.

⁴⁷⁴ English, French, Arabic, Traditional Chinese, Simplified Chinese, Hindi, Italian, Korean, Igbo, Oji-Cree, Polish, Portuguese, Punjabi, Russian, Spanish, Tagalog, Tamil, Thai, Urdu, Vietnamese.

⁴⁷⁵ Interview with Jules Arntz-Gray and William Roy, above n 92.

Underground economy

- 493 The Ministry of Labour regards the underground economy as any business activity that is unreported or under-reported for tax purposes.⁴⁷⁶ Workers in the underground economy are at risk by transacting outside legal protections. The Expert Advisory Panel report noted workers who do not speak English often start working in Canada without appropriate documentation. They tend to work in the underground economy, in seasonal agricultural work or the construction industry, and are highly vulnerable.⁴⁷⁷
- 494 Canada's underground economy approximated \$45.6 billion in 2013.⁴⁷⁸ This figure represents around 2.4% of Canada's gross domestic product (GDP). The underground economy as a percentage of GDP has remained steady at 2.4% since 2002. Of all the provinces and territories in 2013, Ontario recorded the highest underground economy value at around \$16.7 billion or 2.4% of Ontario's GDP.⁴⁷⁹
- 495 The largest sector in the underground economy is residential construction (27.8% of total underground economic value), followed by retail trade (12.5%), and accommodation and food services (11.7%).
- 496 There is a lack of awareness among workers, employers and consumers of the risks and consequences of participating in the underground economy. As the Vulnerable Worker Task Group report notes, the underground economy operates outside the occupational health and safety system, and places workers at increased vulnerability. Workers may not know they are employed within the underground economy and consumers may not understand the impact that their behaviour has in continuing to its proliferation and decreased worker safety.
- 497 To address this, the Ministry of Labour has accepted the Vulnerable Worker Task Group's recommendation regarding awareness campaigns. It runs an awareness campaign to inform consumers of the risks of participating in the underground economy.⁴⁸⁰ The awareness campaign does not highlight the risks to workers in the underground economy, rather focusing on the impact of the loss to government of tax revenue. In our view, there could be an opportunity for future awareness campaigns to be more explicit about the adverse effect on workers in the underground economy.
- 498 The Ministry of Labour faced the challenge that workplaces operating in the underground economy deliberately conducted underground work on the evenings and weekends in order to avoid detection. It accepted the Expert Advisory Panel's recommendation to target workplaces and sectors operating in the underground economy for proactive inspections after normal working hours.
- 499 In 2013, the Ministry of Labour piloted a project for extended hours of inspection, expanding its hours for construction workplace inspections.⁴⁸¹ Inspectors visited construction sites seven days a week, including early mornings, evenings and weekends. The probability of detecting employers operating in the underground economy during extended hours is likely to increase. Extended inspection hours are likely to be one of the few ways to directly improve working conditions for vulnerable workers, especially those who are undocumented workers or refugees. The project has not been formally evaluated. However, the pilot has been extended and is continuing in 2018, expanding to substantial renovations businesses as well as re-roofing, and small business that supports the renovation industry (custom mill work, cabinets, counter tops, glass & tile).⁴⁸²

⁴⁷⁶ Ontario Ministry of Labour "Behavioural Insights Pilot Project – Roofing In the Underground Economy" (30 March 2016) <www.ontario.ca>.

⁴⁷⁷ Expert Advisory Panel on Occupational Health and Safety, above n 435.

⁴⁷⁸ Statistics Canada "The underground economy" (20 June 2016) <www.statcan.gc.ca>.

⁴⁷⁹ Statistics Canada, above n 478.

⁴⁸⁰ Ontario Ministry of Labour "The underground economy" (April 2018) <www.ontario.ca>.

⁴⁸¹ Ontario Ministry of Labour "Backgrounder: Construction Safety Focus of Campaign" (4 October 2013) <www.labour.gov.on.ca>.

⁴⁸² By email from William Roy, Director of the Strategy and Integration Branch, Prevention Office, Ontario Ministry of Labour (22 September 2018).

Inspections

- 500 The Ministry of Labour is sometimes accompanied by consular officials when conducting inspections in the agriculture sector, to help facilitate communication and prevention awareness.⁴⁸³
- 501 In our interview with Jules Arntz-Gray, Director, Training and Awareness Branch, Prevention office and Bill Roy, Director, Strategy and Integration Branch, of the Ministry of Labour, Mr Roy advised us that they work with embassies and consulates, such as that of Jamaica, Mexico and other Eastern Caribbean nations, to increase health and safety awareness and compliance. Each consulate has a liaison officer, who is generally known to all foreign workers. The Ministry brings the liaison officers on inspections. They also find that workers, who may not contact the Ministry themselves, do contact the consulate liaison officer who will then pass concerns on to the Ministry.⁴⁸⁴
- 502 The Expert Advisory Panel recommended that the Ministry of Labour should carry out more proactive inspections and periodic enforcement campaigns at workplaces and in sectors where vulnerable workers are concentrated. As part of the Safe At Work Ontario compliance strategy, every year the Ministry of Labour schedules inspection blitzes and initiatives in specific sectors to protect workers' rights under the Occupational Health and Safety Act. Inspectors carry out blitzes and initiatives to raise awareness of hazards and increase compliance with the Occupational Health and Safety Act and its regulations. There are different blitz focuses at the provincial and regional levels.
- 503 The Ministry of Labour announces to the sector in advance, that they will be conducting a blitz. However, individual workplaces are not notified in advance. Workplaces are identified for proactive inspections through criteria such as high injury rate, a history of non-compliance and potential hazards. The Ministry reports the results of inspection blitzes, usually within 90 days.
- 504 The 2017-18 provincial health and safety blitz report states that during the blitz, inspectors focused on workplaces where new workers were employed, including retail establishments, restaurants, food, beverage and tobacco plants, tourism, hospitality and recreation centres. The inspectors focused on:
- (a) Information, instruction and supervision. Inspectors checked that employers gave new workers the required information, instruction and supervision to protect workers' health and safety when starting a job and that they were receiving supervision; and
 - (b) Safety measures. Inspectors checked that employers had in place measures and procedures to prevent injuries and occupational illness. The inspectors also checked that employers were meeting requirements for protecting workers from workplace violence and harassment.
- 505 The report reveals that 2,261 field visits occurred.⁴⁸⁵ 219 field visits were in a support role⁴⁸⁶ and 1,779 workplaces were visited.⁴⁸⁷ A number of violations under the Occupational Health and Safety Act and its regulations were found, with 6,828 orders issued.⁴⁸⁸ 88 stop work orders were also issued, representing about 1.3% of all orders issued.⁴⁸⁹
- 506 The most common orders issued during the 2017-18 blitz related to workplace violence and harassment. They involved failures of employers to comply with requirements to:
- (a) Have workplace violence and harassment policies and programmes;

⁴⁸³ Ontario Ministry of Labour "Occupational Health & Safety in Ontario: 2016 – 17 Annual Report (27 April 2018) <www.ontario.ca> at 5.

⁴⁸⁴ Interview with Jules Arntz-Gray and William Roy, above n 92.

⁴⁸⁵ Ontario Ministry of Labour "Inspection blitz results: New and young workers 2017" (7 February 2018) <www.ontario.ca>.

⁴⁸⁶ Field visits in a support role are activities where a professional services staff (e.g., hygienist, ergonomist, engineer etc.), or another inspector accompanies an inspector on a field visit to provide professional support or expertise.

⁴⁸⁷ Ontario Ministry of Labour, above n 485.

⁴⁸⁸ Ontario Ministry of Labour, above n 485.

⁴⁸⁹ Ontario Ministry of Labour, above n 485.

- (b) Provide information and instruction on those policies and programmes; and
- (c) Assess or re-assess the risks of workplace violence arising from the nature of the workplace, type of work or conditions of work.

- 507 The 2017-18 blitz results indicate that newcomers continue to be exposed to many similar hazards in workplaces across all sectors, regardless of the size of the workplace or nature of business. Most orders were issued in the retail, restaurant, tourism, hospitality and recreational services sectors. The blitz results report states that continued enforcement is needed to improve the health and safety of new workers.
- 508 The provincial blitzes for 2018-19 are focused on the construction, industrial and mining industries. The construction blitz focus is working at heights (fall protection training) and reversing equipment on construction projects. The industrial blitz focus is new and young workers' health and safety (since these workers are three time more likely to be injured during their first month than more experienced workers),⁴⁹⁰ health and safety in warehouses and 'big box' retail, and machine guarding. The mining blitz focus is conveyor guarding in mines and mining plants, and mobile equipment.
- 509 This 2018-19 blitz focus is not intended to address CALD workers, however it may have an unintended side-effect of doing so depending on the proportions of CALD workers in those sectors.⁴⁹¹
- 510 At the regional level, the Western region has a blitz focus on temporary and foreign workers in the industrial sector divided into two phases: outreach and education with the Workplace Safety and Insurance Board (1 April 2017 to 31 March 2018) and Ministry of Labour enforcement campaign (1 April 2018 to 31 March 2019).⁴⁹²

Fear of reprisal

- 511 The Expert Advisory Panel in its report identified that workers sometimes experience reprisals as a result of raising health or safety concerns, placing vulnerable workers in a particularly difficult position.⁴⁹³ In New Zealand, such reprisals are prohibited under sections 88 to 90 of the Health and Safety at Work Act 2015, using the term "adverse conduct for a prohibited health and safety reason."
- 512 In Ontario, while such reprisals are prohibited under section 50 of the Occupational Health and Safety Act, there is no quick remedy available to workers who complain about this.
- 513 In its report the Panel advised that Section 50 of the Act authorises the Ontario Labour Relations Board (OLRB) to inquire into a worker's complaint, but that it generally takes between 8 – 12 weeks for mediation to occur. If a settlement cannot be reached, an adjudicator will hold a hearing. It can take up to six months for a hearing to be scheduled and it is held in Toronto, regardless of the location of the worker.
- 514 As a result the Panel recommended that the Ministry of Labour and OLRB work together to develop a process to expedite the resolution of reprisal complaints. The Panel supported an expanded role for Ministry of Labour inspectors with direct referral of egregious reprisals to the OLRB, and new procedures at the Board to ensure a prompt response to a referral.
- 515 The Panel recommended that Ministry of Labour inspectors, in addition to investigating health and safety issues related to an alleged reprisal, should interview workplace parties involved in the allegation, as well as any witnesses, in order to document observations and accounts of the event.

⁴⁹⁰ Ontario Ministry of Labour "New and Young Workers" (21 July 2016) <www.labour.gov.on.ca>.

⁴⁹¹ We were unable to locate industry employment rates in Ontario broken down by ethnicity.

⁴⁹² Ontario Ministry of Labour "Workplace inspection blitzes and initiatives" (11 October 2018) <www.ontario.ca>.

⁴⁹³ Expert Advisory Panel on Occupational Health and Safety, above n 435, at 7.

With the worker’s agreement, an inspector would refer to the OLRB any clear and obvious act of reprisal involving firing of the worker, and submit records of the interviews. A copy of records would be given to the employer. The OLRB would act quickly on referrals by offering timely access to mediation and adjudication, with the possibility of holding hearings outside Toronto, closer to the workplace parties’ community. The Board could also order interim reinstatement of the worker.

- 516 The direct referral by inspector recommendation was implemented by way of an amendment to the Occupational Health and Safety Act in 2011.⁴⁹⁴ A cursory search of Ontario Labour Relations Board cases on the website of the Canadian Legal Information Institute (CanLii) finds evidence of reprisal referrals by inspectors to the Board since 2011 which suggests that this had a positive effect, in line with the Panel’s recommendation.⁴⁹⁵
- 517 The Panel also recommended that the Ministry of Labour should review its prosecution policy and develop guidance for inspectors on when to lay charges for a contravention of section 50 of the Occupational Health and Safety Act. The Panel stated at that time that the Ministry had not historically taken enforcement action. Although current operational policy contemplated prosecution for “exceptional cases”, no prosecutions had commenced in recent years.
- 518 Recommendations to strengthen protection from reprisals are critical to enabling vulnerable workers to exercise their rights and speak up about health and safety concerns. Associate Professor MacEachen posits that while migrant workers may instinctively know their work environment is unsafe, they do not feel empowered to speak up. First-generation immigrants may feel grateful for just having a job, even if it is of poor quality, meaning that they put up with poor conditions.⁴⁹⁶
- 519 In examining precarious employment in the Greater Toronto Area, a report authored by the Poverty and Employment Precarity in Southern Ontario research group found that those who are employed in precarious employment have difficulty raising and exercising health and safety rights.⁴⁹⁷ Approximately 25% of respondents in the study indicated that raising a health and safety concern would threaten future employment.⁴⁹⁸
- 520 Finally, it was recommended by the Panel that a worker or employer involved in a reprisal complaint should have access to information and support from an independent, third-party organisation, such as the Office of the Worker Adviser or Office of the Employer Adviser. A common criticism is that the complaint process is too complicated. Many workers cannot understand the paperwork involved and simply give up. This is particularly true for workers who face language or literacy barriers.
- 521 The Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA) are independent agencies of the Ministry of Labour, set up to help workplace parties navigate complex legal processes under the Workplace Safety and Insurance Act 1997. With additional resources, the Panel considered that the OWA and OEA could be well-placed to provide similar support and advocacy services to workers and employers engaged in reprisal complaints under the Occupational Health and Safety Act in Ontario. This recommendation has been put into effect.

Diverse regulatory workforce: workforce capable of working with/for a diverse population

- 522 In our interview with Jules Arntz-Gray, Director, Training and Awareness Branch, Prevention office and Bill Roy, Director, Strategy and Integration Branch, of the Ministry of Labour, we heard that one of the Ministry’s main organisational goals is to have a diverse workforce. Mr Arntz-Gray

⁴⁹⁴ Occupational Health and Safety Statute Law Amendment Act SO 2011 c 11, s 13.

⁴⁹⁵ See *Rock v FCA Canada Inc* 2015 CanLII 72245.

⁴⁹⁶ Interview with Associate Professor MacEachen, Senior Scientist at the Institute for Work & Health in Ontario (Mai Chen, 20 July 2018).

⁴⁹⁷ Vulnerable Worker Task Group, above n 130, at 15.

⁴⁹⁸ At 15.

questioned how the government could serve diverse peoples if they were not diverse themselves. He advised us that the Ministry offers training to staff on unconscious bias and systemic racism, and that they have affirmative action mechanisms in place for their leadership programmes, requiring two of the three people put forward for the management training programme, and the directorship training programme, to be women or to be visually diverse.

Learnings from the Institute of Work and Health, funded by the Ministry of Labour

523 As part of understanding the challenges and lessons learned in Ontario, we spoke with researchers from the Institute of Work and Health (IWH). The IWH is majority-funded by the Ontario Ministry of Labour but operates at arms-length. This section explores key challenges and lessons learned from the perspectives of the IWH researchers.

Distribution of health and safety information to newcomers on arrival

524 Seeking occupational health and safety information is time consuming and may be overwhelming for newcomers, given all the other pressures of settlement.⁴⁹⁹ Health and safety information is often forgotten or not prioritised. Dr Agnieszka Kosny told us that workplace health and safety programmes in Ontario are newcomer-driven.⁵⁰⁰ This means that the programmes respond to the newcomers' interests. However, this is problematic, given the issues of downward mobility discussed below. Newcomers do not expect to be injured in the workplace (or to work in the 'survival jobs' which have a higher risk of injury) and accordingly, do not see the need for workplace health and safety information at the beginning of their settlement journey.

525 A 2011 study by Dr Kosny and others from the IWH found that health and safety information in Ontario was not systematically and sustainably delivered.⁵⁰¹ Statutory agencies host one-off programmes and workshops, but these tend only to be held once a year, and yet there are hundreds of thousands of new migrants. At the time of the study, there was no systematic distribution of health and safety information.

526 Dr Kosny stated in the interview that this situation had not changed, and there was a problematic "diffusion of responsibility" in the delivery of workplace health and safety education to newcomers in Ontario.

527 The Government of Ontario's Newcomer Settlement Program (NSP) provides funding to organisations providing services to refugees, landed immigrants, student and work permit holders and Minister's permit holders.⁵⁰² 104 agencies serving immigrants in Ontario received funding from the NSP in 2012.⁵⁰³ Approximately 80,000 newcomers use NSP services each year (Citizenship and Immigration Canada, 2013).

528 Employers who receive workers through programmes with settlement agencies believe that the responsibility lies with the settlement agencies. Conversely, settlement agencies believe employers are responsible for educating workers on health and safety. As a result, inadequate resources are expended on health and safety, and information is distributed in a haphazard way.

529 Moreover, settlement agencies are funded by the Ministry of Citizenship and Immigration. Their funding includes performance measures around helping people find work, but not about workplace health and safety. These settlement agencies are also required to address many other issues, such as registering in schools and healthcare. Therefore there is a much smaller focus on health and safety, compared to other topics perceived as being more important or pressing.

⁴⁹⁹ Institute for Work & Health, above n 203, at 11-12.

⁵⁰⁰ Interview with Dr Agnieszka Kosny, above n 204.

⁵⁰¹ Agnieszka Kosny and others *Delicate dances: Immigrant workers' experiences of injury reporting and claim filing* (Institute for Work and Health, Ontario, April 2011).

⁵⁰² At 2.

⁵⁰³ At 2-3.

Whether or not an agency emphasises health and safety can depend on the presence of one or more particular interested or engaged staff members.⁵⁰⁴

- 530 A study of immigrants living in Ontario who had arrived within the last ten years found that 83% had used settlement services. 50% had used employment and skills training programs, and 51% had used language training programmes (Ontario Council of Agencies Serving Immigrants, 2012). Despite this, Dr Kosny stated that with current levels of funding and resourcing, settlement agencies are not the best place to provide workplace health and safety information to newcomers. Many of the settlement agencies in Ontario are underfunded, and lack the expertise required to effectively deliver the information. Without dedicated training and further resources, it is difficult for settlement agencies to integrate health and safety into their services.
- 531 Dr Kosny also told us that language training programmes are not the best channel to deliver workplace health and safety information. She gave the example of an English language programme in Ontario, which included a unit on occupational health and safety, making it possible for students to simultaneously learn English and workplace health and safety. She stated that students rarely chose to complete the unit because they were uncomfortable with the subject matter. Instead, students chose to complete units based on familiar topics, such as bicycle riding or cooking.
- 532 With settlement agencies unable to adequately address workplace health and safety, immigrants have tended to have been referred to the Welcome to Ontario Guide, Welcome to Canada Guide and Service Ontario. Dr Kosny states that these referrals are ineffective as the guides do not contain sufficient workplace health and safety information. The Welcome to Ontario Guide is 52 pages in length and contains 16 pages relating to working in Ontario, but only mentions occupational health and safety in one sentence.⁵⁰⁵ Dr Kosny posits that this could partially be attributed to a desire to present Canada in a good light; should occupational health and safety information be provided in this forum it could be perceived as sending the message that newcomers are likely to suffer injuries at work.⁵⁰⁶
- 533 With appropriate resourcing, Dr Kosny suggests that job-search workshops and standard settlement services are the optimal time to include information on workplace health and safety, as it provides them with a high-level overview of Ontario's occupational health and safety system, which can later be built upon in job-specific training delivered by employers.⁵⁰⁷
- 534 In 2011, attempting to address the issues raised above, IWH developed an occupational health and safety toolkit to inform immigrants before they enter the labour market. This toolkit is called "Prevention is the Best Medicine: A toolkit for newcomers to Ontario." A full explanation of the process of developing the toolkit is available in PISTES, an interdisciplinary academic journal on workplace health and safety.⁵⁰⁸
- 535 The toolkit contains all necessary resources to teach instructional sessions on two topics: occupational health and safety, and workers' compensation. These include sample lesson plans, suggestions for in-class exercises and discussion questions, slide show presentations and handouts for participants.⁵⁰⁹ It is designed for a classroom setting, and consists of modular pieces that instructors are able to adapt to their classroom needs.
- 536 The Prevention is the Best Medicine toolkit sessions can be delivered either through settlement agency programming, or by integration into existing language, job-search and employment programmes for new immigrants.⁵¹⁰ The toolkit was not a direct response to the Expert Advisory

⁵⁰⁴ Interview with Dr Agnieszka Kosny, above n 204.

⁵⁰⁵ Agnieszka Kosny and others, above n 501, at 6.

⁵⁰⁶ Institute for Work & Health, above n 203, at 11.

⁵⁰⁷ Interview with Dr Agnieszka Kosny, above n 204.

⁵⁰⁸ Agnieszka Kosny and others "Prevention is the Best Medicine: Development of a Work and Health Toolkit for New Immigrants Using Settlement Services in Ontario" (2014) 16(2) Perspectives interdisciplinaires sur le travail et la santé (online ed).

⁵⁰⁹ Institute for Work & Health, above n 203.

⁵¹⁰ Agnieszka Kosny and others, above n 508, at 4.

Panel’s report but aligns with its recommendation #31 to develop appropriate information products and distribute them through appropriate channels.

- 537 The study in PISTES found consensus among focus group participants (settlement sector instructors and curriculum developers) that newcomers to Canada needed information about occupational health and safety.⁵¹¹ Many participants in the study also asked for more information about workplace bullying, harassment and discrimination.⁵¹² In respect of the workers compensation portion of the toolkit, participants noted that even if they themselves did not need information about it would be useful to have in case someone in their family was injured.⁵¹³
- 538 To ensure the toolkit was user friendly to immigrants with lower literacy levels, the toolkit underwent a language review by a curriculum expert. This ensured that it would be comprehensible to learners who had an English level of Language Instruction for Newcomers to Canada (LINC) 4 or higher, which is the level of language proof needed to apply for citizenship.⁵¹⁴
- 539 The developers of the toolkit suggested that useful follow-up actions would be to evaluate the efficacy of the toolkit, translate the documents into other languages, develop a similar toolkit aimed at employers, and undertake a larger, more systematic distribution to formal and informal organisations part of the settlement sector,⁵¹⁵ however these do not appear to have occurred yet.
- 540 The toolkit has not been evaluated but informal feedback has been positive. Other jurisdictions and NGOs are also adapting the toolkit for their own purposes.⁵¹⁶
- 541 The toolkit is currently being revised to reflect legislative changes that have come into effect since it was first published in 2011. The new version, titled ‘Safe Work Toolkit for Newcomers’ is expected to be available in late 2018.⁵¹⁷

First 30 days

- 542 The first 30 days of a job are a crucial period of time for workers’ health and safety, particularly for new immigrants. The key findings of an IWH study were that workers on the job for less than a month had three times as many claims as those who had held their current job for more than a year.⁵¹⁸ Moreover, as recent immigrants are more likely to experience a work-related injury,⁵¹⁹ this makes the first 30 days especially important for recent migrants.
- 543 The researchers we spoke to suggested that “downward mobility” was a contributing factor to this issue for recent migrants.
- 544 Dr Kosny told us that in Ontario, immigrants (especially those admitted into Canada under the economic category) expect to find a job in the field they previously worked in.⁵²⁰ However, many of those immigrants struggle to find work that is commensurate with their skills, qualifications and experience.⁵²¹ Associate Professor MacEachen, Senior Scientist at the IWH, told us that immigrants who cannot find appropriate work often find themselves performing physically demanding manual labour for the first time, having come from professional backgrounds.⁵²²

⁵¹¹ At 7.

⁵¹² At 9.

⁵¹³ Institute for Work & Health, above n 203.

⁵¹⁴ Institute for Work & Health, above n 203, at 6.

⁵¹⁵ Agnieszka Kosny and others, above n 501, at 10.

⁵¹⁶ Institute for Work & Health “Impact case studies: Concerns about newcomers’ safety at work lead organisation to IWH toolkit” (December 2017) <www.iwh.on.ca>.

⁵¹⁷ Institute for Work & Health, above n 201.

⁵¹⁸ Vulnerable Worker Task Group, above n 130, at 14, citing Institute for Work & Health “Newness and the risk of occupational injury” (May 2009) <www.iwh.on.ca>.

⁵¹⁹ Agnieszka Kosny and others, above n 501, at 1.

⁵²⁰ Interview with Dr Agnieszka Kosny, above n 204.

⁵²¹ Institute for Work & Health “Immigrant worker safety: IWH develops OHS information tool for newcomers” (19 May 2011) 64 Institute for Work & Health <www.iwh.on.ca>.

⁵²² Interview with Associate Professor Ellen MacEachen, Senior Scientist at the Institute for Work & Health in Ontario (Mai Chen, 20 July 2018).

As the manual labour workplace environment is alien to them, their risk of injury increases. They have little knowledge of the hazards, tools and machinery associated with physically demanding work.⁵²³

- 545 This downward mobility is largely driven by racism and a desire by employers for “Canadian [work] experience”. Despite the irrelevance of ‘Canadian experience,’ immigrants continue to be asked if they have experience working in Canada. Dr Kosny spoke of a focus group participant who was asked if he had ‘Canadian experience’ during his application for a dishwashing job.⁵²⁴
- 546 Credentialling is also an issue.⁵²⁵ Immigrants face their overseas qualifications being unrecognised, have few social networks, a lack of experience working in Canada and do not have full proficiency in English.⁵²⁶ Migrant workers end up with poor-quality jobs and require further support to find employment that is well-matched to their qualifications and skillset. Under-utilisation of immigrants’ skills has been estimated to create a CAD\$2 billion opportunity cost for the Canadian economy annually.⁵²⁷
- 547 Downward mobility issues persist beyond the first 30 days. Six months after arrival, 70% of newcomers reported barriers finding employment.⁵²⁸ Furthermore, after two years, this only decreased by 1%.⁵²⁹
- 548 According to a quantitative study by the IWH in 2011, four years after arriving in Canada, 51.6% of immigrants were overqualified for their jobs based on their education levels, and 44.4% of immigrants were overqualified based on experience.⁵³⁰ The study found that overqualified immigrants were more likely to report a decline in mental health than other immigrants four years after arrival in Canada.⁵³¹
- 549 Downward mobility is also associated with “precarious” work, meaning “work characterised by lack of continuity, low wages, [and] lack of benefits.”⁵³² A report from the Law Commission of Ontario noted that “Low pay often means that workers must work at more than one job or must work long hours. In turn, long hours mean that they are more susceptible to illness or injury.”⁵³³
- 550 Associate Professor MacEachen’s view is that the structure of the labour market in Ontario is changing, and that permanent jobs with benefits are becoming less common and are being replaced with temporary and part-time jobs. Between 1997 and 2011, the number of workers with temporary jobs in the Toronto area increased by 40%.⁵³⁴ One-fifth of Ontario’s workforce is employed on a part-time basis.⁵³⁵ Associate Professor MacEachen states that these changes are “an everyone problem”, but the problem is compounded for migrant workers because of their other vulnerabilities.⁵³⁶
- 551 A study for the Law Commission of Ontario based on 2008 data identified recent immigrants as being overrepresented in precarious jobs, making up 40.7% of the workers in precarious employment.⁵³⁷

⁵²³ Interview with Associate Professor Ellen MacEachen, above n 522.

⁵²⁴ Interview with Dr Agnieszka Kosny, above n 204.

⁵²⁵ Interview with Associate Professor Ellen MacEachen, above n 522.

⁵²⁶ Kosny and others, above n 501, at 3.

⁵²⁷ Jeffrey G Reitz “Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research” (2001) 2(3) *Journal of International Migration and Integration* 347.

⁵²⁸ Agnieszka Kosny and others, above n 508, at 2.

⁵²⁹ At 2.

⁵³⁰ Cynthia Chen, Peter Smith and Cameron Mustard “The prevalence of over-qualification and its association with health status among occupationally active new immigrants to Canada” (2010) 15(6) *Ethnicity & Health* 601.

⁵³¹ Chen, Smith and Mustard, above n 530.

⁵³² Law Commission of Ontario *Vulnerable Workers and Precarious Work* (Toronto, December 2012), at 10.

⁵³³ At 28.

⁵³⁴ *Vulnerable Worker Task Group*, above n 130, at 12.

⁵³⁵ At 12.

⁵³⁶ Interview with Associate Professor MacEachen, above n 496.

⁵³⁷ Andrea Noack and Leah Vosko *Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers’ Social Location and Context* (Law Commission of Ontario, November 2011) at 28.

Indigenous workers

- 552 Our interviews also identified particular challenges relating to indigenous workers in Canada. Indigenous persons in Canada are less likely to seek help for mental health issues and have a suicide rate twice as high as non-indigenous counterparts.⁵³⁸
- 553 To address this, Dr Vicki Kristman, an Adjunct Scientist for the IWH, is leading the design of an e-mental health intervention application called “Wiiji”. The application intends to help indigenous workers recognise mental health issues in the workplace and provide guidance on how to resolve the issues based on indigenous community teachings. Dr Kristman writes that the project will link indigenous workers with ‘spirit builders’ who specialise in mental health support and crisis management.⁵³⁹ The application is also planned to provide indigenous workers with the opportunity to self-assess their mental health and give suggestions for improvements.
- 554 Dr Kristman advised us that e-health interventions are relatively inexpensive for users, accessible for rural and isolated populations and easy to administer. The anonymity of e-health applications also prevents the stigmatisation of individual workers. Dr Kristman expects the application to be accessible before 31 November 2018.

British Columbia

- 555 The regulator in British Columbia is WorkSafeBC, which has a dual mandate of promoting the prevention of workplace injury, illness and disease, and administering workers’ compensation.⁵⁴⁰
- 556 British Columbia has not had the same degree of focus on occupational health and safety as Ontario in the last decade, i.e. there has been no comprehensive review of the occupational health and safety system as in Ontario with the Expert Advisory Panel. Consequently, the challenges and lessons learned by the regulator, WorkSafeBC, are less comprehensive; nevertheless they are useful for WorkSafe New Zealand to consider.
- 557 While WorkSafeBC has some general initiatives relating to CALD workers, it has a particular focus on the following groups: migrant workers, migrant farm workers specifically, and indigenous workers. Material relevant to these groups will be considered separately after a general overview of WorkSafeBC’s initiatives for CALD workers.

CALD workers, generally

- 558 In 2005 WorkSafeBC instituted a long-term “ethnic community outreach strategy”.⁵⁴¹ This resulted in WorkSafeBC collaborating the following year with four immigrant-focused social service organisations to produce a “Small Business Primer” pamphlet. The pamphlet adds to WorkSafeBC’s focus on ensuring small businesses are aware of occupational health and safety rights and obligations. It is produced in traditional Chinese, Arabic, Punjabi, and English.⁵⁴²
- 559 WorkSafeBC conducted a “Safety Initiative Symposium” for the construction industry in 2006.⁵⁴³ The symposium assisted WorkSafeBC in identifying barriers facing immigrant workers. The barriers included language issues, lack of awareness about occupational health and safety rights and unregistered employers. Following this symposium, WorkSafeBC translated its materials and publications into several languages.⁵⁴⁴

⁵³⁸ Statistics Canada “Lifetime suicidal thoughts among First Nations living off reserve, Métis and Inuit aged 26 to 59: prevalence and associated characteristics” (19 January 2016) <www.statcan.gc.ca>.

⁵³⁹ Interview with Dr Vicki Kristman, Affiliate Scientist, Institute for Work & Health in Ontario (Mai Chen, 26 July 2018).

⁵⁴⁰ WorkSafeBC “Our mandate, vision, mission, goals and values” (undated) <www.worksafebc.com>.

⁵⁴¹ Agnieszka Kosny and others *Immigrant Workers’ Experiences after Work-related Injury in British Columbia: Identifying Key Questions and Building Research Capacity* (WorkSafeBC, January 2011) at 12.

⁵⁴² WorkSafeBC “Small Business Primer: a Guide to WorkSafeBC” (August 2013) <www.worksafebc.com>.

⁵⁴³ Agnieszka Kosny and others, above n 541, at 12.

⁵⁴⁴ At 12.

- 560 In its 2011 Annual Report, WorkSafeBC noted that it had expanded the health and safety information provided across its seven web portals to better provide for workers whose first language is not English.⁵⁴⁵ It also initiated a 12-week radio campaign on three Lower Mainland Punjabi-language radio stations to raise awareness among Punjabi-speaking farm workers about their basic safety rights.⁵⁴⁶
- 561 In 2016, WorkSafeBC proactively identified the need for a targeted occupational health and safety programme for the large number of Syrian immigrants coming to British Columbia at that time. They developed a programme for Arabic-speaking newcomers to help them understand their rights and responsibilities; workplace hazards, as well as to provide them with information about British Columbia. This project was not formally evaluated but was considered by Trudi Rondou, Senior Manager, Industry and Labour Services of WorkSafeBC to have been successful.
- 562 In its 2018-2022 Strategic Plan, WorkSafeBC states that one of its emerging challenges is increasing service expectations.⁵⁴⁷ With an increasingly diverse workforce, WorkSafeBC notes that there will be a greater need to ensure workplace health and safety for new immigrant and temporary workers. When injuries do occur, WorkSafeBC writes that injured workers require services that respect cultural needs and language differences.
- 563 One of WorkSafeBC's strategic initiatives concerns vulnerable workers.⁵⁴⁸ By collaborating with employers, agencies, and associations that employ and influence vulnerable workers, WorkSafeBC plans to deliver health and safety content and messaging through appropriate channels and languages, to improve health and safety outcomes for vulnerable workers.⁵⁴⁹
- 564 WorkSafeBC offers general occupational health and safety information, online resources and forms in seven languages – Korean, French, English, Chinese (simplified and traditional), Spanish, Vietnamese and Punjabi. The languages were chosen based on the frequency of calls and requests received by WorkSafeBC. WorkSafeBC's website includes 199 translated health and safety publications and videos.⁵⁵⁰
- 565 Access to telephone interpretation in 170 languages is also available in all WorkSafeBC service areas. WorkSafeBC also has multilingual inspectors (providing the example of Punjabi-speaking inspectors).⁵⁵¹
- 566 In recent years, WorkSafeBC has partnered with Decoda, the leading literacy-based skills organisation in British Columbia to deliver occupational health and safety training as part of Decoda's curriculum.
- 567 WorkSafeBC is currently drafting a vulnerable workers strategy.⁵⁵²

Migrant workers

- 568 In 2011, WorkSafeBC commissioned the report *Immigrant Workers' Experiences after Work-related Injury in British Columbia*.⁵⁵³ The report described the outcomes of the Forum on Immigration, Work and Health (2009), in which approximately 50 stakeholders from British Columbia and Ontario came together to discuss policy and knowledge gaps. The report revealed that the experience of immigrant workers once injured at work is uniquely challenging:
- (a) Immigrants may come from countries where occupational health and safety is not observed or a priority and may believe the same to be true in Canada;

⁵⁴⁵ WorkSafeBC, above n 196, at 38.

⁵⁴⁶ At 38.

⁵⁴⁷ WorkSafeBC Strategic Plan 2018 – 2022: A Safety and Healthy Future for B.C. Workplaces (May 2018) at 6.

⁵⁴⁸ At 10.

⁵⁴⁹ At 10.

⁵⁵⁰ Kosny and others, above n 541, at 2.

⁵⁵¹ At 2. See also interview with Angelique Prince, above n 237.

⁵⁵² Interview with Trudi Rondou, Senior Manager at WorkSafeBC (Mai Chen, 3 August 2018).

⁵⁵³ Kosny and others, above n 541.

- (b) Immigrants may be unfamiliar with existing Canadian social programmes, workplace rules, and worker entitlements and responsibilities;
- (c) Immigrant workers may be reluctant to report workplace injuries, particularly if they believe doing so may jeopardise their employment and financial security;
- (d) After being injured at work, immigrants may feel burdened by their inability to provide for their families. This may lead to delayed incident reporting. The feeling of shame associated with work injury negatively affects the worker and their family, and may lead to mental health implications. Research has found that work injuries have led to serious depression and thoughts of suicide among Latino day labourers in the United States;⁵⁵⁴ and
- (e) Immigrants are more likely to be employed in workplaces that put them at greater health and safety risk. This includes non-membership in a union, physically demanding occupations, employment in small workplace, regular shift work, and non-permanent employment.⁵⁵⁵

569 While these issues are common to all migrant workers, they are particularly significant for temporary foreign workers. Temporary foreign workers may have additional barriers such as work permits that tie them to specific employers, which increase fears of reprisals for reporting incidents which may lead to underreporting.⁵⁵⁶

570 Policy and knowledge gaps in British Columbia identified at the Forum include:⁵⁵⁷

- (a) A lack of easily accessible, multi-lingual support and information available to new immigrant and migrant workers;
- (b) Little evaluation on the quality and accessibility of interpretation services offered by compensation boards; and
- (c) Little information is known about health and safety programmes and services available for immigrants, particularly in jurisdictions where immigrants less commonly settle.

571 In 2011, WorkSafeBC established the BCFED Health & Safety Centre to provide workers with health and safety training. BCFED has since become the primary provider of targeted occupational health and safety education for migrant workers. Migrant workers can learn about their safety rights and hazard identification through customised workshops conducted in the workers' first language.⁵⁵⁸ Migrant workers learn about their legal protections, rights and responsibilities, hazard identification and the workers compensation system. The workshops encourage participation and also take into account that many participants have likely been out of formal education for a long period of time and may have literacy barriers in their first languages as well.

572 BCFED also hosts a free 12-week English as a Second Language (ESL) programme aimed at educating migrant workers about workplace health and safety. Participants in this programme have the opportunity to improve their English while learning about health and safety.⁵⁵⁹ Topics covered include injury prevention, hazard identification and bullying in the workplace. This can be cross referenced to the language training programme held in Ontario and Dr Kosny's comments that language training programmes are inappropriate channels for occupational health and safety. The success of BCFED's English programme is unclear.

⁵⁵⁴ Nicholas Walter, Philippe Bourgois and H Margarita Loinaz "Masculinity and undocumented labor migration: injured latino day laborers in San Francisco" (2004) 59(6) Soc Sci Med 1159 at 15.

⁵⁵⁵ Agnieszka Kosny and others, above n 541, at 11, citing Peter Smith and Cameron Mustard "The unequal distribution of occupational health and safety risks among immigrants to Canada compared to Canadian-born labour market participants: 1993-2005" (2010) 48(10) Safety Science 1296.

⁵⁵⁶ See similar issues in Australia at paragraph 644.

⁵⁵⁷ Kosny and others, above n 541, at 18.

⁵⁵⁸ BCFED Health & Safety Centre "Migrant Worker Program" (undated) <www.healthandsafetybc.ca>.

⁵⁵⁹ Above n 558.

573 BCFED has encountered challenges approaching migrant workers. Migrant workers are fearful of employer intimidation and last minute changes to work shifts, if their employers become aware of their involvement in occupational health and safety workshops and meetings. BCFED also finds it difficult to contact migrant workers at their workplaces. Careful consideration and sensitivity is needed in the organisation of workshops for migrant workers. For instance, in order for migrant workers to feel more comfortable, BCFED hosts workshops in partnership with contacts in the Latin American and Filipino communities.⁵⁶⁰

Migrant farmworkers

574 A Canadian federal initiative, the Seasonal Agriculture Worker Programme (“SAWP”), is a main source for farmworkers in British Columbia. The SAWP allows employers to hire temporary foreign workers for a maximum period of 8 months, when Canadians and permanent residents are not available. The SAWP operates according to bilateral agreements between Canada and the participating countries which include Mexico, Jamaica, and a range of other Caribbean countries. The SAWP has been running in Canada since 1966, and British Columbia started participating in 2004.

575 In 2010, WorkSafeBC commissioned the research paper *Farmworker Health and Safety: Challenges for British Columbia*. The paper compared two dominant groups within the migrant farmworker workforce: Canadian immigrants, mostly Punjabi Sikhs; and migrant workers from Mexico.⁵⁶¹

576 The report found that:

- (a) A significant proportion of both groups did not receive adequate training: 74% of Mexican respondents and 70% of Canadian respondents reported receiving no workplace health and safety information at all;
- (b) Both groups faced language barriers;
- (c) Both worked extremely long hours. The migrant Mexican workers were found to work even longer hours than their Canadian counterparts, often agreeing out of economic need. They also feared that refusing to accept long shifts would jeopardize their jobs;
- (d) Both groups rarely refused unsafe work or transportation for fear of jeopardizing current and future employment opportunities; and
- (e) Both groups worked when ill or injured and avoided reporting illnesses and injuries.

577 The report recommended a number of actions to be taken by the provincial government, Farm and Branch Safety Health Association (FARSHA, now known as AgSafe, an independent association aimed at improving health and safety in agriculture in British Columbia); municipal governments; federal governments; the Mexican government; employers and employer organizations, as well as WorkSafeBC.

578 It recommended that WorkSafeBC should:

- (a) Recognise agriculture as a high-risk industry;
- (b) Continue collaborating with the Employment Standards Branch, the Ministry of Transport, and the Royal Canadian Mounted Police to improve unsafe worker transportation;
- (c) Encourage and support the formation and activity of health and safety committees at larger farms;

⁵⁶⁰ BCFED Health & Safety Centre Prevention Through Education: 2016 Report (2016) <www.healthandsafetybc.ca>.

⁵⁶¹ Otero and Preibisch, above n 49.

involved two staff from ILS, and a “young worker speaker”, who was a young person who had been seriously injured at work.

587 Although the project was not formally evaluated, an informal assessment of the pilot noted that the ILS received excellent feedback from all teachers/administrators; lots of questions and positive engagement from attending students; and a follow-up invitation to present a workshop to 40 Aboriginal high school students during a university preparation summer camp.⁵⁶⁵

588 The success of the pilot project led ILS to continue the project. In 2014, Northern BC was targeted due to the concentration of Aboriginal youth in schools. 2015 saw education in the Thompson/Nicola area, and 2016 saw education in the Whistler/Pemberton and Fraser Valley areas.

Other provinces and territories

589 The other provinces and territories in Canada have on the whole identified fewer challenges and lessons learned applicable to WorkSafe New Zealand. Where a jurisdiction does not have any learnings relevant to WorkSafe New Zealand, it has been omitted.

Québec⁵⁶⁶

590 The Québec regulator is CNESST, the Committee on Standards, Equity, Health and Safety. As a Québec government agency, the CNESST is required to comply with the rules of the Charter of the French language and the “Politique gouvernementale relative à l’emploi et à la qualité de la langue française”. Under those rules, all communications with employers, suppliers and partners must be in French only, unless the head office of those parties is located outside Québec. Consequently, there is limited English language information available about the challenges and lessons learned by the Québec regulator. CNESST was previously known as CSST.

591 The majority of migrant workers in Québec are employed in the agriculture sector.⁵⁶⁷ Québec agricultural producers welcome workers from Mexico, the Caribbean, Guatemala and Honduras.⁵⁶⁸

592 In 2011, CSST developed education products for Spanish-speaking immigrant farm workers to inform them about health and safety in Québec. It developed a Spanish-language video, *Trabajar en Québec* (Working in Québec), which is available both on YouTube and for download. This video emphasises that the employer is responsible for safety in the workplace in Québec, but that workers and employers also have a role to play in eliminating risks associated with workplace accidents.⁵⁶⁹ CNESST’s website suggests to employers that it organizes a screening session for foreign agricultural workers on arrival. The video’s content is also available as a Spanish-language pamphlet.⁵⁷⁰

593 In 2014, CNESST (in its previous form CSST) published an article in its magazine *Prévention au travail* (co-produced with the IRSST) regarding strategies to develop and maintain occupational health and safety measures in small business employing immigrant workers in metropolitan Montreal, following research by Professor Sylvie Gravel.⁵⁷¹

⁵⁶⁵ At 2.

⁵⁶⁶ The Government of Québec has francization policies intended to establish French as the primary language of business and commerce. All businesses are required to provide written communications in French, and may not make knowledge of a language other than French a condition of hiring unless this is justified by the nature of the duties. As part of the francization programme, the Québec government provides free language courses for recent immigrants (from other countries or other provinces) who do not speak French or whose command of French is weak.

⁵⁶⁷ Canadian Council for Refugees “Migrant workers: precarious and unsupported: A Canada-wide Study on Access to Services for Migrant Workers” (March 2016) <www.ccrweb.ca>.

⁵⁶⁸ CNESST “Plan stratégique 2012-2016” (2012) <www.cnesst.gouv.qc.ca>.

⁵⁶⁹ CNESST “Travailleurs agricoles étrangers” (undated) <www.csst.qc.ca>.

⁵⁷⁰ CNESST “¿Es Un Trabajador Que Ha Inmigrado Hace Poco Tiempo?” (undated) <www.cnesst.gouv.qc.ca>.

⁵⁷¹ CNESST “Des stratégies pour faciliter la prise en charge de la prévention” (2014) *Prévention au travail* 24 <www.cnesst.gouv.qc.ca>.

- 594 The research describes the ethnic composition of the workforce as a defining factor in health and safety management and worker participation, noting the influences of cultural backgrounds on attitudes towards prevention.
- 595 It also found that workers feel it is more important to be loyal to their employer who allows them to participate in the workforce than to raise issues about their working conditions. Often it is family, friends and neighbours who hire immigrants or recommend that the organisations they work for hire immigrants. There is a bond of loyalty that immigrant workers find difficult to compromise.
- 596 Gravel made several recommendations, including:⁵⁷²
- (a) Raising awareness among health and safety professionals about the needs of migrant workers and their ability to exercise their rights;
 - (b) Producing guidance for employers of migrants, and employers who are migrants, and in the latter case, providing them with that guidance as soon as they start their business;
 - (c) Developing the health and safety knowledge base to be able to extract findings by migration status and employment situation for migrant workers.
- 597 Following the research, an *OHS-Immigration and Employability Roundtable* was established to consider the issue of immigration and workplace health and safety. The table brought together immigration, employment, public health, workplace health and safety organisations, together with unions and community services, with the goal of improving the experience of immigrant workers across the system.
- 598 These organisations were brought together for a *Grand Debate* which aimed to identify disparities and barriers to health and safety of workers in precarious situations, including immigrant workers; report on changes in workplace health and safety practices to improve worker protection; explore developments needed to adapt public policies and workplace health and safety practices to the conditions of workers in precarious job situations, including immigrant workers.⁵⁷³
- 599 As a result of discussions at the *OHS-Immigration and Employability Roundtable*, CNESST partnered with immigrant settlement organisations on a range of projects, including: revising and adapting CNESST’s communications for immigrant workers and employers who hired them; funding a non-profit immigration settlement organisation to develop a workplace health and safety programme for “cultural integration officers” (material developed as part of this project was retained for CNESST’s website); developing a training programme about immigrant workers for workplace health and safety professionals.⁵⁷⁴
- 600 Another article in *Prévention au travail* in 2016 noted the lack of data and information on the subject of immigrant workers and occupational health and safety.⁵⁷⁵
- 601 In 2016, CNESST published a guide on health and safety for immigrant workers describing basic safety rights as workers in Québec.⁵⁷⁶ This guide is available in Arabic, Spanish, Mandarin, French and English.
- 602 In its 2017-2019 Strategic Plan, CNESST identified as a goal increasing knowledge and understanding of relevant legislation particularly among targeted groups (including recent migrants).

⁵⁷² CNESST, above n 571, at 25.

⁵⁷³ Sylvie Gravel and Jessica Dubé “Occupational Health and Safety for Workers in Precarious Job Situations: Combating Inequalities in the Workplace” (2016) 5(3) E-Journal of International and Comparative Labour Studies.

⁵⁷⁴ Gravel and Dubé, above n 573, at 21-22.

⁵⁷⁵ Claire Thiverge “Travailleurs immigrants et SST: Mieux définir les contours d’un portrait flou” <www.preventionautravail.com>.

⁵⁷⁶ CNESST “Are you a worker who recently immigrated? In Québec, your health and safety are protected” <www.cnesst.gouv.qc.ca>.

Manitoba

- 603 In Manitoba, the prevention and enforcement functions are split between two agencies: respectively, SAFE Work Manitoba and the Workplace Safety and Health Branch of the province’s Growth, Enterprise and Trade division.
- 604 SAFE Work Manitoba has assisted in the development of two resource guides for English language learners and instructors: *Workplace Safety and Health in Basic Language and Health and Safety 101*.⁵⁷⁷
- 605 Workplace Safety and Health in Basic Language was developed in 2008 following an initiative of the Manitoba Immigrants’ Safety Initiative (MISI) and Adult Language Training (Immigration, Settlement and Multiculturalism Division, Manitoba Labour and Immigration), which assembled a database of health and safety resources for immigrant workers.
- 606 The search uncovered few ESOL materials at lower levels (Canadian Language Benchmark levels 1 to 3) that focused on health and safety issues. As an attempt to address that need, the *Workplace Safety and Health in Basic Language: A Collection of Safety and Health Resources for the Canadian Learning Benchmark 1 to 3 Audience*, funded by Adult Language Training, was developed.⁵⁷⁸ The kit provides teachers of CLB Levels 1-3 with workplace health and safety materials appropriate for use in the classroom. The kit focuses on lower skill jobs at the entry level. The samples include jobs such as housekeeping (hospital and hotel), fast food, warehousing, construction or auto mechanic. *Health and Safety 101* is very similar.
- 607 In 2014, SAFE Work Manitoba launched the “Safety is a Language We Can ALL Speak” campaign, to educate all Manitobans about their rights and responsibilities related to a safe and healthy workplace, and know that resources are available to help new Canadians and their employers communicate about safety on the job.⁵⁷⁹ SAFE Work Manitoba has translated their resources into 18 languages to help workers understand their rights and for employers to use in training and orientation.⁵⁸⁰
- 608 A two-page bulletin has been developed which details resources to assist employers and organisations when hiring new workers.⁵⁸¹ The bulletin prompts employers to consider language abilities, literacy levels and cultural differences when training workers in workplace health and safety. This information is reproduced in Safe Manitoba’s New Worker Orientation and Training guide.⁵⁸²

Northwest Territories and Nunavut

- 609 The Northwest Territories and Nunavut, although separate jurisdictions, share a regulator: the Workers’ Safety and Compensation Commission of the Northwest Territories and Nunavut (WSCC).
- 610 The Northwest Territories has a small population, only 44,736 in the whole province. However Aboriginal people account for 52%; immigrants amount to 9% (only approximately 300 people). The median age in the Northwest Territories is 34 years. In Nunavut, which has a population of

⁵⁷⁷ “SAFE Work Manitoba “Health and Safety 101: Resource Guide for English Language Learners” Immigrate Manitoba” <www.immigratemanitoba.com>.

⁵⁷⁸ SAFE Work Manitoba “Workplace Safety and Health in Basic Language: A Collection of Safety and Health Resources for the Canadian Learning Benchmark 1 to 3 Audience” <www.immigratemanitoba.com>.

⁵⁷⁹ SAFE Work Manitoba “It’s hard to understand workplace safety if you don’t understand the language” (February 2017) <www.safemanitoba.com>. See also a similar initiative in Ontario, “Know Your Workplace Rights”, at paragraph 494.

⁵⁸⁰ The languages are English, French, Chinese, Cree, German, Greek, Italian, Korean, Ojibwe, Polish, Portuguese, Punjabi, Russian, Spanish, Tagalog, Tamil, Ukrainian, and Vietnamese. Clicking the name of the language at the bottom of SAFE Work Manitoba’s website takes you to all resources in that language.

⁵⁸¹ SAFE Work Manitoba “Bulletin 271: Hiring New Workers” (April 2014) <www.safemanitoba.com>, and SafeWork Manitoba “Hiring New Workers: Resources to Assist You” (March 2014) <www.safemanitoba.com>.

⁵⁸² SAFE Work Manitoba “Guide: New Worker Orientation and Training” <www.safemanitoba.com>.

33,000, the medium age is 21.8 years and the majority of the population are of Aboriginal origin (86%).

- 611 Meta Antolin, Manager of Occupational Health and Safety Programs, Prevention Services at the WSCC, explained the impact of this unique demographic situation on the regulator’s activities. She advised that WSCC has developed a new strategic initiative called “Cultural Safety Advancement”, which is intended to educate WSCC staff about indigenous culture. For many reasons, including the very poor broadband infrastructure in both Northwest Territories and Nunavut which limits the benefits of making information available online, WSCC safety officers travel to remote communities to educate (the mostly indigenous) workers and employers about health and safety in a face-to-face setting. Ms Antolin emphasised that the Cultural Safety Advancement initiative stemmed from the fact that it is important to know who you are working with to be able to deliver effective education and awareness training. As a result, all WSCC staff will receive this training. Ms Antolin emphasised its importance given historical factors in Canada (relating to colonisation), that mean many indigenous people have a low level of trust with not just government, but also with non-indigenous people in general.⁵⁸³
- 612 In addition, many workers in Northwest Territories and Nunavut have no prior understanding of occupational health and safety, compared to workers in other territories who already have a basic understanding. This is a unique challenge for this regulator.
- 613 WSCC has posters on workplace safety available in English, French, and the official languages of Nunavut – Inuktitut and Inuinnaqtun. This poster was sent to indigenous communities to be pinned on the community board, and it was Ms Antolin’s view that this significantly impacted awareness for workers in those communities. In the Northwest Territories, this poster is available in all eleven official languages.
- 614 Although the Northwest Territories and Nunavut have relatively few foreign workers, they are still a priority for WSCC, which will be looking to develop specific initiatives in 2020. It is likely that WSCC will partner with agencies that deliver English language courses to deliver occupational health and safety information to foreign workers before they enter the workforce.⁵⁸⁴

Alberta

- 615 The regulator in Alberta is Alberta Labour, which is also responsible for employment standards, skills and training, and immigration.⁵⁸⁵
- 616 There is limited publically available evidence that Alberta Labour has considered occupational health and safety of CALD workers.
- 617 Lisa Chen, Director of Innovation and Strategic Priorities at Alberta Labour, confirmed that Alberta Labour does not have a particular focus on addressing the challenge of health and safety for CALD workers.
- 618 However, it does identify “vulnerable workers” (which they define as young or inexperienced workers, recent immigrants or temporary foreign workers, indigenous workers, older workers, workers with several jobs or part-time jobs, contract workers, temporary workers or workers employed by staffing services, low-skilled workers and female workers in male-dominated industries) as requiring special attention.
- 619 One initiative is to focus inspections at workplaces that typically employ at-risk workers, including hotels, arenas, departments stores, restaurants, catering companies, and couriers.⁵⁸⁶

⁵⁸³ Interview with Meta Antolin, above n 71.

⁵⁸⁴ Interview with Meta Antolin, above n 71.

⁵⁸⁵ Alberta Labour “Ministry of Labour” (1 October 2018) <www.work.alberta.ca>.

⁵⁸⁶ Government of Alberta “Alberta committed to protecting at-risk workers” (press release, 15 September 2016) <www.alberta.ca>.

- 627 YWCHSB provides multilingual phone lines for occupational health and safety queries. Callers can ask questions about health and safety in their first language. Callers are not required to provide their name or place of work in order to ask questions. To further encourage migrant workers to speak up, YWCHSB can send a safety officer to conduct a random inspection of their workplace and will not inform the employer of the call.⁵⁹⁵
- 628 Bruce Milligan, Director Occupational Health and Safety, advised that YWCHSB is currently in the process of developing a business plan which will implement the goals of the Strategic Plan. YWCHSB is also currently working on relationship building with its local indigenous population.⁵⁹⁶

Newfoundland and Labrador

- 629 As in Manitoba, the prevention and enforcement functions are split between two agencies: Workplace NL and the Occupational Health and Safety Division of Service NL respectively.
- 630 In its “Advancing a Strong Safety Culture in Newfoundland and Labrador: a Workplace Injury Prevention Strategy 2018 – 2022”, Workplace NL names “Focus[ing] on educating and protecting young workers, new workers and temporary foreign workers” as a strategic priority (this is not elaborated on).

Prince Edward Island

- 631 The Workers Compensation Board of Prince Edward Island (which also has prevention and enforcement functions) has produced a guide for farm employees regarding the Occupational Health and Safety Act. It has been translated into Spanish.⁵⁹⁷ It also has a range of multimedia resources, some of which are available in multiple languages (English, Spanish, French, Portuguese).⁵⁹⁸
- 632 In their annual conferences in 2015 and 2016, the Workers Compensation Board included sessions on improving cross-cultural communication and inclusion. Both years, representatives from the PEI Association for Newcomers to Canada (Prince Edward Island’s largest immigration settlement agency) spoke about the challenges newcomers face in coming to Canada and in the workplace, employers’ rights and responsibilities, and how understanding cultural differences and communication styles can greatly improve interactions.⁵⁹⁹

Summary

- 633 Canada has a number of useful lessons learned to assist WorkSafe New Zealand in preventing disproportionate workplace injury and illness to CALD workers.
- 634 Useful points to consider from Canada include:
- (a) The structure and nature of workplaces, work, and the workforce as a major issue affecting vulnerable workers;
 - (b) The intersectional nature of worker vulnerability, as defined by the Ontario Vulnerable Workers’ Task Group;
 - (c) That the first 30 days of a job are a crucial period of time for workers’ health and safety;
 - (d) The importance of educating workers about their rights and obligations under legislation, not just about specific hazards within workplaces;

⁵⁹⁵ Yukon Education “Foreign Workers’ Guide to Employment in Yukon: Rights and Responsibilities” (undated) <www.mcyukon.com>.
⁵⁹⁶ Interview with Bruce Milligan, Director Occupational Health and Safety at Yukon Workers Compensation Health and Safety Board (Mai Chen, 26 July 2018).
⁵⁹⁷ Workers Compensation Board “Publications” (undated) <www.wcb.pe.ca>.
⁵⁹⁸ Workers Compensation Board “Library and Research” (undated) <www.wcb.pe.ca>.
⁵⁹⁹ Workers Compensation Board “2016 WCB Workplace Health & Safety Conference Brochure” (undated) <www.wcb.pe.ca>.

- (e) The adverse effects on health caused by immigrants' downward mobility;
- (f) The value of assessing the needs of discrete communities, i.e. immigrant women in the nail salon industry in central Toronto;
- (g) The value of incorporating occupational health and safety information into English language training;
- (h) The necessity of a multilingual approach;
- (i) The value of "quick wins", such as multilingual health and safety posters;
- (j) The importance of using ethnic media;
- (k) The value of "active outreach" with ethnic communities;
- (l) The importance of collaboration with a range of agencies, including settlement agencies, to appropriately deliver health and safety information;
- (m) Loyalty to employers as a barrier to reporting health and safety risks;
- (n) The fear of reprisal as a significant barrier to reporting breaches and citing rights; and the chilling effect of slow and inefficient processes to deal with reprisal for raising health and safety issues;
- (o) The importance of the regulator taking up cultural capability training; and
- (p) The value of a responsive and targeted enforcement approach.

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Australia

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635 Our expectations that Australia, as a superdiverse country with a long history of immigration, would have considerable lessons learned to benefit New Zealand was unfortunately not borne out by the research and discussions with the regulators.

636 Like the other jurisdictions surveyed, Australia lacks a strategic approach to ensuring the safety of diverse workers. Although the state and federal regulators do share information on successful initiatives at the National Work Health and Safety Injury Management Forum, initiated under the National OHS Strategy 2002 – 2012,⁶⁰⁰ we found little evidence of coordination in relation to CALD workers.

637 Although the Heads of Workplace Safety Authorities (HWSA) brings together senior executive officers from the Commonwealth, state and territory and New Zealand workplace safety authorities to improve and harmonise occupational health and safety at a national level,⁶⁰¹ CALD workers do not appear to have been a topic of discussion.⁶⁰²

638 We note that we also had limited uptake from the Australian regulators on the invitations to speak with us about this topic. In particular, we were unable to speak with any representatives from New South Wales, Northern Territories, or Western Australia. This hampered our efforts to identify information about challenges and lessons learned by the regulators which are not publicly available.

639 Representatives from Safe Work Australia also directed us towards the Migrant Workers’ Taskforce. This Taskforce was established in May 2016, and is chaired by Professor Allan Fels AO. The Taskforce has a focus on exploitation of migrant workers, particularly with regard to underpayment. Safe Work Australia, Comcare (the federal workers’ compensation organisation), and the state regulators are not members of this taskforce and there is no publicly available evidence of attention to health and safety of migrant workers by this taskforce

640 As the Australian regulators considered lacked a strategic approach to ensuring the health and safety of diverse workers, the resulting identification of challenges and lessons learned are somewhat ad-hoc. There is also a significant lack of evaluation and evidence of the instituted strategies. Despite this, there are some lessons learned which are useful to WorkSafe. These are arranged below with reference to each relevant regulator.

Safe Work Australia (the policy arm)

641 Safe Work Australia is an Australian government body established by statute in 2008 to develop national policy relating to workplace health and safety and workers’ compensation.⁶⁰³ In 2011 Safe Work Australia, a statutory body set up to improve work health and safety, developed a single set of workplace health and safety laws, otherwise known as the model WHS Act and Regulations.⁶⁰⁴

642 Despite Australia’s longstanding history of immigration and superdiverse population (as explained in depth at paragraphs 343 to 349), Safe Work Australia does not have, nor is it developing, a national policy in regard to CALD workers. Nevertheless, it has occasionally touched on issues

⁶⁰⁰ Safe Work Australia “Government” (undated) <www.safeworkaustralia.gov.au>. Although some resources from these fora are publicly available, there is no publicly available information that relates to ethnic and cultural diversity.

⁶⁰¹ Safe Work Australia “Who we work with” (undated) <www.safeworkaustralia.gov.au>.

⁶⁰² WorkSafe confirmed to us by phone on 25 September 2018 that to the best of their knowledge, CALD and indigenous workers have not been a topic of discussion at HWSA. Those discussions have tended to be focused on technical and legislative topics.

⁶⁰³ Safe Work Australia Act 2008 (Cth).

⁶⁰⁴ See Appendix A and Appendix B for further information.

relating to CALD workers in various publications and initiatives since its establishment, which have lessons that WorkSafe can learn from.⁶⁰⁵

- 643 In a literature review on how socio-psychological factors influence organisations' and individuals' actions in relation to work health and safety (September 2011), Safe Work Australia noted that language barriers were a major impediment to "responsive regulation" in many inspection visits. Responsive regulation is where an inspector changes his or her enforcement style, from a cooperative style to a progressively more deterrent approach if cooperation and dialogue fail. The study found that language barriers inhibited this responsive regulation approach (which presumes a cooperative style at the outset), as they limited dialogue and the possibility of providing advice, persuasion, and assisting with compliance.⁶⁰⁶ This is very relevant when considering the research findings discussed in the United Kingdom section, that ethnic and minority owned businesses often have a negative view of and reluctance to speak to inspectors, but also that they prefer to receive health and safety information directly from inspectors rather than, for example, from the telephone helpline.⁶⁰⁷
- 644 In their 2014-15 Annual Report, Safe Work Australia identified migrant workers, particularly those with temporary visa status, as being vulnerable to unsafe working conditions.⁶⁰⁸ Recent news reports corroborate this issue, particularly in regards to workers on a Working Holiday visa (subclass 417) completing their "88 days" of specified work in designated rural areas (commonly fruit picking), which is a requirement in order to get a second Working Holiday visa.⁶⁰⁹ Union organisers have suggested that "because the backpackers' top priority is to get their paperwork signed, they are likely to put up with illegal wages and poor conditions."⁶¹⁰ In some cases those poor conditions, which include lack of health and safety training, have resulted in workers' deaths.⁶¹¹ This highlights the impact of structural factors, such as visa requirements, on workers' attitudes and behaviours, for example, regarding duties to refuse unsafe work.
- 645 In guidance published by Safe Work Australia in May 2016, regarding preventing and responding to workplace bullying, it identified that workers considered to be in a minority group because of ethnicity, religion, disability, gender or sexual preferences have a greater risk of being exposed to workplace bullying.⁶¹² Interestingly, New Zealand research has found that "despite reporting higher levels of bullying than New Zealand Europeans, Pacific Island and Asian/Indian respondents reported lower levels of psychological strain", attributing this to somewhat higher levels of supervisor support.⁶¹³ This suggests that having supportive supervisors is an essential mitigating factor against psychological strain for CALD workers caused by workplace bullying.
- 646 In its submission on the Draft Report of the Productivity Commission on Regulation of Australian Agriculture (July 2016), Safe Work Australia identified migrant workers as having a higher workplace health and safety risk than Australian-born workers, due to factors such as poor English language skills, poor understanding of rights, job insecurity, and personal characteristics.⁶¹⁴ In this submission, it stated that it has a work programme to address and reduce risks to migrant workers by:⁶¹⁵

⁶⁰⁵ Meredith Bryant, the Director, Work Health and Safety Policy, Strategic Policy Branch, Safe Work Australia, advised us by email that Safe Work Australia is not currently developing national policy in relation to preventing disproportionate harm to ethnically, culturally, and linguistically diverse workers.

⁶⁰⁶ Safe Work Australia "Something to think about – motivations, attitudes, perceptions and skills in work health and safety" (September 2011) <www.safeworkaustralia.gov.au>.

⁶⁰⁷ Vickers and others, above n 40, at 62.

⁶⁰⁸ Safe Work Australia "Part 2 – Performance Report (2015-2016)" (11 December 2017) <www.safeworkaustralia.gov.au>.

⁶⁰⁹ Australian Government Department of Home Affairs "Working Holiday visa (subclass 417)" <www.homeaffairs.gov.au>.

⁶¹⁰ Anne Davies "Death in the sun: Australia's 88-day law leaves backpackers exploited and exposed" *The Guardian* (online ed, 21 May 2018).

⁶¹¹ Anne Davies, above n 610.

⁶¹² Safe Work Australia "Guide for preventing and responding to workplace bullying" (May 2016) <www.safeworkaustralia.gov.au>.

⁶¹³ Dianne Gardner and others "Ethnicity, workplace bullying, social support and psychological strain in Aotearoa/New Zealand" (2013) 42(1) *New Zealand Journal of Psychology* 123 at 129.

⁶¹⁴ The source did not elaborate on what these characteristics may be. Safe Work Australia "Submission on Draft Report of the Productivity Commission: Regulation of Australian Agriculture" (July 2016).

⁶¹⁵ Safe Work Australia, above n 614, at 2.

- (a) Developing targeted health and safety information for migrant workers, and task-based guidance on the most high-risk tasks;
 - (b) Improving the integration of government information sources;
 - (c) Working with national community organisations which support migrants to disseminate health and safety information widely; and
 - (d) Supporting employers to understand their role and to improve communication with migrant workers in their business, including by developing workplace resources for employers.
- 647 Our contacts at Safe Work Australia did not corroborate the existence of this work programme, however did advise that they had developed “working safely in Australia” information sheets for migrant workers. Published in May 2016 and translated into 11 languages, they contain information about employer and employee duties, what to do when injured at work and a checklist for starting work to ensure employees are aware of basic policies and procedures.⁶¹⁶
- 648 In 2017, Safe Work Australia hosted a symposium at the 12th World Congress on Safety and Health at Work, entitled “The workplace diversity dimension of OSH”. The symposium explored workplace diversity and globalisation, including areas such as migrant workers, assessing WHS hazards and risk through a diversity lens, and designing work to accommodate the diversity of all workers.⁶¹⁷ Two papers relevant to Australia were presented during that symposium, which considered attitudes, behaviour and awareness of foreign-born workers and international student workers in Australia. The papers found respectively that:
- (a) Migrant status, regardless of region of birth, was generally not associated with higher work-related injury reporting, however qualitative interviews suggested under-reporting of work-related injury among low income migrants due to fear of losing their jobs;⁶¹⁸ and
 - (b) International students (sharing important predictive factors for serious injury claims i.e. being non-Australian born and from a non-English speaking background) are at greater risk of experiencing serious injury in the workplace compared to young local workers. The study found that most international students did not receive any health and safety training before commencing work.⁶¹⁹
- 649 Safe Work Australia has also developed some model Approved Codes of Practice (ACOPs), which accord with the model legislation and can be adapted by the states’ regulators to their own legislative and regulatory context), which touch on issues relevant to CALD workers.
- 650 In the model Code of Practice on Construction Work, published in May 2018, it notes (in relation to consultation), that for CALD workers, face-to-face consultation is more effective than phone, fax, email, or other networks. It also suggests that the “Safe Work Method Statement” (SWMS), which is required under workplace health and safety regulations for high risk construction work and which sets out control measures for mitigating the risks, should take account of the literacy needs or CALD backgrounds of the workers. However, the template SWMS and guidance for preparing an SWMS, set out in the model Code of Practice, does not explain how this should be done.
- 651 In the model Code of Practice on Work health and safety consultation, cooperation, and coordination, it notes that health and safety information “should be presented in a way that can be easily understood by your workers and take into account literacy needs and the cultural or linguistically diverse backgrounds of your workers.” It also suggests that “young workers and those

⁶¹⁶ These languages are Vietnamese, Chinese, Thai, Malay, Korean, Indonesian, Hindi, Farsi, Dari, Arabic, English; Safe Work Australia “Migrant Workers” (26 September 2018) <www.safeworkaustralia.gov.au>.

⁶¹⁷ Safe Work Australia “Annual Report 2016-2017” (5 October 2017) <www.safeworkaustralia.gov.au>.

⁶¹⁸ Alison Reid and others “Taking risks and survival jobs: foreign-born workers and work-related injuries in Australia” (2014) 70 Safety Science 378.

⁶¹⁹ Thamrin, above n 205.

with limited English may be less likely to question health and safety practices or speak up if they are unsure. They may find it easier to communicate through a health and safety representative, an interpreter or worker representative. Information should also be simplified and presented in different ways, such as using diagrams, to make it easier to understand.”⁶²⁰

652 The ACOP suggests that consulting on health and safety matters so far as is reasonably practicable will depend on a range of factors, and gives the example of “the characteristics of the workers, including languages spoken and literacy levels.”⁶²¹

SafeWork NSW

653 SafeWork NSW operates under the Work Health and Safety Act 2011 (NSW),⁶²² which implements the model legislation. The statutory role of the regulator is the same as that for the model WHS Act, as at [31].⁶²³ NSW also has an additional regulator, the Department of Planning and Environment, specific to mines and petroleum sites (known as the Resources Regulator). SafeWork NSW and the Resources Regulator work independently and report to different ministers. However, they have a cooperative relationship, and meet as required to discuss policy and legislation issues. This report does not consider the NSW Resources Regulator in depth.

654 We were unable to speak with any representatives of the NSW regulator, therefore the following sections relate solely to publicly available information. In this section, we also consider challenges to and lessons learned by WorkCover NSW (an earlier regulator which was absorbed into SafeWork NSW in September 2015).⁶²⁴

655 Publicly accessible information shows that from 2008 to its disestablishment in 2015, WorkCover NSW implemented a Multicultural Policies and Services Programme to ensure that its planning, development and delivery of services was inclusive of the cultural, ethnic and religious needs of NSW. This programme reflects the requirements in the Multicultural NSW Act 2000 for chief executives of public authorities to implement the legislation’s “multicultural principles” within their areas of administration.⁶²⁵

656 Initiatives implemented in response to these requirements were mentioned in WorkCover’s annual reports from that period. WorkCover NSW has not published any evaluations of the efficacy of the programmes instituted under the Multicultural Policies and Services Programme.

657 The initiatives were:

(a) Language and translation:

- (i) Produced “Watching out for you” posters displayed in all NSW workplaces in Mandarin, Cantonese, Italian, Arabic, Vietnamese, Greek, Croatian, Macedonian, Spanish, Maltese, Serbian, Turkish, Hindi, Swahili, Dinka and Urdu;⁶²⁶
- (ii) Installed on its website a rolling language bar offering 27 different languages;⁶²⁷
- (iii) Produced flyers in 16 key languages;⁶²⁸

⁶²⁰ Safe Work Australia “Work health and safety consultation, cooperation and coordination: Code of Practice” (25 May 2018) www.safeworkaustralia.gov.au at 8.

⁶²¹ At 9.

⁶²² Work Health and Safety Act 2011 (NSW).

⁶²³ Section 152.

⁶²⁴ A NSW government agency established in 1989. WorkCover NSW no longer exists. On 1 September 2015, WorkCover NSW was replaced by three new entities – SafeWork NSW, Insurance and Care NSW, and the State Insurance Regulatory Authority.

⁶²⁵ Multicultural NSW Act 2000 (NSW), section 3(5). The principles include making provision for the culture, language and religion of others within an Australian legal and institutional framework where English is the common language, and that all individuals in NSW should have the greatest possible opportunity to contribute to and participate in public life, and make use of and participate in relevant activities and programs provided or administered by the NSW Government.

⁶²⁶ “Watching out for you” posters have been replaced by “If you get injured at work” posters summarising statutory requirements for notifying injuries and making claims, Safe Work NSW “If you get injured at work poster” <www.safework.nsw.gov.au>.

⁶²⁷ The language bar on the Safe Work NSW website currently includes 103 languages.

⁶²⁸ The 16 key languages were not specified.

such as factsheets, toolkits and contact information to ensure this information was accessible to people from culturally and linguistically diverse backgrounds;⁶³⁶

(e) **Research tools:**

- (i) Developed and promoted the internal use of a “Client Diversity Profile” which provides an overview of the location and characteristics of culturally and linguistically diverse workers across occupations and sectors, helping to tailor their projects and services to a diverse context.⁶³⁷

658 Indirectly, other workstreams have also examined issues relating to CALD workers. In 2011, WorkCover NSW identified the demolition sector as one of the highest risk industries in NSW, and used it as a pilot project for its “Focus on Industry Priority Program.” Having conducted site visits and industry surveys as part of the project, WorkCover NSW found that significant literacy, language and cultural barriers existed within the demolition industry.⁶³⁸ As part of this pilot project, the written induction course was replaced with an interactive online course that used graphics and voiceover to accommodate those with difficulties understanding English.⁶³⁹ Posters and information sheets that communicated the priority hazards via graphics and key messages were also developed.⁶⁴⁰

659 After consulting with the farming industry in 2017, SafeWork NSW identified migrant workers and workers from culturally and linguistically diverse backgrounds as a key priority area where the most significant work health and safety risks exist.⁶⁴¹ These workers were identified as being at a greater risk of harm due to varying levels of literacy and numeracy, vulnerability to exploitation, and valuing job security over health and safety.⁶⁴²

660 Safe Work NSW’s Work health and safety roadmap for NSW 2022 (six year strategy) identifies “at risk workers” (including workers from culturally and linguistically diverse backgrounds, and migrant workers) as a priority and states that from 2017, it will undertake “insight research and analytics and engagement with key representatives...to establish a baseline to measure improvements in health and safety outcomes for at risk workers”, and that it will design “evidence informed initiatives...for at risk groups to bring about substantial improvements” in occupational health and safety.⁶⁴³ There is not yet any publicly available information about the research, analytics, engagement, or initiatives developed for this part of the roadmap.

Workplace Health and Safety Queensland

661 Workplace Health and Safety Queensland operates under the Work Health and Safety Act 2011 (QLD), which implements the model legislation. The regulator’s role is consistent with the model Act.

662 While the Queensland regulator does not have any specific initiatives for ethnically, culturally, and linguistically diverse workers, the representatives we spoke to were aware of the issues and had some useful insights which are explored below.

663 In terms of specific initiatives, in 2011, Workplace Health and Safety Queensland (“WHSQ”) published its own version of the “Work Health and Safety Consultation, Co-operation and Co-ordination Code of Practice”, developed by Safe Work Australia.⁶⁴⁴ As an ACOP, this code is not

⁶³⁶ WorkCover NSW “Annual Report 2014-2015” (22 October 2015) <www.opengov.nsw.govt.au> at 42.

⁶³⁷ At 47. No further information about this Client Diversity Profile was publicly available.

⁶³⁸ WorkCover NSW “Annual Report 2011-12” (3 August 2012) <www.opengov.nsw.govt.au> at 18.

⁶³⁹ At 18.

⁶⁴⁰ At 18. There is no publicly available information which determines the effect of these changes.

⁶⁴¹ NSW Government “Agriculture: Work Health and Safety Sector Plan” (2017) <www.safework.nsw.gov.au> at 6.

⁶⁴² At 6.

⁶⁴³ SafeWork NSW “Work health and safety roadmap 2022” (August 2016) <www.safework.nsw.gov.au>.

⁶⁴⁴ Queensland Government “Work health and safety consultation, co-operation and co-ordination Code of Practice 2011” (1 July 2018) <www.worksafe.qld.gov.au >. The content of this ACOP is discussed at paragraph 628.

binding but is practical guidance that is admissible in legal proceedings as evidence as to whether or not a duty under the Act has been complied with.⁶⁴⁵

- 664 Callers to WHSQ can use the Translating and Interpreting Service (a Language Line equivalent) to have multilingual access to WHSQ, including translation of the website.⁶⁴⁶
- 665 Dr Tristan Casey, Principal Advisor (Leadership & Culture Unit), WHSQ indicated that temporary workers on visas and the agriculture sector are areas of interest for the regulator owing to a perception of elevated injury and illness rates. This perception has not been validated as Workplace Health and Safety Queensland does not analyse information from significant incident notifications by reference to ethnicity.
- 666 Mental health is an emerging area of interest for the Queensland regulator. Teegan Modderman, the Manager, Psychological Health Unit at Workplace Health and Safety Queensland (WHSQ), told us that recent internal workshops WHSQ has run relating to their “mentally healthy workplaces” toolkit have revealed significant gaps in addressing the mental health issues of ethnically, culturally, and linguistically diverse workers. In particular, she highlighted reports from Aboriginal and Torres Strait Islander participants that workplaces lack “cultural safety.”⁶⁴⁷
- 667 The term “cultural safety” originates from nursing practice, and in that context is defined as “an environment which is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity, and truly listening.”⁶⁴⁸
- 668 Ms Modderman suggested that cultural safety issues may arise in the way workplaces deal with the death of an employee or in performance management meetings. For example, in the interview she spoke of Asian workers being disciplined for not raising issues, despite it being impolite in their culture to draw attention to other people’s shortcomings.
- 669 Ms Modderman also raised the issue of risk perception and “risk blindness”. It has been suggested that risk blindness “arises from a cultural bias whereby individuals ‘either cannot see it [risk] or consider it inherently acceptable’”.⁶⁴⁹ Bahn suggests that this is a particular issue for migrant workers “as many migrant workers come from countries with health and safety records worse than [the receiving country] and... these migrants bring with them their cultural biases or home country experiences that shape how they perceive risk.”⁶⁵⁰ Ms Modderman’s example related to workers who were likely to have suffered trauma in their home country, i.e. those who have emigrated to escape war and conflict (she highlighted Sudanese workers in particular). She suggested that such workers have a lower level of risk perception, and do not consider actions such as bending and lifting, or accidents such as slips, trips and falls, to be a “risk” in the workplace warranting avoidance. There does not appear to have been any research specific to refugees done to date, but this thesis warrants further examination.

WorkSafe Victoria

- 670 The Australian Model WHS laws on which the New Zealand legislation is based have not been implemented in Victoria. Victoria has not introduced legislation in accordance with the model WHS laws. The state government explained this decision on the basis that “Victoria has the safest and most effective OSH system, the lowest rate of workplace injuries, illnesses and deaths... in Australia” and that transitioning to the model WHS would have significant cost implications.⁶⁵¹

⁶⁴⁵ Work Health and Safety Act 2011 (Qld), s 275.

⁶⁴⁶ Work Cover Queensland “Language Assistance” (2 December 2016) <www.worksafe.qld.gov.au>.

⁶⁴⁷ Interview with Teegan Modderman, above n 52.

⁶⁴⁸ Williams, above n 36.

⁶⁴⁹ Bahn, above n 206.

⁶⁵⁰ Bahn, above n 206, at 3.

⁶⁵¹ Department of Treasury and Finance Victorian Budget: 2012-2013 Treasurer’s Speech, Budget Paper No. 1 (Victorian Government) at 19.

An industry publisher has noted that “In many respects [the Victorian legislation] is reasonably consistent with the national model work health and safety (WHS) legislation that applies in most other jurisdictions.”⁶⁵²

- 671 The main legislation is the Occupational Health and Safety Act 2004.⁶⁵³ The main regulations are the Occupational Health and Safety Regulations 2017.⁶⁵⁴ The role of the Victorian regulator, WorkSafe Victoria, in the Occupational Health and Safety Act 2004 is substantially similar to the regulator’s role in the model WHS Act.⁶⁵⁵
- 672 Like many of the regulators interviewed, WorkSafe Victoria is inhibited by limited data regarding the ethnic, cultural, and linguistic characteristics of workers.⁶⁵⁶ Professor Andrea de Silva, Director of Research at WorkSafe Victoria, said that despite WorkSafe Victoria’s awareness of the high level of migration into Victoria, it does not have a particular strategic focus on reducing injury and illness for CALD workers as one or more distinct groups.⁶⁵⁷
- 673 In 2008, Work Safe Victoria published a Compliance Code for “communicating occupational health and safety across languages”.⁶⁵⁸ The Compliance Code is a practical guidance and is not mandatory. The Code highlights that ethnically, culturally, and linguistically diverse workers may be hesitant to communicate health and safety concerns to their employer, because they may assume the employer should not be questioned or disagreed with, or they may fear losing their job.⁶⁵⁹
- 674 The Compliance Code suggests that employers could overcome communication barriers by:
- (a) Identifying the range of languages spoken in the workplace;
 - (b) Identifying the employees’ preferred form of communication;
 - (c) Using bilingual employees or health and safety representatives to facilitate consultation with non-English speakers; and
 - (d) Making sure written information is translated into or explained in appropriate languages, kept simple, clear and brief; and is supported by a summary in plain English or translation.
- 675 This compliance code was updated in 2018, in an abbreviated form (eleven pages instead of twenty-eight).
- 676 Professor de Silva stated that WorkSafe Victoria’s website is mostly untranslated and, being very text-heavy, is difficult to read even for native English speakers, especially those with low literacy skills. As a result, WorkSafe Victoria are starting to use more animations and infographics to convey health and safety information, instead of text.⁶⁶⁰
- 677 Posters and information sheets about the main duties, obligations and rights under the Occupational Health and Safety Act 2004 is also available Chinese, Greek, Italian, Arabic, and Vietnamese.

⁶⁵² Workplace OHS News & Info for Australian OHS Professionals “VIC Legislation” <<http://workplaceohs.com.au/legislation/vic-legislation>>.

⁶⁵³ Occupational Health and Safety Act 2004 (Vic).

⁶⁵⁴ Occupational Health and Safety Regulations 2017 (Vic).

⁶⁵⁵ Occupational Health and Safety Act 2004 (Vic), s 7.

⁶⁵⁶ Interview with Professor Andrea de Silva, Director of Research, WorkSafe Victoria (conducted by Mai Chen, 13 July 2018).

⁶⁵⁷ Interview with Professor Andrea de Silva, above n 656.

⁶⁵⁸ WorkSafe Victoria “Compliance Code: Communicating occupational health and safety across languages” (September 2008) <<https://www.worksafe.vic.gov.au>>.

⁶⁵⁹ At 4. The Code does not include details about the assumptions of specific cultural groups and which of these groups may be reluctant to communicate with authority figures.

⁶⁶⁰ Interview with Professor Andrea de Silva, above n 656.

WorkSafe ACT

- 678 WorkSafe ACT operates under the Work Health and Safety Act 2011 (ACT), which implements the model legislation. The regulator’s role is consistent with the model Act.
- 679 WorkSafe ACT covers a small jurisdiction, with less than 40,000 people. Greg Jones, Director WorkSafe ACT and the state’s Work Safety Commissioner, confirmed that there is no strategy in place in respect of CALD workers, but said that measures are taken on a case-by-case basis.
- 680 WorkSafe ACT has a 24/7 telephone interpreter service, available in 15 languages to handle inquiries regarding workplace health and safety.⁶⁶¹
- 681 It also has a specific website sub-page, “Health and Safety tips for new and vulnerable workers”, which identifies migrants and workers facing cultural and linguistic barriers as having a much higher likelihood of injury at work than other workers. Specific issues these workers are identified to face are language barriers, cultural and religious differences, literacy difficulties, limited knowledge of local legislation and safety standards, and reluctance to engage with authority figures.⁶⁶²
- 682 WorkSafe ACT has published guidance to PCBUs about how to comply with their obligations in respect of migrant and other workers facing cultural and linguistic barriers, which suggests that employers:⁶⁶³
- (a) Consider how to convey information about safety to those with a limited knowledge of English;
 - (b) Consider accessing English language support for workers;
 - (c) Encourage supervisors to be understanding and approachable;
 - (d) Demonstrate skills thoroughly rather than giving verbal instructions; and
 - (e) Use pictures rather than words as reminder prompts.

SafeWork SA

- 683 SafeWork SA operates under the Work Health and Safety Act 2011 (SA), which implements the model legislation. The regulator’s role is consistent with the model Act.
- 684 Similarly to the other jurisdictions examined, SafeWork SA does not have a strategic focus on CALD workers. However, it has identified issues relevant to CALD workers in other workstreams.
- 685 Ingrid Ormay, an Industry Advisor in the Education team at SafeWork SA, explained that the Education team specifically looks at priority industries: agriculture, construction, manufacturing, road transport, accommodation and food services, and healthcare and social assistance.
- 686 In respect of its healthcare priority, SafeWork SA’s Aged Care Action Plan identified cultural and linguistic diversity as a key focus area for its work with the residential aged care sector. The action plan states that for the period 2018 – 2020, SafeWork Australia will disseminate practical information and advice addressing key focus areas to encourage effective management of risks to health and safety; noting the cultural and linguistic diversity in this sector. This focus on aged care is particularly relevant, given the 2016 Australian National Aged Care Workforce Census and Survey found that 32% of the total residential care workforce was born overseas (most commonly from India and the Philippines) and 40% of recently hired workers (employed for 12 months or

⁶⁶¹ Access Canberra “Languages” (5 September 2017) <www.accesscanberra.act.gov.au>.

⁶⁶² Access Canberra “Health and safety tips for new and vulnerable workers: person conducting a business or undertaking responsibilities” (13 May 2018) <www.accesscanberra.act.gov.au>.

⁶⁶³ Access Canberra, above n 662. Details of which barriers relate to which specific cultural groups were not provided.

less) were migrant workers.⁶⁶⁴ 87% of the total residential aged care workforce were female.⁶⁶⁵ The 2016 National Aged Care Workforce Census and Survey also reported that no overall sector improvement in health and safety was achieved between 2012 and 2016.⁶⁶⁶

687 SafeWork SA has also taken some steps towards linguistic diversity, by creating a poster with images and multilingual descriptions of common work safety signs. Each sign is accompanied with descriptions in 15 languages of what the employee must do to protect themselves at work.⁶⁶⁷ It has also embedded Google Translate on its website so that all website content can be read in the website visitor’s native language (noting that this translation will be imperfect and in some cases, inaccurate, owing to the software’s limitations).

NT WorkSafe

688 NT WorkSafe operates under the Work Health and Safety (National Uniform Legislation) Act 2011 (NT), which implements the model legislation. The regulator’s role is consistent with the model Act.

689 We were unable to speak with any representatives of the Northern Territories’ regulator therefore refer only to publicly available information.

690 In 2012, NT WorkSafe published the ACOP “Work Health and Safety Consultation, Co-operation and Co-ordination Code of Practice”, following the model version developed by Safe Work Australia.⁶⁶⁸

691 In 2016, NT WorkSafe designed, developed and implemented the Remote Community Work Health and Safety Initiative in partnership with North East Arnhem Land Aboriginal community stakeholders. The program provided advice, education and training to workers and employers, and “aimed to ensure that remote Aboriginal workers were given accessible, culturally appropriate work health and safety training.”⁶⁶⁹ As part of this program, NT WorkSafe developed three “culturally appropriate” short films (which were produced locally, and featured local workers and residents), as well as other guidance and educational material. These films are available on Safe Work Australia’s website. We could not locate any relevant evaluative material in respect of this Remote Community Work Health and Safety Initiative.

692 In 2018, NT WorkSafe published a guide to Worker Representation and Participation. Within that guide, in relation to health and safety “work groups” (also known as committees), it notes that “Languages spoken in the workplace should be considered when negotiating work groups, so that the interests of workers from culturally and linguistically diverse backgrounds are properly represented. In a multilingual workplace, the parties involved in work group negotiations should identify the language preferences of workers and try to structure work groups and the representation within them (multiple HSRs or deputies) to cater for their language needs.”⁶⁷⁰

693 Similarly, in 2018, NT WorkSafe published a guide to Remote or Isolated Work. Within that guide, there is a section on information, training and supervision (including cultural awareness).⁶⁷¹ The section on cultural awareness relates to indigenous communities. It suggests that “before travelling remotely you need to research the community you are attending, acknowledge the original landowners by contacting them... to seek permission to enter their lands and to organise an appropriate time to visit.” It also suggests ways to build good relationships in and with indigenous

⁶⁶⁴ Australian Government, Department of Health “The Aged Care Workforce, 2016” (March 2017) <www.agedcare.health.gov.au> at 10.

⁶⁶⁵ At 17.

⁶⁶⁶ At 42.

⁶⁶⁷ English, Amaharic, Arabic, Bosnian, Chinese, Croatian, Greek, Italian, Khmer, Persian (Farsi), Polish, Russian, Somali, Spanish and Vietnamese. Safe Work SA “Multilingual Work Safety Signs” (2013) <www.safework.sa.gov.au>.

⁶⁶⁸ The content of this ACOP is discussed at paragraph 651.

⁶⁶⁹ NT WorkSafe “Work Health Authority: Annual Report 2016-17” <www.worksafe.nt.gov.au> at 10.

⁶⁷⁰ NT WorkSafe “Guide: Worker Representation and Participation” (September 2018) at 7.

⁶⁷¹ NT WorkSafe “Guide: Remote or Isolated Work” (September 2018) at 17.

communities, which include being respectful, following protocols, taking the time to get to know the community, and spending more time in the community, including longer and more frequent stays.⁶⁷² It also suggests that cultural awareness training can be a way of managing the risks of remote work.

WorkSafe WA

- 694 WorkSafe WA currently operates under the Occupational Safety and Health Act 1984. However the Western Australian Government is currently developing a modernised Work Health and Safety Act for Western Australia which is based on the national model Act.
- 695 We were unable to speak with any representatives of the Western Australian regulator therefore refer only to publicly available information.
- 696 In 2010, WorkSafe WA published a guide to employers about understanding the health and safety needs of migrant workers. The guide states that the following factors can be specific issues for migrant workers: language barriers; cultural or religious differences; literacy difficulties; limited knowledge of local legislation and safety standards; and reluctance to engage with authority figures.⁶⁷³
- 697 The guide includes an “employer checklist” to help employers address the needs of migrant workers when managing occupational safety and health at the workplace. The checklist requires employers to check whether they understand their workforce (including having an awareness of the languages, cultural and religious practices in their workplace), whether they have appropriate consultation and communication strategies taking into account the cultural and communication needs of the workforce, and that the needs of migrant workers are taken into account in induction, training and instruction materials, and in policies and procedures.⁶⁷⁴
- 698 The checklist provides a comprehensive list of matters employers should consider but also provides some suggestions as to how these could be implemented i.e. employers should make sure that communication strategies are culturally appropriate and inclusive, which may mean providing language support through interpreters or bilingual facilitators. The checklist is sufficiently general that it can be used in most workplaces. It is very similar to WorkSafe Victoria’s checklist. This guidance is available in 8 languages: Arabic, Bosnian, Burmese, English, Chinese, Swahili, Tagalog, and Vietnamese.
- 699 Callers to WorkSafe WA can use the Translating and Interpreting Service (a Language Line equivalent) to have multilingual access to WorkSafe WA’s phone line.⁶⁷⁵

WorkSafe Tasmania

- 700 WorkSafe Tasmania operates under the Work Health and Safety Act 2012 (Tas) which implements the model legislation with minor variations. The regulator’s role is consistent with the model Act.
- 701 WorkSafe Tasmania has no specific strategies or initiatives regarding the health and safety of ethnically, culturally, and linguistically diverse people. Pamela Atkinson, Senior WHS Consultant at WorkSafe Tasmania, stated that this is likely due to the fact that Tasmania’s small population is not significantly diverse.⁶⁷⁶ In the 2016 census, 80.7% of people living in Tasmania were born in Australia. The most common countries of birth of those not born in Australia were England 3.7%, New Zealand 1.0%, China (excludes SARs and Taiwan) 0.6%, Scotland 0.4% and Netherlands 0.4%.

⁶⁷² At 18.
⁶⁷³ WorkSafe WA “Understanding the safety and health needs of your workplace” (April 2010) <www.commerce.wa.gov.au>.
⁶⁷⁴ WorkSafe WA, above n 673.
⁶⁷⁵ Government of Western Australia “Worksafe translation services” (12 October 2016) <www.commerce.wa.gov.au>.
⁶⁷⁶ Interview with Pamela Atkinson, Senior WHS Consultant at WorkSafe Tasmania (Mai Chen, 13 July 2018).

- 702 Nevertheless, WorkSafe Tasmania has noted in the course of the Safe Farming Tasmania programme, a joint initiative between WorkSafe Tasmania and the Department of Primary Industries, Parks, Water and the Environment (DPIPWE), that seasonal workers from non-English speaking backgrounds have “a higher risk of injury due to language barriers and their limited experience or background in a rural environment or the task to be undertaken”.⁶⁷⁷
- 703 As a result, in its guidance for farming PCBUs, “Farming Safely in Tasmania”, WorkSafe Tasmania advises employers that they must ensure that workers from non-English speaking backgrounds understand the information and training given, and that this might require “closer supervision, an interpreter, instructions translated into different languages or more photos/pictures.”⁶⁷⁸ There is no evidence of testing by WorkSafe Tasmania of these recommendations in the farming sector.

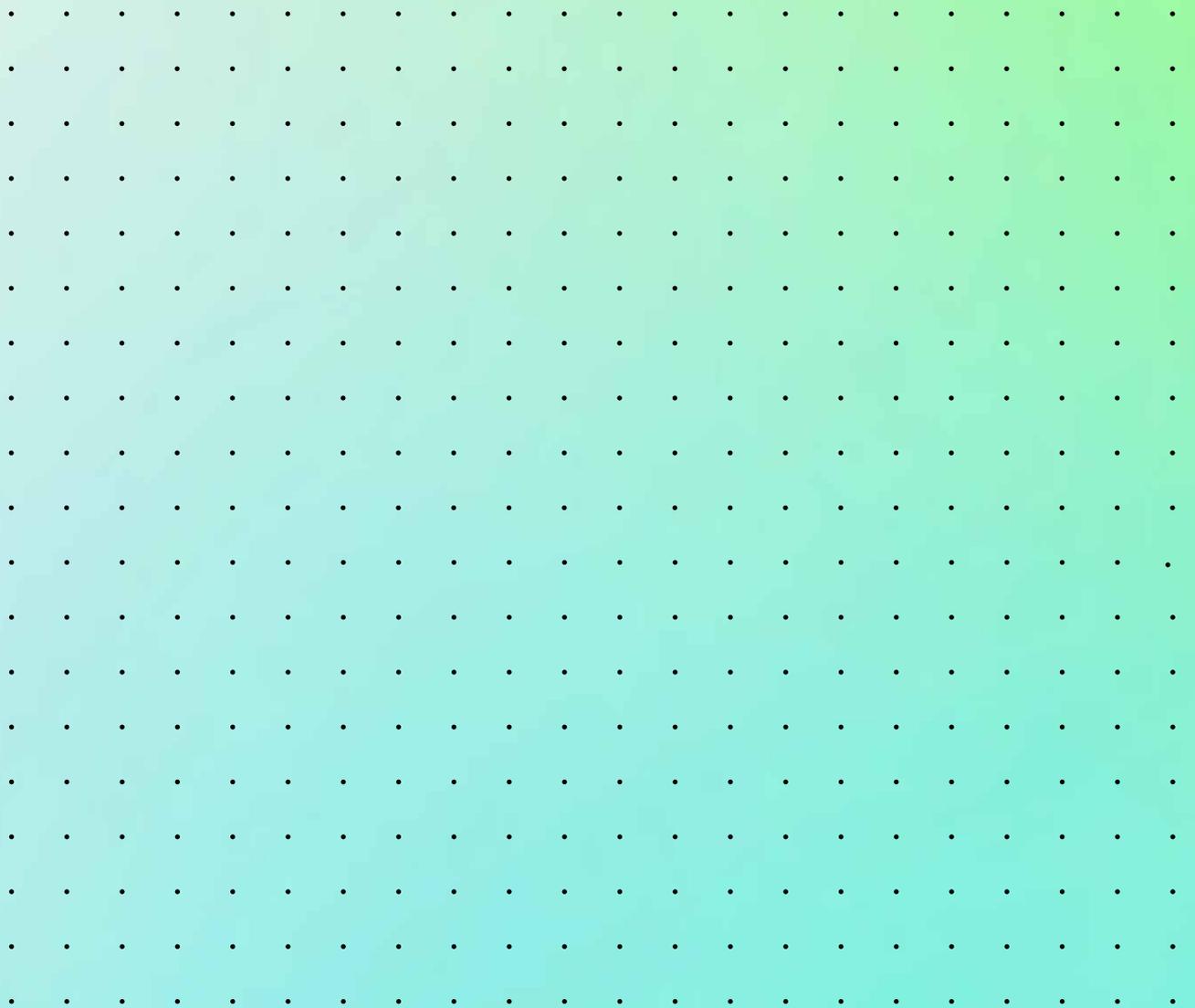
Summary

- 704 Australia has a long way to go in identifying the issue of disproportionate workplace injury and illness to CALD workers, and to mitigating that issue. Of all the states, the Queensland regulator appears to be the most advanced in this regard, particularly in relation to mental health.
- 705 Useful points to consider from the Australian research include:
 - (a) The influence of visa conditions on reporting health and safety risks (as discussed in the Safe Work Australia section regarding the “88 days” requirement);
 - (b) International student workers as doubly disadvantaged, being both new migrants and young workers. Additionally, structural factors increase their vulnerability; they are restricted to working a certain number of hours which limits the jobs open to them;
 - (c) Cultural awareness as a necessity both for regulator’s staff, but also for people working remotely in indigenous areas, for example, health and community workers, (as a way of mitigating health and safety risks to themselves);
 - (d) ACOPs as a mechanism for disseminating cultural capability guidance.

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⁶⁷⁷ Worksafe Tasmania “Farming Safely in Tasmania: Safe Farming Tasmania Program” (November 2015) <www.worksafe.tas.gov.au>.
⁶⁷⁸ Worksafe Tasmania, above n 677.

Part 3: Appendices



Appendix A: The Robens Model

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The Robens Model

- 706 The 1972 Robens report is considered to have provided the basis for modern approaches to health and safety in the United Kingdom and other Commonwealth countries. The Health and Safety at Work etc. Act 1974 (UK) reflected the recommendations of the Robens report and provided a unified and flexible system of regulation.⁶⁷⁹
- 707 The aim of the Robens report “was to facilitate a shift of emphasis in British legislative provisions, away from prescriptive standards towards goal-setting approaches, and to create greater participation by representatives of employers and employees in making and maintaining preventive health and safety standards.”⁶⁸⁰
- 708 The report recommended:⁶⁸¹
- (a) An approach which encouraged both employers and workers to self-regulate health and safety;⁶⁸²
 - (b) That the legislation be simplified and unified into one piece of legislation;⁶⁸³
 - (c) That greater use should be made of agreed voluntary standards and codes of practice;⁶⁸⁴
 - (d) A broader and more flexible framework to allow inspection services to be used more constructively in advising and assisting employers and employees, as well as enabling them to concentrate on more serious problems requiring tighter control;⁶⁸⁵ and
 - (e) That a single regulator should be established.⁶⁸⁶
- 709 In recommending this approach, the Robens Committee did not consider the implications of ethnic or cultural differences on health and safety. This is despite the influx of immigration of people from Commonwealth nations (particularly Caribbean nations) in the years preceding the report.⁶⁸⁷
- 710 In the United Kingdom there have been no substantive amendments to the 1974 Act since its enactment that relate to ethnic and cultural diversity. As Booth others note, “although there is no specific health and safety legislation relating to diverse employees, the *HSWA 1974* and many of the subsequent regulations apply to all groups of workers.”⁶⁸⁸
- 711 Two of the main regulations published under the UK Act, the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) and the Management of Health and Safety at Work Regulations 1999 (MHSWR), incorporate various EU directives.⁶⁸⁹ Relevant EU agencies have published guidance on those directives which “illustrates how and why the diversity of the workforce has to be taken into account when assessing and managing risk.”⁶⁹⁰ The guidance also

⁶⁷⁹ Robens Committee Safety and Health at Work: Report of the Committee 1970-1972 (July 1972) <www.mineaccidents.com.au>.

⁶⁸⁰ Steve Tombs “Enforcing Safety Law in Britain: Beyond Robens?” (2001) 3(2) Risk Management 29 at 30.

⁶⁸¹ Robens Committee, above n 679.

⁶⁸² At 452.

⁶⁸³ At 453.

⁶⁸⁴ At 453.

⁶⁸⁵ At 454.

⁶⁸⁶ At 455.

⁶⁸⁷ Immigration from the colonies was approximately 2,000 per year in 1953, but had increased to 135,000 annually by 1961. The Immigration Act 1971 which tightened immigration controls was passed during the drafting of the Robens report. Refer United Kingdom National Archives “Origins of Commonwealth immigration” <www.nationalarchives.gov.uk>.

⁶⁸⁸ Nikki Booth, Clare Robson, Jacqui Welham others Tolley’s Managing a Diverse Workforce (Routledge, 2009) at 50.

⁶⁸⁹ In particular, Council Directive 89/391/EEC.

⁶⁹⁰ European Agency for Safety and Health At Work “Workforce diversity and risk assessment – Ensuring everyone is covered” (European Agency for Safety and Health at Work, 2009).

deals with the particular problems faced by migrant workers; factors that should be dealt with under best practice; and practical guidance and tools for assessing the risks faced by migrant workers.⁶⁹¹ However, there has been limited guidance by the United Kingdom in that regard and no legislation has been enacted or amended that clarifies the impact of ethnic and cultural diversity on employer and employees’ duties and responsibilities.

712 In recent years, there have been several academic considerations of the continued efficacy of the Robens model in the twenty-first century workplace. In particular, attention has been paid to the changing structure and organisation of work and labour markets (including outsourcing, franchising, and downsizing, as well as the changing role of trade unions and collective agreements⁶⁹²) and whether self-regulation is still suitable in this environment.⁶⁹³ In fact, Brooks notes that even at the time the Robens Committee proposed the self-regulatory approach, “they had no evidence of its success.”⁶⁹⁴

713 As of July 2018, there is no evidence (at least in English) of specific academic consideration of the interrelationship between the Robens model and cultural, ethnic, and linguistic diversity. This is not to say that health and safety academics, regulators and stakeholders are not considering ethnic, cultural and linguistic diversity in health and safety. In particular, there is substantial literature relating to the health and safety of foreign and migrant workers. However, the literature does not consider whether the underlying assumptions of the Robens model are flexible enough to accommodate these workers. The focus is on mechanisms to improve the health and safety of these workers within the existing regulatory framework.

The Australian Robens model

714 Following the Robens report, in the 1970s and 1980s, each Australian jurisdiction enacted new legislation based on the Robens model.⁶⁹⁵

715 Prior to 1 January 2012, each state and territory had a principal health and safety Act which set out workplace health and safety requirements. In 2011 Safe Work Australia, a statutory body set up to improve work health and safety, developed a single set of workplace health and safety laws, otherwise known as the model WHS Act and Regulations.

716 The purpose of developing the model Act and Regulations was to harmonise workplace health and safety legislation across the Australian jurisdictions. The objective of the harmonisation efforts was to:⁶⁹⁶

- (a) Enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
- (b) Address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
- (c) Create efficiencies for governments in the provision of OHS regulatory and support services; and
- (d) Achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

⁶⁹¹ At 16-19.

⁶⁹² David Walters “Workplace Arrangements for OHS in the 21st Century” (presented to the Australian OHS Regulation for the 21st century conference, Gold Coast, 20–22 July 2003) at 18.

⁶⁹³ At 18.

⁶⁹⁴ Adrian Brooks “Rethinking Occupational Health and Safety Legislation” (1998) 30 *Journal of Industrial Relations* 347, as cited in Felicity Lamm “Australian and New Zealand Occupational Health and Safety – A Comparative Analysis” (1994) 32(2) *Asia Pacific Journal of Human Resources* at 63.

⁶⁹⁵ Australian National University School of Regulation and Global Governance “Overview of work health and safety regulation in Australia” (10 August 2017) <regnet.anu.edu.au>.

⁶⁹⁶ Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (3 July 2008) <<https://www.coag.gov.au/>>.

- 717 For the model WHS laws to become legally binding, states and territories must separately implement them as their own laws. The model WHS Act has been adopted by the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, and the Commonwealth.
- 718 Only Western Australia (which is subject to the Occupational Safety and Health Act 1984) and Victoria (which is subject to the Occupational Health and Safety Act 2004) have not adopted the model WHS legislation.
- 719 Improving the efficacy of the legislation for CALD workers was not a primary consideration in the development of the model legislation. However CALD workers were infrequently discussed as part of the development process:

- (a) In the “National Review into Model Occupational Health and Safety Laws: First Report to the Workplace Relations Ministers’ Council: October 2008” which precipitated the new legislation, the authors do consider migrant workers as a “change [in demographic or circumstance] affecting regulatory risk”. However they do not consider other ethnically and culturally diverse people who are not migrants, nor do they make any suggestions as to how new legislation can mitigate risks arising from increased numbers of migrant workers.⁶⁹⁷
- (b) In September 2009, the Workplace Relations Ministers’ Council released a draft of the Model Work Health and Safety (WHS) Act and key administrative Regulations for a six week public comment period. A total of 480 submissions were received during the public comment period, and an analysis of the submissions informed the drafting of the model WHS Act.

Ethnic and cultural diversity was considered in one of the consultation questions, which was:⁶⁹⁸

The model Act requires the provision of, so as is reasonably practicable, any information, training and instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work (clause 18(4)(f)). Should this requirement expressly require that the information etc. be provided in an appropriate language or languages, or provided at a level that can be understood by workers?”

In response to this question, some submitters identified differential impacts of the proposed wording on foreign born workers. For example, Unions NSW cited research that workers born overseas face additional barriers to reporting health and safety issues, as a result of not knowing how or to whom to report an injury, or because of a fear of being fired, harassed, or reported to immigration authorities.⁶⁹⁹

- 720 However, when the Work Health and Safety Bill was introduced on 6 July 2011, the relevant provision was left general without express requirements for information, training and instruction to be provided in appropriate languages or at a level understood by workers. It is not clear why this decision was made.
- 721 CALD workers were not specifically mentioned in the explanatory memorandum to the bill,⁷⁰⁰ the Regulatory Impact Statement, or the speech accompanying the first reading.⁷⁰¹

⁶⁹⁷ Australian Government “National Review into Model Occupational Health and Safety Laws: First Report, October 2008” (31 October 2008) <docs.jobs.gov.au>.

⁶⁹⁸ Safe Work Australia “Model Work Health and Safety Act Public comment period 2009” (undated) <submissions.swa.gov.au>.

⁶⁹⁹ Unions NSW “Submission for the National Review into Model Occupational Health and Safety Laws” (11 July 2008) <submissions.swa.gov.au>.

⁷⁰⁰ Work Health and Safety Bill 2011 (Aus) – Explanatory Memorandum <parlinfo.aph.gov.au>.

⁷⁰¹ Access Economics Pty Limited Decision Regulation Impact Statement for a Model Occupational Health and Safety Act (report to Safe Work Australia, 9 December 2009) <www.safeworkaustralia.gov.au>.

New Zealand's decision to adopt the Australian model

- 722 New Zealand's previous health and safety legislation, the Health and Safety in Employment Act 1992, followed the Robens approach. The 2012 Royal Commission on the Pike River Coal Mine Tragedy however "concluded that [New Zealand's] implementation of the Robens approach has been incomplete – particularly in relation to the relative lack of regulations, Approved Codes of Practice (ACoPs) or guidance to make the Act as effective as intended."⁷⁰²
- 723 The 2013 Independent Taskforce on Workplace Health and Safety also suggested that the existing health and safety system was marred by, among other issues, confusing regulation; a weak regulator; poor worker engagement; inadequate leadership; and capacity and capability shortcomings. To address these shortcomings, the Taskforce recommended the enactment of a new workplace health and safety Act based on the Australian Model Law.⁷⁰³
- 724 In the Cabinet paper recommending the adoption of the Australian model legislation (which eventually occurred through the enactment of the Health and Safety At Work Act 2015), Hon Simon Bridges, the then Minister of Labour, noted that the Australian model law was "the most recent articulation of the Robens approach available to us" and that "there is no point reinventing the wheel if an excellent one already exists."⁷⁰⁴
- 725 There do not appear to have been any specific considerations of ethnic and cultural diversity in New Zealand's decision to adopt the Australian model when enacting the Health and Safety at Work Act 2015.
- 726 In the then Minister of Labour's paper to the Cabinet Economic Growth and Infrastructure committee, "Improving Health and Safety at Work: Overview", there is little reference to ethnic and cultural diversity. In relation to the Work Health and Safety Strategy, which was recommended by the Taskforce to be a requirement in the new legislation, and following a proposal that the Strategy should be a legislative requirement, it states:⁷⁰⁵
- "The Strategy should include appropriate focus on addressing the issues associated with particular at-risk populations and organisations, including Māori and Pacific Peoples (who are over represented in high risk industries), and those with low literacy, and other identified high risk groups such as migrants and those who work in remote locations."*
- 727 In relation to the Christchurch rebuild, it notes that inspectors need to "target high risk communities and populations across the rebuilding (young workers, workers new to construction, immigrant workers."
- 728 No further mention of these populations is made in the subsequent Cabinet minute.⁷⁰⁶
- 729 The "Improving Health and Safety at Work: An Effective Regulatory Framework" paper to the Cabinet Economic Growth and Innovation Committee does not consider ethnic and cultural diversity.
- 730 Moving to the Health and Safety Reform Bill, there is limited attention to ethnic and cultural diversity throughout its legislative progress. Neither the explanatory note to the Bill, nor the Regulatory Impact Statement, consider issues of ethnic or cultural diversity. These issues were not raised in the speech introducing the Bill to the house.

⁷⁰² Cabinet Paper, above n 21, at 12.

⁷⁰³ Independent Taskforce on Workplace Health and Safety The Report of the Independent Taskforce on Workplace Health and Safety: Executive Report (April 2013) <hstaskforce.govt.nz>.

⁷⁰⁴ Cabinet Paper, above n 21, at 18.

⁷⁰⁵ Cabinet Paper, above n 21, at 12.

⁷⁰⁶ Cabinet Minute "Improving Health and Safety at Work: Overview" (15 July 2013) CAB Min (13) 24/10.

- 731 Certain members of Parliament however considered these issues during the Committee stages. While before the Transport and Industrial Relations Committee and while considering Part 2 of the Bill, the Honourable Su’a William Sio stated:⁷⁰⁷

When you have a multicultural workforce—and I am not just talking about Pacific Islanders from the various five nations in the Pacific, who all speak five different languages. I am also speaking about a workforce that I came across in Nelson, who are predominantly from Asia—from the Philippines and other parts of Asia. None of this part makes reference to how we pass information on to a particular workforce who may not necessarily be aware of our signs, who may not necessarily be aware of the kinds of information that we generally take for granted and assume that by presenting it in English a person will know what those duties are.

I also want to recognise—the Committee may not be aware of this, but this country of ours takes in, on a regular basis, a certain number of Pacific workers from Samoa as a result of the Samoan quota, and from other islands in the Pacific as a result of the Pacific access category. Many of those workers come from village settings, and they are arriving for the first time into our country and may not necessarily be accustomed to the rigours of a manufacturing industry, to the rigours of a farm industry, and to the rigours of a forestry industry. They are very vulnerable to the kinds of dangers that all New Zealanders agree we are trying to stop, and which the purpose of this bill is about.

- 732 Similar concerns were raised by Marama Fox MP, who stated:⁷⁰⁸

When we spoke with the Minister about that it was about “How do you know what you do not know? If you are a worker from another country, working here in New Zealand, or even if you are just a worker who is young and coming into the workforce very new, how do you know what you do not know about safety regulations? If nobody has told you, how do you know that you can challenge? How do you know that you can ask to have a safety officer? How do you know those things?” One of our concerns, which is not even in this bill, is about ensuring that there is multi-language advertising and that multi-language workers’ facilitators can go out and speak with people. If there was a health and safety officer in a workplace, they would have the ability to do that. So part of our conversation was to ensure that, despite what is said in the bill, workers’ rights are articulated and that people know they can ask. That is one of the things we were concerned about.

There are words about reasonable opportunity—that workers be given a reasonable opportunity to express their views. In the workplace we have a bicultural society but we also have a workforce that is diverse, culturally and language-wise. To expect that workers in a power situation, where some may fear the employer and may not be willing to reveal what is in their minds to an employer—giving workers reasonable opportunity could mean nothing. It could mean nothing happens, and that puts workers in danger.

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⁷⁰⁷ (19 August 2015) 707 NZPD 6003.

⁷⁰⁸ (20 August 2015) 707 NZPD 6053.

Appendix B: Legislative Framework

New Zealand

733 The key features of the Health and Safety legal framework within New Zealand are:

- (a) **The concept of reasonably practicable.** The HSW Act requires PCBUs to do all that is “reasonably practicable” to ensure the health and safety of its workers. This term is defined as what could reasonably be done by a person to ensure health and safety, taking into account:
 - (i) The likelihood of the hazard or risk occurring;
 - (ii) The degree of harm that might result from the hazard or risk;
 - (iii) What the PCBU ought to reasonably know about the hazard or risk and ways of eliminating or minimising it;
 - (iv) The availability and suitability of ways to eliminate the risk; and
 - (v) After assessing all of the above, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk (section 22).

The definition is highly context-dependent, but guidance can be obtained through regulations (legally binding), safe work instruments (legally binding), approved codes of practice (provide advice and guidance, admissible in legal proceedings as evidence of whether or not a duty has been complied with), and good practice guidelines (provide advice and guidance) published by the regulator.

The regulations include the Health and Safety At Work (General Risk and Workplace Management) Regulations 2016 and Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016.

- (b) **Duty to manage risks.** All persons that have duties under the HSW Act must eliminate risks to health and safety, so far as is reasonably practicable. If it is not possible to eliminate risk, then that person must minimise the risk so far as reasonably practicable (section 30). In order to properly manage risks, risks and hazards in the workplace must first be identified. Accordingly, the duty under section 30 requires the implementation of effective processes to identify hazards.
- (c) **Primary duty of care.** PCBUs have a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers, while they are working, and workers whose work is influenced or directed by the PCBU. PCBUs also have a duty to ensure that non-workers are not put at risk from work carried out by the PCBU (section 36). This duty involves:
 - (i) Providing and maintaining a work environment that is without risk to health and safety (section 36(3)(a)). In order to comply with this duty, it is essential that PCBUs have good processes for identifying and managing risks in the workplace. It also requires PCBUs to manage those identified risks by either eliminating or minimising the risk;
 - (ii) Providing and maintaining safe plant and structures (section 36(3)(b));
 - (iii) Providing and maintaining safe systems of work (section 36(3)(c)). This duty requires managers of the workplace to critically examine the work that workers are carrying out and determining, and then implementing, methods of carrying out that work safely;

- (iv) Creating systems for the safe use, handling, storage of plant, substances and structures (section 36(3)(d));
 - (v) Providing adequate facilities for the welfare at work of workers (section 36(3)(e)). Work facilities must be clean, safe, accessible, in good working order, and regularly maintained;
 - (vi) Providing information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety (section 36(3)(f)); and
 - (vii) Monitoring of the health of workers and conditions at the workplace for the purpose of preventing injury or illness of workers arising from the conduct of the business (section 36(3)(g)). This includes monitoring hazards in the workplace ie. noise, fumes, vibrations and also monitoring the health of workers to determine whether workplace hazards are causing harm.
- (d) **Duty of Officers.** An officer of the PCBU (Directors, Chief Executive Officers) must exercise due diligence to ensure that the PCBU complies with its primary duty. Due diligence requires the officer to:
- (i) Acquire knowledge of health and safety matters relating to the workplace;
 - (ii) Understand the operation of the business, and the general hazards and risks associated with those operations;
 - (iii) Ensure the PCBU has adequate resources to manage risks and hazards;
 - (iv) Ensure PCBU has appropriate processes to respond to incidents and hazards in a timely way. This would include having processes in place for managers of the PCBU to collect information regarding risks and hazards and what action will be taken once that information has been collected;
 - (v) Ensure the PCBU has processes for complying with its duties. This would include ensuring managers of the PCBU have implemented processes to identify and manage hazards in the workplace, and to monitor the health of workers and conditions in the workplace; and
 - (vi) Verify – review and audit health and safety performance. Officers are required to consistently consider whether the processes and action the PCBU is taking to manage workplace health and safety is appropriate (section 44).
- (e) **Duties of Workers.** Workers have duties to take reasonable care for their own health and safety, and to ensure that their acts or omissions do not affect the health and safety of other persons (section 45).
- (f) **PCBUs must not levy workers** for any health and safety related action taken by the PCBU (section 27).
- (g) **PCBUs must consult** with other PCBUs that have duties in relation to the same matter. Each PCBU must, so far as is reasonably practicable, consult, cooperate, and coordinate with the other PCBU with the same duties (section 34).
- (h) **Offences.** The level of penalty that a duty holder is subject to for breaches of the HSW Act is dependent on whether the duty holder’s breach was reckless, exposed an individual to serious risk, or was a simple breach (sections 47, 48 and 49).
- (i) **Notifiable events.** As soon as possible after becoming aware, PCBUs are required to notify the regulator when a person dies at work, is seriously injured at work, or when workers are exposed to serious risk.

- (j) **Worker Participation.** PCBUs must engage with workers in a manner which provides workers with access to health and safety information, allows workers to express views regarding those issues, and contribute to decision-making regarding those matters. Workers are permitted to elect health and safety representatives (section 62) or create health and safety committees (section 66), to facilitate this engagement.
- (k) **Right to cease work.** A worker is entitled to cease work if that worker believes that carrying out the work would expose the worker, to serious risk to either their health, or the health of another person (section 83).
- (l) **Regulator.** WorkSafe New Zealand is the regulator of the HSW Act (section 189). WorkSafe's function are to:
 - (i) Monitor and enforce compliance with health and safety legislation;
 - (ii) Develop codes of practice and safe work instruments;
 - (iii) Public information about enforcement and performance standards;
 - (iv) Provide guidance, advice, and information on work health and safety; and
 - (v) Promote research, education and training regarding health and safety.

Australia

734 The key features of the model WHS in Australia is:

- (a) **Primary duty-holders.** "Persons conducting a business or undertaking" (**PCBU**) have a primary duty of care to ensure, so far as is reasonably practicable the health and safety of all workers who are at work in the business or undertaking (section 19).
- (b) **Other duty holders.** "Officers" of a PCBU have a statutory duty to exercise due diligence to ensure that the PCBU complies with its duties under the Act (section 27). "Workers" have duties to take reasonable care for their own health and safety, and to ensure that their acts or omissions do not affect the health and safety of other persons (section 28).
- (c) **Offences.** The model WHS establishes 3 categories of offences. Reckless conduct (category 1), and failure to comply with health and safety duty (categories 2 and 3).
- (d) **Incident Notification.** PCBUs are required to immediately notify the regulator after becoming aware of a "notifiable incident," such as death, serious injury or illness, or a dangerous incident (section 38).
- (e) **Workplace participation.** Duty-holders under the Act have a duty to consult with one another (section 46), and PCBUs have a duty to consult with workers (section 47). Workers may request the election of a health and safety representative (section 50), and PCBUs must facilitate the creation of Work Groups on request (section 51).
- (f) **Regulator.** WHS regulators in the Commonwealth and in each state are responsible for regulating and enforcing the laws in their jurisdictions. For instance, WHS law in Queensland is regulated by WorkSafe Queensland, and WHS law in New South Wales is regulated by SafeWork NSW. The Model WHS Act defines the functions of the regulator as including, inter alia (at section 152):
 - (i) To advise and make recommendations to the Minister and report on the effectiveness of the Act;
 - (ii) To monitor and enforce compliance with the Act;

- (iii) To provide advice and information on work health and safety to duty holders under this Act and to the community;
- (iv) To collect, analyse and publish statistics relating to work health and safety;
- (v) To foster a cooperative consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters; and
- (vi) To promote and support education training on matters relating to work health and safety.

735 Each regulator operates under a distinct statute and regulatory framework. Where the model WHS Act and Regulations are adopted, limited departures from the national scheme are permitted, but must be made in accordance with jurisdictional notes (found in the model Act and Regulations) which specify in what way the model Act may be varied. These allow Commonwealth, state and territory WHS regulators to address local matters and ensure the provisions work, such as by referencing the relevant courts in each jurisdiction.⁷⁰⁹

United Kingdom

The Health and Safety at Work etc. Act 1974

736 The Health and Safety at Work etc. Act 1974 (“the UK Act”) sets out a range of general duties. Both employers and employees have general duties as do persons in control of certain premises.⁷¹⁰

Key features of the UK Act

737 Key features of the UK Act include:

- (a) **General purposes:** The Act’s purposes are to secure the health, safety and welfare of persons at work; protect persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work; control the keeping, use, acquisition, possession, and use of dangerous substances, and control noxious emissions (section 1(1)).
- (b) **Duty-holders:** Unlike the NZ Act, there is no “primary” duty holder. The UK Act instead sets out general duties of employers,⁷¹¹ the self-employed,⁷¹² persons concerned with premises,⁷¹³ manufacturers,⁷¹⁴ and employees.⁷¹⁵ Employers must, “so far as is reasonably practicable,” ensure the health, safety and welfare at work of all their employees (section 2(1)). The employee, while at work, must “take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work” (section 7(a)), and must cooperate with his employer to enable the employers’ duty to be performed or complied with (section 7(b)).
- (c) **Policy:** The employer must prepare, and as often as appropriate, revise, a written health and safety policy which sets out the organisation and arrangements for carrying out the policy. The employer must give employees notice of this policy and any revisions (section 2(3)).

⁷⁰⁹ NSW Government Better Regulation Division “Statutory review of the Work Health and Safety Act 2011: Discussion Paper” (November 2016) <www.safework.nsw.gov.au>.

⁷¹⁰ Health and Safety at Work etc Act 1974, ss. 2, 3 and 7.

⁷¹¹ Health and Safety at Work etc Act 1974, ss 2 and 3.

⁷¹² Health and Safety at Work etc Act 1974, s 3.

⁷¹³ Health and Safety at Work etc Act 1974, s 4.

⁷¹⁴ Health and Safety at Work etc Act 1974, s 6.

⁷¹⁵ Health and Safety at Work etc Act 1974, s 7.

- (d) **Offences:** Section 33 relates to offences. Among other provisions, it states that it is an offence for a person to fail to discharge a duty to which he is subject by virtue of sections 2 to 7.⁷¹⁶
- (e) **Workplace participation:** The Act provides for regulations which allow trade unions to appoint safety representatives. It is the duty of every employer to consult those representatives on measures to promote health and safety, and the efficacy of those measures. Where prescribed by regulation and requested by the safety representatives, every employer has a duty to establish a safety committee to review health and safety measures (section 2(4) to 2(7)).
- (f) **Regulator:** The UK regulator is the Health and Safety Executive (HSE), established by section 10 of the UK Act. Its functions are set out at section 11, and having regard to the general purposes of Part 1 of the legislation, include regulation, enforcement, and advice.⁷¹⁷
- (g) It has a discretionary power to propose regulations (section 11(3)). The relevant Secretary of State has the power to make those regulations (section 15(1)). HSE is required to make “adequate arrangements” for the enforcement of the relevant statutory provisions (except where other authorities have that role i.e. the Office for Nuclear Regulation) (section 18(1)).
- (h) The HSE has the power to investigate and report on any accidents, occurrences, situations or other matters.⁷¹⁸ It also has the power to hold inquiries with the consent of the Secretary of State in such circumstances (section 14).
- (i) One of the main roles of HSE is to publish guidance and Approved Codes of Practice (ACOPs). The status of each is as below:
 - (i) **Guidance:** Following the guidance is not compulsory, unless specifically stated, and duty holders are free to take other action. Following the guidance will normally be enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance.⁷¹⁹
 - (ii) **ACOPs:** ACOPs gives practical advice on how to comply with the law and have a special legal status.⁷²⁰ If you are prosecuted for a breach of health and safety law, and it is proved that you did not follow the relevant provisions of the Code, you will need to show that you have complied with the law in some other way or a Court will find you at fault.⁷²¹

Regulations and additional legislation

- 738 The UK Act is supported by a variety of regulations which range from regulations imposing procedural obligations (such as the Health and Safety (Consultation with Employees) Regulations 1996) to subject-matter specific (such as The Ionising Radiations Regulations 2017).
- 739 A key regulation is **The Management of Health and Safety at Work Regulations 1999** (UK). These regulations require employers to undertake **risk assessments** (regulation 3(1)); to review them at certain junctures (regulation 3(2)); and to record them in writing where more than five people are employed (regulation 6). They also require employers to put in place measures for mitigating risk (regulation 5(1)) and procedures in the event of serious and imminent danger (regulation

⁷¹⁶ Health and Safety at Work etc Act 1974, s 33(1)(a).

⁷¹⁷ Note that local authorities are the main enforcing authority in retail, wholesale distribution, warehousing, hotel and catering premises, offices, and the consumer/leisure industries, pursuant to the Health and Safety (Enforcing Authority) Regulations 1998. HSE is the regulator for the following high-risk sectors: agriculture, forestry, construction, healthcare, and manufacturing.

⁷¹⁸ Health and Safety at Work etc Act 1974, s 14(1) and (2).

⁷¹⁹ Health and Safety Executive “Legal status of HSE guidance and ACOPs” <www.hse.gov.uk>.

⁷²⁰ Health and Safety Executive, above n 719.

⁷²¹ Health and Safety at Work etc Act 1974, s 17(1).

5(2)). The regulation also requires employers to provide appropriate information and training to employees (regulation 10 and regulation 13).

740 Another key regulation is **The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013** (“RIDDOR”). These regulations require employers, the self-employed, and people in control of work premises⁷²² to report certain serious workplace accidents, occupational diseases, and near misses to HSE.⁷²³

741 The employer’s duty to consult is further set out in The Safety Representatives and Safety Committees Regulations 1977 (as amended) and The Health and Safety (Consultation with Employees) Regulations 1996 (as amended)

742 Section 44 of the Employment Rights Act 1996 contains the employee’s right not to be subjected to detriment on the grounds of refusal to return to an unsafe workplace or for taking reasonable steps to address risks.

Canada

743 Each jurisdiction has its own occupational health and safety legislation, outlining the general rights and responsibilities of the employer, the supervisor and the worker.

744 The federal health and safety legislative framework comprises the Canada Labour Code and the Canada Occupational Health and Safety Regulations.

Canada Labour Code (federal)

745 Occupational health and safety is covered in Part II of the Canada Labour Code.

Key features of the Canada Labour Code

746 Key features of the Canada Labour Code and its regulations include:

- (a) **General purposes:** The purpose of Part II is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment.
- (b) **Duty-holders:** The Code sets out general (section 124) and specific (section 125) duties of employers and the duties of employees (section 126). The Code gives employers and employees a strong role in identifying and resolving health and safety concerns. The provisions of the Code are designed to strengthen employers’ and employees’ self-reliance in dealing with occupational health and safety issues.
- (c) **Offences:** Section 148 relates to offences. Offences are broken up into three categories:
 - a) Wilfully commits act likely to cause death or serious injury (2 years, \$1,000,000 OR both);
 - b) Offence results in death or serious injury (2 years, \$1,000,000 OR both); and
 - c) Any person who contravenes any provision (On indictment - 2 years, \$1,000,000 OR both; on summary conviction - \$100,000).
- (d) **Notifiable events.** Employers have a duty to report serious injuries to the Labour Program within 24 hours.⁷²⁴ Employers must also submit written investigation reports to the Labour Program, for all temporary and permanent disabling injuries, within 14 days after receipt of the police report.⁷²⁵

⁷²² Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, Reg 3(1).

⁷²³ Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, Regs 4, 6 and 8.

⁷²⁴ Canada Occupational Health and Safety Regulations SOR/86-304, Reg 15.5.

⁷²⁵ Section 15.9.

- (e) **Workplace participation:** The Code sets out that workers have a right to participate. Health and safety committees or representatives are required for all workplaces.⁷²⁶ However, in workplaces where there are 19 employees or less, or in workplaces exempted from the committee requirement, there must be a health and safety representative. Employers who employ 300 or more workers are required to establish a policy health and safety committee.⁷²⁷ As health and safety representatives or committee members, employees have the right and the responsibility to participate in identifying and correcting job-related health and safety concerns. Every employer has a duty to consult those representatives on measures to promote health and safety, and the efficacy of those measures.⁷²⁸
- (f) **Right to know.** Throughout provisions of the Code, employees have the right to be informed of known or foreseeable hazards in the workplace and be provided with the information, instruction, training and supervision necessary to protect their health and safety.⁷²⁹ This right is strengthened by the requirement that methods of communication are appropriate for all employees, including those with special needs.⁷³⁰ Through their health and safety committees or representatives, employees have a further right to access government or employer reports relating to the health and safety of employees.
- (g) **Right to cease work.** A worker is entitled to cease work if the worker has reasonable cause to believe the workplace presents a danger to the worker, the use or operation of a machine or apparatus presents a danger to the worker or another employee, or the performance of an activity constitutes danger to the worker or another employee (section 128). In addition, a worker who is pregnant or nursing may cease work if she believes that continuing any of her current job functions may pose a risk to her health or to that of the foetus or child (section 132).
- (h) **Powers of health and safety officers.** Under the Code, a health and safety officer is a person appointed by the Minister of Labour. The Code sets out their powers, including when entering the workplace, conducting investigations or inspections, removing samples of any material or equipment, taking photographs and making sketches, and meeting with any person.

Legislation in the provinces and territories

- 747 In each province or territory, there is an Act (typically called the Occupational Health and Safety Act or something similar) which applies to most workplaces in that region. The Act usually applies to all workplaces except private homes where work is done by the owner or occupant. Generally, it does not apply to farming operations unless made to do so by a specific regulation.
- 748 Many basic elements of health and safety are similar across all jurisdictions in Canada. However, details of the occupational health and safety legislation and how laws are enforced vary from one jurisdiction to another.
- 749 The below chart compares selected provincial legislation to the New Zealand legislation.

⁷²⁶ Canada Labour Code RSC 1985, s 135(1).
⁷²⁷ S 134(1).
⁷²⁸ S 121(1) (z.05).
⁷²⁹ S 125(1)(s).
⁷³⁰ S 122.3(1).

	New Zealand	Ontario	British Columbia
Regulator's functions	<p>Among others (s 190, HSWA 2015):</p> <ul style="list-style-type: none"> • Monitor and enforce compliance • Develop codes of practice and safe work instruments⁷³¹ • Publish information about enforcement and performance standards • Provide guidance, advice, and information to duty holders. <p>Promote research, education and training regarding health and safety.</p>	<p>Minister of Labour's duties in administering the Act include (s 4(2)):</p> <ul style="list-style-type: none"> • The promotion of OHS and the prevention of workplace injuries • The promotion of public awareness of OHS, the education of employers, workers and others about OHS • The fostering of commitments to OHS among such people and the making of grants to support OHS. 	<p>Workers Compensation Board can</p> <ul style="list-style-type: none"> • make regulations to establish standards and requirements • undertake inspections, encourage or develop programs for the promotion of OHS • Support research and collect statistics (s 111(2)).
Duty on Employer	<p>PCBUs have a primary duty of care to ensure the health and safety of workers of the PCBU while at work (s 36(1), HSWA 2015). They also have a primary duty to ensure that non-workers are not put at risk from work carried out by the PCBU (s 36(2) HSWA 2015).</p>	<p>There is no primary duty holder and no general duty on employers to ensure health and safety of workers. Instead, employers must ensure a range of specific measures (s 25).</p>	<p>There is no primary duty holder. Instead, employers have a general duty to ensure the health and safety of all workers working for that employer, and any other workers present at an employer's workplace (s 115(1)).</p>
Standard of care	<p>Standard is 'reasonably practicable', which is defined in the Act (s 22, HWSA 2015). Definition is subjective but provides a non-exhaustive list of factors to consider. Used throughout the Act in reference to duties.</p>	<p>The concept of reasonably practicable is not used in the Act. The Act uses the concept of "every precaution reasonable in the circumstances" in reference to the duty of an employer to protect employees.</p>	<p>The concept of reasonably practicable is used in the BC legislation, but is not defined in the Act. The concept is used only in reference to the posting of information and to court and evidence procedures. It is not used in reference to duties.</p>
Duty to manage risks	<p>All persons that have duties under the HSW Act must eliminate (or if not reasonably practicable, minimise) risks to health and safety, so far as is reasonably practicable (s 30 HSWA).</p>	<p>The duty to manage risks only extends to the employer. An employer has a duty to create a policy to address violence and harassment in the workplace, which must include measures to control risks.</p>	<p>An employer has a general duty to "remedy any workplace conditions that are hazardous to the health or safety of the employer's workers" (s 115(1)(a)).</p>
Duty of officers	<p>"Officers" (directors and CEOs) must exercise due diligence to ensure that PCBU complies with primary duty (s 44, HSWA 2015).</p>	<p>Officers and Directors of corporations must take all reasonable care to ensure compliance with the Act and its regulations (s 32).</p>	<p>Directors and officers of corporations must ensure that the corporation complies with Part 3 of the Act, just as the employer is (s 121).</p>
Duty of workers	<p>To take reasonable care for their own health and safety and to ensure that their acts or omissions do not affect the health and safety of other persons (s 45, HSWA 2015).</p>	<p>To work in compliance with the Act and regulations; to use or wear required safety equipment the employer requires; to report defects in equipment/devices, and to report any contravention of the Act or regulations, or the existence of hazards which may endanger others to the employer or supervisor (s 28).</p>	<p>To take reasonable care to protect their own health and safety and that of others potentially affected by their work or omissions (s 116(1)) and a spate of more specific requirements in s 116(2)) in furtherance of this.</p>
Levies	<p>PCBU must not levy workers for any health and safety related action taken by the PCBU (s 27, HSWA 2015).</p>	<p>No equivalent provision.</p>	<p>No equivalent provision.</p>

⁷³¹ The purpose of a safe work instrument is to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.

	New Zealand	Ontario	British Columbia
Consultation	PCBUs must consult with other PCBUs that have duties in relation to the same matter. Each PCBU must, so far as is reasonably practicable, consult, cooperate, and co-ordinate with the other PCBU (s 34, HSWA 2015).	No requirement to consult with external parties.	No requirement to consult with external parties.
Offences in respect of breach of duties	Three categories of offences relating to duties, by level of seriousness of breach (ss 47-49, HSWA 2015). 1) Reckless conduct; 2) Failure to comply that exposes an individual to risk of death or serious injury/illness; and 3) Failing to comply with duty (simple breach).	S 66 of the Act – it is an offence to contravene: 1) The Act and its regulations; 2) An order or requirement of an inspector or a Director; and 3) An order of the minister. The Act does not categorise offences by level of seriousness of breach.	S 213 of the Act: It is an offence for a person to contravene a provision of Part 3 of the Act, the regulations or an order. The penalties for conviction increase upon subsequent conviction. The Act does not categorise offences by level of seriousness of breach.
Offences in respect of breach of duties Workplace participation	PCBU has a duty to engage with workers on health and safety matters (s 58 HSWA 2015). "Engage" not defined. Workers may elect health and safety representatives (s 62 HSWA 2015) or create health and safety committees to facilitate this engagement (s 66, HSWA 2015).	Joint Health and Safety Committees are required at workplaces of more than 20 regular workers (s 9(2)). They must consist of at least two people for workplaces of fewer than 50 regular employees, or at least 4 people for larger workplaces (s 9(6)), at least half of whom must be selected by the workers (s 9(7)) and the remainder from management (s 9(9)). At workplaces where no committee is required, an OHS representative is required to be selected by workers (ss 8(1) and (5)).	All workplaces over 20 employees must establish a joint health and safety committee (s 125(a)). It must have at least four members (s 127(a)), at least half of whom must be workers (s 127(c)).
Right to cease work	A worker is entitled to cease work or refuse to carry out work if that worker believes that carrying out the work would expose the worker to serious risk to either their health, or the health of another person (s 83, HSWA 2015).	A worker may refuse work if they have reason to believe that any equipment or physical condition of the workplace, including workplace violence is likely to endanger them or another (section 43(3)).	Under the Occupational Health and Safety Regulation a worker may refuse work if that person has reasonable cause to believe that to do so would create an undue hazard to the health and safety of another (r 3.12(1)).
Incident notification	PCBU has duty to notify regulator as soon as possible after becoming aware of a "notifiable incident," such as death, serious injury or illness, or a dangerous incident (s 56, HSWA 2015). Notifiable injury, illness and incident are all defined (ss 24, 25 HSWA 2015).	If someone is seriously injured or killed the employer must notify a Ministry inspector immediately and within 48 hours must send a written report of the incident to the Ministry (s 51(1)). If the person is injured or disabled from work by an accident the employer must give notice of the incident within 4 days (s 52(1)). Notifiable serious injury is not defined within the Act.	Employer must immediately notify the Board of an accident involving serious injury, major structural failure, the release of a hazardous substance or as regulations otherwise require (s 172(1)). Further, an employer must conduct an investigation if s 172 applies or if an accident caused an injury requiring medical treatment, or if no injury resulted but the potential to cause serious injury arose, or the incident is otherwise required to be investigated (s 173).
<p>HSWA 2015: Health and Safety at Work Act 2015 Ontario Act: Occupational Health and Safety Act. RSO 1990, C O.1. British Columbia Act: Workers Compensation Act RSBC1996, C 492. British Columbia regulation: Occupational Health and Safety Regulation</p>			

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Interview with Angelique Prince, Manager of New & Young Workers/Small Business, Industry & Labour Services, WorksafeBC (Mai Chen, 21 August 2018).

Interview with Anne Tennier, President and CEO, CCOHS (Mai Chen, 27 July 2018).

Interview with Associate Professor MacEachen, Senior Scientist at the Institute for Work & Health in Ontario (Mai Chen, 20 July 2018).

Interview with Bruce Milligan, Director Occupational Health and Safety at Yukon Workers Compensation Health and Safety Board (Mai Chen, 26 July 2018).

Interview with Dr Anne-Marie Masgoret, Associate at Victoria University of Wellington's Centre for Applied Cross-Cultural Research (Mai Chen, 23 July 2018).

Interview with Dr Vicki Kristman, Affiliate Scientist, Institute for Work & Health in Ontario (Mai Chen, 26 July 2018).

Interview with Jules Arntz-Gray and William Roy, Director of the Training and Awareness Branch and Director of the Strategy and Integration Branch, Prevention Office, Ontario Ministry of Labour (Mai Chen, 17 August 2018).

Interview with Meta Antolin, Manager, Occupational Health and Safety Programs, Workers' Safety and Compensation Commission of Northwest Territories and Nunavut (Mai Chen, 16 August 2018).

Interview with Pamela Atkinson, Senior WHS Consultant at WorkSafe Tasmania (Mai Chen, 13 July 2018).

Interview with Professor Andrea de Silva, Director of Research, WorkSafe Victoria (Mai Chen, 13 July 2018).

Interview with Teegan Modderman, Manager, Psychological Health Unit, Workplace Health and Safety Queensland (Mai Chen, 26 July 2018).

Interview with Trudi Rondou, Senior Manager at WorkSafeBC (Mai Chen, 3 August 2018).

Interview with Worksafe staff (Mai Chen, 27 June 2018).

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APPENDIX D: Methodology

Methodology

- 750 Researchers first examined the website of each relevant regulator, using keyword searches (“migrant,” “immigrant,” “foreign,” “diversity,” “ethnic,” “cultural,” “temporary,” and “vulnerable”) to isolate relevant information. Where dedicated subpages for any of these concepts were identified, these were reviewed for relevant material. Publications such as annual reports and organisational strategies, including Statements of Intent, were also reviewed.
- 751 To supplement the publicly available material, interviewees from each regulator were identified by WorkSafe New Zealand and the Superdiversity Institute. Introductions were made by WorkSafe New Zealand, and followed up by the Superdiversity Institute.
- 752 The interviewees validated or clarified the findings of the Superdiversity Institute from the publicly available information, provided updates and further explanations of gaps in research. Many interviewees referred the Superdiversity Institute to further contacts or research they were aware of and thought would be useful to this research project.

Limitations

- 754 As the focus of the research is the relevant regulator in each jurisdiction, we have been reliant on the goodwill and availability of representatives of those regulators to provide us with relevant information, in addition to publicly available information. In some cases, we did not receive responses from the regulator, and therefore the information about the challenges and lessons learned by the regulator is necessarily brief. The response rate from the Australian regulators was particularly disappointing, despite repeated follow ups.

Interviewees

- 755 The following people were interviewed in the course of our research:

Name	Position	Organisation
United Kingdom		
Dr Bev Bishop	Chief Social Researcher	Health and Safety Executive
David Walters	Professor of Work Environment & Director of Cardiff Work Environment Research Centre	Cardiff University
Australia – Federal		
Meredith Bryant	Director, Work Health and Safety Policy, Strategic Policy Branch	Safe Work Australia
Dr Majid Hmeidan	Evidence, Assistant Director, Strategic Policy Branch	Safe Work Australia

Australia – States		
Australia – Queensland		
Dr Tristan Casey	Principal Advisor (Leadership & Culture Unit)	Workplace Health and Safety Queensland
Teegan Modderman	Manager Psychological Health Unit	Workplace Health and Safety Queensland
Australia – ACT		
Greg Jones	Director and Work Safety Commissioner	WorkSafe ACT
Australia – Victoria		
Professor Andrea de Silva	Director of Research	WorkSafe Victoria
Australia – South Australia		
Ingrid Ormay	Principal Industry Advisor Workplace Advisory Services	SafeWork SA
Australia – Tasmania		
Pamela Atkinson	Senior WHS Consultant	WorkSafe Tasmania
Canada – Federal		
Anne Tennier	President and CEO	Canadian Centre for Occupational Health and Safety
Rebecca Mukuna	Bilingual language assistant and Masters student	Canadian Centre for Occupational Health and Safety
Canada – provinces and territories		
Canada – Alberta		
Lisa Chen	Director, Innovation & Strategic Priorities, Policy and Program Development,	Alberta Labour
Canada – British Columbia		
Valerie Vojnic	Senior Policy and Legal Advisor, Policy, Regulation and Research Division	WorkSafeBC

Trudi Rondou	Senior Manager, Industry and Labour Services	WorkSafeBC
Angelique Prince	Manager, New & Young Workers/Small Business Industry & Labour Services	WorkSafeBC
Tom Brocklehurst	Director of Prevention Practices and Quality	WorkSafeBC
Deepani Werapura	Manager, Policy, Regulation & Research Division	WorkSafeBC
Canada – New Brunswick		
Anne Lise Albert	Assistant Director of Program Development and Evaluation	WorkSafe New Brunswick
Canada – Northwest Territories and Nunavut		
Meta Antolin	Manager, Occupational Health and Safety Programs	Workers’ Safety and Compensation Commission
Canada – Ontario		
Jules Arntz-Gray	Director, Training and Awareness Branch	Ontario Ministry of Labour
William Roy	Director, Strategy and Integration	Ontario Ministry of Labour
Dr Monique Gignac	Associate Scientific Director	Institute for Work & Health
Associate Professor Ellen MacEachen	Senior Scientist (Adjunct)	Institute for Work & Health
Dr Vicki Kristman	Associate Scientist	Institute for Work & Health
Dr Agnieszka Kosny	Appointed Tribunal Member, Workplace Safety and Insurance Appeals Tribunal Research Scientist	Institute for Work and Health
Dr Monica Bienfeld	Director, Knowledge Transfer & Exchange	Institute for Work & Health
Canada – Yukon		
Bruce Milligan	Director Occupational Health and Safety	Yukon Workers Compensation Health and Safety Board

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APPENDIX E: New Zealand Public Sector Definitions of ‘Recent Migrants’

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This chart demonstrates the wide variance between definitions of “recent migrant” amongst New Zealand government agencies. As noted in the report at paragraph 389, “the definition of ‘migrant’ is not simply a technical problem, but has an important effect on migration data and analysis generated from such data.” We have recommended earlier in this report that WorkSafe agree consistent definitions for different groups of CALD people, especially “migrants”, across government agencies that WorkSafe interfaces with, if possible, and if that is not possible, at least agree consistent definitions within WorkSafe.

The below chart shows that the most commonly used definition of “recent migrant” is “migrants who have arrived in New Zealand in the past five years.” However, we would caution WorkSafe against concentrating its focus on “recent migrants” as set out in that definition, given the evidence in this report that the greatest risk to new migrants is in their first 30 days in a new job, which is more likely to occur earlier on in their residency.

New Zealand Public Sector	Publication/s	Definition of ‘Recent Migrants’
Immigration New Zealand	Immigration NZ National Migrant Consultations 2018	Migrants who have arrived in New Zealand in the past five years.
Inland Revenue Department	Understanding Migrant Businesses: their Characteristics, Compliance Attitudes, Behaviours and Drivers	Migrants who have lived in New Zealand between six to 10 years.
Ministry of Business, Innovation & Employment	Labour Market Outcomes of Recent Migrants to New Zealand	People in New Zealand on a temporary work visa or temporary student visa or the holder of a New Zealand resident visa that was approved in the five years before the reference period.
	Migrant Youth: A Statistical Profile of Recently Arrived Young Migrants	Migrants who arrived in New Zealand less than five years ago.
	Migration and Labour Force Trends: Waikato Overview 2015	Migrants who have been living in New Zealand for less than two years.
	Labour Market Integration of Recent Migrants in New Zealand	Migrants who arrived in New Zealand in the last three years.
Ministry of Health	Asian Health Chart 2006	Migrants who have arrived in New Zealand in the past five years.

New Zealand Public Sector	Publication/s	Definition of 'Recent Migrants'
Ministry of Social Development	Diverse Communities – Exploring the Migrant and Refugee Experience in New Zealand	Different sets of statistics refer to 'recent migrants' as migrants who have been in New Zealand for less than five years or less than 10 years.
	Summary Report: Evaluation of Migrant Pilot Projects in Auckland North, Auckland Central, Waikato and Central Regions 2002	No definition provided.
Statistics NZ	Well-Being Statistics: 2016	Migrants who have arrived in New Zealand in the last five years.
	Employed Migrants in New Zealand Report High-Quality Working Life	Migrants who have been in New Zealand for less than five years.
	New Zealand General Social Survey 2014 and 2010	Those who have arrived in New Zealand in the last five years.
	2013 Census	Migrants who have been in New Zealand for five years or less.
	Loneliness in New Zealand: Findings from the 2010 New Zealand General Social Survey	People who have migrated to New Zealand in the last four years.
	Longitudinal Immigration Survey: New Zealand	People who have migrated to New Zealand in the last three years.
The Treasury	The Effect of Trial Periods in Employment on Firm Hiring Behaviour	Migrants who had their visa stamped in the past two years.

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