Submission on behalf of the Australian Fair Trade and Investment Network (AFTINET) to the Department of Foreign Affairs and Trade on the Pacific Agreement on Closer Economic Relations (PACER-Plus)

Prepared by Adam Wolfenden
AFTINET
Level 3, Suite 3B,
110 Kippax St
Surry Hills
NSW 2010
Email: campaign@aftinet.org.au
Phone: 02 9212 7242
Fax: 02 9211 1407
www.aftinet.org.au

1. Overview

The Australian Fair Trade and Investment Network (AFTINET) is a national network of organisations and individuals supporting fair regulation of trade, consistent with human rights, labour rights and environmental protection. AFTINET welcomes this opportunity to make a submission to the Department of Foreign Affairs and Trade on the Pacific Agreement on Closer Economic Relations, known as PACER-Plus.

This submission addresses general principles and issues of common concern to our members. Member organisations will also make more detailed submissions in areas of particular concern.

AFTINET believes that the following principles should guide Australia's approach to trade in the Pacific:

- Trade negotiations should be undertaken through open, democratic and transparent processes that allow effective public consultation to take place about whether negotiations should proceed and the content of negotiations.
- Before an agreement is signed, comprehensive studies of the likely economic, social and environmental impacts of the agreement should be undertaken and made public for debate and consultation.
- Trade agreements should not undermine human rights, labour rights and environmental protection, based on United Nations and International Labour Organisation instruments.
- Trade agreements should not undermine the ability of governments to regulate in the public interest.

1.1 Historical Background

The relationship between the Pacific Island Countries and countries like Australia and New Zealand has always had a political and economic importance. The history of colonialism and the economic relationships this fostered is still having an impact today.

Initial agreements like the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) aimed at providing preferential access for imports from 13 Pacific Islands into Australia and New Zealand[1]. This granting of preferential access by both Australia and New Zealand was recognition of the disproportionate economic relationships between these countries and, as such, a measure to address the ongoing disadvantage borne by the Pacific Island countries compared to their heavily industrialised neighbours.

The EU previously had similar preferential arrangements with former colonies under the Cotonou Agreement but, following a challenge to this preferential access through the World Trade Organisation, has been forced to withdraw that access. Further to this, the EU, along with developed countries like Australia, is now demanding reciprocity of market access from Pacific Island Countries.

PACER was endorsed by the Pacific Island Forum Governments at their 2001 meeting. PACER provides for a broader agreement than the Pacific Islands Countries Trade Agreement (PICTA), an agreement on trade in goods amongst Pacific Island Countries. PACER promises to initiate negotiations for a free trade agreement, to be called PACER-Plus, by 2011, unless triggered earlier[2].

The initialling of Economic Partnership Agreements (EPAs) between the European Union and both Fiji and Papua New Guinea (PNG) has been seen as the trigger of the PACER-Plus negotiations.

Australia is currently in the preliminary stage of the negotiation of what is known as “PACER-Plus”, an extension of the initial PACER commitments on trade in goods that applied to the Island States, New Zealand and Australia.

[1] Kelsey, J. (2004) *Big Brothers Behaving Badly: The Implications for the Pacific Islands of the Pacific Agreement on Closer Economic Relations (PACER)*, available from http://www.pang.org.fj/doc/040401bigbrothersjanekelsey.pdf, accessed 11/01/08.

[2] ibid.

PACER-Plus is aiming to include both trade in services and investment, in the economic agreement. Following the outcomes of the Cairns meeting of Pacific Islands Forum Leaders on August 5 – 6 there will be a launch of PACER-Plus negotiations soon[3].

2. Australian Process for Engaging with the Pacific Island States

2.1 Parliamentary Process

The Australian Government should commit to effective and transparent community consultation about proposed trade agreements in the Pacific, with sufficient time frames to allow informed public debate about the impact of particular agreements. AFTINET feels that the current initial round of consultations have failed to provide sufficient time frames for adequate public debate and assessment of impacts, undermining the effectiveness and meaningfulness of such processes.

To facilitate effective community debate, it is important that DFAT develop a clear structure and principles for consultation processes that can be applied to all proposed trade agreements. The Senate Foreign Affairs, Defence and Trade Committee made detailed recommendations for legislative change in its November 2003 report, *Voting on Trade*, which, if adopted, would significantly improve the consultation, transparency and review processes of trade negotiations[4]. These recommendations were supported by the ALP member of the Committee. The key elements of these recommendations are that:

- Parliament will have the responsibility of granting negotiating authority for particular trade treaties, on the basis of agreed objectives;
- Parliament will only decide this question after comprehensive studies are done about the economic, regional, social, cultural, regulatory and environmental impacts that are expected to arise, and after public

[3] 40th Pacific Islands Forum Leaders' Meeting Communique, available at www.pif2009.org.au.
[4] Senate Foreign Affairs, Defence and Trade Committee, 'Voting on Trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement', 26 November 2003 at paragraph 3.91.

hearings and examination and reporting by a Parliamentary Committee; and

- Parliament will be able to vote on the whole trade treaty that is negotiated, not only on the implementing legislation.

We welcome the Australian Labor Party policy platform on increased transparency in the process of undertaking talks regarding a trade agreement. We are encouraged that the platform now states:

> "…prior to commencing negotiations for bilateral or regional trade agreements, a document will be tabled in both Houses setting out the Labor Government's priorities and objectives, including independent assessments of the costs and benefits of any proposals that may be negotiated. This assessment should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise."[5]

AFTINET eagerly anticipates the adoption of this policy and the inclusion of social, cultural and environmental impacts into the assessment of any proposed trade agreements.

AFTINET welcomes the policy put forward by the ALP to table any trade agreements in Parliament with any implementing legislation. However, AFTINET still believes that to properly increase transparency and democracy, the Parliament should be the body that decides on whether or not to approve a trade agreement, not just its implementing legislation.

Recommendation: That any future consultations on PACER-Plus be undertaken with timeframes that allow participation to be conducted in a manner that is informed and meaningful.

Recommendation: That the Government set out the principles and objectives that will guide Australia's consultation processes for trade agreements and that the Government will have regular consultations

[5] Australian Labor Party National Platform and Constitution 2007, Section 3.26, included in the Platform and Constitution 2009.

with unions, community organisations and regional and demographic groups which may be adversely affected by the agreement.

Recommendation: That the Government establish parliamentary review processes, which give parliament the responsibility of granting negotiating authority for proposed trade agreements and that Parliament should vote on the agreement as a whole, not only the implementing legislation.

2.2 Pacific Consultations

Following the decision by Leaders of the Pacific Islands Forum in Cairns to launch negotiations "forthwith", there must be appropriate time for Pacific countries to undertake consultations with their constituents.

The decision for Trade Ministers to meet prior to November to discuss timelines, identification of issues, role of the Office of Chief Trade Advisor (OCTA) etc raises the importance of promoting a process that allows sufficient time for countries to undertake consultation.

AFTINET welcomes the ALP Party Policy Resolution that states:

> "Labor acknowledges that wide consultation with stakeholders within the Pacific region will inform the substance of the proposed negotiations. In negotiating a PACER-Plus agreement, Labor will seek an outcome that is in the best interests of both Australia and the people and countries of the Pacific[6]."

In the spirit of this platform the Australian government must instruct its trade minister to promote a timeline that reflects the needs and desires of the Pacific Island Countries. Pushing for the conclusion of negotiations within a two or three year timeframe would undermine the ability and democratic processes that should be followed to ensure that Pacific Island Countries have the time to ensure adequate participation from their constituents as well as time to assess their interests from any such agreement.

[6] Australian Labor Party National Platform and Constitution 2009, yet to be released.

Recommendation: That Australia advocates a phased approach to the progression of trade talks on PACER-Plus without pushing for a time-bound deadline.

2.3 Modelling of Impacts for Free Trade Agreements

The econometric modelling that was used by Australia as a basis for entering into negotiations on previous trade agreements has been severely flawed. Econometric modelling has been based on assumptions of perfect labour mobility and complete and instantaneous market access, assumptions that do not reflect the operation of real economies or the actual outcomes of final agreements. Such assumptions underestimate damaging effects like unemployment and exaggerate economic benefits.

The Institute for International Trade feasibility study on PACER-Plus also repeats many of these same problems. The claim that trade levels would increase by 30%[7] has been used by Trade Minister Crean on a number of occasions as a means of promoting the benefits of PACER-Plus[8]. The figure however isn't clear on the distribution of that increase in trade and how it will benefit Pacific countries making such estimations not entirely accurate as a picture of the benefits from PACER-Plus.

In addition to the problematic econometric aspects of the modelling that is undertaken, such studies also exclude the social and environmental impacts of an FTA. The decisions and implications of FTAs have impacts that extend well beyond the economic sphere. The impacts that changes in economic relations can have on communities can be enormous and disastrous, yet such potential impacts are seldom addressed in the initial scoping for an FTA.

Recommendation: Before Australia enters into negotiations on PACER-Plus with the states of the Pacific, it must ensure that the

[7] Institute for International Trade report, June 2008, "Research Study on the Benefits, Challenges and Ways Forward for PACER-Plus", available at: www.iit.adelaide.edu.au/docs/Final%20PACER%20Report%2012_06_08.pdf
[8] See statements made by Mr Crean on 3 April 2009, 16 February 2009, and 26 August 2008

social, environmental and economic impacts are incorporated into the assessment and decision of whether or not to enter into any agreement.

Recommendation: The adoption of ALP Policy that "on commencing negotiations for bilateral or regional free trade agreements, a document will be tabled in both Houses setting out the Government's priorities and objectives, including independent assessments of the costs and benefits of any proposals that may be negotiated. This assessment should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise" (Chapter 2, Section 67 in Draft ALP Platform adopted in 2009).

2.4 Trade Agreements Should Support International Standards on Environment Protection and Labour, Human, and Indigenous Rights

It should be a prerequisite of Australia pursuing trade agreements that parties to the agreement abide by international standards on human, labour, and Indigenous rights and environmental sustainability, as defined by the United Nations (UN) and the International Labour Organisation (ILO). Trade agreements should not undermine these standards.

Australia must ensure that it does not give preferential access for goods and services from countries where labour rights and human rights are being violated. Australia has a responsibility to not support governments that are violating human rights and this extends to Australia's trade policy. In regards to PACER and PACER-Plus, this extends to the current situation in Fiji.

Environmental protection must not be undermined by Australia's trade policy. Australia's trading relationships should support and strengthen multilateral environmental agreements as well as actions taken by the United Nations Environment Program. This includes not only environmental protection but also the right to develop in a sustainable way.

On a domestic level, trade policy must not undermine the ability of governments to regulate in the interest of protecting the environment. This includes ensuring that disputes settlement processes at both a multilateral and bilateral level do not erode the space for governments to regulate. As discussed below, Australia should avoid any mechanism such as the Investor-State Disputes Settlement process in its bilateral agreements. Such a mechanism has seen rulings against governments trying to regulate in the interests of environmental protection.

Trade policy must also work cohesively with measures to address climate change. Trade agreements should recognise the primacy of environmental agreements, and trade rules should not restrict governments from regulating to address climate change. WTO rules currently recognise the right of governments to regulate for environmental goals, but there is still debate about the legal meaning of this. If there is a conflict between trade rules and the ability of governments to regulate, we believe trade rules should be clarified or amended to enable such regulation.

> ***Recommendation:*** Prior to undertaking any trade agreement Australia outline how it will strengthen and support international standards on the environment, labour rights, human rights and the rights of Indigenous Peoples.

3. The Impacts of PACER-Plus

3.1 Removal of Tariffs in the Pacific

For many Island countries, tariffs form a major source of government revenue. Under both PICTA and PACER tariffs on goods are proposed to reduce to zero, leaving major revenue gaps for Island governments. A report commissioned by the Forum Secretariat has concluded that countries could stand to lose upwards of US$10 million per year in government revenues due to tariff liberalisation[9]. The report singles out Fiji, PNG, Samoa, and Vanuatu

[9] Nathans Associates Report, 2007, *Pacific Regional Trade and Economic Cooperation Joint. Baseline and Gap Analysis,* Report to the Forum Secretariat, pg x.

as countries that all stand to lose upwards of US$10 million in tariff revenues from Australian and New Zealand imports[10].

Some countries will lose over 10% of their revenue through the removal of their import tariffs on Australian and New Zealand goods. Tonga and Vanuatu both stand to lose over 17% of their government revenue under a tariff reducing agreement. The impacts of this agreement would extend beyond the Southwest Pacific to the Compact Countries such as Palau, Federated States of Micronesia and Marshall Islands who must also extend any PACER-Plus preferences to the United States. They could face substantial revenue losses as the US makes up between 45-65% of total imports for these countries[11].

The current proposal is to replace such tariff revenues with user-pays taxation. Value Added Taxes (VATs) are being proposed as one of the solutions to any induced tariff revenue loss[12]. VATs are a problematic source of government revenue as they force the taxation burden onto the poor through increases in taxes applied to all consumer items. Tariffs, however, target the more affluent as they are predominantly applied on luxury items produced externally. VATs also pressure poorer, subsistence farmers, who survive off the land or sea and remittances to have money and engage in the cash economy[13]. The evidence suggests that governments will not recover the lost tariff revenue through VATs. The IMF study looking at the impact of trade liberalisation on poorer government revenues has found that the imposition of consumption taxes/VATs raises only 30% of the revenue previously gained through tariffs[14]. The removal of tariffs and the subsequent

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[10] Ibid.
[11] Pareti, S. (2007) *PACER: A Plus of Negative?*, Island Business, September, 2007, available at http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=17625/overideSkinName=issueArticle-full.tpl, accessed 12/10/2007.
[12] Kelsey, J. (2004) *A People's Guide to PACER*, available from http://www.bilaterals.org/IMG/pdf/A_Peoples_Guide_to_PACER.pdf, accessed 17/12/2007, p27.
[13] Ibid
[14] International Monetary Fund Working Paper 112, *Tax Revenue and (or?) Trade Liberalization*, June 2005.

imposition of VATs would leave governments having to make up the remaining 70% through other means, or simply spend less on services.

The loss of government revenue through tariffs has major implications for the lives of Islanders. The loss of revenue and subsequent loss of capacity for governments to fund the services, utilities, and infrastructure they need aligns perfectly with the intent of free trade agreements to minimise the role of governments in the market. Undercutting the level of potential government expenditure compliments the push for greater privatisation and selling off of government utilities. This increases the threat that essential services and utilities will no longer offer non-profitable options that are needed by poorer sectors of Island communities.

Recommendation: Government revenue for Pacific Island Countries should not be compromised through the pressure to commit to remove tariffs under PACER-Plus.

3.2 Trade in Services in the Pacific

Services were initially excluded from the PACER agreement between Pacific Island Countries, New Zealand and Australia. However under PACER-Plus, services play a key role in the aims for closer economic integration. Any inclusion of services raises concerns about the rights of governments to ensure equitable access and have the policy space to determine how essential services are provided.

The inclusion of services in any agreement will most likely see the adoption of the World Trade Organisation definition of public services. AFTINET is highly critical of the definition of public services used in Free Trade Agreements and the WTO's General Agreement on Trade in Services (GATS), which defines a public service as "a service supplied in the exercise of governmental authority … which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers." This definition results in ambiguity about which services are covered by the exemption. In Australia,

as in many other countries, many public and private services are provided side by side. This includes education, health, water, prisons, and many more.

The provision of services interlinks with the accountability and responsibility of governments. Maintaining services under government provides more policy space to ensure that the levels of services needed by the population are being met. Universal access is threatened through the privatisation of services and their inclusion in any PACER-Plus agreement.

A report prepared by the Pacific Islands Forum Secretariat highlighted Island countries could expect a negative list for services[15]. A negative list means that all laws and policies are affected by the agreement unless they are specifically listed as reservations. This differs from WTO multilateral agreements like the General Agreement on Trade in Services (GATS), which is a 'positive list' agreement, meaning that it only applies to those services which each government actually lists in the agreement. The negative list is therefore a significantly greater restriction on the right of governments to regulate services than the WTO GATS agreement. Given that only three states from the Pacific Islands are members of the WTO, the inclusion of a negative list for services places restrictions on PACER-Plus countries that go well beyond what many would have to accept in accession to the WTO.

A 'positive list' approach to Australia's trade negotiations in services and investment allows Australia and Southwest Pacific Island states to determine exactly which sectors are going to be included in any agreement. This provides for future industries and sectors to be excluded from an agreement unless specifically included under government direction. This approach also places Australia's trade strategy more in line with multilateral efforts within the WTO.

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[15] Pareti, S. (2007) *PACER: A Plus of Negative?*, Island Business, September, 2007, available at http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=17625/overideSkinName=issueArticle-full.tpl, accessed 12/10/2007.

Even when essential services are not publicly provided, governments need to regulate them to ensure equitable access, and to meet other social and environmental goals. To the extent that services and investment are included in any trade agreement, it should be under a positive list rather than a negative list.

> ***Recommendation:*** Public services should be clearly and unambiguously exempted from trade agreements and there should be no restrictions on the right of governments to regulate services in the public interest

> ***Recommendation:*** If Australia is to include services in a trade agreement that it be done only as a "positive list".

3.3 Trade in Manufacturing Goods

Liberalised trade in goods in the Pacific will lead to a concentration of investment, most likely in Australia and New Zealand. Many small Island countries that manufacture goods rely on imported materials which they then assemble domestically. This results in those goods violating the Rules of Origin (ROOs) as determined by the PICTA/PACER agreements and thus they don't receive the preferential treatment when exported.

PACER-Plus will see manufacturing and other industries move to those areas where they can value add within the country. In the garment and textiles industry this previously has seen a movement towards Fiji as it was the only country with the economies of scale to produce and still qualify for preferential treatment. Under a PACER-Plus agreement there would be incentives for manufacturing industries to move to Australia and New Zealand in order to take advantage of the infrastructure and capacities within those countries. Professor Waden Narsey from the University of the South Pacific has

predicted that under PACER-Plus, 75 per cent of Pacific manufacturing will be forced to close down, costing thousands of jobs[16].

The flight of such investment, coupled with reduced revenue from tariffs, would see Island communities left with a greater demand for services like education and training, but with fewer resources to provide them.

Recommendation: Pacific Islands Countries retain the policy space to nurture and protect infant industries that play important economic roles.

3.4 Pacific Foreign Investment

Investment agreements aim to provide additional guarantees for private investors. Investment agreements often require "national treatment" for foreign investors. This means that governments cannot limit levels of foreign investment and cannot require foreign investors to contribute to local development by training local people, using local products or transferring technology. Governments cannot give preference to local industry through subsidies or governmental procurement.

Investment chapters in a PACER-Plus agreement would likely involve some very sensitive areas in the Pacific. One such issue could be the communal ownership of traditional lands as this is seen by some investors to be a barrier to investing in the region, due to uncertainty about land titles. Investment chapters also look at granting foreign investors the same rights as domestic investors, undermining the ability of governments to prioritise and nurture the growth of infant industry. These two examples highlight how the inclusion of investment chapters in trade agreements challenges domestic regulation decisions by governments.

A Pacific Islands Forum commissioned report examining the EPAs between Pacific Island States and the EU recommended that:

[16] Institute for International Trade report, June 2008, "Research Study on the Benefits, Challenges and Ways Forward for PACER-Plus", available at: www.iit.adelaide.edu.au/docs/Final%20PACER%20Report%2012_06_08.pdf

> "it would not make sense for PACPs to purchase fine-sounding arrangements for promotion of an inherently improbable flow of foreign direct investment (FDI) from Europe by giving up powers to protect and manage aspects of their domestic economies that they would otherwise expect to use to good effect. Exceptional care is needed in approaching trade offs between trade and investment issues where there are substantial asymmetries and imbalances between ACP and EU positions.[17]"

The Island countries of the Pacific should adopt the same attitude towards Australian and New Zealand FDI.

Recommendation: Australia should not promote a PACER-Plus agreement that would restrict the rights of governments to make independent decisions on investment policy and regulation.

3.5 No Investor-State Disputes Settlement Process

All trade agreements contain State-to-State dispute processes to resolve disagreements arising from the agreements. Investor-State disputes processes are additional disputes processes which allow investors to challenge government actions and sue governments for damages if they believe their investments have been harmed. Investor-State dispute processes in other agreements like the North America Free Trade Agreement (NAFTA) have seen a range of government regulation aimed at protecting public health and the environment overturned in the interests of trade[18]. This allows unaccountable investors to challenge the democratic powers of governments to enact legislation that is in the public interest.

> ***Recommendation:*** Australia should continue with the example set by the AUSFTA and not include investor-state dispute processes in any trade agreements

3.6 Non Comprehensive Agreement

The Pacific Island economies are still emerging and as such require flexibility to ensure that policies are reflecting current needs. In order to do this

[17] Coates, B (no date) *Look before you leap: trade agreements in the Pacific*, Presentation hand out, Oxfam New Zealand

[18] See Public Citizen's Report on all the cases included under the Investor-State Disputes Process in NAFTA at http://www.citizen.org/documents/Ch11cases_chart.pdf

government's need to retain the policy space to meet these needs. Any PACER-Plus agreement must not be a "comprehensive" agreement and instead be an agreement that allows countries to opt-in to the chapters of the agreement that suits their developmental needs. Allowing this flexibility will mean that countries can truly look to make any PACER-Plus agreement reflect the development that they desire.

Recommendation: Australia must not push for PACER-Plus to be a comprehensive agreement and should allow Pacific Island Countries the flexibility to opt-in to the chapters that suit their development.

4. Labour Mobility within the Pacific

It is not appropriate to situate temporary labour mobility schemes in FTAs. They have no place in such agreements primarily concerned with trade and subject to WTO trade rulings. Further the current temporary migration scheme under the Subclass visa 457 was examined last year in the Deegan Review and it found that[19];

> *…visa holders who are susceptible to exploitation are also reluctant to make any complaint which may put their employment at risk…concerns about exploitation are well-founded, particularly in relation to visa holders at the lower end of the salary scale."… It has been suggested that such behaviour is particularly prevalent where Subclass 457 visa holders make up a large percentage of the workforce at a workplace.*

Therefore any expansion of temporary migration schemes into lower paid labourers classifications in horticulture are fertile ground for further exploitation. The low wages and poor working conditions offered by Australian and New Zealand's employers in horticulture have created their demands for seasonal work schemes that employ Pacific people.

The long term interests of the development of sustainable economies in PICs will not be served by their working age population being temporarily employed overseas in low wage seasonal work. Such wages may appear high from the

[19] Visa Subclass 457 Integrity Review, Final Report, October 2008, pages 23-24.

PIC perspective and have the perverse effect of draining those with the highest qualifications from their actual vocation into such schemes with poor long tem outcomes outweighing any short term benefits.

Australian and New Zealand Governments should instead assist long term economic and social progress in PICs by committing funds to enhancing their skills base, economic and social infrastructure. The '*Pacific Partnerships for Development with Solomon Islands and Kiribati'* agreed by Australia with their Governments in January 2009 are a first step in this process and their extension to the whole of the Pacific peoples will bring far greater benefits than band aid solutions to help out low wage employers in Australian and New Zealand or the proposed Pacer-Plus negotiations.

The trial three year seasonal worker program has nonetheless been welcomed by Island governments. The implementation of any such programme should take on the lessons learned from the current visa 457 scheme.

The experience of the visa 457 scheme and specifically the findings of the Deegan Review Pacific suggest strongly that Island guest workers are likely to be exploited[20];

> *Stakeholder consultation has revealed that certain unscrupulous employers and agents will take advantage of perceived flaws in the immigration system to bring people to this country outside the intention of the relevant Regulations. Whether this is due to substitution intended to evade the requirements of the Subclass 457 visa or in response to limitations in other visas it is apparent that a number of visas with attached work rights are being systematically abused.*

There are emerging patterns as to which workers suffer exploitation in our temporary migration system. The lower the skill set of a worker the more likely they are to be exploited. Similarly, the lower a worker's level of English

[20] Ibid. p.89.

language training, the higher the likelihood of exploitation, further, the more remote the location of work, the increased likelihood of exploitation. Finally and most importantly, the poorer the worker and the poorer the community is from which that worker is drawn, the greater the possibility of exploitation.

The 4 risk factors highlighted above (skill level, English language ability, isolation and poverty) are obviously endemic in this context and will be impossible to militate against in any Pacific seasonal worker scheme.

If temporary migration of natural persons is a feature of PACER-Plus then we call for the following to be rigorously demonstrated before an employer is permitted to participate in any temporary migration scheme;

- show how the wages and conditions offered to local workers compared to those offered in similar occupations in the region,
- show in detail efforts made to recruit local labour including copies of all public advertisements of vacancies and listings with job placement agencies, these must include details of wages and conditions offered,
- show in detail efforts made to recruit disadvantaged members of the Australian community including long term unemployed and Indigenous Australians.

Such employers should not be permitted to start the process of participating any in horticulture based Pacific seasonal worker scheme if the wages and conditions offered to local workers are inferior to those offered in similar occupations in the region and if genuine rigorous efforts have not been made to recruit disadvantaged members of the Australian community including long term unemployed and Indigenous Australians.

In the event that any of these conditions have not met, then such employers must be required to reiterate the process of labour market testing and recruitment.

There have been 11 reported workplace deaths of visa 457 workers, three of which gained notoriety in the media[21]. The Deegan Review of the application of the visa 457 scheme has found systematic breaches, including:

- Migrant workers in positions that have no benefit for local workforces.
- Migrant workers paid substantially less than prevailing market rates for local workers,
- Accommodation and meal expenses wrongly deducted directly from workers' wages.
- Workers employed in locations other than those stated on visas.
- Safety standards ignored.
- Overtime unpaid.[22]

Many temporary migrant workers encountering these conditions are too afraid to speak and are often told by their sponsor that if they resign and attempt to find another employer they will be automatically deported. Those temporary migrants who are most vulnerable and have low levels of education, don't speak English very well, and are unaware of their rights are most likely to be exploited[23]. Many are referring to the conditions as being "akin to slavery"[24].

The experience of the Visa 457 in Australia should serve as a warning to the Pacific Islands. The seasonal worker trial must support the rights of workers and not be an avenue for the exploitation of domestic and overseas workers.

The Recommendations from the Government's Review of Visa 457 arrangements by Industrial Relations Commissioner Barbara Deegan, should be considered in regard to the application of any temporary worker scheme within Australia.

[21] Moore, M. and Knox, M. *Foreign Workers 'Enslaved' By Visa 457*, The Age, 28/8/2007
[22] Ibid.
[23] Anon, *Some migrants being 'treated like slaves'*, The Sydney Morning Herald, 2/10/2007
[24] Moore, M. and Knox, M. *Foreign Workers 'Enslaved' By Visa 457*, The Age, 28/8/2007

If a temporary labour mobility scheme is to be implemented it must be done separate from any trade agreement. Governments must retain the right to regulate such schemes and avoid the past mistakes experienced under Visa 457. Such regulatory space however may be constrained if included in the framework of any PACER-Plus agreement.

Recommendation: Any decision on a Pacific Island temporary labour mobility scheme must not be included in any PACER-Plus agreement.