

The Production of Employment Conditions for Migrant Care Workers: Cross National Perspectives

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There is widespread scholarly recognition that migrant long-term care (LTC) workers experience relatively poorer work conditions than local LTC workers. We focus here on the ways in which migration and employment regulation intersect in formal LTC markets to produce working conditions for migrant workers. Drawing on cross-national comparisons between Australia, the Netherlands and the United Kingdom we explore: firstly, the forms of employment regulation that can protect migrant LTC workers or expose them to additional risks; and secondly, how migration regulation can work to amplify employment protection gaps for certain groups of migrant workers. We find that while historically there have been better employment protections in Australia and the Netherlands, the reshaping of work in all three LTC systems creates a context within which migration regulation can exacerbate the risks of precarious work for migrant workers and for those on temporary visas in particular.

Keywords: Long term care, migrant workers, working conditions, employment regulation, migration regulation.

Introduction

There is a rich scholarship focused on the ways in which the intersections of employment, care and migration regimes shape the experiences of migrant long-term care (LTC) workers (Shutes and Chiatti, 2012; Williams, 2012; Da Roit, 2018). Concern about the conditions of these workers has grown with the increase in temporary labour migration across the OECD, with migrant women disproportionately experiencing the least favourable conditions in a sector characterised by low-paid, poor-quality work (King-Dejardin, 2019). There has been, however, less focus on how employment regulation might work to protect migrant care workers in formal LTC, particularly in countries where there are no formal exemptions from employment minima based on citizenship status.

In this article, we highlight the ways in which migration and employment regulation intersect in the formal LTC context in Australia, the Netherlands and the United Kingdom (UK). We focus, in particular, on how these intersections can produce regulatory gaps that shape working conditions for migrant workers in different LTC systems. This cross-national comparison provides a useful perspective on the diverse ways employment and migration

regulation intersect in different LTC contexts. As set out below, both Australia and the Netherlands have historically had more extensive employment protections, including in LTC, than in the UK. On the other hand, until Brexit, the migration pathways EU nationals have had to LTC employment in the Netherlands and the UK differ significantly from the historical and contemporary migration pathways of LTC workers in Australia. Further, while a number of comparative studies on migrant LTC workers have included both the Netherlands and the UK, such studies rarely focus on Australia, despite the significant presence of migrants in its LTC workforce (Brennan *et al.*, 2017).

The first section of our article sets out the main conceptual underpinnings for our analysis. We provide a brief overview of existing scholarship on the intersections of care, employment and migration regimes in LTC and through the lens of precarity and 'decent work' identify a range of factors linked to the production of regulatory protections and gaps for migrant workers. In the second section, we outline available data on migrant LTC workers and key features of LTC systems that structure their employment conditions. We then turn to employment protections in the LTC sector and to the key features of migration regulation in each country that shape migrant worker access to these protections.

We focus here on formal LTC systems and on the frontline workers working in institutional settings and in clients' homes. As in much of the literature, our reference to 'migrant' workers is to those who were born outside the host country in which they work. A major challenge in examining migrant LTC workers is the gendered paucity of adequate comparative data both on frontline LTC workers (Howe *et al.*, 2019) and their migration status. Nevertheless, we want to focus attention on what Anderson suggests is a more crucial question – how 'being a migrant' plays out in employment relations, in our case in LTC, and how those employment relations are shaped by migration controls (2014: 42).

Intersecting regimes in LTC and the production of precarity

Intersecting regimes

Researchers interested in the impact of employment, care and migration regimes on migrant care workers have focussed on the complex interplay of institutions, policies, national and global conditions and policy mechanisms that produce both the conditions of care and conditions of work for LTC workers (Cangiano *et al.*, 2009; Williams, 2012). Key aspects of LTC systems that shape workers' access to decent work have been considered in several cross-national studies. Da Roit and Weicht (2013) point to the *interaction* of institutional variables such as LTC expenditure and the extent of public LTC provision, regulation of cash for care schemes, regulation of migration flows, and the extent of labour market regulation. Their analysis suggests that it is often the combination of at least two of these variables that shape how migrant workers are used in LTC. The marketisation of care and of migration regulation in influencing employment outcomes and the use of migrant workers has also been emphasised (Shutes and Chiatti, 2012), as has the organisation of LTC, including the level of government funding and the extent of non-profit and for-profit provision (King-Dejardin, 2019). The shift to homecare and the further marketisation of homecare services have also been found to shape the organisation and quality of LTC work (Bessa *et al.*, 2013; Hussein and Manthorpe, 2014).

Employment regimes, which include labour market policies and employment regulation, can protect or create risks for migrant care workers. National care labour markets

have also been noted as a factor in producing conditions (rather than simply creating demand) for migrant care workers (Cangiano *et al.*, 2009). The persistence of poor wages and conditions in LTC, especially outside direct government employment, with the resulting problems of attraction and retention of locally born workers, can create incentives for providers to employ migrant workers (Cangiano *et al.*, 2009; Howe *et al.*, 2019). In the developed country context, studies show that migrant LTC workers have poorer conditions compared to native workers, particularly in being more exposed to temporary and insecure work, employer non-compliance with employment regulation, under-employment and long hours (OECD, 2020a; Charlesworth and Isherwood, 2021).

National migration regimes set the rules whereby people can enter a country to live and work and the temporary or permanent basis of residence, together with the employment, political and social protection rights that adhere to a particular migrant status, and contribute to the norms that govern the employment of migrants in different sectors (King-Dejardin, 2019: 52). Migration regulation in many countries privileges those workers designated as 'skilled', providing them direct migration pathways and often permanent residence. In LTC, however, gendered norms about what constitutes skill intersect with the gendered norms that underpin the profound undervaluation of LTC work. Thus temporary migrant workers who end up in 'low-skilled' LTC work have little prospect of permanent residence or citizenship (Howe *et al.*, 2019).

Precarity and decent work

The concept of precarious work highlights a range of vulnerabilities in employment, from those caused through ineffective or inadequate employment protection (reflected in a low degree of employer compliance and regulatory enforcement, casual or temporary status, specific exclusion from employment regulation) to low wages (Campbell and Price, 2016). Access to employment protections is shaped by employment status, such as being self-employed or an employee; the form of employment (temporary or permanent, part-time or full-time); as well as by social context and social location (Noack and Vosko, 2011). The fact that women are more likely than men to be in precarious jobs and working in precarious sectors highlights the gendered nature of precarity (Vosko *et al.*, 2009). Further, migrant status intersects with employment precarity with recent migrants, in particular, overrepresented in temporary and part-time jobs (Noack and Vosko, 2011). Thus gender and migration status can work to shape both the extent and nature of precarious employment and the types of regulatory gaps that underpin it.

The International Labour Organisation's 'decent work agenda' offers a benchmark to assess the impact of employment regulation on working conditions for migrant LTC workers. The goal of decent work is to achieve productive work for women and men, carried out in conditions of freedom, equality, security and human dignity (Hepple, 2001). The substantial scholarship on the gendered (de)valuation of paid care work (e.g. England, 2005) suggests that the working conditions in LTC have 'decent work deficits' across a number of key indicators of decent work – which include adequate earnings, opportunities for progression, job security, predictable hours of work, the promotion of gender equality as well as a safe working environment (ILO, 2008). These features are absent in much frontline LTC work (OECD, 2020a: 20-21).

The different spatial locations of LTC in institutional or domestic settings and in government, for-profit or non-profit sectors or in grey markets (Shutes and Chiatti, 2012;

Kraamwinkel, 2016; Charlesworth and Malone, 2017) are also crucially important, structuring the effective reach of, and compliance with, employment regulation. These locations, together with gender and migrant status, can work to lessen or amplify decent work deficits experienced by migrant LTC workers.

Grimshaw *et al.*'s (2016) framework of intersecting 'protective gaps' in employment rights, in social protection, in representation and in enforcement is also helpful in highlighting how diverse forms of precarity can be produced in different forms of standard/non-standard employment in specific country contexts. For example, much part-time, variable hours and temporary employment is low-paid with poor progression and limits on employment rights in respect to job security and working time. However, in countries with more inclusive regulation, such as minimum hours contracts and limits on temporary agency work, the risks of precarity for part-time and temporary workers can be lessened (Grimshaw *et al.*, 2016: 10-12).

In our analysis below we seek to integrate the broader concepts of precarity and decent work deficits to highlight the ways in which regulatory gaps can be created through inadequate employment regulation which interacts with aspects of migration regimes to produce the conditions of work for migrants in LTC. We draw on a range of literature including scholarly individual and comparative country studies, relevant government, regulatory and policy studies, available OECD and national-level data, as well on the specific features of the relevant migration and employment regimes in our three countries.

National LTC systems and migrant workers

LTC systems in Australia, the Netherlands and the UK

Several trends characterise recent shifts in OECD LTC systems and among the most crucial have been the expansion of homecare, a shift to personal budgets and the marketisation of care. Table 1 provides available data on aspects of LTC provision and on migrant LTC workers in our three countries.

While LTC GDP expenditure provides a general indicator of the extent of publicly provided LTC and the size of the LTC market, it provides a limited picture. In 2018, as a percentage of GDP, the Netherlands outspent the other two countries in LTC. Yet the Australian LTC system covers a slightly larger proportion of older people than does the Netherlands and has only a slightly lower ratio of personal care workers for the population aged sixty-five years and over. Conversely, despite the UK's slightly larger GDP spend, the ratio of personal care workers is much lower than in Australia. Nevertheless, in all three countries this ratio has fallen over the last decade (OECD, 2020a: 17).

While previously more dependent on institutional LTC, Australia has developed a more 'balanced' LTC system over the last decade. The Australian policy commitment to expand the use of homecare is based on a rhetoric of 'choice' rather than familiarisation (Chomik and Townley, 2019). In the Netherlands, Dutch cost containment policies have seen a strong shift to homecare together with an explicit emphasis on the responsibilities of family and other carers in providing support for the elderly (Da Roit and Van Bochove, 2017).

In the UK, historically a greater proportion of recipients have used homecare than institutional care. However, the proportion of the elderly population accessing formal LTC is well below that in the Netherlands and in Australia. Strict means-testing limits eligibility

Table 1 Selected features of LTC systems and migrant LTC workers

Country	LTC public expenditure as % of GDP ¹	LTC users as % of pop ≥ 65 years ²		Personal carers per 100 pop ≥ 65 years ²		For-profit 'ownership' as % of LTC providers		Migrant workers in LTC		Migrants' main region of origin
		Homecare	Institutional	Homecare	Institutional	Homecare	Institutional	Homecare	Institutional	
Australia (pop = 25 mil) ≥65years = 15.9%	1.4% (2018)	7.7% (2017)	6.2% (2017)	2.0 (2016)	2.9 (2016)	36% ³ (2019)	39% ³ (2019)	37% (2016) ⁷	50% (2016) ⁷	Southern Asia; Maritime South-East Asia; Africa (2016) ⁷
Netherlands (pop = 17 mil) ≥65years = 19.6%	3.8% (2018)	8.0% (2017)	4.2% (2017)	2.3 (2016)	3.5 (2016)	20% ⁴ (2015)	12% ⁵ (2019)	8% (2015) ⁸		America and Oceania; EU; Africa (2015) ⁸
United Kingdom (pop = 67 mil) ≥65years = 18.5%	2.3% (2018)	NA	NA	1.2 (2017)		78% ⁶ (2018)		20% ⁸ (2015)		Africa; Asia and Middle East; EU (2015) ⁸

Sources. ¹OECD, 2020b; ²OECD Long-Term Care Resources and Utilisation Statistics; ³Australian Aged Care Financing Authority (AACFA) (2020). Homecare data for personalised 'consumer-directed care' only; ⁴Marczak and Wistow, 2015; ⁵Bos *et al.*, 2020; ⁶Skills for Care, 2018. Data for England only; ⁷Eastman *et al.*, 2018; ⁸OECD, 2020a.

for publicly-funded LTC and progressive austerity cuts have led to an overall decline in LTC recipients in England despite growing numbers of elderly people (Kings Fund, 2020). The limited reach of the UK LTC system is also reflected in the comparatively low ratio of LTC workers in Table 1.

The steady withdrawal of government from LTC service provision with the creation of LTC markets is reflected in growing for-profit provision. The vast majority of LTC in England is provided by the for-profit sector, with local authorities, once the main provider, accounting for only seven per cent of LTC jobs (Skills for Care, 2018). In Australia, for-profit LTC is growing rapidly, although off a lower historical base than the UK, and is a direct outcome of a shift towards marketisation in the late 1990s as a cost containment measure (Macdonald and Charlesworth, 2016). In the Netherlands, LTC provision has been overwhelmingly provided via non-profit providers and local authorities. However, access to formal LTC services is becoming more targeted with the re-familiarisation of LTC. Personal budgets are available to those who want to organise their own care and, if they choose, they can employ their own caregivers (da Roit, 2018). In Australia, LTC personal budgets are limited to homecare services and service users cannot directly hire workers but must go through providers.

Migrant LTC workers in Australia, the Netherlands and the UK

In Australia the proportion of migrants in LTC far exceeds that in either the UK or the Netherlands. Reflecting Australia's post WW2 policy of permanent white settler migration, migrants in LTC were historically more likely to come from the UK, New Zealand and North Western Europe (Brennan *et al.*, 2017). However today LTC workers are more likely to come from developing South-East Asian countries, such as the Philippines, and Southern and Central Asian countries, such as India, Nepal and Sri Lanka (Eastman *et al.*, 2018).

In the UK, in contrast, only nine per cent of the labour force are migrants with 2015 OECD data indicating that around 20 per cent of LTC workers are migrants (OECD, 2020a). Recent estimates suggest that in 2020, 16 per cent of LTC workers were born outside Britain; with eight per cent holding EU nationality and nine per cent from non-EEA countries. The main countries the non-British workforce comes from include Romania, Poland, Nigeria and the Philippines (Skills for Care, 2020). According to the OECD, in the Netherlands around 15 per cent of the labour force was foreign-born, as is the case for less than 10 per cent of those in LTC. While there is limited data on the nationality of migrant LTC workers, around a third come from other EU countries (OECD, 2020a). Live-in migrant carers mainly come from EU countries, such as Slovakia, Hungary, Poland and Romania (da Roit and van Bochove, 2017).

Employment regulation and migrant LTC workers

In terms of decent work outcomes, the Netherlands outranks Australia in terms of earnings quality and particularly labour market security, with the UK well behind both countries, especially in labour market security (OECD, 2016). Further, Australia rates more highly than the UK on the protective strength of employment regulation, although not as highly as the Netherlands (Schröder, 2009). This is hardly surprising. The UK has relatively poorer employment standards with basic working time minima only put in place after the EU

Working Time Directive was implemented in 1998, and enforcement is poor. Such differences shape the nature and extent of national decent work deficits in LTC, and when combined with less secure forms of employment, working in the for-profit sector and in homecare, can shape employment conditions for migrant workers.

In England migrant LTC workers are over-represented in for-profit employment and homecare (Skills for Care, 2018). In both sectors employment conditions are generally least favourable and distanced from protections offered in employment regulation. In Australia, migrant LTC workers are more likely to be found in residential care than in homecare, but migrant homecare workers are much more likely to work for-profit employers than locally born workers (Charlesworth and Isherwood, 2021). In the Netherlands, while residential workers are typically covered by collective sectoral agreements, municipal homecare employment is becoming more de-professionalised and fragmented, with workers increasingly on fixed-term rather than permanent contracts (da Roit, 2018). While it is unclear the extent to which migrants work in municipal employment, available evidence suggests they are more likely to be self-employed; in direct employment with families via personal budgets; in cleaning and personal household services; and, most recently, in the emerging live-in LTC sector (da Roit, 2018). Unlike the self-employed in the UK and Australia, who are excluded from employment protections such as a minimum wage, in the Netherlands some groups of self-employed LTC workers do have contracts with minimum pay rates and entitlements to paid leave as set out below.

There are few formal distinctions between employment protections for locally engaged and (documented) migrant care workers in any of our three countries. All three countries have a National Minimum Wage (NMW). In both the Netherlands and Australia most LTC workers who are employees are also covered by sectoral agreements or 'awards' that include pay rates and some working time protections (Charlesworth and Malone, 2017; Da Roit, 2018). In Australia, for example, working time protections for workers on part-time work contracts – still the most typical contract type for LTC workers – cover the maximum and minimum hours of work and the scheduling of hours. However, those working time protections are weaker than those that adhere in male-dominated sectors, which have stronger limits on employer-orientated flexibility in rostering part-time workers (Charlesworth and Malone, 2017).

In the UK the NMW is not only a floor but also a ceiling for LTC workers, who rarely earn above it (Skills for Care, 2020). While compliance in the UK with the obligation the NMW be paid for travel time between clients is poor (Bessa *et al.*, 2013), Australian employment regulation does not yet recognise this travel time as 'work' (Charlesworth and Malone, 2017). There is little evidence in formal LTC that migrants are paid less per hour than their locally born counterparts in Australia or the Netherlands. However, in the UK non-British homecare workers are more likely to be paid at or below the NMW (Bessa *et al.*, 2013).

The form of employment, that is whether LTC workers are engaged as an employee, a worker or are 'self-employed', and/or whether they are deemed temporary or ongoing, also affects access to key employment protections of working time and job security. Weaker regulatory employee protection in the UK is reflected in increasing use of 'zero hours' contracts in LTC, especially in homecare. In England, while 34 per cent of all adult social care workers have zero hours contracts, this is the case for 56 per cent of homecare workers (Skills for Care, 2020). In 2013, the Low Pay Commission (LPC) reported that 80 per cent of homecare workers employed with private providers were on zero hours

contracts, and that there was a correlation between zero hours contracts and NMW underpayments (LPC, 2013).

In Australia working in homecare is also more precarious with higher rates of casualisation than in residential care. Migrant homecare workers from non-English speaking background (NESB) countries are much more likely to be in casual employment and to be underemployed than locally-born workers. NESB migrant homecare and residential workers in for-profit employment are also more likely to be casual and underemployed (Charlesworth and Isherwood, 2021). While the majority of LTC workers, including migrant workers, are on more protective part-time contracts, personalisation in homecare has led to a fragmentation of working time made possible by the relatively weaker employment regulation of homecare (Charlesworth and Malone, 2017) with employer demands for additional 'flexibility' leading to the further undermining of existing protections (Macdonald and Charlesworth, 2016).

In all three countries, evidence indicates self-employment is growing with shifts to cash for care schemes and direct employment by LTC users which can disguise the role and responsibilities of employers (Christensen and Manthorpe, 2016). In the UK, over 31 per cent of direct payment recipients directly employ their own workers, estimated to be some 70,000 workers (Skills for Care, 2020). A study of migrant workers in direct employment found heightened risks of employment informality and insecurity (Christensen and Manthorpe, 2016), while an earlier study found examples of direct employers not paying tax and required national insurance contributions or creating a false self-employment status for migrant workers in order to avoid these responsibilities (Cangiano *et al.*, 2009). This has direct consequences for the 'self-employed' in LTC as these workers have no entitlement to employment protections beyond some limited health and safety and anti-discrimination rights (ACAS, 2021).

In Australia, there is some evidence of the increasing use of temporary agency or brokered workers by providers (Mavromaras *et al.*, 2017) and a growth of LTC 'self-employment' including through care platforms that match care and support users directly with workers (Macdonald and Charlesworth, 2016). It is noteworthy that one such platform has been used by the Australian government to provide surge LTC workforce capacity during COVID lockdowns (Skatssoon, 2020). While workers who work through labour hire agencies, are much more likely to be casual and thus have more limited working time protections than part-time workers Australian self-employed workers are excluded from any employment protections although, as in the UK, they may have some formal health and safety and anti-discrimination protections. What is known as 'sham contracting' is a growing phenomenon in the Australian LTC sector, particularly in home care and there has been some limited enforcement action taken against home care providers who have misclassified their employees as contractors (Skatssoon, 2019).

In the Netherlands, self-employed LTC workers are excluded from the more protective sector collective agreements. However, where they are employed via personal budgets specific employment regulation provides that they must have contracts with minimum pay rates and some entitlements to paid leave (da Roit, 2018). But because these workers have to pay their own social insurance and taxes (King-Dejardin 2019: 100), they effectivity miss out on social protection benefits including unemployment, disability and pensions (van Hooren, 2018). The specific employment regulation that directly excludes domestic workers, many of whom provide LTC services, from much of the social and employment protection that covers other workers is an example of gendered

exceptionalism in a country where the employment and social rights of part-time workers have historically been well-protected (van Hooren, 2018). Nevertheless, the regulation and relatively strict monitoring of personal budgets have discouraged a low-paid unregulated LTC workforce, unlike in the UK where the price of services can be negotiated between user and worker favouring a 'grey market' (Da Roit *et al.*, 2015). Because of the ongoing restructuring of homecare services in the Netherlands, a small market for live-in migrant carers supported by personal budgets has grown as well as a market for commercial cleaning companies providing both domestic and personal care support outside the formal LTC system (da Roit and van Bochove, 2017). However undeclared work, particularly where migrant workers lack a residence permit, creates significant employment risks for these migrant LTC workers (Kraamwinkel, 2016).

Employer compliance with employment regulation is critical, but patchy, in LTC (e.g. Charlesworth and Howe, 2018). This is especially the case for migrants, who may be even less likely to complain about their employment conditions or shift employers, which is more likely where employers are also care recipients (Shutes, 2013). Given their increasing importance in LTC and additional vulnerability in the less visible homecare sector, a specific decent work deficit for migrant homecare workers who have some rights to employment protections is the reluctance of employment regulators – particularly in the UK and Australia – to monitor and enforce labour standards in private homes: particularly where the household is the employer (Charlesworth and Malone, 2017).

Migration regulation and LTC workers

There are no designated migration pathways for frontline LTC workers in any of our three countries, which all have strict migration regimes that privilege skilled entrants. In both Australia and the UK, the employment of professional migrant nurses working in LTC is facilitated by migration regulation. However, non-professional or frontline LTC work is classified as 'low-skilled' and, as a consequence, those wishing to migrate to work in LTC are unable to access skilled permanent or even skilled temporary visa pathways (Howe *et al.*, 2019). However, LTC migrant workers have entered variously over time as permanent migrants, refugees, family members, students and, importantly, in the Netherlands and the UK, as EU citizens. EU freedom of movement provisions provide EU nationals with residence, work and social protection rights, which, while of temporary duration, can be renewed almost indefinitely (King-Dejardin, 2019: 13).

Nevertheless, Dutch migration regulation has not encouraged the migration of EU migrant workers as in the UK and until 2007 limited the work rights of nationals from newer EU member states (King-Dejardin, 2019: 99). Non-EU nationals have limited work rights under the Dutch work permit system, which requires a residence permit, and it is generally difficult for those classified as 'low-skilled' to obtain work permits (van Hooren, 2012). There is also some evidence in the broader LTC sector that low-skilled migrants who enter on a temporary basis may overstay their residence visas and end up as undocumented migrants working in domestic work or home-based care work (Kraamwinkel, 2016).

Migration regulation creates a number of employment risks for migrant LTC workers including via specific exemptions, temporary visa status and limited access to permanency. In Australia migration regulation can trump employment protections for migrants as visa breaches 'undo' the enforceability of employee employment protections

(Tham *et al.*, 2016). This legislative exemption has been at issue where international students, who make up an important share of migrants in residential LTC (Howe *et al.*, 2019), have been found to have breached visa limits on working hours. While there is international concern about undocumented migrants in informal LTC and their inherent vulnerability to employer exploitation (King-Dejardin, 2019), studies suggest that income requirements for residency can force temporary migrants into low-paid sectors and the informal LTC market (Anderson *et al.*, 2014), including non-EU nationals as in the Netherlands (Kraamwinkel, 2016). Indeed there is a stratification of migrant workers across migration status, sex and race in non-state subsidised areas of household work (King-Dejardin, 2019: 101).

Temporary visa status creates a fundamentally precarious environment for many migrant LTC workers, something that will become sharply apparent for many EU nationals in the UK post-Brexit context (Skills for Care, 2020). In LTC work, temporary migrant workers can easily become trapped in sectors where employment standards may be more likely to be breached such as in for-profit employment. Further, migrant LTC workers, who may have temporary migration status and/or more limited work rights, often have constrained powers of exit or voice in relation to their employment (Shutes, 2013). In Australia, the labour market vulnerability of temporary migrants is intensified with no access to social protection to buffer periods of unemployment or illness, while in the UK this has also been the case for non-EU migrants (Anderson *et al.*, 2014)

One of the most direct ways in which migration regulation shapes employment outcomes for migrant workers is by restricting access to residency and citizenship, where pathways to better quality work may lie, particularly outside the LTC sector. LTC work continues to be designated as low-skilled work in all three countries which makes it difficult for those temporary LTC workers to gain the security and visibility to labour law that comes with rights to residency. While most migrants currently working in Australian LTC are on permanent visas, including family and humanitarian visas, growing numbers of recent migrants working in LTC are on temporary visas. Given the tightening of Australia's migration regulation these migrants are increasingly unlikely to transition to permanent residence (Howe *et al.*, 2019). The Dutch regulation, which limits employment protections for self-employed LTC and domestic workers, interacts directly with the Dutch migration regime. Those migrant women who find themselves in this less formal form of work are unable to access a residence visa, as their work is not considered 'work' (Kraamwinkel, 2016: 360). Their location 'in the shadows' of both employment and migration regulation, as Kraamwinkel characterises it, also makes employer compliance and any enforcement of their more limited employment rights much more fraught.

Finally in each country, there is a growing dependence on temporary migrant workers to plug gaps in the LTC labour market. While in the UK new skills-based migration regulation post-Brexit will lead to LTC labour shortages (Skills for Care, 2020), in Australia there are now skilled visa exemptions in migration regulation that allow designated employers access to 'low-skilled' temporary migrants from the Pacific Islands to meet demands for work in LTC (Howe *et al.*, 2019).

Conclusion

Cross-national comparisons highlight the importance of national context in specific LTC regimes. In this article we have highlighted ways in which decent work deficits are created

for migrant LTC workers in each country. The UK is arguably the ‘worst’ case, offering little employment protection in an essentially privatised LTC regime. This leaves migrant workers open to vagaries of the increasingly precarious work in the sector, underpinned by the withdrawal of the state from LTC via austerity cuts, and very meagre labour standards beyond the minimum wage even for employees. More robust employment regulation such as in Australia and the Netherlands, in respect of access to wages that sit just above the NMW and a framework of working time rights, does buffer many LTC workers, including migrant workers, by providing access to a ‘safety net’ of labour standards.

Our analysis also suggests that while current regulation in different regimes can be protective or not, *historical* regulatory settings and cultural norms are also important. In both the Netherlands and Australia there has been longstanding community and institutional support for a decent NMW and other employment protections, including through sectoral agreements and, in the case of Australia, annual wage cases. These standards now protect a smaller proportion of LTC workers with the growing trend towards self-employment in the Netherlands and in Australia. However, this history of (relatively) decent labour minima in the context of lower rates of privatisation than in the UK arguably has some continuing normative effect on employment in LTC, including for migrant workers. In the Netherlands in particular, cultural support for strong employment protections and workers’ rights together with a relatively well-regulated formal LTC system has been important in both limiting the extent of privatisation and, until recently, limiting the shift to informal care (da Roit, 2018). However, with the ongoing retreat of the state from LTC provision in the Netherlands and the rapid marketisation of LTC in Australia, the protective effect of these historical employment norms for migrant workers may wane over time in both countries.

In Australia, the UK and the Netherlands there are also shared employment protection gaps experienced by many migrant LTC workers. In the growing homecare sector, migrant LTC workers are located outside traditional and visible institutional workplaces with less effective access to any formal employment protections. Further, with the expansion of for-profit provision and self-employment, including through direct employment by clients, many migrant workers are effectively placed in more precarious forms of employment, often outside the reach of employment regulation. Despite the increased reliance of LTC markets on temporary migrant workers, these workers have limited or no access to citizenship rights and to better pathways to decent work.

Migration regulation can thus further erode labour protections for migrant workers and alter the balance of power between employer and worker. As Fudge argues, migration regulation has a *constitutive* role in institutionalising precarious work for migrant workers (2012). It does this via the creation of specific exemptions from employment regulation; limiting the pathway to permanency for temporary migrants in low-skilled work, such as in LTC; and by limiting access to social protection. In other words, the precarity created through migration regulation amplifies decent work deficits in LTC for many migrant workers.

There is an important role for robust employment regulation in protecting migrants and indeed all LTC workers from precarious working conditions. However, the reshaping of work and funding in the LTC sector, and the national contexts in which migration regulation indirectly or directly trumps employment regulation significantly exacerbate the risks of decent work deficits for migrant LTC workers despite any employment

standards and protections to which they may be formally entitled. The increasing demand for a highly flexible LTC workforce in Australia, the UK and the Netherlands has an alarming compatibility with the proliferation of a temporary and thus disposable migrant workforce. Until *all* work in state-subsidised LTC is fully recognised in employment regulation as ‘work’, to which full employment protections adhere, migrant LTC workers will continue to experience decent work deficits, whatever their employment contract or migration status.

Acknowledgments

This article draws on research conducted as part of two Australian Research Council grants, DP170100022 and DP160100175.

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