Submission to the Queensland Parliamentary Inquiry into the practices of the Labour Hire Industry in Queensland

Jane O'Sullivan, April 2016

I welcome the Queensland Parliament's decision to investigate labour hire practices in Queensland. It is one of a number of recent or current inquiries around Australia, which reflect growing public concern about exploitative employment practices. Some of these practices are evidently illegal, enabled by provisions which impede transparency and accountability. Others exploit alternative employment structures to circumvent the intention of the law.

I am particularly concerned that Australian job seekers are being disadvantaged by unfair competition from more exploitable migrant workers. It would be wrong to say that the migrants are being "advantaged", because the outcome is that they are disadvantaged workers. But the result is that more Australians are either unemployed or have to match the poor pay and conditions offered to migrants.

I believe that both state and federal governments, both Liberal and Labor, have been wilfully blind to these practices, in order to foster the high rates of immigration demanded by their large corporate backers. This is despite lack of evidence that the migration-driven population growth of the past decade has benefited Australians (other than the big developers and employers), and mounting evidence of negative impacts – from reduced job prospects to housing unaffordability, congested infrastructure and contraction of government services to offset fiscal debts for the additional infrastructure.

Against the mounting evidence of migrant labour abuse, governments have progressively wound back labour market testing requirements and limits on numbers and skill level of imported workers. Only when abuses have been widely exposed in the media has disciplinary action been taken.

It will be a test of the sincerity of the Palaszczuk government, whether this inquiry merely meddles with surveillance or acts decisively to break the business model of the worker-traffickers.

Migrant workers as a means to rort labour laws

The Senate Education and Employment References Committee has recently released a scathing report on the impact of Australia's temporary work visa programs on the Australian labour market and the temporary work visa holders. The report, entitled ***A National Disgrace: The Exploitation of Temporary Work Visa Holders***, finds that abuses are systemic, not only under temporary visa categories but for undocumented foreign workers, and importantly that these practices were eroding labour standards for Australian employees, including placing downward pressure on the wages and conditions of Australian workers and undercutting the majority of legitimate employers that abide by Australian workplace laws.[1]

[1] Senate Education and Employment References Committee 2016. A National Disgrace: The Exploitation of Temporary Work Visa Holders. 17 March 2016. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

The negative impacts on the Australian labour market have been consistently denied by both Liberal and Labor spruikers of the skilled migration program.

The committee found that:

1. the processes for determining the Consolidated Sponsored Occupations List (CSOL) were intransparent, ad hoc and ineffective;
2. the vast majority of all occupations available for sponsorship under the 457 visa program are exempt from labour market testing, and
3. there was disturbing evidence of workers losing their jobs only to be replaced by 457 visa workers.

These three points together suggest a system designed to be rorted. In order for an employer to replace Australian workers with exploitable migrant workers, they only have to use their influence to get the job description listed on the occupations list and exempted from labour market testing. From there, countless hours of overtime and penalty time may be off the books, and workers may be employed at lower levels than required for the work they do, knowing that none of them will speak up.

Last August, Tranfield was reported to be actively recruiting migrant electrical linesmen while laying off over a hundred Australian workers.[2]

I have also heard directly from workers displaced by migrants (after having to train their replacements!). When I have questioned them on how it could be so much cheaper to hire 457 visa workers, they claimed that their replacements did not have 457 visas, but were working rotating three-month periods on visitor visas. This is only anecdotal evidence, but if such practices exist, it is a sad indictment on the systemic lack of enforcement of Australian labour laws.

The Senate Committee also found that Australia's Working Holiday Maker (WHM) and student visa holders were *"consistently reported to suffer widespread exploitation in the Australian workforce"*.

The Committee found that certain employers have exerted pressure on temporary visa workers to breach a condition of their visa (such as the student visa hours of work limit) in order to gain additional leverage over the employee. The 7-Eleven scandal[3] is well known to be only the tip of the iceberg. Other companies named are cleaning contractor BIC Services Australia and Pizza Hut[4] and Australia Post.[5]

Last October, investigative journalists in collaboration with Chinese students claimed that such abuses affected "hundreds of thousands of workers across the economy, in food courts, cafes, factories, building sites, farms, hairdressers and retail".[6] They found that 80 per cent of

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[2] Toscano N. 2015 "Transfield recruits migrant labour despite large-scale redundancies in Victoria" The Age 28/8/2015. http://www.theage.com.au/victoria/transfield-recruits-migrant-labour-despite-largescale-redundancies-in-victoria-20150826-gj7xu1.html#ixzz3k3ovnqQg

[3] "More details have emerged of 7-Eleven's alleged 'half-pay scam'." News.com.au 31/08/2015. http://www.news.com.au/finance/business/the-7-eleven-convenience-store-chain-has-been-accused-of-a-widespread-half-pay-scam/story-fnkgdftz-1227503846668

[4] Van Onselen L. 2015. "Yet another report of foreign worker exploitation" Macrobusiness 17/12/2015. http://www.macrobusiness.com.au/2015/12/yet-another-report-of-foreign-worker-exploitation

[5] McKenzie N. and Baker R. 2015. "Australia Post link to visa crime racket claim" The Age 5/8/2015. http://www.theage.com.au/national/australia-post-link-to-visa-crime-racket-claim-20150804-girbiw.html

[6] Schneiders B. and Millar R. 2015. " 'Black jobs': Rampant exploitation of foreign workers in Australia revealed" Sydney Morning Herald 1/10/2015. http://www.smh.com.au/national/investigations/black-jobs-rampant-exploitation-of-foreign-workers-in-australia-revealed-20150930-gjxz7q.html

foreign language job advertisements offering wages below legal rates. Many of them are openly advertised as "black jobs". According to the article, many workers also received threats from employment brokers. "The labour hire middle-men often take a cut from three sources: the workers themselves, employers who hire the workers, and from owners of cheap hotels who house them." In the face of these revelations, federal Employment Minister Michaelia Cash ruled out government intervention in favour of industry self-regulation.[7]

Lax reporting requirements lead to exploitative employment

Poor data collection on the nature and activities of labour hire companies would appear to be symptomatic of the inadequacy of processes for enforcement. The Treasury's briefing paper to this inquiry reveals that ABS data combine labour hire companies and employment agencies together. The justification for this appears to be that there may be variations between the two types of arrangement, at least in terms of the criteria which the ABS collects.

The ABS data would seem to be incomplete, particularly with respect to migrant workers. If its survey was comprehensive, it is implausible that so few expect to change jobs within 12 months, that so few are paid directly by the labour hire company, and that a particularly small proportion of manufacturing and labouring workers placed by a labour hire company were being paid by the labour hire company.

According to the Treasury briefing paper, WorkCover reported that labour hire firms are paying premiums for 44,000 Queensland workers. However, the ABS data reported that only 12,800 (12%) were currently registered with a labour hire firm, and only 21,800 (21%) were being paid by the labour hire firm or employment agency. (How could the latter figure be greater than the former? If they are being paid, they are by definition "registered with" their employer. This alone calls to question the ABS survey methodology.) It appears that over half of the workers employed by labour hire companies were invisible to the ABS data collection.

Workers not registered as PAYG represent an additional invisible cohort. (The Treasury briefing recognises that such workers exist, and that this is one advantage of the single, public, insurer for Queensland workers, since injured workers can be covered regardless of whether a premium has been paid to insure them, and WorkCover can pursue their employer for the failure to insure them. This contrasts with some other states, where the existence of multiple private insurers against workplace injury mean that there is no obvious source of compensation for an uninsured worker.) The above-mentioned Fairfax investigation suggests that the scale of these "black jobs" might include hundreds of thousands of migrant workers.

Exploitative work is not labour market tested

Australian employers, labour hirers and migration lobbyists have repeatedly resisted and successfully eroded requirements for genuine labour market testing of job vacancies before filling them with migrant labour.

[7] Schneiders B. and Millar R. 2015. "Turnbull government hands off on 'black' labour middle men" Sydney Morning Herald 4/10/2015. http://www.smh.com.au/national/investigations/turnbull-government-hands-off-on-black-labour-middle-men-20151002-gjzzvt.html#ixzz3nZY1Xv6F

There is only one reason for not advertising jobs to local job seekers. It is that migrants can be employed on terms more favourable to the employer than locals. This may be an outright underpayment, a deduction of 'costs' by the employer, or the ability to avoid declaring the work for the purpose of avoiding tax, worker insurance or other obligations.

Even where the employer (such as a hospital) sees no difference between hiring a local or a migrant, the employment agent may gain an advantage in placing migrants. Why is it that half of Australia's nursing graduates have found it difficult or impossible to find nursing work last year, while a similar number of 457 visa nurses were imported?[8] Applicants are told that they lack the experience needed. This is either a false excuse (a lie) or an unconscionable abrogation of responsibility to train workers on the job and promote them internally. Given the anecdotal evidence that migrant nurses require significant periods of training to adapt to the Australian work environment, it would seem more likely to be a lie. What would motivate such lies, other than some undisclosed pay-off to the labour hire company? Is it more accurate to call these firms migration agents?

False claims of levels of experience needed seems to be a means of circumventing local labour market testing in other occupations also. A poultry processing worker reported to Qld Unions[9],

> *"Five years ago, all the workers at Baiada Poultry Processing were Mareeba locals. Now we only have 86 local jobs out of the 200 workers employed. Out of the 32 boners employed at Baiada in Mareeba - 4 are locals and 28 are workers on temporary visas. The skills assessment process is also falling down because when the workers on temporary visas arrive at the shed, they don't have the skills needed to be boners - and so are needing to be trained to do this work on site. My question is, if temporary visa workers are being trained on site to be boners - why can't locals? And the young people in our town still can't get work."*

It seems that the findings last year by the Fair Work Ombudsman against Baiada have not eliminated their exploitative practices, nor their preference for migrants over willing local workers. The Fair Work Ombudsman found flagrant exploitation of Taiwanese workers in Baiada chicken processing plants in regional NSW.[10] Their report found that labour hire companies had skimmed the money and short-changed workers, that much of the work was unrecorded cash-in-hand, that the companies and people responsible were frequently untraceable as they dissolved to be replaced by new entities (pheonixing), and that no legal responsibility fell back on the factory itself.

One may wonder why a large company such as Baiada, operating a large workforce at multiple sites, would find it more effective to outsource the recruiting of skilled workers to multiple fly-by-night agencies, rather than to do the job in a coordinated way themselves. Could it be that these firms are no more than shell-companies to cover for the fact that Baiada controls the whole process, while pretending not to be the employer? Avoiding workers' compensation for injury would seem to be one of the incentives behind such practices – the Treasury briefing paper cites both elevated rates of injury and 'inconsistent' reporting of

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[8] Toscano N 2015. "Nurse graduates 'locked out' of workforce as migrants get jobs" The Age 7/6/2015. http://www.theage.com.au/business/workplace-relations/nurse-graduates-locked-out-of-workforce-as-migrants-get-jobs-20150607-ghi9c8

[9] https://www.securejobsqld.org.au/

[10] Om J 2015. "Foreign workers exploited at Baiada chicken processing plants: Fair Work Ombudsman finds" ABC Lateline, 18/06/2015. http://www.abc.net.au/news/2015-06-17/foreign-workers-exploited-at-baiada-plant-investigation-reveals/6554570

injuries in the poultry industry. Underpayments and unrecorded hours of work appear to be other motives.

The Senate Education and Employment References Committee report (cited above) recommended that labour market testing be applied to all positions nominated by sponsors of 457 applications. They expressed the view that employers should take more responsibility for training Australian workers to fill shortages. Their recommendations 13 – 15 further strengthen the training responsibilities of employers of 457 visa workers.

The Commonwealth Government's National Harvest Labour Information Service (NHLIS) has created the Harvest Trail Website[11] to allow people seeking itinerant agricultural work to find opportunities. (The service operates via a "harvest" filter on the general Jobsearch site.) However, when I explored this site on two recent dates, I found there are almost no jobs currently advertised. Evidently, either most jobs offered are very quickly filled, or most jobs are not offered through this site. If the former, then there is no justification for migrant visas for harvest work. If the latter, then work is going to migrants without labour market testing.

Employers must be held to account

Enforceable legislation is needed at both federal and state level, to break the business model of labour exploitation.

The Senate Education and Employment References Committee has made many recommendations, including ensuring labour market testing and one-for-one employment of an Australian trainee alongside any 457 visa employee.

Former Labor party president Greg Sword has advocated that responsibility for underpayment should fall back to the employer (the firm for whom the work is done) not stop at the middle-man (the labour hire firm).[12]

David Stacey, in a letter to The Age, suggested that all 457 visa holders should be employed through a government agency:

> *"Exposing 457 visa rorts has done nothing to stop them; if anything rorts are more blatant than ever. Why not set up a 457 Authority to pay the award rate directly to visa holders, thus stamping out exploitation? Employers would pay the award plus a premium to the authority. A sufficiently high premium would more than cover costs, with any excess earmarked for training in the identified shortages, while encouraging employers to genuinely search for local labour.*
> *Market forces would again come into play with unions, employers, jobseekers and governments all incentivised to train for the skills in demand. I suspect, however, that the number of applications would magically decrease. End result; no exploitation, genuine short-term gaps are filled at minor extra cost while in the (slightly) longer-term, young Australians are skilled and then employed."*

There is merit in this idea. Why should the government allow any private agency to place migrant workers, when the government already needs to process each visa application in response to an employment offer. Immigration is already doing the job of employment agent for these workers.

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[11] www.jobsearch.gov.au/job/search/harvest

[12] Schneiders B. and Millar R. 2015. " 'Black jobs': Rampant exploitation of foreign workers in Australia revealed" Sydney Morning Herald 1/10/2015. http://www.smh.com.au/national/investigations/black-jobs-rampant-exploitation-of-foreign-workers-in-australia-revealed-20150930-gjxz7q.html

However, the worst breaches are not of 457 visa holders. I believe that the 'black jobs' issue will not be resolvable unless individuals (not firms) are held accountable. CEOs of firms for which work is done (regardless of whether a labour hire firm technically employs the workers) should be held criminally accountable for breaches of employment law.

It would be relatively easy to require that all jobs offered to migrant workers are previously placed on a government jobsearch register for at least a week, and Australian permanent resident applicants given priority. Such a register would make it easier to trace unsuccessful applicants, and discover whether they were indeed inappropriately qualified. Unless posting of vacancies is compulsory, such sites will not become the go-to platform for Australian job seekers, and hence would not constitute genuine market testing.

At the federal level, sharing of data between immigration and the tax office would enable many rorts to be quickly detected. The absence of such practices is blatant wilful blindness on the part of government. All temporary working-visa migrants should have a tax file number, and be required to be PAYG employees. Failure of quarterly BAS statements to report activity for any working-visa holder would highlight potential undocumented employment.

It is clear that many Australian workers are employed under labour hire arrangements also. They report being paid less than regular workers for the same work, and not receiving the same entitlements to breaks, overtime payments and regularity of hours. This model of hiring should simply be disallowed. The labour hire model (in which workers are paid by the agency, rather than by the firm in which they work) may have its place but it should never be cheaper than regular (permanent or casual) workers. To achieve this, labour hire firms should be required to employ people on ongoing contracts, with the usual entitlements for leave and superannuation. If a casual appointment is what is needed, then it is the client firm who should employ the causal, and the labour hire firm should just act as employment agent. If the work is ongoing, such as cleaning contracts, delivery contracts or IT maintenance contracts, then the business model is one of a contractor (supplying service) not a labour hire company (supplying workers). Hence the workers should be regular employees of the contractor. The contractor (not the worker) must wear the risk that demand for work fluctuates, and charge a premium to clients accordingly. This is the normal practice of contractors.

The point being made above is that the use of labour hire firms to employ workers in client firms has no legitimate basis. It exists only to deflect employer responsibility for workers and to disguise rorts.

I look forward to hearing the outcome of the Parliamentary Inquiry.

Jane O'Sullivan
7 April 2016.