Inquiry into the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

ACTU Submission to the Senate Standing Committee on Education and Employment Legislation

March 2017

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Background and Content

ACTU position on exploitation of vulnerable workers

The exploitation of workers especially temporary visa holders has become a business model for some employers.

Unfortunately, examples of exploitation are no longer rare. Rather, these practices have become normalized and are particularly prevalent in some sectors. A good example was the widespread exploitation of international student visa holders working in 7-Eleven stores across Australia. We need to examine the structural factors that create the vulnerability of temporary visa workers and predispose them to exploitation.

The coercion of temporary visa workers into breaching their visa conditions was particularly pertinent to the plight of international student visa workers in the7-Eleven scandal and while the ACTU welcomes many of the measures in this Bill we believe there is much more that can be done to address systemic exploitation of temporary work visa holders.

Businesses like 7 Eleven, Caltex, Pizza Hut and others must take responsibility for their flawed business models. Similarly, the government must ensure rampant exploitation of workers through the underpayment of wages cannot be normal practice for some firms any longer. What is clear from these recent wage scandals is that business size is not a guarantee against widespread breaches of workplace laws, neither is commercial success, nor is being a common household name present on many high streets.

Temporary Migrant workers - estimated to make up 10% of the workforce - are particularly susceptible to exploitation by employers. Most temporary migrant workers are present in poorly regulated industries; agriculture, meat processing, hospitality and accommodation have a particular high concentration. The ACTU fears that exploitation has become systemic in many sectors and noncompliance of workplace laws has been long standing. While this Bill, in many ways, is recognition of the scale of the problem, the provisions of the Bill do not go far enough if the Government is to truly address the systemic exploitation of temporary work visa holders. Below we explain where the Governments proposals are lacking and can be improved upon.

The normalization and prevalence of wage theft

Unfortunately the prevalence of wage theft in some recent examples of exploitation of vulnerable workers is a clear sign that this has been the prevailing business model. A 7 Eleven internal survey taken in July and August 2015 indicated that 69% of franchisees had payroll issues including fraud (the Four Corners episode quoted a 7 Eleven Australia insider as saying that all franchisees were involved in wage fraud).

As former Australian Consumer Commission observed in relation to the 7-Eleven 'the business model will only work for the franchisee if they underpay or overwork employees'

INTRODUCTION

ACTU position on the Fair Work Amendment Bill (Protecting Vulnerable Workers) Bill 2017

We support the bill as first step to towards addressing the exploitation of temporary work visa holders. It is an acknowledgement that exploitation is systemic and is used as a business model in many industries.

However there are significant improvements and additions to the Vulnerable workers Bill that the ACTU recommends;

Below is summary of the Bill and the ACTU postion;

(NB. 1 penalty unit is currently $180.)

Introduces a higher scale of penalties for 'serious contraventions' of prescribed workplace laws.	Support. Penalties will go to 600 penalty units for individuals and 3,000 penalty units (or five time higher) for bodies corporate. We would like to see the penalties increased for general protections such as breaches of freedom of association and discrimination.
Increasing penalties for record-keeping failures.	Support. Penalties will double from 30 to 60 penalty units for individuals, and from 150 to 300 penalty units for bodies corporate. For falsifying records penalties will double from 30 to 60 penalty units for individuals, and from 150 to 300 penalty units for bodies corporate.
Making franchisors and holding companies	Support but the scope of 'responsible

responsible for underpayments by their franchisees or subsidiaries where they knew or ought reasonably to have known of the contraventions and failed to take reasonable steps to prevent them. The new responsibilities will only apply where franchisors and holding companies have a significant degree of influence or control over their business networks.	franchisors entities' is too narrow and vague. Instead we should use the language of the ACCC's Franchising Code of Conduct. References such as the 'significant influence' and 'intellectual property requirement" should be removed to ensure transnational companies are adequately captured. This amendment should be further extended to include lead companies in supply chains to capture cases such as Baiada.
Expressly prohibiting employers from unreasonably requiring their employees to make payments (e.g. demanding a proportion of their wages be paid back in cash)	Support. Should be extended to potential employers as this is where a number of these breaches occur.
Strengthening the evidence-gathering powers of the Fair Work Ombudsman to ensure that the exploitation of vulnerable workers can be effectively investigated.	Oppose. We need measures to protect workers but giving the FWO coercive powers could further frighten workers and stop them from reporting abuse. Also the powers could be used against unions. NB. The FWO did not ask for those powers.

Key Recommendations

In addition there are a range of recommendations we would like to see included in the Bill:

- In accordance with the Productivity Commission report recommendation, amend the Act to make it clear that the Fair Work Act 2009 applies to all employees irrespective of their status under the Migration Act 1958;

- require the FWO to publish a Fair Work Information Statement containing information

for employees about their rights under the Fair Work Act 2009, the relationship between workplace laws and the Migration Act 1958 and the right of overseas workers to seek redress for contraventions of workplace laws;

- provide additional protection from adverse action taken against an employee who questions whether a workplace right exists, including whether they can join a union,

- give the Court the power to make an order disqualifying a person from managing a corporation (within the meaning of the Corporations Act 2001) for a certain period in relation to certain civil contraventions of the Fair Work Act 2009 if the Court is satisfied that disqualification is justified;

- Further changes need to be made to the Migration Act to set out protocols between the Fair Work Ombudsman and the DIBP and in effect 'firewall' victims of exploitation from immediate removal from the country so they can have access to natural justice and public services as recommended by the UN Special Rapporteur on Migrant Rights following his visit to Australia[1].

- Fund trade unions and existing community-based organisations to deliver mandatory orientation sessions for all work-related visa holders and their family members - to provide meaningful and sustained linkages to community based support and to reduce social isolation

- Create greater accountability for domestic supply chains by establishing a licensing and regulation scheme for the labour hire industry. There must be changes to the laws to prevent employers from outsourcing their labour requirements to labour hire companies or contractors in order to cut the wages of employees and side step the Agreements for the pay and conditions of those employees. This open practice of corporate avoidance of established agreements, by outsourcing to third parties, is driving down wages by locking out employees from being able to negotiate for their fair share of the value they create for the business.

[1] UN Special Rapporteur on Migrant Rights, End of Mission Statement, p.9
http://un.org.au/files/2016/11/16.11-SRM-Australia-End-of-mission-Statement.pdf

- Ban the use of ABNs for WHVs and student visa workers.

- Governments should have the option of imposing quotas or capping working holiday visa numbers and exercise that option where labour market conditions require it. Given the current state of the labour market, now is such a time for a cap to be imposed. An annual quota for the visa should be determined based on advice from a genuine tripartite Ministerial Advisory Council for Skilled Migration and taking into account the labour market conditions for young Australians

- Job ads that advertise only for working holiday visa holders or that use the inducement of a second working holiday visa be banned.

- The second year working holiday visa be abandoned altogether

- There is a profound knowledge gap - current data sources do not enable the precise number of temporary migrant workers to be identified, let alone the key industries and occupations of such workers and where they are experiencing breaches of labour protection. We make recommendations to improve data collection for both DIBP and the ATO in the relevant section.

A higher scale of penalties for 'serious contraventions' of prescribed workplace laws.

The ACTU supports an increase in penalties to 600 penalty units for individuals and 3,000 penalty units (or five time higher) for bodies corporate.
However the ACTU would like to see the penalties increased for general protections such as breaches of freedom of association and discrimination. This will act as a greater deterrence for these breaches of workplace laws.

Simply relying on the capacity of the courts to award increased penalty amounts as a deterrence to breaching workplace laws will not be sufficient. There has been the tendency for employers that have engaged in deliberate underpayments and illegal activity to avoid the full consequences of a court finding. Unscrupulous employers have avoided the full penalty imposed by a court through clever corporate restructuring, asset shifting and corporate

liquidation. Effective enforcement and recovery of the penalties is just as important as the penalties themselves.

As the law currently stands, the penalties that can be awarded against an individual are one fifth of the maximum penalty that can be awarded against a corporation. The result is that the penalties ordered against a director are often less than the underpayments owed to a worker. There have been examples of where corporate employers liquidated their companies after the FWO filed a matter in court to avoid some of the penalties and payments of underpaid wages ordered by the courts.

Increasing penalties for record-keeping failures

The current penalties under the Fair Work Act are relatively insignificant. The current deterrents are clearly inadequate as the Four Corners episode revealed instances of franchisees being prepared to absorb the penalties from such proceedings, adamant at continuing illegal labour practices. Essentially some unscrupulous employers have seen penalties as additional cost under their business model

The ACTU supports the measures in the Bill for increasing penalties for record keeping failures. Penalties will double from 30 to 60 penalty units for individuals, and from 150 to 300 penalty units for bodies corporate. For falsifying records penalties will double from 30 to 60 penalty units for individuals, and from 150 to 300 penalty units for bodies corporate.

Making franchisors and holding companies responsible for underpayments by their franchisees or subsidiaries

The ACTU supports making franchisors and holding companies responsible for underpayments by their franchisees or subsidiaries where they knew or ought reasonably to have known of the contraventions and failed to take reasonable steps to prevent them. However it is clear the new responsibilities will only apply where franchisors have a significant degree of influence or control over their business networks. It is notable that the requirement of "significant influence or control" does not apply insofar as the provisions relate to holding and subsidiary companies. The net effect is that provisions cast a lesser burden in franchising relationships than is the case under holding/subsidiary relationships.

We are of the view that that the differential treatment of holding/subsidiary relationships compared to franchisor/franchisee relationships means that the proposed changes don't go far enough in making franchisors responsible for actions of franchisees. The 7 Eleven

business model and gross profit split was a key element in the underpayment of workers because it effectively placed often highly indebted small business owners (the franchisees) in an invidious position. Professor Allan Fels, head of the government's Migrant Worker Taskforce, himself has stated that most franchises could not make a go of 7 Eleven franchise unless they underpaid their workers. This is no sound basis for a business model. It is clear the 7 Eleven business model was fundamentally flawed because it funnelled too much profit to head office at the expense of the Franchisee and the workers.

Professor Joo Cheong Tham stated the following in his submission[2] to the recent inquiry of the Committee into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders:

> With 7-Eleven, pressures to reduce labour costs on the part of the franchisees stemmed from two key aspects of the franchise contract. First, the profit breakdown provided in the franchise contract with 53% going to the 7-Eleven Stores Pty Ltd (7-Eleven Australia) and 47% going to the franchisees.[6] Second, the responsibility of the franchisees for labour costs with Article 35(b) of the standard 7-Eleven store agreement stating that:
>
> The FRANCHISEE shall have the sole right to employ and discharge such Employees as in the FRANCHISEE'S judgment may be necessary. Such employees shall be employees or agents of the FRANCHISEE. The FRANCHISEE shall exercise full and complete control over, and shall have full responsibility for, the conduct of the Employees, and any and all labour relations, including hiring, firing, supervision, disciplining, *compensation* (and taxes relating thereto) and work schedules of the Employees (italics added).

It is clear in this model profits received by head office create severe downward pressure on running costs by franchisees. This operating model is only viable if labour costs are squeezed

[2] http://www.aph.gov.au/DocumentStore.ashx?id=e6247e65-0ea1-484e-9a31-0e427b665b87&subId=350900

below the legal workplace limits. However, it is also clear that Franchisee's take legal responsibility for all labour relations. The ACTU believes this relationship and responsibility needs to change. However, the present proposals, by requiring that franchisors cannot be held be liable unless they have a "significant degree of influence or control over the franchisee entity's affairs", may perpetuate these types of indemnification arrangements and as a consequence may not be effective in making franchisors liable.

Effective provisions are critical because of the snowball effect of non-compliance. The mass underpayment of wages across a chain of stores creates an uneven playing field where other businesses doing the right thing and paying the correct wages and entitlements to their workers are at an enormous unfair disadvantage. A stronger regulatory model, which imposes de-facto positive obligations effectively in the form of a negligence type standard ("knew or ought to have known") is preferable. Given that such a standard was deemed acceptable for the holding/subsidiary, it ought also be applied to the franshisor/franchisee relationship.

The ACTU supports expressly prohibiting employers from unreasonably requiring their employees to make payments

The ACTU supports expressly prohibiting employers from requiring their employees to make payments (e.g. demanding a proportion of their wages be paid back in cash). Unfortunately we have seen extensive examples of such exploitative behaviour.

The 7 Eleven scandal wage scandal highlighted not only falsification of employee records at the heart of the breaches, but also the "cash-back scam" emerged, where employees were initially paid the correct award rate and then forced into paying back part of their wages to their employers. This high level deception has been the hallmark of some of the recent wage scandals and action to prevent employers from requiring their employers to make cash back payments is essential.

However the scale of the problem, in reference to the 7-Eleven wage scandal, despite the high number of complaints, may even be higher because many workers did not come forward. As Fels made clear during the inquiry many workers faced "a campaign of deception, fear-mongering, intimidation and even actual physical violence".

The ACTU opposes giving the FWO coercive powers

The ACTU opposes giving the FWO any additional coercive powers. We need measures to protect workers but giving the FWO coercive powers to detain persons for questioning could further frighten workers and stop them from reporting abuse. The vulnerability of temporary work visa holders to exploitation and being so fearful as to not report breaches of workplaces laws is a fundamental problem. Adding to this climate of fear is not helpful and may make the prevalence of underreporting of exploitative work practices much worse.

Further, there is real doubt as to how this suite of powers would add anything of significance to the FWO's existing capacity. The inquiry reports of the FWO referred to in the explanatory memorandum, which included detailed accounts of non-compliance and detailed descriptions of complex supply chains, were produced using the existing suite of powers and contain no recommendation for any extension of them. Nor does the Productivity Commission report of its Inquiry into the Workplace Relations Framework recommend such powers (rather it recommends additional resources on the basis that doing so would permit increased enforcement: "Such enforcement could extend beyond migrant workers to any other employee groups where the risk of underpayment was high")[3]. In fact the only reference to the potential additional powers for the Fair Work Ombudsman, in the material referred to in the Regulation Impact Statement, is contained in the *National Disgrace Report*. The relevant recommendation of *National Disgrace* report called for a tripartite independent review of matters including the FWO's powers. Such review has never occurred.

The particular new investigative powers provided in the Act create notably different use and derivative use immunities for the two different types of coercive powers, creating a potential for regulatory error and confusion. They also contain no other safeguards, and are expressed in terms that apply to all to contraventions. The provisions are effectively the first steps toward creating an Australian Building and Construction Commission for all industries and workers in Australia.

Finally, there are competitive neutrality issues that have not been considered in the framing of these powers. The Industrial Relations system has historically, and still does, provide a significant compliance and investigation role to unions. Providing a regulatory advantage to the State agency creates unwarranted incentives in the enforcement market in circumstances where the regulator's real problem is its capacity to service the *number* of inquiries it already directed to it.

[3] Productivity Commission, *Workplace Relations* Framework, p. 926.

'Firewall' victims of exploitation from immediate removal from the country

Further changes need to be made to the Migration Act to set out protocols between the Fair Work Ombudsman and the DIBP and in effect 'firewall' victims of exploitation from immediate removal from the country so they can have access to natural justice and public services as recommended by the UN Special Rapporteur on Migrant Rights following his visit to Australia4.

There is fear amongst many temporary visa holders about the precarious visa status and the potential for deportation over minor, inadvertent or coerced breaches of their visa conditions. There is also fear by temporary visa holders of the relationship between the FWO and the DIBP. It is clear a firewall is needed.

The ACTU also recommends that the identities of migrant workers who report instances of exploitation to the Fair Work Ombudsman or to any other body should not be provided to the DIBP.

Fund trade unions and existing community-based organisations to deliver mandatory orientation sessions for all work-related visa holders and their family members

The ACTU supports funding trade unions and existing community-based organisations to deliver mandatory orientation sessions for all work-related visa holders and their family members - to provide meaningful and sustained linkages to community based support and to reduce social isolation.

Visa workers are understandably wary of the risks in speaking out about their exploitation given the tenuous nature of their residency in the country. This fear is compounded in many instances by employers coercing their employees into breaching conditions of their visa in order to gain leverage over them. It is imperative that more efforts are made to inform all work related visa holders of their rights. This is a crucial strategy in preventing exploitation.

BREACHES OF MIGRATION ACT NOT TO RESULT IN ABSENCE OF PROTECTION UNDER THE FAIR WORK ACT

[4] UN Special Rapporteur on Migrant Rights, End of Mission Statement, p.9
http://un.org.au/files/2016/11/16.11-SRM-Australia-End-of-mission-Statement.pdf

The hearings into 7-Eleven case revealed that undocumented work performed in breach of visa condition is a huge problem in Australia. In this case International students who were legally allowed to work in Australia were required to work in excess of their visa conditions precisely so their employers could then exploit the technical breach of their visa conditions in order to underpay and rob them of their wages and workplace entitlements.
The incentive to pressure temporary workers and engage workers on visas exists because the Fair Work Act 2009 does not apply when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements. There is mounting evidence about the pressure that certain employers have exerted on temporary visa workers to breach a condition of their visa in order to gain additional leverage over the employee.

The potential for visa cancellation and exploitation puts temporary visa holders in a precarious position with regard to their employer. Considering the element of employer coercion involved in visa breaches the current penalties of visa cancellation and deportation facing temporary visa holders is disproportionate and draconian.
The March 2016 Senate Education and Employment References Committee report 'A National Disgrace: The Exploitation of Temporary Work Visa Holders' highlights the prevalence to which companies are avoiding their obligations under the Fair Work Act 2009 and are putting pressure on temporary migrants to breach their visa conditions.
Recommendation 23 is important in addressing this issue;

Recommendation 23

The committee recommends that the *Migration Act 1958* and the *Fair Work Act 2009* be amended to state that a visa breach does not necessarily void a contact of employment and that the standards under the *Fair Work Act 2009* apply even when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements.

This has been also been recognised by the Productivity Commission

Productivity Commission Inquiry Report, *Workplace Relations Framework: Volume 2* (2015) 931

RECOMMENDATION 29.4

The Australian Government should amend the *Fair Work Act 2009* (Cth) to clarify that, in instances where migrants have breached the *Migration Act 1958* (Cth), their employment contract is valid and the *Fair Work Act 2009* (Cth) applies.

Proposals to make temporary migrant workers feel safer in coming forward to report instances of exploitation are extremely important. The fear of being reported to the DIBP and potential deportation due to visa breaches strongly discourages temporary visa holders from coming forward and acts as a brake on the reporting of claims by visa workers.
The chronic under reporting of exploitation by visa holders will continue without a concerted effort by government to address this issue. Changes to the laws, including that the standards under The Fair Work Act 2009 apply even with a visa breach, are required to encourage visa holders to come forward. Furthermore, visa cancellation should be limited to cases of serious noncompliance with a visa. Seriousness must consider whether the noncompliance was brought about by the conduct of employers.

Where a visa breach is caused by the employer then the visa worker her/ himself should not suffer but be offered an extension visa to enable the temporary worker to obtain alternate employment. This would stymie the first response of many unscrupulous employers which is to terminate the worker's employment and insist that their visa is cancelled and hence must return home.

Additional protection when workers question their workplace rights and whether they can join a union

The ACTU supports providing additional protection from adverse action taken against an employee who questions whether a workplace right exists including whether they can join a union. There have been recent examples of workers being sacked after asking whether they can join a union.

Compliance with Workplace Laws down the supply Chain

This issue of compliance has been of particular prevalence in the supermarket supply chain. The role of major buyers, including the Supermarkets, such as Coles is fundamentally important in preventing worker exploitation down the supply chain. Supermarkets need to ensure that all produce sold by major supermarkets are ethically produced.

There is a need for a regulatory framework that would address some of the structural vulnerabilities faced by, for example, 417 visa workers in the horticulture sector. A combined set of measures that would include:

• an enforceable code of conduct that all the major retailers sign up to and which growers would also need to sign up to sell produce to a major retailer;

• labour hire licensing; and

• a regular auditing process.

Dr Joanna Howe has described how this comprehensive system operated in the US:

'In Florida there is something called the Coalition of Immokalee Workers. What the regulatory framework looks like there, very briefly, is that there is a code of conduct that all the big retailers have signed up to. If you are a tomato grower, you need to have signed up to that code of conduct or you cannot sell your produce through the big retailers. What that code of conduct has—it is not just some airy fairy document, it is enforceable—is mandatory collective organisation, so those workers are collectivised because it is recognised that that gives them some security. Secondly, all labour hire companies are licensed through that process. They have to be registered. Thirdly, there is a comprehensive auditing process, so tomato growers are audited for their employment practices, not just through paper but through someone visiting them.[5]'

Unlike Australia in the U.S. employers have the ultimate responsibility under US migration law to ensure that any migrant worker hired is properly documented.

We need to create greater accountability for domestic supply chains by establishing a licensing and regulation scheme for the labour hire industry

Labour hire is a component of Australia's insecure workforce. Whilst the use of labour hire fell 8 per cent between 2001 and 2008,[6] the industry had grown at over 30 per cent per

[5] Senate Enquiry 'A National Disgrace: The Exploitation of Temporary Work Visa Holders' March 2016
[6] ABS, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6105.0Feature%20Article1Jan%202010

annum throughout the 1990s and 2000s, one of the fastest rates in the world, leaving Australia near the top of OECD country rankings for use of agency work.[7] Whilst data on the prevalence of labour hire is patchy, the ABS estimated that 576,700 workers or 5 per cent of employed people in 2008, had found their current job through a labour hire agency.[8] Some 97 per cent of these were estimated to be employees and 3 per cent were estimated to be independent contractors.[9]

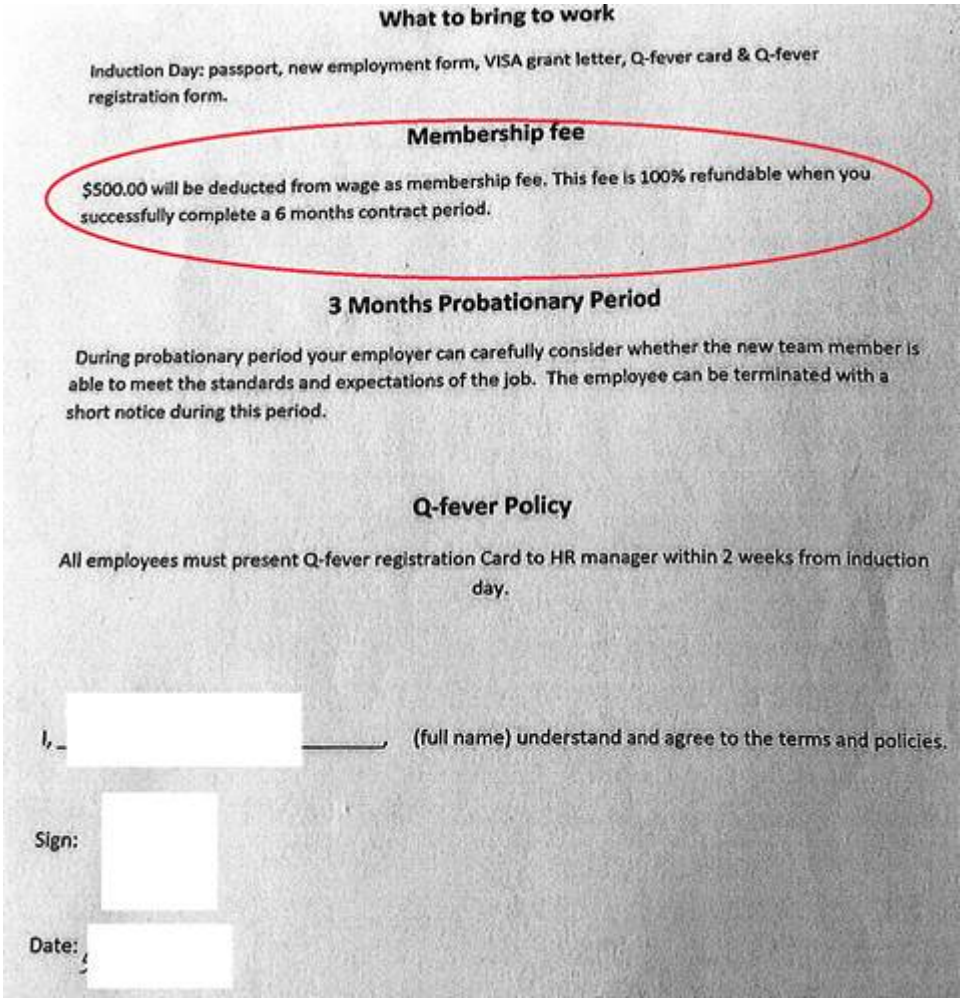
As various critics have noted, employers have used labour hire arrangements to minimise their costs and shift the risks posed by working life on to their workforce.[10] It avoids standard employment entitlements and conditions attaching to direct employment such as the right to ongoing work via access to unfair dismissal protection and redundancy pay and protections. Risk-averse behaviour by employers in the wake of the GFC contributed to the growth of labour hire engagement.[11]

The consequences of this form of engagement for workers can be dire. Labour hire workers come closest to the 'disposable worker' model at the heart of the 'just-in-time' workforce that has cemented itself in the Australian labour market over the last twenty-five years. For example, labour hire workers experience the most volatile weekly hours of work[12]and are unable to participate in collective bargaining at their worksite. Labour hire workers work alongside employees doing the same work but with inferior conditions. At times there are layers of these arrangements - for example outsourcing through competitive tendering, where the successful tenderer engages a labour hire sub-contractor to supply the workforce that performs the contracted services. In such an arrangement, two corporate entities (or more) are placed in the supply chain between the worker and the ultimate purchaser of the labour and are deriving incomes from what would otherwise be incomes paid to the worker. Within these structures there are number of questionable sub layers, such as requiring the worker to pay a "membership fee" to the labour hire company (see caption over page), or transferring the worker between various labour hire companies without any benefit to them.

[7] Huiyan Fu, Temporary Agency Work and Globalisation: Beyond Flexibility and Inequality, 2015, p96.
[8] Ibid.
[9] ABS, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6105.0Feature%20Article1Jan%202010
[10] Ibid.
[11] See, for example, Huiyan Fu, Temporary Agency Work and Globalisation: Beyond Flexibility and Inequality, 2015, p96.
[12] based on HILDA Wave 13 data.

An enterprise that chooses to engage some or all of its workers through labour hire has very few obligations to those workers and, accordingly, those workers have very few rights to influence their relationship with that enterprise. This occurs notwithstanding that those workers are under a contractual obligation to abide by the direction of their 'host employer'.

Unlike outsourcing, where accusations of avoidance behaviour are often met with denials by business referring to the external service offerings and industry expertise that outsourcing is claimed to provide, labour hire involves the provision by a third party of labour only, generally without provision of any particular kind of expertise beyond that already held by employees of the host organisation. Hence, the *raison d'etre* of labour hire is purely and simply to permit industry to avoid industrial relations laws and consequently shift risk to workers, so business can take the benefit of labour without the burden of complying with laws that are premised on workers being protected in the labour market and given a fair share of the profits generated. It is purely reactionary, a rejection of the basic policy intent that underlies the industrial relations system. This manifests in a number of ways as follows:



What to bring to work

Induction Day: passport, new employment form, VISA grant letter, Q-fever card & Q-fever registration form.

Membership fee

$500.00 will be deducted from wage as membership fee. This fee is 100% refundable when you successfully complete a 6 months contract period.

3 Months Probationary Period

During probationary period your employer can carefully consider whether the new team member is able to meet the standards and expectations of the job. The employee can be terminated with a short notice during this period.

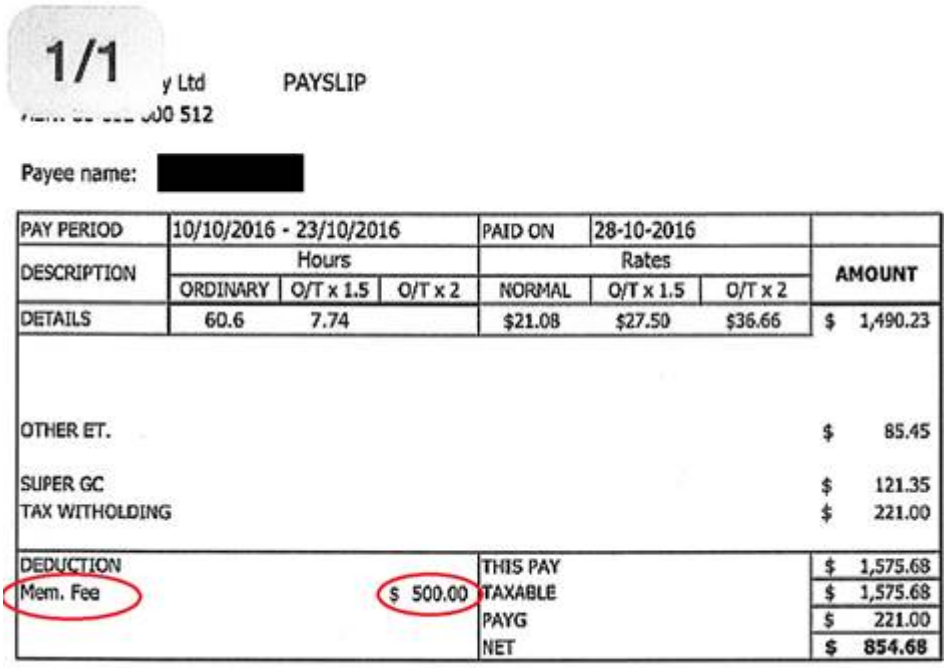
Q-fever Policy

All employees must present Q-fever registration Card to HR manager within 2 weeks from induction day.

I, _____, (full name) understand and agree to the terms and policies.

Sign:

Date:



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y Ltd PAYSLIP

00 512

Payee name: [redacted]

PAY PERIOD	10/10/2016 - 23/10/2016			PAID ON	28-10-2016		
DESCRIPTION	Hours			Rates			AMOUNT
	ORDINARY	O/T x 1.5	O/T x 2	NORMAL	O/T x 1.5	O/T x 2	
DETAILS	60.6	7.74		$21.08	$27.50	$36.66	$ 1,490.23
OTHER ET.							$ 85.45
SUPER GC							$ 121.35
TAX WITHOLDING							$ 221.00
DEDUCTION				THIS PAY			$ 1,575.68
Mem. Fee			$ 500.00	TAXABLE			$ 1,575.68
				PAYG			$ 221.00
				NET			$ 854.68

a. The common law does not see an employment relationship between the host employer that directs the work and the worker. Further, it has generally rejected the idea that there could be more than one employer;[13]
b. Labour hire workers cannot bargain for a collective agreement with the host employer, or participate in bargaining for such an agreement. Whilst labour hire workers can make a collective agreement with the labour hire agency (subject to the practical barriers which attach to their predominantly casual form of engagement), the agency is not the entity that on a day to day basis controls the work that they perform and the conditions under which and location where it will be performed;
c. Labour hire workers cannot make an unfair dismissal claim against a host employer, even where the host employer is the decision maker as to whether the worker will have a continuing job at the workplace or not;
d. The "General Protections" contained in the *Fair Work Act 2009* (Cth) adapt poorly to the work situations of labour hire workers because in the main they

[13] Because there can be only one employer, in exceptional cases, the common law is able to treat the imposition of a labour hire agency as sham, and look through that sham in order to treat the host employer as the actual employer. See *Nguyen v. A-N-T & Thiess* (2003) 128 IR 241.

protect the labour hire agency itself from "adverse action" rather than the workers the agency employs and makes available to workplaces; and

e. Workers in labour hire arrangements are less inclined to speak up about matters of concern to them as they understand that the decision to request that they no longer be supplied to the workplace can be made by the host employer at any time, and may mean they have an uncertain period of time before another host engagement becomes available.

It has been estimated that there are between 2000 and 3500 temporary agencies operating in Australia. The top ten agencies combined have a market share of less than 20 percent and fewer than 2 per cent of agencies employer more than 100 workers[14] but the industry is largely directed by the largest firms such as Skilled, Manpower, Spotless, Programmed Maintenance Services and Chandler Macleod. The dominant organisations also subcontract to preferred panels of labour-hire subcontractors[15] and a multitude of smaller players. Hence, a labour hire employee may be legally situated deep within complex layers of inter-corporate subcontracting arrangements as well as the commercial arrangements between the labour hire and host. The case reported in *Matthew Reid v Broadspectrum Australia Pty Ltd*[16] identifies some of the practical difficulties that this can present; namely, complying with the practice and procedure *at one's workplace* can lead to one being terminated by one's employer – who is *not at one's workplace*.

The Howe Inquiry[17]heard many personal accounts from workers engaged in labour hire arrangements. The inquiry's report relevantly contains the following:

> *"The weight of evidence we heard about the effects this has on workers was overwhelming. We heard of cases of:*
>
> *Workplaces where the entire workforce was employed as casuals through a labour hire firm. Employees were expected to be available for a full-working week, and were notified by text message around 4pm each day of whether and*

[14] *Ibid.*
[15] See, for example, the advertisement placed by Spotless seeking expressions of interest for "Security Labour Hire Subcontractor s"; Sydney Morning Herald, March 2015.
[16] [2014] FWC 7108, [2015] FWCFB 519.
[17] Independent Inquiry into Insecure Work in Australia (2012), "Lives on Hold: Unlocking the potential of Australia's Workforce".

when they were required to turn up the next day – but without any information about how long their shift would be;

Employers using labour hire in the workplace to foster divisions among their ongoing staff and temporary workers, weakening workers' bargaining power and leading to lower rates of pay and lesser entitlements;

Indirect discrimination on the basis of union activity, age and other grounds being tacitly applied by simply not offering certain workers any more shifts;

Labour hire workers feeling unable to report bullying, injuries suffered in the workplace, or occupational health and safety risks for the fear that exercising their rights would lead to censure, the loss of shifts or the loss of a job altogether; and

Labour hire workers finding themselves unable to secure a home loan or a car loan because of their lack of job security."[18]

Labour hire is not a new phenomenon in Australia. What is exceptional about it is that has been allowed to continue so untouched by mainstream regulation. It has surpassed its initial object of supplementing existing workforces and is now used also to replace them. At the extreme end, some labour hire agencies in fact recruit workers from overseas to perform work in Australian as labour hire workers on "working holiday" visas under exploitative conditions.[19]

Labour hire is overwhelmingly used as an avoidance strategy and its continued operation in the present regulatory setting is untenable unless one accepts that the workers who are engaged by labour hire agencies are second class citizens. There is no good reason why a situation should be allowed to continue whereby two workers can work side by side in the same role yet one has a lesser standard of employment protection or a lower rate of pay.

[18] *Ibid*., at p34.
[19] For example, see evidence given by temporary migrant workers to the public hearings on 26 June 2015 to the Senate Inquiry into the Impact of Australia's Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders. An investigation by the Australian Broadcasting Corporation's program Four Corners on 4 May 2015 that revealed the exploitation of migrant workers in the meat processing and horticultural industries where unscrupulous labour hire contractors were often implicated: see the Inquiry's Interim report, *Interim Report: Australia's Temporary Migrant Visa Programs*, June 2015, p4.

Reform is necessary and, in the absence of outright restrictions on labour hire, measures must at least be taken to ensure that labour hire workers engaged in a workplace, however temporarily, have the same level of industrial citizenship as the employees they work with.

Our concerns regarding labour hire were raised with the Productivity Commission in the course of its inquiry into the Workplace Relations Framework. It sole recommendation on the issue was that the *Fair Work Act* be amended to prohibit collective agreements from requiring that labour hire workers be paid the same as direct employees. In contrast, the Senate Education and Employment References Committee recommended in it's report *A National Disgrace: the exploitation of temporary visa holders*[20] that the Commonwealth develop a national labour hire licensing scheme, although the Government is yet to respond to that recommendation. Some State governments have, to date, been more receptive to these issues. In Victoria, an extensive inquiry was conducted which recommended the establishment of a system for licensing labour hire agencies operating in the horticultural, meat and cleaning industries[21], which the Government has accepted. Such a system was recommended to involve a fit and proper person test along with reporting as to compliance with laws concerning industrial relations, health and safety, superannuation, taxation and workers compensation laws (as well a regulatory standards associated with accommodation where such accommodation is required)[22]. The Economic and Finance Committee of the South Australian House of Assembly made comparable recommendations on licensing, although not limited to any particular industry sectors.[23] The Queensland Government Office of Industrial Relations is currently conducting a consultation processes on Labour Hire regulation[24], following on from its own Parliamentary inquiry.[25]

The ACTU supports banning the use of ABNs for WHVs and student visa workers.

[20] Senate Education and Employment References Committee (2016), "A National Disgrace: The Exploitation of Temporary Work Visa Holders", Commonwealth of Australia.
[21] Victorian Inquiry into the Labour Hire Industry and Insecure Work (2016), Final Report, Victorian Government Printer, Recommendation 14
[22] Victorian Inquiry into the Labour Hire Industry and Insecure Work (2016) *Op. Cit.*, Recommendation 16.
[23] Parliament of South Australia, Economic and Finance Committee (2016), Inquiry into the Labour Hire industry (Final Report). The South Australian government is yet to indicate whether it will adopt the recommendations in the report.
[24] See Office of Industrial Relations (2016), "Regulation of the Labour Hire Industry", Queensland Government.
[25] Queensland Parliament, Finance and Administration Committee (2016), "Inquiry into practices of the labour hire industry in Queensland".

The ACTU believes no Working Holiday Makers or student visa holders should be using ABN's. If the temporary work visa holders are in the country to travel and work or study and work then there is no reason why the visa holder should be asked to administer their own employment status. There are clear incentives for a visa holder to be placed on an ABN including avoiding paying superannuation and other employee entitlements such a sick leave and holiday leave.

Systemic exploitation of Working Holiday Makers especially in the Agriculture Sector

The Working Holiday Maker visa has unfortunately become synonymous with unscrupulous labour hire companies that abuse their workers. Exploitation of working holiday makers in the farm sector include cases of underpayment, provision of substandard accommodation, debt bondage, and employers demanding payment by employees in return for visa extensions Evidence released from the Fair Work Ombudsman last year revealed the systemic exploitation of Working Holiday Makers (where those visa holders from Asian countries seem to be particular vulnerable). The report highlighted the following;

- 28 percent did not receive payment for work undertaken
- 35 percent stated they were paid less than the minimum wage
- 14 per cent revealed they had to pay in advance to get regional work
- 66 per cent felt employers take advantage of people on Working Holiday Visas by underpaying them.

Given the 'normalisation' of underpayment of wages and breaches of workplace conditions amongst Working holiday Makers there is clearly a financial incentive to employ Working Holiday Makers.

In 2014-15 the total number of Working Holiday maker visas granted was 226,812 and in the six months from July to December 2015-16 there were 116,750 visas' granted. This is now equivalent to around 10.8% of the total Australian labour force aged 15-24. These figures have more than tripled since mid-2007 when working holiday visa holders numbered 74,450 and were 3.7% of the Australian workforce aged 15-24. There are over 150,000 more working holiday visas granted each year now than there were 8 years ago. It is notable that Australia has a substantially larger WHM program than comparable countries (e.g. the UK and Canada only have 20,000 each).

The WHM unfortunately has become a fertile ground for unscrupulous labour hire companies that abuse their workers. There is now a growing consensus of this problem. The March 2016 Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" stated;

> "The WHM visa program is a poorly-regulated program, and the bulk of the evidence to the inquiry showed that the WHM visa program has been abused by unscrupulous labour hire companies in Australia with close links to labour hire agencies in certain south-east Asian countries ..... (labour hire companies) .....are in fact not only using the program to fill potential shortfalls in labour, but also to gain access to cheaper labour[26]"

The Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" in March 2016 recommended the following;

The Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders

Recommendation 32

9.309 The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license

A systematic approach by labour hire companies to access cheap labour and use the WHM program as a low skilled work visa has knock on consequences for the domestic labour market. This was not the intended consequences of the WHM scheme. A visa intended for culture exchange has formed into something quite different from the original design and aims of the visa program.

[26] Senate Enquiry "A National Disgrace: The Exploitation of Temporary Work Visa Holders " Education and Employment References Committee, March 2016

There is a profound Knowledge Gap - we need better data to understand the levels of exploitation

There is a profound Knowledge Gap. Current data sources do not enable the precise number of temporary migrant workers to be identified, let alone the key industries and occupations of such workers and where they are experiencing breaches of labour protection.

Insufficient data collection on the temporary visa holder program does not allow for proper monitoring of the program. Good evidence based policy making needs good data and good data collection. It is clear this has been lacking in this area of policy.

The Department of Immigration and Border Protection should be sufficiently resourced to allow it to pursue inter-agency collaboration that would enable it to collect and publish the following data on the temporary visa program:

- the number of visa holders that do exercise their work rights;
- the duration of their employment;
- the number of employers they work for; and
- their rates of pay, and the locations, industries, and occupations they work in.

The Department of Immigration and Border Protection should be required to publish information for which temporary visa nominations have been approved, including data by industry sector and detailed occupation groupings.

The Department, or an authorised agency such as the Australian Tax Office, should also collect and publish regular data on actual salaries paid to temporary visa holders. The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.

The Fair Work Ombudsman should also be required to publish information on temporary visas where their investigations uncover issues relating to workers on these visas; information should include salary level, occupation, and sector.

Conclusions

Turning a blind eye to systemic exploitation of temporary work visa holders is no longer an option. While the ACTU supports many of the measures in this Bill it is clear a more comprehensive strategy is needed. We hope some of our recommendations can be adopted by the Government in order to improve the quality of the policy response.

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