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Workplace Relations Inquiry
Productivity Commission
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Submission by the Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia to the Productivity Commission into Workplace Relations Framework March 2015

The Justice and International Mission Unit of the Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission to the Productivity Commission inquiry into the Workplace Relations Framework. The Unit has spent many years working for the eradication of human trafficking and forced labour globally, working with many non-government organisations located overseas. However, the Unit notes that human trafficking and forced labour does occur in Australia in some industries, such as agriculture, construction and hospitality. The focus of this submission is to seek that the Productivity Commission does not make recommendations that increase the likelihood and prevalence of human trafficking and forced labour in Australia. Further, the Unit seeks to ensure the recommendations of the Commission do not reduce the ability of law enforcement to detect cases of human trafficking and forced labour in Australia.

The submission by the Unit will consider the following issues within the scope of the inquiry:

- fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net;
- patterns of engagement in the labour market;
- the ability for employers to flexibly manage and engage with their employees;
- red tape and the compliance burden for employers; and
- appropriate scope for independent contracting.

The Unit notes that common to many cases of human trafficking and exploitation of migrant workers on temporary visas:

- Treating the migrant workers as independent contractors in an attempt to avoid having to provide Award pay and conditions;
- Using the promise of sponsorship of an application for permanent residency as a means to manipulate migrant workers into accepting exploitative, and often illegal, pay and conditions; and
- Failure to pay penalty rates.

The Unit is concerned at the level of undetected exploitation and human trafficking of migrant workers in Australia and is concerned that the relevant law enforcement agencies lack adequate

resources to deal with the scale of the problem. Thus, the Unit favours further measures to deter the exploitation of migrant workers.

Recommendations

The Unit makes the following recommendations:

- That the ultimate employer be held responsible for the treatment of migrant workers by any labour broker contracted by the employer. The ultimate employer should be required by law to take reasonable steps to ensure that any labour broker they obtain workers from is complying with all legal requirements around the pay and conditions of the workers. The Unit has done extensive work around human trafficking and forced labour in seafood processing plants in Thailand. The worst abuses of migrant workers in these processing plants was usually at the hands of labour brokers. It was when the Thai seafood industry accepted responsibility for the conduct of the labour brokers they were using that forced labour and human trafficking into the processing plants largely disappeared.
- There is a need to have greater regulation and registration of labour brokers in Australia. In the experience of the Unit there appear to be a significant number of individuals acting as effective labour brokers who appear to not be subject to any regulatory oversight, with allegations that some engage in sexual exploitation of female migrant workers.
- Migrant workers who have been trafficked or subjected to significant exploitation, such as significant underpayment of wages, should be permitted to remain in Australia if they are pursuing civil remedies of compensation from the employer or if they are involved in any Fair Work processes. The Unit is deeply concerned by cases in which trafficked or grossly exploited migrant workers have been rapidly removed from Australia before they can even obtain legal advice on their rights and avenues for legal action open to them.
- Migrant workers who are suspected to have been trafficked into Australia be given access to independent legal advice before any action is taken to remove them from Australia.
- All migrant workers coming to Australia should be provided with information about their rights and responsibilities in a language they understand. The information should include how to seek help from both relevant government authorities and non-government organisations.
- The Productivity Commission should recommend that the Government require employers allow migrant workers have access to a non-government organization that is able to assist the migrant worker understand their rights and responsibilities, as is the case in Ireland. This would act as a significant protective factor against human trafficking and exploitation.

The need for adequate regulation

The Unit notes with concern that one of the issues raised in Issues Paper 1 (p. 10) as an area for reform would be to make it easier for employers to use labour hire businesses. In our experience, both in Australia and internationally, labour hire businesses appear to carry a higher risk of being involved in human trafficking than other employers, especially in weakly regulated environments.

The International Labour Organisation (ILO) has noted:¹

¹ Beate Andrees and Patrick Belser (eds.), 'Forced Labor. Coercion and Exploitation in the Private Economy', ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, p. 3.

When labor regulation and labor institutions are weak, limited to certain sectors or categories of workers, some employers will be able either to impose unfavorable conditions of work or to violate existing labor agreements to their advantage. Our empirical evidence suggests that, if circumstances permit, some employers will ultimately turn to the use of coercion and treat the payments of wages as discretionary.

Further, the ILO has highlighted the role labour hire and labour recruiters often play in human trafficking and forced labour:²

Often, these recruiters operate in a legal vacuum or in an environment of impunity, where abuses are not investigated and prosecuted. This makes it relatively easy to deceive workers about the nature of the jobs, the wages, and living conditions that are proposed in a distant place of employment or about the fees that have to be paid. Deception is the most commonly used means of recruiting workers into situations of forced labor. The true nature and characteristics of jobs can be concealed because recruiters often have a monopoly over employment-related information.

The ILO has found that in Europe:³

.... deceptive recruitment mechanisms and exploitative systems of subcontracting are key factors in understanding the vulnerability of migrant workers to forced labor exploitation. Weak labor market regulations or enforcement and the lack of protection afforded to irregular migrant workers provide incentives to employers and intermediaries to use abusive practices. Easy profits can be made through deceptive job offers, illegal wage deductions, or nonpayment of wages. Some of the exploitation is organized by sophisticated criminal networks, but in the majority of cases, the exploitation of trafficked migrants takes place in the context of small-scale scam operations. Through complex subcontracting systems, trafficking penetrates mainstream economic sectors, such as agriculture, construction, or the service industry where there is high demand for cheap and exploitable labor. Most migrant workers who work under hazardous conditions for low pay and without protection from labor law are not forced to work at gunpoint. There is a large enough pool of migrants who are willing to take high risks to enter Europe and who are determined to make their journey a success. But not all of them succeed, and some fall victim to various forms of coercion. Those who demand a better bargain for their labor are quickly replaced by more docile workers.

The ILO has found that in the case of Europe “those migrants relying on an unspecified intermediary rather than their own family networks or formal recruitment structures are more likely to be abused during the recruitment process as well as in employment.”⁴

² Beate Andrees and Patrick Belser (eds.), ‘Forced Labor. Coercion and Exploitation in the Private Economy’, ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, p. 4.

³ Beate Andrees and Patrick Belser (eds.), ‘Forced Labor. Coercion and Exploitation in the Private Economy’, ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, pp. 89-90.

⁴ Beate Andrees and Patrick Belser (eds.), ‘Forced Labor. Coercion and Exploitation in the Private Economy’, ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, p. 94.

Human Trafficking into Australia for the purposes of labour exploitation

Most people identified by as having been trafficked into Australia are girls and women trafficked for the purpose of sexual exploitation. However, trafficking also increasingly occurs in other industries.⁵ The precise size of Australia's labour trafficking problem is difficult to gauge, with confirmed "instances of unreported and/or perhaps unrecognised labour trafficking".⁶ The incentives for the employer are high with reduced wages meaning increased profits.

The Australian Institute of Criminology has assessed that exploitation of migrant workers can be "characterised as low-risk, high-profit activities".⁷ Migrant workers often only report issues as a last resort, when "they literally could not remain in that situation either because of serious injury or fear about their personal safety"⁸, a state of affairs that underlines not only the huge importance of support services but also how to inform migrant workers of their availability.

Two other factors are particularly significant to the exploitation of migrant workers in Australia:⁹

- Agents' fees and associated debt where an overseas agent will charge large fees in the home country to facilitate access to a legal or illegal visa or to assist in linking a potential migrant with a job. Migrants may go into significant debt to pay these fees, which renders them more willing to accept substandard conditions in order to earn money.
- Permanent residency, which many migrant workers aim for in the long run rather than wages. Employers can hold the offer, genuine or not, of eventual sponsorship for such residency in return for migrants' compliance with substandard or exploitative working conditions.

The construction industry is a sector where "very serious instances of exploitation"¹⁰ of migrant workers occurs. A large proportion of these instances involve workers on 457 visas. Some, however, involve workers in different situations such as young people from the Cook Islands who had New Zealand passports so had no requirement to obtain a visa to live and work in Australia.

Nursing, manufacturing and the meat industry are other industries experiencing similar exploitation of 457 visa holders. The Australian Institute of Criminology has reported that abattoirs are described as being a 'profoundly rich territory for exploitation'¹¹ both because of the nature of the industry itself but also because the migrants that are being employed come from countries such as Nigeria, the Philippines, China and Korea and they would have been on very low salaries even in their own countries. Even as they gain a better understanding of industrial conditions over time, they are unwilling to try to enforce these due to the threat of being deported.

⁵ Joudo Larsen, J., Renshaw, L., Gray-Barry, S., Andrevski, H., Corsbie, T. *Trafficking in persons monitoring report: January 2009-2011*, AIC Reports Monitoring Reports 19, 2012 p. 4

⁶ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xii

⁷ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xiii

⁸ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xiii

⁹ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xi

¹⁰ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 29

¹¹ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010 p. 33

Domestic workers in Australia number relatively few but “appeared to feature disproportionately in the instances of more severe forms of workplace exploitation”.¹² They usually have very limited support networks and live and work in the family household are usually dependent on their employer for all accommodation, food and transportation, making them extra vulnerable.

The agricultural sector is also vulnerable to human trafficking and gross exploitation of migrant workers. The Australian Workers Union (AWU) has publicly expressed concern exploitation of foreign workers is rife in the fruit picking industry.¹³ AWU Victorian branch secretary Ben Davis said labour-hire arrangements were becoming more common in the fruit picking industry. “The growers themselves don’t actually know what is happening at the point of payment to the employee,” he said. The Fair Work Ombudsman said it was stepping up its investigations of employment arrangements within the fruit picking industry.¹⁴

Case Examples

The following are examples involving strong allegations of exploitation or human trafficking of migrant workers in Australia.

Yogalingam Rasalingam

Yogalingam Rasalingam, a restaurant owner, was prosecuted in New South Wales in 2007 for allegedly trafficking a male Indian chef for exploitation in his restaurants.¹⁵ The accused had implicitly threatened the complainant with deportation should he leave his employment. It was the complainant’s understanding that he had to stay and work for four years, on the basis that some money would be sent to his father and the complainant would get permanent residency at the end of four years. While the jury returned a verdict that acquitted the accused on the trafficking in persons charge, it did convict him on a lesser immigration charge.

The case was then separately pursued by the (then) Office of Workplace Services (OWS). On 13 March 2008 Federal Magistrate Cameron ordered Rasalingam’s business, Yoga Tandoori Pty Ltd, to pay \$18,200 in penalties into Commonwealth revenue, taking into account his lack of contrition, the need for specific and general deterrence, the fact the entirety of the complainant’s pay and entitlements had been deliberately withheld and that although not a slave, the complainant was at a considerable disadvantage in his dealings with him.¹⁶

Aprint (Aust) Pty Ltd¹⁷

Four Chinese nationals, holders of subclass 457 visas, were employed by Aprint (Aust) Pty Ltd. The Workplace Ombudsman commenced an investigation in 2006 to determine if they had received their minimum terms and conditions of employment.

¹² Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 39

¹³ <http://www.abc.net.au/news/2015-01-05/mildura-employer-allegedly-paid-backpackers-60-cents-an-hour/6001218>
accessed 06/01/2015

¹⁴ <http://www.abc.net.au/news/2015-01-05/mildura-employer-allegedly-paid-backpackers-60-cents-an-hour/6001218>
accessed 06/01/2015

¹⁵ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 18

¹⁶ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 18

¹⁷ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 23

It was found that the men spent the first few weeks of their employment living and working on the Aprint premises. They slept in a confined office together on mattresses. Basic toilet facilities were available, however, no shower or other facilities were provided. The workers washed either at a basin in the workplace or at the local swimming pool. They were later moved to a rented share housed owned by the employer within 300 metres of the workplace so were made to “feel as though they were constantly on call for duties.”¹⁸

Working conditions for the men were substantially different to that of Aprint’s other workers, working longer hours and having deductions for medical expenses, rent and immigration costs debited from their wages without their consent, often leaving them with around \$200 net per week for between 40 and 50 hours’ work.

Although Aprint was placed into liquidation in July 2007, the Workplace Ombudsman pursued the claim as against its Director, Tu Chuan Yu instead of the company. The Federal Magistrates’ Court ordered Tu to pay total penalties of \$9,240. Repayment of \$93,667.66 in underpayments that had occurred was provided to the workers within a matter of weeks of the breaches having been determined by the Workplace Ombudsman.

Example from the Construction Industry¹⁹

A Filipino carpenter was recruited to work with a stonemasonry company. Once on the job site, he was required to do manual labour, such as lift heavy slabs of rock and other odd jobs. He lived in accommodation provided by the employer. After lifting some heavy stones, he nearly injured himself. He asked about his working conditions and was shown a bullet by his employer, who threatened him, told him he owed money to the recruiter and to the company and that the recruiter in the Philippines has a direct line to his family.

He made contact with a volunteer from Migranté (an alliance of Filipino and Filipino-Australian organisations) who assisted him to make contact with a union. He was very scared. The community organisation and the union were able to assist him to find a place to live but not another job. While he was trying to sort out his situation, his family in the Philippines was visited by an associate of the recruiter who threatened them should they not be able to encourage him to return to his employer.

Raying Holding Pty Ltd²⁰

In March 2014, the Fair Work Ombudsman commenced legal proceedings against labour hire company Raying Holding Pty Ltd and another individual, alleging that ten employees at a regional NSW abattoir were underpaid more than \$41,000 for various periods of time worked between March 2011 and July 2013. Eight employees were casuals – Chinese nationals here on short-term visas - while the remaining two were Chinese immigrants who were employed full-time.

Raying Holding allegedly supplied the workers to the Primo Australia Scone Abattoir, operated by Hunter Valley Quality Meats Pty Ltd. The Fair Work Ombudsman is seeking Court-issued penalties against both the company and another individual allegedly involved in the

¹⁸ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010 p. 23

¹⁹ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 31

²⁰ <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/march-2014/court-action-over-alleged-underpayment-of-chinese-workers-at-regional-nsw-abbatoir> accessed 12/03/2015

underpayments. Court documents allege that Raying Holding often required the employees to work more than 38 hours a week but did not pay overtime penalty rates. The Fair Work Ombudsman also alleges that Raying Holding was involved in sham contracting (by representing to the two full-time employees that they were independent contractors) and breached record-keeping laws.²¹

Domestic Work Example – Masri v Nenny Santoso and anor [2004] NSWIRComm 108²²

In 2004, a young Indonesian woman, Ms Masri, who worked as a domestic worker in the house of an Indonesian-Australian family, successfully sued her employers under the Industrial Relations Act 1996 (NSW). When Ms Masri was approached about working in Australia Ms Masri understood she would be paid around \$250 per month, based on what she'd heard from others. The respondent arranged for her to move to Australia, including arranging false documentation, a false sponsor and traveller's cheques.

The New South Wales Industrial Relations Commission noted that:

From her arrival in Australia on 11 June 1995, the applicant was unaware that she was an illegal immigrant. The applicant arrived in Australia escorted by the first respondent who, soon after arriving, took possession of the applicant's passport, travellers cheques and identification documents. (Transcript of proceedings, Masri v Nenny Santoso and anor, Industrial Relations Commission of NSW 28 April 2004).

Ms Masri lived and worked 17 hours per day in the respondent's home for over four years but was never paid properly and not permitted to leave the house. The Commission found in favour of the applicant, noting that she "clearly had no money, had no friends or relatives in Australia and was effectively trapped in the relationship with the respondents".²³ The Commission ordered that the respondents pay Masri \$95,000 in unpaid wages along with interest and costs.²⁴

Domestic Work Case²⁵

Rosy had been working as domestic help for the Lebanese consul official in Lebanon, Greece and Australia. She came to Australia on a 426 visa and ended up running away because of the alleged bad treatment she was experiencing. Rosy allegedly often had to work until 2 am and was paid US\$200 when she was meant to be getting AU\$1,970.

International Student Case²⁶

Singh, an international student from India, worked as a regular and systematic casual labourer for a large company. He worked an average of 30 hours per week for a year. He stopped working in his job and was owed wages. The employer allegedly told Singh that if he kept asking for his wages he would kill him and the employer threatened to have him deported. Singh alleged there were 50 employees who were owed many thousands of dollars due to underpayment; in his case he was owed more than \$10,000. He also received a letter from a person claiming to be solicitor acting for his ex-employer who claimed that Singh had breached

²¹ <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/march-2014/court-action-over-alleged-underpayment-of-chinese-workers-at-regional-nsw-abbatoir> accessed 12/03/2015

²² Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 40

²³ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 40

²⁴ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 40

²⁵ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, pp. 75-76.

²⁶ Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 77.

the terms of a restraint of trade clause. The letter demanded payment of \$50,000 within seven days from the date of letter for loss flowing from the breach. Singh had never signed or seen any written contract. He called the police about the threats to kill him and they advised him to stay inside and lock the doors and windows, and if the ex-employer turns up at the house to call them immediately. Singh said his ex-employer told him and other employees that if they had an Australian Business Number they did not have to worry about the 20 hour per week limit of their visa conditions.

Divye Kumar Trivedi²⁷

On 3 August 2007, the victim, an Indian national, arrived in Australia on a subclass 457 temporary business (long stay) visa to work as a chef for the defendant in his restaurant at Eastwood in NSW. Upon his arrival the victim worked in the defendant's restaurant for approximately 16 months. During this period the victim was told that he could not leave Australia unless he repaid the defendant \$7,000, being the cost of bringing him to Australia. The victim was not able to pay that sum and because of this threat the victim was not free to stop working or leave the restaurant. The defendant also took possession of the victim's passport to prevent him from leaving the country.

The defendant pleaded guilty to one count of organising or facilitating the entry or receipt of a person into Australia being reckless as to whether that person would be exploited pursuant to section 271.2(1B) of the Criminal Code.

On 8 May 2012 the defendant was sentenced in the NSW District Court to 250 hours of community service and fined \$1,000. In passing sentence the Court agreed with the Crown submission that "general and specific deterrence were of relevance in order to deter the offender and those that may contemplate bringing others to Australia in circumstances of forced labour".

Migrant worker at 7-Eleven in Brisbane²⁸

The Fair Work Ombudsman commenced legal action against Mubin Ul Haider, the owner and operator of a 7-Eleven retail store in Brisbane until it closed last year. He will face court for allegedly underpaying an overseas worker more than \$21,000 over a period of 13 months between January 2013 and February 2014, and refusing to co-operate with Fair Work inspectors. His company, Haider Enterprises Pty Ltd., is also facing court.

The employee, from Nepal and aged in his late 20s, was a visa holder when he commenced working for Haider and is now a permanent resident of Australia. Haider faces maximum penalties between \$5,100 and \$10,200 per breach and his company \$25,500 to \$51,000 per breach and a Court Order is also being sought for the company to back-pay the employee in full.

This is not the first time Haider has been in trouble with law enforcement.²⁹ There was a court decision on 15 August 2014 at the Migration Review Tribunal of Australia that upheld a

²⁷ <http://www.cdpp.gov.au/case-reports/divye-kumar-trivedi/> accessed 10/03/2015

²⁸ <http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015/20150209-haider-litigation> 9 February 2015 accessed 11/03/2015

decision to "bar the applicant from sponsoring more subclass 457 visa employees for 2 years from the date of decision" due to underpayment of other staff members (on 457 visas from India), lack of wage records and lack of co-operation with the Department of Immigration regarding these issues.

Fruit Picking Case³⁰

A Victorian man was reported to be under investigation over allegations he has exploited backpackers working in the fruit picking industry, paying them as little as 60 cents an hour. The Fair Work Ombudsman received several complaints about the Mildura operator just before Christmas, including allegations of sexual harassment.

Craig Bildstein, a Director with the Ombudsman's Office, said there were also reports the man had crammed dozens of workers into one home, and another 12 in a garage.

"The suggestion's been put to us that backpackers are being charged up to \$150 a week, with reportedly up to 32 people being accommodated in one home and a dozen or so more sleeping in the garage," he said.

The man allegedly charged workers a \$450 fee to find them a job. It has also been alleged the man had been bullying and sexually harassing some of the workers on the property.

Mr Bildstein said it was not the first time the Fair Work Ombudsman had received complaints about the operator. "The allegations that have been put to us include bullying, sexual harassment and ripping them off to the tune of hundreds of dollars," he said.

"Some of these matters are obviously outside our jurisdiction, but clearly where we identify these matters we do pass them on the appropriate local authorities [and] that might be the police."

Agricultural Sector Case³¹

In March 2014 it was exposed by *The Weekly Times* that overseas workers at Covino Farms in Longford, one of Victoria's largest horticulture operations, were underpaid and asked to work long hours with some working up to 16 per day day. Covino Farms confirmed that many of its overseas workers were supplied by contract companies.

Four former workers allege most international workers were paid about \$12-\$13 an hour in cash instead of the horticulture award for casual employees of \$20.46-\$23.83 an hour. Some international workers received no superannuation and had no income tax taken out of their pay. A former worker said many Malaysian workers were on working holiday visas and some Indians were on student visas with many not having the correct work visa. As some workers on legitimate visas were paid cash they had no proof of their work in Australia which means they can't apply for the second year of their visa.

²⁹ <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/MRTA/2014/1864.html?stem=0&synonyms=0&query=mubin%20ul%20haider> accessed 11/03/2015

³⁰ <http://www.abc.net.au/news/2015-01-05/mildura-employer-allegedly-paid-backpackers-60-cents-an-hour/6001218> accessed 06/01/2015

³¹ E. Field, 'Questions surround farm's foreign labour', *The Weekly Times*, 26 March 2014 pp. 14-15

Many of the workers lived in houses in Sale which often had up to 20 people in one residence where each person was charged \$80-\$100 per week. They were also allegedly charged \$9-\$12 to be transported the 15km from Sale to the farm.

Covino Farms has also been the subject of numerous complaints, 34 improvement notices and one prohibition notice from the workplace safety watchdog since 2007. The farm has been raided by the Department of Immigration several times with two workers being sent home due to having incorrect work visas, and one who returned with a different name on his passport after having been previously deported.³²

The Immigration Department, the Fair Work Ombudsman and Woolworths have all since initiated separate inquiries into Covino Farms' alleged practices. In response, Covino Farms has vowed to improve its practices, conduct an internal investigation and planned to crack down on the labour hire companies that provided much of its workforce.³³

Cases of Abuses on Migrant Workers Documented and Assisted by Migrante Australia, a Filipino migrant community organization

For the following case studies, the real identities of workers and employers have been changed/omitted for the purposes of confidentiality.

Victorian Cases

Case 1

Myrna and Rene (not their real names) were hired under the 457 visa scheme in early 2013 as a couple of 'Resident Managers' at a hotel. Both allegedly worked an average of fourteen hours a day over six days, and sometimes seven days a week. Myrna allegedly earned only the basic wage for 40 hours a week and Rene had no pay at all.

As Rene did not receive any salary, both had to share the wage that Myrna received from the company, which also caused financial and personal strain in their relationship. Rene recounted his experience: "Our financial situation in Australia brought chaos to our relationship; only she is receiving salary despite the two of us working long hours daily. I have to solicit from her everything I wanted to send to my children because our employer is not giving me my own salary."

Rene approached their employer to ask for his own wage. His employer said that if he wanted his own pay, it had to be deducted from Myrna's pay to which Rene did not agree. Rene planned to leave the hotel and look for other employment. To appease Myrna and Rene's frustration, their employer gave them a leave of absence which allowed them to have a holiday in the Philippines.

While Myrna and Rene were in the Philippines, Myrna received an e-mail from their employer terminating their employment.

³² E. Field, 'Questions surround farm's foreign labour', *The Weekly Times*, 26 March 2014 pp. 14-15

³³ E. Field, 'Farm workers probe: Horticulture operation under fire over alleged illicit, unsafe practices', *The Weekly Times*, 2 April 2014 pp. 1,18-19

According to Myrna and Rene, there are other couples hired by this motel company that apparently have the same arrangements as they did.

When asked, why they remained in the employer company for almost seventeen months, Myrna and Rene replied that during their first months they were paying off their debts so they needed to stay. They were also hoping that by bearing their difficult situation, their employer would eventually sponsor them to become permanent residents.

A case is being heard in the Fair Work Commission on the alleged illegal termination of Myrna. At the moment, Myrna has received a notice from the Department of Immigration and Border Protection of the department's intention to cancel her visa.

Case 2

Hesable started working as a vehicle exhaust fitter on 11 February 2013 under a 457 visa. By the second week of April, his employer allegedly reduced his salary. Hesable was forced to accept the unjust deal as he did not want to lose his job. After deducting payment of his loans to cover his travel expenses to Australia he was literally left with nothing for his living expenses and for support to his family in the Philippines.

As if this is not enough, he allegedly suffered from a hostile work environment where his employer regularly scolded him and would make demeaning remarks about him.

On 7 May 2013, while cutting a pipe at work, he was accidentally hit on his forehead and abdomen by the blade that he was using. Hesable's employer allegedly just asked if he was okay and gave him band aid and tissue. He was allegedly required to work until the end of the week even if he was in pain.

This alleged bullying and unjust treatment had caused much emotional stress for Hesable and he was diagnosed with depression and anxiety.

As a victim of abuse and concerned with other temporary workers who experience abuse, Hesable opted to speak out and expose his abusive employer. By doing so, he put his future and his family's future at risk.

In addition to the difficulty Hesable has been put into, he is finding it hard to find a job due to his temporary status and with the current Immigration policy on 457 visas. Hesable's visa was cancelled and his case is now being appealed to the Minister of Immigration.

Case 3³⁴

Antonio says he was lured to Australia with the promise of permanent residency. "The promise was staying here for two years will make us a permanent resident and days turned to weeks, weeks turned to months, months turned to years."

What did eventuate for Antonio was a cleaning job at the MCG for allegedly below award wages. He left after just two shifts.

³⁴ Greg Dyett, SBS World News Radio <http://www.sbs.com.au/news/article/2014/09/11/allegations-foreign-worker-exploitation-mcg>

Frederico had a similar experience. In the one shift he did in August last year he was told to go home early meaning he worked only two hours, in violation of the minimum shift required under workplace laws.

"Many people are working tonight that's why we're going to finish this early so we had a two hour job picking up rubbish at night at the MCG and I don't like the idea that's why I don't want to do it anymore."

United Voice has expressed concern that cleaners such as Antonio and Frederico are being subjected to sham contracting arrangements.

ISS is the company contracted to provide cleaning services at the MCG. In a statement it expressed concern about the allegations being made against its sub-contractor, the First Group. ISS said it takes the allegations raised very seriously as it prides itself on being an ethical employer. It says it's contacted the First Group and is working with it to ensure the First Group is adhering to the conditions of its contract.

The Melbourne Cricket Club says if there's evidence contractors are not meeting employment obligations it will take action.

Reyvi Marinas from Migrante Melbourne has stated he first heard of these allegations in 2011. "In the past few years we had been approached by individual students, some of whom are in groups, you know asking about their courses, whether or not that course will qualify them to become a permanent resident so then we finally concluded that the problem is more deeper than that, the issue of underpayment, no benefits at all working as a cleaner here at the MCG."

United Voice has expressed concern that cleaners at the MCG have been paid \$16 an hour less than the award rate, according to Migrante.

Case 4

Five Filipino workers under 457 visas were hired in their nominated occupations, but were not performing their supposed occupations and instead work as labourers and cleaners.

They were made redundant in early May 2013. They had allegedly suffered verbal abuses, swearing, bullying and threats of deportation.

They had allegedly paid exorbitant fees of at least \$12,000 to the labour agent upfront.

Case 5

Tentorio arrived in Australia on 1 December 2011 and reported to work the next day. After just two weeks at work his employer allegedly started maltreating him and eight months later he was told that there was no more work for him and he should go home.

Receiving a text message from his migration agency that his visa was expiring in 28 days, he was distressed. Realising he lost his job, he panicked. He sought advice and help from acquaintances and friends in Australia and was referred to a community organisation which assisted him.

He brought his case of alleged abuse and untimely dismissal from employment to the Ombudsman while looking for a job and has been to “every place where there is a possibility of employment.”

When he left the Philippines for the job, he expected to work for at least four years which is the duration and terms of his contract. To cover the cost of travel, agency fees and other miscellaneous cost, he borrowed money. He has a pregnant spouse and two children.

Western Australian Cases

Case 1

A group migrant workers working as bakers are expected to work over time without being paid penalty rates. They are also asked to deliver supplies and orders to clients after work hours without overtime pay and also use their own transport for deliveries. The bakers were not reimbursed for petrol and the bakers' cars do not get any maintenance support from their employer. The employer promised the workers to nominate them for permanent residency visas after four years so the bakers have put up with their employer's exploitation.

Case 2

Alvin, an electrician, arrived on 457 visa seven years ago. His work contract excluded overtime pay or penalty rates. When Alvin became an Australian citizen two years ago, he approached his boss and asked for penalty rates to apply but his employer refused to grant them. It is alleged that all the migrant workers on 457 visas with the same employer are not paid penalty rates. Alvin reported that the workers are scared to join the union in case of retaliatory action by the employer such as putting off nomination for their permanent residency visa applications.

The same employer also collected airfares of all 457 visa workers systematically as soon as they commenced work. The company administrative officer collected the payments from each 457 visa worker and entered the payment in a journal account. The workers were not given any record or receipts even after the completion of full payment of the airfare.

Case 3

Two groups of 457 visa migrant workers doing the same job and having the same level of skills had been offered two different employment contracts. The Filipino workers and the Irish workers could not understand why the job offers were different. The Irish workers were given a living away from home allowance. A few of the Filipino migrant workers were able to receive a living away from home allowance, but the majority of Filipino workers were denied a living away from home allowance. The union assisted the Filipino workers but the matter has not been resolved with the employer.

Case 4

Fifteen Filipino linesmen from the Philippines were required to sign a work contract stating that participation in union activities is a ground for termination of employment. The matter was taken by the Union and Migrante with the manager of the company. The manager agreed to delete the clause forbidding union activities and gave each one a new copy of the contract.

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