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15 December 2022.

Submissions of the Australasian Meat Industry Employees' Union in relation to *A Migration System For Australia's Future*

Background

1. The Australasian Meat Industry Employees' Union has prepared this paper in relation to the review currently being conducted of Australia's migration system. The review has produced a discussion paper entitled, "*A migration system for Australia's future.*"

2. The AMIEU offers its submissions based upon our experience of the meat industry, and in particular the meat processing industry, which has made extensive use of migrant labour, both skilled and unskilled, since 2004.

3. Rather than deal with specific review questions, the AMIEU submission is directed towards the shortcomings of a reliance upon temporary migration programs to provide solutions to Australia's skilled and labour shortages.

4. The AMIEU considers that the shift from permanent residence to temporary residence visas which occurred under the Howard government, and its continuance by successive governments, has underpinned many of the problems identified by the discussion paper: declining productivity, stagnant wages, and the perpetuation of both labour and skill shortages, as well facilitating the exploitation of migrant workers on a tremendous scale.

5. Eighteen years of access to temporary migrant labour has failed to provide any solution for the problem of attracting and retaining labour in the meat industry. Indeed, the prevalence of temporary migrant labour has entrenched a dependence upon foreign labour, exacerbating the industry's problems and indeed, the current shortage of labour (both skilled and unskilled) is perhaps the worst it has ever been.

Foreign Labour and the Meat Industry in Australia.

6. There has been a significant influx of foreign labour into the meat industry since 2004. Meat industry employers have, invariably, sought to justify the need for foreign labour in terms of a supposed "labour shortage" occasioned by a "mining and energy boom" in Australia. While the mining boom certainly produced short-term labour shortages in some specific areas where the meat industry operated, the meat processing industry's current obsession with access to foreign labour is more complex.

7. The AMIEU has little doubt that the generation of the industry's interest in overseas labour was associated with a conscious attempt by industry to emulate the success of meat and poultry processors in the United States in using foreign, non-English speaking migrants as a means of suppressing wage growth, union organisation, and collective bargaining in their industries. This was achieved by deliberately recruiting workforces from migrant populations that were vulnerable to exploitation.

8. In the United States, the vulnerability of migrant populations was essentially a consequence of their visa status – a very high proportion of the workers employed had either entered the US illegally, or remained illegally after their visa expired.

Skilled Foreign Labour – the subclass 457 Visa program

9. In Australia, the vulnerability of skilled migrants entering under the 457 visa program was also to be due to visa status. The right of these migrant workers to work in Australia depended upon sponsorship from employers. Application for permanent residence status, likewise, depended upon employer sponsorship. Migrant workers were plainly aware that they could be sent home at the employer's whim.

10. The first influx of skilled meatworkers under the subclass 457 visa program beset by a range of problems – both legal and industrial.

11. Firstly, it soon became evident there had been widespread misuse of the immigration system and that many meatworkers who had been issued visas were not entitled to them. The then Minister for Immigration temporarily suspended the meat industry's access to foreign labour (ironically giving a competitive advantage to those employers who had been

caught rorting the system and who already had migrant workers in the country) until a meat industry Labour Agreement had been negotiated.

12. Even from the earliest days, foreign workers entering under the Subclass 457 visa system were being subjected to exploitative arrangements. Employees under the visa had to meet a "minimum salary level" which was quantified in terms of an annual amount. Those employers in the meat industry who had sponsored subclass 457 visa workers realised that the wages paid at their establishments were unlikely to reach the minimum salary level over a twelve-month period. However, the visa regulations contained no requirement that the minimum salary level had to be earned by employees during their ordinary hours. As a result, in many establishments, any available overtime was allocated to 457 visa workers, so that these penalty payments could be counted towards the required minimum earnings. This discriminatory practice, engaged in on the pretext that employers had to allow migrant workers to earn the minimum salary level, had the effect of preventing Australian workers from opportunities to perform overtime, and created understandable resentment from local workers.

13. Equally, when a processing establishment suffers a reduction in production levels (whether due to market conditions, problems with availability of livestock), it would need to reduce the size of the skilled boning and slaughtering gangs. Often establishments make such reductions based on seniority / length of service provisions. However, employers would cite their sponsorship obligation to only employ foreign workers in particular occupations as a reason they could not downgrade these workers to less skilled roles. The result was that Australian workers found themselves displaced from skilled roles.

14. Migrant workers were also vulnerable to severe financial hardship during periods of seasonal closure or stand downs due to lack of available livestock. Their visa work rights prevented them from being employed by anyone other than their employer sponsor, unlike Australian workers who could seek to secure alternative employment.

15. Moreover, the widespread misrepresentation of the actual skill classifications of meatworkers arriving under 457 visas meant that – under the existing rules – most of the meatworkers had neither the requisite skills nor the required language proficiency to qualify for permanent residency.

The Meat Industry Labour Agreement (MILA)

16. The AMIEU was involved in the negotiations of the first Meat Industry Labour Agreement, (MILA) which occurred during the final months of the Howard government. The AMIEU was also central to the renegotiations of the MILA which occurred during the life of the Rudd Government, which identified and corrected a number of shortcomings that became apparent from the practical implementation of the first MILA.

17. The revised MILA provided an eased pathway to permanent residence for those migrants who were already onshore in Australia, and closed a number of loopholes that either exposed migrant workers to exploitative practices or possible financial hardship.

18. As "Skilled Meat Workers" transitioned to permanent residence, meat processors began to complain that many foreign workers left the meat industry in search of other employment once permanent residency had been obtained. One might have thought that industry operators with any form of insight might have begun to question what it was about their industry that made them incapable of retaining their migrant labour. Instead, the response of at least some operators was to push for changes to the Meat Industry Labour Agreement so that skilled migrants who obtained permanent residence remained "bonded" to their former sponsors for a number of years.

19. The Department of Immigration had no appetite whatsoever for such a proposal, but the fact that some industry employers pushed for such changes is really a damning admission on their part. The problem is not simply one of inadequate numbers of workers, but obviously involves features of the industry itself. To the extent that the industry focusses solely on securing access to increasing numbers of migrant workers, the industry only guarantees that a solution will never be found.

Skilled Migration System and the Impact on Skill Shortage

20. Unsurprisingly, the influx of skilled, subclass 457 meatworkers did little to alleviate the problem. This is because the industry was suffering largely from a shortage of <u>un</u>skilled labour, rather than skilled labour. There were some rare, localised exceptions. Skilled meat processing roles (boners, slicers, slaughterers) have traditionally been filled by selecting workers from the pool of unskilled labour poor and training them up. The industry was

intent on foreign labour for its own reasons (e.g. wage suppression) but realistic options for temporary migration of unskilled labour did not exist at the time (2004).

21. Prior to the influx of skilled labour, workers in the unskilled roles were not being trained, because it would create vacancies in the unskilled labour pool that the processors could not backfill. With skilled foreign labour coming in, the skilled roles went to migrant workers, reducing the opportunity for advancement to skilled roles.

The "Working Holiday" visas and unskilled labour

22. This "skill shortage" situation was in fact exacerbated when the meat processing industry identified sources of foreign labour for their unskilled roles. The expansion of the Subclass 418 "Backpacker" visa to countries such as South Korea, Taiwan, and Hong Kong, enabled the industry access to an ongoing cycle of unskilled temporary workers from non-English speaking backgrounds. Lack of regulation of the visa class meant that these workers could be employed by labour hire companies at Award rates that undermined collective bargaining outcomes in the industry – and this was the best-case scenario! More commonly, sham contracting arrangements or labour hire operations operated on a business model which depended for its profitability on undercutting competitors by unlawfully underpaying workers.

23. Furthermore, industry preference for foreign labour is well understood in the regional communities in which the meat industry operates. Over time, local applicants for employment become discouraged from applying for work in the industry, recognising it as a futile exercise.

24. The extent of the exploitation is well documented in a range of sources, including:

    a. The Report of the Fair Work Ombudsman into the practices of the Baiada Group: https://www.fairwork.gov.au/sites/default/files/migration/763/baiada-report.pdf

    b. The report of the Australian Senate Education and Employment References Committee inquiry into temporary work visas, entitled *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, published 17 March 2016: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

c. The Report of the Migrant Workers' Taskforce, 7 March 2019: https://www.dewr.gov.au/migrant-workers-taskforce/resources/report-migrant-workers-taskforce

25. Despite the abundance of evidence, the Commonwealth legislative response has been inadequate. Faced with such inaction, some State governments took measures to regulate the licensing of labour hire companies. Such developments were welcome, particularly in Queensland where an energetic inspectorate had the will to enforce the regulatory regime. However, these measures have not eliminated even all forms of illicit exploitation, much less the fundamental problems of labour hire: circumventing collective bargaining outcomes to allow migrant workers to receive lower pay than Australians performing the same work.

26. None of the forgoing should even be surprising, given the extent of international literature on the subject. Such literature is not new, but relatively recent examples include:

a. The experience of migrant workers in the "meatpacking industry" and poultry industry in the United States is analogous to that in Australia. In the United States, the vulnerability of migrant populations stems not from temporary visa status, but from the undocumented or unlawful status of the migrant workforce. Worker agitation around substandard working conditions is met not with cancellation of visas but with workers being reported to immigration authorities. The literature on the US experience is extensive, but see, for example, the Human Rights Watch Report, *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants* at https://www.hrw.org/reports/2005/usa0105/index.htm

b. The exploitation of so-called "guestworkers" in the European Union has been the subject of several studies by the European Union Fundamental Rights Agency, the most recent of which is *Protecting migrant workers from exploitation in the EU: workers' perspectives* in June 2019, which can be accessed here: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf

c. Human Rights Watch produced a study on the appalling treatment of domestic workers in the Middle East and elsewhere, noting, amongst other factors, the

vulnerability to exploitation created by the visa sponsorship system tying a worker's visa status to an individual employer. The 2010 report, *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East,* can be accessed here: https://www.hrw.org/report/2010/04/27/slow-reform/protection-migrant-domestic-workers-asia-and-middle-east

27. The AMIEU points out that the exploitative features of temporary migrant visa schemes are not only well-documented, but surely notorious. Given the extensive literature on the topic, it is difficult to escape the conclusion that when a government decides to introduces a system of temporary visas for unskilled or semi-skilled foreign workers, it has done so precisely because such schemes produce the opportunity to exploit workers and circumvent labour standards.

Pacific Labour Scheme / Pacific Australia Labour Mobility Scheme

28. The coronavirus pandemic and subsequent border closures put an end to international travel and disrupted use of the working holiday visa. Most of these visa workers travelled home. The created a labour problem for the meat industry, during which the industry turned to yet another temporary migrant solution in the form of Pacific Island workers.

29. Again, vulnerability to exploitation under this scheme was facilitated by individual visa sponsorship, allowing labour hire companies to employ visa workers (something not permitted under the Meat Industry Labour Agreement, for instance), allowing workers to amass significant debts which had to be repaid to their employer, and a failure to provide adequate information about their workplace rights or even their working conditions. As was commonplace with earlier migrant contingents, many Pacific Island workers have reported to the AMIEU that they had been threatened with being sent home if they joined a union.

30. As an aside, to the extent that the PALM scheme for Pacific Island workers is intended to improve relations with Pacific neighbours, or to create a favourable impression of Australia, it is unlikely to be successful while the majority of long-term PALM workers find themselves in the meat processing industry. Pacific Island workers are – not everywhere, but in most establishments - receiving lower wages than Australian workers, performing the same or similar work. Labour hire arrangements permit such discrimination, but lawful or not, Pacific Island workers are very conscious of such "second class" treatment.

Recommendations of the AMIEU

31. Temporary migration, whether for skilled or semi-skilled labour creates opportunities for exploitation. The experience of the meat industry in Australia, over the last eighteen years, demonstrates that wherever the opportunity for exploitation of migrant workers exists, it will be taken up. Temporary migration should be abandoned in favour of a reversion to permanent migration. Permanent visas requiring regional settlement or work in a particular industry (rather than a particular employer) should replace existing temporary migration arrangements.

32. Visa sponsorship which bonds a visa holder to a particular employer facilitates exploitation. Foreign workers on temporary visas should be allowed to "vote with their feet" to move between approved employers in a particular industry. If the reason an employer is unable to attract and retain workers is not because of a shortage of labour but because the employer is not prepared to offer the market rates of remuneration necessary to do so, then it should not be the task of Australia's immigration system to supply them with a bonded workforce.

33. The foregoing paragraph also identifies a serious problem with the current requirements of "labour market testing" for employers. At present, employers only have to demonstrate they have advertised a position to which they have not received adequate response. However, this only demonstrates that the employer has not been able to attract local workers; it does not establish that there are no local workers to attract. The current system of labour market testing thus becomes a vehicle by which employers can secure a workforce at levels of remuneration they are prepared to pay, rather than the rate required to attract local labour. Allowing a system of temporary worker migration to function in this manner creates or maintains the very problems that it meant to cure. Again, this should not be the function of the Australian immigration system.

34. Insofar as the Australian economy needs an influx of additional workers, the AMIEU considers the country would be best served by allowing permanent migration of workers, requiring them to live in areas experiencing labour shortage, and allowing local industry to compete for that labour.

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