

## ASIA-PACIFIC LABOUR MOBILITY AND THE TWO TRACK LABOUR MARKET

### John Sutton

*John Sutton is National Secretary of the Construction Forestry Mining Energy Union (CFMEU). The following opinion piece is a revised version of his address to the Catalyst Seminar held in Sydney, 6 May 2008, by Catalyst Australia, a new labour movement think-tank. Here he presents evidence showing that the current (allegedly skilled) temporary migration scheme under the 457 visa is often abused and voices serious concerns about extending temporary labour migration to workers openly acknowledged to be low skilled. His address was delivered before the Rudd Government announced its record increase in the permanent migration program and before it floated the idea of importing unskilled guest workers from the Asia/Pacific region.*

I would like to thank Catalyst Australia for the opportunity to speak today. Catalyst is a new forum for progressive ideas in Australia in a new political environment. I'm sure today's event will be the first of many to tackle timely and challenging policy debates. It's fitting that the question of temporary migration forms the basis for Catalyst's first forum. The new Minister for Immigration, Chris Evans, has announced a review of the 457 temporary skilled migration visa scheme and the CFMEU welcomes the inquiry headed by Australian Industrial Relations Commissioner Barbara Deegan. As well, momentum is building behind a proposal for a new scheme to bring in unskilled labour from the Pacific Islands—indeed the new Labor Government's 2020 Summit called for the even broader approach of so-called 'Asia/Pacific labour mobility'.

Migration, particularly temporary migration for work purposes, is firmly on the political agenda so today will provide a useful opportunity to look in detail at the issues and engage in productive debate. We're not all going to agree. We will have different ideas but there is a stark contrast in this forum in May 2008 to previous times. Under the last government, there was no debate, let alone debate where all points of view were heard. It's also heartening that the Rudd Labor Government has heard the

public voices highlighting the serious shortcomings of the current 457 visa scheme.

### THE 457 VISA: THE HARSH REALITY

The first test of any system regulating work—in this case work and migration—should be the safety of workers and their right to return home uninjured. In mid-2007 I became aware of the stories of three guest workers, men brought in on 457 visas, who were killed at work—details were scarce because the Howard Government wouldn't release information. However, with the CFMEU's encouragement, the *Sydney Morning Herald* undertook a special investigation. The *Herald's* investigation detailed the conditions under which these men lived and how they died. One of the men, Guo Jian Dong, worked mostly alone in the Cyprus pine forests of central Queensland. The living conditions of this worker were harsh—he lived in a tiny shack with other temporary migrants. The day he died, Mr Guo was sent out into the forest to work alone on work he was not qualified to do and which was not the basis of the 457 sponsorship visa. He died an agonising death trapped under a fallen tree and his body was only discovered many hours later.<sup>1</sup>

Mr Guo was from China. He left behind

a bereaved wife and a baby daughter he had never met. He had come to Australia to provide his family with a better life. Two Filipino workers, Pedro Balading and Wilfredo Navales, died at work around the same time—our union expects charges to be laid in the case of at least one of these fatalities soon. All those three men entered the country under the 457 skilled migration visa.

Proper safety protections are one of many aspects of the 457 visa scheme never adequately addressed by the last government. In the construction industry, on average, one worker dies every week. This is alarming and unacceptable. But the situation is even worse for workers on 457 visas. Respected researcher Bob Kinnaird has produced interesting data showing that 457 visa workers are almost twice as likely to die at work as the national average. There are 3.0 workplace deaths per 100,000 workers per annum nationally. But last year the three workplace deaths of 457 visa workers took place in a total 457 workforce of just on 52,000. That rate is almost double that of local workers, equivalent to 5.8 deaths per 100,000 workers.

### **ABUSES HAVE OCCURRED AND CONTINUE**

Let me turn to another case study of abuse. Mohammed Nayeem is a 457 worker from India and now a proud member of the CFMEU. His former employer made him work 50 hours a week with no overtime. He was forced to sleep in a converted office off a workshop with five other 457 workers. For this privilege his employer deducted \$100 per week from each of their wages. When Mohammed asked for his overtime pay he was sacked and told: 'I will break your legs and send you back to India'.<sup>2</sup> He was then given 15 minutes to get his things. Mohammed bravely told his story to the Sydney press even though he faced deportation. Unlike many, this story

had a happy ending—our union found him a new employer and he now continues to work in Australia.

In response to these cases and many others last year our union called for a full public inquiry into the 457 scheme. The then Minister, Kevin Andrews, refused. Under the new Rudd Labor Government there is now to be a review of the 457 visa program by Barbara Deegan. The Commissioner will have her work cut out. The abuses I've outlined are the tip of the iceberg. That's because, where migration status is contingent on the goodwill of the employer, the potential for exploitation is an ever present, inherent problem.

Another inherent problem relates to pay rates. Many guest workers—especially in the trades—are paid only at the Minimum Salary Level (MSL), which in most instances is well below market rates of pay. (The MSL is only \$41,850 per year for most occupations, and \$57,300 in ICT positions, with a 10 per cent discount permitted for employers in regional areas.) Thus there is a substantial economic incentive for employers to engage these temporary migrant workers. And when you understand that the worker's ability to stay in the country—and to one day gain permanent residency—depends entirely upon the sponsoring employer maintaining the sponsorship you get the picture of why these guest workers will put up with almost any hardship or abuse.

Some have attempted to argue that, 457 visa workers are paid more than local workers. I've even seen one report earlier this year claiming that temporary migrant workers earn on average \$15,000 a year more than their Australian counterparts. This average masks the experience of the workers at the trade and sub-trade level.

Consider this. Many 457 visa workers are in highly paid professions, doctors in the health industry, engineers and project managers in construction. This skews the

overall average up. But many more are not in professional positions and the like. Most industries are of course a mix of lower skilled workers and the highly skilled. The last few years have seen a massive growth in 457 workers in the trades and sub-trade level.

In contrast to the misleading \$15,000 figure, according to the Department of Immigration's own data, the average base salary approved for a tradesperson on a 457 visa (Australian Standard of Classification of Occupations Level 4) in 2006–07 was \$49,200.<sup>3</sup> Many 457 visa holders in this category used to work excessive hours even to get to this substandard wage, before the last government eventually regulated that the salary was for 38 hours per week. You simply don't get local tradespersons to work at that rate. It is clear that the economic reality of the MSL arrangement denies many temporary workers wage justice while also undermining local wage standards set by unions through collective agreement negotiations.

If you need a living breathing example of this, consider the impact of 457 visa arrangements in the meat industry,<sup>4</sup> or the protest marches of local building workers in Darwin over the last 12 months who have seen their pay rates slashed by employers importing cheap 457 workers.<sup>5</sup>

An apparent problem with the 457 arrangements relates to 'labour market testing'—advertising the job openly and giving Australians the opportunity to compete first—a process which has been abandoned. This is combined with the 'light touch' regulatory approach of the Department which is supposed to grant these visas only to employers with a 'demonstrated training record' regarding the training of local apprentices and trainees.

The relaxation of both of these regulatory measures has been a boon to the worst kind of employers—at the expense

of those employers and contractors who do take their responsibility to their industry and society seriously.

### **TEMPORARY MIGRATION—A STRUCTURAL DISADVANTAGE**

This issue of having temporary migrant status as compared to permanent migrant status is the key difference with these special migrants whom we know as guest workers. There have always been problems with traditional migrants, be it in Australia or elsewhere, receiving fair treatment and not being discriminated against. Yet these problems pale into insignificance when you consider the circumstances of the guest worker.

These workers are the ultimate contingent workers. Their right to stay in the country is dependent on their employer—in the case of the 457 worker the employer is the 'sponsor'. The problem is clearly a structural one—it's in the design of the visa scheme. Indeed, we argue that problems are likely to compound so long as we favour temporary migration over permanent migration.

This has been the big change in migration policy in this country over the last ten years, ushered in by the Roach Inquiry in 1996 and the subsequent actions of the Howard Government. Temporary migrants with work rights now exceed the numbers under the permanent migration program and this trend is only likely to continue unless policymakers take stock.

For the Australian labour market, and for those who look to maintain first-world standards in wages, conditions and safety, this is no light matter.

Permanent migrants have the same rights as Australians in every respect. By contrast guest workers are always 28 days from a notice by the Department of Immigration that their employer has terminated their sponsorship and that they must leave the country unless they quickly

find another sponsor.

As long as the worker does not have freedom of movement, that is the freedom to stay in the country that a permanent migrant has, then the room for abuse and exploitation of these workers is apparent.

The guest worker is in an inferior position in other ways too. They do not get the full suite of rights that a permanent migrant has in relation to social security rights, health care and so on.

### **THE NEO-LIBERAL AGENDA**

At the global level we see that one of the key economic institutions involved in spreading the neo-liberal economic model, namely the World Bank, is strongly advocating the spread of these guest worker arrangements. Similarly, we see the countries with vast pools of abundant, low-skilled workers agitating through Free Trade Agreements to place their workers overseas to obtain remittances.

While one can understand the point of view of the Philippines and Bangladesh—or increasingly the emerging giants of China and India—this does not mean that Australia should rush toward the two-track labour market model without fully understanding the consequences.

At a time when there are some skill shortages in Australia (though they are by no means uniform across the nation), our best way forward is through learning the lessons of our past. There is a tried and true nation-building formula that has stood us in good stead and we need to return to it—it's called training our own people (particularly our youth) and committing to a strong permanent migration program.

### **LOWER SKILLED WORKERS AND THE NEW ZEALAND MODEL**

The labour market dynamic is not just influenced by the 457 visa. Though this intention is often flouted, the 457 visa is meant to bring in workers with high skills.

Other visas, however, openly bring in low-skilled workers. More than 135,000 Working Holiday Maker visas were issued in 2006–2007, together with more than 200,000 student visas (students can work up to 20 hours per week, more during vacations). And a new visa, the Graduate Skills Working Visa, allowing graduates to stay and work for 18 months in skilled or lower skilled jobs, has come into operation over the last year. Further, the new Minister has recently announced longer stays for working holiday makers who work in rural and regional areas including on construction projects.

It is in this context that the proposal to bring in lower skilled temporary workers from the Pacific Islands should be viewed. This push embraces a key big business demand that has the potential ultimately to devastate our labour market and open up major social divisions.

This push for the free movement of labour from the Asia/Pacific into Australia is a major plank in the agenda of the economic rationalists whose policies support and are funded by big corporate interests. These are the same people who have given us 'flexibility', 'deregulation', 'privatisation', 'strong regulation of trade unions' and, more recently, the failed WorkChoices policy.

The proposed open-door policy for guest workers from the Asia/Pacific is qualified by some who support it; they insist that the new wave of guest workers should be paid according to Australian standards. But this stipulation is not new—Australian labour laws have been meant to apply to and protect the 457 visa workers. But these workers have been found time and again over the last five years to be underpaid, exploited and then deported if they advocate for their rights.

Under the New Zealand model, widely seen as the framework for an Australian plan, there have already been a number of

disputes between employers and workers. In one case, in the Bay of Plenty, temporary workers have stopped work because their rates of pay are so low. There are already problems even though the program has been in operation since only April last year. Temporary workers under the New Zealand scheme are supposed to be paid at 'market rates' but the New Zealand Council of Trade Unions informs us that many are paid at the minimum wage or just above.

Make no mistake, the large movement of guest workers from the Asia/Pacific into our small labour market would have profound effects on the ability of governments or unions to uphold standards. It is no exaggeration to warn that an open-door approach could lead to the Mexicanisation of our job market where lower skilled jobs would be performed almost exclusively by guest workers and high skill/professional jobs would be the territory where Australian citizens predominate.

This approach to the labour market is seen to be a two-track or two-tier model where the outsiders perform the hard, unpleasant, arduous work at low pay and the locals work in higher paid jobs further up the skill spectrum.

This two-track model is playing itself out in the world at the moment in various locations, including Western Europe and the Middle East. Most particularly, the Gulf States provide an example of what we should not do.

## **THE UNITED ARAB EMIRATES EXPERIENCE**

Let me give you some detail regarding the situation of migrant workers in one of the gulf states, the United Arab Emirates (UAE), as it represents the worst case scenario for temporary migrants.

The use of temporary labour is booming there. An incredible 25 per cent of the world's construction activity is centred in

that one small country. Millions of guest workers have been brought in. A recent article in the *Sydney Morning Herald* detailed the conditions of migrant workers in the Dubai emirate. Sonapure (a Dubai slum) is described in these terms:

It is a Middle Eastern Soweto, where as many as 500,000 foreign labourers, mostly illiterates from impoverished rural villages of the sub-continent, who build Dubai are housed in some of the most depressing conditions I've seen.<sup>6</sup>

This town does not even appear on official maps so keen are the UAE authorities to ignore the issue.

A recent report by Human Rights Watch (HRW) 'Building Towers, Cheating Workers' details the misery endemic in this workforce.<sup>7</sup>

Average per capita income in the UAE is US\$2,106 per month. The average wage for migrant construction workers is US\$175 per month. Routinely workers have their passports taken from them by their employer and their first two months wages withheld to ensure they do not quit.

Many of these workers are illegally charged between 1,000 and 3,000 US dollars for the privilege of working in slave-like conditions by recruitment agencies in their home country. So they start in debt, go into arrears and the interest mounts.

Unionisation in the UAE is illegal. There are approximately 240,000 businesses employing temporary migrant workers, with 140 government inspectors to police their conditions.

Following the HRW report Al Jazeera produced a television special 'Blood Sweat and Tears' in August last year. They found that, in the UAE in 2006, 109 Indian labourers committed suicide.<sup>8</sup>

The UAE media do give some coverage to these issues from time to time. In 2004 some outlets reported that tuberculosis had made a comeback amongst migrant construction workers. Last year it was

reported that an injured Pakistani worker was denied medical attention by two private hospitals. By the time he was taken (by taxi) to a public hospital he was dead.

Sporadic illegal strikes do break out, often because the burning 50 degree heat is just too much and workers are at great risk of death through heart failure.

Such is life and death for construction guest workers in the UAE.

## CONCLUSION

So where to from here? I hope that Commissioner Barbara Deegan focuses on the following key concerns about the operation of the current 457 visa regime including:

- the MSL versus market rates of pay issue, that is, finding a way to ensure that employers do not undercut Australian market rates of pay and conditions when they sponsor temporary migrant workers
  - the issue of labour market testing, that is, requiring employers to advertise the job openly and to give first opportunity to Australians, before they can access foreign workers
  - specifying the test for a 'demonstrated training record' that employers must show, before they are approved as 457 sponsors
  - showing how mistreated workers can come forward without facing deportation
  - establishing a tough supervisory regime including union input
  - instituting transparency regarding employers' sponsorship applications
- facilitating stakeholder (including union) input into sponsorship decisions by the Department of Immigration and Citizenship.

In the short term I hope that the Rudd Labor Government legislates the *Migrant Amendment (Sponsorship Obligations) Bill* which the Howard Government introduced but failed to proceed with in the face of heavy employer pressure. This legislation contains a number of useful elements that provide some increased rights for the temporary workers together with greater regulation and penalties in relation to recalcitrant migration agents and sponsors.

In the longer term I hope the Rudd Government:

- places the primary emphasis regarding labour force supply on training Australians
- restores our permanent migration program to become the primary migration vehicle
- accepts that temporary work migration schemes should only have a short-term niche role under a strong regulatory framework
- accepts that our responsibility to our Pacific neighbours rests primarily in lifting our economic aid, particularly to develop sustainable industry models rather than locking these societies into an unstable dependency on migrant remittances
- opens its eyes to the moral bankruptcy of poaching the best and brightest skilled workers from the developing nations rather than training our own.

## References

- <sup>1</sup> M. Moore, 'A lonely death among the pines', *The Sydney Morning Herald*, 29 August 2007, p. 8
- <sup>2</sup> See M. Moore and M. Knox, 'Philippines calls for halt to abuse of guest workers', *The Sydney Morning Herald*, 29 August 2007, p. 1.
- <sup>3</sup> Report of the Joint Standing Committee on Migration, September 2007
- <sup>4</sup> See for example Heather Ewart, 'Meat industry accused of exploiting foreign workers', *The 7:30 Report*, broadcast 31 July 2007, transcript at <<http://www.abc.net.au/7.30/content/2006/s1702021.htm>>, accessed 23/5/08.
- <sup>5</sup> See media release, Darwin visa scams worst in Australia, CFMEU <[http://www.cfmeu.asn.au/construction/press/nat/20070224\\_457Darwin.html](http://www.cfmeu.asn.au/construction/press/nat/20070224_457Darwin.html)>.
- <sup>6</sup> E. Ellis, 'Economy soars on back of poor', *The Sydney Morning Herald*, February 10 2008 <<http://business.smh.com.au/economy-soars-on-back-of-poor-20080210-1rep.html?page=fullpage#>>
- <sup>7</sup> Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates, *Human Rights Watch*, November 2006 <<http://www.hrw.org/reports/2006/uae1106/>>
- <sup>8</sup> See program notes at <<http://english.aljazeera.net/NR/exeres/E5FD9F11-0CC1-4596-8F4D-320DE62E6148.htm>>.