

NURSING MIGRATION: ISSUES OF EQUITY AND BALANCE

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The author is the senior federal industrial officer of the Australian Nursing Federation. In this article he examines aspects of the experiences of migrant nurses—both permanent and temporary—in Australia. He also considers the impact of Australia's recruitment drive on the health-care services of less-developed sending countries.

'Health workers have a clear human right to emigrate in search of a better life. Yet people in source countries hard hit by the exodus of health workers also have a right to health in their own countries',

Mary Robinson former UN High Commissioner for Human Rights.

A wealth of culture and knowledge travels on the backs of international workers, and nurses are no exception. Australia benefits in a myriad of ways when the workforce is propped up by immigration. However there are a number of issues that must be addressed regarding both the rights of the international workers once they arrive and also our responsibility to the people in the countries they have left behind.

The international recruitment of nurses stands in the nexus between an individual's rights to maximise their personal potential and professional outcomes, and the developed world's responsibilities as part of a global community. If the developed world is to accept its responsibilities, it will need to find a way to both recruit from the developing world and replace the human resources it is taking.

Since early 2000 the Australian Nursing Federation (ANF) has increasingly been involved in issues around the permanent and temporary migration of nurses. Our union has generally favoured permanent migration and, where this was not possible, ethical recruitment and fair treatment of nurses working in Australia on a temporary basis.

The ANF has always supported the movement of nurses around the globe to gain further training and different clinical experiences. Health care has a strong tradition of international collaboration.

There is also clear merit in international exchange and diversity, as well as the economic benefit of remittances and transfers in technologies.

We, at the ANF, recognise that in many cases the motivation of nurses to work in other countries is linked to increased and improved employment opportunities: higher salaries, better working conditions and enhanced capacity for career advancement. And, increasingly, an important deciding factor is the opportunity for them and their families to work and live in a safer and more economically prosperous environment as permanent residents.

In the past our approach has been insular and limited with nearly all of our attention and efforts going to ensuring that once nurses arrive to work in Australia they are fairly treated. This has included a focus upon specific immigration rules relating to their recruitment and the mainstream industrial relations (IR) system's treatment of these nurses. There is a growing awareness in our union and the labour movement generally that we cannot ignore the fact that our domestic actions have international ramifications.

This paper looks at some of my union's experiences of the treatment of temporary and permanent migrant nurses in Australia. It also examines the impact of offshore recruitment, particularly in our region.

BACKGROUND

There is an international shortage of nurses and other health professionals with many developed countries, including Australia, scanning the globe for potential employees. It is estimated that at present there is a shortage of around 25,000 nurses and midwives in Australia although it is interesting to note that, in 2007, around 27,500 local nurses remained registered but were not employed in the nursing workforce.¹

To address this unmet demand Australian employers aggressively recruit permanent and temporary nursing labour from around the globe, in particular from the UK, China and other parts of Asia, Africa and within the Pacific region.

In 2008–2009, 3,850 registered nurses were granted 457 temporary worker visas² and 3,355 permanent visas were granted to registered nurses through Australia's skilled permanent migration program.³

Australia has a very active temporary skilled migration program, granting 50,660 457 visas to applicants and their families in 2008–2009.⁴ It is interesting to note that this scheme is demand-driven and uncapped, with employers principally deciding who and how many people they wish to bring into the country and employ.

It does remind one of that infamous statement: 'We will decide who comes to this country and the circumstances in which they come'!

In the current program year (2009–2010) registered nurses made up eight per cent of the 457 visa program for temporary skilled migrants (TSMs), the highest single occupation in the program.⁵ Registered nurses can also arrive holding other temporary visa classes including the 456 and 442 visa.

TSM nurses are employed across all sectors of health; the largest employer is the NSW public hospitals sector followed by residential aged care. Nearly 70 per cent of 457 nurses become permanent

residents⁶ and most nurses remain on their initial 457 visa for less than 12 months after their arrival.

Under current industrial legislation all workers in Australia, including temporary visa holders, are entitled to the full protection of Australia's IR system. However, many factors inhibit a temporary worker's ability to access this protection, including reliance upon the employer for their temporary visa and sponsorship for a permanent visa, language barriers and cultural issues in relation to seeking help from unions and government IR protection.

My own involvement in temporary migration started in early 2007 when I was contacted by a television journalist investigating a story about a number of Chinese nurses stranded in the Northern Territory. It appears that an immigration agent based in China had recruited 21 Chinese nurses to come to Australia on a temporary training visa, promising work for them in the residential aged care sector. It is understood that the agent advised the nurses that after undertaking a three-month English language program they would be provided with jobs as nurses in aged care and would also become eligible for a 457 visa.

Each nurse entered into a contract and paid an initial A\$12,000 for training fees, agent fees and other expenses.

In early 2006, the nurses flew from China to Tennant Creek in the Northern Territory and undertook English language training conducted by a local company. We do not know much about this company except that the people who ran the course couldn't speak any Chinese. Not surprisingly, very few passed the course and none were offered jobs or were able to get a 457 visa.

It was around this time that their original visas, which we understand were the Occupational Trainee visa subclass 442, expired and the migration agent subsequently organised three-month tourist visas. The

nurses were told by the migration agent that there was employment available in a nursing home in Adelaide. A couple of nurses took up the offer and moved to Adelaide at their own cost, where they found that there was no job, just another training centre with a A\$7,000 fee attached. Other nurses were offered employment by a migration agent in Perth which turned out to be the same deal; more training and costs but no job.

After this about half the nurses returned to China and around 10 remained in Tennant Creek. They had no job, no money, visas which were soon to expire and many were unable to pay for their flight home. A number of businesses in Tennant Creek ran raffles and other fund-raising activities in order to buy their return air tickets and, in the meantime, the nurses were housed and fed by the generosity of people of Tennant Creek.

For the nurses, this experience was incredibly traumatic and shameful—not to mention expensive.

Regrettably the program was never aired principally, because the nurses were afraid and distrustful of the media and trade unions.

Many international nurses who are successful in obtaining work are regularly subject to exploitation and intimidation. I recall speaking to a very senior and experienced nurse from Zimbabwe in late 2006 who had secured a job as the senior clinician in an aged care facility in Melbourne.

She flew from Harare to Melbourne via Sydney. When she arrived in Sydney with her four children she was met by a company envoy who presented her with an Australian Workplace Agreement on a take-it-or-leave-it basis. The company told her that if she declined to sign the contract neither she nor her children would be permitted to board the plane to Melbourne. So she signed on the dotted line and proceeded to take up the position. However her experi-

ence working here as a nurse was so poor that she told me she regretted ever leaving her home. She said she was treated better and had more rights in Zimbabwe than she did in Australia. There are many other similar cases of nurses being forced to accept inferior contracts and being denied any form of representation or support.

In 2007 one of the most blatant examples of exploitation involved a group of nurses from India and Nigeria here on 442 visas and employed as patient care assistants (PCAs). They were told by their employer that they must pay for their training and would also be subject to unpaid mandatory 'clinical experience' in order to complete the training. The education was delivered by the Director of Nursing in her own house—and was subject to no scrutiny or standards. The PCAs were also required to do 260 hours of unpaid work before they were considered qualified for a position that actually has no qualification requirements in Australia. The so-called clinical experience was not supervised, often exceeded safe working hours and shift lengths, and was a serious occupational health and safety risk for the nurses and other staff. It also placed patients' lives at risk.

Of course exploitation has not been confined to nurses. In fact, between 2004 and 2008 the 457 temporary migrant work scheme became notorious for the abuse and rip-off of migrant workers. Temporary migrant workers were vulnerable to exploitation because their industrial rights were less than those of local workers and their rights were considerably less than those of Australian citizens and permanent residents. Their ability to continue working in Australia depended almost entirely upon their sponsoring employer. For a temporary worker to step forward and complain meant taking a significant risk, one that could lead to a withdrawal of sponsorship from their employer and thus ultimately to deportation.

Exorbitant deductions from wages for administration costs, educational costs and other costs were commonplace and these monies were often deducted from the workers' pay without their agreement. Unauthorised deductions from an employee's wages has always been illegal but, because of the workers' visa status and the threat of loss of sponsorship, most employers took these monies confident that they would not be challenged.

In the view of our union many employers also used the 457 program to undercut the terms and conditions of employment of Australian workers. It was also an attempt to weaken the role of unions. The rules under which the visas were then granted held that the sponsor must provide a minimum salary. But that salary was below the industrial standard and this encouraged employers to provide only that level of reimbursement.

The industrial system should have prevented this rort. But the employee-driven nature of seeking redress and the disconnect between immigration rules and IR legislation at the time meant that the support was often not acted upon.

Just as significantly, a practice of reclaiming costs and wages, such as renting property to workers at exorbitant rates or demanding that recruitment costs be repaid, was often off the books or slipped between cracks in the protective legislation.

In fact the cynics amongst us could say that, on balance, one could easily conclude that the gross exploitation of 457 workers and the undercutting of the wages and conditions of local workers were deliberate consequences of the temporary migrant workers scheme.

LABOR'S 2008 REFORMS

In early 2008 the Rudd Government somewhat reluctantly announced a review of the 457 scheme and, even more

reluctantly, acted on some of the key recommendations that flowed from the review. But to their credit they did act, by removing differences in salaries and working conditions between local and migrant labour at the workplace, relaxing sponsorship requirements to provide greater freedom of movement to TSMs, removing occupations (those classified as ASCO 5 to 7)⁷ from the 457 list of occupations and other initiatives.

I don't think there can be any debate that these changes are having a positive impact on reducing exploitation and enhancing the working conditions of temporary migrant workers. In particular, the higher skilled workers, with better English, and more ability to move between employers have a stronger (though still weakened) hand in negotiating with employers and the enforcement of their rights.

However, there remain serious deficiencies principally related to the temporary nature of the employment. These stem from reliance on employer sponsorship as well as the absence of any form of labour market testing (LMT), both of which encourage exploitation.

Of particular concern is the complete absence of any form of LMT or any requirement that an employer provide minimal evidence that they have attempted to engage local labour before going offshore. During the Howard years Australia gave commitments in nearly all free trade agreements not to apply any form of LMT to overseas workers in Australia and, in 2005, as part of the WTO Doha Round offer, committed to remove further barriers that may remain in LMT. Under pressure from unions the then Labor opposition agreed to withdraw the DOHA commitment, however it has now made a policy commitment not to do so. As at December 2009 the government was in negotiations to secure a further seven FTAs.

Despite these concerns the changes to

the 457 program, along with the impact of the global economic meltdown and the replacement of the *Workplace Relations Act* with the *Fair Work Act*, have all had a positive impact.

Certainly in nursing this has been the case and, while the numbers of 457 nurses remain high, and this is a concern to us, the anecdotal and objective information we receive is that migrant nurses are increasingly being treated in the same way as local nurses. The further, planned strengthening of registration by the Nursing and Midwifery Board of Australia, and particular the higher English standard, should contribute further to the integration and protection of international nurses.⁸

Now this is not to say that TSM nurses are not suffering exploitation—nursing is an occupation which is low-paid and has poor working conditions. Nurses work long unsocial hours, often without appropriate compensation. It's no picnic being an Australian nurse or a migrant nurse in Australia. This poses a question. Is the protection of international nurses in Australia as a separate group a limited goal? Or should we be looking at the protection of vulnerable workers, of whom international nurses are a subset?

Nurses who arrive as permanent migrants have always enjoyed the same industrial benefits as local workers. However they do experience issues unique to their situation. Many struggle to come to grips with a new working environment and different cultural mores, and often have to work in positions that are of a lower status than those that they experienced in their country of origin. In addition they are sometimes faced with discrimination and bullying from local nurses and other health workers who resist them or simply do not accept them. The ANF is working hard to educate our officials and our members and bring about change where needed.

GLOBAL IMPLICATIONS OF NURSING MIGRATION

Turning to look at the international impact of Australia's recruitment of international nurses, the ANF is becoming increasingly concerned about the impact global recruitment is having on the provision of health services in developing countries; particularly for smaller Pacific island countries in our region.

It is estimated that in 2006 nearly 3500 Pacific island-born nurses were working as nurses in Australia.⁹ These nurses and other health professional are coming from countries that have insufficient numbers of health professionals and many have fallen below, or are in danger of falling below, the WHO minimum density threshold of 2.5 professional health workers per 1000 people. A major reason for this is the scale of permanent migration to Australia and New Zealand.¹⁰

In Fiji nurses are leaving the health system faster than they can be replaced. Around 120 nurses graduate each year but, in the last five years, the numbers of nurses either resigning from the profession or working overseas has exceeded the numbers of graduates.¹¹

There are almost as many Fijian-born doctors working in Australia and New Zealand than there are doctors in Fiji.¹² And there are more nurses and midwives working in Australia and New Zealand who were born in Samoa, Tonga, Fiji and Niue than there are in their domestic workforces.¹³

The exodus of health professionals from their country of birth is having a negative impact on health care in the region. As professor John Buchan of Edinburgh's Queen Margaret University College has noted:

The impact on source countries of nurse migration included understaffing and loss of skills, decreased capacity in health services, increased costs of recruitment and retention, compromises in quality of care and low morale for remaining nurses and patients.¹⁴

This is graphically illustrated when one looks as an example at some of the key health indicators in Papua New Guinea (PNG) in 2006:¹⁵

- 20 per cent of children under one year did not receive the three doses of Triple Antigen vaccine
- 51 per cent of children under one year did not receive a dose of measles vaccine
- 259 people per 1,000 of the population presented to a health facility with malaria. The number of deaths due to malaria was approximately 11 people per 100,000 of the population
- Approximately, 40 per cent of women did not receive any antenatal care
- 60 per cent of women received no skilled supervision at birth
- It is estimated that 34 per cent of PNG health workers may be lost to the workforce due to AIDS by the year 2020.

The PNG health system is at best fragile and can ill afford to lose more people from their meagre health workforce.

Understandably many nurses and other health professionals see access to the Australian labour market as a significant fillip to generating wealth for themselves and their families. However, against this we need to weigh up the potential for long term structural damage to the provision of basic health care when one country denudes another of its workforce.

This presents difficult policy challenges for governments and organisations, including unions, that strive to seek some balance in response to the global movement of labour. We must address the impact this migration has on the source countries as well as on the recipients of the labour.

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- ⁴ <www.immi.gov.au/media/statistics/pdf/457-stats-state-territory-june09.pdf> p. 10
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- ⁶ Information provided by Department of Immigration and Citizenship to the ANF indicates that 67 per cent of registered nurses who arrived in Australia holding a 457 visa in 2005–06 are now permanent residents.
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