

COVID-19 AND THE POLICY-INDUCED VULNERABILITIES OF TEMPORARY MIGRANT WORKERS IN AUSTRALIA

Stephen Clibborn and Chris F. Wright

The COVID-19 crisis has starkly exposed the existing economic vulnerability of temporary migrants in many countries. In Australia, many temporary migrants, who were already at risk of marginalisation due to policies restricting their bargaining power and agency (Wright and Clibborn 2020), have lost their jobs and have minimal financial support due to their exclusion from public welfare.

We argue that the situation confronting temporary migrant workers is a direct consequence of dramatic and deliberate changes in immigration policy since the 1990s. These policy changes were engineered by the Australian state with the professed aim of increasing labour market efficiency, and led to the abandonment of previous policy arrangements that had successfully enabled social and economic inclusion of migrant workers.

The next section examines the shift in Australian immigration selection and control to an exclusive focus on improving the short-term economic contribution of visa policy. The article then analyses how these policies have eroded temporary migrants' rights and channelled temporary migrants into sectors that have poor quality employment practices. It concludes by outlining proposals to avoid marginalising migrants in the future through a greater focus on socially inclusionary measures.

Clibborn, S. and C.F Wright (2020)
**'COVID-19 and the Policy-Induced Vulnerabilities of Temporary Migrant
Workers in Australia'**
Journal of Australian Political Economy
No. 85, pp. 62-70.

Australian immigration policy and the changing definition of ‘national interest’

Nation states tend to select and control immigration in a manner consistent with how they define their ‘national interest’ (Hiebert and Ley 2006). Australia exemplifies this because its relative geographical isolation grants the state a virtually unmatched capacity to control immigration in accordance with its definition of national interest (Salt 2006), which has changed strikingly in recent decades. Prior to 1973 Australian immigration policy prioritised racialised exclusion, as reflected in the White Australia policy. From 1973 to 1996, this shifted to a more multicultural and socially inclusive policy, as seen in replacement of race and nationality as the basis for immigrant selection with a points test in which the family connections of applicants were a priority (Jupp 2007).

Since 1996, the Australian state’s definition of national interest underpinning immigration policy has again shifted dramatically, towards a neoliberal approach aimed at maximising economic returns and labour efficiency for employers. While applicants deemed most likely to contribute to these goals have been permitted entry, those who do not meet these criteria have been deemed ‘unwanted’ and refused entry. Intakes of skilled and student visa holders, which are net beneficial to the Commonwealth budget, have been expanded sizeably. Skilled visa applicants are considered likely to make a net economic contribution by virtue of changes to immigration selection that prioritises young, highly qualified, high-income and English-proficient applicants. Student visa holders contribute significantly through upfront payment of unsubsidised fees. Conversely, types of immigration deemed as generating net fiscal costs – due to applicants’ relatively low labour market participation and/or relatively high welfare support – have been reduced in the case of family immigration, and discouraged by force in the case of asylum seekers (Wright 2014).

A comprehensive shift from immigration policies based almost exclusively on permanent residency to large-scale temporary migration is another way the Australian state has achieved its goal of maximising the economic returns of immigration policy. Unlike permanent residents and citizens, temporary migrants have virtually no access to welfare support and social security, and their rights are constrained. For instance, there are restrictions on temporary skilled and Seasonal Workers Program visa

holders' ability to switch employers. These workers face deportation if they lose their jobs and cannot find another employer sponsor with a narrow timeframe. While some temporary migrants are eligible for permanent residency, various visa changes have curtailed this in recent years (Wright and Clibborn 2020). For example, the temporary skilled visa 'short-term' stream introduced in 2018 provides no pathway to permanent residency. Since 2013 there has been a three-fold increase in the number of people on temporary visas for more than eight years (Sherrell 2019).

Welfare restrictions have contributed to temporary migrant workers' economic insecurity because they have no access to income support if they lose their employment. This can also make temporary migrants more vulnerable to underpayment and other forms of mistreatment because it means they may have limited alternatives to working for unscrupulous employers (Clibborn and Wright 2018).

COVID-19 has intensified these insecurities and exposed the impacts of the Australian state's neoliberal immigration policy. Many migrants are concentrated in sectors affected heavily by the economic shutdown and are excluded from the JobKeeper payment. While the government has told temporary migrants who have lost their jobs to leave, since their economic utility to Australia is deemed to have ceased, international travel restrictions make this option virtually impossible.

The erosion of protections for migrant workers

Prior to 1996, the risks of migrants in Australia being underpaid or mistreated at the workplace were relatively low. Due to the focus of immigration policy on permanent residency and the relatively standardised outcomes produced by the award system, which unions helped to enforce effectively, migrant workers had access to the same wages and conditions as other workers (Quinlan and Lever-Tracy 1990).

Under the post-1996 policy regime, temporary migrants notionally receive minimum award standards, but the challenges of enforcing these standards are considerable. While unions have been weakened by several decades of policy changes, they remain an important determinant of whether legal standards are enforced at the workplace (Hardy and Howe 2009). Union membership is low in industries where temporary migrants are concentrated, such as hospitality, food delivery, retail, horticulture, cleaning and residential construction. This makes temporary migrants

disproportionately reliant upon the Fair Work Ombudsman, which lacks the resources to effectively enforce employer compliance in industries and workplaces where temporary migrants often work (Clibborn 2015).

Studies of temporary migrant workers' experiences with underpayment and wage theft illustrate these enforcement challenges. A survey of 1433 international student visa holders found that 100% of those working part-time as café and restaurant waiters and retail shop assistants were paid below the relevant award minimum rate (Clibborn 2018). Widespread underpayment has also been identified in other occupations and industries where temporary migrants are concentrated (Berg and Farbenblum 2017; Howe *et al.* 2019). The Australian government's preoccupations with maintaining labour market flexibility, the influence of employer groups over policy decisions and weak political incentives to improve employer compliance are factors contributing to widespread underpayment of temporary migrants (Clibborn and Wright 2018).

Poor quality employment practices

Employer association lobbying has been identified as a driver of policy changes enabling the growth of temporary migration in Australia (Wright and Clibborn 2017). These lobbying efforts have been particularly intense among employer associations representing industries with 'labour supply uncertainties' (Campbell 2019: 50), such as hospitality and horticulture. In some cases these labour supply uncertainties are exacerbated by factors beyond employers' control, including geographical distance and seasonal production (Campbell 2019; Howe *et al.* 2019). In other cases, however, labour supply uncertainties are caused by poor job quality – in the form of low pay, insecure working arrangements and/or minimal career development opportunities – which makes it difficult for employers to attract permanent residents. This is illustrated by research of employer sponsorship of temporary skilled visa holders.

Like employer sponsored immigration schemes in other countries (Sumption 2019), the objective of Australia's temporary skilled visa scheme is to address skill shortages, which are typically defined by the qualifications required to perform a job. However, a survey of the motivations of 1602 employers for recruiting temporary skilled migrants identified significant deviation from this objective (Wright and Constantin 2020). A key motivation of sponsorship among employers in certain

industries, especially hospitality, was to recruit temporary workers perceived as more loyal and harder working than other groups of workers. These attributes are likely due to restrictions imposed on temporary skilled migrants' ability to switch employers, which makes them a more attractive source of labour supply for employers seeking a cost or productivity advantage. Only 1% of surveyed employers using the scheme increased wages to address their supply challenges, which is a widely accepted proxy for skill shortages (Campbell 2019; Healy *et al.* 2015). This indicates the skill shortages temporary migrants' employer sponsors seek to address are not acute, if they exist at all. While it was common for employers to attribute their supply uncertainties to the attitudinal deficiencies of local workers, these challenges also reflect poor job quality in industries where temporary migrants are concentrated (Wright *et al.* 2019).

COVID-19 crisis consequences

The Australian state has effectively denied responsibility for temporary migrants displaced by the crisis by failing to extend new and existing social security measures to temporary migrants and telling those who cannot support themselves to 'go home', in the words of the Immigration Minister (Coleman 2020).

Some Australian industries that have been large employers of temporary migrants in recent years, such as hospitality, have been impacted particularly heavily by the economic shutdown caused by COVID-19. A survey of temporary migrants by Unions NSW at an early stage of the shutdown found that around 50 per cent had lost their jobs as a consequence (Pupazzoni 2020).

While employers and workers with permanent residency have to some extent been protected by the JobKeeper payment, and state government assistance (Doherty 2020), this does not extend to temporary migrants, illustrated by some employers standing down temporary migrants while retaining other workers eligible for JobKeeper (Karp 2020).

Whereas temporary migrants were the most likely victims of wage theft prior to COVID-19, they have been the workforce group most adversely affected by the shutdown and least likely to benefit from changes allowing access to superannuation given relative length of service and superannuation theft. Similarly, the extension of international students' maximum working hours in health services and major supermarkets will

help few, given their prevalence in hospitality and informal retail employment during semester (Marginson *et al.* 2010; Clibborn 2018).

Changes to policy

We have argued the vulnerabilities of temporary migrants to displacement are the direct consequence of 25 years of policy change. This indicates the Australian state has responsibility for these workers' plight, despite comments from government ministers to the contrary. Policy changes have been informed by a narrow, neoliberal understanding of the national interest defined exclusively in terms of budgetary outcomes and employer flexibility, with minimal attention given to social inclusion or equity considerations. To avoid the marginalisation that many migrants in Australia have experienced under these policies, which COVID-19 has intensified, the following changes are needed.

First, policies should recognise the social inclusion benefits of permanent migration and, where temporary migration remains necessary, a clear temporary-permanent migration pathway. Australia should return to the highly inclusive policy arrangements that prevailed in the 1973-1996 period that gave virtually all migrants access to permanent residency with the same rights and protections as citizens. International research demonstrates that permanent residency and citizenship are key factors enhancing the likelihood of migrant workers being treated fairly in the labour market (*e.g.* Dauvergne 2016).

Second, policies should ensure that migrant workers maintain or are granted mobility between employers so they can leave exploitative arrangements that temporary visa schemes can facilitate. Visa regulations that tie migrant workers to an employer sponsor or otherwise constrain workers' mobility can significantly enhance employer power and the likelihood of these workers being exploited (Sumption 2019).

Third, institutional protections of employment rights must serve migrant workers more effectively. This requires a significant funding increase to ensure the Fair Work Ombudsman is adequately resourced. This should be complemented by a co-regulation strategic approach whereby the Fair Work Ombudsman involves unions, community legal centres, other community-based migrant representative groups and migrant workers themselves as part of its enforcement strategies (Clibborn 2019). These groups' ability to enforce employment laws should also be enhanced.

Finally, skill shortages should be independently verified through an assessment of existing supply and demand within the labour market and addressed by more coordinated education and immigration policies (Howe 2013). While employer demand can serve as a gauge of labour market needs, it can also encourage employers to develop structural preferences for migrant labour in ways that can erode job quality and career opportunities for workers (Ruhs 2013). To this end, structured training programs, active labour market programs and requirements by employers in low-wage industries to improve job quality would enhance the attractiveness of work in these industries.

Conclusion

The policy-induced inequalities identified in this article created conditions that have made temporary migrant workers particularly vulnerable to the impacts of the COVID-19 crisis. This vulnerability has been exacerbated by new policies restricting temporary migrants from the JobKeeper payment and other forms of welfare support, which represent a continuation of the Australian state's exclusionary approach since 1996. The measures we have proposed in this article would help to strengthen migrants workers' bargaining power and agency and reduce employer reliance on an exploited and marginalised temporary migrant workforce, which must be policy priorities for the post-COVID-19 recovery.

Stephen Clibborn is a Senior Lecturer in the Discipline of Work and Organisational Studies in the University of Sydney Business School.

stephen.clibborn@sydney.edu.au

Chris F. Wright is an Associate Professor in the Discipline of Work and Organisational Studies in the University of Sydney Business School.

chris.f.wright@sydney.edu.au

References

Berg, L. and Farbenblum, B. (2017) *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey*, Sydney, Migrant Worker Justice Initiative.

- Campbell, I. (2019) 'Harvest labour markets in Australia: Alleged labour shortages and employer demand for temporary migrant workers', *Journal of Australian Political Economy* 84: 46-88.
- Clibborn, S. (2015) 'Why undocumented immigrant workers should have workplace rights', *Economic and Labour Relations Review*, 26(3): 465-73.
- Clibborn, S. (2018) 'Multiple frames of reference: Why international student workers in Australia tolerate underpayment', *Economic and Industrial Democracy*, eprint before publication, doi:10.1177/0143831X18765247.
- Clibborn, S. (2019) 'It takes a village: civil society regulation of employment standards for temporary migrant workers in Australian horticulture', *UNSW Law Journal* 42(1): 242-68.
- Clibborn, S. and Wright, C.F. (2018) 'Employer theft of temporary migrant workers' wages in Australia: why has the state failed to act?' *Economics and Labour Relations Review* 29(2): 207-27.
- Coleman, D. (2020) 'Coronavirus and temporary visa holders', *Media Release*, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 4 April. available online: <https://minister.homeaffairs.gov.au/davidcoleman/Pages/Coronavirus-and-Temporary-Visa-holders.aspx>, accessed 28 April 2020.
- Dauvergne, C. (2016) *The New Politics of Immigration and the End of Settler Societies*, Cambridge, Cambridge University Press.
- Doherty, B. (2020) 'Victoria latest state to help temporary migrants excluded from federal coronavirus support', *The Guardian*, 30 April, available online, <https://www.theguardian.com/australia-news/2020/apr/30/victoria-latest-state-to-help-temporary-migrants-excluded-from-federal-coronavirus-support>, accessed 7 May 2020.
- Hardy, T. and Howe, J. (2009) 'Partners in enforcement? The new balance between government and trade union enforcement of employment standards in Australia', *Australian Journal of Labour Law* 22(3): 306-36.
- Healy, J., Mavromaras, K. and Sloane, P.J. (2015) 'Adjusting to skill shortages in Australian SMEs', *Applied Economics* 47(24): 2470-87.
- Hiebert, D. and Ley, D. (2006) 'Introduction: The political economy of immigration', *Tijdschrift voor Economische en Sociale Geografie* 97(1): 3-6.
- Howe, J. (2013) 'Is the net cast too wide? An assessment of whether the regulatory design of the 457 Visa meets Australia's skill needs', *Federal Law Review* 41(3): 443-70.
- Howe, J., Clibborn, S., Reilly, A., van den Broek, D. and Wright, C.F. (2019) *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, University of Adelaide, Adelaide.
- Jupp, J. (2007) *From White Australia to Woomera: The Story of Australian Immigration* (2nd edition), Cambridge, Cambridge University Press.
- Karp, P. (2020) 'Sydney laundry condemned for standing down migrant workers ineligible for jobkeeper', *The Guardian*, 30 April, available online, <https://www.theguardian.com/australia-news/2020/apr/30/sydney-laundry-condemned-for-standing-down-migrant-workers-ineligible-for-jobkeeper>, accessed 7 May 2020.
- Marginson, S., Nyland, C., Sawir, E. and Forbes-Mewett, H. (2010) *International Student Security*, Cambridge, Cambridge University Press.

- Pupazzoni, R. (2020) 'Calls for migrant workers to be included in JobKeeper subsidy amid coronavirus crisis', *ABC News*, 8 April, available online, <https://www.abc.net.au/news/2020-04-08/migrant-workers-are-struggling-due-to-coronavirus-jobseeker/12129798>, accessed 24 April.
- Quinlan, M. and Lever-Tracy, C. (1990) 'From labour market exclusion to industrial solidarity: Australian trade union responses to Asian workers, 1830–1988', *Cambridge Journal of Economics* 14(2): 159-81.
- Ruhs, M. (2013) *The Price of Rights: Regulating International Labor Migration*, Princeton, Princeton University Press.
- Salt, J. (2006) 'Skilled migration: The UK and Australia', in B. Birrell, L. Hawthorne and S. Richardson eds., *Evaluation of the General Skilled Migration Categories*, Canberra, Department of Immigration and Multicultural Affairs: 252-82.
- Sherrell, H. (2019) 'Migration—permanent and temporary visa trends'. *Briefing Book: Key Issues for the 46th Parliament*, Canberra, Parliament of Australia: 128-31.
- Sumption, M. (2019) 'Is employer sponsorship a good way to manage labour migration? Implications for post-Brexit migration policies', *National Institute Economic Review* 248(1): R28-R39.
- Wright, C.F. (2014) 'How do states implement liberal immigration policies? Control signals and skilled immigration reform in Australia', *Governance* 27(3): 397-421.
- Wright, C.F. and Clibborn, S. (2017) 'Back door, side door, or front door: An emerging de-facto lowskilled immigration policy in Australia', *Comparative Labor Law and Policy Journal* 39(1): 165-88.
- Wright, C.F. and Clibborn, S. (2020) 'A guest-worker state? The declining power and agency of migrant labour in Australia', *Economic and Labour Relations Review* 31(1): 34-58.
- Wright, C.F. and Constantin, A. (2020) 'Why recruit temporary sponsored skilled migrants? A human capital theory analysis of employer motivations in Australia', *Australian Journal of Management*, eprint before publication, doi: 10.1177/0312896219895061.
- Wright, C.F., Knox, A. and Constantin, A. (2019) 'Using or abusing? Scrutinising employer demand for temporary sponsored skilled migrants in the Australian hospitality industry', *Economic and Industrial Democracy*, eprint before publication, doi: 10.1177/0143831X18823693.