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Abstract | Temporary migrants play an important role in Australia's workforce and student population. Little is known, however, about the migration mechanisms temporary migrants use and the associated risks these may involve.

This paper examines the role of migration brokers in alleged and finalised cases of migrant exploitation ranging from low pay and hazardous working conditions to more severe forms involving debt bondage, forced labour and other slavery-like practices.

This paper presents a typology of two kinds of migration broker—the migration facilitator and the labour supplier—developed from these case studies. Points of intervention are discussed with reference to these types, as is the effectiveness of various responses to the actions of migration brokers in preventing and detecting human trafficking, slavery and slavery-like practices. These responses may overlap with responses to other serious crimes such as immigration fraud, corruption, extortion and people smuggling.

Migrating for work and study: The role of the migration broker in facilitating workplace exploitation, human trafficking and slavery

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Migration often involves the services of intermediaries who coordinate and facilitate paperwork, visas and job and education placements in destination countries. These intermediaries are commonly referred to, in both the Australian and international literature, as migrant brokers (Lindquist, Xiang & Yeoh 2012; McKeown 2012), labour brokers (Verité 2010), recruitment agents or agencies, employment agencies, or simply agents or brokers (David 2010; Lindquist 2012; UNODC 2008). These different terms reflect variations in the practices and structures of the people and businesses that perform these functions, and the context in which they are provided. However, these terms are rarely defined (UNODC 2012), which makes it difficult to establish a coherent understanding of the mechanisms people use to migrate and associated risks.

The Australian Institute of Criminology's (AIC's) Human Trafficking and Slavery Research Program has previously highlighted the role migration intermediaries may play in facilitating human trafficking and the related exploitation of migrants in Australia and the Asia-Pacific region (Andrevski & Lyneham

2014; David 2010; Simmons et al. 2013), specifically by arranging or contributing to debt bondage, servitude, forced labour and other forms of exploitative labour. However, there has as yet been no comprehensive examination of their roles in either the Australian or the international literature. To fill this gap this paper reviews existing information on the links between migration brokers and human trafficking, slavery and slavery-like practices, and examines how these relate to pathways for migration to Australia and temporary migrants' experiences of exploitation.

Research questions and scope

In this paper the term migration broker is used to describe those who facilitate the migration of an individual for a fee by:

- submitting and organising migration paperwork or travel on the migrant's behalf; and/or
- referring a migrant to, or providing information to a migrant about, a visa sponsor (employer or individual) or entity otherwise relevant to migration (such as an employer, education provider or another broker). This may include facilitating a job placement or education enrolment.

The following research questions were posed:

- What type of migration brokers are used by people migrating to Australia?
- Do specific trends or typologies relating to the role of migration brokers emerge from alleged or finalised cases of migrant exploitation in Australia?

This study serves as a preliminary scope of the issue and therefore relies on open-source material and the academic literature. This paper focuses on the intermediaries who assist in arranging temporary visas for work or study and the role they may play in facilitating the debt bondage, slavery, servitude or forced labour of a migrant. It does not address the role of brokers who facilitate overseas marriages, organ transplants or adoptions.

Common migration-brokerage pathways

Although no major transnational migration corridor traverses Oceania, Australia still plays a substantial role in global migration trends, ranking ninth of the ten countries with the most international migrants in the world (UN 2013). Temporary migration forms an important part of Australia's migration infrastructure. At 31 December 2015, there were 159,910 Temporary Work (Skilled) subclass 457 visa holders, 155,180 Working Holiday Marker (subclasses 417 and 462) visa holders and 328,130 student visa holders (DIBP 2016). These numbers include both primary and secondary visa holders.

Onshore migration brokers

Under Australian Commonwealth, state and territory law, the following professions and sectors in Australia may provide immigration assistance, enrolment in study, and/or workplace recruitment and placement services to potential and current migrants:

- migration agents;
- education agents;

- private recruitment agencies; and
- labour hire firms.

The extent to which each of these professions provide these services, and the regulations associated with them, are detailed below.

Migration agents

Australia's migration legislation specifies who can provide immigration assistance to potential migrants in Australia. According to section 280 of the *Migration Act 1958* (Cth), only registered migration agents can receive a fee or other benefit for providing immigration assistance to potential migrants or visa sponsors. The Migration Agents Regulations 1998 prescribe the registration body, provide a code of conduct and outline what activities registered migration agents may undertake. The current registration body for migration agents is the Office of the Migration Agents Registration Authority (OMARA), which is also responsible for administering the code of conduct.

The proportion of visa applications submitted by migration agents varies by visa type, but it is clear migrants commonly use migration agents to facilitate visa applications. OMARA's 2016 report states that, between October and December 2015, 74 percent (n=17,821) of subclass 457 visa applications, 84 percent (n=13,442) of employer-sponsored visa applications, 35 percent (n=6,210) of general skilled visa applications, 63 percent (n=2,148) of business skills visa applications and 13 percent (n=7,362) of student visa applications were lodged by registered agents. A substantial proportion of temporary resident visa applications were also lodged by registered agents (18%; n=4,133) compared with only one percent (n=4,812) of applications for visitor visas (OMARA 2016).

Education agents

Education agents recruit overseas students for study with Australian education providers and in some cases assist with their enrolment. Education providers pay a commission for each successful enrolment, often as a percentage of the student's fees for the semester; less commonly, they charge the student directly (Baas 2007). A 2006 survey of international students in Australia showed over two thirds used an education agent and just over half identified an education agent as an important influence on their decision to study in Australia (Ipsos 2007). However, that study did not identify the extent to which onshore or offshore agents had been used.

Education agents are regulated under the *Education Services for Overseas Students Act 2000* (Cth; the ESOS Act), its associated regulations, and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code of Practice). Education agents can only recruit students for providers and courses registered with the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Onshore agents are not permitted to provide immigration assistance unless they are registered with OMARA.

Private recruitment agencies

Recruitment agents and agencies link potential employees based overseas with Australian employers. No aggregate data is collected on the use of onshore and offshore agencies by Australian employers; however, in 2012 there were 3,300 private employment/recruitment agencies with 7,000 branches operating in Australia (CIETT 2014), although this data may conflate private employment/recruitment

agencies with labour hire firms (as described below). This paper distinguishes between businesses that recruit applicants for specific positions (private recruitment agencies) and those that provide workers (labour hire firms).

Labour hire firms

Labour hire firms, also known as on-hire labour firms, are private businesses that provide workers to 'host' organisations. While working for a host organisation, workers continue to be employees of the labour hire firm and are paid by them, rather than by the host organisation. Businesses in a range of sectors act as host organisations, usually hiring employees of labour hire firms on a temporary basis.

Given that labour hire firms are often conflated with private recruitment agencies, it is difficult to establish the prevalence of each. From the results of its Forms of Employment Survey in 2011, the Australian Bureau of Statistics (ABS) estimated that 1.25 percent of employees found their job through an employment agency or labour hire firm, and were being paid by that agency or firm (ABS 2012). The majority of those employed by labour hire firms worked as clerical or administrative workers or machinery operators and drivers (ABS 2012). Although employees of labour hire firms comprise a small proportion of Australia's total workforce, a parliamentary research paper from 2004 noted most sectors of the economy utilise labour hire services (O'Neill 2004). What proportion of temporary migrants are contracted out by labour hire firms remains unclear.

Offshore migration brokers

Offshore brokers who provide immigration assistance to temporary or permanent migrants to Australia are not required to register with OMARA. The legal definition of migration agent that applies within Australia, therefore, is not applicable overseas, where a person's migration to Australia may be arranged. No current open-source statistics are available on the number of visa applications submitted by unregistered offshore agents, but a 2002 survey of Australia's overseas immigration posts found that, on average, 40 percent of the agents they dealt with were unregistered—although this varied greatly between posts (DIMIA 2004). At the time of the survey, offshore applications for Australian visas were lodged and processed at these posts.

The use of private offshore recruitment agencies to recruit and place migrant workers in Australia is similarly unquantifiable. Whether private offshore recruitment agencies and labour hire firms may legitimately arrange the migration and job placement of temporary migrants to Australia is also a complex question. Private recruitment agencies are regulated under state and territory legislation. It is unclear whether these regulations can be applied to, and enforced against, offshore companies (David 2010), an uncertainty that extends to labour hire firms—although, domestically, these are largely unregulated anyway.

The demarcation between onshore and offshore migration brokers can also at times be unclear. For instance, an agent based in Australia could rely on overseas friends or acquaintances to recruit workers (Xiang 2001), or multinational labour hire firms might recruit and/or sponsor migrant workers through their Australian branches (Velayutham 2013).

Migration brokers, human trafficking and slavery

To investigate the role of migration brokers in human trafficking and slavery, and related migrant exploitation, the sentencing transcripts of finalised cases were analysed and a search of the academic literature and other open-source material on the subject conducted.

Some of the sentencing transcripts of finalised cases mentioned migration brokers who helped arrange the travel and visa applications of the victims; the use of these brokers formed a general pattern. However, the type of intermediary that emerged from the academic literature and other open-source material was paid differently, provided different services, arranged different visas and conducted business differently than those documented in the sentencing transcripts. On the basis of these findings, a typology of brokers was constructed based on two identified types (see Table 1).

	Type 1	Type 2
Characteristics ^a	Migration facilitator	Labour supplier
Client (person who pays broker)	Third party	Migrant
Payment method	One-off payment per person	Wage deductions, with some upfront payments
Migrant visa category	Temporary (student or working holiday)	Temporary (skilled or working holiday)
Broker's modus operandi	Immigration fraud	Packaged services, inflated rates, complex referral chains
Broker's location	Onshore and/or offshore	Onshore and/or offshore
Business model	Sole agent	Various

a: Type 1 was developed from sentencing transcripts of finalised cases of human trafficking and slavery offences; Type 2 was developed from case studies identified in the academic literature and other open-source material

Type 1: The migration facilitator

Migration facilitators recruit and arrange the migration of people who are then exploited by a third party. Exploitation, in this context, refers to slavery, forced labour, debt bondage or servitude as defined by the Criminal Code under the *Criminal Code Act 1995* (Cth). This type of broker benefits financially by recruiting and providing immigration assistance to the migrant; however, the costs incurred for this service are paid by a third party in Australia, with no direct payment made by the migrant.

This type of broker's level of involvement in the exploitation of migrants exists on a continuum. The broker may:

- be unaware that a third party intends to exploit the migrant and have no role in that exploitation; or
- be reckless as to the exploitation of the migrant by a third party; or
- use coercion, threat or deception to facilitate the migrant's exploitation; or
- otherwise directly perpetrate or benefit from the exploitation of the migrant.

In some of these situations, the broker may not be criminally culpable for the trafficking or exploitation of the migrant.

To date no migration agent, education agent, labour hire firm or private recruitment agency based in Australia has been convicted of human trafficking, slavery or slavery-like offences. However, both onshore and offshore agents have been otherwise implicated in prosecuted cases of human trafficking and slavery, most often involving immigration fraud.

Case studies

Type 1 is based on information about the intermediaries used by human trafficking and slavery offenders drawn from the sentencing transcripts of finalised cases, including the following:

- *R v Wei Tang* [2009] VSCA 182 and *R v DS* [2005] VSCA 99 (co-accused);
- *R v Sieders and Yotchomchin* [2006] NSWDC 184;
- *R v McIvor and Tanuchit* [2010] NSWDC 310;
- *DPP (Cth) v Ho and anor* [2009] VSC 437;
- *R v Netthip* [2010] NSWDC 159;
- *R v Nantahkum* [2013] ACTACA 40; and
- *R v Wong* [2013] unreported.

While these provide valid case studies of intermediaries' involvement in confirmed cases of human trafficking, slavery and slavery-like practices, they may not be a representative sample of human trafficking and slavery cases in Australia, given not all cases are reported or result in successful convictions. In addition, court sentencing transcripts may not necessarily include details of the intermediaries' involvement. Further, these cases all occurred in the sex industry and may not reflect cases in other sectors.

Migrant outcomes

As noted above, all cases analysed for this paper involved exploitation within the sex industry, where the offender was charged with slavery and sexual servitude offences. Debt bondage was another common element of these cases. The migration brokers concerned, however, had limited involvement with the migrant's exploitative living or working conditions once their visa and travel arrangements had been made.

Modus operandi

Immigration fraud

Immigration fraud was a feature of all the cases reviewed for this paper. In four of these, fraud occurred in relation to the offshore brokers' applications for temporary visas—usually tourist visas, but also short-term business visas. Fraud also occurred in relation to subsequent onshore applications for protection visas and interim bridging visas (which enabled victims to continue working while their protection visa application was being processed).

While offshore brokers recruited the victims and facilitated their entry visas, once these initial visas expired further applications for protection visas were made by registered onshore migration

agents. In one case, the onshore migration agent involved was successfully charged with immigration offences (Simmons et al. 2013). It is unclear whether onshore migration agents were complicit in making fraudulent protection visa applications in the other cases.

Offshore brokers were paid a one-off payment per migrant by the offender and/or the offender's associates. The payments noted in the sentencing transcripts ranged from \$6,000 to \$20,000 per person. These costs were absorbed into the debts (which ranged from \$40,000 to \$94,000 per person) victims were required to pay from their earnings. In some cases, these payments were used as evidence in support of slavery charges, in that they represented the purchase of an individual or provided evidence of entering into a 'commercial transaction involving a slave', a specific offence under section 270.3(1)(c) of the Criminal Code. It was not clear from the transcripts what amounts were paid to onshore migration agents for arranging protection visa applications.

Deception

From the transcripts, it did not appear brokers used deception to recruit victims. The majority of victims were aware they would be doing sex work and knew what debt arrangements would be applied. One victim was misled about the size of the debt she would be required to pay, and two victims were misled about the level of discretion they would have in the type of sex work they would be involved in. It is worth noting, however, that what is known about this is limited to the information provided in the transcript.

Location of Type 1 brokers

In the cases analysed it appears a single offshore agent (registration status unknown) referred the migrant to the offender in Australia but did not have anything to do with the victim's living and working arrangements. There was also no evidence of the involvement of complex referral chains once the victim was in Australia. An onshore migration agent undertook subsequent visa applications and provided immigration assistance but, similarly, had no further involvement in the migrant's living or working arrangements. The extent to which onshore and offshore brokers colluded or were otherwise linked was not evident from the case material available.

Type 2: The labour supplier

The labour supplier is an intermediary who benefits financially not only from the recruitment of migrants and/or the provision of immigration assistance, but from the migrant's job placement. The cost of their service is paid directly by the migrant either upfront or through wage deductions (whether ongoing or to pay a specified debt).

Case studies

Type 2 was derived from case studies that included detailed ethnographies of Indian IT workers (Xiang 2007, 2001), Indian workers on subclass 457 visas working in the IT, manufacturing, construction and hospitality sectors (Velayutham 2013), and nurses on subclass 457 visas (Boese 2013). While the sample size was small and the methodology qualitative, these studies identified several common themes in the exploitation of temporary migrants. Further, they reflect other documented alleged

incidents related to labour hire firms and migrants on subclass 417 visas (see FWO 2015a, 2015b), as well as issues raised in supplementary research, formal reviews and inquiries (Baird 2010; David 2010; Deegan 2008; Senate Standing Committee on Education and Employment 2015).

Migrant outcomes

The alleged practices of this type of migration broker may, as the case studies outlined above demonstrate, result in migrants experiencing unsafe or hazardous working conditions or more serious situations involving elements of forced labour, debt bondage or servitude. This type of broker is particularly relevant to those migrating for work, particularly migrants on temporary work visas that require sponsorship (subclass 457 visa), or those on student visas who need to work to pay living expenses. This type of broker may also be relevant to migrants on other temporary visas such as Working Holiday (subclass 417) visas, who also allegedly experience low wages and more serious forms of exploitation as a result of hiring and employment practices (FWO 2015a, 2015b).

Modus operandi

A number of practices associated with labour suppliers—including the use of inflated fees and debts, complex subcontracting chains, packaged services and deception—increase the vulnerability of migrant workers by creating a dependence on their broker for information, job and living arrangements.

Inflated fees and debts

In Velayutham's (2013) study, Singapore-based agents who recruited Indian workers and placed them in manufacturing and construction jobs in Australia allegedly charged up to \$10,000 per client. Half this amount was purportedly paid upfront by each migrant and the rest deducted from their wages in Australia. The total cost, once visa fees and airfares were included, could be as high as \$16,000 to \$17,000 per person (Velayutham 2013).

Women migrating to work as nurses in Australia were allegedly charged between \$9,000 and \$24,000 by recruitment agents (Boese et al 2013). These charges often included fees for securing the migrant a job, usually in the aged-care sector. In Xiang's (2007) study, agents allegedly deducted set amounts or proportional fees from the migrant's pre-tax income. In some cases, migrants received only 40 to 50 percent of their wages after these fees were extracted by the multiple agents involved in their job placement.

Having a large debt to pay or a significantly reduced wage could restrict a migrant's ability to change employers or increase their tolerance of substandard or hazardous work conditions. In some of the cases documented by Velayutham (2013), migrants took out loans to pay these fees or provided assets as collateral.

Subcontracting chains

Xiang's research showed 'placement agents do not assume their functions individually but form "agent chains"', which collectively function as a complex interdependent labour supply mechanism (Xiang 2001: 78, 2007). Agents and agencies of three sizes were observed in the study:

- individual agents or agencies, or 'body shops', which sponsor migrants on temporary work visas but contract them out to larger agencies to arrange their job placements;

- middle-sized agents or agencies, which generally recruit between 15 and 50 workers a year, often relying on body shops to undertake the recruitment process; and
- so-called ‘big agents’ or agencies, which place more than 50 workers a year.

Xiang’s informants suggested up to 80 percent of the workers managed by big agents were sponsored by smaller agents. Placements made by middle-sized or big agents were often temporary, with migrants sometimes ‘benched’—that is, spending some time unemployed or without pay (Xiang 2007, 2001).

It must be noted that restrictions that prevent labour hire firms from sponsoring migrants on Temporary Work (Skilled) subclass 457 visas were introduced after Xiang’s studies (2007, 2001) and may have limited or ended the use of body shops. However, Velayutham’s (2013) study covered the time after these changes were made, and showed labour hire firms continued to bench workers between contracts.

There have also been recent allegations of migrant workers experiencing exploitation and hazardous working conditions while on Working Holiday (subclass 417) visas and subcontracted by labour hire firms to work in poultry processing plants (Meldrum-Hanna & Russell 2015). The subclass 417 visa does not require sponsorship; however, visa holders require their employers to confirm they have spent three months (88 days in total) working in a specified job in a regional area to obtain a second Working Holiday visa (DIBP 2015).

A Fair Work Ombudsman (FWO) inquiry into the labour procurement practices of labour hire firms implicated in the abovementioned exploitation of poultry processing workers found some of the subclass 417 visa holders involved were recruited by a labour hire firm through advertisements on Facebook and Taiwanese backpacking websites and in Chinese newspapers (FWO 2015a). The inquiry also found multiple tiers of contractors were used to supply workers to these factories (FWO 2015a). At one site investigated, the contracted workers were supervised by an employee of one of the labour hire firms (which formed part of a subcontracting chain), rather than the owner of the processing plant (FWO 2015a). Under these arrangements, workers were significantly underpaid, worked long hours and faced discriminatory practices.

Using complex chains of agents and subagents to recruit migrants and arrange their job and education placements reduces their accountability, lessens the impact of regulation and prevents the application of penalties for regulatory breaches. For instance, subcontracting the direct supervision of workers, as observed in the FWO’s inquiry, allows workplaces to redirect accountability for their workforce. It may also increase the cost of migration for the migrant by multiplying the number of people who must be paid (Xiang 2007, 2001).

Packaged services

A key characteristic of this type of broker is they not only arrange job placements but also accommodation and other services. These services are often provided by a third party; the broker directs their clients to this third party exclusively, without providing other options. For example, Boese et al’s study (2013) found many migrants were directed by their brokers to undertake specific bridging courses at high cost to the migrant.

A review of the ESOS Act found frequent allegations that agents, landlords, education providers and employers were collaborating in the provision of highly coordinated services, resulting in:

...poor education outcomes, poor living conditions, low pay, poor working conditions, and visa conditions being breached by students working more than 20 hours a week to be able to afford to be here (Baird 2010: 7).

It was alleged the agents and third-party service providers were taking advantage of the migrants' primary aim of achieving permanent residency (Baird 2010), thereby increasing their tolerance for substandard living and working arrangements. In addition, the FWO inquiry alleged workers on Working Holiday (subclass 417) visas were forced by the contractors to stay in overcrowded and unsafe accommodation—for which they paid high rents—to secure their jobs. Rents were allegedly deducted directly by the contractor from the workers' pay (FWO 2015a).

These are not the first allegations of exploitative arrangements between labour hire firms and hostels providing job placements and accommodation for Working Holiday (subclass 417) visa holders in regional areas (FWO 2015b). The FWO has experienced a spike in the number of complaints from subclass 417 visa holders about seasonal work in the horticultural industry facilitated by labour hire firms, relating to the provision of unsafe accommodation at inflated rates, price-gouging for other services such as transport, and payment of wages at less than award rates (FWO 2015b).

Deception

Migrants are sometimes deceived about what 'packaged services' will be provided to them in Australia. For instance, migrant workers in Velayutham's (2013) study were promised accommodation and training that did not eventuate, leaving them in insecure living and financial situations; rather than the promised accommodation they were allocated a room in the back of the factory, for which they were charged \$100 a week. They were also promised training and licences but, on arrival, were expected to pay for both themselves.

Location of Type 2 brokers

By comparison with migration facilitators, labour suppliers (Type 2) have more diverse business structures. Type 2 brokers range from individuals with small businesses (Velayutham 2013) to large labour hire firms (FWO 2015a). They also appear more likely than Type 1 brokers to form dependent contracting chains (FWO 2015a; Xiang 2007, 2001).

However, as with Type 1 migration facilitators, Type 2 brokers may be located onshore or offshore. As previously noted, this distinction can on occasion be blurred: brokers may travel overseas to recruit, have overseas associates recruit on their behalf or undertake brokerage as part of a multinational firm with branches in Australia and overseas.

Implications for intervention

As noted above, analysis of migration brokers' practices highlights two types of brokers who may be involved in the exploitation of migrants. The modus operandi, as determined from the case studies, of each type of broker has implications for both existing interventions aimed at protecting migrants

and those not yet tested. The current and latent capacity of such interventions—the provision of information to migrants, awareness raising and information sharing among key sectors, visa integrity responses, enforcing regulatory compliance, monitoring trends, financial analyses and the application of criminal sanctions—to disrupt and deter exploitative practices is discussed below. Some of these interventions are more relevant to the activities of one type of broker than to both.

Disseminating information to migrants

The cases discussed in this paper illustrate the deception migrants may face when recruited by labour suppliers; the influence of such deception may be mitigated by providing migrants with independent advice and information about the migration process and their legal rights and entitlements. The Commonwealth Attorney-General's Department, for example, provides fact sheets on labour trafficking which have been translated into a number of other languages on their website; however, these do not cover migration processes and procedures. The FWO provides online information for migrants and visa holders about work rights and entitlements, which is currently available in 27 languages and English. These resources can also be accessed through the Department of Immigration and Border Protection (DIBP) website. A new suite of awareness-raising materials on labour exploitation is being developed by the National Roundtable on Human Trafficking and Slavery's Communication and Awareness Working Group (IDC 2015).

There is no publicly available information regarding the extent to which existing resources are accessed, or how useful migrants find them. The capacity of those migrants and temporary workers who are vulnerable to labour exploitation to act upon such information may be limited. Migrants may understand their rights and entitlements, but an intention to seek permanent residency or the accrual of debts or other financial obligations may increase their tolerance for exploitative conditions (David 2010). This vulnerability is exacerbated by the lack of formal support for temporary migrants. There is, therefore, a need to ensure that the information available is accessible and useful to migrants both before and after they arrive in Australia. Further, the dissemination of such information should act as a supplement to other support services for migrants at risk of or experiencing exploitation, rather than as a single strategy to affect behaviour in isolation.

Awareness raising and information sharing

Raising awareness of exploitative packaged migration services provided by labour suppliers among local councils, housing agencies (including tenancy advice agencies), legal centres, workplaces and local communities may play an important, if currently untested, role in preventing and deterring such practices. Enhancing awareness and information sharing between agencies that have contact with temporary migrants in the context of their work, study or accommodation would increase their capacity to detect coordinated price gouging or the exploitative integration of work and living arrangements.

As the cases discussed in this paper show, the control a third party or broker has over a temporary migrant may only become apparent once their work, study and living arrangements are examined as a whole rather than in isolation. Only through effective information sharing and an awareness of the key indicators of exploitation can an agency working in a discrete area such as housing, education or the workplace assemble a complete picture.

Visa integrity responses

The DIBP implements a multilayered approach to screening passengers prior to their arrival to Australia, as well as a tiered risk-assessment framework for visa applications which addresses the risk of fraud (McCairns 2010). Both are based on risk profiles developed from historical data. These screening and assessment processes are supplemented by the sharing of intelligence from DIBP posts overseas, and the exchange of fraud information and intelligence with overseas counterparts (McCairns 2010).

Although beyond the scope of this study, it is clear visa integrity procedures have a role in addressing fraudulent activity and monitoring the suspect activities of migration agents and, consequently, preventing the exploitation of migrants. The lack of observable fraud in cases involving labour suppliers (Type 2) suggests this intervention may be most useful in relation to migration facilitators (Type 1).

Regulatory frameworks and compliance measures

Although severe exploitation is addressed by Commonwealth legislation, regulatory frameworks for different migration intermediaries—ie migration agents, education agents, private recruitment agencies and labour hire firms—vary considerably. Concerns have been raised in the literature regarding the effectiveness of existing regulations in supporting the detection of and responses to practices that place migrants at risk. These concerns are outlined below.

Offshore migration agents

Although a 2002 survey of 41 overseas offices by the then Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) found unregistered offshore agents engaged in various problematic practices, there continues to be a lack of regulation of offshore unregistered agents (DIMIA 2004). The proven cases of human trafficking and slavery described above illustrate how unregistered offshore agents assist in recruiting and facilitating the migration of victims of human trafficking and slavery, highlighting the need to regulate unregistered offshore agents and agencies. A discussion paper released by DIMIA in 2004 outlined a number of alternative regulatory models involving the full or partial registration of offshore agents for consideration; however, none of these has been implemented.

Private recruitment agencies

The existing regulation of private recruitment agencies and labour hire firms varies between states and territories in both content and legislative framework; the conduct that attracts criminal or civil sanctions and the penalties that apply also vary. South Australia (SA), Western Australia (WA) and the Australian Capital Territory (ACT) are the only jurisdictions in Australia that administer licensing schemes specifically for private recruitment agents and agencies (see the *Employment Agents Registration Act 1993* [SA]; the *Employment Agents Act 1976* [WA]; and the *Agents Act 2003* [ACT]). Queensland has no licensing scheme but does require agents and agencies to adhere to a mandatory code of conduct under the *Private Employment Agents Act 2005* (Qld). Labour hire firms are exempt from adhering to this code of conduct. Labour hire firms are also exempt from licencing requirements in WA and SA, but must be licenced in the ACT.

It is uncertain whether such laws and codes apply to overseas recruitment and labour hire agencies; whether state and territory agencies would have the capacity to enforce the relevant legislation and codes of conduct on overseas agencies is also questionable (David 2010). There are also issues with sanctions and penalties that vary substantially between states and territories; whether these penalties pose enough of a business risk to outweigh the benefits, financial or otherwise, to be gained from exploiting, or facilitating the exploitation of, migrants is uncertain (David 2010).

Attempts have been made to regulate overseas recruitment agencies. A memorandum of understanding signed by the Australian Government and the government of China in 2007, for example, allowed recruitment agencies based in China to be listed with the former Department of Immigration and Citizenship and the Ministry of Commerce of the People's Republic of China, on condition they adhere to an ethical code of conduct. If an agency breaches the code, it is removed from the list and penalised by the Chinese government (David 2010, citing Kinnaird personal communication 2009). While this approach is limited, it does create an important precedent for similar (albeit as yet unestablished) bilateral arrangements.

Labour hire firms

Concerns about the activities of labour hire firms extend beyond those outlined in this paper relating to their role as migration brokers and the risks they may present to migrant workers. Submissions to a 2005 Commonwealth inquiry into independent contractors and labour hire arrangements provided evidence that these entities utilised working arrangements that obscured their accountability and reduced the protections and entitlements afforded to workers (House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation 2005).

Following recent allegations of the abuse of migrant workers by labour hire firms the Victorian, Queensland and South Australian governments announced, and recently undertook, inquiries into their use (Victorian Department of Economic Development, Jobs, Transport and Resources 2015; Finance and Administration Committee, Queensland Parliament 2016; Economic and Finance Committee, Parliament of South Australia 2015).

There is scope to examine various regulatory models that might prevent the exploitative practices some agencies have been accused of. The United Kingdom's Gangmasters Licensing Authority, which regulates the labour hire firms that provide workers for the agricultural, horticultural, and shellfish industries and the associated processing and packaging industries, represents one such regulatory model.

Training brokers to detect and respond to migrant exploitation

Beyond monitoring conduct, regulatory systems provide a mechanism for setting training and conduct standards. Training brokers to recognise the signs of human trafficking, slavery and related exploitation may prevent them from being unintentionally used to facilitate these crimes. Lyneham and Richards (2014) recommended incorporating such training into OMARA's existing professional development programs for migration agents. The extent to which these or similar training programs are utilised by Australian-based education agents and private recruitment and labour hire agencies is unknown.

Criminal sanctions

The regulation of brokers supplements the criminalisation of severe forms of exploitation including slavery, servitude, forced labour and debt bondage; but as previously noted, despite Australia's comprehensive criminal legislation around the facilitation of human trafficking and its extraterritorial applications, there have been few prosecutions of migration brokers. Given the extent of migration facilitators' involvement in finalised cases of human trafficking and slavery, this lack of convictions suggests achieving a successful conviction may be difficult. This could be due to the challenge of providing evidence of coercion, threat, deception or recklessness, or to difficulties in extraditing people or acquiring evidence from overseas. The different levels of involvement migration brokers can have in the exploitation of migrants, and the challenges investigating officers and prosecutors may face in proving that involvement, may result in brokers being prosecuted for less serious immigration or related offences. In summary, there remains a gap in our understanding of the barriers that prevent the application of current criminal legislation in the prosecution of migration brokers for their involvement in the exploitation of migrants.

The recently passed *Migration Amendment (Charging for a Migration Outcome) Act 2015* (Cth) introduced criminal and civil penalties for requesting, or receiving, a benefit in return for ensuring certain visa-related outcomes, including for providing sponsorship. It is not yet known how this legislation will be applied against brokers exploiting temporary migrant workers in situations like those outlined in this paper.

Tracking emerging brokerage trends

The literature illustrates the lack of data and high-quality information on who facilitates temporary migration to Australia. How this impacts on the ability of stakeholders to respond to the activities of migration facilitators and labour suppliers is discussed below.

Gaps in the collection of data on migration brokers

The lack of information on and research into the role of migration brokers in facilitating human trafficking, slavery and slavery-like practices reflects a more general lack of available information on migration intermediaries. The demand for migration brokers is obvious and, without further data collection and research into how temporary migrants to Australia use such brokers, the risk of exploitation cannot be accurately investigated.

Little information on how migrant workers and Australian employers utilise employment and recruitment agencies, or how employers recruit workers overseas, is available; this was highlighted in a recent review of the literature on the recruitment industry in Australia. There was a particular lack of data available on the unskilled labour sector, especially the hospitality and retail industries (Jepsen et al. 2014).

This lack of data also causes problems in the implementation of regulatory systems. It prevents the effective monitoring of brokers and their compliance with the relevant laws and codes. It also presents challenges in evaluating the effectiveness of these systems.

Migration patterns

The case studies reviewed for this paper illustrate how the geographical, cultural and industrial contexts of migrant labour and migration pathways intersect, with each presenting different vulnerabilities to exploitation. From the case studies available, labour supply-chain mechanisms appear to reflect the norms and practices of the industrial sectors and recruitment locations involved.

For instance, the majority of offshore brokers referred to in the migration facilitator case studies were based in Thailand. The victims' debt arrangements were similar to those observed among sex workers from Thailand working in Sydney during the 1990s; such arrangements were not as common among sex workers from other countries (Brockett & Murray 1994). Xiang's (2007, 2001) and Velayutham's (2013) studies reveal other supply chains and recruitment practices characteristic of specific offshore hubs from which migrant workers to Australia are recruited.

Understanding how the migration patterns associated with various industries and geographic locations relate to known cases of human trafficking and slavery could assist to better identify where pathways to migration are being manipulated to recruit workers for exploitative labour. This knowledge could be used to design effective detection and intervention strategies that reflect the characteristics unique to the sector or location; these could be implemented when migrant workers are recruited or transported. Determining how the immigration advice and services sought by prospective migrants varies by country of origin and anticipated migration outcome (ie study or employment in a particular industry) may also lead to a better understanding of the demand for migration brokerage, and assist in tailoring strategies to enhance the quality and ethics of the services provided.

Monitoring financial transactions

As the case studies reviewed for this paper show, the financial transactions migration brokers make may indicate whether migrant exploitation is occurring. Such transactions include one-off payments to offshore migration facilitators and ongoing wage deductions made by labour suppliers. Commonwealth regulatory authorities, in conjunction with Commonwealth, state and territory law enforcement agencies, could profile and monitor these transactions to identify incidents of migrant exploitation—although it may be more difficult to monitor the financial transactions of individual Type 1 migration facilitators than those of the larger firms and businesses associated with Type 2 labour suppliers.

Conclusion

The available information suggests two distinct groups of intermediaries may be involved in the exploitation of those who migrate to Australia for work or study. Migration facilitators providing immigration assistance largely act alone, and contribute to exploitation by preparing fraudulent visa applications. They may be located onshore or offshore, and may or may not be knowingly complicit in any subsequent exploitation. Labour suppliers play a greater role, often providing assistance with job placement in addition to recruitment and immigration services. Labour suppliers receive payment for their services directly from the migrant through fees or wage deductions in contrast to migrant facilitators who receive payments from a third party. Labour supply services to migrants may be

charged at inflated fees; they may be different to those promoted, substandard or non-existent, and are often facilitated by a complex, symbiotic network of agents.

The typology developed for this study was based on a small number of proven and alleged cases of exploitation; hence the features of each type of broker described in this paper are not necessarily comprehensive and may change subject to new information. The typology demonstrates the gap in our knowledge of the links between offshore and onshore agents—particularly in relation to migration facilitators, the concurrent use of both types of brokers during passage to Australia, and human trafficking schemes involving offshore and onshore visa applications. Nonetheless, the typology presented here provides a working template through which the characteristics of the types may be further enhanced. With access to supplementary material, broker methodologies may be further differentiated.

An examination of the support needs of migrants who may be identified by the prevention and detection interventions discussed in this paper was outside the scope of this research; however, such an examination would undoubtedly supplement this paper's findings and conclusions.

It is clear the services provided by migration brokers are essential and, depending on the migrant's country of origin, they may be the only way legitimate migration can be arranged. However, this paper highlights the regulatory gaps in the current migration structures. The use of debt in the practices of both types of brokers suggests that exploring how migrants' debts to brokers could be regulated might play an important role in preventing the kinds of exploitation presented in these case studies. It would be similarly relevant to assess whether the provision of and accountability for packaged services could be regulated. Responding to these and other specialised practices of migration brokers presents a challenging, yet potentially effective, means of disrupting broker-facilitated exploitation.

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