

Free agency is a right, not an option

by Matt Withers and Sophia Kagan

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PALM worker from PNG at the Cootamundra meatworks

Photo Credit: Pacific Australia Labour Mobility scheme/Facebook

Stephen Howes has responded to our recent articles [advocating for free movement](#) of Pacific Australia Labour Mobility (PALM) scheme workers between employers [as a provision against exploitation](#), arguing that “free agency is not a PALM reform worth pursuing”. In this reply, we outline an alternative case that situates the freedom to change employers – what Howes terms ‘free agency’ – as both necessary from a human rights perspective and eminently workable in practice.

Howes makes [five interrelated points](#) in considering the merits of the right to change employers and we address these in turn.

First, he argues that introducing free agency for PALM workers to switch employers is impractical for short-term workers due to time constraints.

While we believe the right to change employers is one that should be enjoyed by all workers, we also acknowledge that this is a less pressing concern in the case of short-term workers, as they are employed for no longer than nine months before returning home and deciding whether to reapply. There is an implicit option to change employers from one season to the next. That said, there is a precedent for short-term workers to have the ability to change employers under the UK’s [Seasonal Worker Visa](#), provided the original and new employers fall under the same [sponsoring “scheme operator”](#).

Second, Howes anticipates reduced demand for PALM workers under free agency, noting the upfront costs borne by employers and the associated expectation that those workers will not change jobs.

This reasoning doesn’t add up. [PALM workers bear more cost](#) than any other party

in the labour mobility arrangement and any outstanding debt obligations to the original employer could simply be subrogated by the new employer and thereafter reclaimed through deductions, as usual. Moreover, upwards of 70 percent of PALM-long workers are employed in the meat processing sector, which has chronic labour shortages and, unlike the horticulture sector, has no recourse to labour supply options that are cheaper than PALM workers. It is hard to see demand abating.

Third, Howes argues that although free agency would create desirable pressure for employers to keep their workers happy, it would only do so if the option to leave were a credible one. He thinks it would not be, based on the difficulties faced by temporary skilled shortage workers (TSS Subclass 482 visa holders) in finding employment quickly.

We agree free agency would create powerful incentives for employers to invest in the happiness of PALM workers – including, we would add, in supporting familial accompaniment measures which are currently contingent on employer approval. While the option to change jobs would indeed need to be credible, we suggest this could be achieved by the creation of a recruitment pool for PALM workers already in-country and looking to change employers. Priority recruitment of these workers could be encouraged by government subsidies to reduce costs associated with the transfer of workers' debt obligations, if applicable. Workers who have already paid off their debt via deductions will be cheaper and potentially more attractive for new employers.

Fourth, Howes claims that free agency would “do little to reduce exploitation” because bad employers would seek retribution against departing workers by providing negative appraisals.

As the weight of industrial relations scholarship attests to, the right to change employers is integral to the functioning of labour markets and a cornerstone safeguard against exploitation. The ability to freely sell one's labour in an open market is largely what distinguishes capitalism from feudalism and is a foundational assumption of all neoclassical economics. No other workers in Australia are subject to the expectation that their employers have sole claim to their labour. Why should PALM workers be treated as an exception for fear of employer retribution, as Howes suggests? If reference letters are really a deal-breaking concern, omit them and require new employers to screen workers on the same basis as they would fresh applicants to the scheme.

Finally, Howes claims that the right to change employers would not stem the growth in protection visa applications by PALM workers, which he believes is largely happening for reasons other than exploitation. He argues that only a reduction in

visa processing times will solve this problem.

We agree that PALM workers' motives for seeking temporary protection visas are currently unclear due to a lack of publicly available data – the Department of Employment and Workplace Relations refuses to publish the findings of a study recently conducted by the Pacific Labour Facility. However, this is a related but distinct issue: there is nothing to say that reforms to reduce visa processing times couldn't be implemented in tandem with free agency. In addition, free agency will almost certainly resolve the concerns of some workers seeking protection visas as a means of disengaging from the scheme. At present, PALM workers have no practical recourse but to disengage when faced with abuse; relaxing restrictions on employer-tied visas would empower workers to make those decisions within the remit of the scheme.

What, then, should be done?

At present, the restrictions imposed on long-term PALM workers are analogous to **widely condemned** “unfree” guest worker arrangements in places like the Persian Gulf, Singapore and Hong Kong. In fact, guest workers in Qatar have **greater rights to change employers** than do Pasifika and Timorese workers in Australia. **Recent comments** from the President of the National Farmer's Federation signal that employers recognise that “competition and flexibility can be positive forces for both workers and employers”. By contrast, unfree labour leaves the PALM scheme open to criticism from a modern slavery perspective, undermining claims to “best practice” and potentially harming diplomatic relations across the region.

We envision an alternative “high road” approach that can underpin the sustainability of PALM. Enshrining the right to change employers is not only consistent with **basic human and labour rights frameworks**, but also offers Australia an opportunity to depart from the Asian guest worker model and do labour mobility better.

By creating recruitment pools for workers seeking to change employers, organised on an intra-industry or intra-state basis, the scheme could do away with labour hire middlemen and create a government-run facility through which approved employers can enlist workers already in-country. Similarly, this facility could safeguard the rights of workers seeking to switch jobs and minimise the expenses of new employers seeking to hire, effectively intervening to cover the costs required to make labour mobility work well for all parties.

Yes, this would entail additional public expenditure in administering the PALM scheme, but we consider this consistent with the scheme's international development objectives, and justifiable as a subsidy for essential industries in rural

and regional Australia.

Author/s:

Matt Withers

Matt Withers is a senior lecturer in the School of Sociology at the Australian National University.

Sophia Kagan

Sophia Kagan is the Principal Policy Adviser on Labour Migration with the Office of the NSW Anti-slavery Commissioner.

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