

Joint Standing Committee on Migration

Inquiry into the Seasonal Worker Programme

Submission of the National Union of Workers

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The National Union of Workers welcomes the opportunity to make a submission to the Inquiry into the Seasonal Worker Programme on behalf of our members participating in the Programme.

The NUW is a large and diverse trade union representing workers in a range of industries, including warehousing, logistics, manufacturing, dairy, poultry, horticulture and food manufacturing, including workers who have participated, or are currently participating, in the Seasonal Worker Programme.

This submission will focus on the working and living conditions of workers participating in the Programme, providing the Committee with an understanding of the experiences, concerns, risks and challenges facing program participants, from the perspective of the workers themselves and their union.

When the Seasonal Worker Programme was initially designed and implemented it included provisions to safeguard the rights of Seasonal Workers, in recognition of the fact that Temporary Migrant Workers in Australia are particularly vulnerable to exploitation, an approach the NUW strongly supports.

These provisions – outlined in the Implementation Arrangements – include a pre-departure and on-arrival briefing that includes training on Australian workplace laws and rights, the introduction of workers to trade unions in their home country and Australia, and the guarantee that Programme participants will enjoy the same workplace rights and entitlements as Australian permanent residents and citizens.

The experience of many workers in the Programme, as outlined below, demonstrates that key regulatory gaps, and a failure by Approved Employers to fully comply with and implement existing regulations, has made Programme participants vulnerable to exploitation and abuse.

The NUW notes that this Inquiry is being undertaken in the context of concerning revelations about the widespread exploitation of Temporary Migrant Workers in Australia, particularly in the horticulture industry where the vast majority of Programme participants are employed.

Unfortunately, some of the abuses of Temporary Migrant Workers on Australian farms documented in the ABC's *Slaving Away Four Corners* report¹ – including excessive working hours without reasonable compensation, substandard and overpriced accommodation, and unlawful and unreasonable deductions from workers' pay – are also affecting Seasonal Workers working in the horticulture industry.

This submission identifies key vulnerabilities and gaps in existing Programme regulations, and contains recommendations to strengthen regulation to ensure that participants are empowered to fully exercise their workplace rights.

A focus on empowering Programme participants will strengthen compliance, protect the integrity of the Programme, and ensure that the economic and social benefits of participation in the Programme for workers, their families and their home nations are fully realised.

¹ <http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm>

Key Problems and Challenges for Seasonal Workers

This submission is informed by the results of a survey conducted with some of the NUW's Seasonal Worker members from East Timor, as well as discussions NUW officials have conducted with members from Tonga and Vanuatu about their experiences and major concerns with the regulation of the Programme. The following have been identified as areas of key concern.

1. Vulnerability to abuse & risks of exploitation

Programme participants are highly dependent on their Approved Employer – usually a labour hire contractor – who is their visa sponsor, employer, landlord and transport provider. This dependency on the Approved Employer makes workers vulnerable to abuse and reluctant to raise concerns.

Workers' reluctance to raise legitimate concerns about their employment or accommodation are based on the fear that doing so could jeopardise their employment and result in them having to return home early and potentially not be chosen to participate in the Programme in the future. In their submission, the Fair Work Ombudsman has also noted the impact of workers "concerns about their visa status" as a challenge for achieving compliance with workplace regulations.²

Workers have reported that this fear has stopped them from raising concerns with their approved employer, host employer, home government, and the Fair Work Ombudsman. There is a significant risk that problems experienced by workers participating in the Programme are underreported.

It is clear that most Programme participants begin work with their host employer with very limited understanding of Australian workplace rights and laws, including protections against retaliation for exercising a workplace right.

Most of NUW's Seasonal Worker members have reported that they were not aware of protections against discrimination for raising concerns, nor their right to join a trade union, on commencement of their employment.

2. Unfair and unlawful treatment of workers

a. Unclear, unfair and unreasonable deductions

The most common concern expressed by Programme participants relates to the deductions from their wages made by Approved Employers. This is consistent with the Fair Work Ombudsman's submission to the inquiry that a number of complaints have been made, and enforcement actions taken, in regard to unlawful deductions from Seasonal Workers wages.³

Workers are understandably concerned about the amounts charged for various services and the rate at which deductions are made because these factors directly affect the net earnings

² Submission of the Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, p 21.

³ *Ibid*, p. 21, and Fair Work Ombudsman Case Studies, Attachment F. p. 39.

workers are able to remit to their families. Workers report having up to 60% of their weekly pay deducted.

Workers have reported difficulties in raising concerns about the fairness of deductions or changes to the deduction schedule with their Approved Employers, and are reluctant to do so for fear it will jeopardise their employment.

b. Unreasonable overtime & piece rates

Programme participants understandably wish to maximise their income while working in Australia, however many do so by working excessively long hours without proper compensation for overtime, or a guaranteed hourly rate of pay.

As the Department of Employment has noted in its submission, “most seasonal workers employed in horticulture are paid piece rates.”⁴ The failure of the Horticulture Award to provide guaranteed minimum income to workers paid on piece rate arrangements is forcing some seasonal workers to work unreasonably long hours in order to secure a reasonable income. Tongans working on blueberry farms in Tasmania have reported that they are expected to work seven days per week for their entire 6 month contract.⁵ Other workers are receiving hourly rates less than the federal minimum wage, due to the way some piece rate arrangements are constructed by the host employer.

More broadly, the failure of the Horticultural Award to clearly guarantee overtime pay for casual workers means that Seasonal Workers are routinely working excessive overtime hours without proper compensation. The NUW has real concerns regarding workers’ health and safety in light of excessive hours being worked and fears this could result in injury or worse for participants during the stay in Australia.

c. Overcrowded accommodation

NUW officials have inspected accommodation provided by some Approved Employers. In many cases, workers are sharing small bedrooms with other workers and are sharing amenities such as bathrooms and toilets with twice the number of people than they were designed to accommodate. It is common, for example, for 8 workers to share a 4 bedroom house or larger numbers to share on-farm accommodation without adequate provisions.

Some Approved Employers appear to have an attitude that it is reasonable for Seasonal Workers to accept a different, lower standard of accommodation than would be expected by the broader Australian community. Workers have reported living without everyday utilities such as lights or adequate heating, or leaks going unfixed. Workers are routinely subjected to unreasonable and onerous inspections of their accommodation – sometimes once per week – and report being forced to agree to house “rules” that have been described as “dehumanising” by Programme participants.

d. Unreasonable, above-market rate charges for accommodation and transport

In addition to enduring crowded conditions, workers are often charged above market rate for their accommodation. As an example, 8 workers sharing a 4 bedroom house would be

⁴ Department of Employment, 1.25, p. 8.

⁵ <http://www.abc.net.au/news/2015-01-22/tongan-workers-tasmania-seasonal-worker-program/6034676>

charged \$100 per worker per week (\$800 total), however on the private rental market the house has been listed for \$350 per week.

Workers are routinely charged substantial amounts, up to \$50 per worker per week, to access transportation provided by Approved Employers, even when workers' accommodation is on-farm, or very close to the farm. In these instances, it is clear that the amounts charged are unreasonable and not in the best interest of the worker.

Although Approved Employers charge workers bonds for their accommodation, they do so outside statutory bond authorities. Workers have described Approved Employers denying the return of their bond monies, without explanation.

e. Threats, and fear of retaliation

Workers report that they are often subject to implicit and explicit threats that they will be sent home if they speak up about their working or living conditions. Almost all current Programme participants wish to return in future years, and report uncertainty and insecurity in knowing whether they will return.

Because there is currently no formal, transparent process for redeployment for current program participants, conduct of this kind by Approved Employers exacerbates' workers' fears that they will be prevented from returning in future years if they raise concerns or complaints about employment, accommodation and other conditions, or if they exercise their right to organise alternative accommodation and transport. A fair process would ensure that a worker, where there are no legitimate performance management concerns, is notified that they will be able to return to a work placement before returning to their home country.

f. Racism and discrimination

Workers report that they frequently experience racism and discrimination at work. Being called derogatory names, being treated differently or made to constantly perform the "hard work" significantly taints workers experiences and undermines the integrity of the Programme.

More needs to be done to educate employers on their obligations regarding discrimination, and Seasonal Workers on their right to work without being subject to racism or discrimination, and their options to address these issues.

3. Compliance with pre-departure and on-arrival briefing requirements

The Programme's Implementation Arrangements include provisions for pre-departure and on-arrival briefings, during which Home country governments and Approved Employers are required by the Australian Government to ensure workers' understand their workplace rights, including the right to join a trade union. Upon completion of the on-arrival briefing, Approved Employers sign statutory declarations that they have complied with these requirements.

As previously noted, it is clear that these requirements are not being fully complied with, as most workers commence employment in Australia unaware of core workplace rights, or

their right to organise alternative accommodation and transport arrangements should they so choose.

Workers report that pre-departure briefings do not provide Programme participants with a clear understanding of their workplace rights in Australia, and that the relevant local trade union was not invited to participate in the briefing. In the case of Vanuatu, this is despite local trade union leaders raising concerns about the treatment of ni-Vanuatu workers in Australia in 2012 and expressing a desire to be involved in the pre-departure briefing process.⁶

It is the NUW's understanding that none of the ten home country governments participating in the Programme are systematically inviting representatives from local trade unions to address workers before departure.

Similarly, upon arrival in Australia, workers report that they were not introduced to trade union representatives, despite the requirement that AE's do so.

Failure to include trade unions in workers' briefing has weakened compliance, leaving many Programme participants ill-equipped to assert their rights and entitlements, vulnerable to exploitation, and more likely not to report issues or problems.

4. Proposed changes to cost sharing burden.

Submissions made to the inquiry by the Victorian Farmers Federation, MADEC and others have recommended making further changes to the cost sharing arrangements of the Programme, removing the requirement that employers contribute \$500 towards the cost of international travel for returning Seasonal Workers.

It is important to note that reforms to the Programme in July 2015 have already shifted the cost burden further onto workers, removed the requirement for employers to contribute to domestic travel costs.

Shifting the administrative costs of the Programme onto workers undermines the Programme's development goals by further reducing workers' net earnings.

5. Lack of training opportunities.

Currently, the Department of Employment has approved 12 Registered Training Organisations (RTOs) for which the Australian Government provides funding of up to \$825 is available to each first time seasonal worker and each returning worker to access training and Recognition of Prior Learning (RPL) assessment under the Seasonal Worker Program.

Data provided for the June through September 2014 quarter shows that less than half of the workers participating in the Seasonal Worker Program enrolled in a add on skills course through this scheme.

This data is supported by workers reports that they were offered limited or no opportunities to engage in further skills training as part of their participation in the Programme.

⁶ <http://www.radioaustralia.net.au/international/radio/onairhighlights/calls-for-vanuatu-unions-to-train-seasonal-workers-on-rights>

Key Recommendations to strengthen compliance and improve conditions for Programme participants

1. Workers' rights and compliance:
 - a. Increase Departmental oversight of the pre-departure and on-arrival briefing process, including ensuring Approved Employers comply with the requirement to introduce Programme participants to trade union representatives.
 - b. Make it a requirement that local trade unions participate in pre-departure briefings in home countries. In countries where there are not functioning trade unions, the Government and Approved Employers should work with Australian trade unions and worker rights organisations to identify appropriate non-governmental organisations that can participate in the briefings
 - c. Include a provision in the Implementation Arrangements that states a guarantee that workers' will not jeopardise their employment, visa or future participation in the Programme by exercising a workplace right, and/or exercising their right to organise alternative accommodation and transport arrangements.
2. Develop a transparent process for the redeployment of workers who wish to return to Australia and participate in the Programme in future years.
3. Consider changes to the Migration Act that would provide returning workers (and their families) with access to the permanent migration scheme.
4. Improve educational and training opportunities for Programme participants, including provisions to improve access by making it compulsory for Approved Employers to offer skills and other training.
5. Maintain the current requirement for employers to pay \$500 towards workers' airfares, and prevent further administrative cost shifting onto workers.
6. Maintain the current requirement that employers pay Seasonal Workers Superannuation. Seasonal Workers must receive the same pay, conditions and entitlements as Australian permanent residents and citizens, including superannuation, and should be paid those entitlements through the same mechanisms. Where one group of workers are not provided equal wages or conditions, systematic exploitation can begin to take root.