

## UNITED WHY

United Working Holiday Makers in Australia

HKWHY

HONG KONG WORKING HOLIDAY YOUTH



KOWHY

KOREAN WORKING HOLIDAY YOUTH



T-WHY

TAIWANESE WORKING HOLIDAY YOUTH



# VULNERABILITIES OF WORKING HOLIDAY MAKERS AND POLICY RECOMMENDATIONS

## January 2016

*Submission to Senate Inquiry on the Impact of Australia's Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders*

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## ABOUT UNITED WHY

### About United WHY

United WHY is a combined initiative of KOWHY (Korean Working Holiday Youth), T-WHY (Taiwanese Working Holiday Youth) and HKWHY (Hong Kong Working Holiday Youth).

T-WHY is a non-profit organisation that helps Taiwanese backpackers cope with unfair treatment in the workplace and assist them in liaising with authorities such as the Fair Work Ombudsman and relevant trade unions. T-WHY also translates policies and regulations regarding workplace entitlements into Chinese, reports backpackers' stories, and cooperates with other NGOs and unions on decreasing the exploitation of temporary migrant workers.

KOWHY is a non-profit organization that works with young Koreans who live and work in Australia, providing support and information on employment, adjusting to life in Australia and social events. The goal of KOWHY is to develop a community of young Koreans that are aware of their rights so that the problems that they face can be addressed collectively. KOWHY supports workers whose rights are violated by assisting them to contact relevant authorities, disseminates information on laws and regulations, and engages young people through social events.

HKWHY is a non-profit organisation initiated by the HKCTU (Hong Kong Confederation of Trade Union) and a group of young people who have been Working Holiday makers previously. It provides prospective Working Holiday makers basic knowledge and information on their rights to protect them from exploitations before they leave Hong Kong. It cooperates with other NGOs and unions to gather information on working rights and conditions in different countries for the working holiday makers from Hong Kong, and assists them by referring relative authorities when their rights were violated.

# INTRODUCTION

## Introduction

United WHY appreciates this chance to submit our report to the Senate Inquiry. We are concerned with growing reports of deteriorating conditions in the Australian labour market for Working Holiday makers. We also note with concern the reduction in number of Working Holiday makers, as published by DIBP's recent report, and have reasons to think the two are inter-related based on our observation from the field. United WHY has worked extensively with Working Holiday makers and reiterates sentiments from the ground that the Working Holiday maker programmes *can* result in very positive experiences *when* employment conditions lie within the boundaries of law. If workers are paid what they are legally entitled to, then they would have more resources and time to travel around and to engage in fruitful cultural exchanges for Australia. While doing so, Working Holiday makers can also fill temporarily labour shortage in Australian labor market. However, their rights at work place should not be compromised because of their temporary status. Illegal employment practices is an obstacles for Working Holiday makers to enjoy Australia, and it creates irreversible damage in the Australian labour market. The Australian government must take serious measures urgently to tackle illegal employment practices that have become prevalent in some industries. While doing so, it is important to note that respecting the rights of Working Holiday makers, especially their rights at work, is in the interest of the Australian government and the Australian people.

This report identifies areas where Working Holiday makers are experiencing vulnerabilities and provides policy recommendations. Our submission focuses on three areas: 1) enforcement and inspection 2) current employment restrictions and visa conditions on Working Holiday visas and how they could lead to vulnerabilities and rights violations 3) proposed changes to Working Holiday programme in 2016. In each area, existing problems are identified and followed by recommendations.

Data used in this submission are drawn from two surveys and counseling requests, field visits and other discussions each organization (KOWHY, T-WHY and HKWHY) had at the grassroots level. One set of surveys was undertaken from 2013-2014 online by T-WHY, with 450 backpackers having responded so far. The questions asked in the survey include the average wage, type of jobs they do, network used to find a job, and the legal knowledge. Another set of surveys were undertaken in from May to December 2015 by KOWHY. 200 respondents have responded so far, 172 of them being workers with

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experiences of having been a working holiday maker. Respondents were recruited online or were given paper surveys in events organised by KOWHY, which were later coded into an online system. The KOWHY surveys asked questions on their current working conditions including wages, the nature of their employment, rights violation, as well as their views on proposed policy changes in 2016.

The term Working Holiday Maker (WHM) used in this report, in general, denote workers who are currently on visa subclass 417 (Working Holiday visa) and 462 (Work and Holiday visa). Because of the nature of organisations under United WHY and our focus on young people from Taiwan, South Korea and Hong Kong, our attention primarily is on 417 visa holders. Our views on 88-days of regional work requirement for the second visa should be understood as such because the second visa is not currently available for 462 workers. However, with changes proposed in the White Paper on Developing Northern Australia, we believe the requirement for the second visa is a pertinent issue for 462 workers as well.

## ENFORCEMENT AND INSPECTION

### Enforcement and Inspection

Research and media coverage this year have revealed a series of labour law breaches and severe exploitation of Working Holiday makers, particularly in horticulture and food processing sectors. Non-compliance with existing federal awards and Workplace Health and Safety (WHS) laws as well as criminal offenses have been detected in the forms of underpayment, extremely long working hours, no written agreements, hazardous work environments, discrimination, injuries, threats, withholding of passports and sexual harassment. If the Commonwealth Government wants to secure the long-term viability and credibility of the Working Holiday program, we recommend that the enforcement of labour standards becomes a much higher priority. There need to be a much higher risk involved for perpetrators breaching existing labour regulations to clamp down on the business of labour exploitation. We propose the establishment of an individual unit within the Fair Work Ombudsman (FWO) dedicated to Working Holiday maker issues only, such as monitoring compliance with federal awards and criminal law via routine inspection, outreach support services, and a national hotline where workers, employers and local community members can report breaches of work standards and related offenses, seek advice, find information and get relevant support. As part of this initiative, we propose that FWO collaborate with the DIBP to ensure that all Working Holiday makers receive independent information directly in person about their rights and responsibilities in Australia. They should be given the said information upon arrival in their native language with contact details to the FWO and other relevant authorities where they can seek advice and support if needed. We also urge the Australian government to collaborate with the countries of origin for greater outreach, by building MOU with the Working Holiday makers' countries of origin. The government of South Korea, for instance, runs Working Holiday Information Centre that provides information on what Working Holiday makers need to know prior to their departure.<sup>1</sup> We believe a more targeted approach, involving a centralised national unit and international cooperation for Working Holiday makers will improve the Fair Work Act's intention of becoming more enforceable and accessible (FW Act, s. 3).

#### LABOUR INSPECTION

A crucial aspect of successful enforcement is inspection. Today the FWO has 163 inspectors altogether who cover separate areas such as compliance with the Fair Work Act, early interventions and dispute resolutions. These inspectors are responsible for

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<sup>1</sup> Working Holiday Info Centre is run by the Ministry of Foreign Affairs (<http://whic.mofa.go.kr/eng/>)

## ENFORCEMENT AND INSPECTION

11.6 million workers in 2.1 million workplaces around the country (Productivity Commission, 2015:1). Out of the 11.6 million workers in Australia, 143 920 are made up of young people on Working Holiday visas (Productivity Commission, 2015). This subgroup of migrant workers is more vulnerable than local residents due to lack of knowledge about the labour market and language barriers. These and other vulnerabilities makes it hard for them to exercise rights while simultaneously dealing with the expectation of complying with immigration requirements like the 88 working days necessary to get a visa extension. This creates a vulnerability that employers easily can exploit to get more working hours out of the Working Holiday maker. Nevertheless, these young people are performing crucial work that fills the labour shortage in the Australian market, especially in the agriculture and horticulture industry. They should therefore be granted the best protection to ensure that the Working Holiday program delivers the best outcome and maintains the necessary credibility that will continue to attract young workers to the program. In order to implement the level of inspection necessary to improve the success of the Working Holiday program and meet the Fair Work Act's standards, United WHY recommends that the FWO will be allocated sufficient resources to improve inspection processes in the agriculture and horticulture sector and other industries are dependent on temporary migrant workers from this program.

### REGULATION OF LABOUR MARKET

A key contributor to the vulnerability of Working Holiday makers and the exploitation that is becoming more visible in sectors such as horticulture and poultry processing is the way the labour supply chain operates. In June, The Fair Work Ombudsman released their findings from an investigation made into the operations of the Baiada Group, the largest Australian-owned poultry processing company, whose primary workforce consist of working holiday visa holders from Hong Kong and Taiwan (FWO, 2015). The Baiada Group has built a business model around outsourcing their labour recruitment to labour hire companies in an elaborate labour supply chain. The report states that Baiada had six main contractors that supplied them with workers, who also further subcontracted down several tiers, which in the end included some 34 entities of labour suppliers. Along with outsourcing the workforce, Baiada had also outsourced the labor compliance responsibilities and serious breaches were uncovered including severe underpayment, extreme work hours, discrimination, and very expensive rent for overcrowded and unsafe accommodation (FWO 2015). We recommend that a more sophisticated system is



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established where licensing and regulation procedures are put in place for anyone who employs, places or supervises Working Holiday makers as well as for labour hire companies. Unregulated operations of labour hire companies encourage employers to find temporary relief in labour shortage by hiring temporary workers, rather than investing for long-term solutions, such as developing training programs or improving employment conditions to make the job more attractive.

A licensing system should be under the responsibility of the aforementioned specialist Working Holiday worker unit within the FWO. A best-practice model for such a system is the Gangmaster Licensing Act, introduced by the United Kingdom Parliament in 2004 as a direct response to the tragic event where at least 21 undocumented Chinese cockle pickers died in northern England. The Act demands that any business involved in employment placement in the agriculture, horticulture and shellfish industry as well as any related processing and packaging needs a licence to operate within the labour supply chain. The Gangmaster Licensing Authority, established to oversee compliance with the Act, and has been successful in identifying exploitation, working with suppliers and retailers to provide education for workers, and ultimately work towards eliminating labour violations in the supply chain. United WHY fear that tragedies similar to the cockle picker incident may occur in Australia due to the lack of regulation of actors operating in the labour supply chain, and urge the Australian government to introduce a Licensing Act enforced by the FWO.

### EMPLOYERS WHO DOUBLE AS LANDLORDS

Triangular exploitation relationships affecting Working Holiday makers are currently happening where the responsibility for working conditions and the treatment of workers have become non-transparent as they are being shared between employers and contractors, as seen in the example of the Baiada Group. Outsourcing of labor contracts creates further forms of exploitation due to tie-ins with the employer/contractor/labour-hire agent. Examples of this are employers/labour-hire companies who *also* fill the role of landlord and make Working Holiday makers pay above-market prices for low quality housing which is often overcrowded, unsanitary and unsafe. The employer/landlord also often deducts money for transport to and from the work site, and are the ones who allocate shifts and sign off on visa forms. Refusal or complaints about the accommodation or transport can lead to punishment and termination of employment. There have also been several incidents where female Working Holiday makers experience sexual harassment from their employer/landlord who they are forced to live with as well

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as work for. In this scenario the Working Holiday maker ends up in what is effectively a bondage labour situation. A case study in the Appendix 1 shows how an employer/supervisor doubling as a landlord can expose a worker to multiple vulnerabilities. It is from this misbalance of power between the worker and the employer, coupled with lack of oversight and accountability, that situations can escalate from exploitation to more egregious instances of forced labour.

United WHY recommend setting up monitoring mechanism to ensure that workers reside in accommodation that are safe, sanitary and humane.

### SUMMARY OF RECOMMENDATIONS

- **Enforcement:** A separate department within the FWO dedicated to Working Holiday makers, providing greater scrutiny of unscrupulous employers; services for workers such as a telephone hotline, a webpage where workers and employers can access information on labour rights, legislation and anonymously report incidents; maintaining a blacklist of employers or recruitment agencies; and providing proper oversight of the program so as to ensure its long-term sustainability.
- **Labour inspection:** The allocation of sufficient funds to minimise exploitation and ensure that the Fair Work Act's standards are met in order to maintain a certain credibility with the Working Holiday maker program. The recommended FWO department for Working Holiday makers should have its own labour inspectors akin to the UK's Gangmaster Licensing Authority, which has proven to be a successful initiative in intervening in situations of labour exploitation and imposing penalties on employers who do not comply with legislation. This would also ensure that the Commonwealth Government meets its international obligations as a signatory to International Labour Organisation's Labour Inspection Convention.
- **Specific labour market legislation:** Establish a Licensing Act handled by the FWO to ensure that all employer of Working Holiday makers and other temporary migrant workers are covered by legal obligations to their workers. The website the suggested new FWO unit for Working Holiday makers should provide provisions for employers and workers to check if contractors, labour hire companies and intermediaries are officially licensed before entering into business relationships with them.
- In case where employer, workplace supervisor, or labour hire company has a property to let for fee to be occupied by workers that are hired by, work under, and supervised by

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him/her, the housing must meet minimum legal standards required by respective laws and policies to ensure sanitary, safety and health standards are met

- The employer has a responsibility to ensure that a worker hired by him/her has found a housing that is safe, reasonably clean and does not present health or other safety hazards. When a worker has grounds to prove that the particular regional worksite has no adequate housing that meets minimum standards, it should be deemed s/he has a valid reason to voluntarily terminate his/her employment. A worker should not be disadvantaged in obtaining the signature for the second visa for exact days worked, claiming due wages or else.
- Where problems are identified, local councils and government bodies intervene so that adequate housing conditions are maintained in the regional rental market for temporary workers.
- Multi-agency collaborative initiative should be set up for monitoring various aspects of labour market where temporary migrant density is high, in order to maximise efficiency and outreach, in recognition of unique vulnerability of temporary migrant workers.
- International collaboration is made with the governments of the Working Holiday makers in their countries of origin by building MOUs. These governments are often able and willing to give workers information on their workplace rights and safety information, and often already have existing government bodies and institutions to do so before workers arrive in Australia

# REMOVING OBSTACLES TO SEEKING JUSTICE AND PROTECTING RIGHTS OF WHM

## Removing Obstacles to Seeking Justice and Protecting Rights of WHM

### EXISTING EMPLOYMENT RESTRICTIONS AND VULNERABILITIES

To promote cultural exchange, the Department of Immigration and Border Protection specifies that Working Holiday makers can work for a year, but the law only allows them to work for the same employer for a maximum of six months, which limits their job options since many companies would rather hire workers for more than six months. Several of our survey respondents complained that the six-month regulation limits their work choices to certain jobs in which they are easily replaceable and always paid by cash. Six-month limit restricts workers to temporary jobs, which are often casual. Although employment insecurity should be compensated through casual loadings, underpaid cash-in-hand jobs are common experiences of Working Holiday makers. Therefore, United WHY recommends the regulation of working for a single employer for six months to be abolished until the government can secure that the workers are paid appropriate wages in accordance with the Australian laws. This will allow working holiday makers a chance to access jobs where they are guaranteed the minimum working entitlements, as opposed to cash-in-hand casual jobs that do not pay casual loadings. They will contribute to Australian economy by paying taxes and will have more funds to travel around during their stay in Australia. This will benefit the Australian economy as this group of people will be in a position to spend more and increase the chance of cultural exchange. Another significant issue is the 88-days regional work requirement for the second Working Holiday visa. Working Holiday makers are eligible to apply for a second Working Holiday visa if they have completed 88 days of specific types of work such as plant and animal cultivation, farming, mining, or construction in regional Australia. According to the Department of Immigration and Border Protection, the rationale for adding the option of a second Working Holiday visa was “to provide an incentive to Working Holiday makers to work in the harvest industry which is experiencing severe labour shortages.” However, the “88 days” regulation has in some cases led to severe exploitation of Working Holiday makers. The opportunity for a second Working Holiday visa increases the vulnerability of the Working Holiday makers because workers can only be granted their second visa when the employers verify and sign the form. The ABC’s 4 Corners program in its report

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“Slaving Away” uncovered employers’ abuse of power over visa status to pay their employees below-award wages in poor conditions and in some cases, sexually harass female employees. The case study in Appendix 1 also shows this vulnerability. Many workers seeking to apply for a second visa are currently forced to endure unfair and unsafe working conditions. It is common that for those who apply for a second Working Holiday visa, potential modes of exploitation include unpaid or underpaid wages, long working hours, and precarious working conditions. We argue that in this context, employers currently have unchecked power to exploit employees. Given the employees might choose to leave the work due to unfair treatment, the evaluation of the 88 days should be calculated from multiple sources rather than from the single workplace. The government needs to establish a system that allows the time served with one employer to be carried across to another employer or recognised by the government. The advent of this system should not reduce the emphasis on the accountability of firms, reporting, and inspection mechanism. The lack of effective inspection mechanisms, vulnerability of workers to dangers of exploitation, and the growth of cash-in-hand job market fosters a legal grey area conducive to illegal activities. Bogus visas have been reported by various media outlets where workers pay fees to brokers or farmers to falsely testify to the Immigration officials.<sup>1</sup> This can sound attractive to some workers given rampant underpayment and exploitation in regional areas, although being involved in bogus activities ultimately renders them more vulnerable. The government must strengthen the accountability of employers, create a sound labour inspection mechanism, and establish a better scheme to regulate employers. We also argue the government and the Fair Work Ombudsman should take a greater inspection role in the second visa application process.

### RECOMMENDATION: AN ONLINE REGISTRAR SYSTEM

United WHY proposes that the government should establish a register system for 88 days of regional work. The reasons why a registrar system is necessary are as follows:

1. There is a prevalence of exploitation, abuse and violation of labour rights while workers undertake 88 days of regional work. Our data confirms reports of others

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<sup>1</sup> For example, see this news report: <http://www.smh.com.au/national/travellers-lie-to-get-second-year-visa-extension-20120812-242sf.html>

## REMOVING OBSTACLES TO SEEKING JUSTICE AND PROTECTING RIGHTS OF WHM

such as Visa Entitlement Verification Online (VEVO) that this requirement bonds an employee to the employer and increases their vulnerability to exploitation. The employer can threaten to refuse to provide verification to the Department of Immigration and Border Protection that the 88 days of work requirement has been met.

2. When violations occur there are limited means of redress. Although the Fair Work Ombudsman has started making substantial efforts to reach out to working holiday makers in regional areas, many are either not aware of their rights or avenues through which to seek assistance in the case of exploitation. Many remain in fear of not being granted their second visa because they have worked some days or weeks in fulfillment of 88 days. These obstacles to seeking justice should be removed.
3. Farmers and other employers in regional areas profess to have difficulties in finding workers, and as a result rely on labour hire companies that may engage in exploitative practices.
4. Many workers that come to work in regional areas do not have prior background knowledge or experiences in agricultural work. Not only are they unfamiliar with labour standards in Australia such as Agricultural Award, they are also not familiar with lifestyle, social context and related industrial practices in Regional Australia. The term "88 days" is misleading in this aspect because in farm work, for instance, a worker may need to stay substantially longer than this time period depending upon the availability of work. The nature of agricultural labour needs to be conveyed clearly to workers considering undertaking the 88 days of regional work requirement.

One of United WHY's key aims is to help young, overseas workers to work in safe work environment where their rights are protected and prevent the potential for exploitation. United WHY proposes the establishment of an online-based registration system that is administered by the DIBP and that employees and employers must access. The system we propose would have the following key aspects:

- Employers that are able to provide certification that an individual has completed this requirement must be registered/approved by DIBP as competent to do this.
- Employers registered to participate in this scheme must undergo routine monitoring and annual audits.

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- Employers could advertise positions for hiring workers allowing Working Holiday Makers apply for jobs directly.
- Allow Working Holiday Makers to notify DIBP when they commence the 88-days work.
- Require an employer to confirm this as a measure to prevent fraudulent applications.
- Create significant legal penalties if an employer fails to confirm this
- .Institute a way of calculating the number of days worked so that in instances where a visa applicant encounters a workplace dispute they will not be negatively disadvantaged if they report their employer to the authorities such as FWO or the police in case of violation of their rights or any workplace abuse.
- Disseminate information that is readily available in multiple languages. Information is already available in other website such as Harvest Trail but an online platform would increase the outreach of such information to a wider group of Working Holiday makers
- Make an easy to use internet portal similar to my.gov or the VEVO or Jobsearch Harvest Trail.

This should reduce the vulnerability of workers in a number of ways:

- The government can have better control over employment practice and of migrant visa status. If employers, labor hire contractors, and employees are all forced to register in advance, the government can track the labor processes and better monitor and uphold integrity of the labour market as well as the visa process.
- By establishing the register system, the government can take sanctions against employers that engage in unscrupulous practices, and help regional employers to hire directly and reduce the need for employers to rely on labour hire agents.
- By linking migrant data into a centralised system, the government can monitor the visa status, company operation, and their record keeping in relation to wages and hours worked.
- Much of online-based mechanisms and resources are already publicly available, what is lacking is coordination for broader outreach.
- Under the system the government can also provide a platform for both employers and employees to share information and experiences regarding their work. People

## REMOVING OBSTACLES TO SEEKING JUSTICE AND PROTECTING RIGHTS OF WHM

can understand the employers/employees more before offering/taking the position.

There are some Facebook pages or online forums already created as a platform to share/spread out the information, we urge the government to establish a system where credible information on employers and workplaces can be shared, to minimize a space where brokers and unscrupulous labour-hire agencies recruit workers without providing full information. The registrar system we propose would provide conveniences as well as a better monitoring mechanism for the government. We believe it can also efficiently decrease the illegal agents, provide a healthier work environment for migrant workers and improve the integrity of the Australian labour market.



## ON PROPOSED CHANGES IN 2016

### On Proposed Changes in 2016

#### CHANGE OF RESIDENT STATUS FOR TAX PURPOSES KNOWN AS “BACKPACKER TAX”

In May 2015, then-Treasurer Joe Hockey announced that working holiday makers in Australia will pay tax from their first dollar earned because they will be exempt from a tax-threshold of nearly \$20,000 starting in July 2016. The Australian Tax Office (ATO) announced that working holiday makers will be treated as non-residents for tax purposes regardless of how long they stay in Australia<sup>2</sup>. The current rules treat WHMs who reside in Australia for more than six months as residents for tax purposes *as they would for other temporary residents*. United WHY oppose the removal of tax-free threshold for working holiday makers for three reasons.

Firstly, this change is unfair. Many Working Holiday makers fall under the low-income bracket and many of them live in Australia. WHMs can legally stay for a year, and 417 visa holders are eligible for second visa when they fulfill 88 days of regional work requirement. Many do stay on for two years. While WHMs are charged the same rates of taxation currently, they are excluded from a wide range of services offered to permanent residents and Australian citizens in health, employment, and other social services. While the government claims Working Holiday makers have to pay “fair share”, they are already subject to taxes in income and sales while being formally entitled to *no* social protection and services. They live in Australia for substantial amount of time, often in low-wage jobs, and it is highly discriminatory that they are singled out among other temporary visa workers in being treated as non-residents regardless of how long they stay. United WHY express concerns that this measure comes as the government is introducing a series of changes to working holiday visas in 2016, notably the ChAFTA and Northern Australia development plans, where Working Holiday makers are treated in the policies as temporary migrant workers rather than holiday makers.

Second, the proportion of workers who are paid cash-in-hand is already very high and removing the tax-free threshold will *encourage* growth in cash-in-hand job market. It will

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<sup>2</sup> <https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-individuals/Tax-residency-rules-to-change-for-temporary-working-holiday-makers/>

## ON PROPOSED CHANGES IN 2016

provide justification for employers to pay and encourage workers to seek cash jobs. In surveys conducted by KOWHY, almost half (79 out of 159) of respondents replied that they are working cash jobs. In another survey conducted by T-WHY, 178 out of 449 (40%) replied that their average hourly wages were below \$15 and were paid cash-in-hand. Underpayment of minimum wages has been reported by various media outlets as well as the Fair Work Ombudsman, where they report vast majority of these illegal wages are paid cash-in-hand. Underpayment of wages and the growth of cash job market is an endemic problem that requires proper regulation and enforcement. When asked how they felt about the tax changes, the majority of survey respondents replied that this was unfair. A portion of respondents noted that they would consider changing their jobs so that they can be paid cash. A significant proportion (11%) heard their employer mention the changes in the context of lowering their wages. It will encourage growth in the informal economy and insecure cash-only work.

Third, it is thus likely that removing the tax-free threshold will result in decreased tax revenue for the government. While the government forecasts some hundred million dollars in tax revenue in the next years as a result of hefty tax increase, this prediction is highly questionable on the basis of what we know about the high proportion of Working Holiday makers who are paid in cash.

United WHY reiterate the need for Working Holiday makers to be treated fairly and to enjoy the equal workplace conditions enshrined in the Australian laws. The proposed changes in the tax regulations is unfair, will encourage a cash-based job market and altogether its benefits are questionable. *Even if* it produces greater tax revenue, its implications for the migration industry and by association, labour market, as well as the lives of individual Working Holiday makers will be profound. United WHY strongly recommends reinstatement of resident status for tax purposes for Working Holiday makers.

### WHITE PAPER ON DEVELOPING NORTHERN AUSTRALIA

In the White Paper on Developing Northern Australia, Working Holiday makers (both 417 and 462 visa holders) are identified as workforce for the goal of developing the North, as shown in the report's recommendation as below

## ON PROPOSED CHANGES IN 2016

Expand the Working Holiday Maker Visa Programme by increasing the amount of time visa holders can work in high demand areas

Expand the Working Holiday Maker Visa Programme to allow participants to work for longer in high demand areas in northern Australia, with a small number allowed a second year on their visa if they work in northern tourism and agriculture.<sup>3</sup>

United WHY express worries that migrant workers (including not only Working Holiday makers but also Designated Area Migration Agreements workers, seasonal Pacific workers, and a new pilot visa for Pacific Islanders) are identified as frontiers of Northern development without being explained what protection mechanisms for their labour and human rights exist. We are especially concerned about the remote nature of job locations, difficulties in accessing services due to geographical locations, and cultural sensitivities around indigenous communities that foreign workers with limited linguistic, social and historical understanding may not be able to fully grasp. In addition, we reiterate worries from past experiences of workers' vulnerabilities and problems during 88 days of regional work required for the second visa under current rules. Without adequate regulations, regular inspection, and effective enforcement/penalty mechanism at place, the incentive provided when WHMs move to Northern Territory could give a way to unscrupulous labour hire practices, deteriorating employment conditions and vulnerabilities to physical, verbal, psychological and sexual abuse on young workers.

### RECOMMENDATIONS ON PROPOSED CHANGES IN 2016

United WHY recommends:

- Resident status for tax purposes is reinstated as it is now for working holiday makers
- Fairwork Ombudsman to plan how labour and human rights of foreign workers will be protected to recognise their unique vulnerabilities in the Northern Territories and to uphold integrity of the labour market. Such plan should include the scope for implementation, enforcement and inspection to make sure the plans are realistically feasible on the ground.

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<sup>3</sup> <http://industry.gov.au/ONA/WhitePaper/Paper/developing-the-north.html>

## ON PROPOSED CHANGES IN 2016

- Department of Immigration and Border Protection to devise a system that ensures fairness in accessing granting of the second visa. Such system should be transparent and incorporate a measure that provides protection for workers from unscrupulous labour hire company or abusive employer, such as the online-based registrar system suggested above.
- Provide an official ways in which information on policies, visa implications and essential information about Northern Territory can be passed to workers, and such portal should be made available in multi languages.

## APPENDIX 1: TESTIMONY OF A FARM WORKER

### Appendix 1: Testimony of a Farm Worker

*Below is a testimony of a worker named SL who is a member of KOWHY. She came to Australia on 417 visa and obtained her second visa by working in a farm in regional Queensland for 88 days. She is currently in South Korea at the time of hearing.*


I'd like to talk about work I did that was very demanding but not very rewarding.

During the first harvest of tomatoes, you cannot pick from the machines because tomatoes ripen from the bottom of the vine. You have to hand pick by completely folding your back forward. There were 60 workers on the first day and we worked for 13 hours. 5 fully grown men got sick during work, and I passed out from the sun. We waited 3 weeks for our wages, and we were paid \$45 for work on that day.

Machine picking starts when tomatoes ripen. 10 people sit in one machine to pick tomatoes, and 3-5 people with baskets pick tomatoes that the machine missed. Each line is usually 3kms long and can be as long as 10 km. It is not easy to pick tomatoes across that distance, following the speed of the machine. No exceptions were made because I am a woman. Each basket weighed about 7-10 kg, I thought my pelvises were going to collapse. A Korean woman who was a contractor was the farm owner's daughter-in-law. She swore a lot, and bullied if you did not work fast enough.

4 bins fit a 3-ton truck, and when you fill one truck, each team member is paid about \$10. It is not exactly \$10, because the price depends on grades of tomatoes given when being sorted at the factory. When there are not much ripened tomatoes, you can end up with \$3-40 after 14 hours of work.

But of course not everyone was paid the same. This contractor is already notorious so she does not recruit. Below the contractor there are "supervisors" that worked under the contractor for 2-3 years and they say they are not supervisors. They recruit through Facebook, and Korean guesthouses and manage the share house, and they are paid additional wages for that. All wages are put in an envelope with a name and an amount, and sometimes an envelope goes missing which means a worker is just not paid. What feels most vain about this is that you cannot find anyone responsible for your missing wage.



I worked from 29 March to 5 June 2014, and was paid \$6650 for duration. I was returned no taxes. The last wages and the signature for the second visa I could only get with the help of a church minister after persistent calls and text messages a month after I quitted in July.

I found this work through a Korean guesthouse in Brisbane through a 26-year old “supervisor”, and was assigned a share house that was managed by him. The room was shared between two people, and I paid \$130 for lodging. The room was clean, but the other 5 people that lived in the house worked in that farm for more than 3 years, and was very close to the contractor.

I complained and said that I’d quit. After that, I was bullied by the people in the house. (There were 3 cars in the accommodation but no one gave me a ride. The closest supermarket was 5 minutes away by car but 40 minutes on foot.) I was given disadvantage in shifts. My days were off when tomatoes ripened and it was easy to harvest and make money. I worked on days when work was difficult. I felt guilty because I thought there was something wrong with my personality that I did not get along with the people in the house. But when I returned to the city and met other people who worked in the same farm, I realised this was a pattern. The farm did not pay proper wages, or provide signature for the second visa or report taxes, but I was made to think that I was to be blamed for it.



## CONTACT INFORMATION

### Contact Information



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Please direct your inquiries on respective sections to:

- Sohoon Lee (“Introduction” and “On Proposed Changes”)
- Tina Davis (“Enforcement and Inspection”)
- Kuo-Sheng Cheng (“Removing Obstacles”)
- Yao-Tai Li (“Removing Obstacles”)