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**Submission by the Synod of Victoria and Tasmania, Uniting Church
in Australia to the inquiry into the *Migration Amendment
(Strengthening Employer Compliance) Bill 2023*
21 July 2023**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission to the inquiry into the *Migration Amendment (Strengthening Employer Compliance) Bill 2023*. The Synod supports the Bill and believes it should be passed through the Parliament, preferably with the suggested amendments below. Of greater concern is that the level of criminal activity amongst employers far outstrips the resources available to all relevant law enforcement agencies, including the Fair Work Ombudsman, the Australian Taxation Office, Australian Border Force and the Australian Federal Police. The Committee should recommend greater resources be allocated to all these law enforcement agencies, so they can investigate and prosecute more cases.

The Uniting Church in Australia has affirmed the importance of just and fair conditions in Australian workplaces. It has also affirmed the critical role trade unions play in our society, in line with internationally agreed human rights principles.

The 2006 National Assembly meeting further resolved the following:

06.20.02 *The Assembly resolved:*

- (a) *to affirm that all people are entitled to just remuneration and equitable conditions of employment in their working lives and dignity in unemployment;*
- (b) *to note the Inaugural Assembly's 1977 Statement to the Nation, which committed the Church "to challenge values which emphasise acquisitiveness and greed in disregard of the needs of others and which encourage a higher standard of living for the privileged in the face of the daily widening gap between the rich and poor";*
- (c) *to affirm Assembly Resolution 91.14.17, which stated that trade unions are of importance in the overall democratic process and play a role in protecting those who are vulnerable in society, and to remind members of its statement that "synods, Assembly agencies, and other Church bodies be requested to encourage employees to join and be active in an appropriate trade union and/or professional association";*
- (d) *to affirm the importance of bearing witness to the Uniting Church's public role in the life of the nation by conducting our actions as an employer in line with our public affirmations of principle;*



- (e) *to request the Assembly Standing Committee to appoint a task group to progress the development of a national approach in the area of just and ethical employment within the Uniting Church by*
- a. *convening a consultation among the synods and Assembly to*
 - i. *share together the way in which each is seeking to ensure that their employment practices are consistent with Uniting Church statements on the role of employers and the rights of employees,*
 - ii. *consider identifying minimum expectations of employing bodies in the church and/or guidelines by which the employment practices of the church may be measured against our commitment to social justice principles and our public statements on the role of employers and the rights of employees;*
 - iii. *determine an appropriate timeframe for this undertaking, taking into account the immediate need created by the entry into effect of the WorkChoices legislation in March 2006; and*
 - b. *reporting to the ASC on the results of the consultation and related actions and bringing any recommendations for further action.*

People working on temporary visas have been demonstrated to be more vulnerable to wage theft and other forms of exploitation, including cases of modern slavery. However, wage theft and exploitation are not restricted to people on temporary visas and therefore it is inappropriate to lay blame for wage theft, exploitation and modern slavery on temporary migration.

The Migrant Workers' Taskforce Report concluded "the problem of wage underpayment is widespread and has become more entrenched over time", with as many as half of temporary migrant workers may be underpaid.¹

In relation to people on temporary visas, their vulnerability to wage theft and exploitation would be reduced if their rights in relation to their employers were improved. Visas that grant employers the ability to have workers removed from Australia where the worker has no effective ability to appeal against the removal particularly make people on temporary visas vulnerable to exploitation.

Schedule 1, Part 1

The measures in Schedule 1, Part 1 will go some way to address criminal behaviour of employers that seek to exploit people who are working in breach of their visa conditions. In our experience some employers seek out people to work in breach of their visa conditions for the purposes of exploiting them to boost the profits of the business. In a conversation with a person from Malaysia working in breach of her visa conditions packing grapes in the Robinvale area of Victoria in 2019, she stated that people working in breach of their visas were paid \$2.25 per box they packed, while people working legally were paid \$4.50 per box. In some cases, people have been coerced or tricked by their employer to work in breach of their visa conditions as a means to make them malleable to coercion for the purposes of exploitation. The measure in Schedule 1 will increase the risk for such employers that workers they exploit will be more readily able to pursue them through the *Fair Work Act*.

¹ Commonwealth of Australia (2019). Report of the Migrant Workers' Taskforce. Retrieved from <https://www.ag.gov.au/industrial-relations/industrial-relations-publications/Pages/report-migrant-workers-taskforce.aspx>

We ask that the Committee gain assurance from the Department of Home Affairs that the proposed language “*arrangement in relation to work*” in subsections 245AAA(1), 245AAB(1) and 245AAC(1) are broad enough to cover known exploitative conditions to which migrant and temporary workers have been subjected. For instance, it should cover where Working Holiday Makers are made to submit to sexual harassment or sexual acts, as well as sub-standard accommodation and withholding of passports, to receive their employer’s sign-off for ‘specified work’ to gain an extension on their visa.

Schedule 1, Part 2

We support creating a framework to prohibit certain employers from employing additional non-citizens. We also support creating a mechanism to exclude employers who have been convicted by a court under a civil remedy provision of the Fair Work Act, which we note was a recommendation of the Migrant Workers’ Taskforce.

The New Zealand Government already has a regime where employers that have breached employment standards are restricted from recruiting migrant workers.² In New Zealand the stand down period starts from when an infringement notice is issued by a Labour Inspector, a penalty is ordered by the Employment Relations Authority, or a more serious sanction is ordered by the Employment Court for a breach of employment standards.

The length of the stand-down period is:

- six months for a single infringement notice;
- twelve months for multiple infringement notices;
- two years for pecuniary penalties ordered for a case from the Court;
- twelve months from declaration of breach ordered by the Employment Court, adjusted upwards as appropriate to reflect the resulting penalties ordered (up to 24 months);
- twelve months from recruiting migrant workers for employers incurring a banning order of less than five years, to be added at the end of the ban period; and,
- two years from recruiting migrant workers for employers incurring a banning order of five years or more, to be added at the end of the ban period.

For non-pecuniary penalties ordered by the Employment Relations Authority or Employment Court, the table below outlines the stand-down period.

Table 1. Stand-down periods in New Zealand for non-pecuniary penalties ordered by the Employment Relations Authority or Employment Court.

| Individual penalties | Company penalties | Stand-down period (months) |
|-------------------------------|-------------------------------|----------------------------|
| \$1,000 or less | \$1,000 or less | 6 |
| Between \$1,001 and \$10,000 | Between \$1,001 and \$20,000 | 12 |
| Between \$10,001 and \$25,000 | Between \$20,001 and \$50,000 | 18 |
| Greater than \$25,000 | Greater than \$50,000 | 24 |

A public list of employers subject to a stand-down period is maintained by Employment Services. As of 19 July 2023, there were 59 employers on the stand-down list.

Where the Minister has made a declaration of a prohibited employment, enforcement would require monitoring of the employer to ensure they comply. Such monitoring could be

² <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/employers-who-have-breached-minimum-employment-standards>

implemented by an enforceable undertaking where the employer is required to pay for independent monitoring of their compliance. Enforcement was the primary reason why New Zealand did not extend the stand-down provisions to “foreign nationals with open work conditions”, stating: “Immigration New Zealand does not have any control over the employer these people work for.”³

The criminological literature demonstrates that delayed sanction is less of a deterrent. We submit that adopting New Zealand’s approach, where employers may be stood down not just by a penalty ordered by the court but also when an infringement notice is issued by a Labour Inspector or a penalty is ordered by the Employment Relations Authority would enable authorities to prevent non-compliant behaviour from becoming entrenched. We note there is some complexity with provisions under the *Fair Work Act* where, if a compliance matter is resolved, the contravention is taken to have not occurred.

Schedule 1, Part 6, Subsection 116

The Synod believes the proposed amendment in the Bill is inadequate. People on temporary visas who report exploitation should be provided with a guarantee of protection against visa cancellation under subsection 116(2) for any breaches of the law that relate to their exploitation. Such breaches would include breach of visa conditions, tax evasion related to tax not being taken out of their pay by their employer and making a false claim for a protection visa. However, there will be circumstances where visa cancellation may still be appropriate in cases where the person has committed other non-trivial criminal actions. Based on our experience with people on the PALM Scheme, such cases may include domestic, family and sexual violence or serious assaults. It is our understanding, if subsection 116(2) is amended to provide a guarantee against visa cancellation in cases where the person can provide a valid certification that they have been subjected to unlawful workplace treatment, their visa could still be cancelled under section 501 of the *Migration Act* if they have committed another crime.

The current Assurance Protocol between the Fair Work Ombudsman and the Department of Home Affairs is not available to protect a person against visa cancellation if they approach agencies other than the Fair Work Ombudsman. For example, a person may have a legitimate claim regarding breaches of workplace health and safety, sexual harassment, and bullying. Protection against visa cancellation is not available to workers who seek to address their exploitation through union action or a legal claim in a court or the Fair Work Commission.

With the PALM Scheme, it is our experience that the Department of Home Affairs rarely cancels the visas of disengaged workers. It is helpful that they do not cancel visas. It becomes easier for workers to be persuaded to re-engage with the Scheme, where the Department of Employment and Workplace Relations supports such an outcome. It also is easier to persuade a person to voluntarily leave Australia if they still have a valid visa.

Unethical migration agents and others with no legal right to provide migration advice often prey on disengaged people from the PALM Scheme, manipulating their fear that their visa will be cancelled. For a fee of up to \$5,000 per person, they file meritless claims for protection visas to obtain for the people from the Pacific Islands a bridging visa with work rights, so the person can then lawfully work for any employer in Australia. More recently, we have seen workers being persuaded to apply for student visas. Some of these applications

³ New Zealand Ministry of Business, Innovation and Employment. (2016).

are legitimate, but we fear others are about the unethical migration agent or other person not lawfully allowed to provide migration advice gaining payment from the worker.

The need for a Temporary Visa to pursue cases of exploitation

The measures in Schedule 1 by themselves will be insufficient to deter criminally exploitative employers. Most workers we have spoken to that have worked in breach of their visa conditions fear removal from Australia above other considerations. Thus, many will put up with being exploited in Australia if the financial outcome is still better than the situation they would face if they were sent to their home country. Thus, many workers that work in breach of their visa conditions will continue to do so until the employment arrangement is ended, such as being terminated by the employer or due to intervention by a law enforcement agency.

People who have worked in breach of their visa conditions will largely only be able to pursue an employer for cases of exploitation under the *Fair Work Act* where they have an ability to remain in Australia to do so. It is exceedingly difficult to pursue a case once the person has been required to return to their home country. We therefore would urge the Parliament to support the introduction of a visa that allows a person who has a meritorious non-trivial claim related to a breach of the *Fair Work Act* to be able to remain in Australia while the legal action against their former employer is pursued. Such a visa could also be granted in cases where the person is assisting a law enforcement agency in a prosecution of an employer for non-trivial offences. An example would be where the person is needed to assist a state-based labour hire licensing authority in the prosecution of an unlicensed labour hire business.

New Zealand already has in place measures to allow workers on temporary visas that have been exploited and breached their visa conditions access temporary migration relief to enable the ability to escape exploitative situations, maintain legal status, and the ability to work. Workers receive help connecting with advice, information and support services where necessary.⁴

⁴ Employment New Zealand, Migrant Worker Exploitation webpage.
<https://www.employment.govt.nz/resolving-problems/types-of-problems/migrant-exploitation/>. Accessed 04/01/2022.

What happens when you make a complaint

Employment New Zealand will consider your complaint.

If you agree to be contacted, we aim to contact you within 3 working days with the information you gave us and let you know how we can help.

MBIE has introduced the Migrant Exploitation Protection Visa, which allows people to quickly leave exploitative situations and remain lawfully in New Zealand for up to 6 months and will be available to those who are holding a valid work visa, have had their report of exploitation assessed by Employment New Zealand and have been given a Report of Exploitation Assessment Letter.

[Migrant exploitation – Immigration New Zealand](#) 

The rights of many migrants remain precarious, as highlighted by a report published by the United Workers Union in 2019⁵, which focused on the exploitation occurring in the Australian farm sector. The research found that only 35% of the workers speaking out reported holding a valid work visa, with two-thirds of all the farmworkers surveyed earning below the minimum wage.

The need for an strengthened offence for failing to conduct a VEVO check

There is a need to strengthen the requirements to use the Visa Entitlement Verification Online (VEVO) system to verify that a person is allowed to work under their visa. As highlighted by the Migrant Workers' Taskforce, people who end up working in breach of their visa are highly vulnerable to being abused through exploitation.⁶ There is a need to ensure that the ultimate employer is held to account for the employment of people on temporary visas in breach of their visa conditions unless they can demonstrate they took all reasonable steps to try and ensure the person had the legal rights to work in the employment in question.

We have extensive experience with people on the PALM Scheme that have disengaged from the scheme. These people have no trouble finding a large number of Australian employers willing to employ them despite their 403 visa having a condition on it that the person in question can only work for the Approved Employer who sponsored them to come to Australia. For example, we were in contact with disengaged workers from the PALM Scheme working at a large meat works in Victoria in breach of their visa conditions. The workers were eventually terminated on mass and moved on to work for other employers in breach of their visa conditions. It is near impossible to understand how a business the size of the meat works that regularly employs migrant workers, failed to know it needed to conduct a

⁵ National Union of Workers (2019). 'Farm workers speak out'. Retrieved from https://www.nuw.org.au/sites/nuw.org.au/files/farm_workers_speak_out_nuw_report_web.pdf

⁶ Department of Home Affairs, 'Migrant Amendment (Protecting Migrant Workers) Bill 2021. Exposure Draft – Context Paper', 2021, 2.

VEVO check of the workers from the Pacific Islands that it was employing. We would be willing to name the meat works and provide further details of the case.

Our own experience is that too many employers have attempted to use labour hire businesses and other intermediaries to knowingly or recklessly establish plausible deniability that they did not know people were employed in breach of their visa conditions. Establishing a requirement that the ultimate employer must check the legality for any contractor workers would allow individuals and industries with the highest risk of non-compliance to be required to use the VEVO system and be unable to try and shift blame for any non-compliance onto other intermediaries.

The need for increased law enforcement resources

It is our experience from the PALM Scheme that reporting cases of employers employing workers who have disengaged from the Scheme in breach of the workers' visa conditions rarely results in law enforcement action. Our hypothesis is not that the law enforcement agencies are uninterested. Rather, it is the scale of criminality amongst Australian employers is so extensive and the enforcement systems are so slow and labour intensive that the law enforcement agencies can only deal with a small fraction of the cases reported to them.

In a recent cases, we dealt with people who had disengaged from the PALM Scheme who were employed by an unlicensed labour hire business in Victoria. The workers alleged that the controller of the business:

- Paid them in cash with no apparent tax or superannuation contributions, suggestive of tax evasion with no tax being taken out of the wages;
- Made threats of physical violence against workers;
- Made a death threat against a worker; and,
- Held workers passports and demanded \$500 for the return of a passport in one case.

The person who was listed as the director of the registered business was persuaded to agree to provide evidence against the controller of the business. He provided the bank statements for the business. The statements showed that large payments from farms using the labour hire business would be deposited into the business bank account and then would be transferred out in large sums to other parties the same day or the next day. The payment pattern was suggestive that the labour hire business was being used a front company to conceal additional parties who were financial beneficiaries of the illegal labour hire activities.

Several workers stated that they were willing to provide statements and evidence to any law enforcement agencies.

The case was reported to Fair Work Ombudsman, the Australian Taxation Office, Australian Border Force, the Australian Federal Police and the Victorian Labour Hire Authority. The Victorian Labour Hire Authority commenced an investigation speaking with the business director and the workers. The Fair Work Ombudsman followed up, but decided not to pursue any matters. The Australian Federal Police also followed up. The Australian Taxation Office and Australian Border Force did not speak with the business director or the workers, who we have remained in touch with.

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