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TIM KENNEDY SECRETARY
JO SCHOFIELD PRESIDENT

United Workers Union

Submission

Senate Legal and Constitutional Affairs Committee Inquiry

Migration Amendment (Strengthening Employer Compliance) Bill 2023

United Workers Union is a powerful union with 150,000 workers across the country from more than 45 industries and all walks of life, standing together to make a difference. Our work reaches millions of people every single day of their lives. We feed you, educate you, provide care for you, keep your communities safe and get you the goods you need. Without us, everything stops. We are proud of the work we do – our paramedic members work around the clock to save lives; early childhood educators are shaping the future of the nation one child at a time; supermarket logistics members pack food for your local supermarket and farms workers put food on Australian dinner tables; hospitality members serve you a drink on your night off; aged care members provide quality care for our elderly and cleaning and security members ensure the spaces you work, travel and educate yourself in are safe and clean.

The United Workers Union welcomes the opportunity to provide input into the *Migration Amendment (Strengthening Employer Compliance) Bill 2023*.

We commend the government's commitment to 'designing out' the levers for exploitation within the migration system. UWU will continue to consult with government in that important task, to ensure that the interests and experiences of our migrant worker members are represented.

This Bill contains a number of important mechanisms designed to tackle migrant worker exploitation, including by enhancing penalties against employers who exploit migrant workers, and establishing a framework through which such employers can be prohibited from employing additional migrant workers.

UWU **supports the submissions and recommendations made by the ACTU** to this inquiry, including to pass the Bill with some important amendments. In particular, we support the ACTU's recommendations that:

- The visa cancellation framework proposed in the bill not be passed, and be replaced with an effective guarantee against visa cancellation for exploited workers;
- Grounds for prohibition of an employer be broadened to include consideration of breaches of all work-related laws and regulations, including health and safety laws, as well as the Pacific Australia Labour Mobility (PALM) Deed and Guidelines; and



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- Workers and unions be enabled to make an application for an employer to be declared prohibited, as well as be enabled to make submissions about whether a proposed decision to declare an employer prohibited be made.

We refer to the ACTU's submission for further discussion of why these recommendations are fundamental to ensuring migrant workers are protected and the other provisions of the Bill operate as intended.

In particular, UWU is concerned that, without the appropriate visa-based protections for migrant workers in place, the penalty provisions at Schedule 1, Parts 1 to 5 of the Bill will not have a tangible effect on employer behaviour. That is, unless migrant workers are appropriately protected to come forward and take action against their employers, it is unlikely that regulators will be able to take action to enforce penalties for coercing workers or to impose a ban on non-compliant employers. Experience with the existing employer provisions of the *Migration Act 1958* (Cth) shows that penalty provisions will remain under-utilised unless migrant workers – the key witnesses in prosecutions against their employers – are protected against adverse visa consequences.

We agree with the ACTU's submission that the changes to the visa cancellation framework proposed at Part 6, Div 1, Item 37 of the Bill do not go far enough to protect exploited migrant workers against exploitation. That is because:

- (a) The amendments maintain a **discretion to cancel, not a guarantee against cancellation** of an exploited worker's visa. Even if regulations were made providing that the Minister (or their delegate) *must* have regard to evidence of exploitation and give it *significant weight* in a visa-holder's favour, the proposed new s 116(1B) makes it clear that the delegate would still be at large to consider any other matter that they considered to be relevant. It would still be open to a delegate, at their discretion, to cancel an exploited worker's visa. Exploited workers must be entitled to protection if they come forward against exploitation at work;
- (b) The amendments propose to **codify the failed 'Assurance Protocol'** between the Fair Work Ombudsman and the Department of Home Affairs, which provides a limited protection against cancellation *only* relating to matters investigated by the FWO. Migrant workers should be extended protection against cancellation if they have experienced any form of exploitation – from unsafe work, discrimination, bullying or breaches of labour hire licensing laws. Protection should not just be limited to a small subset of wage claims that are investigated by the FWO; and
- (c) The provisions of the Bill **cannot be clearly communicated to temporary workers**. They offer only a partial protection, because the discretion to cancel is maintained, and it is unclear what information the Minister (or their delegate) will (or will not) be required to take into account when deciding to cancel a visa. If a guarantee against cancellation cannot be communicated to visa-holders, they will never have the confidence to come forward about exploitation at work. This will mean that the other provisions proposed in the Bill – as well



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as further measures the government might take to increase regulation of employers – will remain ineffective.

Migrant workers should not fear cancellation of their visa if they come forward about workplace exploitation. Likewise, unscrupulous employers should not be able to rely on the threat of visa cancellation to compel migrant workers into accepting sub-standard conditions at work.

Only a strong, reliable protection against visa cancellation will be sufficient to provide visa-holders the security to come forward. If the possibility of cancellation remains, in our experience, visa-holders will not accept the risk and will not pursue workplace claims, preferring their visa security instead.

UWU, along with a significant number of other unions, civil society organisations and academics, has endorsed the *Breaking the Silence* proposal prepared by the Migrant Justice Institute and Human Rights Law Centre.¹ We endorse the suggestion in that proposal for regulations to be issued for the purpose of **s 116(2), prescribing circumstances in which a visa *must not be cancelled***, arising from breaches of workplace law.

As proposed in *Breaking the Silence*, the circumstances prescribed by the regulations for the purpose of s 116(2) should include all non-trivial breaches of labour laws – including the *Fair Work Act 2009* (Cth), work health and safety laws, discrimination laws and breaches of labour hire licensing legislation.

Evidence of non-trivial breaches enlivening the protection at s 116(2) should be given by way of certification by government regulators (such as the FWO or labour hire licencing authorities), a Court or Tribunal or qualified employment lawyer. Where such certification of a non-trivial breach is provided, the protection at s 116(2) should be made available to the visa holder as of right – it should not be possible for the Department to ‘go behind’ the certification.

While we recommend that the provisions at Part 6, Div 1, Item 37 of the Bill **not be passed**, the existing mechanism provided at s 116(2) of the Act provides government with the power to extend the necessary protection to migrant workers.

We look forward to continuing to work with government to design appropriate protections that migrant workers can rely on.

¹ Migrant Justice Institute and Human Rights Law Centre, *Breaking the Silence: A Proposal for Whistleblower Protections to Enable Migrant Workers to Address Exploitation* available <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/63fd396c1e56d5441059e94a/1677539698406/Breaking+the+silence+-+A+proposal+for+whistleblower+protections+101122.pdf>.