

## **UNITED WORKERS UNION**

### **SUBMISSION**

#### **Select Committee on Temporary Migration**

United Workers Union (**UWU**) is a powerful new union of 150,000 workers 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 member’s work around the clock to save lives; our early childhood educator members are shaping the future of the nation one child at a time; our farms, food and logistics members are putting food on Australian tables and our cleaning and security members are making the buildings you work, travel and educate yourself in safe and clean.

Working across these and other industries, there are now about 1.3 million people on temporary working visas in Australia.<sup>1</sup> UWU represents thousands of these temporary migrant workers, including seasonal workers, international students, backpackers, refugees and asylum seekers, as well as undocumented workers. Our union thus has unique insights into the experiences of temporary migrant workers at work in Australian workplaces.

UWU’s approach to issues of migration is grounded in the union’s core values, and includes the following guiding principles:

- The promotion of permanent migration as well as strong protections for all temporary migrant workers working in Australia;
- A humanitarian approach to migration and asylum, the promotion of decent employment, and equality of treatment for all workers; and
- A commitment to freedom of movement, and belief that immigration was, is and always will be a positive aspect of Australian life.

In short, UWU considers justice for migrant workers to be core union business.

Through years of on-the-ground organising, UWU has assisted temporary migrant workers to expose and collectively address some of the worst forms of exploitation in the Australian economy - including widespread wage theft, unlawful deductions, sexual assault, substandard accommodation and a variety

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<sup>1</sup> In a national workforce of 12 million, there are about 1.3 million people on temporary working visas. Berg, L. and Farbenblum, B. (2017). *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey*, UNSW and UTS, Retrieved from [https://static1.squarespace.com/static/593f6d9fe4fcb5c458624206/t/5a11ff31ec212df525ad231d/1511128887089/Wage+theft+in+Australia+Report\\_final\\_web.pdf](https://static1.squarespace.com/static/593f6d9fe4fcb5c458624206/t/5a11ff31ec212df525ad231d/1511128887089/Wage+theft+in+Australia+Report_final_web.pdf)

of other slavery-like practices. These practices are now extremely well-documented in a number of academic studies,<sup>2</sup> parliamentary inquiries,<sup>3</sup> as well as reports prepared by UWU.<sup>4</sup>

The failure to properly regulate labour hire providers and the lack of effective mechanisms to address wage theft has enabled a culture of lawlessness to become entrenched across large segments of the Australian economy, affecting all workers in these industries, and rendering migrant workers particularly vulnerable.

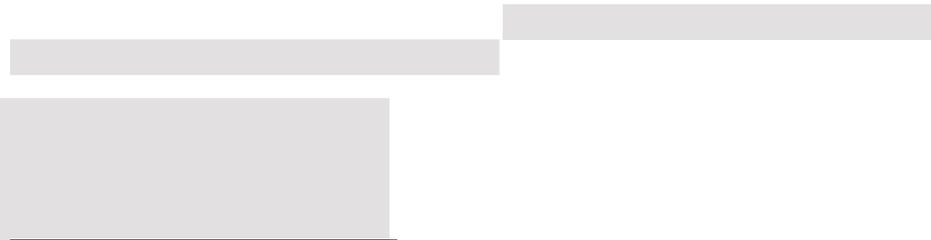
However, rather than focusing on why it has become so easy for employers in Australia to exploit workers, including temporary migrant workers, some politicians, media pundits and other stakeholders have misleadingly sought to hold temporary migrants responsible for their own exploitation, as well as other economic or labour market problems.

Based on our long history of organising permanent, temporary and undocumented workers, UWU strongly condemns and opposes any attempt to vilify or scapegoat temporary migrant workers for structural economic conditions that they did not create.

Public narratives that seek to malign workers based on their visa status are designed to distract attention from the industry-specific factors that create a *demand* for precarious workers. In short, such narratives serve only to deflect attention away from those truly responsible for the deterioration of the living and working conditions of all workers in Australia, namely employers, industry and government.

In the context of this divisive debate, UWU welcomes the opportunity to make recommendations in this submission focused on reforms that will:

- Address the root causes of wage theft, job insecurity and wage stagnation affecting all workers in Australia, including temporary migrant workers;
- Expand the protections in temporary migrant worker visa programmes in order to empower temporary migrant workers and ensure they have the means to enforce their workplace rights; and
- Ensure that Australia's workplace laws and enforcement mechanisms are broad enough to protect temporary migrant workers.



<sup>2</sup> Berg, L. and Farbenblum, B. (2018), *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia*, available at <https://www.mwii.org/highlights/wage-theft-in-silence>; Segrave, M et al (2018) *Exploited and Illegal: Migrant Workers in Australia* (Interim Report), Retrieved from [https://monash.figshare.com/articles/Exploited\\_and\\_illegal\\_Unlawful\\_migrant\\_workers\\_in\\_Australia/7159193](https://monash.figshare.com/articles/Exploited_and_illegal_Unlawful_migrant_workers_in_Australia/7159193); Howe, J et al (2019). *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, Retrieved from <https://sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>.

<sup>3</sup>Senate Education and Employment References Committee (2016). *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016, Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/~media/Committees/ee\\_tcte/temporary\\_work\\_visa/report/report.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/~media/Committees/ee_tcte/temporary_work_visa/report/report.pdf)

Fair Work Ombudsman (2018), *Harvest Trail Inquiry*, Retrieved from <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-inquiry>; Joint Standing Committee on Foreign Affairs, Defence and Trade (2017) *Hidden in Plain Sight - An Inquiry into Establishing a Modern Slavery Act in Australia*, Box 6.2, 'Human Trafficking Framework' Retrieved from [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc\\_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf).

<sup>4</sup> 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](https://www.nuw.org.au/sites/nuw.org.au/files/farm_workers_speak_out_nuw_report_web.pdf).

## SUMMARY OF RECOMMENDATIONS

1. Introduce a **National Labour Hire Licensing** scheme that replicates and scales up the **best-practice requirements of the Queensland and Victorian state schemes**.
2. Create a **criminal offence of wage theft**, with limited defences and exceptions, that provides jail time for offenders.
3. Increase access to wage justice for workers by **strengthening unions' powers to inspect employment records and reforming courts and tribunals** to enable fast and simple avenues to recover stolen wages.
4. Expand **workers' ability to collectively bargain** for improved workplace standards with the controlling economic entities across industries and along supply chains.
5. Expand the best-practice **employer registration and worker education requirements** in the Federal Government's Seasonal Worker Program to **all temporary migrant visa categories**.
6. Introduce an **'Employment Justice' visa**, to protect migrant workers who have experienced exploitation, and encourage them to come forward.
7. Develop a **national plan to manage temporary migration**, based on the consideration of industry-specific needs and goals, and a formal role for worker representatives.
8. Urgently **resolve the immigration status of migrant workers in the Horticulture industry**, and ensure they can continue to work in the industry by either expanding the Seasonal Worker Programme, or introducing an Agricultural Visa with strong worker protections.
9. **Review Temporary Visa Conditions and Enforcement**, remove visa conditions that facilitate exploitation, and ensure enforcement activity protects workers.
10. **Expand Australia's permanent migration programme**, including by linking temporary and permanent visa pathways.

### Recommendations to address the root causes of exploitation affecting all workers in Australia.

While visa insecurity may make temporary migrant workers more vulnerable to some forms of exploitation<sup>5</sup>, at root, the growth and prevalence of exploitative practices is the result of structural economic changes that have occurred in Australian workplaces and which *affect all workers, regardless of their migration status*.

Decades of neoliberal economic restructuring have increased inequality, removed key workplace protections, eroded workers' bargaining power, and led to a dramatic rise in the incidence of:

<sup>5</sup> Tham, J, Campbell, I and Boese, M. (2016) Why is Labour Protection for Temporary Migrant Workers so Fraught? In Joanna Howe and Rosemary Owens (eds.) *Temporary Labour Migration in the Global Era* (pp. 173-200) Oxford, Hart Publishing.

- precarious and insecure work;<sup>6</sup>
- underemployment;<sup>7</sup>
- wage theft,<sup>8</sup> and
- wage stagnation.<sup>9</sup>

Reforms that directly address and start to counteract the negative effects of these structural changes are therefore necessary in order to improve conditions for all workers in the Australian labour market, including temporary migrant workers.

UWU recommends:

1. Introducing a **National Labour Hire Licensing scheme**. State-level labour hire licensing schemes in Victoria and Queensland are already working to improve the employment practices of labour hire companies. UWU only supports the introduction of a national scheme if it replicates and scales up the best-practice aspects of both state schemes.
2. Creation of a **criminal offence of wage theft**, with limited defences and exceptions, that provides jail time for offenders.
3. Increasing access to wage justice for workers by **strengthening unions' powers to inspect employment records**, and **reforming courts and tribunals** to enable fast and simple avenues to recover stolen wages.
4. Expanding **workers' ability to collectively bargain** for improved workplace standards with the controlling economic entities across industries and along supply chains.

## Recommendations to protect and empower temporary migrant workers

Temporary migrant workers suffer higher vulnerabilities to exploitation at work, with disproportionate levels of wage theft, discrimination, intimidation, unfair dismissal, and pressure to do unreasonable work in comparison to citizens and permanent residents.<sup>10</sup>

There are now large sections of the Australian labour market where the expectation that temporary migrant workers will not be paid or treated in accordance with Australian law is close to becoming culturally entrenched, including in the hospitality industry.<sup>11</sup> Additionally, migrant worker exploitation has become most rife in those industries where powerful actors at the top of a supply chain exert

<sup>6</sup> Campbell, I (2018) *On-call and related forms of casual work in New Zealand and Australia*. International Labor Office, Geneva.

<sup>7</sup> ABS, Labour force, Oct 2018, cat. no. 6202.0. Retrieved from:

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6202.0main+features10September%202018>

<sup>8</sup> Clibborn, S & Wright, CF (2018) 'Employer theft of temporary migrant workers' wages in Australia: Why has the state failed to act?', *Economic and Labour Relations Review*, vol. 29, no. 2, pp. 207–227

<sup>9</sup> Lyons, T (2018). Minimum Wages. In Stewart, A, Stanford, J and Hardy, T (eds) *The Wage Crisis in Australia*. Canberra, ANU Press.

<sup>10</sup> Ibid; Fair Work Ombudsman (2016) *Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program*, Retrieved from <https://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report.pdf.aspx>; Meldrum-Hanna, C. and Russell, A (2015)

'Slaving Away: The dirty secrets behind Australia's fresh food', *Four Corners*, Retrieved from:

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

<sup>11</sup> Bagshaw, E. (2016) '80 per cent of international students in restaurants paid below minimum wage, survey finds', *The Sydney Morning Herald*, 21 April 2016, Retrieved from: <http://www.smh.com.au/national/education/80-per-cent-of-international-students-in-restaurants-paid-below-minimum-wage-survey-finds-20160421-gobkzh.html>; Fair Work Ombudsman (2016) Malaysian restaurant operators penalised almost \$300,000 after paying staff \$11 an hour, Media release, 19 August 2016; FWO (2016) Korean backpackers short-changed, Media release, 3 August 2016; Schneiders, B and Millar, R (2015) 'Black jobs': Rampant exploitation of foreign workers in Australia revealed, *Sydney Morning Herald*. October 1, 2015, Retrieved from:

<http://www.smh.com.au/national/investigations/black-jobs-rampant-exploitation-of-foreign-workers-in-australia-revealed-20150930-gjxz7q.html>

considerable price pressure on suppliers and labour hire companies further down the chain, creating a market for insecure and underpaid work. This occurs most notably in the horticulture and cleaning industries.

**The best way to ensure that migrants are not exploited is for them to join their union.** Where temporary migrant workers have joined together in UWU, alongside other migrant and permanent workers, they have been able to:

- recover thousands of dollars in unpaid wages;<sup>12</sup>
- win significant wage increases;<sup>13</sup>
- hold unscrupulous labour hire contractors accountable;<sup>14</sup>
- win the introduction of state labour hire licensing schemes; and <sup>15</sup>
- force major supermarkets to take responsibility for exploitation in their supply chain.<sup>16</sup>

### *Union cleaners unite with temporary migrant workers from Sri Lanka to end sham contracting at Cadbury in Tasmania.*

*In 2018, a cleaning contractor at the Cadbury chocolate factory in Hobart sacked half their cleaning workforce and hired new workers who had recently arrived from Sri Lanka.*

*These new workers were coerced onto ABNs by the cleaning company, sham-contracted at \$17.50 an hour – almost &8 per hour less than the casual Award rate. Being on an ABN meant that the workers didn't accrue any leave, had to pay their own tax and insurances, and that they couldn't afford workers' compensation.*

*Although the new workers were afraid to raise these issues with their new employer, existing union cleaners, caterers and security guards at the factory encouraged them to join the union, stand together to stop sham contracting.*

*Together these union members took the issues to Cadbury management, who directed the cleaning company to fix it immediately.*

*Within 24 hours, cleaning company management flew to Hobart and offered full employment to the Sri Lanka cleaners on the Award, with all the protections and entitlements offered to other members at the site. The cleaning company also committed to an ongoing audit of all their operations.*

*Because existing union members educated the new workers about their rights, and new workers bravely took action together in the union, all cleaners at Cadbury have the same wages and conditions, and are treated with dignity and respect.*

<sup>12</sup> "Restaurant salary scandal: management pays "underpaid" staff after workplace investigation," *Herald Sun*, November 21, 2019, Retrieved from <https://www.heraldsun.com.au/leader/inner-south/former-hochi-mama-cook-tiff-than-alleges-horrible-working-conditions-underpayment/news-story/faaa6881b91fb22913c4ff9efcc2aa7a> "Exploited Pacific migrant farm workers settle significant case," *Sydney Morning Herald*, August 1, 2019. Retrieved from: <https://www.smh.com.au/business/workplace/exploited-pacific-migrant-farm-workers-settle-landmark-case-20190801-p52cvi.html>

<sup>13</sup> "Migrant farm workers take on one of Australia's richest families, the Smorgons," *Sydney Morning Herald*, July 29, 2017, Retrieved from <https://www.smh.com.au/business/workplace/migrant-farm-workers-take-on-one-of-australias-richest-families-the-smorgons-20170729-qxla75.html>

<sup>14</sup> "Workers at Woolworths supplier paid a pittance, threatened," *Sydney Morning Herald*, 6 March, 2016. Retrieved from <https://www.smh.com.au/national/workers-at-woolworths-supplier-paid-a-pittance-threatened-20160304-gnaft8.html>

<sup>15</sup> "Backpackers 'targeted by dodgy labour hire companies' in 'culture of impunity'," *ABC*, 2 March 2016 <https://www.abc.net.au/news/2016-03-02/backpackers-targeted-by-labour-hire-companies-inquiry-hears/7213328>

<sup>16</sup> "Woolworths workers win big wage rises, farm supply chain gets overhauled," *Sydney Morning Herald*, November 22, 2017. Retrieved from <https://www.smh.com.au/business/workplace/woolworths-workers-win-big-wage-rises-farm-supply-chain-gets-overhauled-20171122-qzqghu.html>

*\*Abdul, a temporary migrant worker at Covino Farms in Victoria, tells his story about how he organised with his coworkers to stop underpayments.*

*I've been a fieldworker at Covino for many years. In April last year, the company held a meeting where my team were told they had to move from one labour hire agency to another. The new agency said that Covino wanted to move them from hourly pay to piece rates. I wasn't affected, but the rest of my team was.*

*Everyone was really stressed about what this would mean; not making as much money; having to work more quickly and possibly getting injured. We also knew the season was slowing down, so picking the same weight would get harder and harder.*

*We started organising with the union (who helped us get rid of bad contractors before). We had some meetings and more of us started to join and unite. We were scared, but we also had little to lose - after the first pay on piece rates, some people were underpaid by \$200 in one week!*

*We made the decision to write to the agency and Covino about it, even though we knew it might mean they stopped giving us hours. We asked that they back pay us, and put us back on hourly pay.*

*After a couple of weeks, the agency did what we asked. It felt really good to see my team win what were owed, and go back to the security of hourly pay. People still have a lot of problems (unpaid superannuation from the old agency, constant late payments, not getting payslips) but by uniting and standing up together we have been able to change things for the better.*

UWU supports reforms that will empower temporary migrant workers, minimise the possibility of employer exploitation of temporary migrant workers, and provide visa security and access to justice for those workers who have experienced exploitation.

In particular, UWU proposes that the Federal Government:

## **5. Expand the best-practice employer registration and worker education requirements in the Federal Government's Seasonal Worker Program to all temporary migrant visa categories.**

The Federal Government's Seasonal Worker Programme (SWP) contains important mandatory employer obligations, which are designed to protect the temporary migrant workers from Pacific countries who work on farms across Australia.<sup>17</sup> These requirements include:

- Mandatory worker rights education for all workers pre-departure and on-arrival in Australia, including a requirement that the employer invite trade unions to meet workers before they commence work.<sup>18</sup>
- A registration process that requires Federal Government approval to employ temporary migrant workers. This requirement provides workers and their representatives with an important mechanism to hold employers accountable.<sup>19</sup>

When they are properly enforced, these requirements work to empower temporary migrant workers to enforce their workplace rights. Employers who have breached workplaces laws are suspended from

<sup>17</sup> Seasonal Worker Programme, 'Implementation Arrangements', Retrieved from [https://docs.employment.gov.au/system/files/doc/other/implemntation\\_arrangement\\_5\\_november\\_2018.pdf](https://docs.employment.gov.au/system/files/doc/other/implemntation_arrangement_5_november_2018.pdf)

<sup>18</sup>Department of Education, Skills and Employment, 'Process to Become and Approved Sponsor' <<https://www.employment.gov.au/process-become-approved-employer>>

<sup>19</sup> Ibid.

the programme pending the satisfactory remediation of those breaches, and employers who fail to comply lose their ability to employ workers under the scheme.

These best-practice requirements are already working to minimise the likelihood of worker exploitation, and should become mandatory requirements in all temporary visa programmes.

## 6. Introduce an 'Employment Justice' visa

Visa options exist to protect victims of criminal conduct or trafficking in Australia. The aim of both the Criminal Justice<sup>20</sup> and Referred Stay<sup>21</sup> visas is to encourage migrant victims of wrongdoing to come forward, without fear that their visa status may be jeopardised or they may be deported if they take legal action.<sup>22</sup> However, no such options exist for workers who have been the victims of workplace exploitation or modern slavery practices. There is therefore little incentive for temporary migrants who have been victims of exploitation to seek redress, and there is lessened incentive on investigators to pursue cases of exploitation on behalf of migrant workers lest the key witness be removed from Australia in the course of proceedings. The absence of visa security to victims of exploitation fundamentally undermines the efficacy of expanded protections for migrant workers under the *Fair Work Act*.<sup>23</sup>

UWU proposes the creation of a specific visa for temporary or undocumented migrant workers pursuing remedies through the *Fair Work Act*, or other causes of action for unpaid wages and other breaches of law. The Criminal Justice visa provides a ready template for the creation of an Employment Justice visa, and either the Fair Work Ombudsman or the Federal Circuit Court may be empowered to issue a 'temporary stay certificate' certifying that a worker's ongoing presence in Australia is required for the conduct of their proceedings.

The introduction of this visa should be accompanied by amendments to the eligibility requirements for various temporary and permanent visas, so that holders are free to explore other visa options independent of their former employer. The decoupling of the holder's visa from their exploitative employer is a crucial step in addressing the exploitation of migrant workers, as identified by numerous studies.<sup>24</sup>

## 7. Develop a national plan to manage temporary migration, based on the consideration of industry-specific needs and goals, and a formal role for worker representatives.

The expansion of temporary migration in Australia has been largely employer-led, occurred in a largely uncoordinated way, and without the formal input of workers and their representatives.

UWU recommends the creation of an evidence-led committee on temporary migration, independent of government and inclusive of workers' representatives, to direct migration planning in the future.

The rationale for this approach is that each industry exists within a unique policy and economic environment which creates industry-specific labour demand and in turn, unique vulnerabilities amongst the labour force. Such matters are unlikely to be reflected in the generic, highly politicised and exclusively employer-led process of temporary migration planning, dictated by the government of the day.

<sup>20</sup> *Migration Act*, s 156.

<sup>21</sup> *Migration Regulations* 1994, Schedule 2, Subclass 852.

<sup>22</sup> Farberblum, B and Berg, L(2017). 'Migrant Workers' Access to Remedy for Exploitation in Australia: the role of the national Fair Work Ombudsman' (2017) *Australian Journal of Human Rights* 1.

<sup>23</sup> *Fair Work Amendment (Protecting Vulnerable Workers) Act* 2017.

<sup>24</sup> Committee on Foreign Affairs, Defence and Trade (2017), *Hidden in Plain Sight*, p 283.

The pitfalls of unspecific, non-consultative and haphazard temporary migration planning are most apparent in horticulture, which is simultaneously experiencing a labour shortage as well as a crisis in worker exploitation and abuse. Faced with evidence of an ongoing labour shortage for around two decades, successive governments have responded with piecemeal visa reforms which have failed to solve, and in some cases exacerbated, the problems. The primary planning response of successive governments has been in amendments to Working Holiday visa programs - first by enabling an extension following 88 days' regional work, and more recently, through a third extension based on six months' work in a regional area.

However, the market duopoly of major supermarkets, downward price pressure and pervasive labour shortages have meant both that temporary workers experience serious mistreatment on Australian farms and that growers have turned to wholesale reliance on undocumented workers.

Likewise, the privatisation of commercial cleaning services by large firms has led to unsustainable competition through the tendering process, resulting in a complex array of sham contracting arrangements which, at the end, fundamentally undermine workers' rights and conditions. A Fair Work Ombudsman Inquiry in 2018 found non-compliance with the standards of the *Cleaning Award* in 90 percent of surveyed sites controlled by Woolworths.<sup>25</sup> As UWU has previously noted, wage theft, wage stagnation, insecurity and poor working conditions are entrenched features of the industry which is now dominated by temporary migrant workers.<sup>26</sup>

Such sectoral crises can be prevented by industry-specific, evidence based and worker inclusive planning of temporary migration.

## 8. Review Temporary Visa Conditions and Enforcement

UWU has previously pointed out that the conditions attached to certain temporary visas, and the strict and inflexible enforcement of those provisions, leads to divisions in the workforce which ultimately harm migrant workers. In its submission to the recent parliamentary inquiry into the *Modern Slavery Act*, UWU noted that:

An extremely common scenario will be for an international student, who is permitted to work 40 hours a fortnight under the terms of their visa, to be pressured into covering additional shifts in order to replace a fellow worker who is sick. Once a migrant worker agrees to 'help out' his or her friend in this way, they become highly vulnerable to wage exploitation from the employer, because any complaint they may make about unlawful work conditions will be met with the threat that they will be reported to immigration authorities.<sup>27</sup>

We note that similar findings, in relation to the exploitative reliance on 8105 by employers, emerged from the public inquiry into the 7-11 franchise model.<sup>28</sup>

UWU recommends that condition 8105 - which limits Student visa holders to 40 hours' work per week - be removed from Student visas. The rationale for the condition appears to be to ensure that students focus on studies whilst in Australia. However, there is another, specific condition directed at that

<sup>25</sup> Fair Work Ombudsman (2018) *An inquiry into the procurement of cleaners in Tasmanian supermarkets*, February 2018.

<sup>26</sup> United Voice, Submission to Senate Inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies, 18 July 2018.

<sup>27</sup> United Voice, 'Submission into the Parliamentary Inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade on Establishing a Modern Slavery Act' (Submission 116) available at <https://www.business-humanrights.org/sites/default/files/Sub%20116%20%281%29%20United%20voice.pdf>.

<sup>28</sup> Fels Wage Fairness Panel, cited in Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (March 2016) p 220 Retrieved from [https://iris.pmc.gov.au/sites/default/files/posts/2017/03/senate\\_standing\\_committee\\_report\\_into\\_temporary\\_work\\_visa\\_holders.pdf](https://iris.pmc.gov.au/sites/default/files/posts/2017/03/senate_standing_committee_report_into_temporary_work_visa_holders.pdf).

purpose - being condition 8202, which requires students to maintain satisfactory course progress and attendance. As such, condition 8105 serves no ostensible purpose, other than to render international students liable to exploitation and underpayment.

UWU has likewise encountered multiple instances of other work limitation conditions being used as a means of exploitation by employers. For instance, employers routinely encourage backpackers to work in breach of condition 8547 - which limits working holiday makers to 6 months' work for one employer - and use the condition as justification for paying workers in cash at considerably lower rates. UWU's organising in the hospitality sector suggests that the overwhelming majority of international students and backpackers are fully aware they are being underpaid, but have little power to command higher wages due to the threat of visa cancellation.<sup>29</sup>

UWU recommends that Department of Home Affairs' policy in relation to visa cancellation be amended, to require decision makers to take into account evidence of workplace exploitation connected to the visa holder's breach of their conditions, and weigh this matter strongly against visa cancellation. We note that current policy adverts to '*circumstances outside of visa holders' control, such as family violence*<sup>30</sup> - there is no reason why workplace exploitation should not be treated in the same way. Overzealous use of cancellation powers by the Department facilitates employer exploitation of visa holders, enabling employers to leverage the threat of cancellation to ensure that migrant workers do not assert their rights or seek redress for wrongs in the workplace.

## 9. Urgently resolve the immigration status of migrant workers in the Horticulture industry

Multiple reports confirm that the Australian horticulture industry has become '*structurally reliant*' on the labour of undocumented workers.<sup>31</sup> Reports estimate that between 50,000 to 90,000 undocumented workers currently participate in the harvest labour force in Australia.<sup>32</sup> Rather than fuelling panics regarding criminal syndicates or 'plane people,' it is incumbent upon parliament to attend to the industry conditions that have created demand for undocumented workers, and bring justice to those workers who have been mistreated on Australian farms.

UWU, as well as various industry organisations, such as the Victorian Farmers Federation, have advocated for an amnesty that resolve these workers' immigration status and enable them to continue to work in the industry.<sup>33</sup>

The Federal Government should address chronic worker exploitation and labour shortage issues by resolving the immigration status of undocumented farm workers already in Australia, and enable them to continue to work in the industry. This could be done by:

- a. Expanding the scope of the Seasonal Worker Program (SWP) to include countries beyond the Pacific. These should specifically include Malaysia, Indonesia and Vietnam - being the countries from which most currently undocumented workers in the horticulture sector originate.<sup>34</sup> Workers already in Australia must be exempted from any

<sup>29</sup> Berg, L. and B. Farbenblum (2017) Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey, November 2017, UNSW and UTS.

<sup>30</sup> DHA 116 policy

<sup>31</sup> Howe, J et al (2019). *Towards a Durable Future*, p 40.

<sup>32</sup> Ibid 39.

<sup>33</sup> "VFF, union call for an amnesty on workers without visas as labour shortages hit home", *Weekly Times*, , October 3, 2018. Retrieved from <https://www.weeklytimesnow.com.au/news/national/vff-union-call-for-an-amnesty-on-workers-without-visas-as-labour-shortages-hit-home/news-story/d408cac28e467e64f9aeb7bee53d6eb9>

<sup>34</sup> A report of the Joint Standing Committee on Migration in 2016 found that most undocumented workers were from South East Asia and China; see Joint Standing Committee cited in Ariyawansa, S (2018) 'On the Backs of Migrant Workers – Imported Labour in the Australian Agricultural Sector', *Australian Journal of Legal Philosophy*, 43, p. 58.

'bar' under the *Migration Act* which would prevent them from applying for the visa. Further, workers participating in the program should be guaranteed a "right to return" each season;

- b. Creation of a dedicated Agriculture visa. As set out above, UWU would only endorse a dedicated visa solution that contained inbuilt protections similar to those contained in the SWP. Importantly, any Agriculture visa should not be 'tied' to sponsorship by a particular employer, given that this is both unsuitable to the portable nature of horticultural work and also fosters employer dependence, which is recognised as a core vulnerability of temporary migrant workers.

Both the interests of justice for migrant workers, and the viability of the horticulture industry in the coming years, depend upon an effective response to this crisis.

## **10. Expand Australia's permanent migration programme**

The shift to a paradigm of temporary, rather than permanent migration in Australia was not a policy change ever openly discussed or decided on democratically, but was rather the cumulative effect of different programs, each with their own momentum and rationale that now cohere around a demand-driven, employer-led, hybrid system of two-step migration.<sup>35</sup>

In order to be just and viable, temporary migration must be linked with permanent migration pathways. Temporary migrants contribute inestimably to the Australian economy, and enmesh themselves in Australian society during their time in the country - there should be just reward for their contribution. A significant body of academic literature suggests that temporary migrants become culturally and economically embedded within a new society within the first five years of migration, such that return migration becomes onerous or impossible.<sup>36</sup>

UWU believes that temporary migration will only be sustainable and productive where it is linked with correlative permanent visa pathways, rather than a '*permanently temporary*'<sup>37</sup> state of repeated short-term visas. Permanent transition should not depend upon employer sponsorship. Rather, self-nominated permanent visa pathways should be created for temporary migrant workers whose ongoing work in an in-demand sector is evidence in itself of their skills and contribution.

For more information on this submission,

<sup>35</sup> Mares, P. (2016) *Not Quite Australian: How Temporary Migration is Changing the Nation*, Melbourne, Text Publishing.

<sup>36</sup> Ruhs, M (2013). *The Price of Rights: Regulating International Labor Migration*, Princeton, Princeton University Press, p. 177. Carens, J (2015) *The Ethics of Immigration*, Oxford, Oxford University Press, p.116.

; Sayomi Ariyawansa, 'On the Backs of Migrant Workers – Imported Labour in the Australian Agricultural Sector' (2018) 43 *Australian Journal of Legal Philosophy* 58

<sup>37</sup> Mares, P. (2016) *Not Quite Australian: How Temporary Migration is Changing the Nation*.