

Submission  
No 38

**INQUIRY INTO MODERN SLAVERY RISKS FACED BY  
TEMPORARY MIGRANT WORKERS IN RURAL AND  
REGIONAL NEW SOUTH WALES**

**Organisation:** Immigration Advice and Rights Centre (IARC) and Unions NSW  
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**HELPING  
PEOPLE  
NAVIGATE**  
| AUSTRALIAN  
| IMMIGRATION LAW



# **INQUIRY INTO MODERN SLAVERY RISKS FACED BY TEMPORARY MIGRANT WORKERS IN RURAL AND REGIONAL NEW SOUTH WALES**

Immigration Advice & Rights Centre (IARC) and Unions NSW

February 2025

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## ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the Traditional Owners of Country throughout New South Wales and the Gadigal people of the Eora Nation who are the Traditional Custodians of the land in which we work. We acknowledge this land holds structures of law which were practiced for thousands of generations and recognise First Nations peoples' cultures, wisdom and connection to lands throughout Australia. We pay our respects to Elders past and present and acknowledge that sovereignty over this land was never ceded. It always was and always will be Aboriginal land.

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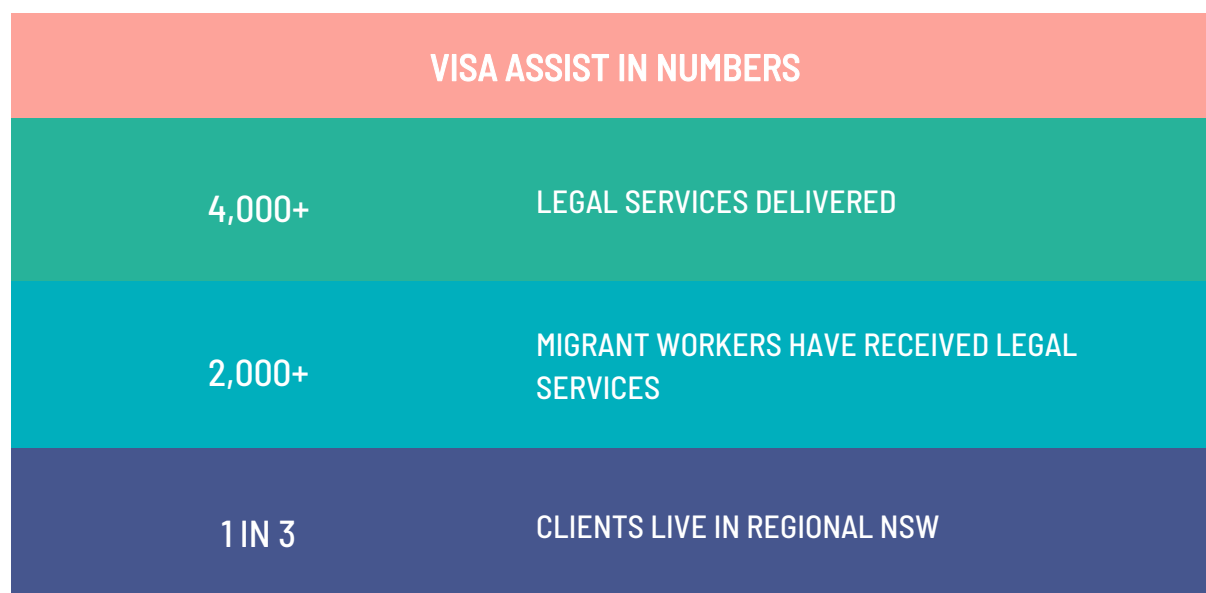
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## 1. ABOUT IARC AND UNIONS NSW

The Immigration Advice and Rights Centre (**IARC**) is a not-for-profit, specialist community legal centre (**CLC**) providing free legal advice and assistance to people throughout New South Wales (**NSW**). IARC is the only specialist CLC in Australia that advises on all immigration, refugee, and citizenship matters.

Unions NSW is the peak body for trade unions and union members in NSW, with 48 affiliated trade unions and Trades and Labour Councils representing approximately 600,000 workers across the state. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors.

In 2019, IARC partnered with Unions NSW to create Visa Assist, which provides both employment and immigration law advice in one service. Many clients referred to Visa Assist have experienced workplace exploitation and require legal advice from IARC on safely leaving exploitative situations without jeopardising their visa status. Since its establishment, Visa Assist has delivered over 4,000 legal services to more than 2,000 migrant workers across NSW. 1 in 3 of those workers live in regional NSW.



## 2. SUMMARY OF RECOMMENDATIONS

1. Increase funding for IARC and Visa Assist to:
  - a. Expand regional outreach work and support more temporary migrant workers across rural and regional NSW;
  - b. Create information and resources in community languages about worker's rights, including rights and obligations in the visa system;
  - c. Provide education to temporary migrant workers about workplace and immigration laws in regional and rural areas of NSW.
2. Support services and NSW Government agencies should assist migrant workers in rural and regional NSW to better understand their workplace rights by providing comprehensive information and education on unionism, plus opportunities to engage with union representatives.

3. Employers and migration agents must have a 'positive obligation' to provide migrant workers with information on how to contact relevant trade unions.
4. The NSW Migrant Workers Centre should partner with unions and union peak bodies to deliver comprehensive Work Health and Safety programs in regional areas, as well as offer information on employment and immigration law.
5. A labour hire licensing scheme must be established in NSW to protect migrant workers from workplace exploitation. The NSW Government must allocate adequate resources for effective enforcement of the scheme, particularly in rural and remote areas.
6. The NSW Government must ensure that the NSW Migrant Workers Centre is adequately funded to develop multilingual and culturally appropriate workplace rights training programs in regional areas, effectively empowering migrant workers to enforce their workplace rights and ensuring that recent reforms achieve their intended purpose.
7. The NSW Government must ensure that the NSW Migrant Workers Centre is adequately funded to develop multilingual and culturally appropriate referral channels, connecting migrant workers in regional areas with support services to address workplace issues, as well as other related matters such as housing, healthcare, emergency financial assistance, and domestic violence.
8. The NSW Migrant Workers Centre should develop specific initiatives to empower women to report sexual harassment.
9. NSW Government agencies, including SafeWork NSW and the Anti-Discrimination Board, should redesign reporting processes and allocate more resources for interpreters, multilingual services, and experienced bilingual staff to better support migrant workers facing sexual harassment.
10. The NSW Government should invest in bridging programs, training initiatives, and requalification opportunities, which help temporary migrants in regional areas align their qualifications with local standards and requirements.
11. The NSW Government should advocate for the establishment of clearer and more efficient processes for recognising overseas qualifications and skills to simplify the skills assessment process.
12. The NSW Government should push for international agreements that facilitate the mutual recognition of occupational licenses, ensuring smoother integration of skilled workers into the local workforce and empowering migrants to escape exploitative working conditions.
13. The NSW Government, in collaboration with IARC and Unions NSW, should update the Visas and Migration section of its website to include information on workplace exploitation and available protections to migrant workers, such as the Workplace Justice Visa (**WJV**) and Strengthening Reporting Protections (**SRP**) pilots.
14. The NSW Government should implement a policy that they will nominate eligible employees for permanent residency through the Employer Nomination Scheme (subclass 186) visa.
15. The NSW Government should ensure that the Expression Of Interest (**EOI**) settings for the Skilled Work Regional (Provisional) (subclass 491) visa are not restrictive and provide temporary migrant workers with a genuine opportunity to leave an exploitative employer.
16. The NSW Government should advocate for changes to the following visa settings:

- PALM workers should have the right to change employers without having to receive approval from the Department of Employment and Work Relations.
- Pacific Islander labourers deserve a fair and transparent process to gain permanent residency, rather than the current random ballot system for the Pacific Engagement visa (subclass 192).
- Remove the specified regional work requirement for subsequent Working Holiday visas.
- Introduce robust obligations for regional employers who wish to hire Working Holiday Makers.
- Remove Condition 8547, which requires Working Holiday visa holders not to remain with any one employer for more than 6 months.
- Abolish the 48-hour work fortnight visa condition for Student visa holders.
- Reform the immigration system to permit temporary skilled employer-sponsored visa holders to apply for permanent visas independently of their employers.
- Labour agreements should be published in full on the Department of Home Affairs website, so that migrant workers and trade unions can access them.

### **3. OUTREACH IN RURAL AND REGIONAL NEW SOUTH WALES**

Through both the Visa Assist service in partnership with Unions NSW and our general practice, IARC has supported thousands of temporary migrant workers in rural and regional NSW. We provide legal advice sessions via phone and in person, while also delivering workshops to large groups of migrant workers. These workshops inform workers about their legal rights and how to receive personalised assistance if necessary.

Since its establishment in 2019, the Visa Assist service has conducted more than 10 regional outreach trips across rural and regional NSW. Regional stakeholders consistently report that despite available online and telephone services, temporary migrant workers are often reluctant to engage with our services remotely. Face-to-face interactions are far more effective in building trust. Additional funding for both IARC and the Visa Assist service is crucial to deepen relationships with regional stakeholders and communities and, ultimately, support even more temporary migrant workers throughout rural and regional NSW.

#### **Outreach trips to the Riverina and Mid North Coast (late 2024)**

We select regional outreach locations based on reports we receive from local stakeholders and publicly available data. Our two most recent outreach trips were to the Riverina in September 2024, and in particular, the towns of Griffith, Leeton, and Wagga Wagga; and the Mid North Coast two months later, where we visited Coffs Harbour and Woolgoolga. These locations were prioritised after multicultural organisations on the ground alerted us to significant numbers of temporary migrant workers at risk of exploitation and slavery-like workplace conditions.

Table 1 (next page) presents data from these outreach trips, revealing a concerning picture of a precarious workforce, preyed upon by both dubious migration agents and unscrupulous employers, lacking both viable visa options and work rights. IARC advised 52 clients over the course of these two outreach trips. Each legal advice session lasts at least one hour with a solicitor.

**Table 1**

*IARC's clients from outreach trips (Riverina and Mid North Coast)*

Category	Number of people
Migration failure/fraud	12 (23%)
No viable pathway to remain in Australia	13 (25%)
Undocumented workers	15 (29%)

\*It is likely that the above statistics are underreported, given the fear that surrounds disclosing the above information.

At least 12 clients we advised were the victims of 'migration failure' or 'fraud'. 'Migration failure' refers to poor quality immigration advice from migration agents (or people posing as migration agents) who lodge visa applications on people's behalf without proper eligibility checks. We also saw instances of 'migration fraud' whereby agents charged desperate workers extortionate fees to lodge mostly unmeritorious visa applications, or even no visa application at all, compounding their financial hardship.

The consequences of migration failure and fraud are significant because having a visa refused in Australia can limit future migration pathways. Under s 48 of the *Migration Act 1958* (Cth), certain non-citizens in Australia who do not hold a substantive visa and whose visa applications are refused can only apply for a select list of prescribed visas thereafter. The list includes Protection visas, which are only available to people who can demonstrate there is a real chance they would suffer serious or significant harm in their home country if they were returned there; Partner visas, which are available to people with an Australian partner; just three Skilled visa subclasses; the Medical Treatment visa for people who require medical care in Australia; and Bridging visas. Most people whose visas are refused end up holding Bridging visas, which employers often distrust due to uncertainty about the visa holder's length of stay in Australia and eligibility for work rights. As a result, Bridging visa holders can face limited employment options and, if they find work, it is often unstable cash-in-hand jobs.

13 clients were assessed as having no viable visa options to remain in Australia. This high number was partly the consequence of the poor migration advice that clients had previously received, limiting their migration pathways. IARC also encountered 15 undocumented workers, both a combination of unlawful people whose visas had expired and workers whose visas had no work rights. This concentration of labourers without viable migration pathways or work rights represents a vulnerable workforce at heightened risk of exploitation and modern slavery.

Current funding limits IARC and the Visa Assist service to only a few regional trips annually. Additional resourcing would enable us to scale up our in-person outreach work and maintain a consistent presence in locations with high concentrations of temporary migrant workers at risk of modern slavery, such as the Riverina and the Mid North Coast. This increased presence would reduce workers' reliance on dubious migration agents that often leave them more precarious. Expanding our Community Legal Education (CLE) and workshops would also help address the significant information gap about legal rights facing temporary migrant workers in rural and regional NSW.

## **Recommendation**

- 1) Increase funding for IARC and Visa Assist to:
  - a. Expand regional outreach work and support more temporary migrant workers across rural and regional NSW;
  - b. Create information and resources in community languages about worker's rights, including rights and obligations in the visa system;
  - c. Provide education to temporary migrant workers about workplace and immigration laws in regional and rural areas of NSW.

## **4. UNION INDUCTIONS AND EDUCATION**

Temporary migrant workers in rural and regional New South Wales should be provided with comprehensive information and education on unionism by different support services and government agencies, in addition to opportunities to engage with union representatives to better understand their workplace rights. Employers and migration agents must have a 'positive obligation'<sup>1</sup> to provide migrant workers with information on how to contact relevant trade unions before leaving their home country or upon the commencement of their employment. Additionally, union-led workplace rights inductions should be encouraged and facilitated to reduce the risk of workplace exploitation.

There is strong evidence that trade union membership reduces the risk of worker exploitation and improves a worker's prospects of reclaiming unpaid entitlements. A study conducted by the Grattan Institute showed that workers who are not union members "are 65% more likely to be underpaid than union members".<sup>2</sup> Employees in unions have far greater knowledge of workplace rights, including enterprise bargaining, penalty rates, and health and safety rights and obligations.<sup>3</sup>

A 2017 survey of over 4,000 temporary migrants found that union membership increased the likelihood of temporary migrants pursuing their underpayment claims.<sup>4</sup> A significant number of underpaid participants who had been a union member at some point reported that they had attempted or planned to recoup their unpaid wages, compared to only 10% of underpaid participants who had never been a union member.<sup>5</sup> Additionally, respondents who contacted a union to pursue their underpayment claims had the most favourable outcomes, with 30% of workers recouping all and 40% recouping a portion of their wages.<sup>6</sup>

Collaboration with unions is crucial because unions have a unique ability to enter workplaces to investigate contraventions of the *Fair Work Act 2009* (Cth) and relevant Work Health & Safety (WHS) legislation. Unions also have strategies in place to hold discussions with temporary migrant workers who may distrust the government and are fearful of raising concerns of exploitation with authorities. This often gives unions access to information not available to the government, which enables the identification of employers breaching workplace laws. In industries such as horticulture, hospitality, and the meat industry, to name

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<sup>1</sup> Australian Council of Trade Unions. (2024). *ACTU Congress 2024: Labor hire*.

<sup>2</sup> Grattan Institute. (2023). *Short changed: How to stop the exploitation of migrant workers in Australia*. (p. 67).

<sup>3</sup> Ibid.

<sup>4</sup> Farbenblum, B., & Berg, L. (2018). *Wage theft in silence: Why migrant workers do not recover their unpaid wages in Australia* (UNSW Law Research Paper No. 19).

<sup>5</sup> Ibid. (p. 22).

<sup>6</sup> Ibid. (p. 30).



a few, where there is a high representation of migrants working in regional areas, unions have played a crucial role in promoting policy changes and empowering migrant workers to take legal action. For instance, in 2021, the Australian Workers' Union (**AWU**) and the United Workers Union (**UWU**) achieved a historic victory for horticulture workers by successfully applying to the Fair Work Commission (**FWC**) to vary the Horticulture Award to ensure a minimum wage guarantee for piece-rate workers.<sup>7</sup>

The FWC heard from several migrant workers, including Geraldine, a Working Holiday visa holder who spent almost three years working as a fruit picker on various Australian farms. She recounted being paid \$25 per 800 kg of oranges, which left her earning just \$125 per week. Geraldine was motivated to provide evidence due to the support she received from a union organiser, who shared her ethnic background and communicated with her in Chinese, fostering trust and facilitating her participation in the proceedings.

IARC and Unions NSW welcome the NSW Government's announcement to fund a Migrant Workers Centre, which will provide advice, education, and advocacy to combat the exploitation of migrant workers in NSW. The Migrant Workers Centre should partner with unions and union peak bodies to deliver comprehensive work health and safety programs in regional areas, as well as offer information on both employment and immigration law.

### **Recommendations**

- 2) Support services and NSW Government agencies should help migrant workers in rural and regional NSW to better understand their workplace rights by providing comprehensive information and education on unionism, plus opportunities to engage with union representatives.
- 3) Employers and migration agents must have a 'positive obligation' to provide migrant workers with information on how to contact relevant trade unions.
- 4) The NSW Migrant Workers Centre should partner with unions and union peak bodies to deliver comprehensive Work Health and Safety programs in regional areas, as well as offer information on employment and immigration law.

## **5. LABOUR HIRE COMPANIES AND WORKPLACE EXPLOITATION**

The exploitation of migrant workers by labour hire companies is well documented, particularly in the meat processing and horticulture industries. One of the most notable early investigations exposing the extent of the exploitation was the ABC Four Corners report, "Slaving Away: The Dirty Secrets Behind Australia's Fresh Food",<sup>8</sup> which revealed some of the forms of abuse experienced by temporary migrants on Australian farms, including wage theft, sexual harassment, unsanitary living conditions, and threats of deportation. The horticulture industry is highly reliant on labour hire providers, with 2024 released data indicating that, on

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<sup>7</sup> Fair Work Commission. *Horticulture Award variation (AM2020/104)*. Retrieved February 25, 2025, from [Horticulture Award variation \(AM2020/104\) | Fair Work Commission](#).

<sup>8</sup> Australian Broadcasting Corporation. (2015, May). *Slaving Away: The Dirty Secrets Behind Australia's Fresh Food*. ABC Four Corners.

average, 60% of contract horticulture workers were employed through these companies during the 2022–2023 period.<sup>9</sup>

The Migrant Workers’ Taskforce recommended the implementation of a national labour hire registration system, which resulted in the formation of a Labour Hire Harmonisation Working Group aimed at the adoption of a unified approach through model legislation between the different states. Currently, four Australian jurisdictions have established their own labour hire schemes: Queensland, Victoria, South Australia, and the Australian Capital Territory. The lack of a licensing scheme in New South Wales has prompted some companies to relocate into the state to bypass the regulatory requirements enforced in other states.

Unions NSW and IARC urge the NSW Government to legislate a licensing scheme and welcomes the efforts to develop across jurisdictions a national harmonised system of labour hire licensing. The NSW Government must commit to ensuring that adequate resources are in place for effective enforcement at the State level, particularly in rural and remote areas. A national harmonised system should feature the following<sup>10</sup>:

- a. Maintain and improve existing state schemes by incorporating their best features.<sup>11</sup>
- b. Apply the regulations to all labour hire providers across all sectors.<sup>12</sup>
- c. Effective channels should be established for reporting licensees’ breaches, including multilingual and culturally appropriate channels to ensure migrant worker access.<sup>13</sup>
- d. Require all labour hire service providers to obtain a license, including creating a category for parent companies or corporate groups.<sup>14</sup>
- e. Create a publicly available register of licensed labour hire providers.<sup>15</sup>
- f. Set minimum capital requirements for anyone or any company registering a labour hire company, along with regular reporting on compliance with legal obligations.<sup>16</sup>
- g. Require license holders to comply with migration laws and impose penalties for non-compliance.<sup>17</sup>
- h. Promote cooperation between agencies and cross-border collaboration with state licensing authorities.<sup>18</sup>
- i. The system implementation should be fast tracked in sectors where workplace exploitation is widespread, such as horticulture.<sup>19</sup>

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<sup>9</sup> Slatter, B. (2024). *Labour use in Australian horticulture: Analysis of survey results, 2022–23*. ABARES research report, Australian Bureau of Agricultural and Resource Economics and Sciences.

<sup>10</sup> Australian Council of Trade Unions. (2024). *ACTU Congress 2024: Labor hire*.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Douglass, M., & Cavanough, E. (2024). *Licensing labour hire*. McKell Institute.

<sup>14</sup> Australian Council of Trade Unions. (2024). *ACTU Congress 2024: Labor hire*.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

## **Recommendation**

- 5) A labour hire licensing scheme must be established in NSW to protect migrant workers from workplace exploitation. The NSW Government must allocate adequate resources for effective enforcement of the scheme, particularly in rural and remote areas.

## **6. WAGE THEFT AND MISUSE OF PIECE RATES IN THE HORTICULTURE INDUSTRY**

Numerous reports have exposed the systemic misuse of piece rates to underpay horticultural workers.<sup>20</sup> Recent data shows that, in 2022–23, at 32%, New South Wales had the highest share of workers on piece rates, followed by Tasmania (25%), South Australia (23%), Victoria (22%), Western Australia (22%), and Queensland (18%).<sup>21</sup>

To measure the severity of underpayment among horticulture workers under the piece rate system, Unions NSW has conducted several studies. From late December 2019 to early September 2020, an audit of over 1,000 foreign language job adverts in the horticulture industry was conducted.<sup>22</sup> The adverts were predominantly in English, Chinese, Japanese, and Korean. The analysis found that an overwhelming majority of job adverts (88%) offered a piece rate, and over 96% of the piece rates advertised would not allow a worker to earn the national minimum wage. In several instances, workers would earn less than \$1 an hour.

From late September 2020 to February 2021, Unions NSW surveyed over 1,000 horticulture workers, most of whom were holding temporary visas (84%) and worked across various states in Australia.<sup>23</sup> The research revealed that 78% of respondents had been underpaid at some point while working in the horticulture industry, with a notably high proportion of underpayment among those paid on a piece rate (80%). In some cases, piece-rate workers reported earning less than \$1 per hour. One in seven workers reported earnings ranging from \$0 to \$7 per hour, while nearly one-third earned between \$8 and \$11 per hour. About one-fifth reported earnings between \$12 and \$15 per hour, and one in six earned between \$16 and \$19 per hour. Only around one in nine piece-rate workers were paid in the higher range of \$20 to \$23 per hour.

To examine the impact of the Fair Work Commission’s decision in 2021 to introduce a minimum wage guarantee for piece-rate workers, Unions NSW conducted additional research from January 2021 to September 2022.<sup>24</sup> The study analysed over 1,000 job advertisements in the horticulture industry and surveyed more than 200 horticulture workers. The analysis revealed a significant reduction in the number of adverts offering piece rates since the Fair Work Commission’s decision came into effect. However, at 42%, the highest proportion of adverts offering piece-rate wages was observed in New South Wales.

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<sup>20</sup> Cavanough, E., & Wherrett, C. (2020). *Blue harvest: Wage theft and other labour infringements in the NSW Mid-North Coast’s 2019/20 berry harvest*. McKell Institute.

<sup>21</sup> Slatter, B. (2024). *Labour use in Australian horticulture: Analysis of survey results, 2022–23*. ABARES research report, Australian Bureau of Agricultural and Resource Economics and Sciences.

<sup>22</sup> Unions NSW. (2020, December). *Wage theft, the shadow market report*.

<sup>23</sup> Unions NSW & Migrant Workers Centre. (2020). *Working for \$9 a day: Wage theft and human rights abuses on Australian farms*.

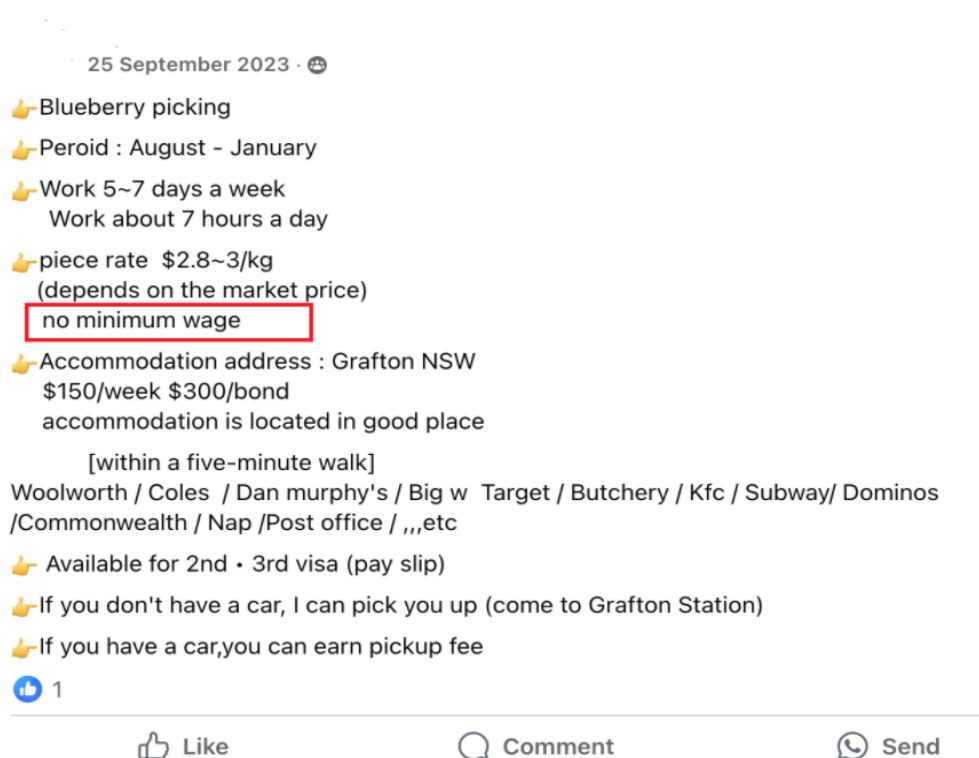
<sup>24</sup> Unions NSW. (2022, December). *Wage theft, the shadow market – Empowering migrant workers to enforce their rights*.

The study also exposed the challenges of enforcing the new Horticulture Award rules. More than half (51%) of the piece rate workers surveyed indicated that their employer guaranteed a minimum wage for only a limited time. Nearly a third (29%) were offered an hourly rate but paid by piece rate, earning less than the minimum wage. Additionally, 1 in 5 participants reported being threatened with termination if they failed to meet employer-set picking targets.

The introduction of the minimum wage guarantee marks an important step in combatting the exploitation of horticulture workers, and progress has been observed. However, exploitation continues, and effective enforcement is crucial to ensure that the changes have the intended impact.

Additionally, the practice of advertising jobs in foreign languages with wages below the minimum wage was identified by the Migrant Workers' Taskforce (2019), which recommended the inclusion of a specific prohibition in the *Fair Work Act 2009* (Cth).<sup>25</sup> This recommendation was adopted on 7<sup>th</sup> January 2023.<sup>26</sup> However, migrant workers continue to face a range of intersecting challenges that prevent reporting, emphasising the need for additional resources focused on culturally appropriate and multilingual engagement to better inform and empower migrant workers to enforce their rights.

**Figure 1: Example of a social media job advert for a fruit picker in Grafton suggesting that the minimum wage guarantee does not apply**



### **Recommendation**

- 6)** The NSW Government must ensure that the Migrant Workers' Centre is adequately resourced and funded to develop multilingual and culturally appropriate workplace

<sup>25</sup> Commonwealth of Australia. (2019, March). *Report of the Migrant Workers' Task Force*. [Report of the Migrant Workers taskforce March 2019](#).

<sup>26</sup> *Fair Work Act 2009* (Cth), s 536AA.

rights training programs in regional areas, effectively empowering migrant workers to enforce their workplace rights and ensuring that recent reforms achieve their intended purpose.

## 7. OTHER WORKPLACE LAW BREACHES IN THE HORTICULTURE INDUSTRY

The bundling of wages with secondary expenses such as food, transport, and accommodation remains a common practice in the horticulture industry. This practice exploits the vulnerabilities of migrant workers, who often face significant challenges due to the remote nature of horticultural work, limited access to support services, language barriers, and a lack of social networks.

Many migrant workers arrive in Australia feeling confused and uncertain, with little choice but to accept the conditions offered by their employers. The bundling of essential services has become an additional form of exploitation, further exacerbating workplace abuse and increasing workers' exposure to health and safety risks.

A survey of horticulture workers conducted by Unions NSW revealed that nearly half (49%) of respondents had experienced exploitative conditions related to transport and employer-provided accommodation.<sup>27</sup> The survey also highlighted that a significant proportion of respondents had been exposed to health and safety risks while performing their duties (26%), with other issues such as discrimination, bullying, or harassment affecting 35% of participants. Unfortunately, migrant workers often do not face these issues in isolation; instead, various breaches of workplace laws intersect and worsen over time, as exemplified by Jess's case.

### CASE STUDY:

#### **JESS\***

Jess arrived in Sydney in 2023 on a Working Holiday visa and moved to rural NSW to fulfil the regional work requirement for a second-year visa. She secured employment on a strawberry farm through a labour hire company. During her time on the farm, Jess experienced various forms of exploitation, including wage theft, bullying, and threats of deportation.

Jess was forced to stay in accommodation provided by her employer, which was overcrowded, infested with cockroaches, and had a hole in the roof. She had to share a single kitchen and bathroom with eight other workers, some of whom were male, and the bathroom door lacked a lock.

The cost of accommodation was \$170 per week. Jess was paid by piece-rate, earning an average of only \$120 per week. Although Jess considered leaving, she didn't know anyone in the area and was reluctant to waste time. She hoped to complete the 88 days required

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<sup>27</sup> Unions NSW and Migrant Workers Centre. (2020). *Working for \$9 a day: Wage theft and human rights abuses on Australian farms*.

for her second-year visa as quickly as possible, believing that her earnings might improve over time. Unfortunately, they never did.

As the busier season began, Jess's wages remained low, never exceeding \$380 per week. Whenever she raised concerns about her pay, the employer responded aggressively, telling her: "It's not our fault you're so slow. If you don't like it, leave." Despite her concerns and the harsh conditions, Jess continued working, hoping the situation would improve.

By the time she completed the required 88 days, Jess's physical and mental health had significantly deteriorated, and she was frequently experiencing panic attacks. Unable to endure the conditions any longer, Jess made the decision to leave the farm and return to her home country to seek medical treatment.

\*Name and details altered to protect worker confidentiality

## **Recommendation**

- 7) The NSW Government must ensure that the Migrant Workers Centre is adequately funded to develop multilingual and culturally appropriate referral channels, connecting migrant workers in regional areas with support services to address workplace issues, as well as other related matters such as housing, healthcare, emergency financial assistance, and domestic violence.

## **8. SEXUAL HARASSMENT IN REGIONAL AREAS**

Women holding temporary visas working in regional areas often experience sexual harassment and other forms of gender-based violence, yet the support services available to protect their safety at work remain insufficient. We urgently call for stronger support services and reporting channels to ensure their safety.

Last year, Unions NSW launched the report, "Disrespected, Disregarded, and Discarded",<sup>28</sup> which exposed widespread sexual harassment of migrant women holding temporary visas across Australian workplaces. The research, which built on over 3,300 survey responses, 700 written statements, and 80 interviews, highlighted how isolation and visa restrictions create a systemic culture of silence.

The report highlighted a disturbing pattern of harassment by employers, co-workers and customers in industries relying on migrant workers, who have next to no avenues enabling them to speak out about the treatment they experience.

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<sup>28</sup> Unions NSW. (2024, November). *Disrespected, disregarded and discarded: Workplace exploitation, sexual harassment, and the experience of migrant women living in Australia on temporary visas.*

Key findings included:

- High rates of sexual harassment. Over 50% of migrant women surveyed reported harassment, with the highest rates being in the construction (82%), horticulture (53%), and hospitality (51%) industries.
- Barriers to reporting. 75% of respondents did not report sexual harassment for fear of losing their job, retaliation from their employer (and subsequent consequences for their visa status) or because previous complainants were not believed by management.
- Many workers reported wage theft, reduced hours, and other retaliation after attempting to report exploitation.

The report provided 9 recommendations, many of which focused on increasing support services and improving reporting channels, including:

- Establish migrant worker centres across the country to provide dedicated support and reporting avenues. The centres should develop programs specifically designed to empower migrant women to report sexual harassment perpetrators and unsafe workplaces. The NSW Government's announcement to fund a Migrant Workers Centre aligns with this recommendation, and specific initiatives to empower women to report sexual harassment should be integrated into the NSW centre's programs.
- Implement reporting mechanisms to empower workers to make complaints through the introduction of multilingual and culturally appropriate channels to address the unique barriers faced by women with precarious visa statuses. The Fair Work Commission, Fair Work Ombudsman, anti-discrimination and human rights bodies, and work health and safety regulators should redesign their processes to provide migrant workers with services tailored to their needs. Resources should be allocated to improve access to interpreters, implement multilingual services, and hire bilingual or multilingual staff, including senior staff with extensive experience working with migrant communities and specialised knowledge in areas that intersect with sexual harassment, such as workplace law, modern slavery, workers' compensation, and immigration law, among others.

### **Recommendations**

- 8) The NSW Migrant Workers Centre should develop specific initiatives to empower women to report sexual harassment.
- 9) NSW Government agencies, including SafeWork NSW and the Anti-Discrimination Board, should redesign reporting processes and allocate more resources for interpreters, multilingual services, and experienced bilingual staff to better support migrant workers facing sexual harassment.

## **9. STREAMLINING SKILLS RECOGNITION**

The current process for recognising migrant workers' skills is overly complex and burdensome. Many visa applicants must first complete a skills assessment to work in their chosen occupation. All applicants for points-tested visas must complete a skills assessment, while employer-sponsored applicants do so depending on their passport country and

occupation. These applicants must also meet separate professional standards, commonly known as ‘occupational licensing’.<sup>29</sup>

A skills assessment is required to ensure that prospective migrants have the necessary qualifications, experience, and skills to satisfy Australian standards. However, as noted in the *Review of the Migration System*,<sup>30</sup> this system has become a barrier to migrants reaching their full potential and requires reform. A 2023 Unions NSW survey of over 1,200 temporary migrants revealed that nearly 60% were required to complete a skills assessment under their migration pathway, and more than half (56%) had to undertake further studies to meet the requirements.<sup>31</sup> Additionally, 53% of respondents had to take an exam or assessment as part of the process. Research indicates that in some instances, the cost of skills recognition can reach \$51,000 for migrant workers.<sup>32</sup>

The current skills assessment process is costly, inflexible, and lacks transparency, limiting equal employment opportunities for migrant workers. As their qualifications and skills are often not recognised in Australia, many migrant workers find themselves in exploitative working conditions and positions far below their skill level. Between 2013 and 2018, nearly one in four permanent skilled migrants worked in jobs that did not match their skill level, resulting in at least \$1.25 billion in lost wages due to skill mismatches.<sup>33</sup>

There are also significant gaps between the services offered by assessing authorities and the industry’s expectations of skills assessments for workers. The Unions NSW survey also found that nearly a third (32%) of participants met the skills assessment requirements for migration, but still had to meet additional requirements to practice their occupation or obtain a relevant license in Australia.<sup>34</sup>

The NSW Government should advocate for the establishment of clearer and more efficient processes for recognising overseas qualifications and skills to simplify the skills assessment process. The NSW Government should also advocate for international agreements on the mutual recognition of occupational licenses. Such measures would help migrant workers trapped in exploitative conditions in regional NSW move into jobs matching their skills without facing cumbersome processes. Additionally, the Government should encourage collaboration between NSW licensing authorities, professional bodies, and skills assessment authorities, to ensure consistency between migration and occupational licensing requirements. This would prevent situations where migrant workers meet visa requirements but cannot practice their profession.

The NSW Government should also invest in bridging programs, training, and requalification opportunities to help temporary migrants in regional areas align their qualifications with local standards. These programs should address skills gaps and enhance employability. Fear of

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<sup>29</sup> Parkinson, M., Howe, J., & Azarias, J. (2023). *Review of the migration system*. See also: Coates, B., Wiltshire, T., & Bradshaw, N. (2024). *It all adds up: Reforming points-tested visas*. Grattan Institute.

<sup>30</sup> Parkinson, M., Howe, J., & Azarias, J. (2023). *Review of the migration system*.

<sup>31</sup> Unions NSW & Migrant Workers Centre. (2023, June). *Unlocking talent report: Empowering migrant workers with equal work opportunities*.

<sup>32</sup> Coates, B., Wiltshire, T., & Bradshaw, N. (2024). *It all adds up: Reforming points-tested visas*. Grattan Institute.

<sup>33</sup> Committee for Economic Development of Australia. (2021). *A good match: Optimising Australia’s permanent skilled migration*.

<sup>34</sup> Unions NSW & Migrant Workers Centre. (2023, June). *Unlocking talent report: Empowering migrant workers with equal work opportunities*.



losing employment is a major barrier to reporting exploitation, and improving access to suitable employment would empower migrant workers to leave exploitative situations and find work that matches their skills.

### **Recommendations**

- 10)** The NSW Government should invest in bridging programs, training initiatives, and requalification opportunities, which help temporary migrants in regional areas align their qualifications with local standards and requirements.
- 11)** The NSW Government should advocate for the establishment of clearer and more efficient processes for recognising overseas qualifications and skills to simplify the skills assessment process.
- 12)** The NSW Government should push for international agreements that facilitate the mutual recognition of occupational licenses, ensuring smoother integration of skilled workers into the local workforce and empowering migrants to escape exploitative working conditions.

## **10. PILOTS FOR MIGRANT WORKERS**

In July 2024, the Department of Home Affairs launched two complementary two-year pilots aimed at reducing migrant worker exploitation and, therefore, the risk of modern slavery: the Workplace Justice Visa (**WJV**) and Strengthening Reporting Protections (**SRP**) pilots. The WJV is a temporary, substantive visa that allows temporary visa holders who are near visa expiry to stay in Australia for up to 12 months to take legal action if they have been exploited at work. The new reporting protections under the SRP pilot compel the Department of Home Affairs to consider whether workplace exploitation has occurred when deciding whether to cancel a person's visa for breach of a work-related visa condition. If an Accredited Third Party (**ATP**) can certify that the visa holder breached a work-related visa condition because of exploitation, the visa should not be cancelled.

These pilots are a significant step forward in combatting migrant worker exploitation and modern slavery. They have enabled workers like Kate (case study below) to remain in Australia and take action against their employer.

### **CASE STUDY:**

#### **KATE\***

Kate arrived in Australia with her children to start a new life working as a chef. She was sponsored on a Temporary Skill Shortage (subclass 482) visa by a restaurant to work in their kitchen. She was promised that they would nominate her for permanent residency as soon as she became eligible.

While working in the kitchen, Kate experienced significant racial discrimination, underpayments, bullying, and harassment. She endured this treatment for months until one day, she broke down at work and had to take extended leave. While on leave, she continued to receive harassing calls from her workplace. Eventually, she was admitted to hospital due to the significant deterioration in her mental health.

When her visa was about to expire, Kate received an email from her employer saying that they would not sponsor her again and that she had to leave the country immediately. She then contacted her union who put her in contact with Visa Assist.

Visa Assist took Kate on as a client and helped her and her children apply for a Workplace Justice visa with the assistance of her union. Kate and her children now hold Workplace Justice visas, and her union is assisting her take action against her employer.

\*Name and details altered to protect client confidentiality

The NSW Government has a vital role to play in helping IARC and Unions NSW achieve more success stories like Kate's. First of all, the state Government should update the Visas and Migration section of its website with information on workplace exploitation and available protections to migrant workers, including the pilots for migrant workers. The website should also direct workers to IARC's free and confidential legal advice services, including Visa Assist. IARC and Unions NSW are able to assist the NSW Government with these updates.

### **Resourcing the pilots**

The NSW Government should also be aware of the significant resourcing implications for organisations involved in the two pilots, which includes both ATPs and specialist services that give migration advice, including IARC. Greater funding to these service providers would help them manage the higher demand generated by the pilots.

Below is an excerpt from the Workplace Justice Visa Factsheet, which IARC co-authored alongside four ATPs: Unions NSW, Redfern Legal Centre, Human Rights Law Centre, and the Migrant Workers' Centre in Victoria.

#### **Excerpt from the Workplace Justice Visa Factsheet**

"It is important that you get immigration **and** employment law advice before applying for a Workplace Justice visa:

**Step 1:** You should get immigration law advice. You can contact a community legal centre that specialises in immigration law, a union (and ask for a referral to their immigration law service) or a private migration agent or lawyer.

**Step 2:** If they confirm you may be eligible for a Workplace Justice visa, you can contact an accredited third party ... so they can provide you with relevant advice and certify your workplace exploitation claim.

**Step 3:** Once you receive your certification, you should contact a migration agent or lawyer to assist you to apply for a Workplace Justice visa."

Source: [Workplace-Justice-Visa-Factsheet-FINAL.pdf](#) (p. 3).

This factsheet explains the process of applying for a WJV to prospective clients. Evidently, it is protracted, requiring exploited workers to obtain advice from both immigration and employment law specialists. Accordingly, involvement in the pilots has placed significant strain on participating organisations.

IARC has experienced a significant increase in demand for our services as a result of the two pilots. The operation of the WJV pilot is especially challenging because there is a very short timeframe in which WJV applications can be lodged (discussed further below). This often means we have to prioritise WJV appointments ahead of other clients because of tight legal deadlines.

For ATPs, including Unions NSW, the certification process is also resource-intensive, requiring a detailed analysis of the migrant worker’s case and evidence, provision of employment law advice, assessment of eligibility, and, where eligibility is established, drafting of a statutory declaration. Evidently, greater resourcing to IARC and Unions NSW is needed to make the pilots viable – so we can offer time-sensitive assistance to exploited workers accessing the pilots.

**Gaps in regulations**

Since July 2024, when the WJV and SRP pilots were launched, several gaps have emerged in the wording of the *Migration Regulations 1994 (Cth)* (**the Regulations**). IARC identified these gaps because some clients, who were intended to be protected by the pilots, were unable to access the pilots. Although the NSW Government cannot directly address these gaps, it is worth outlining them here as context for the progress of the pilots to date. The NSW Government can also advocate to the Federal Government to take on board the recommended changes to the pilots that we detail below.

Table 2 below summarises IARC’s legal advice to the 78 clients who reported experiencing workplace exploitation between July 2024 and the end of January 2025.

Table 2

*IARC legal advice to clients who reported experiencing workplace exploitation (July 2024 to January 2025)*

Category	Number of clients
Eligible for Strengthened Reporting Protections (SRP)	7
Eligible for Workplace Justice Visa (WJV)	27
<b>Total number of clients that reported experiencing workplace exploitation</b>	<b>78</b>

Over this seven-month reporting period, only 31 clients (40%) who reported workplace exploitation were assessed to be eligible for the new pilots. 27 people were deemed eligible for the WJV, and 7 for the SRP, with 3 clients qualifying for both pilots.

This leaves 47 clients (60%) deemed ineligible for either pilot. The high percentage of ineligible workers highlights the gaps in these reforms. There are several reasons for the limited coverage of the pilots. There is a small window in which to apply for the WJV: an applicant must either hold a substantive visa with work rights with no more than 28 days remaining, or have previously held a substantive visa with work rights that has expired no more than 28 days before the day of the visa application. This tight time frame places undue pressure on specialist immigration community legal centres such as IARC, as well as ATPs certifying claims of workplace exploitation. It has meant that meritorious applicants have unjustly missed out on accessing the WJV because they have been unable to obtain certification in time. We have recommended to the Department of Home Affairs that this 28-day requirement be amended so that it only applies post substantive visa expiry.

The eligibility criteria for the WJV are equally narrow. The visa is not available to people who hold Bridging visas (for more than 28 days) or substantive visas without work rights. Nor is it available to unlawful people whose visas expired more than 28 days ago. This is a particular problem in rural and regional NSW because of the concentration of vulnerable labourers who reside there, as discussed in Section 3 (see Table 1, p. 6). We have recommended to the Department of Home Affairs that they expand eligibility for the WJV to at least include Bridging visa holders with work rights.

Many workers also lack confidence in the SRP pilot due to the present drafting of the protections in the Regulations. Contrary to the intentions of the pilot to provide a non-discretionary protection against visa cancellation, the Regulations grant the Minister of Home Affairs (or their delegate) discretion to determine whether there is a connection between the breach of a work-related visa condition and workplace exploitation. Given this drafting, IARC has had to explain both in legal advice sessions and community legal education that there is still a discretionary element to the supposedly non-discretionary protections. The likely effect of this advice has been that either some people have elected not to have their claim certified or have not come forward to seek advice on the new protections, instead remaining in exploitative employment.

Concerningly, IARC has also encountered PALM workers who disengaged from the PALM scheme due to workplace exploitation and had their visas cancelled under s 116(1)(g) of the *Migration Act 1958* (Cth). As a consequence, workers like Ben (see case study below) cannot access the SRP pilot because the cancellation protections only relate to s 116(1)(b) of the *Migration Act 1958* (Cth). We have advised the Department of Home Affairs that the Department's cancellations teams should be directed not to consider cancellation under s 116(1)(g) of the Act but rather s 116(1)(b), so that PALM workers can come forward to report exploitation and access the SRP pilot.

#### CASE STUDY:

### **BEN\***

Ben arrived in Australia on the PALM scheme to work in the meat work industry in regional NSW. He heard that Australia pays people fairly and has good work conditions. He wanted to make enough money so that he could support his family back home.

Unfortunately, his expectations did not meet the reality he faced in Australia. From his very first pay day, Ben noticed that significant deductions were taken from his wages. This meant he barely had enough to live on, let alone send back to his family. He was also forced to sleep in a shipping container with six other workers and pay over \$200 in rent each week.

Ben also never received appropriate safety equipment and training, which meant that one day, he lost a finger in a workplace accident. He ended up leaving his employer when they refused to get him medical assistance.

A few months later, Ben received a letter from the Department of Home Affairs saying they were considering cancelling his visa because he was no longer working for his sponsor. He approached his union who then referred him to Visa Assist.

Visa Assist told Ben that due to the visa he held (namely, a PALM visa) and the cancellation powers being used, he was ineligible for the protections against visa cancellation. He would have to rely on the discretion of the Department. He was also ineligible for the Workplace Justice visa as he still had years left on his PALM visa.

\*Name and details altered to protect client confidentiality

As active participants in the pilots, IARC and Unions NSW have quarterly reporting obligations to the Department of Home Affairs. Our first quarterly report to the Department in November 2024 highlighted the various gaps in the Regulations discussed here and the detrimental impact of these gaps on clients like Ben. We provided accompanying recommendations on how to address the gaps. We want quarterly reporting to be a meaningful and genuinely consultative process, meaning the Department should implement the recommendations we put forwards based on our experience of the pilots. Without this, the pilots' impact will only be modest.

### **Recommendations**

- 13)** The NSW Government, in collaboration with IARC and Unions NSW, should update the Visas and Migration section of its website to include information on workplace exploitation and available protections to migrant workers, such as the Workplace Justice Visa (**WJV**) and Strengthening Reporting Protections (**SRP**) pilots.

## **11. VISA SCHEMES AND CATEGORIES**

This section analyses Australia's visa system. It starts by discussing the few visas where the NSW Government has some influence. The rest of the section then analyses visa schemes and categories where IARC and Unions NSW have documented significant exploitation: the Pacific Australia Labour Mobility (**PALM**) Scheme; the Working Holiday Maker (**WHM**) program; Student visas; and temporary skilled employer-sponsored visas. This section proposes reforms to visa settings that the NSW Government should advocate to the Federal Government.

## 11.1. THE ROLE OF THE NSW GOVERNMENT IN THE IMMIGRATION SYSTEM

The NSW Government can take direct action within the immigration system to reduce modern slavery risks in rural and regional areas. Our policy recommendations would also benefit regional NSW's economy by retaining skilled migrant workers outside Sydney.

First, the state Government should implement a policy to nominate eligible employees for permanent residency through the Employer Nomination Scheme (subclass 186) visa. The subclass 186 visa lets workers, who are nominated by an employer, live and work in Australia permanently. This policy would benefit eligible migrant workers by granting them permanent residence rights, including access to Medicare and Centrelink. Crucially, providing this additional visa pathway for those wishing to stay long-term in Australia creates a crucial exit option for exploited workers who remain with abusive employers out of fear of visa cancellation or because of vague promises of being nominated for permanent residency.

Second, the state Government should ensure that the Expression of Interest (EOI) settings for the Skilled Work Regional (subclass 491) visa are not restrictive and provide temporary migrant workers with a genuine opportunity to leave exploitative employers. At the time of writing, Pathway 1 – which is applicable to everyone who is currently employed with a regional NSW employer – is closed to further applications.<sup>35</sup> We assume that this pathway was closed because it was the most popular option for skilled migrants seeking to access this particular visa. But we urge that where feasible, the NSW Government considers expanding this pathway. It represents a valuable option for exploited migrant workers who would otherwise remain trapped by their employer sponsor; subclass 491 visa holders are not beholden to a single employer because it is a points-tested visa.

The subclass 491 also represents a useful tool by which the NSW Government can retain skilled labour outside of Sydney. Sponsorship costs are too prohibitive for many regional employers. For example, a small business with an annual turnover of under \$1 million per year that wishes to nominate a migrant worker on the Skills in Demand (subclass 482) visa for a period of 4 years would be liable to pay a levy of \$4,800 in total for the Skilling Australians Fund (SAF) levy, in addition to all other labour costs.<sup>36</sup> Expanding Pathway 1 for the subclass 491, where possible, would enable regional businesses to continue employing temporary migrant workers without bearing these costs, thereby benefiting the regional NSW economy.

### **Recommendations**

- 14)** The NSW Government should implement a policy that they will nominate eligible employees for permanent residency through the Employer Nomination Scheme (subclass 186) visa.
- 15)** The NSW Government should ensure that the EOI settings for the subclass 491 visa are not restrictive and provide temporary migrant workers with a genuine opportunity to leave an exploitative employer.

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<sup>35</sup> NSW Government. (n.d.). *Skilled Work Regional visa (subclass 491)*. Retrieved February 26, 2025, from [Skilled Work Regional visa \(subclass 491\) | NSW Government](#).

<sup>36</sup> Department of Home Affairs. (2024, December 7). *Cost of sponsoring*. Retrieved February 26, 2025, from [Cost of sponsoring](#).

## 11.2. PACIFIC AUSTRALIA LABOUR MOBILITY (PALM) SCHEME

The exploitation of workers under the Pacific Australia Labour Mobility (**PALM**) scheme is well documented.<sup>37</sup> This partly reflects the fact that most PALM workers are employed in sectors that are at high risk of modern slavery: in particular, agriculture, horticulture, and meat processing. Increasingly, many PALM workers also work in the aged care sector.

The scheme also permits employers to make a variety of lawful pay deductions – including for airfares to and from the Pacific Islands, travel within Australia, and visa processing costs, to name just a few<sup>38</sup> – which creates a highly vulnerable and impoverished workforce. Despite the introduction of a minimum pay guarantee of \$200 per week, reports of underpayment continue.<sup>39</sup>

### **PALM Scheme visa settings**

There are two core issues with the visa scheme that render PALM workers more vulnerable to exploitation: the difficulty of changing employers and the lack of alternative visa pathways.

PALM workers are tied to the employer that sponsored them, meaning that workers in the long-term stream of the program cannot change employers for up to four years unless they obtain approval from the Department of Employment and Workplace Relations (**DEWR**).<sup>40</sup>

The PALM scheme also functions as a ‘guest worker’ program<sup>41</sup>, with workers in fruit picking and meat processing unable to exit the scheme and stay in Australia after completing their work because of a lack of skilled visa options thereafter. While certain employers may be able to sponsor PALM workers in aged care for other skilled visa options or even permanent residence, they have little incentive to do so because they can simply wait for the next intake of PALM workers.

Tacitly recognising that most PALM workers are unable to exit the scheme onto alternative visa pathways, the Australian Government introduced a new permanent visa – the Pacific Engagement visa (subclass 192) – for Pacific Islanders in March 2024. However, this visa is allocated through a ballot system, which we oppose due to its inherent unfairness as it reduces the serious pursuit of permanent residence to a lottery.

In previous submissions, we have made the following recommendations to the Federal Government:

- PALM workers should have the right to change employers without having to receive approval from the Department of Employment and Work Relations.

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<sup>37</sup> Australia Institute. (2023, December). *The PALM scheme: Labour rights for our Pacific partners*; NSW Anti-Slavery Commissioner. (2024, September). *Be Our Guests: Addressing urgent modern slavery risks for temporary migrant workers in rural and regional New South Wales*.

<sup>38</sup> Commonwealth Government. (2023). *PALM scheme Approved Employer Guidelines* (1 July 2024 ed.). Retrieved February 14, 2025, from [PALM scheme Approved Employer Guidelines - 4 November 2024.pdf](#). (pp. 40-41).

<sup>39</sup> Fair Work Ombudsman. (2024). *Alleged unlawful deductions from visa workers on potato farm*.

<sup>40</sup> Department of Home Affairs. (2024, September 23). *Pacific Australia Labour Mobility stream*. Retrieved February 14, 2025, from [Temporary Work \(International Relations\) visa \(subclass 403\) Pacific Australia Labour Mobility stream](#).

<sup>41</sup> Withers, M. (2024). Depletion through transnational social reproduction: guestworker migration and uneven development in the South Pacific, *Work in the Global Economy*, 4(1): 30–51.

- The Federal Government should give Pacific Islander labourers a fair and transparent process to gain permanent residency, rather than the current random ballot system for the Pacific Engagement visa (subclass 192).<sup>42</sup>

Kyle (see case study) is one of many PALM workers that IARC has advised through the Visa Assist service in partnership with Unions NSW.

#### CASE STUDY:

### **KYLE\***

Kyle moved from Samoa to Australia on a PALM visa to work in fruit picking on a regional farm. Kyle's employer made significant deductions from his weekly pay, leaving him uncertain about his take-home earnings. Without an interpreter to explain his workplace rights, he could not determine whether these deductions were lawful. Unfortunately, as a PALM worker, the conditions on Kyle's visa required him to stay with the employer that sponsored him, with very limited grounds on which his sponsorship could be transferred to another employer within the PALM scheme.

One day, Kyle was injured at his workplace in an accident when stapling together boxes with a staple gun. He had not been provided with suitable safety equipment and a staple ended up lodged in his eye. Doctors advised Kyle he could return to work but only to complete light duties and to avoid dust and dirt.

He was forced to continue doing difficult tasks, including lifting 20-kilogram bags of fruit. He was given safety goggles, but they made his eye injury worse, trapping sweat and dirt in the puncture site. It left him with significant vision loss in one of his eyes and he had to undergo multiple surgeries. Due to the pressure imbalance that the puncture injury caused, he also experienced pain in his uninjured eye.

Prior to Kyle's arrival in Australia, his employer managed his visa applications. After his injury, they were supposed to apply for another visa on his behalf, but the application was never made. Eventually, Kyle discovered he was unlawful. It meant he had no visa options to remain in Australia to pursue action against his employer for work health and safety breaches, or pursue the medical treatment he required to manage his injury. This treatment was not available in Samoa.

Kyle joined the Australian Workers' Union (AWU) after hearing about the support they provide through a podcast by an AWU organiser, who was also a Samoan interpreter. As a union member, AWU assisted Kyle with his workers' compensation claim and referred him to the Visa Assist program. Visa Assist spent two years advocating on Kyle's behalf and worked tirelessly to secure him a ministerial intervention because of the compelling circumstances of his situation. Kyle was granted permanent residency in 2023. It allowed him to remain in Australia for medical treatment and sponsor his family to join him.

\*Name and details altered to protect client confidentiality

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<sup>42</sup> IARC and Unions NSW. (2024, November). *Preventing Migrant Worker Exploitation in Australia*. From: [IARC-Report-for-the-UN-Special-Rapporteur-on-contemporary-forms-of-slavery-November-2024.pdf](#).



### **Non-government service providers assisting PALM workers**

Kyle was fortunate for two reasons. First, ministerial interventions are discretionary and are only granted in very exceptional cases; there are thousands of exploited workers who cannot rely on that option, including most PALM workers. Second, Kyle benefited from the fact he was referred to Visa Assist because he was a union member.

The Agricultural Workers' Union (**AWU**) recruits PALM workers in agriculture and fruit picking, providing essential interpreter services to overcome language barriers. For Kyle, having a union-provided Samoan interpreter was crucial, especially as these services are hard to find in rural NSW. While the AWU and aged care unions refer many clients to Visa Assist, the PALM workers whom our service assists are just a fraction of those needing support, as most are not union members.

Through our Visa Assist service, we have advised many PALM workers who have been dismissed by their employers on spurious grounds and threatened with deportation, usually on an impending flight. This experience underscores the lack of accessible information PALM workers receive about their visa status and workplace rights. Many clients do not realise that employers do not possess the legal authority to deport migrant workers, and they fear deportation even when they have considerable time remaining on their visa. In our experience, this coercive behaviour is more common for PALM workers than other clients and reflects discrimination due to language barriers and limited knowledge of workplace rights.

This discussion underscores the importance of greater funding for two different types of non-government service providers supporting PALM workers. First, as the only specialist CLC in NSW – and Australia – that advises on all immigration, refugee, and citizenship matters, IARC requires greater funding to provide free and confidential immigration advice to vulnerable PALM workers. Second, unions that support PALM workers deserve greater funding to help them realise their workplace rights, and access Visa Assist referrals.

## **11.3. WORKING HOLIDAY MAKER PROGRAM**

Working Holiday Maker (**WHM**) visa holders are highly exploited. In a national survey of temporary migrant workers conducted in 2017, 46% of WHM visa holders reported being underpaid by their employer, which was a higher percentage than any of the other groups surveyed, including Temporary Graduate visa holders; Tourist visa holders; subclass 457 visa holders; and Student visa holders.<sup>43</sup>

### **Specified regional work**

Many WHM visa holders are exploited while conducting specified work in regional Australia to obtain additional Working Holiday visas after their first year in Australia. WHM visa holders (excluding those from the UK) must complete 88 days of regional work to qualify for a second year Working Holiday visa and 179 days for a third year visa.

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<sup>43</sup> Berg, L. and Farbenblum, B. (2017). *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (p. 27).

Specified work must be undertaken in certain industries and sectors. Almost half (49%) of second Working Holiday visas are within the Agriculture, Fishery and Forestry sector.<sup>44</sup> While many employers within this sector play by the rules and treat their employees fairly, a Fair Work Ombudsman investigation of 638 harvest trail businesses in 2018 found that 70% of them had breached Australia's workplace laws.<sup>45</sup> Other sectors that constitute eligible specified work include mining and construction work throughout regional Australia, and tourism and hospitality in Remote and Very Remote Australia.<sup>46</sup>

#### CASE STUDY:

### AURORA\*

Aurora was working in a restaurant in a remote town to obtain her second year Working Holiday visa. From the beginning of her employment, the restaurant owner made unwanted sexual advances towards her. Despite Aurora's objections, he continued to harass her throughout her time there.

When Aurora reported the harassment to her manager, she was told not to complain if she wanted to keep her job and complete the required 88 days of specified work. Her manager also warned that reporting to the police would be futile, as the restaurant owner was close friends with local law enforcement.

Before completing her required 88 days of work, Aurora fled the restaurant. With her visa nearing expiry, she sought advice from IARC about her options to remain in Australia.

\*Name and details altered to protect client confidentiality

This case study illustrates the power imbalance between regional employers and WHM visa holders who depend on them to satisfy their visa requirements. It also underscores other salient contributors to this power imbalance. As a foreigner in a remote town, Aurora lacked support networks and the restaurant owner leveraged both his position and connections to local law enforcement to silence her. Sadly, IARC has advised many women who, like Aurora, have faced sexual harassment from employers while conducting their required regional work.

The simplest solution to address this power imbalance would be to abolish the specified work requirement for second and third Working Holiday visas. The Australian Government already exempts UK passport holders aged 18-35 years old from specified regional work under the 2023 Australia-UK Free Trade Agreement. Other countries will likely seek similar exemptions in future trade agreements. However, rather than removing the specified work requirement only for citizens of countries with stronger ties to Australia, the Federal Government should simply abolish it for everyone. Any concerns about the WHM program being oversubscribed could be managed by capping visa numbers within this program.

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<sup>44</sup> Department of Home Affairs. (2024). *Supporting strong and sustainable regions: Review of Regional Migration Settings Discussion Paper* (p. 13).

<sup>45</sup> Fair Work Ombudsman. (2018). *A report on workplace arrangements along the Harvest Trail*.

<sup>46</sup> Regulation 1.15FAA and 1.15FA of the *Migration Regulations 1994* (Cth). See also: Department of Home Affairs. (2024, December 9). *Specified subclass 417 work*. Retrieved February 17, 2025, from [Specified work for Working Holiday visa \(subclass 417\)](#).

## **Obligations for regional employers**

At the very least, regional employers who wish to hire WHM visa holders must be better regulated than at present. This is especially imperative if the Federal Government remains unwilling to abolish the specified work requirement for all WHM visa holders. Currently, the only obligation required to become a WHM employer is to have an active Australian Business Number (**ABN**), and to register your company with the Australian Tax Office (**ATO**).<sup>47</sup>

We propose that regional employers who wish to hire Working Holiday Makers should be subject to the same obligations that apply to all temporary activity sponsors. Like these sponsors, regional employers should be compelled to keep records that demonstrate continual compliance with their obligations to pay Working Holiday Makers fairly and regularly. They must also be prepared to provide records or information when requested by an officer from the Department of Home Affairs to help determine whether they are complying with their obligations, and whether any circumstances exist relating to which the Minister might take administrative action.<sup>48</sup> Greater monitoring and oversight of regional employers involved in the WHM program would reduce the likelihood of migrant worker exploitation and increase employer compliance with Australian workplace laws.

## **Condition 8547**

This visa condition applies to all WHM visa holders. It stipulates that the visa holder cannot work for the same employer in Australia for more than six months. Since the 1<sup>st</sup> of January 2024, there have been a few industries that are exempt from this limitation, including plant and animal cultivation; natural disaster recovery work; and critical sectors such as agriculture and aged care.<sup>49</sup>

We believe that this condition should be removed by the Federal Government for two key reasons. First, it limits employment opportunities because employers are reluctant to invest time in training temporary workers, effectively restricting WHM visa holders to casual positions where underpayment is more common. Second, WHM visa holders who exceed the six-month limit face the prospect of visa cancellation, and this threat often silences workers experiencing mistreatment as they do not want to admit to breaching visa conditions. For reasons discussed in Section 10, the Federal Government's Strengthening Reporting Protections (**SRP**) pilot does not adequately alleviate migrant workers' fears of visa cancellation.

We have previously made the following recommendations to the Federal Government:

- Remove the specified work requirement for subsequent Working Holiday visas.
- Introduce robust obligations for regional employers who wish to hire Working Holiday Makers.<sup>50</sup>

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<sup>47</sup> Australian Taxation Office. (2024, October 1). *Employer registration for working holiday makers*. Retrieved February 17, 2025, from [Employer registration for working holiday makers | Australian Taxation Office](#).

<sup>48</sup> Department of Home Affairs. (2024, September 23). *Sponsorship obligations for Temporary activity sponsor*. Retrieved February 17, 2025, from [Sponsorship obligations for Temporary activity sponsor \(homeaffairs.gov.au\)](#).

<sup>49</sup> Department of Home Affairs. (2024, December 4). *Working Holiday Maker (WHM) program*. Retrieved February 17, 2025, from [6 month work limitation](#).

<sup>50</sup> IARC. (2024, July). *Submission to the Review of Regional Migration Settings*. From: [2024-07.26-IARC-Submission-to-Review-of-Regional-Migration-Settings.pdf](#).

- Remove Condition 8547, which requires Working Holiday visa holders not to remain with any one employer for more than 6 months.<sup>51</sup>

## 11.4. STUDENT VISAS

Many Student (subclass 500) visa holders work while studying in Australia in order to financially support themselves. These students represent another highly vulnerable cohort of temporary migrant workers. In Berg and Farbenblum's 2017 survey of temporary migrant workers, 42% of Student visa holders reported being underpaid by their employer, which represents a higher percentage than every group surveyed other than WHM visa holders.<sup>52</sup>

### **Condition 8105**

Student visa holders' vulnerability is exacerbated by the imposition of this rigid visa condition to all subclass 500 visas. It stipulates that the visa holder must not engage in work in Australia for more than 48 hours a fortnight when their course of study is in session.<sup>53</sup> The condition places students in a precarious situation, where they are often forced by their employer to work in excess of 48 hours per fortnight and then later threatened with visa cancellation for breaching the condition.

#### CASE STUDY:

#### **AVI\***

Avi is a Student (subclass 500) visa holder enrolled full-time at a university in regional NSW. To cover his living costs, he obtained a part-time job at a local café, where he was paid just \$15 an hour in cash, which is well below the minimum wage.

Avi's employer regularly asked Avi to work extra shifts at the café and to stay back after closing time to clean the premises. Avi felt pressured to work these additional hours because he did not want to be fired and lose his main source of financial income as a student.

As a result of his difficult financial circumstances, Avi later complained to his employer about his underpayment. He requested to be paid an hourly rate in line with the minimum wage.

In response to this request, Avi's employer threatened to report him to the Department of Home Affairs for breaching visa Condition 8105 because he had been made to work more hours than the visa permitted.

\*Name and details altered to protect client confidentiality

<sup>51</sup> IARC and Unions NSW. (2023, February). *Parliamentary Joint Standing Committee on Migration: Migration, Pathway to Nation Building*. From: [2023-02.13-IARC-and-Unions-NSW-Submission-Migration-Pathway-to-Nation-Building.pdf](#).

<sup>52</sup> Berg, L. and Farbenblum, B. (2017). *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (p. 27).

<sup>53</sup> *Migration Regulations 1994* (Cth). Schedule 8, Condition 8105.

In rural and regional NSW, there are fewer support services available to international students, making it easier for employers to silence people like Avi with threats of visa cancellation. This case study also underlines how Condition 8105 contributes to the exploitation and underpayment of workers by pushing them into exploitative workplaces where they live under the threat of visa cancellation by their employer.

In previous submissions to the Federal Government, we have recommended the following:

- Abolish the 48-hour work fortnight visa condition for Student visa holders.<sup>54</sup>

The aim of Condition 8105 is to ensure international students are genuinely studying while in Australia. However, the Federal Government can rely on visa Condition 8202, which stipulates that students must maintain satisfactory attendance in their course and meet certain academic performance requirements.<sup>55</sup> This condition alone provides sufficient means to ensure students are genuinely studying and complying with their visa requirements, without increasing the likelihood of migrant worker exploitation.

## 11.5. TEMPORARY SKILLED EMPLOYER-SPONSORED VISAS

Whereas WHM and Student visa holders are often coerced into slavery-like conditions because they fear their employer reporting them, temporary skilled employer-sponsored visa holders are frequently coerced by different means: the false promise of nomination for permanent residency. Employer-sponsored temporary visa holders generally need an employer to nominate them for permanent residency.

While many employers play by the rules and treat their employees fairly, the inherent power imbalance in these sponsorship arrangements leaves workers vulnerable to exploitation. Often, the promise of permanent residency is used as an incentive to keep temporary visa holders in exploitative work environments. There is also no obligation for an employer to nominate the employee for permanent residency, so we often see the offer either never realised or withdrawn just before the worker's current visa expires.

The following case study illustrates the severe impacts this dependency can have on temporary visa holders.

### CASE STUDY:

#### **MESSAGE THERAPISTS**

In 2014, six women were sponsored on Temporary Work (Skilled) (subclass 457) visas from the Philippines as massage therapists. When they arrived in Australia, they were subject to slavery-like conditions by their employer. They were forced to sleep on the floor in the sponsor's accommodation (all in the same room). They worked 6 days a week for over 12 hours each day. They were restricted from leaving the home and from forming any relationships. They were told what they could eat and drink, and even forced to eat

<sup>54</sup> IARC and Unions NSW. (2022, January). *Joint Submission to Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]*. From: [Submission-11.pdf](#).

<sup>55</sup> Ibid.

from dog bowls. They were also grossly underpaid and were forced to pay back certain “costs” to their employer from their already low wage.

If the women breached any rules set by their sponsor, they were threatened with their visas being cancelled and they would be removed from Australia and their families killed.

They were eventually sponsored for permanent residency by their employer. After which, they managed to escape and seek help from the Salvation Army and eventually join a union. The employer’s visa nomination was refused by the Department of Home Affairs (in part due to their treatment of workers). This in turn meant that the women's permanent residency applications were also refused at the Department stage and on appeal at the Administrative Appeals Tribunal. This refusal meant that the six women were unable to apply for almost all other visas while in Australia.

All of the women were referred to IARC through the Visa Assist program. IARC appealed for ministerial intervention, and eventually all six women were granted permanent residency almost 10 years later in 2023.

This case study highlights a fundamental failure of Australian immigration law in protecting vulnerable workers. Because the massage therapists’ pathway to permanent residency depended on their employer, they were penalised for their employer’s misconduct by having their visa applications refused. Without IARC’s successful advocacy for ministerial intervention, they would have faced the same fate as countless temporary migrant workers who, after being dismissed by their employer, face the prospect of leaving Australia if they cannot secure another employer within a short timeframe.

While not everyone plans to stay in Australia long-term, those who do should have a clear and objectively achievable pathway to permanent residency without being beholden to their employers. In previous submissions we have argued that one of the best ways to protect temporary skilled employer-sponsored visa holders from exploitation is for the Federal Government to permit them to apply for permanent visas independently of their employers.<sup>56</sup>

### **Exploitation under labour agreements**

Clear and accessible pathways to permanent residence independent of employer sponsors are especially vital for low-paid migrant workers, who are already at higher risk of exploitation.<sup>57</sup> IARC and Unions NSW have particularly observed significant exploitation in certain low-paid sectors covered by industry labour agreements, including aged care, dairy, and horticulture.<sup>58</sup> Annual salaries under these agreements are typically well below the minimum annual income of \$73,150 for migrant workers whose occupations are on the Core Skills Occupations List (**CSOL**).<sup>59</sup> For instance, the new Aged Care Industry Labour Agreement stipulates that migrants in this sector will earn an annual salary of at least \$51,222, which is

<sup>56</sup> IARC and Unions NSW. (2024, November). *Preventing Migrant Worker Exploitation in Australia*. From: [IARC-Report-for-the-UN-Special-Rapporteur-on-contemporary-forms-of-slavery-November-2024.pdf](#).

<sup>57</sup> Australian Government. (2023). *Migration Strategy: Getting migration working for the nation*. (p. 44).

<sup>58</sup> The full list of industries covered by industry labour agreements can be found here: [Labour agreements](#).

<sup>59</sup> The full list of occupations on the CSOL can be found here: [Federal Register of Legislation - Migration \(Specification of Occupations—Subclass 482 Visa\) Instrument 2024](#).

only about 70% of the minimum income threshold for migrants with occupations on the CSOL.<sup>60</sup>

Labour agreements are developed between the Australian Government (represented by the Department of Home Affairs) and employers. Generally, they are in effect for five years and provide for visas to be granted under the Employer Nomination Scheme visa (subclass 186); the Skills in Demand visa (subclass 482); and Skilled Employer Sponsored Regional (Provisional) visa (subclass 494).<sup>61</sup>

The main reason labour agreements facilitate high levels of worker exploitation is their lack of transparency. These agreements are not published anywhere for migrant workers or trade unions to scrutinise. This opacity is particularly problematic because employers in industries covered by labour agreements must agree upon a maximum number of approved nominations for permanent residency per year, known as the Nomination Ceiling. This requirement differs from regular employer sponsorship arrangements, where the number of nominations fluctuates in response to market demand. Consequently, employers in sectors covered by labour agreements routinely hire more workers than they can feasibly nominate for permanent residency while promising permanency to each and every worker. Employers then renege on these promises with reference to the Nomination Ceiling. Without public access to labour agreements, migrant workers cannot verify whether or not their employers have genuinely reached the Nomination Ceiling.

The opacity and complexity of labour agreements has given rise to another concerning issue: predatory intermediaries, primarily recruiters, who exploit desperate workers by charging excessive fees in exchange for the promise of employment and nomination for permanent residency. IARC has advised some clients who have been charged as much as \$30,000 over time. These recruiters are most prevalent in the aged care industry, where the Industry Labour Agreement covers Nursing Support Workers, Personal Care Assistants, and Aged or Disabled Carers. Their prominence likely reflects the desperation of many aged care workers who lack alternative skilled visa options and therefore, rely upon being nominated for permanent residency by an employer sponsor.

Memorandums of Understanding (**MOUs**) between unions and employers provide workers with some protections, albeit these are limited. For example, the Aged Care Industry Labour Agreement requires employers in this sector to enter into MOUs with one of three participating unions, either the Australian Nursing and Midwifery Foundation (**ANMF**), Health Services Union (**HSU**), or United Workers Union (**UWU**). An MOU entitles unions to conduct workplace visits and monitor workplaces for egregious exploitation. However, these MOUs are not legally binding and unions require greater resourcing to enforce them. Moreover, the inability of trade unions to access labour agreements remains a fundamental problem and highlights the need for full publication of these documents. We make the following recommendation to the Department of Home Affairs, which the NSW Government should advocate for:

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<sup>60</sup> Department of Home Affairs. (2024, December 19). *New Aged Care Industry Labour Agreement*. Retrieved February 19, 2025, from [New Aged Care Industry Labour Agreement](#).

<sup>61</sup> Department of Home Affairs. (2025, January 17). *Labour agreements*. Retrieved February 19, 2025, from [Labour agreements](#).

- Labour agreements should be published in full on the Department of Home Affairs website, so that migrant workers and trade unions can access them.

### **Recommendation**

**16)** The NSW Government should advocate for changes to the following visa settings:

- PALM workers should have the right to change employers without having to receive approval from the Department of Employment and Work Relations.
- Pacific Islander labourers deserve a fair and transparent process to gain permanent residency, rather than the current random ballot system for the Pacific Engagement visa (subclass 192).
- Remove the specified regional work requirement for subsequent Working Holiday visas.
- Introduce robust obligations for regional employers who wish to hire Working Holiday Makers.
- Remove Condition 8547, which requires WHM visa holders not to remain with any one employer for more than 6 months.
- Abolish the 48-hour work fortnight visa condition for Student visa holders.
- Reform the immigration system to permit temporary skilled employer-sponsored visa holders to apply for permanent visas independently of their employers.
- Labour agreements should be published in full on the Department of Home Affairs website, so that migrant workers and trade unions can access them.

## **11. ANNEXURES**

We have also uploaded four annexures to this submission.

Annexure A: *Working for \$9 a Day: Wage Theft & Human Rights Abuses on Australian Farms*.<sup>62</sup>

Annexure B: *Wage Theft: The Shadow Market Part Two: The Horticultural Industry*.<sup>63</sup>

Annexure C: *Wage Theft: The Shadow Market Empowering Migrant Workers to Enforce Their Rights*.<sup>64</sup>

Annexure D: *Disrespected, disregarded and discarded: Workplace exploitation, sexual harassment, and the experience of migrant women living in Australia on temporary visas*.<sup>65</sup>

### **IMMIGRATION ADVICE AND RIGHTS CENTRE Inc and Unions NSW**

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<sup>62</sup> Unions NSW & Migrant Workers Centre. (2020). *Working for \$9 a day: Wage theft and human rights abuses on Australian farms*.

<sup>63</sup> Unions NSW. (2021, March). *Wage Theft: The Shadow Market Part Two: The Horticultural Industry*.

<sup>64</sup> Unions NSW. (2022, December). *Wage theft, the shadow market – Empowering migrant workers to enforce their rights*.

<sup>65</sup> Unions NSW. (2024, November). *Disrespected, disregarded and discarded: Workplace exploitation, sexual harassment, and the experience of migrant women living in Australia on temporary visas*.