

Empowering and Protecting Temporary Migrant Workers

*Key recommendations for the Federal Government
to reform Australia's temporary migration system*

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UNITED
WORKERS UNION



Acknowledgement of Country

The United Workers Union is a national trade union.

We acknowledge and respect the continuing spirit, culture and contribution of Traditional Custodians on the lands where we work, and pay respects to Elders, past, present and emerging.

We extend our respects to Traditional Custodians of all the places that United Workers Union members live and work around the country.



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INTRODUCTION

The Australian economy is structurally reliant on the labour of hundreds of thousands of Temporary Migrant Workers.

The labour supply challenges and shortages wrought by border closures and other disruptions caused by the COVID-19 pandemic have revealed just how essential temporary migrant workers are to so many industries in Australia.

United Workers Union (UWU) represents thousands of these temporary migrant workers, particularly in those industries where they comprise a significant percentage, if not the majority, of the workforce – such as horticulture, contract cleaning and hospitality.

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, and substandard accommodation. These exploitative practices have now been extremely well-documented through a series of Government inquiries.

The exploitation of migrant workers is one manifestation of a broader trend, driven by employers and enabled by the regulatory failures of successive governments, towards insecure and precarious models of employment that have undermined the job security, working conditions, wages and bargaining power of all workers in a number of essential industries.

While stagnant pay, poor working conditions, a lack of job security characterizes the experience of all workers in many essential industries, temporary migrants are rendered particularly susceptible to these forms of exploitation because of their lack of visa security, and the absence of proper protections to support workers to speak up and enforce their workplace rights.

It is critical that the Federal Government immediately undertake a number of reforms to address the root causes of these vulnerabilities. This will involve making a number of changes to existing visa arrangements to ensure that all temporary migration programs are:

- consistently well regulated, to avoid labour market segmentation;
- require employers to apply for and receive authorised status;
- contain positive protections for workers and a properly resourced dispute mechanism;
- have a built-in role for trade unions in worker education and dispute resolution, and
- be linked to a self-nominated pathway to permanency.

Below we outline a number of key recommendations the Federal Government should prioritise as part of this reform process, with a focus on reforms that:

- **Create accessible, self-nominated pathways to permanency for all Temporary Migrant Workers to** ensure temporary migration programs are just, sustainable, and recognize the essential contribution of temporary migrants to the Australia economy and society.
- End the race to the bottom and ameliorate labour market segmentation by strengthening protections in existing visa programmes and **applying the same set of strong and consistent regulations and protections to all Temporary Migrant Workers**
- Support and empower temporary migrant workers to stand up and take action against exploitation by **ensuring workers have access to visas to stay in Australia while pursuing complaints.**

We look forward to working closely with the Federal Government to discuss these recommendations in greater detail.





BACKGROUND

This paper summarises and builds on discussion and key recommendations made by UWU through submissions to the following inquiries over the past two years:

- Senate Select Committee on Temporary Migration, 2020
- National Agricultural Labour Advisory Committee/National Agricultural Workforce Strategy, 2020.
- Senate Standing Committees on Legal & Constitutional Affairs - Migrant Amendment (Protecting Migrant Workers) Bill 2021, 2021
- DFAT consultation on Pacific Australia Labour Mobility (PALM) scheme Deed and Guidelines (Round 1 & 2), 2022

These submissions and papers draw on significant, larger bodies of work developed by United Voice and the National Union of Workers, prior to the formation of UWU in 2019. ¹

¹For example: 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>. 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. 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. National Union of Workers Submission, Joint Standing Committee on Migration Inquiry into the Seasonal Worker Programme, 2016, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/Seasonal_Worker_Programme/Submissions



SUMMARY OF KEY RECOMMENDATIONS

Pathways to permanency for Temporary Migrant Workers

1. **Regularise the status of undocumented workers in the horticulture industry** through existing visa pathways (implementing NALAC Recommendation 25)
2. **Create a self-nominated General Skilled Migration pathway** for all temporary migrant workers, with limited eligibility requirements other than a continuous period of residence and employment in Australia over a specified period.

One set of strong regulations and protections for all temporary migrant workers

Strengthen the PALM Scheme

Stronger Minimum Standards to protect workers and improve their earnings

- 3. Introduce a minimum earnings guarantee** for PALM workers that limits total deductions and ensures workers receive a reasonable net amount of money each week (e.g. \$250).
4. Introduce a requirement that workers in the short term PALM stream be paid for at least **30 hours work every week**.
- 5. Reduce the deduction burden on workers** by covering the cost of workers' flights through employer (or government) contributions.

Empowering workers: dispute resolution, portability and a pathway to permanency

6. Introduce a transparent, properly resourced **formal dispute resolution mechanism** through which workers and their advocates can raise and resolve issues related to entitlements and rights provided for in the Deed and Guidelines.
7. Enable workers to **initiate movements between Approved Employers** in the scheme.
- 8. Reserve 1,500 places in the new Pacific Engagement Visa** for PALM workers who have completed a designated number of seasons in Australia.

Improvements to accommodation: stronger standards and greater investment to improve conditions and limit cost

- 9. Strengthen minimum accommodation standards**, including by introducing square meter size ratios to prevent overcrowding in sleeping quarters, and maximum per-worker ratios for bathrooms/toilets and kitchen facilities.
10. Facilitate **greater investment in purpose-built accommodation** facilities by:
 - a. introducing a Seasonal Worker Housing Fund through which the Federal Government can co-invest in the development of seasonal worker housing, along with industry.
 - b. introducing new requirements that incentivise greater investment in purpose-built accommodation by industry.

Improve PALM workers access to healthcare by making them eligible for Medicare

11. Provide PALM workers with **access to Medicare**, free of charge.

Apply PALM's Best Practice worker protections to all Temporary Migrant Workers

12. Expand the best practice employer-registration and worker-education requirements in the PALM Scheme to all temporary migrant workers, Working Holiday Maker visas (implementing NALAC recommendations 22 and 24)

Remove visa conditions and enforcement practices that exacerbate vulnerability or exploitation

13. End the 88-day regional work requirement for Working Holiday Makers
14. Permanently remove work conditions limiting Student Visa holders to 40 hours work per fortnight
15. Enact protections against visa cancellation to encourage temporary migrant workers to report exploitation.

Empower Temporary Migrant Workers to stand up against exploitation

16. Require temporary migrant workers to be systematically educated about their workplace rights by trade unions as a conditions of all temporary visas
17. Create a Workplace Justice Visa that would enable temporary migrant workers to remain in Australia to pursue claims against their employers for breaches of law.



PATHWAYS TO PERMANENCY FOR TEMPORARY MIGRANT WORKERS

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.

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. 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.²

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’ 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.

² 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

1. Visa Regularisation for undocumented workers in the Horticulture industry

In December 2020, the Federal Government's National Agricultural Labour Advisory Committee (NALAC) recommended that the Government undertake a one-off visa regularisation process for undocumented workers in the Horticulture industry.³

The former Federal Government did not respond to this recommendation in any way.

It is critical that the new Federal Government take immediate action to implement this recommendation, as it would:

- Address the persistent labour shortages in horticulture raised by industry bodies, by recognising the significant reliance of the industry on undocumented migrant workers and providing a channel through which these workers may continue to participate in this work to fulfil their visa conditions;
- Improve labour standards by eliminating the reliance on labour hire contractors who undercut wages by underpaying undocumented migrant workers, and thus level the playing field between growers and all workers engaged in the industry, including citizens and permanent residents, assisting the industry to attract and retain workers.

The horticulture industry's structural reliance on undocumented workers

There are between 60,000 and 100,000 undocumented workers in Australia and a significant proportion work in the horticulture industry. The term "undocumented" refers to a diverse group of migrant workers in a number of different situations, including:

- Workers whose visa has been cancelled or has expired
- Workers with a valid visa, but not the right to work
- Workers who are working in breach of a condition of their visa
- Workers on a bridging visa who may or may not have work rights

The horticulture industry has become structurally reliant on these essential workers, who constitute a significant proportion of the workforce in many key growing regions. In the Sunraysia region, for example, the Victorian Farmers Federation found in 2019 that 71% of growers had undocumented workers on their farms.

Essential and skilled, yet exploited

Undocumented workers are the most vulnerable of all temporary migrant workers, as they lack work rights and secure visa status, have limited avenues to seek redress, and are vulnerable to threats or retaliation by labour hire contractors or growers if they raise concerns about their wages and conditions.

Despite being subjected to significant exploitation, many undocumented workers have been working in horticulture for a number of years and have become some of the most highly experienced and skilled workers in the industry; they are also 'local workers.' Growers who would like to engage these skilled workers currently have no lawful way of doing so, and undocumented workers remain dependent on unscrupulous labour hire contractors to work in the industry.

How should a visa regularisation process work?

UWU supports the model proposed by Dr Joanna Howe in *Out of the Shadows: A Case for Status Regularisation for Undocumented Migrant Farm Workers*.⁴ Under this model, undocumented workers would be enabled to apply for a four-year temporary visa connected to a permanent pathway, provided they could demonstrate a history of work in the Horticulture industry.

A visa regularisation process such as this would make undocumented workers eligible to:

1. Immediately apply for a Temporary Activity (Subclass 408) visa of four years' duration;
2. Access a permanent self-nominated visa pathway after a further 2 years' work in the horticulture industry.

³ National Agricultural Labour Advisory Committee, National Agricultural Workforce Strategy, Recommendation 25

Four-year temporary visa

The existing Temporary Activity (Subclass 408) visa pathway provides the most suitable framework through which to undertake a visa regularisation process. Undertaking visa regularisation through this pathway would require only minor amendments to the visa's existing Australian Government Endorsed Events (COVID-19 pandemic) stream, in order to make it suitable to the current needs of undocumented workers working in the horticulture industry. These would include:

1. Allowing Subclass 408 visa applications by people who have had a visa refused or cancelled since their last arrival in Australia, provided that they are able to demonstrate 6 months' work in horticulture prior to lodging their application.
2. Extending the Subclass 408 eligibility criteria to allow for:
 - a. Applications by people whose visas expired more than 28 days ago;
 - b. A separate 'class of persons' comprised by applicants who are able to show either evidence of 6 months' work experience in horticulture or an offer of ongoing employment in the sector;
 - c. A visa grant period of up to 4 years, for successful applicants engaged in Australian horticulture.

Evidence of six months' work in the horticulture industry could be shown through a combination of:

- letters of support (or other evidence of employment) from former or prospective employers;
- evidence of continued residence in a growing region;
- letters of endorsement from labour unions or industry associations;
- labour market data showing labour shortages in a particular growing region;
- offer of employment from a prospective employer based on past experience.

The existing Subclass 408 visa is an attractive vehicle for status regularisation for a number of reasons.

Firstly, it would not require legislation and could be achieved by way of amendment to the Migration Regulations 1994 (Cth) and associated delegated legislation. Regularisation through these means could be achieved quickly and efficiently, without the difficulties involved in creating a separate subclass. Given it is an existing visa product, the Department of Home Affairs will be able to undertake processing of applications under a new stream efficiently.

Secondly, the Subclass 408 application process involves minimal threshold eligibility requirements. For example, applicants in the AGEE 'Pandemic Stream' must complete a basic form and are not required to pay application fees. This model makes it uniquely suitable as a means of status regularisation, noting that undocumented workers often have limited access to legal support and means, and may not have made a visa application onshore.

Thirdly, and importantly, by allowing undocumented workers to apply for a visa, rather than granting them a visa automatically, regularisation through the Subclass 408 application process avoids criticisms that may be levelled at the 'integrity' of any status regularisation program.

For these reasons, the existing Subclass 408 therefore offers an efficient and simple model for status regularisation.

Permanent pathway

A status regularisation program must include an announcement of the creation of a permanent visa pathway; otherwise there will be no incentive for uptake by undocumented migrant workers. The Federal Government should immediately investigate the creation of a permanent visa option for former undocumented migrant workers to access permanent residency following initial entry into the 'status regularisation' program, after a further two years' work in the horticulture industry.

Along with a four-year initial grant period, the creation of a permanent pathway is crucial to creating strong incentives for long-term undocumented workers - including those workers on bridging visas with or without permission to work - to apply for an immediate temporary visa.

⁴ Howe, J. (2021). Out of the Shadows: A Case for Status Regularisation for Undocumented Migrant Farm Workers.

A permanent pathway would also help to address the chronic labour supply challenges in the industry by providing growers with a reasonable period of stability and certainty, which is crucial given the long-term effects of COVID-19 on labour supply.

A foundation for long term change

In the context of the ongoing COVID-19 pandemic and the changes that border closures have had on the labour market in the industry, the Federal Government has a unique opportunity - and imperative - to undertake a visa regularisation process as a fundamental step in addressing a number of interrelated challenges in the horticulture industry, including endemic labour supply challenges and ongoing incidence of exploitation.

Doing so will establish strong foundations for a 'transition period' for the industry during which the Federal Government could implement the other key recommendations contained in NALAC's National Agricultural Workforce Strategy, as well as undertake further changes to long-term industry visa settings.

Without a regularisation process, the effectiveness of broader efforts to improve compliance, raise standards, regulate labour hire, address labour shortages and develop a sustainable and skilled workforce in the industry are bound to fail.

2. Legislated pathways to permanency for all Temporary Migrant Workers

The new Federal Government has, rightly, committed to the abolishment of Temporary Protection Visas, recognizing that prolonged temporary status is harmful to visa holders – preventing them from reuniting with family, obtaining stable employment and properly settling in Australia.

Many of the same considerations are raised in relation to long-term temporary visa holders. As has long been observed by commentators such as Peter Mares⁵ and Abul Rizvi⁶, the migration program in Australia has fundamentally shifted away from reliable pathways to permanent residency towards a disjointed series of temporary visa statuses that often lead nowhere. For instance, former Student visa holders who qualify in an occupation on the 'short term skilled occupation list' may qualify only

for successive Temporary Skills Shortage visas of 2 years' duration. Taking together the time spent on a Student visa and various Bridging visas, these temporary migrants may spend close to a decade in Australia without hope of accessing permanent residency.

But inability to access permanent residency does not preclude temporary visa holders from making meaningful connections with and contributions to the community. Over a decade of temporary stay in Australia, commencing in their 20s, Student visa holders might partner, find employment, pay taxes, establish a family and have children. It is both unconscionable and bad policy to promote long-term temporary residence without access to permanent residency. The human consequences should be clear enough. As a matter of policy, the existence of a substantial pool of 'permanently temporary' migrants means that such migrants must constantly be supplemented in the labour market by further temporary migration programs, as previous long-term settled migrants are forced to depart the country.

UWU considers that, in attempting to ensure the 'integrity' of General Skilled Migration and Employer Sponsored programs, previous governments have made these permanent migration schemes all but inaccessible to temporary migrants. Both schemes must be revisited urgently, to ensure that there is better uptake and that temporary migrants are not being forced to extend their temporary status unnecessarily.

UWU supports the creation of a self-nominated General Skilled Migration pathway, with limited eligibility requirements other than a continuous period of residence and employment in Australia in compliance with workplace laws and conditions, over a specified period.

UWU recommends that the Skilled Independent (Subclass 189) visa be expanded to include a self-nominated stream for temporary residents who have been in Australia for a designated period and can demonstrate continued employment over this period. The 'New Zealand Stream' of the Subclass 189 provides a ready framework for a further, self-nominated pathway.

⁵ Peter Mares, 'Temporary Migration and Its Implications for Australia' paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 23 September 2011.

⁶ Abul Rizvi, 'A fairer pathway: improving Australia's temporary migration program' 18 June 2020 available <https://apo.org.au/node/306434>.



ONE SET OF STRONG REGULATIONS AND PROTECTIONS FOR ALL TEMPORARY MIGRANT WORKERS

1

Strengthening the PALM Scheme

- a. Stronger Minimum Standards to protect workers and improve their earnings
- b. Empowering workers: dispute resolution, portability and a pathway to permanency
- c. Improvements to Accommodation: stronger standards and greater investment to improve conditions and limit cost
- d. Make PALM workers eligible for Medicare

2

Applying PALM's best practice worker protections to all TMW

3

Removing visa conditions and ending enforcement practices that exacerbate vulnerability or exploitation

4

Purpose built pathways for specific industry needs

1. Strengthening the PALM scheme

a. Stronger Minimum Standards to protect workers and improve their earnings

DFAT and the Department of Employment are in the process of drafting a new Deed of Agreement and set of mandatory program Guidelines for employers participating in the PALM scheme. The Departments are also undertaking consultation processes on the implementation of the new Federal Government's announced commitments to reform certain aspects of the program.

Through these processes, the Federal Government has an opportunity to make adjustments to program arrangements that protect and empower workers and address some of the root causes of worker exploitation that are undermining the integrity of the scheme.

Minimum earnings guarantee

It is critical that a requirement be introduced that limits deductions made to PALM workers' pay to ensure workers receive a minimum net amount of money each week (for example \$250).

Currently, it is left up to individual employers to determine weekly deductions and consider what is an adequate amount of net income for workers. Under this arrangement it is unfortunately common for workers to earn only \$50 to \$100 after deductions at the beginning of the season, or if workers are not provided with sufficient hours of work. This is clearly unacceptable.

A set net weekly minimum amount would remove the subjectivity for all parties, limit disputes, and provide certainty for workers about their income.

The 12-week minimum period for the recovery of initial arrival costs must also be retained, and should be automatically expanded when workers are not provided with adequate work.

30 hours minimum guaranteed each week

Workers in the "Short-Term" stream of PALM should be guaranteed a minimum of 30 hours work per week, every week, and workers in the long-term stream, at least 38 hours per week.

Current arrangements require employers to provide 30 hours per week to short term workers,

but this can be averaged over the course of the whole assignment (which can be 9 months), meaning workers can (and often are) provided with significantly less than 30 hours per week for long periods.

A lack of income during these weeks causes workers to go into arrears on deductions (accommodation, transport, flight costs, etc). These mounting costs are then recovered from workers' wages once the number of hours provided is increased. This increases the quantum that is deducted from workers' wages each week, and increases the period over which large deductions are made.

The deduction burden that results from a lack of both a minimum weekly hours guarantee and an income guarantee is one of the leading causes of workers disengaging from the program.

DFAT has proposed to shorten the averaging period to 8 weeks. We are concerned that this will continue to result in issues with minimum weekly earnings and it is likely that issues related to workers falling into arrears on their deductions will continue to occur with an 8-week averaging period.

PALM should align with minimum standards in New Zealand's RSE program and guarantee workers 30 hours per week, every week.

Reducing flight costs

Flight costs are the single largest part of a PALM worker's initial deduction burden. Currently, Approved Employers seek to recover the up-front costs of international transportation as soon as possible upon arrival. This cost recovery significantly increases the burden on workers' earnings during their initial 12 weeks of employment.

It is important to note that throughout the evolution of the SWP and now PALM, there has been a significant shift in the cost burden on international flights from employers onto workers. Initially, employers were required to contribute \$500 to the costs of workers' international flights. This was later reduced to \$400; it is now proposed that this be further reduced to \$300. By contrast, employers recruiting agricultural workers through the H2A temporary visa scheme in the USA are required to pay for workers' travel costs in full.

The Federal Government has indicated an intention

to investigate ways to reduce the burden of up-front travel costs on Employers in the scheme. Equal consideration should be given to how to decrease this burden for workers.

There are a number of mechanisms the Federal Government should consider, including funding workers' current contribution to flight costs through funds raised through the 37% tax on workers Departing Australia Superannuation Payment, or by increasing the contribution that employers make towards workers' travel costs.

UWU welcomes the opportunity to consult with the Federal Government further on these proposals.

b. Empowering workers: dispute resolution, portability, and a pathway to permanency

PALM workers rely on their Approved Employer for employment, visa sponsorship, accommodation, and transport. Being so closely tied to their employer in this way creates a power imbalance that can lead – advertently or inadvertently – to exploitative practices. The Federal Government should implement the following reforms so as to empower workers to enforce their workplace rights and entitlements, and address some of the core vulnerabilities that arise from tying workers to their employer.

Formal Dispute Resolution Mechanism

There is currently no formal dispute resolution mechanism available to workers and their representatives to resolve disputes related to entitlements and rights provided for in the Deed of Agreement between DFAT and Approved Employers.

Workers are encouraged to make complaints to the Department, however there is no transparency about what process the Department may take to investigate a complaint, what actions the Department may take to hold employers accountable, or what outcome may be available to workers where allegations are corroborated. Information about the process and outcome of an investigation is often not communicated to workers or their representatives, and the process is not time bound, often dragging out over a significant period. Workers often lose heart and disengage, meaning issues go unreported and unresolved.

This existing complaints process is not fit of purpose and does not empower or encourage workers to enforce their rights.

The Federal Government should establish a properly resourced, expedited dispute resolution mechanism within the PALM scheme that would enable workers and their representatives to bring issues and disputes related to rights or entitlements provided for by the Deed of Agreement between the Government and Approved Employers. The types of issues that are most commonly raised include:

- Failure to provide required hours of work (30 per week)
- Deduction – related disputes and concerns
- Accommodation-related issues, concerns, and disputes

The mechanism should contain the following features:

- Simple formal lodgment procedure
- Meeting scheduled with Departmental officer within 3 days of lodgment
- Specialist Departmental Officers designated to hear complaints in each state
- Strict timelines for investigation and outcome (e.g. 10 days)
- Departmental Officer issues a provisional opinion/determination based on the available evidence and the balance of probability.
- Should the Departmental Officer determine that it is necessary, the Department may then exercise its further powers under the Deed to sanction the employer.

A transparent and time bound dispute mechanism such as this would incentivise both workers to stand up and hold employers accountable, while also incentivising Approved Employers to resolve disputes at an early stage, without the need for further litigation or Departmental action.

Providing real “portability” to workers to initiate movement between Approved Employers

Currently, provisions for PALM workers to move between Approved Employers is limited to where these movements are initiated by Approved Employers.

It is essential that PALM workers themselves are able to initiate movements between Approved Employers.

Existing provisions for DFAT to initiate transfers of

workers where there are allegations of exploitation or other breaches of the Deed should be strengthened and formalised, in consultation with worker representatives, and should form part of the scheme Guidelines to ensure workers and Approved Employers understand the process.

More broadly, changes to the Program guidelines should be made to enable workers who have paid off their initial short-term deductions (related to the costs of coming to Australia – visa, flight, cash advance etc.), to initiate movement to another AE.

This reform would bring PALM into alignment with other employer-sponsored visa schemes, which enable workers to move between eligible employers if they chose. Understanding that workers could leave their employment will operate to incentivise Approved Employers to treat PALM workers fairly.

Permanent Migration Pathway and the Pacific Engagement Visa

UWU strongly supports the creation of a permanent visa pathway for PALM workers.

The Federal Government has announced the creation of the Pacific Engagement Visa as a mechanism through which workers from the Pacific can migrate permanently to Australia.

It is critical that of the proposed 3,000 initial places to be allocated under the Pacific Engagement Visa annually, at least 1,500 should be reserved for PALM scheme participants. This will ensure that those workers who are already making a significant contribution to the Australian economy on a temporary basis are enabled to transition to live in Australia permanently.

Rather than requiring successful applicants to obtain a full-time job, the pathway should be self-nominated, with PALM scheme participants enabled to use evidence of their work history in the industry to meet the criteria for the grant of a permanent visa.

Over time, the scheme should transition to one in which PALM workers who meet established criteria after working for a set number of years in Australia should be enabled to apply for the permanent visa at any time.

UWU welcomes the opportunity for further consultation on the eligibility, criteria and operation of the Pacific Engagement Visa and how to ensure it is properly linked to PALM.

c. Improvements to Accommodation: stronger standards and greater investment to improve conditions and limit cost

1. Strengthen existing accommodation and transportation standards

The lack of quality, affordable, purpose-built worker accommodation is a significant challenge for workers (and employers) particularly in rural and regional areas and will continue to limit the potential further growth of the scheme, as well as jeopardize the integrity of the scheme.

As well as undertaking much needed action to improve the quality and cost of accommodation (outlined below) it is critical that the Federal Government immediately improve the minimum standards around accommodation in the scheme guidelines, including:

- introducing square meter size ratios (or maximum occupancy requirements) for bedrooms to prevent crowding in sleeping areas
- introducing minimum ratios for kitchen facilities per worker, and amending the proposed bathroom/toilet minimum ratio to 1 per 5 workers
- Ensuring good quality Wi-Fi internet is provided at all accommodation free of charge

Ensuring that in private rental arrangements, the cost to each worker cannot exceed the total cost of renting the accommodation, divided by the number of workers (i.e.. if it costs an employer \$350 per week to rent a house, the 6 workers sharing that house cannot be charged more than \$58 per week each)

- Ensuring the requirement that transportation – like accommodation – must be provided to workers at cost.



2. Facilitate significant investment in purpose-built Accommodation (as key industry infrastructure)

It is well known that there is a significant lack of quality, purpose-built accommodation for seasonal workers in rural and regional areas across Australia.

It is likely that overall fewer than 20% of current PALM workers are accommodated in facilities that have been purpose built for seasonal workers.

Workers are currently accommodated in backpacker hostels, caravan parks, privately rented houses, or refurbished facilities built for another purpose (e.g. decommissioned nursing homes or school camps). All of these types of accommodation have significant shortcomings, particularly for workers who are living in them for extended periods of time.

Approved Employers are prohibited from charging workers more than the actual cost of accommodation, as charged to them. However, because accommodation costs are set by the private market, a lack of adequate supply, and competition, means that workers are often paying significant amounts for overcrowded accommodation with inadequate facilities and amenities.

A survey of over 1,000 horticulture workers undertaken by UWU in 2020 illustrate the challenges facing horticulture workers, including PALM workers.⁷

Percentage of workers who experienced:	
Overpriced rent	59%
Overcrowded	51%
Poor quality	38%
Lack of privacy	33%
Poor health and safety	31%
No choice - must stay in contractor employer accommodation	29%
Bills are too high	28%

Only 2% of workers surveyed reported “no problems” with housing.

Workers are paying the price for a broken system in dire need of investment. The current situation in unacceptable and unsustainable, harms the reputation of the scheme and undermines its longevity. It is in the interests of workers, employers, the industry, and rural and regional communities to lower the costs of and increase the supply of seasonal housing.

Housing should be understood and funded as a key part of the industry’s infrastructure, essential to the long-term sustainability and success of the horticulture industry.

In addition to improving minimum standards for existing accommodation, the Federal Government should drive the construction of high-quality, low-cost seasonal accommodation through direct co-investment and targeted policy settings within the PALM scheme.

⁷ UWU submission, National Agricultural Labour Advisory Committee, National Agricultural Workforce Strategy, 2020

This should include:

a. The development of a Seasonal Worker Housing Fund

The Federal Government should create a dedicated seasonal worker housing fund through which it can lead investment in the development of seasonal worker accommodation facilities.

Approved Employers and Host organisations should be enabled to apply to the fund for funding for accommodation projects.

The Federal Government should work with state and local governments to attract additional co-investments from these government partners.

The fund should include an initial significant capitalization (in the tens of millions of dollars), and at least an initial 10-year duration, and ongoing funds allocated to administration and maintenance of the facilities. Funds could be allocated from existing regional economic development funds or be newly appropriated.

All projects funded through the Fund would be required to meet best-practice minimum standards, which would be developed by industry participants and worker representatives, and would include standards on:

- Maximum occupancy requirements for sleeping quarters
- Amenities (including ratios for bathrooms and kitchens)
- Recreational facilities
- Cost
- Maintenance and Repairs
- Worker representation and issue resolution

Housing stock developed through this fund would be managed and maintained by Government and funded by industry, operating with the explicit purpose of providing high quality housing at as low (or no) cost to workers as possible.

b. The introduction of requirements that incentivize greater investment in purpose-built accommodation

The Federal Government should introduce new requirements that Approved Employers and Host Organizations invest in the development of purpose-built accommodation. A number of policy

settings could be used to incentivize investment, including:

- As in the New Zealand RSE scheme, restrictions could be placed on AEs or Host Organizations expanding the number of workers engaged through the scheme until they have invested in purpose-built accommodation.⁸
- Requiring Approved Employers and Host Organizations with a turnover above a certain threshold to either:
 - invest in purpose-built accommodation for their workers, or provide accommodation to their workers free of charge.
 - Large Growers are the largest employers (directly or indirectly) of PALM workers. They have the responsibility and financial capacity as industry leaders to lead the investment in accommodation.
- Requiring AEs and Host Organizations operating in regions or commodity groups (eg. citrus, berries, etc) that are reliant on PALM workers to work collaboratively with the assistance of industry organisations to invest collectively in purpose-built accommodation.

c. Transition from a ‘worker-pays’ model to an ‘employer/industry pays’ model.

Accommodation should ultimately be provided free of charge to PALM workers.

The Federal Government should drive the initial development of purpose-built housing infrastructure, particularly in rural and regional Australia, and industry and government should share the ongoing costs of maintaining newly developed accommodation to the appropriate standard.

Over time, covering the cost of providing high-quality accommodation to PALM workers should be understood as a reasonable cost of employing PALM workers, supporting their welfare and incentivizing their return for subsequent seasons (as in the case in New Zealand). Industry should understand that housing is a key piece of industry infrastructure that needs to be built and maintained.

A number of other rural and regional industries – including the sugar, meat, pastoral, construction and mining industries – already provide accommodation to workers free of charge – either because of state legislation, or well-established industry practice.

⁸ See: <https://www.immigration.govt.nz/employ-migrants/explore-your-options/finding-and-hiring-workers-overseas/providing-accommodation-for-rse-workers>

d. Make PALM workers eligible for Medicare

PALM workers are currently required to take out private health insurance as a condition of their visa.

The private insurance model means workers are required to pay out of pocket for any medical treatment they need, then apply for (partial) reimbursement.

Upfront costs are a significant barrier to workers accessing medical care, and workers often forgo needed medical treatment because of high cost and low income. This results in significant risks to workers' health and safety.

When workers do utilize their private health insurance there is a significant administrative burden on both workers and Approved Employers, who are required to assist workers to make claims.

This model is not fit for purpose and is not providing PALM workers with easy access to healthcare.

PALM workers should be made eligible for Medicare medically necessary out of hospital and hospital care, and PBS prescriptions at the general rate.

2. Applying PALM's Best Practice worker protections to all Temporary Migrant Workers

PALM contains important mandatory employer obligations which are designed to protect temporary migrant workers. These requirements include:

1. A registration process that requires employers to enter into a Deed of Agreement with the Commonwealth to employ temporary migrant workers. This requirement provides the Federal Government, workers, and their representatives with an important mechanism to hold employers accountable
2. 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.

When they are properly enforced, these requirements work to empower temporary migrant workers to enforce their workplace rights. Employers who have breached workplaces laws can be suspended from PALM pending the satisfactory remediation of those breaches, and employers who fail to comply lose their ability to employ workers under the scheme.

While there are certainly still instances of employer non-compliance in PALM, overall, these best-practice requirements are working to minimise the likelihood of worker exploitation (particularly when compared to the broader horticulture industry, where most PALM workers work).

By contrast, other heavily utilised temporary visas, including the 417 and 462 Working Holiday Maker (WHM) visas, and Student visas, are effectively unregulated and contain none of these protections, monitoring or oversight, despite the fact that workers on these visas are similarly structurally vulnerable to exploitation.

While employers in PALM are required to submit recruitment plans and receive the Department's pre-approval to engage each new group of workers, employers who engage Working Holiday Makers or Students are not required to meet any additional requirements. As a result, there is no way for the Federal Government and other industry stakeholders to know where working holiday makers are working, how much they are getting paid, or how much they are charged for accommodation.

Working Holiday Makers seeking to become eligible for a second-year visa must undertake 88 days of work in the industry, and must provide proof of employment, which in effect involves employers "signing off" on their visa. This creates a structural dependence for backpackers on their employer - often a labour hire contractor - that is very similar to PALM, but with no oversight and none of the protections available to PALM workers.

Numerous reports by the FWO, academic studies, media reports, and the experience of UWU members have demonstrated the widespread exploitation of backpackers and other temporary migrant visa holders that are the result of failures to ensure adequate and meaningful regulations and protections are in place for workers to hold their employers accountable.⁹

Giving employers unlimited access to unregulated temporary visa pathways has and will continue to facilitate a race to the bottom in labour standards in the industry. Competition based on different standards of regulation (and cost) undermines efforts to encourage the uptake of better-regulated visa programs like PALM, and limits the incentives employers have to make long-term investments in the workforce.

In order to improve compliance in the industry, the UWU recommends that the Federal Government make PALM's best practice employer registration and worker-education requirements mandatory requirements in all temporary visa programmes, including the Working Holiday Maker (WHM) visas.

Extending these best-practice requirements from the SWP would ensure there is regulatory consistency across all sectors of the economy, ensuring that regardless of which temporary visa they hold, workers have the same protections and mechanisms through which they are able to hold their employers accountable.

Employer registration would provide the Federal Government with a crucial mechanism to sanction employers who engage and exploit but do not directly sponsor temporary migrant workers, such as Working Holiday Makers and students. As in PALM, employers who fail to remediate violations of relevant laws could be prevented from engaging temporary migrant workers in the future, creating a strong disincentive to exploit temporary migrant workers.

In 2020, the National Agricultural Labour Advisory Committee recommended that the Federal Government introduce employer registration for employers who wish to engage backpackers (417 and 462 visa holders) (Recommendation 22) and require employers to ensure that backpackers attend in person tripartite briefings about their workplace rights, based on the PALM model (Recommendation 24).¹⁰

The former Federal Government failed to respond to this recommendation in any way.

The Federal Government should now act to implement these recommendations in full, not just for 417 and 462 visa holders in horticulture, but all temporary migrant workers (including Student Visa holders and others) and all employers and in all industries who wish to engage these workers.

The Government should consult with worker representatives on the best way to deliver in-person tripartite worker rights briefings in industries with high numbers of temporary migrant workers (e.g. Cleaning, manufacturing, hospitality, etc.), based on the model developed in the PALM scheme.

3. Removing visa conditions and enforcement practices that exacerbate vulnerability or exploitation

The exacting and inflexible nature of certain requirements attached to temporary visas render Temporary Migrant Workers susceptible to workplace exploitation and compel temporary visa holders to seek certain types of employment or accept substandard work conditions in order to survive.

The Federal Government must take action to address the ways in which visa conditions, requirements and enforcement activities create vulnerabilities for temporary migrant workers, contribute to the likelihood that temporary migrant workers are exploited, and act as a distinctive for workers to report exploitation.

UWU Recommends that the Federal Government:

1. End the Requirement that Working Holiday Makers undertake 88 days specified work in a regional area.

As discussed above, a series of government inquiries have comprehensively established the myriad forms of exploitation that have arisen as a result of WHM being required to undertake work in a regional area (in practice most often in the horticulture industry) in order to have their visa extended.

In 2021 this requirement was removed for British citizens as part of negotiations for the UK-Australia Free Trade Agreement, following concerns from the UK government that the requirement had rendered its citizens vulnerable to exploitation.

Having agreed to remove this requirement for citizens of one nation, the Federal Government must now remove this requirement for all other WHM nations.

⁹ See for example, 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/eet_cte/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. 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.asp>

¹⁰ National Agricultural Labour Advisory Committee, National Agricultural Workforce Strategy, p.xviii



2. Permanently remove Condition 8105 - which limits Student visa holders to 40 hours’ work per fortnight – 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 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 as they are encouraged by their employer, or compelled by economic realities, to work additional hours in order to survive.

In early 2022, in response to economy-wide labour shortages wrought by the COVID-19 pandemic, the work limitation condition was temporarily suspended, enabling students to work more than 40 hours per fortnight in any sector of the economy.

This temporary suspension should be made permanent, and the work limitation condition permanently removed as a condition from Student Visas.

3. Introduce a legislated protection against visa cancellation, in the following circumstances:

- a migrant worker has breached their work-related visa condition in connection with work for a specific employer;
- there are reasonable grounds to suspect that that employer has committed a non-trivial contravention of labour or immigration law in relation to that worker; and
- the worker is a ‘whistleblower’, i.e. the worker has taken steps to address the contravention. This includes assisting a relevant government agency’s investigation of the employer, engaging with a union in relation to the employer’s alleged contravention or having retained a lawyer to pursue a legal claim.

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.

Current Departmental policy adverts to ‘circumstances outside of visa holders’ control, such as family violence - there is no reason why workplace exploitation should not be treated in the same way. Temporary migrant workers will simply not come forward and report exploitation unless they can be certain that it will not jeopardise their visa pathway.



EMPOWERING TEMPORARY MIGRANT WORKERS TO STAND UP AGAINST EXPLOITATION

Any genuine attempt to address the exploitation of migrant workers must recognise the substantial barriers and disincentives for workers to take action and report exploitative employers.

Between 2015 and the present, only 0.4% of the total number of employer sponsors of visa holders were sanctioned for breaches of their sponsorship obligations. From the public research that led to the introduction of these provisions, and the long experience of Unions' organising with migrant workers, this is a vast underrepresentation of the true scale of underpayment and exploitation experienced by holders of employer sponsored visas.

The reason for the underutilisation of the existing employer sanctions provision of the Migration Act is that there is currently no incentive for migrant workers to seek penalties against their employer because doing so unnecessarily jeopardises their visa pathway without providing them with any relief or security while investigation is undertaken against their employer.

It is common for employers' breaches of the Migration Act to simultaneously involve breaches of a workers' visa conditions – for example, when workers are cajoled or coerced to work in excess of the work limitations on their Student, Bridging or other visas, and are often paid cash-in-hand at below Award rates. If a worker who is subject to exploitation of this kind reports the employers' breach, it is more likely than not that the workers visa would be cancelled, as there are no positive protections for workers who report breaches, and the Department retains discretion over each decision on a case-by-case basis. This strongly disincentivizes workers from reporting and taking action to stop exploitation.

Any attempt by the new Federal Government to enhance enforcement of the Migration Act must be focused on how to improve the conditions and lives of migrant workers and must start with a focus on reforms that provide security of tenure to migrant workers who have been the victims of workplace abuse or underpayment.

1. Educating and Empowering workers as a precondition to enforcement

Simply put, educated and empowered workers are the best monitors of their own working conditions.

There are inherent limitations on the resources of regulators (FWO, state labour hire licensing regulators, etc.) to effectively police employers of temporary migrant workers. This is particularly the case in the Horticulture industry, which operates predominantly in regional and remote areas.

Both labour hire licensing schemes and regulated visa pathways (such as PALM) that involve potential sanctions for unscrupulous employers rely on workers speaking up about problems when they arise. For this to happen effectively, workers must be educated about their rights, and supported when they have the courage to speak up.

Numerous government inquiries into the exploitation of temporary migrant workers have emphasised the importance of providing more and better-targeted information to migrant workers about their workplace rights as a key strategy to reduce the likelihood of exploitation.¹¹

However, in seeking to address this need, it is important to recognise that it is not so much the information itself, but rather who delivers the information, and in what regulatory context, that is most crucial.

This is because workers are underpaid, for example, not primarily because they do not know the minimum wage rate, but because they lack the tools, meaningful recovery pathways and support to enforce their enjoyment of the right to earn the minimum wage.

A 2018 study of the challenges temporary migrant workers in Australia face in recovering underpaid wages found that those workers who were members of their union experienced the best outcome and were the most likely to recover all or some of their wages.

Positive respect for workers' rights to Freedom of Association, and the key role of trade unions in supporting workers to be educated about and enforce their rights is critical to the empowerment of workers and the success of efforts to better regulate visa and job pathways and create a more stable and better treated and supported workforce.

In an industry such as Horticulture, where exploitation is widespread and endemic, the

relatively lower incidence of worker exploitation in the PALM Programme - where trade unions have a structured role in both worker education and the governance of the scheme - shows that this approach is already working on the ground and should be more broadly applied.

The table below compares the incidence of exploitative practices reported by PALM workers in UWU's survey of horticulture workers, compared to workers on all other temporary visas (including undocumented workers):

PALM workers vs other temporary migrant workers (TMW)		
Percentage of workers who have been:	SWP/PALM	Other TMW
Underpaid	49%	67%
Paid Cash	2%	56%
Threatened for raising issues	33%	34%
Faced dangerous/unsafe work	15%	39%
No access to toilet/drinking water	10%	34%
Told not to join/talk to union	32%	25%
Punished or sacked for speaking up	20%	28%
Passport/visa controlled by contractor	20%	20%
<i>Based on UWU survey of 1,098 horticulture workers, July 2020.</i>		

As the comparison demonstrates, PALM workers still face hostility to their right to Freedom of Association and to speak up about exploitation, however there are structures, oversight and support from the union to protect those rights, and, as is shown, to significantly reduce the incidence of exploitation. Although PALM workers are very rarely paid in cash, the prevalence of piece rates across the industry shows that underpayment and low pay is still a significant concern for PALM workers, as it is for all workers in the industry (prior to recent union-won changes to piecerate rules in the Horticulture Award).

As outlined above, **UWU recommends that the Federal Government ensure all temporary migrant workers are systematically educated about their workplace rights as a requirement of all temporary visas.** As part of these obligations, employers (including labour hire companies) engaging temporary migrant workers would be required to ensure trade unions are invited to participate in worker education sessions prior to commencing work, modelled on requirements of the PALM scheme.

¹¹ See for example: Migrant Workers' Taskforce (2019) Report of the Migrant Workers' Taskforce; Senate Education and Employment References Committee (2016). A National Disgrace: The Exploitation of Temporary Work Visa Holders.

2. Workplace Justice Visa – Encouraging and supporting workers to stand up against exploitation.

As discussed above, because of visa insecurity and the possibility that taking action may jeopardise their visa pathway, there is very little incentive for temporary migrants who have been victims of exploitation to seek redress. Additionally, 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 for victims of exploitation fundamentally disincentives workers from utilising the existing employer sanction provisions of the Migration Act and is undermining the efficacy of the expanded protections for migrant workers introduced by the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017.

Visa options do exist to protect victims of criminal conduct or trafficking in Australia. The aim of both the Criminal Justice and Referred Stay 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. However, no such options exist for workers who have been the victims of workplace exploitation or modern slavery practices.

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 Workplace Justice Visa should be made available to applicants who do not hold a visa, who have previously had a visa cancelled or visa application refused while they are in Australia. To ensure integrity,

the initial period of stay should be limited to 12 months, with renewals possible if the visa holder's proceedings continue after that time. In order to be eligible for the visa, applicants may be required to provide prescribed forms of evidence of their intended complaint or proceeding, for instance in the form of:

- Certification by a relevant enforcement agency that it is conducting inquiries or pursuing compliance measures in relation to the visa-holder's employment;
- a court, tribunal or commission issuing a 'temporary stay certificate' certifying that a worker's ongoing presence in Australia is required for the conduct of its proceedings; or
- certification by an employment law practitioner who holds specialist accreditation from their relevant society, or is employed in a government-funded legal service, pro bono practice in a commercial firm, or a union. The legal practitioner must certify that there are reasonable grounds to suspect that a worker's employer has contravened a relevant workplace law in relation to the visa-holder's employment, and that the worker is pursuing a legal remedy in relation to an alleged workplace contravention through negotiation with the employer or a legal application to an appropriate forum.

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, most recently by the Migrant Justice Initiative.







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