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**Submission by the Synod of Victoria and Tasmania, Uniting Church in
Australia to the Senate Education and Employment Committees
Inquiry into the *Fair Work Amendment (Protecting Australian
Workers) Bill 2016*
4 April 2016**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission to the inquiry into the *Fair Work Amendment (Protecting Australian Workers) Bill 2016*. The Synod supports the Bill and believes the Committee should recommend its passage through the Parliament.

The Synod notes that adequate penalties and liabilities are one piece of what is needed in addressing human trafficking, forced labour and other criminal exploitation on Australian farms, in shops and on other workplaces. More importantly, enforcement agencies need to enforce the law and apply penalties to employers (something that happens all too rarely currently compared to workers being subjected to removal for those on temporary work visas). Workers on temporary work visas need to be put in contact with unions or community organisations that can support them on arrival. Further, labour hire companies need to be licensed so there is transparency about what companies are operating, who is controlling them and to provide the means of driving out the unethical operators by making it an offence to run or use an unlicensed labour hire business.

On the *Fair Work Amendment (Protecting Australian Workers) Bill 2016* itself, there is only one area of concern, which is in relation to the phoenix provisions. The Synod appreciates the definition of executive officer is intended to be wide, but we are not sure if it is wide enough and in practice might still be very easy to escape except for all but the most careless of people involved in a phoenix arrangement. For example, in our experience a network of labour hire companies might be set up by a family and the involvement of different family members in each business may be opaque. In the absence of a requirement for the company to have to disclose those involved in its management, it might still be easy to get around the phoenix provisions. For example, one family member runs the first company (say a labour hire company, which will often be run from a residential address and have no equipment associated with it) and then shuts it down when authorities start investigating it. A second family member opens the new business doing pretty much the same as the first using a second new residential address. The



first family member is involved in the management and is a beneficiary of the profits of the second company, but remains in the background and their involvement is not publicly disclosed.

So given the problems with labour hire companies particularly, it would have been good to have provisions to make it an offence for a labour hire company not to reveal its executive officers and beneficial owners.

More generally, the phoenix provisions should be broadened to apply to executive officers and beneficial owners anyway, so that unpaid wages can be recovered from the beneficial owner. Beneficial ownership is defined in the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (see: <https://www.legislation.gov.au/Details/F2015C00917>).

Under the provisions of the rule a beneficial owner is someone who owns or controls (directly or indirectly) a business where:

- (a) In this definition: control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to determine decisions about financial and operating policies; and
- (b) In this definition: owns means ownership (either directly or indirectly) of 25% or more of a person.

At least this would make it an offence where someone tries to hide their control or profit from the phoenix company, as the inclusion of a beneficial owner in the legislation would allow wider scrutiny than just an executive officer. It would also mean that if a large corporation (say a food processing company) set up and used a network of labour hire companies where the executive officers of the large corporation were in reality the beneficial owners of the labour hire companies, they might be able to be held to account if the first network of labour hire companies is shut down and replaced by a second network of labour hire businesses in which they again are the ultimate beneficial owners.

The Synod welcomes the provisions in the Bill to put beyond doubt that workers on temporary visas are able to seek recovery of stolen wages from an employer in situations where the worker is in breach of their visa conditions. The Synod also welcomes the provisions to increase the obligation of employers to inform employees on temporary visas of their rights and obligations under Australian law.

The Synod welcomes the increased penalties for serious contraventions, section 559C, and welcomes Section 559E that it is no defence that a victim of serious contraventions consented or acquiesced to the serious contravention. Our experience is that often in cases of labour trafficking or forced labour, the abusive employer is able to exercise psychological coercion over employees on temporary work visas to gain 'consent' or acquiescence from the employee, who is in fear of their safety or well-being from the employer.

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