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Submission by the Synod of Victoria and Tasmania, Uniting Church in Australia to the inquiry into the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*
14 April 2023

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission to the inquiry into the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023.* The following submission indicates parts of the Bill the Synod supports. If a part is not referenced in the submission, it does not suggest that the Synod opposes that part. Instead, it indicates that the Synod does not have an explicit and established position on the part in question.

The Uniting Church in Australia has affirmed the importance of just and fair conditions in Australian workplaces. It has also affirmed trade unions' critical role in our society, in line with internationally agreed human rights principles.

The 2006 National Assembly meeting further resolved the following:

06.20.02 The Assembly resolved:

(a) to affirm that all people are entitled to just remuneration and equitable conditions of employment in their working lives and dignity in unemployment;

(b) to note the Inaugural Assembly's 1977 Statement to the Nation, which committed the Church "to challenge values which emphasise acquisitiveness and greed in disregard of the needs of others and which encourage a higher standard of living for the privileged in the face of the daily widening gap between the rich and poor";

(c) to affirm Assembly Resolution 91.14.17, which stated that trade unions are of importance in the overall democratic process and play a role in protecting those who are vulnerable in society, and to remind members of its statement that "synods, Assembly agencies, and other Church bodies be requested to encourage employees to join and be active in an appropriate trade union and/or professional association";

(d) to affirm the importance of bearing witness to the Uniting Church's public role in the life of the nation by conducting our actions as an employer in line with our public affirmations of principle;

(e) to request the Assembly Standing Committee to appoint a task group to progress the development of a national approach in the area of just and ethical employment within the Uniting Church by

a. convening a consultation among the synods and Assembly to

i. share together the way in which each is seeking to ensure that their employment practices are consistent with Uniting Church

statements on the role of employers and the rights of employees,

ii. *consider identifying minimum expectations of employing bodies in the church and/or guidelines by which the employment practices of the church may be measured against our commitment to social justice principles and our public statements on the role of employers and the rights of employees;*

iii. *determine an appropriate timeframe for this undertaking, taking into account the immediate need created by the entry into effect of the WorkChoices legislation in March 2006; and*

b. *reporting to the ASC on the results of the consultation and related actions and bringing any recommendations for further action.*

People working on temporary visas have been demonstrated to be more vulnerable to wage theft and other forms of exploitation, including cases of modern slavery. However, wage theft and exploitation are not restricted to people on temporary visas. Therefore it is inappropriate to lay blame for wage theft, exploitation and modern slavery on temporary migration.

The Migrant Workers' Taskforce Report concluded "the problem of wage underpayment is widespread and has become more entrenched over time", with as many as half of temporary migrant workers may be underpaid.[1]

The rights of many migrants remain precarious, as highlighted by a report published by the United Workers Union in 2019[2], which focused on the exploitation occurring in the Australian farm sector. The research found that only 35% of the workers speaking out reported holding a valid work visa, with two-thirds of all the farmworkers surveyed earning below the minimum wage.

Concerning people on temporary visas, their vulnerability to wage theft and exploitation would be reduced if their rights in relation to their employers were improved. Visas that grant employers the ability to have workers removed from Australia where the worker has no effective ability to appeal against the removal particularly make people on temporary visas vulnerable to exploitation.

Thus, the Synod strongly supports Schedule 1 to ensure that a breach of the *Migration Act 1958* does not affect the validity of a contract of employment, or the validity of a contract for services, for the purposes of the *Fair Work Act.* The measure will go some way to address the criminal behaviour of employers that seek to exploit people working in breach of their visa conditions. In our experience, some employers seek out people to work in violation of their visa conditions to exploit them to boost the business's profits. For example, in a conversation with a person from Malaysia working in breach of her visa conditions packing grapes in the Robinvale area of Victoria in 2019, she stated that people working in violation of their visas were paid $2.25 per box they packed while people working legally were paid $4.50 per box. In some cases, people have been coerced or tricked by their employer to work in breach of their visa conditions to make them malleable to coercion for the purposes

[1] Commonwealth of Australia (2019). Report of the Migrant Workers' Taskforce. Retrieved from https://www.ag.gov.au/industrial-relations/industrial-relations-publications/Pages/report-migrant-workers-taskforce.aspx

[2] 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

of exploitation. The measure in Schedule 1 will increase the risk for such employers that workers they exploit will be more readily able to pursue them through the *Fair Work Act.*

However, the measure by itself will be insufficient to deter criminally exploitative employers. Most workers we have spoken to that have worked in breach of their visa conditions fear removal from Australia above other considerations. Thus, many will put up with being exploited in Australia if the financial outcome is still better than the situation they would face if they were sent to their home country. Thus, many workers that work in breach of their visa conditions will continue to do so until the employment arrangement is ended, such as being terminated by the employer or due to intervention by a law enforcement agency.

People who have worked in breach of their visa conditions will largely only be able to pursue an employer for cases of exploitation under the *Fair Work Act,* where they can remain in Australia to do so. It is exceedingly difficult to pursue a claim once the person has been required to return to their home country. We, therefore, would urge the Parliament to support the introduction of a visa that allows a person who has a meritorious non-trivial claim related to a breach of the *Fair Work Act* to be able to remain in Australia while the legal action against their former employer is pursued. Such a visa could also be granted in cases where the person is assisting a law enforcement agency in a prosecution of an employer for non-trivial offences. An example would be where the person is needed to help a state-based labour-hire licensing authority in the prosecution of an unlicensed labour-hire business.

New Zealand already has in place measures to allow workers on temporary visas that have been exploited and breached their visa conditions access temporary migration relief to enable the ability to escape exploitative situations, maintain legal status, and the maintain the ability to work. In addition, workers receive help connecting with advice, information and support services where necessary.[3]

What happens when you make a complain

Employment New Zealand will consider your complaint.

If you agree to be contacted, we aim to contact you within 3 wo
information you gave us and let you know how we can help.

MBIE has introduced the Migrant Exploitation Protection Visa, w
quickly leave exploitative situations and remain lawfully in New
up to 6 months and will be available to those who are holding e
visas, have had their report of exploitation assessed by Employ
been given a Report of Exploitation Assessment Letter.

Migrant exploitation – Immigration New Zealand

[3] Employment New Zealand, Migrant Worker Exploitation webpage. https://www.employment.govt.nz/resolving-problems/types-of-problems/migrant-exploitation/. Accessed 04/01/2022.

In addition to the provisions in Schedule 1 of the Bill, further amendments to the *Migration Act* would be needed to allow workers to make effective use of other workplace laws, such as workers' compensation and anti-discrimination laws.

Additional reforms we believe need to be put in place include:

- Increase the ability to sanction employers for employment of people in breach of their visa conditions. Penalties should be more significant as an egregious breach where a person is employed in violation of their visa conditions and exploited, as it is likely the employer has used the illegal work status of the person as a means to leverage the exploitation; and
- Increase the range of sanctions that regulators and law enforcement agencies have available to deal with exploitation in employment situations to enhance the general deterrence of such exploitation.

There is a need to strengthen the requirements to use the Visa Entitlement Verification Online (VEVO) system to verify that a person is allowed to work under their visa. As highlighted by the Migrant Workers' Taskforce, people who end up working in breach of their visa are highly vulnerable to being abused through exploitation.[4] There is a need to ensure that the ultimate employer is held to account for the employment of people on temporary visas in breach of their visa conditions unless they can demonstrate they took all reasonable steps to try and ensure the person had the legal rights to work in the employment in question.

Our experience is that too many employers have attempted to use labour-hire businesses and other intermediaries to knowingly or recklessly establish plausible deniability that they did not know people were employed in breach of their visa conditions. Setting a requirement that the ultimate employer must check the legality for any contractor workers would allow individuals and industries with the highest risk of non-compliance to be required to use the VEVO system and be unable to try and shift blame for any non-compliance onto other intermediaries.

The Synod gives cautious support to Schedule 5 of the Bill. Our church members provide significant support to people from the Pacific Islands working on the Pacific Australia Labour Mobility (PALM) scheme. Deductions are a common concern for people working on the scheme. People working on the scheme regularly report being told to sign forms authorising deductions without a proper understanding of what they have signed. People we have had dealings with regularly report that the employer does not provide a copy of the form they have signed authorising the deduction. Such cases are challenging to pursue, as the employer can produce a signed document from the worker authorising a deduction, even where the worker did not provide informed consent to the deduction, which protects the employer from any action.

One of the deductions on the PALM scheme is for accommodation. Deductions for accommodation can vary significantly over time, with some employers on the scheme. It is unclear if Schedule 5 would make it easier for employers on the scheme to increase accommodation charges to the workers without the workers having to agree, where the employer is not the accommodation owner. A case example of concern on the PALM scheme is where the worker's employer is a labour-hire business. The workers are provided to a farm, with the farm being the host employer. The host employer owns the accommodation. The workers have the accommodation charge deducted from their pay by

[4] Department of Home Affairs, 'Migrant Amendment (Protecting Migrant Workers) Bill 2021. Exposure Draft – Context Paper', 2021, 2.

the labour-hire business. The labour-hire business then pays the host farm for the accommodation. However, there are at least two scenarios where the workers can be over-charged for accommodation in such an arrangement. In the first scenario, the host farm makes it a condition of the labour-hire business to get the contract that the workers use the accommodation on the farm. Overcharging on the accommodation becomes a way for the host farm to engage in indirect wage theft. Overcharging on the accommodation is a way of clawing back the wages paid. We have concerns that Schedule 5 may make it easier for the host farm to increase the accommodation charge, as the increased deduction for the accommodation may not be seen as a direct or indirect benefit of the direct employer. It is the host employer that benefits.

A more sinister scenario would be the labour-hire business and the host farm agreeing to collude on the overcharging for the accommodation and split the take. While the second scenario would be for the benefit of the direct employer and forbidden under Schedule 5, in practice, the collusion would be almost impossible to prove as long as the labour-hire business and the host farm are not excessively greedy. For example, an overcharge of $20 a week on accommodation for 100 workers would still deliver a benefit of $2,000 per week, with the $20 overcharge being hard to prove.

In theory, workers on the PALM scheme have the right to make their own accommodation arrangements. However, in reality, it can be difficult for them to do, as often they are moving between farms, making it hard to secure a lease. People on the scheme also report that direct employers sometimes exert pressure on workers to live in the accommodation the employer has provided. The people on the scheme then fear that if they make their own accommodation arrangements, they will be denied the ability to return to Australia on a future placement.

A safeguard against the above scenarios might be for Paragraph 324(2)(a) to require that the employee can set an upper limit on the increase of the deduction before the employer must again seek their written approval. For example, an employee might set an upper limit of increasing health insurance payments of $5 per week annually. If the health insurance payment increases by more than $5 per week in a given year, the worker must again provide written consent to the increase. However, we recognise that the suggestion does add additional complexity, especially if every employee can set their own increase limit for each deduction.

In addition, section 324 should be amended to require employers to itemise deductions on each payslip. If employers are required to itemise deductions, it will be harder for them to make unauthorised deductions and reduce the cases of misunderstandings.

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