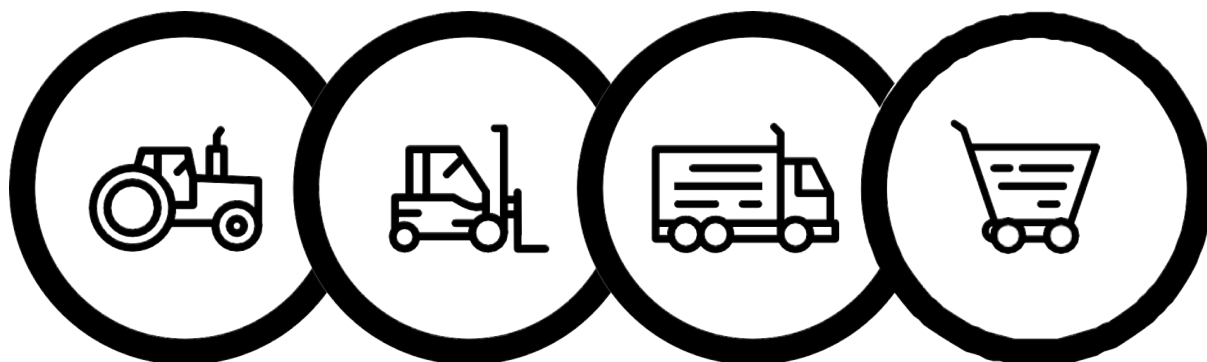


Retail Supply Chain Alliance – Submission to Migration Amendment (Strengthening Employer Compliance)
Bill 2023



Retail Supply Chain Alliance

Submission on Migration
Amendment (Strengthening
Employer Compliance) Bill 2023

26 July 2023

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The Retail Supply Chain Alliance welcomes the opportunity to contribute to the Legal and Constitutional Affairs Legislation Committee’s inquiry on the Migration Amendment (Strengthening Employer Compliance) Bill 2023 (the Amendment Bill).

The Retail Supply Chain Alliance (the RSCA) represents and advocates for the rights of workers across the horticulture supply chain in Australia.

The Alliance is a coalition of trade unions that represent workers in each facet of the horticulture supply chain.

The Transport Workers’ Union (TWU), the Australian Workers’ Union (AWU), and the Shop Distributive and Allied Employees Union (SDA) are worker representatives who have formed the Retail Supply Chain Alliance, which together have coverage across the full spectrum of the horticulture industry supply chain.

The Alliance was formed in 2019 in an attempt to advance the cause for workers’ rights and end the systemic exploitation across the horticulture supply chain in Australia.

Exploitation in the horticulture supply chain

Over the last decade Australia’s horticulture industry has arguably become the most exploitative in the country. At the same time, it has become the most reliant sector on overseas migrant workers, and incidentally an international chronicle for obscene and inhumane workplace abuse and acts of modern slavery. Since 2016, 11 different pieces of research have investigated exploitation of horticulture workers, and they have all come back with the same findings: underpayment, mistreatment, shocking conditions and exploitation are systemic.

Exploitation in the horticulture workforce is systematic: the evidence

2021

[The National Agricultural Workforce Strategy](#), published by the Morrison Government, found “dependence on an overseas seasonal and transient workforce is one of the biggest issues faced by a number of developed countries”, and that “using low-cost labour is... a highly risky option.”

The [McKell Institute report Blue Harvest](#), found some blueberry pickers were paid as little as \$4 a bucket to pick low-quality fruit, while others earned just \$3 an hour. The Institute found that workers are set up to be exploited, that wage theft is a business model in the horticulture sector, and that workers are coerced into a culture of silence

A UnionsNSW Report titled [“Wage Theft: the Shadow market”](#) concluded that 96% of the piece rates advertised would not allow a worker to earn the national minimum wage, and 65% of the ads for strawberry picking and 22% for grape picking would allow workers to earn less than \$2 an hour.

2019

The Morrison Government’s [Migrant Workers’ Taskforce](#) found “unscrupulous employers ... blatantly breach the law” and “it is clear that a significant proportion of temporary visa holders in Australia are being exploited.”

A report commissioned by growers’ organisations [Vegetables WA and the West Australian Strawberries Association](#) identified “widespread” exploitation of migrant workers, and that workers on piece rates generally earn less than \$15 an hour (with many earning much less).

2018

The [Fair Work Ombudsman’s Harvest Trail Inquiry](#) reported a “culture of non-compliance,” with more than half of investigated employers failing to follow workplace laws.

2017

The [Temporary Migrant Work Survey](#) of 4,322 migrant workers found 1 in 7 workers earned \$5 per hour or less, and 1 in 3 earned \$10 or less.

Parliament’s [inquiry into establishing a Modern Slavery Act](#) noted “unscrupulous labour hire companies [contribute] to the exploitation of migrant workers,” and the Committee expressed concern at the high number of case studies detailing exploitation and abuse.

An in-depth investigation by the [Sydney Morning Herald](#) said “There is enough evidence to say that [exploitation] is systemic” and “Significant numbers [of migrant workers] are really exploited.”

A [Senate Committee Report titled “A National Disgrace”](#) said “the scale of abuse is extraordinary”, and identified “blatant and pervasive abuse of the WHM visa program” by labour hire companies supplying workers to the horticulture sector.

Research on [temporary migrant workers from Elsa Underhill at Deakin University](#) stated that “employers take advantage of these variations in vulnerability to find the weakest workers and the most exploitative contracting arrangements and payment systems” and “Without enforceable minimum standards of employment, other employers are then forced to follow suit, producing a downward spiral of wages and employment conditions.”

The Fair Work Commission and the Government have begun the process of reforming this industry with several important decisions and measures:

- the end of unfair ‘piece rate’ arrangements and a guarantee of an award minimum wage for all workers
- defending overtime pay for casual workers
- guaranteeing 30 hours per week for workers under the Pacific-Australia Labour Mobility (PALM) scheme
- establishing the Agriculture Workforce Working Group (AWWG) to bring together governments, unions, industry and other advocates to resolve the range of issues affecting farm workers across the country.

The present Amendment Bill takes an important first step in codifying reforms that will help to end exploitation. The RSCA unions believe that the Amendment Bill will substantially establish a better framework to ensure that employers do not use migrant workers’ visa status to enable their exploitation. For the first time, these will be backed up by enforceable undertakings and the threat of criminal prosecution. The systematic nature of exploitation and inaction by the previous Government or industry has led to the need for strong measures such as those set out in the Amendment Bill.

However, there are also opportunities to strengthen the bill and ensure that it aligns with other ongoing Government processes. The RSCA supports the Australian Council of Trade Unions (ACTU) submission to this inquiry, which makes a broad suite of recommendations designed to bolster the bill’s operation. Elements of particular relevance for our unions are highlighted below.

A more comprehensive package of reforms must complement the codification of the Assurance Protocol

As discussed in the ACTU’s submission to this inquiry, the Assurance Protocol is currently inadequate. Its impact will be significantly affected by the operation of other changes being canvassed by the Department of Home Affairs, including:

- The introduction of industry and occupation sponsorship rather than employer sponsorship
- Visa cancellation protections for workers
- The introduction of a Workplace Justice Visa – that is, a short term visa designed specifically for the purpose of allowing temporary migrant workers to extend their stay to pursue action against exploitative employers.

Further, the current drafting does not provide protections to workers who seek assistance through a registered union, but instead, only protects workers directly engaging with the Fair Work Ombudsman on their workplace issue.

The Government should continue to work through the range of options it is considering before codifying the Assurance Protocol. Accordingly, Part 6, Div 1, Item 37 should not be passed, and instead be introduced alongside a more comprehensive set of reforms.

Other workplace issues should enliven the Minister’s discretion to prohibit an employer from hiring migrant workers

The Bill currently provides for the Minister to make a decision on applying restrictions to the ability of employers to hire migrant based on a number of defined categories of ‘migrant worker sanction’. These sanctions include if an employer is subject to a compliance notice by the Fair Work Ombudsman, or subject to a bar on being a work sponsor under 140M(1)(c) or (d) of the Act. The RSCA believes there should be a greater range of migrant worker sanctions that would allow the Minister to prohibit the hiring of migrant workers by an employer.

There are many breaches not covered by the current approaches to migrant worker sanctions:

- Systematic breaches of employment law that are not investigated by the FWO, but instead by union or worker action in the Fair Work Commission
- Breaches in relation to work health and safety and other regulatory bodies (for example, the National Heavy Vehicle Regulator)
- Sexual harassment or broader discrimination claims
- Restrictions placed on a migrant worker sponsor under departmental rules and guidelines – for example, restrictions placed under the Pacific-Australia Labour Mobility (PALM) scheme, such as those recently placed on Linx Employment.¹

The RSCA suggests that breaches of other work-regulated regulations and delegated legislation enliven the discretion to bar workers from hiring additional migrant workers.

Other reforms needed to deal with exploitation

As noted in the ACTU’s submission, the Amendment Bill will not solve all forms of worker exploitation. Alongside this Bill, the RSCA supports the range of other reforms put forward by the ACTU, namely:

- Ensuring that registered employee organisations (that is, unions recognised by the Fair Work Commission), the Fair Work Commission and Fair Work Ombudsman have the opportunity to be notified and participate in the process to determine whether sanctions should apply to an employer

¹ <https://au.news.yahoo.com/workers-left-lurch-labour-hire-032908297.html>

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- Systematic changes to the migration system that reduce opportunities for exploitation to arise in the first place, such as:
 - Increasing permanent migration and reducing temporary migration
 - Ensuring all migrant workers receive an induction from their relevant union
 - Ending the 88-day specified work requirement for Working Holiday Maker visas.