

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION
REGARDING THE INQUIRY INTO THE WORKING HOLIDAY MAKER PROGRAM**

1. INTRODUCTION

- 1.1. The Migrant Workers Centre ('MWC') welcomes the opportunity to provide this submission to the Joint Standing Committee on Migration regarding the Working Holiday Maker program.
- 1.2. The MWC is a non-profit organisation located in Carlton, Victoria, that helps migrant workers understand their rights and get empowered to enforce them. By 'migrant workers' the MWC refers to persons who were born in a country other than Australia and work in Australia under instructions for income. Its goal is to end labour exploitation and fix our workplace system so that every worker, regardless of their migrant status, is treated with dignity and respect.
- 1.3. The MWC interprets the Working Holiday Maker ('WHM') program as a "hidden labour migration stream".¹ In this submission, the MWC does not differentiate WHMs from temporary migrant workers on other visa subclasses because WHMs have workplace rights in Australia and their residency is conditioned by the temporariness of their visas. The MWC is mindful of the Government's inconsistency in interpreting WHMs' migration status: The Department of Home Affairs categorises Subclass 417 (Working Holiday) and Subclass 462 (Work and Holiday) into visitor visas whereas the Australian Bureau of Statistics refer to the holders of these visas as temporary residents.²
- 1.4. The MWC is uniquely placed to provide input regarding the Inquiry because over 30 per cent of the workers who seek assistance from the MWC in defending their workplace rights are WHMs.³ Given the rampant exploitation of and wage theft against WHMs, this submission highlights some key issues relevant to the Inquiry's Terms of Reference regarding:
 - The extent to which existing visa criteria and conditions related to Working Holiday Makers are still adequate and appropriate to address the purpose of this program, including cultural exchange and creating job opportunities for Australians.

¹ Shanthi Robertson, "Intertwined Mobilities of Education, Tourism and Labour: The Consequences of 417 and 485 Visas in Australia," in *Unintended Consequences: The Impact of Migration Law and Policy*, ed. M. Dickie, D. Gozdecka, and S. Reich (Australian National University, 2016), 74.

² DHA, "Visa List" (17 Mar 2020); ABS, "6250.0 - Characteristics of Recent Migrants, Australia, Nov 2019" (12 Jun 2020).

³ Migrant Workers Centre, Annual Report (2020).

2. SUMMARY OF RECOMMENDATIONS

Recommendation 1. Condition 8547 (Not work for one employer for more than 6 months) should be lifted to uphold WHMs' and young residents' work rights, prevent job market distortions, and stop the culture of non-compliance. The choice between work and holiday should be that of each WHM.

Recommendation 2. Extension of WHM visas should not be contingent on the satisfaction of the specified regional work requirement to address the exploitation of WHM labour but on the declaration of having abiding by Australian laws including the *Migration Act 1958* and the *Income Tax Assessment Act 1997*.

Recommendation 3. The social safety net, especially the Fair Entitlement Guarantee and Medicare access, should be extended to all temporary migrant workers for equity, fairness, and the safety of the entire society.

Recommendation 4. The Government should proactively disseminate the message that the standards under the *Fair Work Act 2009* apply to every worker equally, irrespective of their residency or visa status.

Recommendation 5. Criminal sanctions should be introduced against serious forms of wage theft. There should be additional penalties for contraventions made disproportionately against temporary migrant workers.

Recommendation 6. Employers knowingly influencing or coercing WHMs and other migrant workers into breaching their visa conditions should be regulated and sanctioned. There should be additional penalties for employers who make contraventions of the *Fair Work Act 2009* in combination with the *Migration Act 1958*.

Recommendation 7. The Government should establish a visa with work rights to extend the stay of WHMs and other temporary migrant workers who are victims of workplace exploitation, harassment, or injury and enable them to access justice in court, compensation, or medical/psychological treatment.

Recommendation 8. No breaches of visa-specific work conditions suspected or identified should provide a ground for cancelling the worker's current visa or denying a subsequent visa. A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by reinforcing the existing Assurance Protocol to protect WHMs who are victims of wage theft and whistle-blowers.

Recommendation 9. The *Fair Work Act 2009* should be amended to give the Fair Work Ombudsman power to investigate wage theft allegations and undertake more litigations against non-compliant employers and to provide trade unions with improved rights of entry.

Recommendation 10. Courts and tribunals should be reformed to enable fast and affordable avenues for all workers to recover stolen wages and superannuation. An Industrial Court should be established through which WHMs can pursue wage and superannuation theft claims in a timely manner.

Recommendation 11. Industries with large non-compliance records such as horticulture and labour hire should be thoroughly regulated and contraventions prosecuted. The Government should introduce a national labour hire licensing scheme that replicates the best-practice requirements of the Queensland and Victorian state schemes.

Recommendation 12. Civil society organisations including trade unions, migrant community organisations, and community legal centres should be assisted with adequate funding to extend their services to WHMs and meet their social, economic, and cultural needs.

3. UPHOLDING WHMs' WORK RIGHTS

- 3.1. The WHM program stands out from Australia's immigration programs because it is not conditioned by the binary framework of either labour or leisure. Most temporary visa options treat labour and leisure mutually exclusively: Those on travel visas are prohibited from obtaining employment whereas those on labour migration visas are not allowed to stay in the country without maintaining employment. WHMs on Subclasses 417 and 462 seem to have the rare freedom to work or not as they please.
- 3.2. A closer look at the program reveals that the freedom is merely symbolic. WHMs are expected to be "a genuine visitor whose principal purpose is to spend a holiday in Australia".⁴ The Government enforces the expectation by restricting their work rights. Condition 8547 (Not work for one employer for more than 6 months), attached to both Subclasses 417 and 462, limits WHMs to a maximum period of six months' work with any one employer.⁵
- 3.3. The condition is believed to make WHMs remain mobile during their stay and contribute to Australia's regional economy. **Restricting WHMs' work rights is the least productive way to promote Australia's economic development.** The regional economy may gain for a short term as it reaps WHMs' spending on accommodations and tourism, but the national economy pays for the detrimental side-effects of distorting the job market over the long term.
- 3.4. Condition 8547 prohibits WHMs from staying at work beyond the probation period and discourages employers from hiring WHMs in an on-going position. This also means that WHMs are always excluded from seeking any remedy when they are dismissed from their job in a harsh, unjust or unreasonable manner. Employees have to be employed for at least 6 months before they can lodge an application for unfair dismissal to the Fair Work Commission.⁶ Temporary migrant workers are discouraged from raising issues about occupational health and safety or wage theft because they are not protected against unfair dismissal when their employer takes adverse action against them.
- 3.5. The casualisation of WHM labour is not a problem from the Government's point of view as it views that WHMs look for adventures in Australia and prefer the flexibility of casual employment. In 2013, the then Minister for Immigration and Border Protection Scott Morrison dismissed concerns about the labour market distortion by saying that "undertaking work is an optional part of a WHM's stay".⁷
- 3.6. The argument is problematic in two senses. First, there is no evidence that all WHMs have the same plan for their time in Australia, and even if they do, it provides **no ground for the Government to restrict WHMs' work rights and reduce their employment prospects.**

⁴ Migration Regulations 1994, cl. 417.211(4)(a) and cl. 462.217(a).

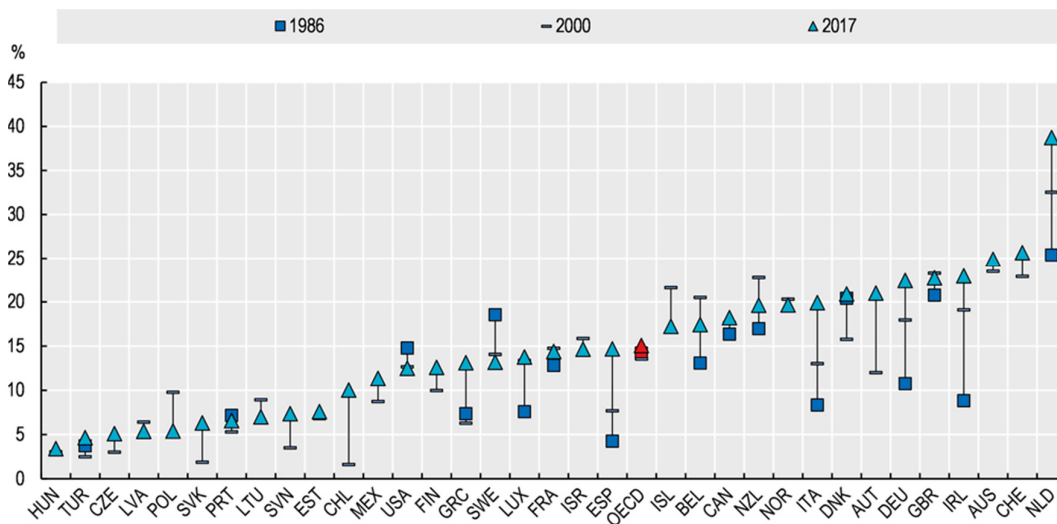
⁵ DHA, "6 month work limitation" (6 May 2020).

⁶ FWC, "Unfair dismissal" (26 March 2020).

⁷ ABC News, "ACTU calls for working holiday visa re-think amid youth unemployment concerns" (26 Nov 2013).

- 3.7. Second, **Condition 8547 breeds a culture of taking young workers as disposable labour**. As at 31 Dec 2019, there are 141,142 WHMs in Australia, and the number has been significantly larger than 100,000 at any point in the last decade.⁸ They are young and healthy people many of whom have good education and skills to put to use in the Australian job market. The six-month restriction gives employers a good excuse to engage WHMs on a casual basis, which many employers already prefer as a cost-saving measure because casual employees are not entitled to sick leave and redundancy pay. In other words, employers have no incentive to hire young workers in an on-going position when they can find WHMs' disposable labour abundant in supply. The casualisation of WHM labour can have a spill-over effect and normalise the casualisation of the entire population of young workers in Australia.
- 3.8. This job market distortion damages the employment prospects of the entire population. Australia's labour market has gone through substantive casualisation in the last couple of decades.⁹ Today the country is one of those with the lowest job security levels. Figure 1 shows that Australia's part-time employment (30 or less hours of work per week) rate is the third highest among the OECD member countries, even without taking into account casual workers who work more than 30 hours per week.

Figure 1. Growth of part-time employment in OECD countries



Source: OECD, 2019, Employment Outlook 2019: The Future of Work, Fig 2.10. Part-time employment as a share of dependent employment, all ages.

- 3.9. Another side-effect is that **Condition 8547 breeds the culture of non-compliance**. Employers make sham contracting and cash-in-hand arrangements to circumvent the condition when engaging WHMs. Sham contracting is an arrangement where an employer disguises an employment relationship as an independent contracting arrangement. This is usually done for the purpose of avoiding responsibility for employee entitlements such as award rate pay, sick leave, and the superannuation guarantee, and it also enables employers to engage WHMs as long as they want.

⁸ DHA, "Working Holiday Maker visa program report" (31 December 2019).

⁹ Iain Campbell, "Casual Work and Casualisation: How Does Australia Compare?", *Labour & Industry: A Journal of the Social and Economic Relations of Work* 15, no. 2 (2004): 85–111.

The MWC heard from many WHMs who complained that their employers had had them apply for an Australian Business Number and sign an independent contract as a sole trader. Cash-in-hand is an off-the-books employment arrangement for the purpose of avoiding tax as well as employee entitlements. Again, the practice is widely used by employers who engage WHMs for longer than six months.

- 3.10. Advocates of Condition 8547 might argue that the Government runs the WHM program according to bilateral agreements with partner countries and cannot easily change it. The claim is not persuasive enough, given the program’s history of arbitrary changes and the unpopularity of Condition 8547.
- 3.11. In the past, the WHM program allowed WHMs to work for one employer up to three months. In 2006, the then Minister for Immigration and Multicultural Affairs Amanda Vanstone relaxed the condition to its current version, arguing that “[w]orking holiday makers often have highly sought-after skills and can make a positive long-term contribution to the economy”¹⁰ and that “[t]he turnover of losing someone after three months because of the previous rule was proving a bit of a cost”.¹¹ The argument applies to the current six month employment restriction as well.

Table 1. Work restrictions for WHMs in Australia’s top partner countries

COUNTRY	WORK RESTRICTIONS
UK	No restrictions
France	No restrictions
Germany	Australian WHMs cannot work for one employer for more than 6 months
South Korea	Australian WHMs cannot work for one employer for more than 6 months
Taiwan	Australian WHMs cannot work for one employer for more than 6 months
Italy	Not work for one employer for more than 3 months; Not work for more than a total of 6 months
Ireland	Australian WHMs cannot work for one employer for more than 6 months
Japan	No restrictions
Canada	No restrictions
The Netherlands	No restrictions

Note: These are the top ten source countries from which most Subclass 417 visa holders came to Australia in 2019-20 (DHA, 31 Dec 2019). It is noteworthy that largest source countries of Subclass 462 visa holders such as the USA do not have equivalent programs for comparison.

- 3.12. Restricting WHMs’ work rights is not a universal practice among partner countries, either. As a matter of fact, other countries impose no or less employment restrictions onto WHMs. Table 1 lists

¹⁰ Parliament Press Release, “Mt Isa a winner in expanded Working Holiday Maker scheme” (3 May 2006).

¹¹ ABC News, “Working holiday visa rules relaxed” (3 May 2006).

Australia's top ten WHM program partner countries and the employment restrictions they impose on WHMs. With the exception of Italy, most partner countries do not restrict WHMs' work rights or impose equivalent restrictions onto Australian WHMs.

- 3.13. To summarise, **Condition 8547 should be lifted to uphold WHMs' and young residents' work rights, prevent job market distortions, and stop the culture of non-compliance.**
- 3.14. The appeal of the WHM program to young people is that it allows them the freedom to choose between the identities of a tourist and a worker. The choice should be that of each WHM. The Government's job is not to prescribe how WHMs spend their time in Australia but to facilitate their travel and cultural experience, protect their rights, and ensure their health and safety in Australia.

4. ADDRESSING WHMs' VULNERABILITY AT WORK

- 4.1. WHMs are one of the most vulnerable groups of migrant workers because **the WHM program is designed to supply flexible labour to meet employer demands.**¹² This employer-oriented nature of immigration management deprives WHMs of power to defend their workplace rights against employers who already have disproportionate power over workers.
- 4.2. The current WHM program is a product of several alterations in response to employer demands. In 2005, the Parliament introduced an extension to Subclass 417 for another year on the condition that the visa holders have completed three months of specified work in regional Australia.
- 4.3. In 2015, the conditional extension to a second year became available for Subclass 462 as well. At the same time, the Government lifted the six months work regulation for WHMs employed in plant and animal cultivation industries and six more industries in northern Australia.
- 4.4. Since 2019 both Subclasses 417 and 462 are renewable for a third year, which is contingent on the visa holders' undertaking of specified work in regional Australia for six months while holding a second-year WHM visa.¹³
- 4.5. Australia's conditional extension of WHM visas is exceptional. Very few countries allow WHMs to extend their stay, and New Zealand is the only other country that conditions the visa extension on assuming seasonal work: WHMs in New Zealand are granted three months of extension in exchange of three months of work completed in the horticulture and viticulture industries.
- 4.6. The WHM visa extension is justified with the demand for the visa holders' labour in regional Australia. Introducing the initial visa extension condition, the Parliament argued that "employers in regional Australia ... are forced to resort to employing people who are unlawfully in Australia and others with no work rights" and suggested that the extension would "assist in addressing the continued demand for labour to meet seasonal harvest needs in regional Australia by creating a

¹² Migrant Workers Centre, "Submission to the Senate Select Committee's inquiry on temporary migration" (25 March 2020).

¹³ DHA, "Specified subclass 417 work" (30 Mar 2020); DHA, "Specified subclass 462 work" (30 Mar 2020).

larger pool of reliable workers, without compromising or risking the integrity of Australian visa programs or undermining employment opportunities for Australian workers”.¹⁴

- 4.7. The chronic labour shortage in regional Australia is an important national issue. Australia must address it with no delay by making investments in improving the infrastructure and work conditions in regional Australia.
- 4.8. The Government’s response to the problems in regional Australia has been far from adequate. It steers WHMs to regional Australia to temporarily ease the labour shortage instead of fixing it. This stop-gap policy is a cheaper option for the Government because **the cost of not fixing the labour shortage in regional Australia is passed on to WHMs**. WHMs working in regional Australia have no alternative but to comply with the terms set by employers if they wish to extend their stay in Australia. Dodgy employers take advantage of the situation and exploit WHMs. Box 1 illustrates how WHMs are exploited while completing the required specified work in regional Australia.

Box 1. Regional businesses preying upon Working Holiday visa holders

Some rural towns in Australia have nicknames such as “Horror Hill” or “Helltown” among migrant workers. In such towns, exploitation and bullying is rife, underpayment is a norm, and proper accommodations are hard to find. A majority of workers there are Working Holiday Makers trying to meet a certain period of specified work requirement before being able to apply for subsequent Working Holiday visas.

Michael (pseudonym) needed to work in rural areas for at least 88 days if he wanted to extend his Working Holiday visa to a second year. He met a labour-hire provider in “Horror Hill” and got a strawberry-picking job. To work at the farm, Michael had to rent a bed from the labour-hire provider. He paid the labour-hire provider \$120 per week to stay with 15 others in a four-bedroom house. He paid him an extra \$5 per day for transportation.

Michael was paid at a rate of \$2 per tray and barely earned what he owed to his labour-hire provider/landlord. He left “Horror Hill” to fill the remainder of his 88 days with a better-paying job. He got a job at an abattoir in “Helltown” from another labour-hire provider, who also charged him \$120 for a bed. At the abattoir, Michael was paid his award rate but still earned little money: his payslip would list all kinds of deductions such as employment commission to the labour-hire provider, training, and Q-fever vaccination.

- 4.9. The Fair Work Ombudsman (‘FWO’) acknowledges that the requirement for regional work facilitates the exploitation of WHMs.¹⁵ It investigated 638 harvest trail businesses and revealed that 70 per cent of the employers employed temporary migrant workers, predominantly WHMs, and that over half of the employers had breached workplace laws.¹⁶

¹⁴ Commonwealth Parliament, “Migration Amendment Regulations 2005 (No. 9) Regulatory Impact Statement ‘Changes to the Migration Regulations: Proposal to Expand the Working Holiday Makers Program Migration’” (2005), 2–3.

¹⁵ Fair Work Ombudsman, “Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program” (2016).

¹⁶ Fair Work Ombudsman, “Harvest Trail Inquiry Report” (2018).

- 4.10. The Government's solution to the exploitation of WHMs in regional Australia was not to regulate non-compliant employers but to impose yet another restriction onto WHMs. In 2015, the Government redefined specified work in regional Australia to exclude volunteer activities. The then Assistant Minister for Immigration and Border Protection Michaelia Cash argued that the new regulation was to remove "a perverse incentive for visa holders to agree to less than acceptable conditions in order to secure another visa".¹⁷
- 4.11. However well-intended, **the remuneration-by-award principle does nothing to promote compliance.** Rather, it effectively punishes WHMs for the wrongdoings of their employers.
- 4.12. Visa extension is denied when WHMs were not "remunerated for the [specified regional] work in accordance with relevant Australian legislation and awards" even though they have completed the specified regional work.¹⁸ According to the records of the Administrative Appeals Tribunal, there were at least three WHMs in 2017 who were denied visa extension and appealed the decision. The Tribunal acknowledged that the appeal applicants performed the required work and yet confirmed they did not meet the visa extension condition because they had been paid below relevant award rates.¹⁹
- 4.13. **Australia must urgently address the structural vulnerability of WHMs by reforming the WHM program and by regulating non-compliance across industries.** It is without question the exploitation of WHMs damages the national economy by stealing wages from WHMs and revenue from the Government in the form of unpaid taxes and superannuation contributions. Australia being the largest host country of WHMs in the world with 44 partner countries and 13 more potential partner countries identified,²⁰ the exploitation of WHMs also ruins the country's reputation as a tourist destination and harms its diplomatic and global trade relations. For example, there have been petitions overseas asking foreign governments to make diplomatic interventions and end Australia's exploitation of WHMs in countries.²¹
- 4.14. The MWC is in the view that **the extension of WHM visas should not be contingent on the satisfaction of the specified regional work requirement** to address the exploitation of WHM labour. The current WHM program makes a de facto temporary labour migration stream through which one is granted a three-year work visa for exploitation with no pathway to permanent residency. The only condition on which an extension visa is granted should be the applicant's declaration of having abiding by Australian laws including the *Migration Act 1958* and the *Income Tax Assessment Act 1997*.
- 4.15. **Industries with large non-compliance records should be thoroughly regulated and contraventions prosecuted.** There should be additional penalties for contraventions made

¹⁷ Assistant Minister for Immigration and Border Protection Senator the Hon Michaelia Cash, "Strengthening Integrity in Working Holiday Visa Programme" (1 May 2015).

¹⁸ Migration Regulations 1994, cl. 417.211 (5)(c).

¹⁹ Lin (Migration) [2017] AATA 648 (28 April 2017); Newman (Migration) [2017] AATA 937 (22 May 2017); Choi (Migration) [2017] AATA 1306 (17 July 2017).

²⁰ DHA, "Working Holiday Maker visa program report" (31 December 2019).

²¹ See, for example, several petitions submitted to the South Korean President (www1.president.go.kr/petitions) asking for interventions on behalf of South Korean working holiday makers who fell victim to wage theft in Australia.

disproportionately against WHMs and other migrant workers. Although the *Protecting Vulnerable Workers Act 2017* created some measures of protection for them by, for example, increasing penalties for serious contraventions and prohibiting employers from making unreasonable requirements to workers, they are only applicable to contraventions made “knowingly” and “systematically”.²² Narrowly defined measures are likely to be inadequate and beyond the reach of many WHMs who are engaged in small businesses or areas of industries where it is hard to prove contraventions. Penalties should be applicable to both business owners and managers as well as labour hire users (i.e. hosts of labour hire workers) who are in control of decisions that lead to the contraventions.²³

- 4.16. Horticulture is one of the industries in which many WHMs experience wage theft. The Horticulture Award 2010 condones labour exploitation and wage theft as long as employers sign a piece-rate agreement with their employees. In an interesting case brought to the Tribunal by a WHM, the WHM had been paid well below the award rate of \$17.70 per hour as a Level 1 full-time employee on farms in the same way as the aforementioned three WHMs and yet was granted an extension visa only because the worker produced a signed piece-rate agreement to the Tribunal.²⁴
- 4.17. The labour hire industry is another example. Labour hire practices create a multi-level subcontracting network at the expense of workers. As shown in Box 1, WHMs are exploited in the labour supply chain as they navigate unfamiliar industries such as horticulture to complete the specified regional work. Inadequate housing and transportation in regional Australia create further loopholes of exploitation by labour hire providers.²⁵ In the absence of effective supply chain governance, Australia has developed a culture of non-compliance in the labour hire industry, and WHMs are one of the prominent groups of victims to it.²⁶ One of the urgent tasks of the Government is to introduce a national labour hire licensing scheme that replicates and scales up the best-practice requirements of the Queensland and Victorian state schemes.²⁷
- 4.18. Criminal sanctions should be introduced against serious forms of wage theft. The onus of proof should be reversed when employers have breached payslip and record-keeping obligations. Falsifying or failing to keep employee records should also be criminalised.
- 4.19. Employers knowingly influencing or coercing WHMs and other migrant workers into breaching their visa conditions should be regulated and sanctioned.²⁸ There should be additional penalties for employers who make contraventions of the *Fair Work Act 2009* in combination with the *Migration Act 1958*.

²² Stephen Clibborn and Chris F. Wright, “Employer theft of temporary migrant workers’ wages in Australia: Why has the state failed to act?,” *Economic and Labour Relations Review* 29, no. 2 (2018): 207-227, 218.

²³ Migrant Workers Centre, “Report of the National Conference on Labour Hire Reform” (Victorian Trades Hall Council, 2019), 15.

²⁴ Hsu (Migration) [2017] AATA 1142 (28 June 2017).

²⁵ Parliamentary Library, “Australia’s Working Holiday Maker program: a quick guide” (22 November 2016).

²⁶ Industrial Relations Victoria, “Victorian Inquiry into the Labour Hire Industry and Insecure Work” (State of Victoria, 2016); Finance and Administration Committee, “Inquiry into the Practices of the Labour Hire Industry in Queensland” (Parliament of Queensland, 2016).

²⁷ Migrant Workers Centre, “Report of the National Conference on Labour Hire Reform” (Victorian Trades Hall Council, 2019).

²⁸ Migrant Workers’ Taskforce, “Report of the Migrant Workers’ Taskforce” (Department of Jobs and Small Business, 2019), 124.

5. EMPOWERING WHMs WITH SOCIAL SECURITY AND INFORMATION

- 5.1. According to the FWO's inquiry into the exploitation of WHMs, WHMs are disproportionately affected by contraventions of workplace laws. 13% of the total assistance requests the FWO receives are lodged by migrant workers, 44% of whom are WHMs.²⁹ Nevertheless, surveys find that a significantly greater number of WHMs experience wage theft and most of them either are not aware of the FWO or choose not to seek assistance from the FWO.³⁰
- 5.2. Based on the MWC's experience, **WHMs do not report contraventions because (a) they do not have faith in Australia's industrial justice system, (b) their temporary visas do not allow enough time to access the system, and (c) they do not have clear information about their entitlements.**
- 5.3. WHMs complain to the MWC that the FWO's mediation offers little help to remedy their workplace issues and that wage and superannuation recovery through the FWO and the Australian Taxation Office take too long. **Courts and tribunals should be reformed to enable fast and affordable avenues for all workers to recover stolen wages and superannuation.** The MWC supports the Australian Council of Trade Unions' suggestion for the establishment of an Industrial Court through which WHMs can pursue wage and superannuation theft claims in a timely manner.³¹
- 5.4. The *Fair Work Act 2009* should be amended to give the FWO power to investigate wage theft allegations and undertake more litigations against non-compliant employers. The FWO should be provided with the same information gathering powers as other business regulators such as the Australian Competition and Consumer Commission.³² Funding of the FWO should be substantially increased to ensure frequent monitoring and regulation of compliance.
- 5.5. At the same time, trade unions should be allowed more power to inspect workplaces and ability to issue a compliance notice. The *Fair Work Act 2009* should be amended to provide trade unions with improved rights of entry by making the notice requirement for trade unions' right of entry less restrictive and removing the restrictions on access to non-member records.³³
- 5.6. When wage theft is brought to court by a WHM, no breaches of visa-specific work conditions suspected or identified should provide a ground for cancelling the worker's current visa or denying

²⁹ FWO, "Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program" (2016).

³⁰ Bassina Farbenblum and Laurie Berg, "Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia" (Migrant Worker Justice Initiative, 2018); Elsa Underhill et al., "Using Social Media to Improve Temporary Migrant Workers' Access to Information about Their Employment Rights," *Journal of Australian Political Economy* 84 (2020): 147–74.

³¹ ACTU, "Submission to the Senate Economics Committee of the Australian Parliament Inquiry into the Unlawful Underpayment of Employees' Remuneration" (6 March 2020).

³² Migrant Workers' Taskforce, "Report of the Migrant Workers' Taskforce" (Department of Jobs and Small Business, 2019), 92.

³³ ACTU, "Submission to the Senate Economics Committee of the Australian Parliament Inquiry into the Unlawful Underpayment of Employees' Remuneration" (6 March 2020).

a subsequent visa. A clear and strong firewall between wage recovery systems and the Department of Home Affairs should be created by reinforcing the existing Assurance Protocol to protect WHMs who are victims of wage theft and whistle-blowers. The victims should be protected throughout their lifetime in Australia without having any negative consequences on their subsequent visa applications.

- 5.7. **The Government should establish a visa with work rights to extend the stay of WHMs and other temporary migrant workers who are victims of workplace exploitation, harassment, or injury and enable them to access justice in court, compensation, or medical/psychological treatment.** This visa for the victims of wage theft should be regarded as a qualifying substantive visa for another visa application. The MWC supports United Workers Union's proposal for the creation of a visa for temporary or undocumented migrant workers pursuing remedies through the *Fair Work Act 2009* or other causes of action for unpaid wages and other breaches of law.³⁴
- 5.8. Information on employment rights and Australia's justice systems is not readily accessible to WHMs.³⁵ **The Government should proactively disseminate the message that the standards under the *Fair Work Act 2009* apply to every worker equally, irrespective of their residency or visa status.** WHMs should be provided with information about their workplace rights upon being granted a visa. The Government should also facilitate follow-up education for WHMs upon their arrival by funding trade unions and community legal centres to offer workplace rights workshops in community languages. A community-based response can be effective in disseminating information to WHMs. Civil society organisations including trade unions, migrant community organisations, and community legal centres should be assisted with adequate funding to extend their services to WHMs and meet their social, economic, and cultural needs.
- 5.9. Lastly, **Australia's social safety net should be extended to WHMs and other temporary migrant workers for equity, fairness, and the safety of the entire society.** Temporary residents including WHMs share the cost of operating the social safety net but are unfairly denied access to it. The MWC believes the extension of the Fair Entitlement Guarantee ('FEG') and Medicare services should be prioritised.
- 5.10. The MWC has witnessed many dodgy employers avoiding their responsibility to pay employees through liquidation. Many WHMs and other temporary migrant workers express their loss of hope over the Australian justice systems when they find their employers continue to have thriving businesses through illegal phoenix activities.³⁶ It is urgent to extend the Fair Entitlement Guarantee ('FEG') to temporary migrant workers. The FEG is a federal government scheme to protect workers who are Australian citizens and permanent residents from employer bankruptcy. It is not offered to temporary migrant workers because the current version of the FEG is designed as a social security measure than a workplace rights protection. The Government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and

³⁴ UWU, "Submission on Temporary Migration" (March 2020).

³⁵ Underhill et al., "Using Social Media to Improve Temporary Migrant Workers' Access to Information about Their Employment Rights."

³⁶ The Guardian, "Legal loophole leaves migrant workers with thousands of dollars in unpaid wages" (30 September 2019).

extending the eligibility to make a claim under the Act to all, irrespective of their residency or visa status.³⁷

- 5.11. All WHMs should be made eligible for Medicare enrolment. Many countries already have effective systems Australia can benchmark. In the UK, for example, every WHM is covered by the National Health Service's comprehensive range of services. Since 2015 temporary migrants in the UK are required to pay their share of the cost of services. WHMs make an upfront payment at the time of visa application. In another example, all temporary residents in South Korea who stay over 6 months are required to register for the country's National Health Insurance. In Italy, every non-resident is given access to the national health services for free of charge.
- 5.12. The expected cost of leaving WHMs uncovered by the social safety net can be higher than the cost of covering them. Currently, the Australian WHM program allows only a portion of WHMs to have access to Medicare through reciprocal health care agreements. This selective provision of health services can endanger the society in face of infectious diseases such as the COVID-19 pandemic. In the early stage of the nation-wide lockdown, many WHMs travelled to regional areas to avoid contagion in metropolitan areas and to look for jobs.³⁸ WHMs' anxiety is understandable considering that they have no access to Medicare nor any emergency funds from the Government to survive the virus and the lockdown-induced job loss.

6. CONCLUSION

- 6.1. This submission argues that **WHMs are made vulnerable by Australia's immigration policies and industrial structure**. The temporality of their visas, restrictive visa conditions, and highly casualised and exploitative nature of the industries in which they are employed are some of the most critical aspects of WHMs' vulnerability.³⁹
- 6.2. The prioritisation of employer demand in operating the WHM program has led to distorting Australia's labour market, normalising wage theft against WHMs, and harming the country's international reputation and relations. Australia's weak protection of workplace rights make WHMs targeted victims of labour exploitation and wage theft.
- 6.3. The MWC recommends the Senate to revise the restrictive conditions of WHM visas and reform industrial justice systems to enable WHMs to exercise their workplace rights.

³⁷ Senate Education and Employment References Committee, "A National Disgrace: The Exploitation of Temporary Work Visa Holders" (Parliament of Australia, 2016).

³⁸ Brisbane Times, "Backpackers caught sneaking into Queensland" (3 April 2020).

³⁹ Elsa Underhill and Malcolm Rimmer, "Layered Vulnerability: Temporary Migrants in Australian Horticulture," *Journal of Industrial Relations* 58, no. 5 (2016): 608–26; Joanna Howe and Irene Nikoloudakis, "A Critique of the Australian Working Holiday Programme: Options for Reform" (2017).