



**United Voice Submission:  
Review of the Working Holiday Maker visa programme  
2 September 2016**

**About United Voice**

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including education support, aged care, disability support, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

A handwritten signature in black ink that reads 'Jo-anne Schofield'. The signature is written in a cursive, flowing style.

Jo-anne Schofield  
National Secretary

For more information on this submission, please contact Dr Miriam Thompson at:



## Introduction

United Voice welcomes the opportunity to make a submission on behalf of our members to the Australian Government's review of the Working Holiday Maker (WHM) visa programme.

Several of United Voice's industries of coverage such as hospitality, cleaning, in-home child care (au pairs) and aged care, have a concentration of low-paid, insecure jobs characterised by a combination of high levels of contracting, labour hire, and informal work. They are industries that numerous investigations have exposed as being home to the systematic contravention of workplace laws and employment standards. Significantly, for the purposes of this review, these are industries that employ high numbers of working holiday maker visa holders.

United Voice considers that the scale of exploitation of WHMs working in Australia is unacceptable and that measures need to be taken to reverse it. The lack of regulation, monitoring and enforcement that characterises this visa subclass also has a flow-on effect on local workers who are already working or seeking to work in these industries: the oversight deficit drives down wages and conditions and even normalises below-award rates of pay. As the recent Senate Inquiry report *A National Disgrace* has made clear, the exploitation of visa holders and the downgrading of pay and conditions on a broader scale are two sides of the same coin.<sup>1</sup> United Voice is attuned to the impact that certain employers' refusal to pay legal wages has on employers who abide by the National Employment Standards (NES). Compliant employers find themselves unable to compete with their non-compliant counterparts.

United Voice believes that improving protections for workers and compliance by employers requires tripartite consultation and action from government, industry and unions. The unilateral imposition of a harsh tax regime on WHMs, while unlikely to raise the anticipated \$540 million in additional tax revenue, does have the potential to increase the vulnerability of all workers at the low-paid end of the market. We consider this policy to be inconsistent with the bi-partisan election commitment made this year to address the issue of worker exploitation.<sup>2</sup>

United Voice will make a number of recommendations that are grouped around the following notions:

- The WHM programme is a cultural exchange programme.
- The 'backpacker tax' is neither fair nor consistent with Australia's tax system.
- There are regulatory obstacles and solutions to curbing the exploitation of WHMs.
- Employer compliance must be improved by boosting monitoring and enforcement.
- Where exploitation does occur, the government should remove obstacles to WHMs seeking justice.

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<sup>1</sup> The Senate – Education and Employment References Committee (2016) *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

<sup>2</sup> The Liberal Party of Australia (2016), *The Coalition's Policy to Protect Vulnerable Workers*; Labor (2016) 'Protecting Fights at Work Fact Sheet' and 'A Fairer Temporary Work Visa System Fact Sheet', *100 Positive Policies*.

## Summary of recommendations

1. *The WHM programme should be restored to its original purpose as a cultural exchange - brought into an appropriate size and consistently capped*
2. *Use the Seasonal Worker Program rather than the WHM programme for genuine seasonal labour shortages in regional Australia*
3. *Withdraw plans to impose a higher tax regime on WHMs*
4. *Provide funding to unions to enable them to engage in monitoring and compliance work*
5. *Allow access of WHM visa holders to the Fair Entitlement Guarantee*
6. *Institute a national labour hire licensing and compliance system*
7. *Prohibit persons on the WHM from obtaining and using an ABN*
8. *Remove obstacles to seeking justice, including allowing alleged victims to remain in the Australian community whilst civil and/or criminal claims are resolved.*

## The WHM programme as a cultural exchange

### Re-focusing the WHM programme

United Voice is concerned that over the past ten years the WHM programme has gradually shifted away from its purpose to encourage 'cultural exchange and closer ties between countries, by allowing young people to have an extended holiday, and supplement their funds with short-term employment.'<sup>3</sup> In practice, and without substantive consultation, the programme has increasingly taken the form of an obfuscated guest-worker program that gives industry free and unregulated access to a low-paid and socially precarious rotating workforce. At the same time, it allows the government to maintain the façade that Australia's migration intake is predominantly a highly skilled one with pathways to citizenship.

While the number of WHM visas granted has declined slightly in the last few years, with 214,830 visas granted in 2014-15, the previous decade saw unrestricted growth that took Australia's WHM visa grant numbers from 85,207 in 2001-02 up to a peak of 258,248 in 2012-13 – a 300% increase over the course of a decade.<sup>4</sup> This extraordinary growth in the number of visas granted by the Department of Immigration and Border Protection (DIBP) is openly vaunted by the horticulture and tourism industries as a response to what those industries deem to be endemic labour supply shortages in low-skilled occupations. The modification of this cultural exchange visa to essentially function as an uncapped, barely regulated low-skilled work visa has not been explicitly acknowledged by Government, nor has it been the subject of any tripartite discussion. It is now such a big program that monitoring and enforcing employer compliance has become a gargantuan task that remains insufficiently resourced.

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<sup>3</sup> Australian Government / Department of Immigration and Border Protection (2016) 'Fact sheet – Working Holiday visa programme'. Accessible at: <http://www.border.gov.au/about/corporate/information/fact-sheets/49whm>

<sup>4</sup> Department of Immigration and Border Protection (DIBP) (2015) *Working Holiday Maker visa programme report*, 31 December 2015, p. 18.

United Voice does not dispute that short-term labour shortages can exist in certain industries, particularly seasonal ones, and in certain geographical locations. We do, however, dispute that there is entirely insufficient local labour supply to do this work. The high unemployment rates in a number of regional areas with high use of WHM labour, combined with the low pay and conditions on offer in these industries and some employers' preference for an un-unionised workforce with limited knowledge of prevailing employment standards, suggest that a certain level of substitution is occurring.

United Voice is concerned that cries of 'labour shortages' are being uttered disingenuously by employers in ways that distort the local labour market. The much-touted unmet demand for seasonal labour can actually mask the abuse of WHMs by unscrupulous agents who leverage the mandated 88 days in a regional area as a condition for a second visa in order to financially wedge young workers. Underhill and Rimmer argue that 'false job vacancy information is endemic' in the agriculture sector.<sup>5</sup> They examined the phenomenon of hostels in small country towns attracting WHMs on the promise of finding them agricultural or horticultural work in exchange for booking into the hostel for a month. Half of the backpackers who participated in the study had had the experience of being enticed to the Northern Territory, Queensland or rural Victoria on the promise of work; they had paid a month's rent at the hostel upfront; and they had waited around for weeks for a day's work.<sup>6</sup>

If the WHM programme is to be restored as a cultural exchange, and if employer compliance is to be achieved, it is necessary to refocus the regulations for visa subclasses 417 (which is open to people with passports from Belgium, Canada, Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong, Republic of Ireland, Italy, Japan, Republic of Korea, Malta, Netherlands, Norway, Sweden, Taiwan, and the United Kingdom) and 462 (which is open to people with passports from Argentina, Bangladesh, Chile, Indonesia, Malaysia, Poland, Thailand, Turkey, the United States, and Uruguay and include education requirements). One part of the solution consists in placing consistent caps on the two visa subclasses.

Australia currently has an inconsistent system of caps on the number of visas granted to citizens of individual countries. The 417 subclass has no caps for any countries, whereas the 462 subclass has caps for certain countries but not others. Other comparable countries with a working holiday visa programme such as the UK, the United States, and Canada adapt the number of working holiday visas granted each year to conditions in the labour market so as not to unduly affect local workers' capacity to obtain employment. Before adopting the domestic labour market conditions model, however, Australia's WHM programme should be brought right back down to a manageable size that corresponds more realistically to the resources available to monitor and enforce compliance. As a point of comparison, in 2014, when Australia was taking 214,830 WHMs, there were 170,000 J-1 visa holders present in the USA under the Summer Work Travel Program; In Canada, the 'International

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<sup>5</sup> Underhill, E. and M. Rimmer (2015) 'Layered vulnerability: Temporary migrants in Australian horticulture', *Journal of Industrial Relations*, 0:0, p. 11.

<sup>6</sup> Underhill, E. and M. Rimmer (2015) p. 11.

Experience Canada's visa programme comprised 54,900 participants in 2011; and the UK's working holiday visa programme had 16,100 participants in 2011.<sup>7</sup>

Aside from allowing for more adequate levels of monitoring and enforcement, decreasing and capping the currently bloated WHM programme will also provide opportunities and incentive to improve job quality in industries such as hospitality, which will in turn assist in the creation of a sustainable workforce into the future.

➔ Recommendation 1: *The WHM programme should be restored to its original purpose as a cultural exchange - brought into an appropriate size and consistently capped*

### **The Seasonal Worker Programme as the primary visa response to genuine seasonal labour shortages**

In response to expected resistance to the proposed reduction of the WHM programme, United Voice recommends more extensive use be made of the Seasonal Worker Program (SWP). A recent review of the SWP found that the WHM programme is in direct competition with the SWP.<sup>8</sup> This is for good reason: the SWP contains worker protections that are absent from the WHM programme, such as pre-departure briefings about workplace rights and government approval of employers. This is not to say that exploitation does not occur in the SWP, with evidence of problems with unreasonable deductions for transport and accommodation and below-award piece rates being reported by the National Union of Workers (NUW).<sup>9</sup> The SWP, like all of our visa programmes, requires a higher level of monitoring, enforcement and worker protection. It remains, however, a 'safer' visa programme than the WHM for seasonal work performed in regional areas.

While the SWP was until recently capped at 8,000 visas/year, the government uncapped it in 2016 in response to the review of the programme. United Voice considers that the SWP should be the primary means through which employers in agriculture fill seasonal labour shortages Australia-wide. We also recommend that it be the primary pathway for the accommodation sector to recruit seasonal workers in Northern Australia, as the new rules now allow.<sup>10</sup> The potential of the SWP to be the default visa for seasonal labour needs that are not met by the local workforce was highlighted by a review of the Pacific Seasonal Workers Pilot Scheme (predecessor to the SWP) in 2011, which

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<sup>7</sup> Department of State (USA) (n.d.) 'Facts and Figures – 2014 Participants', *J-1 Visa Exchange Visitor Program*; Berg, L. (2015) *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour*, Routledge, p. 103.

<sup>8</sup> Joint Standing Committee on Migration / Parliament of the Commonwealth of Australia (2016) *Seasonal change: Inquiry into the Seasonal Worker Programme*, Canberra, May 2016.

<sup>9</sup> National Union of Workers (NUW) (2015) *Submission of the National Union of Workers*. Inquiry into the Seasonal Worker Programme.

<sup>10</sup> Australian Government (2016) *Seasonal Worker Programme expansion – Q & A*. Accessible at: [https://docs.employment.gov.au/system/files/doc/other/expansion\\_of\\_the\\_seasonal\\_worker\\_programme\\_-\\_faqs.pdf](https://docs.employment.gov.au/system/files/doc/other/expansion_of_the_seasonal_worker_programme_-_faqs.pdf)

found that ‘Pacific Island seasonal workers could meet the seasonal labour demands for the horticulture industry.’<sup>11</sup>

United Voice recommends that the SWP be employed for genuinely seasonal work, not for year-round professions such as aged care, disability care, and child care as the 2016 review of the SWP has explicitly called for.<sup>12</sup>

➔ Recommendation 2: *Use the Seasonal Worker Program rather than the WHM programme for genuine seasonal labour shortages in regional Australia.*

## Discard the ‘backpacker tax’

The tax-free threshold which currently stands at \$18,200 and the lower tax rate of 19% for income earned between \$18,201 and \$37,000 are integral components of Australia’s progressive taxation system that has been in place for a century. They contribute towards fairness in our taxation system by guaranteeing that the lowest-earning workers have a correspondingly lower tax burden.<sup>13</sup> The tax-free threshold has long been available to WHMs who reside in Australia for more than 183 days, and it remains available to other visa subclasses such as the 457 visa and the student visa.<sup>14</sup>

When one considers that the average annual earnings for WHMs are approximately \$13,300, the unfair nature of this tax is striking.<sup>15</sup> If implemented, the backpacker tax will result in a legal minimum hourly wage for WHMs of \$11.94.<sup>16</sup> This is a sum that invites comparison with the illegal rates recently revealed to have been paid to 7-Eleven workers. It also elicits the question of how the government proposes to promote employer compliance with the Fair Work Act in general when it normalises such low wages for one class of workers.

The government’s proposed differential tax regime for WHMs ostensibly has the purpose of raising an additional \$540 million in revenue – a figure arrived at by the Treasury by determining ‘the difference between WHMs’ tax liabilities under non-resident and resident tax rates.’<sup>17</sup> This is a somewhat crude economic calculation that ignores the predictable impacts of increases to informal work and reduction in WHM visa application numbers.

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<sup>11</sup> Cited in *Seasonal change* (2016), p. 23.

<sup>12</sup> *Seasonal change* (2016), p. viii.

<sup>13</sup> Australian Government (2015) *Budget 2015: Fairness in Tax and Benefits*.

<sup>14</sup> Steen, A. and V. Peel (2015) ‘Economic and social consequences of changing taxation arrangements to working holiday makers’, *Journal of Australian Taxation*, 17:1.

<sup>15</sup> Tourism Research Australia (2016) cited in fact sheet for the present review. Accessible at: <http://www.agriculture.gov.au/SiteCollectionDocuments/ag-food/working-holiday/working-holiday-visa-review-summary.pdf>

<sup>16</sup> Calculated on the basis of the current value of the national minimum wage - \$17.70/hour. Fair Work Commission (2016) *National minimum wage order 2016*.

<sup>17</sup> Senate Economics Legislation Committee, Answers to Questions on Notice, Treasury Portfolio Budget Estimates 2014-15, Question: BET 124-144, 12 June 2015 [cited in Steen, A. and V. Peel (2015), p. 244.]

In contrast, the recent Senate Inquiry into temporary work visas expressed the Committee's concern that the backpacker tax would create a 'perverse incentive for WHMs to seek cash in hand work to avoid a high tax regime, and for employers to offer a below the award cash rate to WHMs.'<sup>18</sup> A range of civil society actors and academics have raised the alarm at the risk this policy creates.<sup>19</sup> Higher rates of undeclared work will foreseeably yield less – not more – tax revenue from WHMs.

Aside from the revenue issue, informal work inevitably denies workers proof of the hours they have worked and proof of the wages they have received, making it difficult for workers to fight wage theft and other employer transgressions they may be subjected to.

United Voice supports WHMs' eligibility to be treated as residents for tax purposes and therefore be accorded the same tax-free threshold as citizens, permanent residents, and workers on other visa types. We do not support any of the 'compromise' policies put forward by the National Farmers' Federation (NFF) and other industry bodies, such as a flat tax rate of 19%.<sup>20</sup> We also ask the government to consider that WHMs, like other low-income workers, contribute to government revenue by paying GST, as well as through payment of a visa application fee of \$440.<sup>21</sup> From a broader economic perspective, WHMs typically spend more in Australia than they earn. The latest available figures supplied by the then Department of Immigration and Citizenship in 2009 found that WHMs spent on average \$13,218 over an average stay of eight months.<sup>22</sup>

➔ Recommendation 3: *Withdraw plans to impose a higher tax regime on WHMs.*

## Improving employer compliance and protecting WHMs against exploitation

### The exploitation of WHMs

WHMs' experience of work in Australia frequently does not benefit the sentiment of cultural exchange. All too often, working at the lower paid end of the market, young backpackers from around the world are exposed to illegal employment practices by employers seeking to cut their labour costs.

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<sup>18</sup> The Senate – Education and Employment References Committee (2016) *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016, p. 199

<sup>19</sup> Cf. Statement endorsed and sent to MPs by United WHY (HKWHY, KOWHY, T-WHY), United Voice, Shop Distributive and Allied Employees Association (SDA), National Union of Workers (NUW), The Freedom Partnership – to End Modern Slavery (Salvation Army), Asian Women at Work, Asian Australian Alliance, Dr Laurie Berg (UTS, Faculty of Law), Prof. Nicola Piper (Sydney Asia Pacific Migration Centre at the University of Sydney), Dr Bassina Farnemblem (UNSW Law), Associate Professor Stuart Rosewarne (Department of Political Economy at The University of Sydney).

See also Sherrell, H. (2015) 'A story that writes itself: working holiday visas, tax incentives and illegal labour', *Inside Story*. 22 May 2015.

<sup>20</sup> Cf. Mr Tony Maher, Deputy Chief Executive Officer, National Farmers' Federation (2016) *Committee Hansard*, 5 February 2016, p. 1.

<sup>21</sup> DIBP (2016) *Fees and charges for visas*. Accessible at: <https://www.border.gov.au/Trav/Visa/Fees>

<sup>22</sup> DIAC (2009) cited in Steen, A. and V. Peel (2015) 'Economic and social consequences of changing taxation arrangements to working holiday makers', *Journal of Australian Taxation*, 17:1, p. 231.

These experiences can be exacerbated by language and cultural barriers, which can mean that WHMs find it difficult to seek redress when things go wrong.

Notwithstanding this difficulty experienced by WHMs in accessing help, the WHM programme is the source of the highest number of complaints made to the Fair Work Ombudsman. The FWO reported that in 2014-15 WHMs made up the largest group of overseas workers submitting dispute forms (43%), with 26% of matters finalised relating to the accommodation and food services sector.<sup>23</sup>

WHMs working in hospitality frequently approach United Voice complaining of issues such as underpayment, non-payment, unfair dismissal, and excessive wage deductions for insalubrious accommodation. These workers are not given pay slips by their employers, and when they do get paid, it is cash in hand. United Voice's observations are by no means an aberration, with serious abuses being observed and fought on behalf of temporary migrant workers by the NUW in the horticulture industry and the AMIEU in the meat and poultry industry.

We also note increasing evidence that wages for WHMs are being set according to skin colour and country of origin. For instance, the FWO has recently run cases against the operators of Mamak restaurants who took it upon themselves to conduct 'informal market research' in order to determine the 'going rate for Korean workers', settling on \$11/hour; similar 'research' was undertaken by a cleaning contractor in Sydney, who arrived at \$15/hour.<sup>24</sup> Both operators were able to underpay workers without scrutiny for several years before being caught.

It was also recently reported to United Voice that at one Bondi restaurant, white, Australian-born staff are paid the award, while white western-European and Latin American staff are paid off the books at \$4/hour less, and Asian staff are paid a further \$2/hour less. If such breaches to Australian workplace and discrimination laws can occur in the metropolitan electorate of Wentworth, how can compliance be expected in out-of-sight rural and regional locations without allocating far greater resources to monitoring and enforcement?

### **Improving compliance and regulation**

United Voice represents workers in some industries that are riddled with non-compliance, namely cleaning and hospitality. Legal scholar Joo-Cheong Tham has stated that in these industries 'breaches of labour laws are not exceptions; it is the everydayness of exploitation that prevails.'<sup>25</sup>

United Voice recommends the government commit greater resources to monitoring and enforcing employers' compliance in high-risk industries. This will be more effective than simply increasing the value of penalties that are only handed down to the minority of unscrupulous employers that are caught. Government should consider working with unions that already have networks of

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<sup>23</sup> Fair Work Ombudsman (2015) *Annual Report 2014-15*, 39-40.

<sup>24</sup> Fair Work Ombudsman (FWO) (2016) *Malaysian restaurant operators penalised almost \$300,000 after paying staff \$11 an hour*, Media release, 19 August 2016; FWO (2016) *Korean backpackers short-changed*, Media release, 3 August 2016.

<sup>25</sup> Tham, J.-C. (2016) '7-Eleven is the tip of the iceberg in worker exploitation. So who's turning a blind eye?', *The Guardian*, 12 May 2016.



relationships with workers in these industries. Funding should be provided by government to unions to undertake investigation and compliance work.

Aside from the evident compliance issues, there is a patent regulation deficit – or mismatch – that is facilitating worker exploitation in the WHM programme.

In the current system, there is minimal regulatory protection for WHM visa holders. To the contrary, the regulations that circumscribe backpackers' work rights are mostly of a prohibitive order – placing the bulk of responsibility on these young workers rather than on employers. WHM visa regulations place workers in precarious forms of employment in isolated locations with minimal access to assistance if they experience exploitation. They generally cannot work for the same employer for more than six months, and they cannot access a second year visa unless they go and work in specific areas and industries for a period of three months. While they are subject to these restrictions, WHMs are not eligible to access standard worker protections available to permanent residents and citizens such as the fair entitlements guarantee (FEG) if their employer goes into liquidation without paying them.<sup>26</sup>

There are several ways to immediately improve the protection of WHMs against underpayment and other forms of labour exploitation and slavery-like practices. These include instituting a national labour hire licensing system, removing the use of Australian Business Numbers (ABNs) from the WHM programme, and removing obstacles to exploited workers seeking justice.

In the context of several state government inquiries into abuses in the labour hire industry, in addition to the prominent place they received in the Senate Inquiry, there have been resounding calls for the creation of a national licensing system for labour hire companies.<sup>27</sup> Labour hire has been at the origin of some of the most blatant and systematic exploitation of WHMs that has come to light in recent years. Unions, NGOs, and backpacker advocacy groups have made repeated calls for a national registration system to be put in place in order to counteract the exploitation of workers and occasional involvement of these structures in human trafficking and slavery networks. At present it is currently almost impossible for the FWO and unions to identify the labour hire companies that employ workers. Through the use of fictitious registered addresses and habitual phoenixing, these employers exploit migrant workers with impunity. When unions can make contact with these workers, the labour hire company typically and illegally dismisses the workers, and/or phoenixes.

A licensing system would mitigate the risk of such events occurring and would level the playing field for compliant labour hire companies by including features such as:

- Companies will have to demonstrate compliance with the FWA, the Migration Act, OH&S laws and superannuation and tax responsibilities.
- Public register of all licensed labour hire companies.
- Mandatory compliance auditing by the FWO

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<sup>26</sup> This exception is extended to other visa workers.

<sup>27</sup> Queensland Parliament (2015-16) *Inquiry into the practices of the Labour Hire Industry in Queensland*; Victoria State Government (2015-16) *Inquiry into the Labour Hire Industry and Insecure Work*; Parliament of South Australia / Economic and Finance Committee (2015-16) *Inquiry into labour hire practices*.

WHMs participating in a cultural exchange are in Australia to combine travel and work, not to start businesses. And yet rather than working as employees, many WHMs are working as contractors for employees who either do not understand, or do not respect the fundamental differences between the two. Sham contracting is also a significant factor in the underpayment of WHMs, with employers requiring workers to obtain an ABN and be classified as contractors despite in fact being employees. Through sham contracting, employers are able to evade their responsibilities including paying minimum wages, penalty rates, sick leave and annual leave (or casual loadings as the case may be) and superannuation. The workers are also often left with a debt to the tax office, not knowing that their contractor status required them to pay tax directly out of their earnings. If WHMs were ineligible to apply for an ABN, egregious cases such as cleaning company Grouped Property Services' underpayment of 51 employees to the tune of \$327,111 would occur less readily, saving visa workers the experience of exploitation and sparing our courts of costly legal proceedings.<sup>28</sup>

- ➔ Recommendation 4: *Provide funding to unions to enable them to engage in monitoring and compliance work*
- ➔ Recommendation 5: *Allow access of WHM visa holders to the Fair Entitlement Guarantee*
- ➔ Recommendation 6: *Institute a national labour hire licensing and compliance system*
- ➔ Recommendation 7: *Prohibit persons on the WHM from obtaining and using an ABN*

### **Obstacles to seeking justice**

A serious issue of concern for United Voice is the legal difficulty WHMs encounter when they seek justice for underpayment and other forms of exploitation.

There is strong evidence to show that unscrupulous employers frequently compel their employees to breach the conditions of their visa in order to retain them in an exploitative work relationship. This has been seen to occur repeatedly with the student visa program (subclass 500), for instance with the 7-Eleven case unveiled through the Fairfax and 4 Corners investigation, where franchisees compel international students to work more than 40 hours/fortnight through coercion and often by paying them around half of the minimum rate through the cash-back scam so that they have to work additional hours in order to meet their basic needs.<sup>29</sup> This breach of the maximum hours rule is then held over student visa holders in the form of a threat to report them to the DIBP if they protest.

In a similar vein, WHMs can find themselves in breach of their visa conditions through coercion and fraud on the part of an employer, such as through the 88-day regional work condition for the second visa, or through the widespread use of informal work and sham contracting. Threats of being reported to the DIBP function well to compel the silence and acceptance of exploitation by WHMs and other visa holders.

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<sup>28</sup> AustLII (2016) *Fair Work Ombudsman v Grouped Property Services Pty Ltd* [2016] FCA 1034 (26 August 2016). Federal Court of Australia.

<sup>29</sup> Ferguson, A. (2015) *7-Eleven: The Price of Convenience*. Joint Fairfax and 4 Corners report. 31 August 2015.

Passport confiscation, threats, debt bondage, psychological oppression, sexual assault are also part of the arsenal of employers who exploit visa workers, including WHMs, with many of these acts being consistent with the Australian Criminal Code's amendment to the description of slavery and slavery-like practices (sections 270 and 271).<sup>30</sup>

While there are discretionary provisions in place to offer a temporary right of stay to workers who are in breach of their visa conditions whether they are found by the authorities or whether they come forward of their own initiative, their discretionary rather than systematic nature is problematic. The lack of a guarantee that exploited workers will not be expeditiously deported poses a sizeable obstacle to getting workers to come forward.

There are still far too many instances of exploited workers being detained and deported before their civil and sometimes criminal claims can be investigated. For instance, as recently as the 24<sup>th</sup> of August 2016, the Minister for Immigration and Border Protection released a statement detailing Taskforce Cadena's detention of 34 Malaysian workers at Villawood detention centre in preparation for their deportation despite an acknowledgement that the workers displayed 'indicators of exploitation.'<sup>31</sup>

United Voice objects to detention and deportation remaining a standard response to migrant worker exploitation, and recommends the government enact a more ethical victim-centred response that acknowledges that the relationship between visa breaches and exploitation is complex. Such a response would include according a right of stay while civil and criminal claims against employers can be dealt with.

➔ *Recommendation 8: Remove obstacles to seeking justice including allowing alleged victims to remain in the Australian community whilst civil and/or criminal claims are resolved.*

*In addition to the recommendations made in this submission, United Voice broadly endorses the Australian Council of Trade Unions' (ACTU) submission.*

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<sup>30</sup> AustLII (2012) 'Crimes legislation amendment (slavery, slavery-like conditions and people trafficking) Bill 2012.

<sup>31</sup> Peter Dutton / Minister for Immigration and Border Protection (2016) 'Taskforce Cadena detain thirty four individuals', Media release, 24 August 2016; Burley, E. (2016) 'Border Force detains 34 illegal Woolgoolga workers', *The Coffs Coast Advocate*, 24 August 2016.