

Submission  
No 25

**INQUIRY INTO MODERN SLAVERY RISKS FACED BY  
TEMPORARY MIGRANT WORKERS IN RURAL AND  
REGIONAL NEW SOUTH WALES**

**Organisation:** Employment Rights Legal Service

**Date Received:** 27 February 2025

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27 February 2025

Modern Slavery Committee  
Parliament of New South Wales  
6 Macquarie Street  
Sydney NSW 2000

Dear Modern Slavery Committee,

**Inquiry into modern slavery risks faced by temporary migrant workers in rural and regional New South Wales**

The Employment Rights Legal Service thanks the Modern Slavery Committee and the Parliament of New South Wales for the opportunity to provide a submission to the inquiry into modern slavery risks faced by temporary migrant workers in rural and regional New South Wales (**'the Inquiry'**).

**Acknowledgement**

We wish to pay our deepest respect to Aboriginal and Torres Strait Islander Peoples as the traditional custodians of the lands and waters on which we work and live, and acknowledge that their sovereignty has never been ceded. We acknowledge the wisdom and strength of Aboriginal and Torres Strait Islander people. We are committed to fostering a culture of sharing knowledge and showing solidarity to support self-determination for Aboriginal and Torres Strait Islander peoples.

**The Employment Rights Legal Service**

The Employment Rights Legal Service (**'ERLS'**) is a joint initiative of the Inner City Legal Centre, Kingsford Legal Centre and Redfern Legal Centre, providing clients across New South Wales with free employment law advice and representation. ERLS aims to address and remove the systematic barriers that prevent access to justice and allow for the exploitation of workers across the state.

**The Inquiry**

The Anti-Slavery Commissioner of New South Wales' report, *Be Our Guests: Addressing urgent modern slavery risks for temporary migrant workers in rural and*

*regional New South Wales*,<sup>1</sup> first published in September 2024, notes that there is an increasing urgency to address modern slavery risks faced by temporary migrant workers, particularly those in rural, regional and remote settings, earning low wages and based in industries such as agriculture, horticulture and meat processing.<sup>2</sup> These risks include debt bondage, deceptive recruiting, forced labour, servitude including sexual servitude or even human trafficking.<sup>3</sup>

Based on the issues identified in the report, we understand that the Inquiry aims to understand the incidence, causes and extent of these risks, and whether there are any potential opportunities for legislators in New South Wales to increase protections and safeguard rights for temporary migrant workers. We also understand that the Inquiry will also consider resourcing needs among frontline organisations, service providers and community groups who often support temporary migrant workers.

### **1. Modern slavery in Australia, and the susceptibility of temporary migrant workers to workplace exploitation and modern slavery.**

Modern slavery is often used as a ‘catch-all’ term to describe the violations of workplace rights and entitlements, as well as the unsafe, inadequate living and social conditions, experienced by workers in Australia. Examples of these unsafe conditions and violations can be:

- significant underpayment of wages;
- dangerous working conditions resulting in a higher incidence of workplace injury;
- excessive or unreasonable deductions from pay;
- charging overpriced rent for substandard accommodation;
- limiting access to support services, particularly for workers requiring healthcare or experiencing gender-based violence; and
- an isolated, insecure workforce.

Temporary migrant workers are more likely to experience modern slavery, in comparison to other Australian workers. Modern slavery is more prevalent in industries such as agriculture, horticulture and meat processing. This occurs for a number of reasons, including a reliance on working holiday makers and undocumented workers, particularly through unregulated labour hire companies. For example, it is estimated that fifteen to thirty percent of working holiday makers are employed in food

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<sup>1</sup> Office of the Anti-Slavery Commissioner, Parliament of New South Wales, *Be Our Guests: Addressing urgent modern slavery risks for temporary migrant workers in rural and regional New South Wales* (Report, September 2024) (*‘Be Our Guests’*).

<sup>2</sup> Ibid, 7.

<sup>3</sup> Ibid, 5.

production, and as of December 2024, 5,130 PALM workers resided in New South Wales, of which the majority work in meat processing, with a notable representation in the agriculture sector as well.<sup>4</sup> Other factors appear to be the seasonality of employment in those industries, which incentivises workers intending on short stays and working holiday makers; visa settings; and a lack of knowledge about workplace rights.

The dispersal of these industries occurs widely across the country, and more specifically, across rural and regional New South Wales, given the physical and geographical range required for operations in these industries to function properly. This remoteness, combined with little regulation over most temporary migrant workers (including mechanisms in which they may be engaged), means monitoring and enforcing non-compliance in these industries is problematic.<sup>5</sup>

Visa conditions and restrictions result in precarious stays for temporary migrant workers in Australia, often tying them to their employers, which can augment the chances of these workers experiencing exploitation. The effect of underpinning an employment relationship through a visa allows unscrupulous employers to leverage and capitalise on workers' fears that raising concerns of exploitation or abuse might result in retaliation from their employers or even the Federal Government, as well as their visas being cancelled.

## **2. Access to information and knowledge of workplace rights and entitlements and relevant support services**

In our experience, there are significant barriers to migrant workers accessing information about their workplace rights and entitlements, and accessing relevant support services. This is especially the case for temporary migrant workers based in rural and regional New South Wales. Given the isolation inherent in those areas, temporary migrant workers are less likely to be cognisant of their workplace rights, unaware of appropriate avenues for redress, or have little to no access to community or culturally appropriate support services to assist them. These workers are often unaware of what minimum wage they should be earning, what leave entitlements they are able to access, whether they should be paid superannuation, and what protections are available to them under federal and state legislation.

### **Case Study**

<sup>4</sup> Pacific Australia Labour Mobility, 'PALM Scheme Data' (Web Page) <<https://www.palmscheme.gov.au/palm-scheme-data>>, accessed 21 February 2025.

<sup>5</sup> *Be Our Guests* (n 1) 7.

Donna\* was employed on a refugee visa, cleaning abattoirs in regional New South Wales for a period of five years. Donna believed there were issues with her pay, but was unable to particularise these issues until she received advice from ERLS. Our lawyers advised her that she had not been paid penalty rates or overtime as required under the Award, despite regularly working six days a week, until midnight. Until receiving advice, Donna had been unaware that the Award even applied to her. ERLS assisted Donna to recover her unpaid wages.

Much of this is due to an absence of readily accessible, culturally appropriate and in-language programs and information that allow temporary migrant workers to learn and understand their workplace rights and entitlements. It also extends to an absence of knowledge of avenues and services where temporary migrant workers can seek assistance. ERLS has attempted to remedy this by creating materials about workplace rights and protections in a variety of languages, as have other organisations like the Fair Work Ombudsman (**'FWO'**) and SafeWork NSW. As a statewide service, ERLS also prioritises temporary migrant workers experiencing exploitation in rural and regional New South Wales.

However, the remoteness of work done by many temporary migrant workers and a lack of skilled interpreters in these settings and areas means more direct outreach is required to provide meaningful and productive assistance to these communities, of which many organisations are unable to facilitate due to inadequate resourcing and funding.

### Recommendations

1. That the NSW Government provide additional funding to community legal centres, particularly the Employment Rights Legal Service, to provide increased advice and representation services to temporary migrant workers in rural and regional New South Wales.
2. That the NSW Government provide additional funding to community legal centres to create, translate and update more resources and fact sheets into a variety of languages, for the purposes of improving migrant workers' knowledge of workplace rights and entitlements.
3. That the NSW Government provide additional funding to community legal centres, particularly the Employment Rights Legal Service, to coordinate and provide a direct and accessible Community Legal Education and outreach program to temporary migrant workers, community workers, and workers in

- support services in rural and regional New South Wales, in order to raise awareness of and prevent workplace exploitation.
4. That SafeWork NSW ensure that its content, specifically any resources available to workers in New South Wales, is equally available in languages other than English.
  5. That the NSW Government provide additional funding to community legal centres, unions and other organisations regularly interacting with and servicing temporary migrant workers to engage interpreters from languages represented among temporary migrant worker groups in rural and regional New South Wales.
  6. That the NSW Government undertake a widespread campaign of educating temporary migrant workers on their workplace rights and entitlements, and what exploitation and modern slavery looks like in practice, with a focus on direct outreach to rural and regional New South Wales.

### **3. The facilitation of exploitation and modern slavery through other socio-cultural factors.**

The troubling conclusion of the above is not only that a group of disadvantaged workers are not provided with the resources to handle or resolve workplace exploitation, but also that for these workers, their employer becomes their only source of information. This creates an over-dependence between a worker and their employer, particularly after these workers have already expended significant amounts in upfront visa and migration costs, and only widens the existing power imbalance in an employment relationship.

In our experience, this over-dependence is often the source of workplace exploitation escalating or becoming aggravated, for example, when temporary migrant workers are pressured to work in ways that breach their visa conditions, or a reluctance to leave exploitative situations for fear of not finding alternative employment and losing their visa.<sup>6</sup> While this reluctance applies to most temporary migrant workers, it causes PALM workers greater strife given additional requirements on workers concluding placements or seeking agreement from employers who are exploiting them.<sup>7</sup>

It is important to note that these workers generally have no other option but to place a significant amount of trust in their employer, as they are often tied to their employers

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<sup>6</sup> Parkinson, M, Howe, J and Azarias, J, 2023. Review of the Migration System. Canberra: Department of Home Affairs, 89.

<sup>7</sup> Pacific Australia Labour Mobility, 'Information for approved employers: Transitioning to a PALM long-term position in Australia' (Web Page) < <https://www.palmscheme.gov.au/sites/default/files/2022-07/Transitioning%20to%20a%20PALM%20long-term%20position.pdf>>, accessed 20 February 2025.

in a multitude of contexts, not just as a source of income or a sponsor under a visa; their employers often also provide their only means of transport, shuttling groups of migrant workers to the worksite from employer-provided accommodation, which is often inadequate or uninhabitable and accompanied by exorbitant rents that are deducted from the workers' pay.

### Case Study

We assisted Hank\*, who was employed as a fabricator, on a working holiday visa. After a few months, he noticed that his employer was deducting money from his pay. When he queried this, he was told that these deductions were to pay for his visa application and accommodation, which the employer paid for. In total, his employer had deducted upwards of \$5,000 from his pay. After he resigned and moved to a different job, his former employer sent him an outstanding invoice for accommodation fees. Hank had always been under the impression that his employer had covered the cost of accommodation and visa sponsorship without an expectation for him to pay, and so was deeply hurt and confused when he noticed first, the deductions, and later, received the invoice.

While Hank was informed of the Fair Work Ombudsman's Assurance Protocol and his rights around being paid correctly, he was still wary, given his visa status, of embarking on what seemed like a laborious process to pursue his former employer for the exploitation he had experienced.

\* name changed for confidentiality

The effects of gender-based violence, including sexual harassment, are exacerbated for temporary migrant workers. Research supports these workers being more likely to experience both gender-based violence as well as workplace exploitation,<sup>8</sup> with higher incidence rates in the agriculture sector.<sup>9</sup> This intersection of disadvantage in a cohort of already disadvantaged workers can deepen vulnerability, but also over-dependence placed on employers, again due to limited access to specialised support services like crisis accommodation or adequate healthcare, as well as cultural and language barriers. ERLS has found that not only do migrant workers express reluctance in identifying violence, both personal and work-related, to their employers, but workers also report upon notification, employers facilitating or exacerbating this violence. The

<sup>8</sup> Segrave, M., Wickes, R., Keel, C., & Tan, S. J. (2023). Migrant and refugee women in Australia: A study of sexual harassment in the workplace (Research report, 06/2023). ANROWS, 27.

<sup>9</sup> *Be Our Guests* (n 1) 20.

consequence of this is a decreased willingness to raise concerns around other exploitation in the workplace, in case it leads to further violence or even homelessness or visa cancellation.<sup>10</sup>

### Case Study

ERLS advised Mila\*, a client who is now homeless as a result of workplace exploitation. Mila was employed at a bed and breakfast for over 55 hours per week and was compensation only with a bed to sleep in and meals. She thought this was normal for new workers in Australia, as that is what her employer had explained to her. We estimate her underpayment to be well over \$100,000. Mila was dismissed from employment and her accommodation when she queried her lack of payment. Her matter is ongoing.

\* name changed for confidentiality

### Case Study

ERLS assisted Joyce\*, who was on a student visa, and was employed through a labour hire company to work in regional New South Wales for a host employer. While in regional New South Wales, she was sexually harassed by a worker of the host employer. While she made complaints to her employer as well as the host employer, neither business provided any assistance. Joyce continued to experience an unsafe workplace, fear of subsequent harassment from the perpetrator who was in close proximity to her, lack of any support or action from her employer despite her complaints, and isolation in regional New South Wales, until her employer agreed to arrange for a flight back to Sydney. Initially, she was unwilling to pursue any action against her employer or the perpetrator for fears that her visa may be cancelled.

\* name changed for confidentiality

### Recommendations

7. That the NSW Government introduce legislation to implement a regulatory scheme for labour hire companies, requiring these companies to be licensed in order to operate and recruit temporary migrant workers.
8. That the NSW Government provide additional funding to community organisations, with a focus on healthcare and gender-based violence

<sup>10</sup> *Be Our Guests* (n 1) 19.



services, in rural and regional New South Wales to improve quality and access to support services for temporary migrant workers.

This compounding effect of exploitation that permeates all parts of migrant workers' life provides employers with additional forms of leverage to use against temporary migrant workers in response to genuine concerns around rights, entitlements and working conditions, making it even more difficult for these workers to separate themselves from exploitative employers.

#### **4. Regulatory authorities and their role in investigating and addressing workplace exploitation and modern slavery**

The two main authorities investigating and regulating violations of workers' rights relating to wages, entitlements, and health and safety, are the FWO and SafeWork NSW.

The FWO is the independent regulatory authority armed with educating, assisting, and advising businesses and workers alike, as well as monitoring and enforcing compliance with Australia's industrial relations' laws.<sup>11</sup> Similarly, SafeWork NSW is the workplace health and safety regulator in the state, in charge of investigating and prosecuting incidences of harm and injury in workplaces, and ensuring compliance of businesses with work health and safety laws.<sup>12</sup>

Both are committed to ensuring safe and compliant workplaces across Australia and New South Wales, and in particular in rural and regional areas. Both have powers under legislation<sup>13</sup> to conduct workplace investigations, collect evidence, issue compliance notices, and pursue litigation, including referring for criminal prosecution, where there have been contraventions of workplace laws.

In 2023-2024, the FWO nominated certain priority sectors for investigations and other activities, including the agriculture industry, due to the high risk of worker exploitation, and the likelihood of "transient visa holders" seeking work in the industry.<sup>14</sup> In that financial year, 24% of anonymous reports received by the FWO were received from visa holders and migrant workers; of those, more than 20% were submitted in a

<sup>11</sup> Fair Work Ombudsman, 'Our role and purpose' (Web Page) <<https://www.fairwork.gov.au/about-us/our-role-and-purpose>>, accessed 19 February 2025.

<sup>12</sup> SafeWork NSW, 'Our Strategy' (Web Page) <<https://www.safework.nsw.gov.au/about-us/our-strategy>>, accessed 19 February 2025.

<sup>13</sup> Fair Work Act 2009 (Cth) pt 3-4; Work, Health and Safety Act 2011 (NSW) pt 7.

<sup>14</sup> Office of the Fair Work Ombudsman, *Annual Report 2023-24* (2024) 44.

language other than English, highlighting the need for culturally appropriate resources and reporting mechanisms.

In comparison, SafeWork NSW, in the same period, issued more than 24,500 notices, and commenced 154 legal proceedings to non-compliant workplaces.<sup>15</sup> Dedicated teams carry out compliance and investigations across all industries in the Regional North and Regional South areas.<sup>16</sup> They have also identified temporary migrant workers as a group of ‘at risk’ workers;<sup>17</sup> have identified the need for safe work procedures being translated into appropriate dialects for workers in a particular workplace;<sup>18</sup> and have noted that safety incidents in the agriculture industry are prevalent in comparison to other industries, accounting for one-in-five workplace deaths each year.<sup>19</sup>

However, in our experience, given the breadth of the investigation and enforcement activities undertaken by these bodies, across the state in the case of SafeWork NSW, and across the country in the FWO’s case, it is often difficult for them to maintain an immediate and accessible presence in rural and regional New South Wales.

### Case Study

Ahmed\* worked for under minimum wage on an agricultural property in regional NSW doing farm work. He told us that the work was very unsafe, and he received little to no training on most of the equipment. He was significantly underpaid and made to work excessive hours. Ahmed explained to us that it was very difficult for him to leave and get help as there was no phone reception on the farm. He also worked on the farm during COVID lockdown restrictions, and was told by his employer that he was not able to travel outside the local area. Ahmed did not get help until he left the farm completely and moved to a larger city.

\* name changed for confidentiality

<sup>15</sup> Department of Customer Service, New South Wales, *Department of Customer Service Annual Report 2023-24* (2024) 32-33.

<sup>16</sup> SafeWork NSW, ‘SafeWork NSW harm prevention teams’ (Web Page) <<https://www.safework.nsw.gov.au/safework-nsw-careers/become-a-safework-nsw-inspector/our-harm-prevention-teams>>, accessed 19 February 2025.

<sup>17</sup> SafeWork NSW, ‘At risk workers’ (Web Page) <<https://www.safework.nsw.gov.au/safety-starts-here/mental-health-at-work-the-basics/at-risk-workers>>, accessed 19 February 2025.

<sup>18</sup> SafeWork NSW, ‘Worker injured during agricultural irrigation installation (21 November 2024)’ (Web Page) <<https://www.safework.nsw.gov.au/compliance-and-prosecutions/incident-information-releases/agriculture/worker-injured-during-agricultural-irrigation-installation-21-november-2024>>, accessed 19 February 2025.

<sup>19</sup> SafeWork NSW, ‘Farm safety shouldn’t cost an arm or a leg’ (Media Release, 29 July 2024)

Given the very unique cultural and linguistic needs of temporary migrant workers, a more tailored and personal approach is required from regulatory bodies such as the FWO or SafeWork NSW in terms of investigation and compliance, for which additional training may be necessary. This could include:

- making it easier for people who need interpreters to contact SafeWork NSW. At the moment the person needs to first contact a phone interpreting service (often with long delays and sometimes unsuccessfully), ask for an interpreter in their language and then ask the operator to connect SafeWork. It should be possible to contact SafeWork NSW directly on a multilingual line, so that the person has immediate contact with SafeWork NSW.
- making sure that SafeWork NSW officers make regular and well-promoted “circuits” to regional areas to allow for face-to-face communication by local migrant workers.

Without this, temporary migrant workers have told ERLS that they find it difficult to raise concerns around violations of their entitlements, or unsafe working conditions, with either the FWO or SafeWork NSW, despite best efforts by these organisations. These workers are already struggling with fear and anxiety regarding what consequences of such reports would look like; and so, a more personal, culturally appropriate approach by the FWO and/or SafeWork NSW would go a long way in removing the psychosocial barriers hindering these workers from reporting exploitation. SafeWork NSW and the FWO should consult with migrant communities about the methods and styles of community education that would work best with different migrant groups.

### Recommendations

9. That SafeWork NSW establish a Migrant Worker Taskforce or Unit with the intention of exclusively handling incident notifications involving temporary migrant workers, as well as educating, advising and empowering temporary migrant workers around work, health and safety compliance, with a particular focus on rural and regional New South Wales.
10. That SafeWork NSW inspectors regularly inspect, investigate and monitor businesses in rural and regional New South Wales that are known to engage or recruit temporary migrant workers, including in high risk industries such as agriculture, food manufacturing, horticulture and low-paid, feminised industries.

11. That SafeWork NSW invest in mandatory and regular cultural competence training for inspectors and other staff who may be in direct contact with at risk workers, including temporary migrant workers.

##### **5. aOther services and processes that provide assistance to temporary migrant workers in rural and regional New South Wales.**

The remoteness of rural and regional New South Wales, as well as the resourcing required to adequately cope with the needs of temporary migrant workers, also applies to other support services. It can also be seen in frontline community services and agencies, including in healthcare and community legal centres. Without adequate resourcing, this can have a considerable impact on their presence and ability to investigate and provide proper support, particularly for a cohort of workers who are already disadvantaged by their visa status and lack of English proficiency, and who generally require more tailored and specialised assistance to make access to justice more equitable.

Community legal centres provide free legal advice and assistance to disadvantaged people across New South Wales in a variety of areas, including in employment. With the exception of certain statewide services, including ERLS, most community legal centres are only able to assist those who live in designated catchment areas. A map of these community legal centres and their respective catchment areas shows that there are considerable areas of regional and rural New South Wales that have no community legal centre able to adequately deliver services there, including in Western and Northern New South Wales.<sup>20</sup> ERLS notes historically, there have been significant modern slavery violations in these areas; for example, blueberry farms on the Mid North Coast paying backpackers and other working holiday makers approximately \$3.00 an hour, emphasising the need for there to be adequate services in these areas specifically.<sup>21</sup>

Stakeholders in these areas have discussed with us the genuine struggle this presents for community legal centres, who have insufficient resourcing to provide support and outreach to temporary migrant workers in these areas and are already contending with broad, extensive legal need in their existing catchment areas. Often, they are only able to provide assistance to these workers when they access city centres for other essential services, such as healthcare due to an inability to access Medicare or afford

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<sup>20</sup> Randell, S. & Brooke, H. (2018). 'Mapping catchments and identifying gaps.' (Conference Paper, National CLCs Conference, 29 August 2018).

<sup>21</sup> Caroline Riches, 'Calls for a royal commission after report reveals backpackers paid \$3 an hour on NSW blueberry farms', *SBS* (online, 4 December 2020) <<https://www.sbs.com.au/news/article/calls-for-a-royal-commission-after-report-reveals-backpackers-paid-3-an-hour-on-nsw-blueberry-farms/8ijwmt7p9>>.

private health insurance, which are equally unavailable in areas where temporary migrant workers are likely to be located. This results in a significant proportion of temporary migrant workers in rural and regional areas not being assisted or supported with genuine experiences of workplace exploitation and modern slavery, and more generally, increasing the likelihood of legal and social need not being addressed for this group of workers.

### Case Study

We assisted Dawn\* who had been working as a fruit picker in rural New South Wales and had experienced a significant underpayment through her employer miscalculating piece rates under the Horticulture Award. While Dawn was a citizen, she observed that most of her fellow pickers were employed on a visa and lived on the farm. When she raised the underpayment issue initially with her employer, her employer threatened all the pickers that they could either be paid what the employer was willing to pay or they could find another job, including alternate accommodation. As expected, very few besides Dawn were willing to push back or continue to raise issues over their pay afterwards.

\* name changed for confidentiality

Some processes and strategies have been put in place to enable migrant workers to safely report exploitation and modern slavery. For example, prior to 1 July 2024, the Assurance Protocol, established between the Department of Home Affairs and the Fair Work Ombudsman in 2017, provided an amnesty from visa cancellation to workers who had breached their visa conditions due to workplace exploitation, as long as those workers approached the Fair Work Ombudsman for assistance; there was no other reason to cancel the visa; and the worker agreed to follow the conditions of their visa in the future.<sup>22</sup>

Between 2017 and 30 June 2022, only 77 workers had been referred to the Department of Home Affairs under the Assurance Protocol,<sup>23</sup> suggesting that despite its best intentions, the Protocol has been unable to combat the level of exploitation faced by temporary migrant workers. The Grattan Institute notes a number of reasons for the reason why the Assurance Protocol may have not been used to its fullest extent,

<sup>22</sup> Fair Work Ombudsman, 'Visa protections – the Assurance Protocol' (Web Page) <<https://www.fairwork.gov.au/find-help-for/visa-holders-migrants/visa-protections-the-assurance-protocol>>, accessed 19 February 2025 ('Assurance Protocol').

<sup>23</sup> Fair Work Ombudsman, Submission to Review of the Migration System, *A Migration System for Australia's Review* (December 2022) 8[44].

including the lack of formalisation, which may not engender trust in migrant workers; no clear appeal process; the exclusion of those whom the FWO are unable to assist “due to, for example, what they perceive as inadequate evidence or lack of agency resources” and those who pursue the violations of their workplace rights through other means, such as court action or through the Fair Work Commission; and restricting the protection to offences that the FWO can deal with, leaving no recourse for workers who have experienced unsafe working conditions or sexual harassment, for example.<sup>24</sup>

The Assurance Protocol has been paused since 1 July 2024, following the introduction of the Strengthening Reporting Protections and Workplace Justice Visa Pilots.<sup>25</sup> These pilots are intended to strengthen protection available to temporary migrant workers, who are experiencing exploitation and even modern slavery.

The Strengthening Reporting Protections pilot operates similarly to the Assurance Protocol, preventing the Department of Home Affairs from cancelling a worker’s visa due to a breach of the visa’s conditions, as long as the worker is pursuing that breach as a workplace exploitation matter. By contrast, the Workplace Justice Visa pilot seeks to enable workers who have experienced exploitation in the workplace to extend their stay and remain in the country to pursue claims relating to that exploitation against employers, through the obtaining of a six or twelve-month Workplace Justice Visa.

ERLS supports the pilot programs and believes they are necessary in order to counter both the structural and psychosocial barriers preventing temporary migrant workers from reporting or pursuing exploitation by unsavoury employers. These pilots are enshrined in law, which gives a great degree of reassurance to migrant workers who may be wary of the consequences of whistleblowing, but they also give workers agency in how they report and deal with exploitation. They provide alternate pathways of pursuing exploitation rather than strictly through the FWO. The Workplace Justice Visa pilot in particular provides an effective mechanism to incentivise workers to pursue exploitation where they may have otherwise chosen to abandon their claims once having left the country.

### Case Study

ERLS advised Richard\*, who had been employed on a student visa, installing fire safety equipment. He was never given a contract of employment, nor had his employer told him whether he was employed on a part-time or casual basis. By the

<sup>24</sup> Coates, B., Wiltshire, T., and Reysenbach, T. (2023). Short-changed: How to stop the exploitation of migrant workers in Australia. Grattan Institute, 39 (*Grattan Institute Report 2023*).

<sup>25</sup> *Assurance Protocol* (n 22).

time Richard sought advice from ERLS, he had been dismissed by his employer and had already relocated back to his home country, but had continued to face problems with his now ex-employer who was refusing to pay out the annual leave he had accrued while employed.

Our lawyers advised Richard that he appeared to be employed on a casual basis, given the agreement that was reached between him and his former employer at the commencement of his employer. However, while he wasn't entitled to be paid any annual leave on termination, he may have a separate underpayment claim in regard to the casual rate of pay he was entitled to under the relevant Award.

Ultimately, Richard decided that it would be too difficult and onerous to pursue an underpayment claim from overseas, and it would have been different if he had remained in Australia.

\* name changed for confidentiality

A key requirement for workers to receive the benefit of these pilot programs is certification of their workplace exploitation claim by a government agency or an 'accredited third party' ('ATP'). Presently, Redfern Legal Centre, a partner of ERLS, is the only free, non-union legal service in New South Wales that is an ATP; all other ATPs in New South Wales are Unions.

It is important to note that as of August 2024, union membership in New South Wales is at 13%,<sup>26</sup> and research shows that these rates are even lower among migrant workers.<sup>27</sup> It is expected these rates would persist or be less in unions across the agriculture and meat processing industries.<sup>28</sup>

Low rates of union membership have a twofold impact on the scrutiny of exploitative conditions and modern slavery facing temporary migrant workers, given the powers under the *Fair Work Act 2009* (Cth) and the *Work, Health and Safety Act 2011* (NSW) for union officers and officials to enter workplaces for the purposes of investigating suspected contraventions under these laws. Temporary migrant workers may not be able to directly or meaningfully address or call attention to contraventions of their entitlements or unsafe working conditions through unions.

But in respect of the pilot programs, what this means is since July 2024, most migrant workers in New South Wales will only be able to access certification through Redfern

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<sup>26</sup> Australian Bureau of Statistics, *Trade union membership, August 2024* (Catalogue No 6335.0, 9 December 2024).

<sup>27</sup> *Grattan Institute Report 2023* (n 24) 66-67.

<sup>28</sup> *Be Our Guests* (n 1) 13.

Legal Centre, causing an unsustainable workload. Among others, ERLS' other two partner centres, Inner City Legal Centre and Kingsford Legal Centre, have completed the required training and are waiting for the Federal Minister for Home Affairs to approve additional ATPs, without which Redfern Legal Centre will continue to experience an unsustainable workload. The Federal Government has not explained the delay in providing certification to additional community legal centres.

This has and will have a serious impact on the ability of our clients, many of which are based in rural and regional New South Wales, to access free legal advice and assistance to address growing and endemic workplace exploitation.

### **Recommendations**

12. That the NSW Government request that the Federal Government expand the current list of Accredited Third Parties for the Strengthening Reporting Protections and Workplace Justice Visa Pilots, so that temporary migrant workers can benefit from these pilot programs to their fullest extent.

### **Summary of Recommendations**

1. That the NSW Government provide additional funding to community legal centres, particularly the Employment Rights Legal Service, to provide increased advice and representation services to temporary migrant workers in rural and regional New South Wales.
2. That the NSW Government provide additional funding to community legal centres to create, translate and update more resources and fact sheets into a variety of languages, for the purposes of improving migrant workers' knowledge of workplace rights and entitlements.
3. That the NSW Government provide additional funding to community legal centres, particularly the Employment Rights Legal Service, to coordinate and provide a direct and accessible Community Legal Education and outreach program to temporary migrant workers, community workers, and workers in support services in rural and regional New South Wales, in order to raise awareness of and prevent workplace exploitation.
4. That SafeWork NSW ensure that its content, specifically any resources available to workers in New South Wales, is equally available in languages other than English.
5. That the NSW Government provide additional funding to community legal centres, unions and other organisations regularly interacting with and servicing temporary migrant workers to engage interpreters from languages represented



among temporary migrant worker groups in rural and regional New South Wales.

6. That the NSW Government undertake a widespread campaign of educating temporary migrant workers on their workplace rights and entitlements, and what exploitation and modern slavery looks like in practice, with a focus on direct outreach to rural and regional New South Wales.
7. That the NSW Government introduce legislation to implement a regulatory scheme for labour hire companies, requiring these companies to be licensed in order to operate and recruit temporary migrant workers.
8. That the NSW Government provide additional funding to community organisations, with a focus on healthcare and gender-based violence services, in rural and regional New South Wales to improve quality and access to support services for temporary migrant workers.
9. That SafeWork NSW establish a Migrant Worker Taskforce or Unit with the intention of exclusively handling incident notifications involving temporary migrant workers, as well as educating, advising and empowering temporary migrant workers around work, health and safety compliance, with a particular focus on rural and regional New South Wales.
10. That SafeWork NSW inspectors regularly inspect, investigate and monitor businesses in rural and regional New South Wales that are known to engage or recruit temporary migrant workers, including in high risk industries such as agriculture, food manufacturing, horticulture and low-paid, feminised industries.
11. That SafeWork NSW invest in mandatory and regular cultural competence training for inspectors and other staff who may be in direct contact with at risk workers, including temporary migrant workers.
12. That the NSW Government requests that the Federal Government expand the current list of Accredited Third Parties for the Strengthening Reporting Protections and Workplace Justice Visa Pilots, so that temporary migrant workers can benefit from these pilot programs to their fullest extent.

Please let us know if you have any questions about this submission. You can reach the Employment Rights Legal Service at

Yours sincerely,

Yuvashri Harish  
Coordinator

**EMPLOYMENT RIGHTS LEGAL SERVICE**