

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

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

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(in their private capacities)<sup>1</sup>

**28 February 2025**

## **Overview**

We thank the NSW Parliament for this opportunity to submit to its *Inquiry on Modern Slavery Risks* faced by temporary migrant workers in rural and regional New South Wales. We set out our key responses below according to the criteria in the call for submissions and focus on the sexual violence risks these workers face. First, however, we would like to address some fundamental definitional terms.

**Temporary migrant workers** – “Temporary migrant workers are those who work in Australia having entered on temporary work, student or working holiday visas. Three primary schemes permit temporary migrant labour in Australia:

- temporary work visas;
- working holiday visas; and
- student visas” (Australian Institute of Criminology 2019, p8). In this submission we also consider Pacific Australian Labour Mobility Scheme (PALM) visas that are not always included with the Department of Home Affairs’ list of temporary visas.

## **Sexual violence**

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<sup>1</sup> This submission represents our views in a private capacity and not those of the University of Sydney. Anna Boucher is a prior expert on the NSW Anti-Slavery Commissioners Advisory Panel and was from 2022-2024 Chair of the Discipline of Government and International Relations. Gourvika Kumar is one of her former students and enrolled at the University of Sydney. For comments and feedback on this submission, please write to Anna at [anna.boucher@sydney.edu.au](mailto:anna.boucher@sydney.edu.au)

It is important to define key terms and offences to aid specificity in any study of modern slavery (Howe et al 2020; Howe and Nikoloudakis 2017; Henry and Adams 2018). For the current submission and its focus on sexual violence, we note several key terms:

- **Sexual misconduct:** This includes sexual harassment short of sexual assault, the latter of which is commonly known as “rape” (Boucher 2024; 2023). Sexual misconduct is a broad term that encompasses any unwelcome sexual behaviour that occurs without consent or that makes a person feel uncomfortable, frightened or threatened. Sexual misconduct includes sexual harassment and sexual assault, as well as behaviours like stalking. (University of Queensland, 2023)
- **Sexual servitude:** Sexual servitude involves debt bondage, commonly for visa or travel costs. These debts are then frequently paid off through indentured sex work (Boucher, 2024). Sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or threats, (a) is not free to cease providing sexual services or, (b) is not free to leave the place or area where the person provides sexual services (Division 10 *Crimes Act*, 1990, NSW and s268.15 *Criminal Code Cwth* 1995).
- **Sexual assault:** Sexual assault occurs when a person is forced, coerced, or manipulated into sexual relations (Division 10, *Crimes Act* NSW, 1990, s352).
- **Sex Trafficking:** Trafficking refers to the importation of people unlawfully into a country. It is separate from forced labour because it often involves these characteristics as well. “Sex trafficking” involves trafficking offences mixed with a sexual motive (Boucher, 2024; *Criminal Code Cwth*, s271.2)

#### **a) Lived experience of temporary migrant workers in rural and regional New South Wales working in agriculture, horticulture, meat processing and other sectors reliant on temporary migrant labour**

Available survey data of female workers demonstrates that various forms of sexual harassment are rife among temporary migrant workers in NSW. For instance, a report by Unions NSW (2024) found that 53% of workers (female temporary migrants) in the horticulture industry experienced sexual harassment. This included 27% who experienced inappropriate physical contact; 63% who experienced sexually suggestive comments or jokes and 41% who experienced inappropriate

staring or leering that made them feel intimidated. While it is possible that some male migrants also experience sexual violence, this was not the focus of the Unions NSW (2024) survey.

These data also demonstrate the difficulties of migrant workers in reporting instances of sexual violence, in particular a fear of dismissal or of potential reprisal. 51% of migrant women who experienced workplace sexual harassment were concerned that reporting could result in losing their job. 75% of those who experienced sexual harassment did not report the incident and 53% indicated the harasser was a co-worker, while 20% stated it was their direct manager (Unions NSW 2024). Many participants reported a lack of information regarding the appropriate entity/person to approach in order to prevent them from reporting the incident, while 66% feared it would have a negative impact on their migration status, or in the case of Working Holiday Maker Visas (subclass 417), it might lead to a denial of the 88-day regional work sign-off required by an employer to permit a visa extension (Unions NSW 2024, p43; Home Affairs 2024).

These overarching findings from survey data further support findings of more specialised studies of temporary visas. These include the Pacific Australian Labour Mobility Scheme (PALM) scheme and the Working Holiday Maker Visa. In early 2024 for instance, 12 ni-Vanuatu women filed a Federal Court claim, with support from the United Workers Union (UWU), alleging sexual harassment perpetrated by agents of their approved employer (within the horticulture industry), and seeking nearly \$4 million in compensation and damages (Marchant and Mantesso 2023).

A joint inquiry between *60 Minutes*, *The Age* and *The Sydney Morning Herald*, titled “*Trafficked*,” highlighted how the Australian visa system was being misused to bring vulnerable migrants into sex trafficking networks. These migrants are seriously exploited in a sexual and financial sense, sometimes amounting to modern sex slavery. For instance, migrant women on international student and tourist visas, are being moved between brothels, unable to leave their workplace for weeks on end and required to “pay off” debts of between \$AU40,000 and \$AU50,000 before they can seek freedom (Nine, 2022). This and other evidence, led then Australia’s Minister for Home Affairs, the Honourable Clare O’Neil, to launch Operation Inglebook (also known as the “Nixon Review”) to investigate the nexus between visa fraud and sexual exploitation (McKenzie, 2022). Some of these visa holders were in regional NSW, rendering this policy context relevant to the

current inquiry.

There are available lived example of sexual misconduct in the agriculture and horticulture industry for female backpackers on subclass 417 working holiday visas. These include being threatened with sexual violence by employers, forced to wear revealing clothing, placed in unsafe accommodation (no locks on doors allowing for employers to come into female workers' rooms anytime), employers disconnecting phones so that women can not report sexual harassment to the police in private, and up to the most serious offence, namely sexual assault. Further, these anecdotal examples document a lack of reporting to police due to a perceived risk of retaliation and termination of visa status (Uibu 2015; 2020). Howe and collaborators (2022, p1154) provide a disturbing case from a focus group with three Working Holiday Makers in Shepperton:

“[T]hey had each experienced sexual harassment and sexual assault by the same contractor whilst evolving into a male contractor who would touch workers under their clothes while previously working on a farm in Shepperton. They described an incident in picking fruit and that it was ‘all the Asian girls’ who would be subjected to his unwanted attention.”

Furthermore, these women reported that when they rang the Fair Work Ombudsman (FWO) for assistance, they were told to talk to a solicitor instead and were in the process denied help (Howe et al 2022, p1155). This could relate to the scope of the FWO’s function that while it included sexual harassment and bullying, focused on wage underpayment as compared with other forms of workplace infringements. Further, the criminal dimensions of these offences means that also shared jurisdiction with the police. In turn, Howe et al (2022, p1155) found that law enforcement agencies struggled to encourage reports and gather evidence of sexual harassment and assault.

### **b) Incidence, causes and extent of forced labour, deceptive recruiting, gender-based violence, sexual servitude and labour trafficking**

Available analysis suggests that forms of gender-based violence (which includes sexual harassment) and human trafficking are prevalent among temporary migrant workers in NSW. In short, broader concerns in NSW around modern slavery and labour trafficking of migrant workers can have a sexual dimension. The Unions NSW (2024) survey identified above found that almost

seven in ten (67%) female migrant workers who experienced sexual harassment in the cleaning industry indicated concerns related to their migration status, followed by 64% in the construction industry, 60% in retail, 58% in horticulture, and 51% in hospitality. Over half (53%) of those (temporary migrant women) in the horticulture industry who experienced sexual harassment indicated that the harasser was a co-worker, 20% stated that it was their direct manager or supervisor, 19% indicated that it was someone associated with their workplace, 5% stated that it was a business owner, 2% indicated it was a customer or client, and 2% said it was someone else “other” (Unions NSW 2024).

Turning to the issue of sexual-based servitude, statistics from the Australian Institute of Criminology’s (AIC 2024) Human Trafficking/Modern Slavery Data Base found that 25% of alleged modern slavery reports by the AFP were for sexual servitude. Further, 20% of all reported modern slavery investigations were related to sexual servitude. For those who are undocumented or have lapsed visa status, there are even greater risks as any form of reporting can lead to deportation, notwithstanding the possible use of the Migrant Justice Visa (through its current pilot).

#### **d) Structural factors that make temporary migrant workers vulnerable to exploitation**

A variety of factors can render migrants at risk of exploitation and abuse more broadly (Boucher 2024). When we focus in on the question of sexual harassment and assault, pertinent structural aspects arise that we should consider: These include factors related to geography and remoteness. For instance, temporary migrants reported difficulty obtaining transport to remote locations, the risks of sexual harassments during sharing cars with strangers and living with strangers in cramped accommodations in hostels, the challenges of being in private shared houses and on farms (Howe et al 2022). Boucher (2023) in her four-country book on a variety of forms of migrant worker exploitation and abuse, including sexual abuse, found that live-in arrangements and proximity to employer bedrooms did increase the risk of sexual violence experienced by migrant workers.

Visa status may also, as intimated above, play a role. Studies on employer sponsorship indicate that vulnerability to sexual exploitation is especially pronounced for temporary migrant workers in low-skilled occupations with limited access to union representation (Howe et al, 2019, p108). Further, visas that require renewed sponsorship on a cyclical basis, such as the PALM visa, can

cause dependency on the employer and an unwillingness to report workplace sexual harassment given this could jeopardise future sponsorship rights. Howe and collaborators noted that “a Pacific worker may calculate that the potential benefit of reporting experiences of sexual harassment is outweighed by the potential risk of not being sponsored for subsequent seasons” (Howe et al 2022, p1160), leading in turn to a decline in remittances for family members if visa renewal is denied. Finally, subcontractor arrangements raise vulnerability risks for workers as contractors who make complaints, including around sexual harassment, that they can be blacklisted.

As noted earlier, undocumented, or lapsed visa status can present a structural factor that increases risk to forms of workplace abuse, including sexual violence. Such status may flow when visa renewal options are not available to a worker, yet they have not been successfully deported from Australia. Workers also have an acute fear of losing their jobs because they face a more restricted labour market in recent years. As they do not have a legal right to work on farms, they often rely heavily on labour-hire contractors to source farm work. This makes temporary migrant women who are undocumented more vulnerable to sexual harassment. An inquiry into the labour-hire industry has found that contractors commonly blacklist workers who make complaints about pay or other forms of mistreatment (Forsyth et al 2016). Temporary migrant women are vulnerable to sexual harassment when working in remote locations, particularly when they do not have their own transport. Finally, physical isolation can reduce access to relevant services including workplace inspectorates and the police (Howe et al 2022; Boucher 2023).

### **g) adequacy of monitoring, compliance and enforcement of workplace laws, including health and safety laws**

For any kind of vulnerable population – of which temporary migrant workers are one – heightened monitoring is required to ensure that there is sufficient enforcement. The 2020 AHRC report, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* highlighted the risks of sexual harassment of temporary migrant women in the horticulture industry for this reason. The Report includes graphic examples of a migrant woman raped in broad daylight in a field by her employer who told her that “she would be deported if she refused to have sex with him and frequent reports of sexualised comments made to women fruit-pickers” (AHRC 2020, p191). Further, this report identifies the lack of adequate monitoring and enforcement through

human resource policies and procedures (AHRC 2012, 249). These findings echo those from a study by Human Rights Watch of Californian horticulture fields that found there too there was a lack of adequate oversight of work health safety and other workplace conditions, and insufficient Occupational Safety and Health Administration inspections of farms (HRW 2012).

### **i) the impact of visa settings and conditions of employment on temporary migrant workers in rural and regional New South Wales**

An investigation by the Australian Broadcasting Corporation ('ABC') into the experiences of sexual harassment of several women on Working Holiday Maker visas found that the desire for a visa extension gave extra leverage to employers and made employees more vulnerable in the workplace. One worker quoted in the story, who was subjected to frequent unwelcome sexual advances by a subcontractor on the farm, stated: '[w]e stayed, knowing that we were in a bad situation because of the need to complete 88 days of farm work.' As such, changes to render these visas more protective, might also require reforms of the 88-day regional work rule and yet, this rule is central to ensure flow of migrants into regional Australia, in turn raising conflicting policy challenges. Similarly, while circulation opportunities could be removed on the PALM visa, this would raise the risk of visa holders becoming undocumented, as occurred in Canada when the low-skilled Temporary Foreign Worker Pilot had its renewal opportunities ceased for a period (Singer 2021). Any recalibration of visa settings will need to remove existing conditions with considerable care and balance the various competing policy goals.

### **Possible solutions**

We can look to the State of California that has high numbers of temporary migrant workers and undocumented migrant worker in rural areas, including female workers, for possible policy solutions. The documentary *Rape in The Fields* (2014) drew attention to the issue of the sexual assault of undocumented migrant workers in California's agriculture, horticulture and meatpacking sectors, while the case *Equal Employment Opportunity Commission v Harris Farms* (2005) involved a migrant woman raped at gunpoint in an almond field. This landmark case established elevated levels of civil damages in instances of workplace sexual assault. Additional policy initiatives in the State of California include workplace sexual harassment protections, equal opportunity protections, mandatory training of employers in core sectors, reforms to penal codes



to protect against coercion and fraud of those on temporary visas and increased penalties and prison terms to deter the sex trafficking of migrants. California has also recently debated laws to protect migrant children trafficked into sex work (August, 2022; Schaeffer, 2018). Los Angeles police campaigns, such as Operation Reclaim and Rebuild (2020), have developed model behaviour notices in public places to raise awareness of the penalties associated with the sexual exploitation of workers (Etactics, 2023) and similar strategies might be trialled in NSW. Finally, female only or female-run farms may be another appropriate measure.

We thank the NSW Parliament for this opportunity to submit to the inquiry and are happy to take further questions related to our submission.

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