Not Just Numbers:

A Blueprint of Visa Protections for Temporary Migrant Workers

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MIGRANT WORKERS CENTRE

UnionsNSW

Human Rights Law Centre

IARC
Immigration Advice and Rights Centre

Migrant Justice INSTITUTE

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Acknowledgement of Country

The MWC, Unions NSW, HRLC, and IARC respectfully acknowledge Australia's Aboriginal and Torres Strait Islander community and their rich culture and pay our respects to their Elders, past and present.

We acknowledge the Aboriginal and Torres Strait Islander community as Australia's First Peoples and as the Traditional Owners and Custodians of the land and water that we rely on. We recognise and value the ongoing contribution of Aboriginal and Torres Strait Islander Peoples to Australian life and how this enriches us all. We embrace the spirit of reconciliation, as we work towards ensuring an equal voice for all.

We also acknowledge and respect the Traditional Owners of lands across Australia, their Elders, ancestors, cultures, and heritage, and recognise the continuing sovereignties of all Aboriginal and Torres Strait Islander Nations.

The Migrant Workers Centre Inc. (MWC) is a not-for-profit organisation open to any worker in Victoria who was born overseas. It connects migrant workers with one another and empowers them to understand their rights. The MWC assists workers from migrant communities to address problems they encounter in workplaces and collaborates with unions and community partners to seek long-term solutions to the exploitation of migrant workers.

The MWC organises workshops, trains community leaders, conducts research, develops policy recommendations, and bridges language barriers that limit workers' access to information. Their ultimate goal is to fix systemic labour exploitation in Australia.

The Migrant Workers Centre Inc. is supported by the Victorian Government.

Unions NSW is the peak body for trade unions and union members in New South Wales. It consists of 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW aims to create a fairer and more just society and actively campaigns to improve workplace pay and conditions for all workers in New South Wales, regardless of their linguistic or cultural background.

In 2019, Unions NSW, in partnership with the Immigration Advice and Rights Centre (IARC), created Visa Assist, a not-for-profit service which provides free immigration advice and legal support to migrant workers in New South Wales who are union members. Campaigns led by Unions NSW under the Visa Assist umbrella have engaged over 20,000 migrant workers. The Visa Assist program has also provided almost 2000 legal services since its creation.

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Human Rights Law Centre

IARC
Immigration Advice and Rights Centre

Migrant Justice INSTITUTE

The **Human Rights Law Centre** uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

IARC is a not-for-profit specialist community legal centre that provides free immigration and citizenship advice and assistance to migrants experiencing vulnerability. IARC's practice focuses on visa-holders facing workplace exploitation; experiencing family violence; facing health related issues related to migration status; and seeking family reunion.

IARC and Unions NSW have partnered to create Visa Assist, which is currently in its fourth year of operation. Visa Assist provides free, confidential legal advice and assistance to union members in relation to migration issues and also promotes a fairer immigration system through community education, law reform and advocacy on behalf of temporary migrants.

The Migrant Justice Institute undertakes strategic research and advocacy to achieve fair treatment, enforcement of rights and access to justice for migrant workers. Engaging with migrant workers, our research exposes the drivers and scale of exploitation and how laws and institutions are failing in practice. We closely collaborate with migrant communities, civil society organisations and trade unions to develop pragmatic proposals for reform and drive systemic change.

Introduction

In June this year, the Labor government publicly recognised the 'crisis of exploitation' afflicting migrant workers in Australia.[1] That recognition is long overdue. Everywhere we look, migrant workers are having to battle against underpayment,[2] exploitation and unsafe conditions at work.[3]

The government also recognised that Australia has drifted towards a 'guest-worker society'[4] over the past two decades, and committed to doing something about it.

But what does that actually mean? What is a 'guest worker society,' and what needs to be done to remake it?

In theory, it means that there are more temporary visa-holders coming into Australia every year than there are permanent visa places available. This means that every year, more and more people come into the country to study and work, set up their lives and make a home in Australia, without any promise of being able to make a permanent home.

For example, 137,090 temporary visas were granted last year[5] – adding to the estimated 1,614,000 temporary migrants already living in the community.[6] And yet, there are 190,000 permanent visa places available this year.[7] According to government reports, there are around 90,000 people currently in Australia, who have been here for more than five years, but have no pathway to permanent residency – and so qualify as 'permanently temporary' migrants.[8]

But what does this mean in everyday terms? What is life like at home, at university or at work for temporary visa-holders or 'permanently temporary' migrants?

In practice, temporary visa status means being locked out of most secure jobs[9] and all forms of social support, like Medicare. Temporary migrants are regularly denied permanent, ongoing jobs because of their visa status and instead forced into insecure, casual jobs they can't rely on. This means that temporary migrants have to work harder to afford the basics of life, like medical care or school fees for their kids. It means they are forced to accept work, even if they're sick or they should be at home with their families. And increasingly, because of the way that the Australian migration system operates, temporary migrants have to rely on their bosses for the hope of permanent residency.

As long as temporary visas force workers into insecure jobs, and make them rely on their bosses for visa security and permanent migration, there will continue to be a **fundamental power imbalance between workers and their employers** that will drive exploitation. And Australian businesses will continue to profit as a result.

This report is about temporary migrants, their lives and experiences at work. By and on behalf of workers, it makes the case that temporary visa status is directly linked to inequality and exploitation. And it makes the case for **immediate, strong and reliable visa protection for all migrant workers, as the necessary first step towards combatting the exploitation of temporary migrants at work**.

For too long, immigration laws and policies have been made by bureaucrats and economists, concerned only the Australian economy and 'nation-building,' and not with people.

But **temporary migrants are not just numbers** on the national balance of payments. The stories featured here are of people in the Australian community; friends, neighbours, co-workers, partners and parents. These stories have been put together by workers to explain what has happened to them because of the way Australian migration laws and regulations currently operate. They also point the way to what Australian migration laws and policies should be.

The migration system needs to be remade from the ground up, with the rights of migrants placed at the centre. That is not a task that can be achieved by '*further tinkering and incrementalism*'[10] – it will require an overhaul of bonded employment arrangements and the proliferation of temporary visa categories with no connection to permanent residency.

But as temporary migrants return to Australia in record numbers, more immediate and urgent measures are needed. To prevent a return to the 'business as usual' of employers underpaying and exploiting temporary migrants at work, we call for the immediate introduction of **visa protections for migrant workers**, consisting of:

1. An **Exploited Worker Guarantee**, safeguarding workers against visa cancellation if they have had their rights breached at work; and

2. A **Workplace Justice visa**, to allow workers to remain in Australia with a secure visa to get advice and pursue action against an employer for a breach of their rights.

Both these measures must be introduced to give temporary migrant workers the visa security they need to take action for breaches of workplace law. Without both of these measures, the wage theft and exploitation of migrant workers will continue to be 'business as usual' in Australia.

This report has been prepared by a national coalition of unions and civil society groups that are comprised of, represent or work alongside migrant workers. Our organisations came together to support the proposal for visa-based protections first set out by the Migrant Justice Institute and Human Rights Law Centre in their report, *Breaking the Silence*[11]. That report was endorsed by 40 organisations from across the country. In other words, the visa protections proposed in that report, and which we endorse here, have the overwhelming support of those who work with temporary migrants. ***If the Labor government is serious about tackling migrant worker exploitation, it must start by listening to workers and acting on their recommendations.***

Migrant Justice Institute and Human Rights Law Centre, *Breaking the Silence: A Proposal for Whistleblower Protections to Enable Migrant Workers to Address Exploitation* (November 2022)

1. Exploited Worker Guarantee – Protection Against Cancellation

Migrant workers should not fear visa cancellation if they speak up about their conditions at work.

There is ample evidence that the fear of visa cancellation is one of the key factors that prevents temporary visa-holders from acting on their rights at work, even if they know they are being underpaid and mistreated. This was one of the key themes that emerged from the years-long review of the 7-11 Wage Theft Panel, overseen by Professor Alan Fels. In evidence to that panel, a student activist and former 7-11 worker, Ullat Thodi, said:[12]

They are all scared to stand up because of the 20-hour work limit [on Student visas]. I believe that if immigration say in the newspapers that the 20-hour limit does not apply, people will just run in behind it, and you could get thousands of people right now saying 'Yes, I have been underpaid.'

In a large-scale survey conducted by the Migrant Justice Institute in 2018, a **quarter of temporary migrant workers reported reluctance to pursue action for breaches of workplace law due to fear of visa cancellation.**[13]

It is a routine experience for temporary migrant workers to be silenced by their bosses and prevented from speaking out by the threat of visa cancellation. Visa cancellation is a real and ever-present threat for temporary visa-holders. Under the *Migration Act 1958* (Cth), there is an expansive network of powers that allow for the cancellation of a temporary visa – including on grounds that a visa-holder has breached visa conditions,[14] or has ceased to work for their sponsoring employer.[15] All it takes to bring about a cancellation process is an anonymous tip to the Department by an employer, claiming that a visa-holder has breached their visa conditions, or that they have stopped working in their sponsored position.

Sunil's story illustrates how effectively and deliberately employers can use the threat of visa cancellation as retaliation against workplace complaints:

Sunil
Training (Subclass 407)

- **Retaliatory termination leading to visa cancellation**

Sunil arrived in Australia in January 2019 on a Training (Subclass 407) visa, hoping to become a qualified chef. He started working at a hotel in the Blue Mountains as part of his training and felt welcomed by his colleagues.

However, when he received his first pay cheque, he realised that substantial deductions were being taken from his pay which he never agreed to. The deductions were for:

- Accommodation, which was a tiny room in the Blue Mountains with a shared bathroom that they were charging him almost $500 per week in rent; and
- Meals, which included leftovers from the hotel's breakfast buffet (if there were any) and a lunch and dinner he or his colleagues would make themselves.

After lodging a complaint about his treatment, he was terminated from his traineeship, kicked out of his accommodation, and forced to live in a hostel. His employer also reported him to the Department of Home Affairs, who sent him a 'Notice of Intention to Consider Cancellation' of his visa.

With no way to safeguard his visa against cancellation, Sunil applied for a Student visa to continue his studies. But that visa application was refused, as the Department assessed him not to be a 'genuine student,' as he has previously held a Training visa. The Department also called all of his allegations regarding the former employer "hearsay" and refused to put any weight on it at the time.

वे मुझे एक नए अनुबंध पर हस्ताक्षर करने के लिए मज़बूर करना चाहते थे और मुझे कहा कि मेरे पास शाम 6 बजे तक का समय है, और यदि मैंने हस्ताक्षर नहीं किए, तो मुझे घर छोड़ना पडेगा। मैं ऑस्ट्रेलिया पढ़ने के लिए आया था, और मैं अपनी शिक्षा जारी रखना चाहता था। मैं जानता हूँ कि मैंने कुछ भी गलत नहीं किया है। मैंने केवल इसलिए आवाज़ उठाई क्योंकि वे कुछ अनुचित कर रहे थे। मुझे समझ नहीं आया कि क्या हो रहा है"

They wanted to force me to sign a new contract and told me I had until 6 pm, and if I didn't sign, I needed to leave the property. I came to Australia to learn, and I wanted to continue my learning. I know that I didn't do anything wrong. I just raised my voice because they were doing something unfair. I didn't understand what was happening.

Sunil, hospitality worker

Ali's story illustrates how employers are able to use the threat of visa cancellation to keep migrant workers silent and trapped in their conditions at work:

Ali
Regional NSW

● The threat of visa cancellation

Ali was sponsored on a Subclass 494 visa to work in regional NSW in the entertainment industry. After working with her employer for over a year, her manager left the industry, and a replacement was found. She had a good relationship with her old manager but was getting "bad vibes" from her new manager.

They had to work a few late nights together, and often she would catch him looking at her for a long time without saying anything. One night, he approached her and asked her out on a date, which she politely declined. After that night, his mood shifted dramatically. He started calling her in for extra shifts when it was her rostered day off and making her work longer days than she was contractually required to do. This kept going on for months until one day, she asked for bereavement leave, and he yelled at her calling her ungrateful and threatening to cancel her visa if she left.

She stayed for a few more months until she couldn't take it anymore. She left her home in regional NSW and made her way to Sydney to try to access some support services. She found her way to a women's crisis centre, which arranged accommodation for her and put her in contact with immigration lawyers in Sydney.

By the time she got that advice, Ali was in breach of her visa conditions – it had been more than 90 days since she ceased work for her employer, and she was no longer living in a regional area. Fearing what it would mean for her visa, Ali chose not to take further steps against her manager.

The ever-present risk of visa cancellation creates a fundamental imbalance of power between migrant workers and their employers.

In order to counteract that power imbalance, migrant workers must be provided a **guarantee against visa cancellation** if they take action against their employer for breach of workplace laws. It should never be possible for an employer to retaliate by causing the cancellation of a worker's visa. And it should never be acceptable for a migrant worker to risk their visa in order to speak up about what happens at work.

A protection against visa cancellation must be **strong**, **predictable**, **clear** and **easily communicated** to visa-holders. That protection serves two purposes:

1. To clearly communicate to all temporary visa-holders that their visas will not be at risk just because they take action against exploitation, providing the assurance that they need to come forward; and

2. To protect against inconsistent decision-making by the Department of Home Affairs in individual cases.

It is not enough for the Department to simply have discretion not to cancel a visa where there is evidence that the visa-holder has been exploited. In light of the imbalance of power between temporary migrant workers and their employers, only a positive guarantee will be sufficient to guard against retaliatory action and allow workers to come forward. And more importantly, as the stories in this report demonstrate, decision-making across the Department is inconsistent and dependent on the whim of individual decision-makers. Even in cases where workers have, under the current cancellation procedures, given evidence that they have been exploited and mistreated at work, their visa has still been cancelled. This should never be allowed to happen.

As well as Sunil's story above, Kaipo's experience shows that evidence of exploitation and clear breaches of workplace law are not enough, under the current arrangements, to ensure that the Department will exercise discretion in a visa-holder's favour.

Kaipo
Regional QLD

- **Illegal deductions leading to visa cancellation**

Kaipo arrived in Australia on a Subclass 403 visa, under the PALM scheme, to work in regional Australia for a period of 9 months. As required under the PALM scheme, his employer told Kaipo that he would provide accommodation, food and other amenities to him. But when Kaipo arrived in Australia, he found that accommodation consisted of shipping containers and the 'kitchen' was a barbecue set up in a common area.

Eventually, when Kaipo received his first pay slip, he realised that substantial deductions were being made to cover accommodation and living expenses, even though the quarters were barely liveable.

When Kaipo confronted his boss about this, he was simply told to "move out." It was virtually impossible for Kaipo to find another home, as his visa was of short duration and he did not have a local rental history.

Eventually, Kaipo decided to leave his employer. But immediately after that, he received a 'Notice of Intention to Consider Cancellation' of his visa under s 116 of the Migration Act, because he was no longer working for his designated employer.

He was referred to Visa Assist by his union to assist him respond to the cancellation. Visa Assist provided evidence of the exploitation and letters in support from his union. Unfortunately, the Department still exercised their power to cancel his visa under s 116 of the Act. Kaipo became unlawful and then was forced to return to his home country without being able to take any action against his employer.

The call for an Exploited Worker Guarantee and protection against visa cancellation has widespread support, across unions, researchers and migrant rights groups. As well as the 40 unions, faith-based and migrant rights groups that initially signed the *Breaking the Silence* report which detailed the proposal,[16] it has recently been endorsed by the Grattan Institute.[17]

2. Workplace Justice Visa

Migrant workers must be provided with visa security to leave an exploitative employer, and to pursue action against them, without risking their visa status.

This is critical for:

Employer-sponsored visa-holders

whose visa security is otherwise dependent on their employer

Temporary visa-holders

who are nearing the end of their stay in Australia (such as international students or Working Holiday Makers)

Undocumented workers

who have no visa security to bring or pursue a claim against their employer

There are no other visas available to temporary migrants to allow them to stay in Australia, get advice and take action against their employers. The other visas that the Department of Home Affairs sometimes recommends to temporary migrant workers are not fit-for-purpose – for example:

Criminal Justice Stay Visa[18]

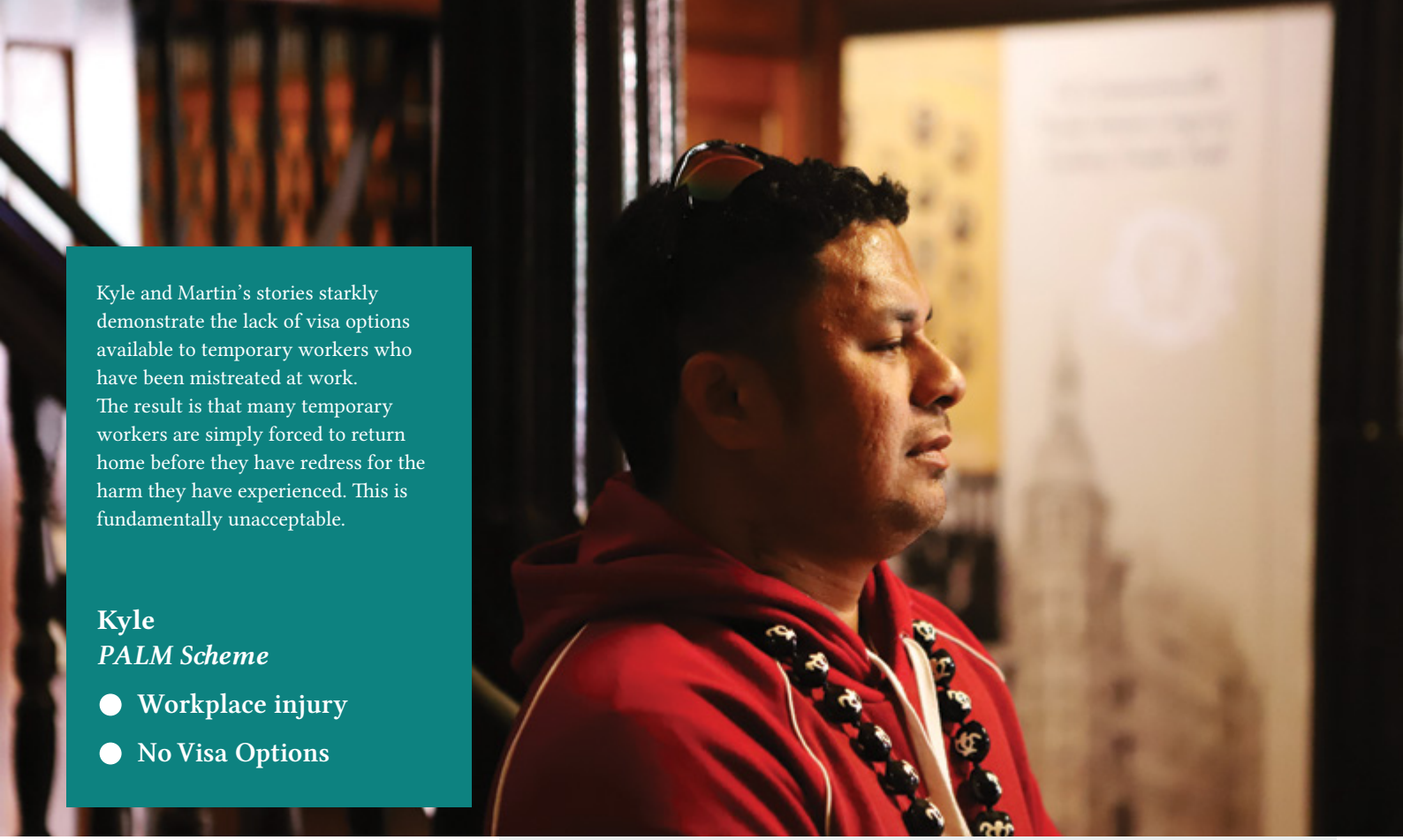
- Short-term visa to allow a witness to participate in a criminal prosecution – therefore only available in relation to criminal (not other) proceedings
- Cannot be applied for directly
- Depends on prosecuting agency (e.g. police or Office of Public Prosecutions) making a request to the Department, and issuing a 'criminal justice stay' certificate

Human Trafficking Bridging Visa[19]

- Bridging visa available for 90 days for suspected victims of human trafficking
- Cannot be applied for directly
- Depends on State/Territory police making referral to the Department of Home Affairs
- No permission to work

Medical Treatment Visa[20]

- Short-term visa to allow holder to remain in Australia for a short time to receive medical treatment
- Not available for participation in legal or other workplace process (e.g. WorkCover proceeding)
- No permission to work in most cases



Kyle and Martin's stories starkly demonstrate the lack of visa options available to temporary workers who have been mistreated at work. The result is that many temporary workers are simply forced to return home before they have redress for the harm they have experienced. This is fundamentally unacceptable.

Kyle
PALM Scheme

- **Workplace injury**
- **No Visa Options**

Kyle arrived in Australia as the holder of a Subclass 403 visa to work in fruit picking on a regional farm. Kyle was not provided with suitable safety equipment while working. During work one day, Kyle sustained an injury to his right eye. The injury resulted in a partial loss of vision.

After several doctor's visits, Kyle was told he could return to work under "light duties". Unfortunately, his employer continued to use Kyle for laborious tasks, including lifting 20 kg bags of fruit. This exacerbated his eye injury, and he was forced to undergo surgery and ongoing treatment for his condition.

The employer then refused to continue sponsoring Kyle for a Subclass 403 visa (or any other substantive visa). Kyle became unlawful and was then on a rolling Bridging Visa E (BVE).

The BVE placed Kyle in a difficult position as it prevented him from lodging other substantive visa applications and prevented him from returning to his home country to visit his family. He was unable to return home permanently as his home country does not have appropriate facilities to treat his eye condition.

There were no visa options to allow Kyle to remain in Australia to pursue action against his employer for work health and safety breaches.

"Talu mai na ou lavea, sa saisaitia au ona le tulaga faigata o le gagana. Sa leai ma se tagata sa fesoasoani e faamatala pe faamalamalama ni mataulu ia te au. Sa ou faia lava so'o se faataonuga sa latou tuuina mai i ate au.

Ina ua ou iloaina sa taumafa'i lo'u pule e toe faafo'i a'u i Samoa, sa ou matua faanoanoa ma mafatia lou mafaufau. Sa tele se faaletonu i le vaa'icia o au. Sa le usitaia e lau galuega faatonuga a la'u fomau. Sa ou lagona lou saisaitia ona o le le' mafai ona ou tatala ma faamatala ou lagona"

"From the time I was injured, I was so restricted in what I could do because of the language. There was never anyone there to explain anything in my language. Whatever they told me, whether or not I understood, I just had to go with flow.

When I realised my employer was trying to send me back to Samoa, I went through a lot of stress. I was told to work against my doctor's recommendation. I felt completely jailed within my own body not being able to talk or express any opinion on how I felt".

Kyle, farm worker – Quote made with interpreter)

Martin
Employer-Sponsored Visa

- **Forced to leave before claim decided**

Martin was a sponsored worker from China, who was working in a Sydney restaurant.

Martin had his visa sponsorship withdrawn by his former employer after he lodged an underpayment claim for $11,000. He then brought an unfair dismissal claim.

Although an expedited hearing before the Fair Work Commission was requested, the process was slowed down by the company's refusal to respond to the application or to identify the appropriate office bearer.

By the time the Commission ruled in favour of Martin he had already returned to his country as his visa had expired, making enforcement of the finding against the company, who refused to participate in the hearing, near impossible.

Maria's story demonstrates how some employers in fact rely on the visa insecurity of migrant workers to avoid responsibility for harm, in the knowledge that visa-holders will be forced to return home before they can take action.

Maria
Working Holiday Maker

- Sexual Assault
- Denial of Work Evidence
- No Visa Options

Maria arrived in Australia in 2018 on a Working Holiday visa. On arrival, she knew that she needed to complete her farm work in order to be eligible for a second Working Holiday visa and wanted to get it out of the way as soon as possible.

She asked some other backpackers online how to find farm work, and they directed her to various Facebook groups. She contacted a farmer in regional Australia, who was happy to employ her. They said they could also arrange accommodation for her in a hostel and pick her up every day to go to work.

A few days later, Maria commenced her farm work, being taken out to the farm on a big bus every day with other people from the hostel. About a week later, she found herself alone with the employer, who then sexually assaulted her while on the farm. He told her that if she told anyone, he would not sign off on her farm work and would have her deported.

She went back to the hostel that night and immediately left town. She didn't tell anyone about what had happened.

A few months later, Maria managed to get migration advice. Unfortunately, because she had not completed her farm work as required, she was not eligible for another Working Holiday visa. There were also no other substantive visas available to her to remain in Australia and pursue a claim against her former employer.

A dedicated Workplace Justice visa must be created, to allow migrant workers the visa security they need to step away and take action against their employers.

That visa must be:

Accessible	Recognising that migrant workers may be employed casually and informally, and that evidence of their employment might be withheld from them by employers.
+	
Secure	Allowing work, so that temporary migrants can rebuild their lives, and are not forced from one precarious workplace to the next because of their visa status.
+	
Allow the same pathway	So that visa-holders aren't disadvantaged because they transition onto the Workplace Justice visa.

2.1 Accessibility

The Workplace Justice visa must be **accessible** and reflect the realities that temporary migrant workers face. Workers should not be faced with undue evidentiary hurdles or forced to cooperate with government regulators as a precondition for accessing the visa – as this would effectively prevent the protection from being taken up. The visa should be **assessed and granted quickly** so that migrant workers do not face prolonged uncertainty in their visa status.

To achieve these aims, eligibility for a Workplace Justice visa should not depend on the assessment of claims by the Department of Home Affairs. This has been shown to be a key weakness of similar schemes that exist in Canada,[21] as it means that immigration officials who are unfamiliar with labour law assess the evidence incorrectly and inappropriately reject claims. If a worker is refused a visa in Australia, and their substantive visa has expired, they are barred from lodging a further visa application while in Australia.[22] It would defeat the purpose of the Workplace Justice visa if applications by vulnerable workers were unnecessarily refused due to inexpert assessment of their claims, leaving them barred from making further visa applications.

To avoid this, eligibility for the visa should depend on **certification** by trusted bodies that the Department cannot 'look behind' – replicating the framework for judicially determined claims of family violence.

Importantly, certifying bodies should not be limited to government regulators – such as the Fair Work Ombudsman, work health and safety authorities, or labour hire licensing bodies. That is because research demonstrates the strong reluctance of migrant workers to approach government authorities in the first instance for advice in relation to their labour claims.[23] Further, not all workplace claims rely on action through government regulators – such as common law claims or discrimination complaints.

Nor is it appropriate to limit eligibility for protection to workers who commence proceedings in Court or through a Tribunal. In our experience, meritorious workplace complaints – in particular, relating to wages and underpayment – are often resolved between the parties before or without court action. Migrant workers shouldn't have to get to the door of court in order to have their visa status protected.

For these reasons, we suggest that certification of a genuine workplace claim should also be available through an **employment lawyer** or **trade union**, from whom migrant workers are most likely to seek advice in the first instance.

Certification should cover the **full range of workplace laws**, and confirm that the applicant is seeking advice or participating in one of the following forms of action:

Inquiry or investigation by the Fair Work Ombudsman

Litigation before a Court

Participation in an investigation by a government agency
(e.g. ABF, Labour Hire Licensing Authority, workplace health and safety authorities, Modern Slavery Commissioner, State, Territory or Federal police etc)

Small claims proceeding

Complaint to the Australian Human Rights Commission

Industrial or other action against their employer through a registered trade union

2.2 Security

The Workplace Justice visa must be secure, in both its structure and length. If it is not, then the visa either will not be taken up by migrant workers, or worse, it will force workers from one insecure and exploitative work situation to another.

To allow sufficient security, the Workplace Justice visa must be a substantive visa, not a Bridging visa. That is for the following reasons:

Exclusion from work

In order to have the necessary security to leave and take action against their employers, Workplace Justice visa-holders must be able to work. Full permission to work is a critical feature of the Canadian Vulnerable Worker Open Work Permit, and has been critical to its uptake.[24] Bridging visa-holders report exceptional difficulty securing reliable, ongoing employment and are forced into the cash economy. This is because, no matter the conditions of the Bridging visa, employers perceive that it is provisional and liable to ending at short notice. The capacity for unrestricted work is critical to the uptake of the visa – without that guarantee, workers are unlikely to leave their exploitative employers, for fear of losing their livelihood. This is absolutely critical to the design of the visa.

Identifiability

A particular Bridging visa that is designated for exploited workers (such as the Bridging 'F' visa) would signal to future employers that the holder had previously taken action against a former employer, severely restricting their future employment prospects and deterring eligible applicants from taking up the visa

Matthew's story provides a clear example of how visa insecurity, leading to Bridging visa status, may compound workers vulnerability, exposing them to greater harm at work:

Matthew
Bridging E Visa

- **Forced into Insecure Work**
- **Unable to Apply for Visas**

Matthew was on a Temporary Skill Shortage (**TSS**) Subclass 482 visa working in an engineering role. Towards the end of his visa, his employer told him that he would not extend his sponsorship unless he paid for all the costs, including the employer's costs. Matthew couldn't afford to pay for all the costs; he also knew it was illegal for him to do so. His employer did not extend his sponsorship and, without another employer lined up, Matthew was forced to apply for a Bridging E visa and make plans to return home.

During COVID, Matthew could not arrange his flights home. He tried to find employment to support himself, but no one would give him a job while he held a BVE. One employer told him he could not work on a BVE, even though he did not have a condition restricting his work rights.

He was then forced to deliver food on a pushbike and, one day was hit by a car on his way to a restaurant. He was afraid to tell anyone as he was worried about his visa status.

Rather than a specifically-named Workplace Justice visa, which would be recognisable to future employers, we propose the creation of a '**Workplace Justice' stream under Subclass 408** of Schedule 2 to the *Migration Regulations* 1994 (Cth).

That approach has the following benefits:

The visa would be **unidentifiable** to future employers, and would not therefore act as a barrier to future employment. That is particularly the case given the significant number of Subclass 408 holders already in Australia, after the creation of the 'pandemic event' sub-stream of the visa in 2020.

The visa is **accessible**, and familiar to temporary visa-holders in Australia during the pandemic.[25]

The visa should be available for grant for **up to 12 months** – this is in line with the grant period of the 'Australian Government Endorsed Event' stream of the Subclass 408 visa.

To allow visa applicants and holders security, the visa should be granted for set periods specified in the Regulations or policy, and not left to the Department's discretion. The purpose of the Workplace Justice visa is to allow visa-holders to take steps to pursue legal action against their employers; that purpose would be fundamentally undermined by a limited or uncertain grant period, requiring visa-holders to divert resources towards renewing this visa rather that progressing their employment-related proceeding.

We propose a tiered grant period, depending on the form of evidence presented by the visa applicant, as follows:

	Evidence of Seeking Advice	Evidence of *Prima Facie* Claim	Evidence of Proper Basis
Summary	Evidence from an authorised employment law service that the applicant has been offered an appointment/is on a waiting list	Certification by regulator that inquiries are being made in relation to employer or by an authorised employment lawyer confirming *prima facie* claim	Certification by regulator, Court or Tribunal of commencement of investigation/proceeding or by an authorised employment lawyer that there is proper basis for claim
Visa Period	**3 Months**	**6 Months**	**12 Months** (Renewable)
Explanation	Pro bono employment law services are in short supply. Service providers remain oversubscribed and indicate that they maintain a waiting list of several months. Applicants should not be locked out from accessing protections because of the unavailability of services.	Preliminary inquiries in relation to workplace matters frequently take several months – regulators frequently require several months to commence investigations; employment lawyers may engage in several months of pre-litigation correspondence before commencing proceedings.	A longer visa period must be made available to applicants who have commenced proceedings – visa security is critical to allow holders to freely participate in proceedings without concern for their status

2.3 Pathways

The Workplace Justice visa must not compromise migrant workers visa pathways – workers must not be placed in a less favourable position having accessed the visa. The Workplace Justice visa should allow the **same visa pathway**, including access to permanent residency, allowed by the visa previously held by the worker. Otherwise, the Workplace Justice visa would impose an undue penalty on the holder.

This effectively means that the Workplace Justice visa cannot be designed as a Bridging visa. As a validity requirement, most visas require applicants to hold a substantive visa at the time that they lodge the application. That means that, if the Workplace Justice visa is integrated into the Bridging F visa framework which currently exists to respond to 'human trafficking,' it will lock workers out of future visa options they might otherwise have had.

This is exactly what happened to Anajli, whose story is as follows:

Anjali
Bridging F Visa

● **Excluded from Further Visas**

Anjali had been brought to Australia on a Subclass 457 visa. She was subjected to severe workplace exploitation and slavery-like treatment by her employer, including having her passport taken from her and being forced to sleep in a shed out the back of her employer's premises. She was also cut off from contacting her family and friends. She continued working for her employer after her Subclass 457 visa expired, as she had no way to leave.

One day, she managed to escape, and eventually, she was put in contact with the police. She also accepted an invitation to access a Bridging Visa F (BVF).

While holding the BVF, she was interested in lodging an Expression of Interest for a general skilled migration visa and was also investigating options for employer visa sponsorship.

Unfortunately, given that she held a BVF, she was unable to lodge a valid application for any skilled visa while in Australia.

The dependence of sponsored workers on their employer for visa security and a pathway to permanent residency is a key driver of exploitation. If the Workplace Justice visa compromises workers' ability to transition between visas, or access permanent residency, then they will be forced to remain with exploitative employers who offer such a pathway.

The risk of being forced to remain with an exploitative employer-sponsor for the sake of visa security is highlighted by Inderjit's story:

Inderjit
Employer-Sponsored Visa

- **Forced to Pay for Sponsorship**
- **No Visa Options**

Inderjit and her husband migrated to Australia in 2009 on Student visas.

After completing her studies as a cook, Inderjit found work in an Indian restaurant in regional Victoria. Her employer did not pay her for several months until her Subclass 457 visa was approved. And once she started paying her, Inderjit's employer demanded payment of $50,000, otherwise he would terminate her sponsorship, resulting in her visa being cancelled.

Without any other visa options, Inderjit was forced to quickly find another employer-sponsor. Her second employer required her to work seven months without wages as a 'trial,' while her sponsorship was pending. Once her visa was approved, her employer refused to pay her unless she paid her wages to him 'up front.'

Inderjit had no visa options to allow her to remain in Australia and pursue both of her employers. After her second employer withdrew his sponsorship of her, she lodged a further Student visa application to be able to remain in Australia lawfully, but that application was refused. As a result, Inderjit is now prevented from applying for any further visas.

दो नयिोक्ताओं ने मेरा पूरा वेतन नहीं दयिा, क्योंकि उन्हें पता था कि अगर मैंने उनका वरिोध कयिा तो मेरा वीज़ा रद्द हो सकता है और उन्होंने इसका लाभ उठाया। चूँकि मेरे वीज़ा में मेरी कोई सुरक्षा नहिति नहीं थी, इसलिए बहुत देर होने तक मैं कोई कार्रवाई नहीं कर सका। मुझसे चुराया गया वेतन मुझे वापस नहीं मलिा और अब ऑस्ट्रेलयिा में कसिी भी अन्य वीज़ा के लिए मुझे आवेदन करना वर्जति है। मेरे नयिोक्ताओं ने मेरे साथ जो कयिा उसके कारण मेरे परविार का भवषि्य अनशि्चति है। मेरे परविार के साथ ऐसा नहीं होना चाहिए था, और यह उन प्रवासयिों के साथ नहीं होना चाहिए जो अब ऑस्ट्रेलयिा आ रहे हैं।

I had my wages stolen by two employers, because they knew my visa could be cancelled if I stood up to them, and they took advantage of that. Because I had no security with my visa, I could not take action until it was too late. I never got back any of the money that was stolen from me and I am now barred from applying for any other visa in Australia. My family's future is uncertain because of what my employers did to me. This should not have happened to my family, and it should not happen to migrants who are coming to Australia now.

Inderjit Kaur, Chef

Temporary migrants must have the basic visa security needed to leave an exploitative employer and take action against them. It is fundamental. We do not bond Australian citizens or permanent residents to their bosses, because we know that it would create a fundamental imbalance of power. That deliberate and systemic imbalance should also not be acceptable when it comes to migrant workers.

Conclusion

Over the past twenty years, governments have convened multiple inquiries to get to the bottom of migrant worker exploitation. Tens of millions of dollars have been directed to regulators to provide education to workers about their rights, or target the worst exploiters.

We do not need to look that far to find the source of migrant workers' vulnerability. It derives in large part from their **temporary and precarious visa status**, which means that migrant workers are locked out of even the most basic protections, forced to pay for their right to remain in Australia, and subject to stringent conditions that restrict their freedom to leave exploitative workplaces.

For all the time and money spent on attempting to penalise and regulate migrant worker exploitation, no steps have been taken to introduce the basic visa security required by workers to realise their rights. **That is where the government must now start** – by introducing **visa protections for migrant workers** that are strong, enforceable and reflect their equal rights and status with all other workers in this country.

Endnotes

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25 As well as expanding the eligibility bases at Schedule 2, the validity requirements at Schedule 1 would need to be expanded to allow applicants without a substantive visa (an who had not held a substantive visa for more than 28 days) to apply (see sub-item 1237(3), item 5). An legislative instrument would need issue for the purposes of sub-item 1237(2)(a)(i) specifying the application charge for applicants in the Workplace Justice stream to be nil, and for sub-item 1237(3), item 1 setting out the manner of application.

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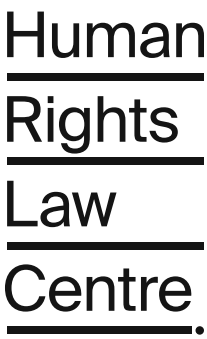

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