

Office of the
NSW Anti-slavery
Commissioner

Be Our Guests: Addressing urgent modern slavery risks for temporary migrant workers in rural and regional New South Wales

Report under section 19(4) of the *Modern
Slavery Act 2018* (NSW)

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Acknowledgement of Country

As the New South Wales Anti-slavery Commissioner, I acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples and traditional custodians of Australia and the oldest continuing culture in human history.

I acknowledge that First Nations communities in New South Wales have survived practices that today we call modern slavery. The legacies of that treatment continue to affect Aboriginal and Torres Strait Islander people today, and through them affect the New South Wales community and economy.

My Office and I pay our respects to elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to country and acknowledge their continuing custodianship of the land, seas, and sky. We acknowledge their ongoing stewardship and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families, and communities, towards improved economic, social, and cultural outcomes, self-determination and for real freedom.

Be Our Guests: Addressing urgent modern slavery risks for temporary migrant workers in rural and regional New South Wales

Published by the NSW Anti-slavery Commissioner.

<https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner.html>

First published: September 2024

Reference number: D24/2436158

Acknowledgements

The authors of this report are Dr James Cockayne, the NSW Anti-slavery Commissioner, Sophia Kagan, Principal Policy Adviser (Labour Migration) and Fiona Ng, Senior Research and Policy Officer.

The NSW Anti-slavery Commissioner also acknowledges and thanks the people and organisations who provided their expertise, experience, and support to inform the development of this Report. These stakeholders include over 80 Pacific Australia Labour Mobility (PALM) workers with whom he has spoken personally, people with lived experiences of modern slavery, Pacific and South Sea Islander Elders and community, local service providers and organisations in Griffith, Leeton, Wagga Wagga, Coffs Harbour, New England, Wollongong and Newcastle, local council workers, members of the NSW Police Force, healthcare workers, consular officials, public servants and subject matter experts. We thank these stakeholders for your engagement and willingness to cooperate to realise the human right to be free from modern slavery for all people in NSW.

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Abbreviations

| Abbreviation | Description |
|--------------|---|
| ABF | Australian Border Force |
| the Act | <i>Modern Slavery Act 2018 (NSW)</i> |
| ACT | Australian Capital Territory |
| AMIEU | Australasian Meat Industry Employees Union |
| AWU | Australian Workers Union |
| CLO | Country Liaison Officer |
| DEWR | Commonwealth Department of Employment and Workplace Relations |
| DFAT | Commonwealth Department of Foreign Affairs and Trade |
| DHA | Commonwealth Department of Home Affairs |
| DPIRD | NSW Department of Primary Industries and Regional Development |
| FWO | Fair Work Ombudsman |
| ILO | International Labour Organization |
| MIA | Murrumbidgee Irrigation Area |
| NSW | New South Wales |
| PALM | Pacific Australia Labour Mobility |
| The Office | The Office of the NSW Anti-slavery Commissioner |
| UWU | United Workers Union |
| WHM | Working Holiday Maker |

Executive Summary

New South Wales (NSW) benefits from the contributions of many different types of temporary migrant workers in agriculture, horticulture, meat processing,¹ cleaning, hospitality, retail and tourism. Soon, these workers will also play an increasing role in aged care. Statistics are imprecise, but the 2021 census estimated that around 30 per cent of all temporary migrants in Australia were based in NSW.² This now includes 6,135 Pacific Australia Labour Mobility (PALM) workers (primarily in agriculture and meat processing),³ and as many as around 52,000 working holiday makers (WHMs).⁴ In addition, our State's communities and workplaces also host international students, skilled temporary workers, graduates, those on regionally sponsored visas,⁵ and undocumented workers employed in agriculture and meat processing in NSW.

Temporary migration is largely well-managed. It benefits workers, their communities of origin, businesses in rural and regional NSW, and the communities in which workers live temporarily as guests. Yet there is an increasingly urgent need to address the situation of a minority of temporary migrant workers in NSW who are at risk of modern slavery. Temporary migrant workers, particularly low-wage workers in agriculture, horticulture and meat processing in rural NSW, face risks of debt bondage, deceptive recruiting, forced labour and, in extreme cases, servitude, sexual servitude or even human trafficking.

In this report I describe the information I have received over the past two years that underpins this conclusion, including information regarding:

- working conditions, wages and entitlements;
- accommodation, transport and living conditions;
- gendered violence and healthcare access; and
- isolation and social marginalisation.

Disengaged and undocumented workers face heightened risks of modern slavery, particularly forced labour. There are thought to be several thousand disengaged PALM workers currently in Australia, with many likely to be in regional NSW.⁶ In becoming undocumented or disengaged, workers frequently lose their access to accommodation, health insurance and, of course, formal income. Reports to me from stakeholders in rural and regional NSW over the last two years indicate that hundreds of disengaged PALM workers have sought humanitarian support over that period,

¹ For the purposes of this report, meat processing covers beef, cured meat and smallgoods, as well as poultry processing.

² Australian Bureau of Statistics. Temporary visa holders in Australia (2021 Census). Canberra: Australian Bureau of Statistics. <https://www.abs.gov.au/statistics/people/people-and-communities/temporary-visa-holders-australia/latest-release>

³ DEWR, 2024. PALM Scheme Key Data (published 31 July 2024). Canberra: DEWR. <https://www.palmscheme.gov.au/palm-scheme-data>.

⁴ Taking the total number of WHMs of 170,437 leads to an estimate of approximately 51,812 WHMs in NSW (WHMs visa holders in Australia at 31 December 2023 including both 417 and 462 visa classes. Department of Home Affairs, 2023. Working Holiday Maker visa program report. Canberra: Department of Home Affairs).

⁵ For example, Designated Area Migration Agreements such as the Orana Designated Area Migration Agreement operating in the Orana, Central West, Southern Inland, Murray and Riverina.

⁶ Thompson, A, 2023. 'Broke and hungry, Pacific Islanders are abandoning Aussie farms in droves.' The Sydney Morning Herald (Web Page, 27 June 2023). <https://www.smh.com.au/politics/federal/broke-and-hungry-pacific-islanders-are-abandoning-aussie-farms-in-droves-20230621-p5diah.html>. DEWR provides assistance to disengaged workers to help them return to their countries of origin.

particularly in the western Riverina region (around Griffith and Leeton), but also in the Mid North Coast Region around Coffs Harbour and the Nambucca Valley. Government law enforcement, healthcare and child protection workers report encountering numerous temporary migrant women with unplanned pregnancies who had not received antenatal care due to ineligibility for Medicare, and lacking access to private healthcare options. In the western Riverina of NSW, crisis accommodation providers report having exhausted all available resources, including even tents, for PALM workers who have left their employer-provided accommodation and are sleeping rough. My Office has provided support and assistance to numerous such workers, under section 9(1)(b) of the *Modern Slavery Act 2018* (NSW).

In this report, I describe the growing indications that it is falling to local communities, social support providers and NSW Government agencies to manage the costs and consequences when temporary migrant workers are disempowered, deceived or disengaged. Local civic, multicultural and religious organisations report being stretched by unpredicted demand, with the federal government providing limited forewarning of the influx of PALM workers, whether engaged or disengaged, in a particular region. Even with the limited humanitarian support that can be provided at short notice, many workers risk falling further into abuse and exploitation as they search for any opportunity to make an income in order to survive, including by working informally for unscrupulous employers. Although less well-documented, it is likely that other types of temporary migrants working in regional agriculture and meat processing in NSW – including WHMs and undocumented workers other than PALM workers – also face risks of abuse of their vulnerability, physical and social isolation, and other forms of treatment amounting to forced labour as recognised by the International Labour Organization (ILO).

Exploitation and modern slavery of temporary workers in rural and regional NSW

Since I took office as an independent NSW Anti-slavery Commissioner in August 2022, I have been considering the situation of temporary migrant workers, particularly PALM workers, in rural and regional NSW. This has included:

- provision of assistance and support under section 9(1)(b) of the *Modern Slavery Act 2018* (NSW) to temporary migrant workers in rural and regional NSW
- direct conversations with over 80 PALM workers, over 30 of them disengaged, largely in agriculture, horticulture and meat processing
- identification of over 200 individuals who have disengaged from the PALM scheme over mistreatment and exploitation concerns and are now living without regular income, accommodation and healthcare
- twelve visits by me or my staff to affected communities in NSW, notably in the Riverina, Mid North Coast, New England, Newcastle and Hunter, and Illawarra/Shoalhaven
- ongoing consultations with service providers, law enforcement officials, local council members, business, unions, diplomatic representatives and Pacific Island community representatives, and
- two workshops held in Griffith and Coffs Harbour in March 2024, at which 39 different local service providers and over 20 subject matter experts were consulted.

This Report, submitted under section 19(4) of the *Modern Slavery Act 2018* (NSW), sets out my findings – including information suggesting a pattern of conduct involving indicators of forced labour, deceptive recruiting, possible sexual servitude and emerging labour trafficking. Individual cases of maltreatment exhibiting these indicators could involve modern slavery offences under both Commonwealth and NSW law.

In line with my mandate under section 9(1)(b) of the *Modern Slavery Act 2018* (NSW), I and my team have provided support and assistance to many of these workers, particularly over the last year. This has included securing donations of food and clothing, crisis accommodation, legal assistance and

advice, immigration advice, healthcare and pastoral support. However, the *Modern Slavery Act 2018* (NSW) gives me no formal investigative power. Where appropriate, I have referred matters to NSW and federal law enforcement. In several cases, this has led to individuals being given assistance through the federal government-funded Support to Trafficked People Program.

Yet reports and other evidence suggest that hundreds – perhaps thousands – of other temporary migrant workers, notably disengaged PALM workers, may currently lack access to appropriate accommodation, healthcare and other essential services. This leaves many destitute, and at high risk of exploitation. In Griffith, there are even some early warning indicators that suggest the possibility that organised labour trafficking may be emerging on a small scale.

Addressing an emerging crisis

The sources of this emerging crisis are complex. The agricultural, horticultural and meat processing sectors are challenging to regulate, in part because of the high proportion of vulnerable migrant workers, the large number of employers, dispersed geography and, in the case of agriculture and horticulture, high seasonality. Enforcement is largely undertaken by national authorities, with limited State support or intervention. The sector also relies significantly on labour hire companies, which are not subject to a specific regulatory scheme in NSW – as they are in neighbouring Victoria, Queensland, the Australian Capital Territory (ACT) and South Australia. In NSW alone, there are 98 direct employers and 14 labour hire companies that are approved to recruit PALM workers⁷ and dozens, if not hundreds of other companies in rural NSW that employ other types of temporary migrant workers including WHMs. Employment of WHMs generally requires no registration,⁸ so the federal and state governments have little visibility on where and who these employers are.

Visa settings for PALM workers (set by the Federal Government) also play an important factor in the rate of disengagement and vulnerability. Unlike temporary migrant workers including sponsored skilled workers (and WHMs), PALM workers do not have the right to change employers during their stay in Australia. Around 70 per cent of PALM workers in NSW are in the ‘long-term’ stream, with contracts of up to 4 years. A PALM worker can only be transferred to another employer by request of the original employer, or at the discretion of the Department of Employment and Workplace Relations (DEWR), but the latter usually requires documented evidence of exploitation.

Even where workers can show evidence of exploitation, meaningful sanction and compensation against an employer may be hard to achieve in practice. As an example, repeated allegations of abuse and mistreatment by workers employed by Linx Tasmania Pty Ltd led the company to withdraw from the PALM scheme in mid-2023. However, to date no charges or formal sanctions have yet been brought against the company or its directors. In fact, I have received requests for support and assistance from temporary migrant workers whose treatment suggests they have been exploited by a resurrected or ‘phoenixed’ version of Linx, operating under a different name and with temporary migrant workers on other valid visa classes. That company now appears to be in liquidation, further complicating attempts by affected workers to receive appropriate remedy and compensation for the harms they have suffered.

The reporting I have received over the last two years paints a consistent picture that many temporary migrant workers consider that employers (including labour hire companies) are unlikely to be held accountable for violations of workplace rights or for abuse and exploitation. This perception of impunity jeopardises the integrity of temporary labour migration programs including the PALM and the WHM programs and discourages workers from making complaints in future. Workers turn instead for support to informal and community networks, consular and diplomatic

⁷ DEWR, undated. PALM current employers. <https://www.palmscheme.gov.au/current-employers> (accessed 25 July 2024). There is a total of 479 approved employers in Australia.

⁸ Except with the Australian Taxation Office for taxation purposes – but this data does not appear to be automatically shared with other government departments such as DEWR.

representatives, unions and church groups, which may lack the resources to address the surge in demand, and risk playing a constant game of ‘whackamole’ to address problems after they have emerged.

Preventing future cases of modern slavery

According to section 19(4) of the *Modern Slavery Act 2018 (NSW)* (‘the Act’):

The [Anti-slavery] Commissioner may, at any time, make a report on any particular issue or general matter relating to the Commissioner’s functions and furnish the report to the Minister who is to furnish the report to the Presiding Officer of each House of Parliament.

This report is the first exercise of this power. In it, I explain the findings of my consideration (under sections 9(1) and 10(1) of the Act) of the situation of temporary migrant workers, particularly PALM workers, in rural and regional NSW. I offer the following recommendations to the NSW Government and the Parliament of NSW:

1. Urgently initiate a trauma-informed and worker-centred investigation of the modern slavery risks faced by PALM workers and other temporary migrant workers working in agriculture, horticulture and meat processing in rural and regional NSW, and the support and resources needed by local communities and service providers to prevent modern slavery. Given the reluctance of many workers to come forward and engage with government authorities and police, and the gravity of some of the suspected conduct, consideration should be given to such an investigation being undertaken by the Modern Slavery Committee, exercising its formal inquiry powers under section 22(1)(a) and Schedule 1 of the Act. This would allow the Committee to gather evidence and offer confidentiality to witnesses.
2. Ensure relevant NSW Government frontline agencies mandate suitable training as envisaged by section 19(3)(a) the Act. This should include training for the NSW Police Force, NSW Government, healthcare and multicultural organisations, social and humanitarian services, Safe Work NSW and DPIRD in the 11 Forced Labour Indicators provided by the ILO.⁹
3. Advocate for the Federal Government to review the visa settings and protection requirements for temporary migrant workers in PALM and the WHM Program, including through such avenues as future meetings of the National Cabinet, or periodic meetings of the Work Health and Safety and Workplace Relations Ministers at State level.
4. Complement the work of the new Migrant Workers Centre to be established in NSW, with regional outreach including migrant centre hubs that support all migrant workers on a non-discriminatory basis.
5. Ensure resources and information sharing to/with non-government stakeholders (including unions, local councils and diaspora groups) to enable them to play a more active role in monitoring working and living conditions and support to temporary migrants.

⁹ ILO, 2012. Indicators of Forced Labour. Geneva: International Labour Office.
https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf

1 Introduction

1.1 About this Report

This is a report by the NSW Anti-slavery Commissioner under section 19(4) of the *Modern Slavery Act 2018* (NSW) (hereafter 'Report'). It has been prepared on the basis of information I have received in the two years since I took office. This has included:

- provision of assistance and support under section 9(1)(b) of the *Modern Slavery Act 2018* (NSW) to temporary migrant workers in rural and regional NSW. Six of these workers have been referred to the federal government's Support to Trafficked People Program.
- direct conversations with over 80 PALM workers, over 30 of them disengaged, largely in agriculture, horticulture and meat processing
- identification of over 200 individuals who have disengaged from the PALM scheme over mistreatment and exploitation concerns and are now living without regular income, accommodation and healthcare
- twelve visits by me or my staff to affected communities in NSW, notably in the Riverina, Mid North Coast, New England, Newcastle and Hunter, and Illawarra/Shoalhaven
- consultation with service providers, law enforcement, local council members, business, unions, diplomatic representatives and Pacific Island community representatives, and
- two workshops held in Griffith and Coffs Harbour in March 2024, at which 39 different local service providers and over 20 subject matter experts were consulted.

The Report addresses the emerging modern slavery risks in agriculture, horticulture and meat processing in rural NSW among temporary migrant workers particularly PALM workers. It does not address modern slavery risks in related visa categories – notably those relating to international students, domestic partners and those on bridging visas, though aspects of these arrangements may also engender such risks.

The Report focuses on onshore regulation of temporary migration and does not address those measures that could be taken in or by workers' countries of origin, such as pre-departure training, minimising risks of deceptive recruiting and reducing debts in countries of origin that may form the basis of debt bondage experienced partially in NSW. This can manifest as recruiters deceiving migrants about employment, living, wages and visa conditions, and demands relating to upfront travel and recruitment costs pre-departure. The scope of this Report is to address migrant worker vulnerabilities while living and working at their employment destination, specifically in rural and regional NSW. However, I recognise continued cooperation between Pacific and other countries, and the Australian government, will be required to effectively prevent, identify and remedy modern slavery.

1.2 Mapping temporary migrants working in agriculture, horticulture and meat-processing in rural and regional NSW

Australia's modern immigration policies have undergone significant changes over the past thirty years. Starting in 1996 with the introduction of a temporary skill shortage visa, entry into Australia has become predominantly temporary. While the intake of permanent migrants has been constrained by annual caps, temporary labour migration has largely been uncapped. Consequently,

the annual admission of temporary migrant workers, including those on *de facto* work visas (including WHMs), has grown much faster than permanent migration. In 2022 there were 5.5 times the number of temporary migrants to permanent migrants, up from 3.4 times two decades earlier.¹⁰

In regional and rural NSW, agriculture, horticulture and meat processing are sectors that are especially likely to employ low-wage temporary migrant workers. These workers comprise different migration streams:

- PALM workers – who come for periods of between 6 to 9 months (short-term stream, largely seasonal agriculture), and 1 to 4 years (long-term stream covering meat processing, agriculture, accommodation, health care and social assistance and other industries¹¹) to work in regional and rural locations across Australia. The number of workers has grown dramatically over the past 5 years from 5,886 workers in 2019 to 31,950 nationally as at July 2024, with the largest number of workers coming from Fiji and Vanuatu.¹² In NSW, there were 6,135 PALM workers (around a fifth of the national total) as at July 2024, with a much larger proportion of workers employed in the long-term stream (4,270 workers) than the short-term stream (1,865 workers). Of the long-stream workers, as at June 2024, the majority were in meat processing (77 per cent) with smaller numbers in agriculture (12 per cent) and health care and social services (11 per cent).
- Working Holiday Makers (WHMs) – who come for periods of up to 3 years. While initial permits are for one year, WHMs can extend their stay into a second and third year if they complete three months of specific regional work in their first year (88 days), and six months of such work in their second year (179 days) respectively. Specified work includes agriculture, forestry, and fishing, mining and construction and bushfire recovery, but most WHMs engage in work on farms. In December 2023, the number of WHMs was 170,437, of which, around 52,000 may be in NSW.¹³ Jobs and Skills Australia estimates that approximately 15-30 per cent of WHMs are directly employed in food production, with migrants in this sector most likely to come from Taiwan, Indonesia and Vietnam.¹⁴ WHMs from South Korea are also common in both agriculture and the meat processing sector.¹⁵
- Undocumented workers – who may be visa overstayers (when a visa is no longer valid because it has expired) or visa holders without a right to work (typically, these involve migrants on tourist visas that do not contain a right to work).¹⁶ This includes workers that

¹⁰ Department of Home Affairs, 2020. Australian Migration Statistics, 2019–20, Canberra: Australian Government,

¹¹ There are media reports suggesting that PALM is being extended to service stations and other sectors. Marie, J, 2024. Pacific workers move from farms to service stations in expansion of Pacific Australia Labour Mobility scheme. ABC (Web Page, 23 May 2024). <https://www.abc.net.au/news/rural/2024-05-23/pacific-workers-move-from-farms-to-service-stations/103878284>

¹² DEWR, above n3. See also, Curtain, R and Howes, S. 2024. Fiji replaces Vanuatu as top PALM sending country. Devpolicy Blog. Canberra: Australian National University

¹³ DHA, above n4.

¹⁴ Jobs and Skills Australia, 2024. Migration and the food supply chain workforce. Food Supply Chain Workforce Capacity Study Advisory Group meeting, 21 July 2024.

¹⁵ Forsyth, A, 2016. Victorian Inquiry into the Labour Hire Industry and Insecure Work. Melbourne: Department of Premier and Cabinet.

¹⁶ Howe, J, Clibborn, S, Reilly, A, van den Broek, D, & Wright, C. F, 2019. Towards a durable future: Tackling labour challenges in the Australian horticulture industry. University of Adelaide and University of Sydney. <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>. Howe et al. define three types of undocumented

have ‘disengaged’ from the PALM scheme, leaving their approved employment to seek work elsewhere. The National Agriculture Workforce Strategy (2020) estimated between 60,000 and 100,000 undocumented workers in the agricultural sector in Australia, though industry stakeholders suggest this is an overestimate.¹⁷ Very little is known about the number and challenges of undocumented workers in NSW specifically, as this group of workers are the least likely to make complaints to government regulators or unions. But there is some evidence that undocumented workers are especially present in the agricultural sector because of employers’ use of unregulated labour hire contractors, and because the sector’s geographic dispersal makes the risk of detection of undocumented workers less likely.¹⁸

The agriculture, horticulture and meat processing sectors have changed dramatically in recent years as a result of COVID-19, industrial relations reforms, revisions to the PALM scheme, and stronger responsible sourcing requirements by supermarkets. These are briefly summarised below:

- COVID-19: The pandemic had a dramatic effect on the number of WHMs, many of whom left Australia due to the uncertainty and travel restrictions imposed during the pandemic. While the total number has climbed back to pre-pandemic totals, the dip during the COVID pandemic period led more employers to rely on PALM workers in these sectors.¹⁹
- Industrial relations reforms: Significant changes were made to the Horticulture Award 2020 and Meat Industry Award 2020, including a wage guarantee for pieceworkers, ensuring that they are paid at least the minimum hourly rate regardless of their output. This change was implemented to address widespread confusion and issues with non-compliance regarding how piece rates were applied. Employers are now required to set piece rates that allow competent pieceworkers to earn at least 15 per cent more than the minimum hourly rate for their classification level. Employers must keep detailed records of the hours worked by pieceworkers and ensure that all workers receive at least the minimum wage guarantee for each day worked. According to industry stakeholders these measures increased the cost of WHMs, who were especially likely to be paid below the minimum hourly wages based on piece rates, which further prompted an increase in PALM workers.
- Changes in social audit requirements: According to industry stakeholders, recent years have seen a stronger push by supermarkets towards responsible sourcing. Woolworths, Coles and ALDI Australia now require that suppliers acquire some degree of certification such as Fair Farms, SEDEX (Supplier Ethical Data Exchange) or GlobalGAP, all of which aim to audit labour compliance.²⁰ This has rooted out some unscrupulous employers and labour hire

workers: Visa overstayers – people who originally held a valid visa, which has since expired; Visa holders without a right to work – typically people on tourist visas that do not contain a right to work in Australia; and visa holders in breach of a visa condition allowing a limited right to work – usually international students in breach of the restriction preventing them from working for more than 48 hours a fortnight during semester.

¹⁷ National Agricultural Labour Advisory Committee, 2020. *National Agricultural Workforce Strategy*. Canberra: Department of Agriculture, Water and the Environment.

¹⁸ Howe, J, 2021. Out of Limbo and Into the Light: A Case for Status Resolution for Undocumented Migrant Workers on Farms. 43(4) Sydney Law Review 433.

¹⁹ Howes, S and Sherman, E, 2022. Horticulture labour crisis needs a calm, PALM response. Devpolicy (online, 27 January 2022). <https://devpolicy.org/horticulture-labour-crisis-needs-a-calm-palm-response-20220127/>

²⁰ Woolworths, 2022. Responsible Sourcing Policy.

https://www.woolworthsgroup.com.au/content/dam/wwg/sustainability/documents/196133_responsible-sourcing-policy.pdf Coles Group, 2023. Ethical Sourcing Policy.

https://www.colesgroup.com.au/FormBuilder/_Resource/_module/ir5sKeTxxEOndzdh00hWJw/file/Ethical_Sourcing_Policy.pdf. ALDI Australia, 2024. 2023 ALDI Modern Slavery Statement, p14.

<https://www.aldiunpacked.com.au/storage/2024/06/2023-Modern-Slavery-Statement.pdf>. Metcash

companies. However, it has also driven up the cost of production as supermarkets consider certification a minimum requirement and do not pay a premium. Combined with rising input costs, growers find profit margins squeezed at the same time that pastoral care requirements of the PALM scheme are also increasing.²¹

1.3 Background on the PALM and WHM schemes

Within the framework of temporary labour migration, the Seasonal Worker Program (introduced in 2012) and the Pacific Labour Scheme (introduced in 2018) – were established as development assistance programs for Pacific Island Countries²² and Timor-Leste. By 2022, these programs were merged and expanded into a single scheme known as the Pacific Australia Labour Mobility (PALM) scheme²³ which brings workers to Australia for periods of between 6 months and 4 years.²⁴ Workers are able to return, meaning that some seasonal workers in fact end up working in Australia for many years, with a mandatory 3 months ‘break’ in their country of origin between contracts.

Within Australia, the PALM scheme is managed by the Commonwealth Department of Employment and Workplace Relations (DEWR), in coordination with the Department of Foreign Affairs and Trade (DFAT) which manages the overall PALM policy including visa settings. The Pacific Labour Facility, Fair Work Ombudsman (FWO), Department of Home Affairs (DHA) and Australian Border Force (ABF) also support the PALM scheme. The Australian Government announced significant efforts to strengthen the PALM scheme at the end of 2023, with an additional \$168.1 million over four years to enhance oversight of domestic operations to better support PALM scheme workers, ensure the responsible growth of the scheme, and provide greater support to employers and participating countries. The initiatives also include helping over 1,000 PALM workers obtain formal qualifications over four years, increasing support to facilitate easier access to superannuation savings for returning workers, and offering Medicare access to an initial 200 families in the PALM scheme family accompaniment pilot.²⁵ Many of these families are expected to be hosted on the NSW Mid North Coast, though the extent to which the NSW Department of Education and relevant medical, family preservation and child protection officials, and local government authorities, have been consulted about the extra demands this will place on schools, medical facilities and relevant social services remains unclear.

The key rules and regulations of the PALM are set out in the Approved Employer Guidelines (last updated 1 July 2024).²⁶ Like other temporary migration streams, the PALM scheme is built on an industrial logic, granting privileged access to the Australian labour market for workers from the Pacific region, but only to work in designated industries that the federal government has identified as experiencing labour shortages. Worker integration into local communities is supported by the

‘encourages suppliers to be members of either Fair Farms, BSCI [amfori Business Social Compliance Initiative] or SEDEX’. Metcash, 2023. Modern Slavery Statement, p20. https://www.metcash.com/wp-content/uploads/2023/11/2023_Metcash_MSS_FINAL.pdf.

²¹ Non-wage labour cost for PALM workers is 12.1 times higher per worker than for WHMs, and 2.3 times higher on average per hour worked. Zhao, S, Binks, B, Kruger H, Xia, C and Stenekes, N, 2018. A comparison between seasonal workers and working holiday makers. Canberra: Australian Bureau of Agricultural and Resource Economics and Sciences, Research Report, p18.

²² Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu

²³ Withers, M. 2024. Depletion through transnational social reproduction: guestworker migration and uneven development in the South Pacific. *Work in the Global Economy*.

²⁴ There is no official minimum period for the seasonal stream of PALM, but DEWR is unlikely to approve a recruitment plan that is not long enough for the worker to be able to make a ‘reasonable’ profit to return with.

²⁵ DEWR, 2023. FAQs Budget 2023-24: Expanding and improving the Pacific Australia Labour Mobility scheme.

²⁶ DEWR, 2024. Pacific Australia Labour Mobility scheme Approved Employer Guidelines. Canberra: DEWR <https://www.palmscheme.gov.au/sites/default/files/2024-07/PALM%20scheme%20Approved%20Employer%20Guidelines%20-1%20July%202024.pdf>

Community Connections program, which operates in tandem with the PALM scheme. This is a partnership between Australian Government and the Salvation Army with the NSW Council for Pacific Communities, the Pacific Island Council of Queensland and the Uniting Church of Australia (Synod of Victoria and Tasmania). Community Connections has several designated contact persons across the country to support employers, workers, and local communities to integrate and foster improved relationships.²⁷ Additionally, Country Liaison Officers (CLOs) are appointed by most Pacific governments to provide support to workers via phone or email.²⁸ However, forecasts of worker population numbers, source country and other demographic information on incoming PALM worker cohorts are not provided to Community Connections, CLOs, State and Territory governments and local councils, nor to local community stakeholders. This limits their ability to prepare, welcome and support incoming workers. And neither Community Connections nor CLOs are mandated to ensure disengaged PALM workers in crisis have access to safe accommodation, medical care, counselling or other support.

Another important stakeholder in the regulation of PALM is the union movement, particularly the United Workers Union (UWU), the Australian Workers Union (AWU) and the Australasian Meat Industry Employees Union (AMIEU) (as well as Unions NSW). Unions not only participate in in-person induction trainings for PALM workers, but operate hotlines and complaint services for members, that allow them to identify emerging problems and conduct strategic litigation. For example, the AWU reclaimed \$30,000 for two underpaid and exploited PALM workers in the horticultural sector in Victoria. However, overall the limited resource of unions often limit their ability to monitor working conditions of PALM workers across the breadth of the State.²⁹ And membership of temporary migrant workers in unions in agriculture and meat processing remains low.

The WHM Program differs from PALM in its light regulatory framework and the limited government oversight of migrant workers' experience. Established in 1975 as a cultural exchange program, the WHM Program has become a bedrock of the agriculture sector in particular, with WHMs from particular Asian countries most likely to engage in full-time work during their 2-3 year stay in Australia. According to the 'specified work' rule, WHMs may extend their one year visa for a second and third year only if they spend a minimum number of work days in particular sectors, particularly agriculture. WHM employers must only adhere to the *Fair Work Act 2009* (Cth) (which applies to all workers in Australia) and register with the Australian Taxation Office (ATO) as employers of WHMs. These requirements offer limited protection to visa holders, many of whom remain vulnerable to exploitation, especially when working on remote farms.³⁰

²⁷ DEWR, undated. Contact. <https://www.palmscheme.gov.au/contact>

²⁸ Ibid.

²⁹ Australian Workers Union, 2024. '\$30,000 repaid to migrant farm workers highlights need to end exploitation.' <https://awu.net.au/national/news/2024/02/20673/30000-repaid-to-migrant-farm-workers-highlights-need-to-end-exploitation/>.

³⁰ Office of the NSW Anti-slavery Commissioner, 2024. Supporting strong and sustainable regions by addressing modern slavery risks. Submission to the Department of Home Affairs by the NSW Anti-slavery Commissioner. Canberra: DHA.

2 Modern slavery risks for temporary migrant workers in rural and regional NSW

Information I have received over the last two years suggests temporary migrant workers in rural and regional NSW, particularly in agriculture, horticulture and meat processing, face modern slavery risks in four areas:

- working conditions, wages and entitlements;
- accommodation, transport and living conditions;
- isolation and social marginalisation; and
- gendered violence and restricted healthcare access for women migrants including survivors.

These reports are consistent with other research in the horticulture and meat processing sectors including:

- In 2015, a report by the FWO on the NSW operations of Baiada, a meat processing company, highlighted that the meat processing sector predominantly employs migrant workers who often experience severe issues such as underpayment, excessively long working hours, and high rents for substandard living conditions.³¹ The report noted that Taiwanese and Hong Kong WHMs were the dominant source of labour for Baiada's poultry processing sites. Unions have noted that the vast majority of workers are recruited through labour hire companies.³² Modern slavery has similarly been alleged in media investigations in abattoirs in Victoria including in the context of workers from China.³³ However, despite these risks, the RMIT Business and Human Rights Centre found that most meat processing companies were not adequately addressing the root causes of modern slavery and labour law breaches, as reported in the modern slavery statements required under the *Modern Slavery Act 2018* (Cth).³⁴
- In 2018-20, the FWO investigated labour compliance in the horticultural sector, finding that, of the 638 businesses investigated, 70 per cent of those that employed temporary migrant workers had breached Australia's workplace laws. Of those horticulture businesses found in violation of the *Fair Work Act 2009* (Cth) which were still operating two years later, 46 per cent were again found non-compliant with legal obligations to their workers. Further studies in 2020 in the horticulture sector confirmed these issues. A survey by UWU of 1,000 horticultural workers across Australia revealed that 63 per cent reported underpayment, 32 per cent faced unsafe working conditions, 33 per cent were threatened for raising concerns,

³¹ FWO, 2015. 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales' Canberra: FWO.

³² AMIEU, 2022. Submission of the Australasian Meat Industry Employees' Union in relation to A Migration System For Australia's Future Background. Canberra: DHA.

³³ Baker, R. 2021. 'Chinese meatworkers bear the scars of mistreatment in Australia's visa factories' The Sydney Morning Herald (Web Page, 1 September 2021). <https://www.smh.com.au/national/chinese-meatworkers-bear-the-scars-of-mistreatment-in-australia-s-visa-factories-20210826-p58m51.html>

³⁴ Moolchand, E, Marshall, S Coffey, H and McErvale, S, 2023. 'Where's the beef? An evaluation of meat company modern slavery statements over two years'. Melbourne: RMIT Business and Human Rights Centre.

and 25 per cent were punished or fired for speaking up.³⁵ Specifically in NSW, in 2020, the McKell Institute report on the blueberry picking industry found severe underpayment issues, with some workers earning as little as AUD\$21 for seven hours of work and others coerced into unpaid labour.³⁶

While many employers do the right thing by ensuring safe working conditions and compliance with the respective industrial award, there are reports of unscrupulous employers (including labour hire companies) and accommodation providers taking advantage of both PALM and other migrant workers in agriculture, horticulture and meat processing. Underpayment of wages, excessive deductions, overcharging for accommodation and transport, in combination with superannuation and taxation settings that disadvantage PALM workers, can represent a significant loss to the development of Pacific communities and other countries of origin of temporary migrant workers in NSW. Gender-based violence and difficulties for migrant women in accessing suitable healthcare and crisis accommodation also deepen vulnerability. And language and cultural barriers pose serious obstacles to effective resolution of grievances and may contribute to under-reporting. Due to a distrust of government authorities and a lack of cultural awareness on the part of employers, service providers and others, many PALM workers may not report incidents, nor seek and receive services.³⁷

These areas, which I go on to discuss in this section, contribute to worker exploitation and in the case of PALM workers specifically, to disengagement from the scheme (see Figure 1 below). Nation-wide, there were estimated to be approximately 4,800 disengaged workers from the program in the five years between mid-2018 and mid-2023.³⁸ Stakeholders in the Murrumbidgee Irrigation Area (MIA) report that disengaged PALM workers presenting in the local area since 2018 number in the several hundreds. As of May 2024, approximately 300 disengaged PALM workers sought support for various issues related to their visas, employment and income in this council area alone. As noted above, disengagement further amplifies underlying modern slavery risks and broader risks to safety and wellbeing due to loss of access to income, food, shelter and healthcare.

This section explains the issues faced by workers as reported to me, and documents available evidence from government inquiries, reports by academics, unions and think tanks, as well as media investigations. This analysis does not represent a formal investigation – since my role has no formal investigative power under the *Modern Slavery Act 2018* (NSW) – but rather a consideration of general issues as provided for by sections 9, 10(1) and 19(4) of the Act.

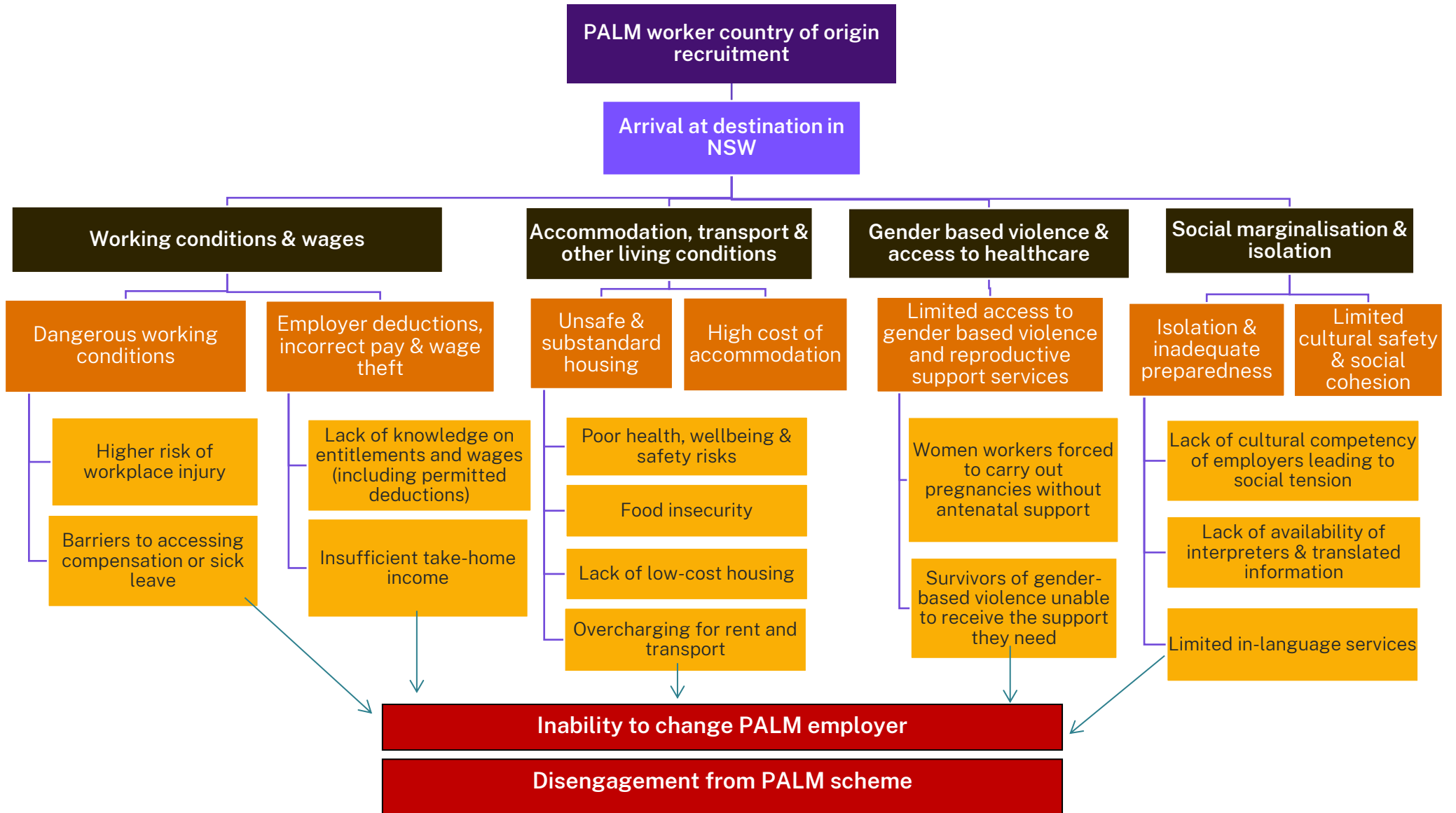
³⁵ UWU, 2020. Submission to the National Agricultural Labour Advisory Committee. Department of Agriculture, Water and the Environment. <https://www.unitedworkers.org.au/wp-content/uploads/2021/02/UWU-NALAC-Submission-2020.pdf>. Another report by Unions NSW, which analysed 1000 job advertisements for horticultural workers, found that 88 per cent offered piece rate payment, and 96 per cent of these would result in illegal underpayment, with some workers earning less than \$1 per hour. Unions NSW, 2021. Wage Theft: The Shadow Market Empowering Migrant Workers to Enforce Their Rights. Sydney: Unions NSW. <https://unionsnsw.org.au/wp-content/uploads/2023/11/Wage-Theft-The-Shadow-Market-Empowering-Migrant-Workers-to-Enforce-Their-Rights.pdf>

³⁶ Cavanough, E and Wherrett, C. 2020. Blue Harvest: Wage theft and other labour infringements in the NSW Mid-North Coast's 2019/20 berry harvest. Sydney: McKell Institute.

³⁷ National Advocacy Group on Women on Temporary Visas Experiencing Violence, 2022. Blueprint for Reform - Removing barriers to safety for victims/survivors of domestic and family violence who are on temporary visas. <https://awava.org.au/wp-content/uploads/2023/06/Blueprint-for-reform-vJUN2023.pdf>.

³⁸ Thompson, above n6. This figure is likely to be underestimated given the underreporting to police and other authorities and secrecy of disengaged workers experiencing exploitation, violence or workplace issues.

Figure 1: PALM worker in-country risks and factors leading to disengagement



2.1 Working conditions, wages and entitlements

2.1.1 Wages

According to consulted stakeholders, PALM workers in NSW frequently experience a range of wage-related violations including underpayment of wages, and excess or unexplained deductions for overpriced rent, transport, laundry, and kitchen access. Workers noted that they often did not receive itemised payslips to identify what deductions were taken from wages. Despite government protections in place for workers to receive a minimum of \$200 weekly take-home pay,³⁹ some reported that this was not complied with. Consulted stakeholders also identified trends of PALM workers given unreasonable fruit picking targets to achieve within a week. Other violations included incorrect application of penalty rates.

Incorrect payment of wages is also an issue for many WHMs. Academic research which surveyed 1,440 WHMs in 2017 found that 32 per cent earned \$12 per hour or less and 46 per cent earned \$15 or less in their lowest paid job. At the time of the survey the standard hourly rate for a casual worker under the Horticulture Award was \$22.13. Only 9 per cent of underpaid WHMs had taken action to recover their unpaid wages and only 4 per cent had contacted FWO about the issue.⁴⁰

2.1.2 Superannuation

Another concern that PALM workers face with respect to remuneration is their ability to access their superannuation upon the completion of their placements, and the high taxation rate when they recover their superannuation entitlements. According to stakeholders, a lack of understanding of the requirements to claim superannuation leaves many PALM workers with only a fraction of their entitlements.⁴¹ For the claim process, applicants need certified copies of identity papers, a \$55 Certification of Immigration Status if they have paid more than \$5,000 in superannuation, a home address, and usually an open Australian bank account – which can be especially challenging for workers already back in the Pacific and with limited internet connectivity. Moreover, unreasonable costs from super funds, high taxation and high remittance costs to transfer superannuation cuts into entitlements. The precise amount of superannuation funds left unclaimed by PALM workers is not known, but experts put this figure – for an average PALM worker in the horticulture industry coming for 9 months a year for 4 years – at nearly \$10,000 for each worker.⁴²

2.1.3 Health and safety

Dangerous working conditions are another pressing issue in both the agriculture and meat processing sectors –for PALM workers and other temporary migrants. Data from DEWR indicated that as of 30 June 2023, the annual number of deaths among PALM visa holders had more than quadrupled, rising from seven deaths in 2021-2022 to 29 deaths in 2022-2023, as well as 233 critical incidents resulting in injuries to PALM workers. This significant increase coincided with a rise

³⁹ DEWR, above n26: articles 5.1.2 and 5.1.7.

⁴⁰ Berg, L and Farbenblum, B, 2017. Wage Theft in Australia: Findings of the National Temporary Migrant Worker Survey. Sydney: Migrant Worker Justice Initiative.

⁴¹ Collins, J, 2024. Australia's superannuation rules leave Pacific workers out of pocket. Lowy Interpreter (Web Page, 3 May 2024). <https://www.lowyinstitute.org/the-interpreter/australia-s-superannuation-rules-leave-pacific-workers-out-of-pocket>. The Australian government does not release data on how much is claimed after the worker returns home.

⁴² Claimants may incur a fee from their superannuation company when choosing to receive their funds via an Australian bank deposit instead of an Australian dollar cheque, which cannot be easily deposited in the Pacific. Consequently, Pacific workers must transfer their superannuation balance from an Australian bank account to the Pacific, navigating one of the most costly remittance corridors globally. Collins, above n41.

in the number of PALM workers working in the sector.⁴³ Stakeholders consulted in rural NSW indicated that injured temporary migrant workers were in some instances unable to work for extended periods and waited months before receiving treatment. SafeWork NSW has identified seasonal workers in agriculture as a priority, but there is limited evidence of this having been translated into increased enforcement action.⁴⁴

2.2 Accommodation, transport and living conditions

PALM approved employers must provide workers “suitable accommodation and transportation” or arrange this through an accommodation or transport provider with DEWR approval. The fees for transport and accommodation are deducted from the workers’ wages, except in circumstances where the PALM worker arranges their own accommodation.⁴⁵ In order to obtain DEWR approval, employers must submit an ‘Accommodation Plan’, with photos, and must ensure that the accommodation (a) is safe and secure; (b) is fit for occupation and use for each worker (c) complies with any workplace, health and safety legislation and state and territory government and local government legislation and codes that may apply; and (d) meets other mandatory requirements.⁴⁶ The latter include, for example, ensuring that rental arrangements and inclusions are “fair and provide good value for money for workers”; do not constitute more than a reasonable proportion of workers’ income, and “are comparable to local market rates”.⁴⁷

Despite these requirements, it is clear that the experiences of PALM workers in NSW sometimes create risks of exploitation. Reports I have received and concerns raised in community consultations included overcrowding, substandard and unsafe accommodation. Frequent reports of price-gouging and overcharging for accommodation, including fees for using basic kitchen and laundry facilities, left workers with inadequate income after deductions. Stakeholders frequently report – and have shared photographic evidence – of substandard living conditions involving six or more people sharing a small room, while being charged \$150 or more per week each. This suggests accommodation providers are in many cases making as much in rent from a single room housing PALM workers as they might from renting an entire house. Some of these places of accommodation show signs of being unsanitary, including cockroach infestations. Lack of safety in accommodation has also been raised as a key issue for women migrant workers, and a factor in gender-based violence.⁴⁸

⁴³ Hodge, H. 2023. PALM worker deaths increase fourfold amid expanding scheme and increasing reliance on participants. ABC (Web Page, 21 December 2023). <https://www.abc.net.au/pacific/palm-worker-deaths-rise-amid-increasing-reliance/103250688>

⁴⁴ There may be broader issues in SafeWork NSW functioning, as highlighted in February 2024, by the NSW Auditor General. The Auditor General’s report critiqued SafeWork NSW for lacking a “comprehensive performance measurement and reporting framework, and ... [an] effective strategic and data-driven approach to respond to emerging risks”. Audit Office of NSW, 2024. Effectiveness of SafeWork NSW in exercising its compliance functions. NSW Auditor General’s Report, Performance Audit. Sydney: Audit Office of NSW (24 February 2024), p2. See <https://www.parliament.nsw.gov.au/tp/files/187648/Effectiveness%20of%20SafeWork%20NSW%20in%20exercising%20its%20compliance%20functions.pdf>

⁴⁵ DEWR, above n26.

⁴⁶ These include (a) Fair and good value; (b) Security bond (c) Transparency of costs (d) Fit for purpose and in good condition (e) Accessibility, safety and security (f) Suitable sleeping quarters and arrangements (g) Adequate bathroom facilities; and (h) Leisure, social and telecommunication facilities.

⁴⁷ DEWR, above n26, p73.

⁴⁸ Kanan, L, and Putt, J, 2023. Safety and wellbeing in Australia’s Pacific labour mobility scheme: Research report. Canberra: Australian National University, Department of Pacific Affairs, Australian Aid Pacific Research Program. https://dpa.bellschool.anu.edu.au/sites/default/files/publications/attachments/2023-11/safety_and_wellbeing_kanan_and_putt_online_small_file_new_doi.pdf.

Although less frequently documented, many WHMs are also vulnerable to exploitative living conditions connected to their work, including overpriced and unsatisfactory accommodation and transportation. WHMs typically depend on hostels and caravan parks with limited government oversight with respect to quality and safety. Moreover, accommodation providers often have close personal and/or corporate ties to labour hire companies, or also provide transportation to workers (for an additional fee), further deepening the dependence of the workers on them and raising the possibility of abuse of vulnerability.⁴⁹

In some cases, these arrangements raise questions that go beyond wage theft and over-charging, to rise to the level of indicators of forced labour. In one case reported to me, for example, PALM workers were forced to live in a particular caravan park, told they could only leave with the employer's permission or that of their labour hire company agent, and forced to buy from a commissary at the caravan park. The latter appears to have charged extortionate prices and been run by business interests aligned with or controlled by the labour hire company. This pattern of forced accommodation and over-charging for basic services through a 'company store' is a classic feature of slavery-like and forced labour conditions operating under supposedly 'free market' conditions. In some cases, where workers have borrowed money for recruitment-related costs (including under the PALM scheme) these additional accommodation and living arrangements may further trap people in debt bondage, making workers financially and physically dependent on their employers and unable to leave exploitative conditions.

2.3 Gendered violence and healthcare access

Around 20 per cent of PALM workers in Australia are female. This proportion is expected to rise with PALM expanding into aged care and tourism, both traditionally sectors that employ more women than men.⁵⁰ The introduction of the family accompaniment pilot scheme allowing partners and their children into Australia will also increase the number of women and children present in Australia under PALM. Female WHMs also comprise more than half of WHMs in agriculture (54 per cent).⁵¹ Across Australia, female temporary migrant workers appear to experience significant levels of violence, abuse and threats.⁵² This national experience is borne out by the information I have received in consulting stakeholders across rural and regional NSW.

2.3.1 Temporary migrant women and children experiencing violence

Stakeholders from local councils, NSW Health, Domestic and Family Violence, and Homelessness Services, as well as from local humanitarian and multicultural service providers, have all informed me of a growing presentation over the last two years of female PALM workers reporting violence, coercive control and sexual exploitation. As a result, many faced risks of homelessness and of deportation due to disengagement from PALM. Police in one rural area told me they are seeing an upward trend in Pacific women experiencing sexual, domestic and family violence, but too afraid to make formal statements to pursue further police action against the alleged perpetrators. While the

⁴⁹ Howe et al, above n16.

⁵⁰ Petrou, K; Doan, D and Casabonne, U. How can we increase Pacific women's participation in labor mobility? World Bank blog (Web Page, March 15, 2023). <https://blogs.worldbank.org/en/eastasiapacific/how-can-we-increase-pacific-womens-participation-labor-mobility#:~:text=Travelling%20with%20family%20or%20community,significant%20enabler%20for%20wome n's%20participation.>

⁵¹ Jobs and Skills Australia, above n14. On the other hand, women workers make up a third of the overall workforce in agriculture.

⁵² National Advocacy Group on Women on Temporary Visas Experiencing Violence, 2023. Blueprint for Reform - Removing barriers to safety for victims/survivors of domestic and family violence who are on temporary visas. <https://awava.org.au/wp-content/uploads/2023/06/Blueprint-for-reform-vJUN2023.pdf>.

police in this area have taken the initiative, developing presentations in Pacific languages to build awareness about gender-based violence, they face ongoing resourcing and cultural barriers to such outreach, including almost non-existent access to accredited female interpreters in major PALM scheme languages, notably Bislama (a significant dialect for ni-Vanuatu workers).

Workplace gender-based violence and harassment has also been an issue experienced both by PALM workers and WHMs. In early 2024, 12 ni-Vanuatu women filed a Federal Court claim, with support from the UWU, alleging sexual harassment perpetrated by agents of their approved employer, and seeking nearly \$4 million in compensation and damages.⁵³ The issue of gender-based violence is not unique to PALM workers but considered widespread in the agriculture sector. There have been credible allegations of sexual violence against WHMs including numerous media reports of WHMs being threatened with sexual violence by employers during transportation, at the workplace and in the accommodation.⁵⁴ The Retail Supply Chain Alliance noted in its submission to the Inquiry into the WHM program (2020) that “cases of rape and other sexual exploitations [of WHMs] are not uncommon across the country”.⁵⁵ The incidence of these cases is likely to be vastly underreported for a number of reasons, notably risks of retaliation and termination of visa status.

2.3.2 Barriers to accessing healthcare, especially for pregnant PALM workers

Concerningly, I have repeatedly received information, notably in the Riverina and Mid North Coast regions, of female temporary migrant workers presenting in labour, having apparently received zero antenatal care.⁵⁶

PALM workers who fall pregnant will generally not be eligible for antenatal care under the exclusions of the private health insurance and ineligibility under Medicare.⁵⁷ Consultations indicated that pregnant temporary migrant workers in some regional areas were reportedly turned away at hospitals in absence of Medicare cover or funds to pay medical bills. Hospitals in some parts of rural and regional NSW safeguard antenatal health by allowing women, regardless of citizenship or visa status, to access tertiary healthcare to give birth. However, other Local Health Districts may not

⁵³ Marchant, G and Mantesso, S. 2024. Ni-Vanuatu women unite to overcome seasonal work 'nightmare' with court case against alleged sexual abuse. BBC (Web Page, 19 Jul 2024). <https://www.abc.net.au/news/2024-07-19/seasonal-workers-federal-court-case-perfection-fresh/103603880>

⁵⁴ Uibu, K, 2015. 'From Sexual Harassment to Being Underpaid: I've Seen How the Work-for-Visa System Is Broken', ABC News (Web Page, 31 July 2015) <https://www.abc.net.au/news/2015-07-31/uibu-ive-seen-how-the-work-for-visa-system-is-broken/6661910>, Feller, J, 2018. 'Backpackers Reveal Stories of Sexual Assault, Exploitation while Working on Australian Farms', ABC News (Web Page, 8 June 2018) <https://www.abc.net.au/news/2017-07-17/rosie-ayliffe-uncovers-backpacker-farm-work-horror-stories/8687868>; Birmingham, K, 2019. 'Man on Trial over Rape, Kidnap of Backpacker on His Pig Farm', The Sydney Morning Herald (Web Page, 5 February 2019) <https://www.smh.com.au/national/man-on-trial-over-rape-kidnap-of-backpacker-on-his-pig-farm-20190205-p50vwc.html>; Kelly, C, 2021. "Modern Slavery": This Is What It Is Really Like Working on Aussie Farms', The New Daily (Web Page, 14 June 2021) <https://thenewdaily.com.au/news/2020/11/16/farm-work-australia-exploitation>. Uibu, K, 2020. 'There are no human rights here', ABC News (Web Page, 16 September 2020). <https://www.abc.net.au/news/2020-09-15/backpacker-farm-workers-speak-of-wage-exploitation/12545294>

⁵⁵ Retail Supply Chain Alliance, 2020. Submission to the Inquiry into the Working Holiday Maker program. Canberra: Parliament of Australia, p12: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Submissions

⁵⁶ Other healthcare issues reported by stakeholders included several PALM workers unable to access primary, tertiary and dental health care due to high cost, despite having private health insurance. Some labour hire organisations and employers have reportedly restricted access to health insurance claims for PALM workers.

⁵⁷ ILO, 2022. Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards: Technical report. Suva: International Labour Office for Pacific Islands. Beazley, J, 2023. "No support": Pacific Island labour-hire workers fear \$6,000 cost of giving birth in Australia" Guardian. (Web Page, 6 October 2023) <https://www.theguardian.com/australia-news/2022/jul/23/no-support-pacific-island-labour-hire-workers-fear-6000-cost-of-giving-birth-in-australia>.

adopt such inclusive policies or have the capacity to service additional populations, particularly in regional districts with fewer resources.

2.4 Isolation and social marginalisation

Stakeholders in the Mid North Coast and Riverina indicated that temporary migrant workers face significant language barriers and a lack of cultural competency on the part of employers and service providers, often leading to isolation and social marginalisation. Diaspora organisations, multicultural associations and church groups were sometimes the only organisations in a position to provide welfare and pastoral support, almost always on an ad hoc basis, after workers had fallen into situations of crisis. With just one outreach worker for all PALM workers in NSW (growing this year to two), the Community Connections program is not able to overcome these challenges.

While the PALM scheme requires employers to have a welfare and wellbeing support person located within a 200 km radius of each placement of workers, there are no specific requirements to ensure their cultural and linguistic capability to support the workers. Local organisations and law enforcement, though well-intentioned, often lack culturally specific services and training that would ensure effective engagement with temporary migrant workers, given their cultural and linguistic needs. This can make it difficult for them to address the barriers of mistrust that impede workers' reporting of incidents or access to services.

The absence of suitable interpreters is a very particular example of these structural gaps. Government and non-government service providers have reported to me that they have been unable to source interpreters to help address potential cases of human trafficking and coercive control. This is reported to have left some PALM workers without interpretation during critical medical and court proceedings, or left government and community service providers scrambling to find interpreters from inter-state. Moreover, stakeholders repeatedly reported that PALM workers and non-English speaking WHMs may lack awareness of their rights due to a lack of available materials in their local language.

2.5 Case Study

This is a case study that closely mirrors an actual presentation to my Office by a temporary migrant worker seeking support and assistance under section 9(1)(b) of the Modern Slavery Act (2018) (NSW). All names () have been changed to protect privacy and confidentiality.*

Kala* is a young Pacific woman recruited under the PALM Scheme to pick fruit on farms. She accrued a significant debt to her extended family and members of her local community to pay the administrative and medical fees required to receive a place in the Scheme, but anticipated paying it off quickly and sending money home to help her family.

Her approved employer was Hyena*, a labour hire organisation (since removed from the PALM scheme). She arrived in Tasmania and was given only three months of work before Hyena transferred her to Queensland to work on another farm. During her time in Tasmania, Kala had \$120 per week deducted from her pay to cover her place in overcrowded, poor quality accommodation with dirt floors. After deductions for rent, and additional deductions for transport and health insurance, Kala was only left with \$100 a week. Hyena withheld Kala's payslips and she could not keep track of wage deductions. Shortly after being transferred to Queensland, Hyena moved Kala to Melbourne, and eventually to Western Australia. She was also charged for the flights within Australia, often at rates that appear to have been several multiples of commercial prices for such flights. Unable to make ends meet and save money to send home, eventually Kala disengaged from Hyena.

When she first contacted the Office of the NSW Anti-slavery Commissioner via SMS, Kala was three months pregnant, experiencing homelessness, food insecurity and fearing deportation. She was by now living in rural NSW. It was unclear how she had arrived there from Western Australia. Kala did not disclose the circumstances of her pregnancy to the Office but her living conditions suggested she had been at high risk of sexual violence from employer personnel, other workers or community members. Kala had applied for a Bridging Visa by herself but, perhaps in part due to her low level of English, her application was denied and her application for appeal was rejected. As an undocumented migrant, Kala was fearful of deportation if she reported what had happened to the authorities or sought help from them.

The Office's Support and Assistance team provided Kala with intensive advocacy and support but faced multiple barriers in finding an organisation willing to provide services or case management. Many organisations excluded modern slavery victim-survivors, people not on a valid visa or those without access to Medicare or Centrelink. The team was eventually able to find a case manager to coordinate services moving forward. The Office was successful in linking Kala with emergency food, crisis accommodation, a free legal service to process her visa application, secure case management and ongoing prenatal support.

3 Structural issues requiring attention

There is a need for urgent action to address the emerging modern slavery risks in the agriculture, horticulture and meat processing sectors in rural and regional NSW.

For host communities, these risks crystallise as unplanned law enforcement, public health, and clinical care costs, as well as increased pressure on already thinly stretched rural housing stock. For workers, they take the form of risks of exploitation, forced labour or other forms of modern slavery.

If not effectively managed, these negative externalities risk, over time, endangering lives, disrupting the social cohesion of rural communities, and eroding the social licence of the PALM and other temporary work migration programs. Given the importance the Australian government is placing on access to migrants in its planning for the future development of certain key industries – such as aged care – the importance of finding a way to sustainably manage the license of the schemes is clear. And clearly State and Territory, and local, governments have key roles to play here, not least to help prevent modern slavery and to help sustain and protect the social license of these schemes in the communities in which they operate, including rural and regional NSW.

This section sets out certain structural issues that warrant attention, including through improved inter-governmental coordination at the Federal, State and Territory, and local government levels.

3.1 A co-regulatory approach to monitoring and enforcement

At present, the working and living conditions of temporary migrant workers in NSW are monitored through regulatory arrangements dominated by what, earlier in this Report, I described as an 'industrial logic'. Monitoring of respect for rights – and enforcement of those rights – is handled largely by Federal Government work safety and workplace rights bodies.

The FWO, for example, has identified agriculture as a priority sector for enforcement as part of its Agriculture Strategy (2021 onwards)⁵⁸ and annual plans including the 2023-24 plan.⁵⁹ SafeWork NSW has also done so, in 2023, replacing its earlier Roadmap with seven regulatory priorities including seasonal workplaces, particularly in the agricultural sector.⁶⁰ In some cases, notably the PALM scheme, government authorities delegate welfare monitoring and rights enforcement to employers themselves. External actors such as unions, local government actors, law enforcement and consular representatives play only a very limited role.

This approach does not appear to have had a significant impact on temporary migrant workers' enjoyment of safety and rights in these sectors. In fact, FWO reported in late 2023 that agricultural employers in some regions of NSW remain stubbornly non-compliant.⁶¹ And the information I have received over the last two years, including through direct presentation for support and assistance, suggests that, in fact, the number of temporary migrant workers vulnerable to various forms of modern slavery in rural and regional NSW is growing, as these regions rely increasingly on temporary migrant workers.

When vulnerability turns into exploitation, the costs fall not only on the workers and their families, but increasingly also on local stakeholders, through increased demand for scarce accommodation, medical, counselling and support services; unplanned healthcare and law enforcement costs; and, increasingly, risks to the local social fabric.

Co-regulation appears to offer a more effective way to prevent, mitigate and remediate modern slavery risks for temporary migrant workers in rural and regional NSW. This would require federal government and industry to work more systematically and deliberately with other stakeholders on whom these costs fall, notably State government, local government, and community service providers. In certain contexts, there will also be a need for workers themselves to be represented, either through direct representation or perhaps through consular or diplomatic representation.

A co-regulatory approach would foster:

- **Stronger data sharing** by DEWR with State government actors, local government, unions, Community Connections and community service providers to share:
 - Information on anticipated arrivals of PALM workers (details of employers, nationality, ages, gender)
 - close to real-time information about disengagement
 - good practice and perhaps even pricing indices for accommodation, transport and services.
- **Greater strategic coordination** between federal and State authorities to monitor sectors that exhibit higher modern slavery risks, such as agriculture, horticulture and meat processing.
- **Joint monitoring of accommodation with local councils and unions:** Under the PALM scheme, employers must submit an accommodation plan and photos, and attest that they have complied with “any [workplace health and safety] legislation and State and Territory government and local government legislation and codes that may apply to such accommodation”, but there is no mandatory inspection, except where complaints are made. A more proactive approach could build on the model used in Canada, where employers of

⁵⁸ FWO. 2023. Annual Report, 2022-23. Canberra: FWO. <https://www.fairwork.gov.au/sites/default/files/2023-10/office-of-the-fair-work-ombudsman-annual-report-2022-23.pdf>

⁵⁹ Inside Small Business, 2023. Fair work compliance urged in agriculture sector (Web Page, 23 October 2023). <https://insidesmallbusiness.com.au/latest-news/fair-work-compliance-urged-for-agriculture-sector>

⁶⁰ SafeWork NSW, 2023. Our Regulatory Priorities 2023. https://www.safework.nsw.gov.au/___data/assets/pdf_file/0006/1122459/safework-nsw-regulatory-priorities-2023.pdf

⁶¹ Inside Small Business, above n59 .

migrant workers must provide *proof of inspection* before they are approved to recruit a migrant worker.⁶² To facilitate this requirement, local councils and trade unions could be empowered – and would need to be resourced – to carry out such inspections. The latter should be provided information about the proposed property and trained in how to assess the property, providing a recommendation to DEWR on whether the proposed accommodation plan should be approved or not.

- **Regular stakeholder meetings:** Regular meetings between the involved agencies, unions and migrant worker representatives (or consular representatives) would be necessary to discuss findings from inspections, identify emerging trends in exploitation, and develop strategies to address these issues. These meetings would also serve as a platform for the various stakeholders to align their objectives and coordinate their efforts more effectively.

3.2 Lack of social safety net for all temporary migrant workers

A key factor explaining why PALM and other temporary migrant workers may be especially vulnerable to modern slavery risks is the financial precariousness that results from these workers' limited access to social safety nets in Australia – especially if they disengage or become undocumented.

Lack of access to Medicare for both engaged and disengaged PALM workers and WHMs is a notable concern, especially in light of the contribution that these workers make to public services through their tax payments.⁶³ The position stands in noted contrast to the approach now taken for analogous populations overseas. In the United Kingdom, temporary migrants are covered by the National Health Service which provides a comprehensive range of services.⁶⁴ Similarly, in South Korea, all temporary residents staying longer than six months must register for the National Health Insurance. According to polling in August 2023, by the Australia Institute, the majority of respondents (68 per cent) agreed that PALM visa holders should have access to Medicare while they are working in Australia.⁶⁵

Temporary migrant workers should also have access to the Fair Entitlements Guarantee – a federal scheme protecting workers from employer bankruptcy – which is currently only available to Australian citizens and permanent residents.⁶⁶ Currently, PALM workers and WHMs are not only vulnerable to withholding of wages, but also loss of their entitlements if the company goes bankrupt or 'phoenixes'. Having eligibility under the *Fair Entitlements Guarantee Act 2012* (Cth) would help to protect them from financial destitution and risk of exploitation.⁶⁷

It may also be important to consider advocacy for reform of the superannuation component of the PALM scheme. One approach could be the establishment of portable superannuation schemes with Pacific nations, similar to that which New Zealand has already established with Pacific countries.⁶⁸ This would enable PALM workers to transfer their superannuation to a local provident fund at a low

⁶² Canadian Government, 2023. Seasonal Agricultural Worker Program Requirements. <https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural/requirements.html>

⁶³ Migrant Workers Centre, 2020. Submission to the Joint Standing Committee on Migration regarding the Inquiry into the Working Holiday Maker Program. Canberra: Australian Parliament (24 July 2020).

⁶⁴ The equivalent scheme in the United Kingdom is called the Youth Mobility Scheme. Applicants on this scheme must pay an immigration health surcharge.

⁶⁵ Adhikari, A; Anderson, L and Harrington, M, 2023. The PALM scheme: Labour rights for our Pacific partners. Canberra: The Australian Institute.

⁶⁶ Migrant Workers' Taskforce, 2019. Report of the Migrant Workers' Taskforce. Canberra: DHA.

⁶⁷ Migrant Workers Centre, above n63.

⁶⁸ Collins, above n41.

cost. Alternatively, the government could consider creating a central bank account for all PALM workers' superannuation deposits. Similar to how monthly pensions are paid into overseas accounts, the Reserve Bank of Australia could remit individual superannuation lump sums into nominated bank accounts in the Pacific once visas expire, with the early withdrawal tax waived for PALM workers.⁶⁹

3.3 Risk of exploitation by labour hire companies in NSW

The high prevalence of labour exploitation in Australia's labour hire sector within the past decade, in particular in the agricultural, horticultural and meat processing sectors, has been highlighted in a number of government inquiries.⁷⁰ The issue is especially urgent in NSW as licensing regimes in Victoria, South Australia, Queensland and the ACT may have caused unscrupulous labour hire companies to shift operations to NSW. It is promising that, following a recommendation by the Migrant Workers' Taskforce to implement a national labour hire registration scheme,⁷¹ the States (through the respective Workplace Relations Ministers) have established a Labour Hire Harmonisation Working Group and committed to a harmonised approach through model legislation. It is understood that the funding arrangements will be agreed by December 2024 by each of the States and Territories and the Federal Government.⁷²

It is important that the NSW Government commits effective resourcing to ensure that there will be sufficient inspection capacity at State level through the harmonised scheme. To determine what capacity will be 'sufficient', and to otherwise prepare for the creation of the scheme, the NSW government or Parliament could undertake an inquiry into the operation of labour hire companies in NSW, similar to those already undertaken in Victoria, Queensland, the ACT and South Australia and focusing on high risk sectors including agriculture and meat processing.⁷³

3.4 Visa settings at Federal level

Temporary migrant workers are known to be vulnerable to abuse, yet they are often the least likely to complain to government authorities such as the FWO because of the risk of employer reprisal, visa cancellation and deportation as a result of losing their work status.⁷⁴ Without assured confidentiality, privacy, timely dispute resolution processes or employer accountability, many workers remain unconvinced by the cost-benefit analysis of lodging a complaint. Inadequate perpetrator accountability, minimal whistleblower protections and fears of jeopardising their visa

⁶⁹ Ibid.

⁷⁰ For example, Forsyth, above n15. See also, Queensland Parliament Finance and Administration Committee, 2016. Inquiry into the practices of the labour hire industry. Queensland Report No. 25. Brisbane: Queensland Parliament. <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2016/5516T1028.pdf> South Australian Parliament, Economic and Finance Committee, 2016. Inquiry into the labour hire industry: final report. Canberra: National Library of Australia. <https://catalogue.nla.gov.au/catalog/7424559>. Australian Parliament Select Senate Committee on Job Security, 2021. Third interim report: labour hire and contracting. Canberra: Australian Parliament. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Third_Interim_Report

⁷¹ Migrant Workers' Taskforce, above n66.

⁷² DEWR. Meeting of Workplace Relations Ministers Communique. Canberra. 20 June 2024.

⁷³ NSW has not had a dedicated inquiry into the labour hire sector since 2003, although there have been some sectoral inquiries where poor regulation of labour hire companies has emerged, including a 2019 inquiry into the NSW building industry.

⁷⁴ Berg, L, Farbenblum, B and Verma, S, 2023. Breaking the silence - A proposal for whistleblower protections to enable migrant workers to address exploitation. Sydney: Migrant Justice Institute. <https://www.migrantjustice.org/s/Feb-23-Breaking-the-Silence-Proposal-for-Whistleblower-Protections-xtna.pdf>.

and stay in Australia have often been identified as barriers to reporting exploitation for temporary migrants.⁷⁵

Under the new visa protection pilots which came into effect on 1 July 2024, migrant workers are protected against visa cancellation and may be eligible for a new workplace justice visa if they are in the last 28 days of their visa or had had their visa expire no more than 28 days earlier.⁷⁶ However, PALM workers may be restricted in their ability to apply for the workplace justice visa by ‘Condition 8503’ which prevents them from being able to apply for a new visa while in Australia. One improvement that could be made to the pilot would be an amendment to the *Migration Regulations* (Cth) clearly excluding PALM workers from requiring a waiver of Condition 8503 if they apply for a workplace justice visa, or alternatively providing a blanket waiver for all PALM workers.

However, even with the ability to apply for a workplace justice visa, PALM workers could remain trapped in conditions of labour exploitation because they are tied to their employers. As noted above, around 70 per cent of PALM workers in NSW are in the ‘long-term’ stream of the PALM Program, meaning that they do not have the right to change employers for up to 4 years (depending on the duration of their contract).

When comparing this with other employer-sponsorship schemes globally, this period of tied employment can be seen as excessive. The ILO, and numerous scholars argue that on economic, as well as ethical, grounds the practice of tied employment (employer-sponsored visas) should be avoided because it promotes exploitation, depresses wages and performs the role of a quasi-‘subsidy’ to particular employers, occupations or sectors.⁷⁷ According to some scholars, visa portability is “perhaps the single best thing the government could do to protect workers’ rights”.⁷⁸

The authors of the Australian Migration review appeared to agree, noting that:

“Visa conditions can increase the risk of migrant exploitation by regulatory conditions driving power imbalances between employers and migrants. Restrictions on a visa holder’s ability to change employers and dependence on an employer’s continued support to access the Australian labour market and, perhaps, eventual pathways to permanent residence, limit a migrant worker’s capacity to resist, report or leave exploitive situations.”⁷⁹

As a result of recent reforms, workers on the temporary skills shortage visa can now leave their employers at any time and have 180 days (with work rights) to find a new sponsor.⁸⁰ However, again, this excludes PALM workers. This exclusion comes despite a number of reports having argued for PALM workers to have greater mobility to change employers, particularly on the long-term stream.⁸¹

⁷⁵ Ibid.

⁷⁶ Migration (Workplace Justice Visa – LIN 24/055) Instrument 2024; and Migration (Strengthening Reporting Protections – LIN 24/057) Instrument 2024.

⁷⁷ ILO, 2022. Temporary labour migration: Unpacking complexities - Synthesis Report. Geneva: International Labour Office.

⁷⁸ Clemens, M. and Gough, K, 2018. Don’t Miss This Chance to Create a 21st Century US Farm Work Visa. Washington, DC: Centre for Global Development. <https://www.cgdev.org/blog/dont-miss-chance-create-21st-century-us-farm-work-visa>

⁷⁹ Parkinson, M, Howe, J and Azarias, J, 2023. Review of the Migration System. Canberra: Department of Home Affairs, p89.

⁸⁰ DHA, 2024. Visa conditions 8107, 8607 and 8608 are changing. Canberra: DHA. <https://immi.homeaffairs.gov.au/news-media/archive/article?itemId=1213>

⁸¹ Senate Select Committee on Job Security, 2022. Final report: matter of possible privilege, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Report; Coates, Wiltshire and Reysenbach, 2023. Short-changed: How to stop the exploitation of migrant workers in Australia, Melbourne: Grattan Institute. <https://grattan.edu.au/report/short-changed-how-to-stop-the-exploitation-of-migrant-workers-in-australia/>. Adhikari, A, Anderson, L and Harrington, M, 2023. The PALM scheme: Labour rights for our Pacific partners. Canberra: The Australian Institute.

Industry stakeholders that were consulted during the preparation of this Report noted that while they support some worker-led mobility of PALM workers in principle, employers make considerable investments to bring workers to Australia – and employers risk losing this investment if the worker is free to move to another sponsor. Onboarding and training costs are of course a business cost that all employers face, whether hiring local or migrant workers. And there are solutions for this specific problem available from practice in other countries: for example, requiring the second or subsequent employer – to whom the worker is moving – to compensate the first employer and take on responsibility for collecting any pending deductions from the worker. Government may have an important role to play in underpinning such a scheme.

A second concern expressed by some stakeholders concerns how workers would know about other approved employers and which vacancies existed. Here, the role of local council or local public employment services could be activated, and the benefits of a co-regulatory approach may emerge, through facilitation of information-sharing about approved employers and their vacancies. Other more active support could also be contemplated, resources-allowing – i.e. active job matching.

4 Recommendations

This section sets out my recommendations to the NSW Government and Parliament to address the emerging modern slavery risks faced by temporary migrant workers in rural and regional NSW, notably in the agriculture and meat processing sectors, identified in this report.

4.1 Urgently initiate a trauma-informed and worker-centred investigation of modern slavery risks faced by PALM and other temporary migrant workers working in agriculture, horticulture and meat processing in rural and regional NSW

The information in this report has been gathered through the exercise of my existing powers under the *Modern Slavery Act 2018* (NSW). These do not include investigative powers. A more detailed investigation of these risks is required to establish a more robust evidence base on which to develop more detailed policy options and programming responses.

Initiating a prompt, trauma-informed investigation focusing on the risks of modern slavery faced by PALM and other temporary migrant workers in agriculture, horticulture and meat processing would be an important way to obtain more comprehensive information on the issues and needs of at-risk workers. The inquiry should include consideration of some of the key structural issues that are identified in this report, particularly with respect to regulation of labour hire companies. As noted above, while States such as Victoria, Queensland, the ACT and South Australia have undertaken comprehensive inquiries into the labour hire sector, this has so far not been tackled in NSW, creating a lack of knowledge that may hamper the work of the future National Labour Hire Authority in NSW once the harmonised scheme is created. Having a foundational knowledge base would also be a useful way of measuring progress at a later stage.

In addition, any such investigation could be mandated to identify conduct that may breach relevant NSW laws, and to make relevant referrals to regulators, law enforcement and other government authorities.

The Modern Slavery Committee is ideally placed to use its formal inquiry powers under section 22(1)(a) and Schedule 1 of the *Modern Slavery Act 2018* (NSW) to conduct this investigation. This approach would allow the committee to collect evidence confidentially, offering protection to

witnesses who might otherwise fear retribution. It would also ensure that further information gathered could be provided as evidence offered under oath.

This recommendation underscores the need for a specialised, well-supported investigation that considers the complexities and sensitivities of the issues, ensuring that vulnerable workers are protected and that local communities are empowered to combat modern slavery. The investigation should be centred on the workers' experiences and the specific supports and resources needed by local communities and service providers to prevent modern slavery, but should be structured and organised in a way that also ensures adequate opportunities for employers, labour hire organisations and other relevant commercial actors to be suitably heard.

4.2 Ensure relevant NSW Government frontline agencies undertake suitable training in modern slavery, as envisaged by section 19(3)(a) the *Modern Slavery Act 2018* (NSW)

As noted above, frontline agencies such as NSW Police Force, NSW Government healthcare organisations, SafeWork NSW, and DPIRD could play a more active and coordinated role with federal agencies to ensure stronger compliance with existing laws to protect at-risk temporary migrant workers. Frontline workers are already encountering numerous cases of modern slavery in rural and regional NSW, but often lack the understanding of indicators and referral pathways to respond effectively.

Under section 19(3)(a) of the *Modern Slavery Act 2018* (NSW), I am required to report annually to Parliament on “the extent to which the government of NSW has provided mandatory training on modern slavery to front-line government agencies and the public generally during the year”. I will soon report on this matter to Parliament, in my forthcoming Annual Report for 2023-2024. Preliminary analysis suggests there has been very little mandatory training undertaken over the past year.

A mandatory training program could be developed and tailored for agencies such as the NSW Police Force, NSW Government healthcare organisations, SafeWork NSW, and DPIRD focussing on the 11 Forced Labour Indicators developed by the ILO, to help to identify at-risk populations.⁸² As Australia has ratified both the *Forced Labour Convention, 1930 (No. 29)* and the *Protocol of 2014 to the Forced Labour Convention, 1930*, on which the indicators are based, they can be considered a relevant framework for assessing the risks of forced labour in Australia.

By providing this targeted training, the agencies would be better equipped to identify, respond to, and prevent instances of forced labour. This is crucial for improving the overall effectiveness of government efforts to combat modern slavery and support vulnerable workers. Further efforts would also be needed at the level of coordination between State and federal agencies, as noted above with respect to SafeWork NSW and DEWR. This would need to align with major reforms announced by the NSW Government to transform SafeWork NSW into a standalone work, health and safety regulator, following an inquiry led by former judge Robert McDougall KC (2023) and the Auditor General's report into SafeWork NSW (2024).⁸³

⁸² ILO, above n9.

⁸³ NSW Government, 2024. NSW Government to transform SafeWork NSW into standalone work, health and safety regulator (22 February 2024). <https://www.safework.nsw.gov.au/news/safework-media-releases/nsw-government-to-transform-safework-nsw-into-standalone-work,-health-and-safety-regulator>. McDougall, R, 2023. The Independent Review of SafeWork NSW: Final Report (15 December 2023). https://www.safework.nsw.gov.au/___data/assets/pdf_file/0005/1285772/The-Independent-Review-of-SafeWork-NSW.pdf. Audit Office of NSW, above n44.

I and my Office stand ready, if suitable resources are made available, to assist the NSW Government to develop and deliver such a training program.

4.3 Advocate for the Federal Government to review the visa settings and protection requirements for temporary migrant workers in PALM and the WHM Program

There have been impressive reforms introduced in 2024 by the Federal government to protect temporary migrant workers, including through the *Migration Amendment (Strengthening Employer Compliance) Act 2024 (Cth)*, the *Migration Amendment (Workplace Justice Visa) Regulations 2024 (Cth)* and the *Migration Amendment (Work Related Visa Conditions) Regulations 2024 (Cth)*.

Additional areas where further reforms may be warranted include:

- Amending the *Migration Regulations 1994 (Cth)* to ensure that PALM workers who are otherwise eligible to apply for a Workplace Justice visa are granted an automatic waiver of condition 8503.
- Given that a number of disengaged PALM workers will not be eligible for the Workplace Justice Visa since, in many cases, more than 28 days will have passed since their visa was terminated, another reform to the Workplace Justice visa could include exploring the possibility of expanding visa eligibility to undocumented workers.
- Ensuring that PALM workers have greater mobility to change employers, particularly on the long-term stream, preferably in line with recently introduced settings for Temporary Skills Shortage visa holders.
- Removing the specified work rule for WHMs and/or creating more stringent regulatory requirements for employers.⁸⁴
- Ensuring that PALM workers and WHMs are eligible for Medicare and the Fair Entitlements Guarantee.
- Exploring ways in which the superannuation entitlements available to PALM workers can be maximised and more easily transferred to their bank accounts (including when they have returned to their country of origin).

The NSW Government could advocate for the Federal Government to review the visa settings, access to entitlements and protection requirements as above including through such avenues as future meetings of the National Cabinet, or periodic meetings of the Work Health and Safety and Workplace Relations Ministers at State level.

4.4 Complement the work of the new Migrant Workers Centre to be established in NSW with regional migrant centre hubs

It is highly encouraging to see that the NSW Government intends to invest \$6.5 million over four years to establish a new Migrant Workers Centre providing advice, education and training to stop exploitation of migrant workers in NSW, and that the Migrant Workers Centre will be a partnership between unions and multicultural organisations.⁸⁵

⁸⁴ Office of the NSW Anti-slavery Commissioner, above n30.

⁸⁵ Ritenis, A, 2024. NSW Government set to deliver state's first Migrant Workers Centre. Sydney Times (Web Page, 29 July 2024). <https://www.sydneystimes.net.au/state-politics-and-government/nsw-state-government/nsw-state-news/nsw-government-set-to-deliver-states-first-migrant-workers-centre/>

This Centre should be closely connected with unions, local councils, community and diaspora organisations, to be able to conduct outreach in those sectors and regions where vulnerable workers predominate, including in the agriculture, horticulture and meat processing sectors in rural and regional NSW. The timing for this outreach is especially opportune, given the protections against visa cancellation and the workplace justice visa have recently come into effect and will encourage more migrant workers to report workplace exploitation without fearing deportation. Effective cooperation with unions and civil society organisations, as well as ensuring that Centre staff have the cultural and linguistic skills to build trust with workers and their communities, will be critical to success.

As a longer-term solution, there is a need for a more ‘joined up’ approach to service delivery to migrants in rural areas, including PALM workers, WHMs, those on bridging visas and settled migrants including refugees. An inclusive approach to legal, humanitarian and other support services can lead to better resource allocation, reducing redundancy and ensuring that all workers receive appropriate and timely support. For example, many refugee programs already have established networks for providing legal assistance, language training, and social services. Extending these services to WHMs and PALM workers, with appropriate resourcing increases, would help them navigate the complexities of their employment conditions and reduce their vulnerability to exploitation. One example of this is the NSW Multicultural Centre for Women’s and Family Safety, which provides support to all women migrants, including temporary migrants, subjected to domestic and family violence.

Longer-term reform could see the setting up of regional migrant hubs that serve as central points for all migrant workers, including WHMs, PALM workers, refugees, and other migrants. These hubs could provide a range of culturally-informed services, from legal assistance and health care to housing support and employment counselling. The centres could also organise training and education for workers, and be supplemented with mobile outreach services to reach workers in remote areas, ensuring they receive consistent support regardless of their location.⁸⁶

4.5 Ensure funding and support to local actors, including to create a more active role in monitoring of conditions and support.

Local councils, community organisations and diaspora groups are making valiant efforts to address the unintended negative externalities from temporary work migration schemes, including supporting the large number of disengaged PALM workers. The reason why, for example, the western Riverina appears to have received so many reports from disengaged workers could be because it has developed a reputation for being supportive to them and has attracted disengaged workers from other regions, including inter-state. Several dozen mayors, including many in NSW, have also taken the initiative, with the support of Welcoming Australia, to convene a ‘Mayoral Alliance for the Pacific’ to equip interested local councils across Australia to engage more effectively with host communities, PALM employers and workers, in order to, in particular, find constructive solutions to the issue of disengaged PALM workers.

However, it is unsustainable for local communities to be left to their own devices to address these urgent needs. The NSW Government should consider providing funding for the development of community-level ‘Welcome Committees’ to help temporary migrant workers integrate more effectively with host communities, and enjoy their time as guests in our State. These same Committees could play an important role in coordinating crisis response when workers need remedial support and assistance. Welcome Committees should include members with key stakes in the success of temporary migration schemes in a particular community, such as:

⁸⁶ See also, Office of the NSW Anti-slavery Commissioner, above n30.

- workers or their community or consular representatives;
- approved employers;
- local community organisations and service providers;
- local government representatives
- State government representatives; and
- unions.

These Committees could ensure coordinated and culturally safe responses to support migrant workers at risk of or experiencing modern slavery. Working with organisations like Multicultural NSW, the Committees could also, for example, facilitate the development and professional translations of ‘welcome packs’ with local services, local information, key contacts, union details, worker, and visa rights. These packs could be given to migrant workers upon arrival by trusted intermediary networks (or shared online as videos in workers’ languages) and as a mandatory requirement of arrival briefings by PALM employers. The Committees could also support such functions as cultural capability training for approved employers, local councils and service providers. Given that one of the practical obstacles to workers’ ability to change employers (in addition to above-mentioned visa restrictions on PALM workers) is the absence of a mechanism for identifying alternative employment opportunities, the Committees (or other local actors) could also play a more active role in facilitating information sharing about available jobs, and helping workers to transition to a new approved employer.

The Committees could also address practical challenges such as the issue of overcharging of PALM and WHMs in housing and transportation, through the development of a ‘fair price index’ developed at local level. Based on inputs from a range of local actors such as migrant workers, local residents, landlords, transport companies, trade unions and community organisations, the Committees could establish benchmark prices for different types of accommodation (e.g., shared housing, single rooms, apartments) and transport services (e.g., public transport fares, ride-sharing costs), ensuring the index reflects regional cost variations to account for differences in living expenses between urban and rural areas. The index would improve workers’ access to reliable market information, which the NSW Government could disseminate through an online platform or app – reducing workers’ dependence on employers for information. This platform could also provide information on which entity to contact to report instances of overcharging. The index could be updated (biannually, for example), to reflect changes in market conditions and ensure the data remains current.

5 Conclusion

The presence of migrant workers living temporarily as guests in rural and regional NSW offers wins for local communities and for the State as a whole, as well as for workers and the families and communities that support their travel to Australia. But the information presented to me over the last two years paints a consistent picture of growing vulnerability to modern slavery for some of these workers, notably in the agriculture, horticulture and meat processing sectors.

As these industries rely increasingly on the labour provided by temporary – but in some cases reasonably long-term – guestworker populations, we have important questions to ask ourselves about the hospitality we are providing these workers, many of whom are our regional neighbours and part of the so-called ‘Pacific Family’.

Rather than being treated as valued guests, too many vulnerable migrant workers in rural and regional NSW are taken advantage of by unscrupulous employers and labour hire companies. This frequently leaves them destitute, and more vulnerable to exploitation. Local community actors are stepping into the resulting gap, often working valiantly to look after our guests. But as the scale of reliance on temporary migrant workers grows, so does the scale of vulnerability and harm, and the burden on these communities.

This is not sustainable. It already imposes an unplanned burden on local service providers and government agencies, which is beginning to impact their ability to do other work. Over time, it risks generating local social tensions, or even undermining the legitimacy of the broader temporary migrant work arrangements, especially as sending communities become more aware of abuse and exploitation.

In this report I have sought to draw the attention of the Parliament and Government of NSW to this emerging crisis, and to lay out the risks of continuing with a set of uncoordinated, ad-hoc responses. I have suggested that what is needed is a more coordinated, indeed co-regulatory, approach, based in particular on closer coordination between Federal, State and Territory, and local governments, with closer coordination with local civil society, business and union stakeholders. My recommendations aim at identifying a series of practical steps that the NSW Government and/or Parliament might take to better understand and respond to this emerging challenge, addressing both immediate symptoms as well as deeper structural issues. These are practical steps that will ensure our guestworkers continue to feel welcome in our State, and that these partnerships can continue to prosper.

**Office of the
NSW Anti-slavery
Commissioner**

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