

25 March 2020

Committee Secretary  
Department of the Senate  
**By email:** [temporarymigration.sen@aph.gov.au](mailto:temporarymigration.sen@aph.gov.au)

Dear Secretariat

1. JobWatch Inc (**JobWatch**) welcomes the establishment of the Select Committee on Temporary Migration to inquire into and report on the impact temporary migration has on the Australian economy, wages and jobs, social cohesion and workplace rights and conditions.
2. The focus of our submission is on the links between temporary migration and workplace exploitation.

### **Who is JobWatch**

3. JobWatch is an employment rights, not-for-profit community legal centre. We are committed to improving the lives of workers, particularly the most vulnerable and disadvantaged.
4. JobWatch is funded by the Office of the Fair Work Ombudsman, Victoria Legal Aid and the Victorian Government. We are a member of Community Legal Centres Australia and the Federation of Community Legal Centres (Victoria).
5. JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. Our centre provides the following services:
  - a) Information and referrals to workers from Victoria, Queensland and Tasmania, via a free and confidential telephone information service (**TIS**);
  - b) Community legal education, through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
  - c) Legal advice and representation for vulnerable and disadvantaged workers across all employment law jurisdictions in Victoria; and
  - d) Law reform work aimed at promoting workplace justice and equity for all workers.

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6. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our TIS. To date we have collected more than 210,000 caller records with each record usually canvassing multiple workplace problems including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time.
7. JobWatch currently responds to approximately 12,000 calls per year. The vast majority of our callers are not union members and cannot afford to get assistance from a private lawyer.

### **Case studies provided in this submission**

8. This submission is based on the experiences of callers to JobWatch's TIS and clients of JobWatch's legal practice. The case studies are already de-identified. Please note that the facts described in the case studies are not findings of a court or tribunal but rather they represent what our callers have told us on the TIS or what our clients have instructed the JobWatch lawyers. Each of the case studies highlights the vulnerabilities endemic to different types of temporary visa holders.

#### **Case Study: bridging visa with no work rights**

Pablo was on an international student visa when he started working in a restaurant on a casual basis. He performed various jobs for the same employer, ranging from food service to general maintenance. He was underpaid and was not given payslips or superannuation contributions. In part because of the severe underpayment of wages, Pablo could not keep paying the fees to his education provider and he subsequently lost his student visa. Pablo went onto a bridging visa with no work rights but he continued to work for the same employer who knew about the change in Pablo's visa status. Pablo became homeless and lived for a period in a tent on the employer's premises. On Pablo's behalf JobWatch negotiated a settlement of his employment law claims and Pablo subsequently left Australia.

#### **Case Study: tourist visa with no work rights, pending 457 visa**

Adam and Dalia came to Australia on tourist visas from South East Asia. They intended to apply for visas which would allow them to work and which would eventually lead to permanent residency. Both Adam and Dalia eventually found jobs with the same employer; he was offered a permanent contract as a chef and she was offered casual work as a kitchen hand. They were offered sponsorship through a 457 visa and they were asked to start their employment before the visa had been granted. Adam and Dalia worked for three months without work rights. They were not paid at all during this time and sometimes their shifts were in excess of 10 hours per day. They kept working on the promise that when they had secured visas with work rights and tax file numbers

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that they would be back-paid for this work. They were both eventually dismissed after the couple wrote a letter to the employer noting their concerns about understaffing, OH&S issues, non-payment for the period of work while they were still on a tourist visa and working hours in excess of their contracted amount. With JobWatch's assistance, Adam and Dalia settled adverse action claims against their employer.

### **Case study: working holiday visa**

Carlos is a working holiday maker from South America. He has been working as a permanent part-time cashier in a supermarket for the last seven months and throughout this time he has been on 462 working holiday visa. Last week, Carlos' supervisor took him aside and informed him that he needed to be dismissed because his particular visa precludes him from working for the same employer for longer than six months. Carlos explained to his supervisor that he had received his second working holiday visa two months previously, as a result of having completed his 88 days of specified regional work. Being granted this second working holiday visa effectively 're-sets' the six-month limit, meaning that Carlos could have continued to work with his employer for a further six months without being in breach of his visa conditions. Carlos showed his employer the information on the Department of Home Affairs website that explained this, but his supervisor was adamant that he needed to abide by the employer's policy not to employ a working holiday maker for longer than six months and accordingly he dismissed Carlos with immediate effect and without any pay in lieu of notice. JobWatch is currently assisting Carlos with an unfair dismissal claim.

### **Case study: international student visa**

Maria arrived in Australia on a student visa to study hospitality. As part of her course she was required to complete 400 hours of work per semester in the hospitality industry. She found a job as a casual sandwich maker/waitress at a café. She agreed to work for \$18 per hour on a cash-in-hand basis initially but after one week she asked to be put 'on the books' as she needed to show pay slips to her course provider to prove her hours. During her employment Maria only received one pay slip and it contained incorrect information. After Maria resigned, the owner withheld her wages, claiming that she had not given enough notice. JobWatch advised Maria that she had been underpaid during her employment, that her employer had failed to make the requisite superannuation contributions and that the employer had failed to provide her with accurate pay slips. JobWatch filed an application in the Small Claims division of the Federal Circuit Court on Maria's behalf. The employer paid the outstanding wages and superannuation before the hearing date.

### **Case study: international student visa**

Hana is a young woman from South East Asia who is living and working in Victoria on a student visa. She worked as a kitchen hand/waitress in a restaurant for two years, working 6 days a week and up to

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12 hours a day. She was paid \$400 a month in cash. The owner of the restaurant was not only her boss but also her landlord and her education agent, as he managed her studies and rented a room to her. He told her he was deducting money for her rent and her studies from her wages, but he never gave her any invoices for the fees, there was no written tenancy agreement and he did not provide her with pay slips, so she could not check what money was owed for what. JobWatch is currently assisting Hana with a claim in respect of alleged breaches of the *Fair Work Act 2009* (Cth).

### **Case study:**

Alan is a young man who came to study in Victoria on a student visa. After finishing his three-year Bachelor's degree, he tried hard to find a job in his chosen profession but he was repeatedly told that employers wanted previous work experience or, at least, employees who were permanent residents. He eventually met a man from his same ethnic background who promised him a job in his chosen field and a permanent visa after two years' work. This man seemed to operate a labour hire business and he directed Alan to work both for him and for an external company who subsequently employed Alan on a 457 visa. Alan paid both this man and the company a substantial sum of money over a period of about two years. His wages and superannuation were paid to him out of the money he paid to them. JobWatch is assisting Alan with claims that his employer and a number of accessories contravened the *Fair Work Act 2009*.

### **Links between temporary migration and workplace exploitation**

9. JobWatch has long been concerned about the imbalance of power between employers and employees, which is exacerbated when the employee is on a temporary visa. Employers generally have power over the employees because of their ability to hire and fire employees and to determine employment conditions in circumstances where employees have a very limited ability to enforce statutory minimum entitlements and/or negotiate better conditions.

### **JobWatch recommends the following:**

#### **1.1 Recommendation 1: Automatic bridging visa**

That temporary migrant workers who find themselves in a position of losing their employer's sponsorship because they have been dismissed, be entitled to an automatic bridging visa covering the period while they are challenging their dismissal (ie. in an unfair dismissal, general protections or discrimination claim). If employees have to leave the country because of the loss of their visa status, then this causes an additional injustice in that they can't practically enforce their rights.

#### **1.2 Recommendation 2: Power to reinstate visa sponsorship obligations**

That the FWC and/or the Federal Court of Australia and the Federal Circuit Court of Australia have the power to order reinstatement of the employer's visa sponsorship obligations because, without this

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power, the remedy of reinstatement which is available in unfair dismissal and general protections claims is rendered meaningless.

**1.3 Recommendation 3: Better vigilance of temporary work visa arrangements**

That a *specific taskforce* or other arrangement be set up between the Fair Work Ombudsman and the Department of Immigration and Border Protection to better protect the work and residency rights of temporary migrant visa workers.

**1.4 Recommendation 4: Specific telephone hotline**

That a confidential hotline be set up within the Fair Work Ombudsman or community legal centre to cater to the employment issues experienced by migrant workers.

**1.5 Recommendation 5: Research and investigation**

That more research be undertaken in order to determine the temporary work visa program's effect on local labour wages and conditions and the extent to which it addresses genuine skills shortages.

**1.6 Recommendation 6: Increased penalties**

That greater penalties to be made available to better deter potential offenders and accessories.

10.

Yours sincerely,



Gabrielle Marchetti  
Principal Lawyer  
JobWatch Inc

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