

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

Organisation: International Commission of Jurists (Australian Section)
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26 February 2025

Committee Secretary
Modern Slavery Committee
Parliament of NSW

By email

Dear Secretary

Please find attached the submission of the International Commission of Jurists (Australian Section) to the Modern Slavery Committee's inquiry into the modern slavery risks faced by temporary migrant workers in rural and regional New South Wales.

Kind regards

President, ICJ(Australian Section)

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

The International Commission of Jurists (ICJ), founded in 1952, has as its mandate the promotion of the rule of law and the legal protection of human rights throughout the world. As a non-governmental organization, it has many national sections and affiliates in all regions of the world, each of whom adheres to the ICJ mandate. The International Commission of Jurists (Australian Section) (ICJ(AS)) has an active branch in New South Wales.

The ICJ(AS) actively supported the development of the NSW Modern Slavery legislation. John Dowd AO KC wrote to the then NSW Premier Gladys Berejiklian and various parliamentarians in 2020 about the delays in passing the legislation and the risks of reducing the effectiveness of the legislation.

The ICJ(AS) commends the work of the NSW Anti-slavery Commissioner and his office. ICJ(AS) members have attended work-shops organized by his office and review his newsletter and reports. The ICJ(AS) commends the NSW Parliament's Modern Slavery Committee's two-part report on the operation of the *Modern Slavery Act 2018* (NSW).

The ICJ(AS) considers that it is well placed to advise the committee on modern slavery risks faced by migrant workers for the following reasons:

The ICJ(AS) actively advocates on refugee and migration issues in the Asia Pacific region and is a member of the NGO dialogue on humanitarian issues which is auspiced by the Department of Home Affairs (DHA). Economic and social barriers faced by vulnerable communities are regularly discussed during these meetings. Some ICJ(AS) members are linked with refugee and migrant support organizations, so are aware of crisis assistance needed by vulnerable migrants.

Citizens of Timor Leste are a significant group among migrant workers in rural industries. There are 4,700 Timorese workers on Pacific Australia Labour Mobility Scheme (PALM) visas in early 2025. Many ICJ(AS) members have close links with Timor Leste; some have lived and worked in Timor Leste, while others have advocated for legal and human rights protections post-independence. The ICJ(AS) is well regarded by the Timorese diaspora in Australia.

The ICJA appreciates the opportunity to comment on matters raised in the Inquiry's Terms of Reference. Our primary concerns are noted below.

1. Unseen vulnerable workers and deceptive recruiting

DHA statistics pick up the numbers of migrant workers who arrive on PALM visas or as working holiday makers, but many vulnerable migrants go unrecognized as workers in DHA statistics and are at risk of modern slavery.

The Electronic Travel Authority (ETA) visa scheme or visitor visa pathway allow ‘tourists’ to apply through a phone App or with the assistance of a travel agent. Tourist visas holders do not have work rights, however such rights may accrue if the tourist applies for an onshore Protection Visa and becomes an ‘asylum seeker’. The asylum seeker and family members can remain during the lengthy refugee determination process with appeal rights for merits, judicial and ministerial review. Asylum seekers may have work rights for short periods, but are not eligible for Centrelink benefits or Medicare. Accordingly, they are vulnerable to unlawful employment offers, especially if there is a promise of accommodation.

Asylum seekers with short term or expired bridging visas are attracted to rural employment by the expectation that living costs will be cheaper, they will be paid in cash and will avoid detection by DHA officers. They have no contract with the employer and no understanding of work rights.ⁱ

Malaysian asylum seekers - a case study of deceptive recruiting

The ETA visa was a pathway for fraudulent visitor visa entry and sham refugee visa applications in 2017-2019 when 17,332 Malaysians entered on tourist visas and quickly applied for protection visas.ⁱⁱ They were lured with promises of accommodation, employment and ability to send remittances to their families. It is reasonable to assume that some were in debt bondage.

Soon after arrival they sought visa assistance from named migration agents who completed Protection Visa applications. Many applicants were not aware of claims of persecution in Malaysia which were lodged on their behalf. They were granted bridging visas with permission to work, but these were usually limited to 3-6 months. Many are forced into the ‘black’ employment sector with unregulated work conditions and safety protections.

The Australian High Commissioner to Malaysia stated in September 2019 that 33,000 Malaysians had applied for refugee status.ⁱⁱⁱ Their ability to remain in Australia for years is an enticement for other Malaysians to enter on ETA visas.

DHA monthly updates on Protection Visa applications indicate that from 50 to 100 Malaysians applied per month for a Protection Visa between November 2019 and December 2024.^{iv} While only a small proportion are granted Protection Visas, many Malaysians remain in Australia pursuing merits and judicial review or Ministerial intervention before finally becoming ‘illegals’. In June 2024 there were 7,100 Malaysians without visas living in the community; they are classified as unlawful non-citizens and can be deported.

Disengaged PALM workers also enter the Protection Visa stream in hope of prolonging work opportunities.^v Unscrupulous migration agents may assist with unmeritorious applications and put the workers further in debt.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families states

... that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition.^{vi}

Unlawful non-citizens survive through the support of friends, community organizations or employment in the black economy, but live in fear of discovery, perhaps through a workplace immigration raid, or a health emergency.

Illegal migrant workers are vulnerable to exploitation because of their invisibility, ignorance and isolation in remote areas. Their lack of visa status prevents applications for reimbursement of wages or workplace entitlements. They cannot apply for Workplace Justice Visa^{vii} or access the Fair Entitlement Guarantee fund if the employer goes into liquidation.^{viii}

The ICJ(AS) suggest that asylum seekers and unlawful non-citizens should be included in a worker-centred investigation of modern slavery risks. The Office of the NSW Anti-slavery Commissioner could monitor Protection Visa statistics and make contact with emerging communities.

2. Violations of work rights

International human rights law protects the rights of all workers to be treated fairly regardless of migration status. Migrant workers are not to be treated less favourably

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than nationals in relation to remuneration and working conditions.^{ix} The International Covenant on Economic, Social and Cultural Rights recognises in Article 7

- the right to fair wages and equal remuneration for work of equal value, and
- a decent living for themselves and their families.

These international norms are not met in the treatment of PALM workers in Australia. Pacific Island and Timorese citizens have limited literacy and English language skills and no experience with formalized employment arrangements. They are at risk of modern slavery because they are unaware of acceptable wages and conditions in Australia. The rights and conditions set out in their work contract with the labour hire firm are not explained in detail using an interpreter.

Media reports and anecdotal evidence indicate that PALM workers are exploited in relation to wages and entitlements. Employers are required to provide 30 hours employment per week, however working hours can be reduced at employer's discretion. Accommodation and transport costs are deducted from weekly earnings. Confused workers are left with little for daily expenses, let alone to send home to families.^x

Her Excellency Ines D'Almeida, Ambassador of Timor Leste, has inspected many rural work sites following complaints from Timorese workers. She briefed the ICJ(AS) in Sydney on 14 February 2025 and stressed the following:

- Workers are charged \$160 per week for a bunk bed.
- There are inadequate and dirty cooking facilities forcing workers to wait until approximately 10pm to prepare their food.
- Workers are charged \$70 per week for transportation to the fields.
- If the employer cancels working hours, the deductions continue as a debt on future wages.
- The four-year PALM visa enables workers to become skilled employees and some utilized as trainers for new employees. Yet they do not progress above level one in the payrates.

Women workers are at greater risk of exploitation and human rights violations. With poor literacy skills and little employment experience, they are dependent on male workers to advise them. They come from patriarchal cultures so are unlikely to question male advice on work conditions. Women workers are motivated to join the

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PALM scheme by the hope that they will be able to better provide for their children at home. Their desperation makes them vulnerable to low wage rates.^{xi}

Annexed to this submission is a case study prepared by the Finding Safety Director at the Jesuit Refugee Service at Parramatta, Sydney.

Regular monitoring of work sites and open discussion with migrant workers are essential to reduce the risks of modern slavery. The Department of Employment and Workplace Relations, Fair Work Ombudsman, and Commonwealth and state Anti-slavery Commissioners should be authorized to undertake inspection visits on short notice.

The ICJ(AS) suggests that a training internet module should be developed for workers who are considering joining the PALM scheme. It should explain the terms of the contract, a scale of deduction costs and the lack of healthcare. Workers could be required to complete the module before signing the contract.

4. Structural issues

A. Health

PALM workers are holders of the Temporary Work (International Relations Visa (subclass 403). Condition 8501 on this visa requires that the visa holder must have and maintain adequate health insurance for the whole stay in Australia. The visa holder is financially responsible for any medical debts incurred in Australia. Such debts will be considered as a 'debt to the Commonwealth' and may be a barrier to the grant of a future Australian visa.

Farmers employ migrant workers to do physically strenuous and often dangerous jobs, yet bear no responsibility for health care after a workplace accident. The employer decides whether the worker gets medical help.

Women who become pregnant are doubly disadvantaged as they lose employment and have no access to prenatal health care.

Staff at the Consulate-General of Timor Leste suggested that there should be a compulsory Power of Attorney given by each worker to a trusted community or local representative for medical emergencies.

Consular staff also highlighted the plight of seriously injured workers. Their future treatment in Timor Leste is uncertain. There are no compensation payments or assistance with rehabilitation.

B. Education

The Department of Foreign Affairs and Trade (DFAT) webpage on the Pacific Labour Mobility states

‘Skills training is embedded into the PALM scheme to make sure it delivers a skills dividend for Pacific Island countries and Timor-Leste where workers can come to Australia, gain new work experience and often new skills.’^{xii}

Workers are encouraged to join the visa scheme in the hope of skills and English language education. Yet the visa conditions do not include study rights. Heavy workloads and rural isolation prevent visa holders from accessing TAFE or community education classes.^{xiii}

C. Employment Limitations

Visa condition 8106 requires the PALM visa holder to remain employed by their sponsor, while visa condition 8611 bars the visa holder from becoming self-employed. If a worker abandons the sponsor’s work place he/she forfeits the subclass 403 visa and work rights. Returning home without savings is not an option.^{xiv}

Visa condition 8503 bars the worker from applying for an employment or skilled visa, accordingly the only option for remaining in Australia is to apply for a Protection Visa. DHA statistics highlight the movement from PALM visas to Protection Visa applications. In 2023 to 2024 882 citizens of Vanuatu applied for a protection visa, while 447 citizens of Fiji and 425 citizens of Timor Leste were refused a protection visa.

The ICJ(AS) suggests that most Protection Visa applicants in this cohort rely on the assistance of migration agents and have little understanding of the refugee determination process. Free legal advice on protection visas should be made available to migrant workers through regional Legal Aid offices and community centres.

D. Workplace Justice Visa

The Workplace Justice Visa commenced on 1st July 2024 as a two-year pilot. It permits migrant workers to remain in Australia for 6 to 12 months to pursue a workplace exploitation matter with the Fair Work Ombudsman. The Minister for Immigration stressed that the new visa was part of a range of measures to combat migrant worker exploitation.^{xv} But disengaged PALM visa holders are not eligible for this visa as there is an application bar in Condition 8503 on the PALM visa. In addition the visa criteria for the Workplace Justice Visa require the applicant holds a substantive visa.

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ICJ(AS) suggests that the *Migration Regulations 1994*(Cth) be amended to allow PALM visa holders to apply for a Workplace Justice Visa. Consideration should also be given to allowing Protection Visa applicants on bridging visas to apply for a Workplace Justice Visa if there is an arguable case of exploitation.

Recommendations

ICJ(AS) endorses the recommendations of the Office of the NSW Anti-Slavery Commissioner in *Be Our Guests: Addressing modern slavery risks for temporary migrant workers in rural and regional New South Wales*.

ICJA representatives would be pleased to discuss these matters with the Modern Slavery Committee. Please do not hesitate to contact Secretary-General Elizabeth Biok

ⁱ Tamana Mirzada, Employment Director, Jesuit Refugee Service 7 February 2025

ⁱⁱ Department of Home Affairs, Onshore Protection Program 2018-19, Delivery and outcomes for Non- Irregular Maritime arrival as at 30 June 2019, <https://www.homeaffairs.gov.au/research-and-stats/files/ohp-june-19.pdf>

ⁱⁱⁱ Max Walden, 'Malaysia urges citizens to obey Australian immigration law after report of 33,000 asylum claims' *ABC News*, 2 September 2019, <https://www.abc.net.au/news/2019-09-02/33000-malaysians-sought-asylum-in-australia/11470480>

^{iv} Department of Home Affairs, Humanitarian Program statistics, Onshore Protection(Subclass 866) Visa Processing, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program> (accessed 6 February 2025.)

^v See below page 6.

^{vi} International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (18 December 1990) Preamble, page 2.

^{vii} *Migration (Workplace Justice Visa) Instrument* (2024) s.7 prescribes that persons applying to remain in Australia to commence an application with the Fair Work Ombudsman must hold a substantive visa, or have held one no more than 28 days before lodging the application.

^{viii} Eligible employees for Fair Entitlement Guarantee repayment must be holders of a permanent residence visa, <https://www.dewr.gov.au/fair-entitlements-guarantee> (accessed 11 February 2025)

^{ix} International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25.

^x Angus Thompson, 'Broke and Hungry, Pacific Islanders abandoning Aussie farms in droves', *Sydney Morning Herald*, 27 June 2023, <https://www.smh.com.au/politics/federal/broke-and-hungry-pacific-islanders-are-abandoning-aussie-farms-in-droves-20230621-p5diah.html> .

^{xi} Tamana Mirzada, Employment Director at the Jesuit Refugee Service, advised that a female PALM worker had been paid \$10 per hour.

^{xii} Department of Foreign Affairs and Trade, 'Pacific Labour mobility', <https://www.dfat.gov.au/geo/pacific/engagement/pacific-labour-mobility> (accessed 19 February 2025)

^{xiii} Three young Timorese workers spoke to an ICJ(AS) member at a Timorese community function in February 2022. They were disheartened by the lack of skills training and were considering leaving the scheme.

^{xiv} Tamana Mirzada, Employment Director Jesuit Refugee Service, 7 February 2025.

^{xv} Explanatory Statement, issued by Andrew Giles MP, Minister for Immigration, Citizenship and Multicultural Affairs on *Migration Amendment (Workplace Justice Visa) Regulations* (2024) (Cth)

Annexure - Case Study provided by Sarah Muzamil, Finding Safety Project Manager, Jesuit Refugee Service

Background:

Mira is a young woman in her twenties. She arrived in Australia on a seasonal worker program, leaving behind four children in her home country. Her primary goal was to earn sufficient income to provide for her children and improve their quality of life. However, upon arrival, she encountered significant hardships that affected her physical, emotional, and financial well-being.

Exploitation and Poor Living Conditions:

Upon starting work at the farm, Mira reported that her passport was confiscated by the farm owner, restricting her freedom of movement and making her vulnerable to exploitation. She met many other workers from her country and discovered that they were all subjected to poor living conditions, sharing a garage-like space to sleep in. The demanding work, coupled with inadequate rest and substandard living conditions, left Mira overworked, exhausted, and emotionally drained.

Relationship and Domestic Violence:

During her time on the farm, Mira formed a relationship with another seasonal worker. However, when she became pregnant, her partner became abusive and insisted she terminate the pregnancy. Due to her strong religious beliefs, Mira refused, which led to an escalation in the abuse. Fearing for her safety and the well-being of her unborn child, she made the decision to leave the farm and seek refuge in Sydney.

Temporary Support and Housing Instability:

In Sydney, Mira reached out to a distant cousin, who agreed to host her despite having six children and a husband of her own. After Mira gave birth, she began to feel like a burden on the already strained household.

Her partner followed her to Sydney, and they moved into an apartment together. However, the abuse intensified, leading to police intervention. Unable to afford rent and with no other support options, Mira returned to her cousin's home with her two-month-old baby.

Current Situation and Future Hopes:

Mira is now struggling with housing instability, financial insecurity, and the trauma of domestic violence. She hopes to renew her seasonal worker visa to return to farm work, despite the risks of further exploitation. Her decision is driven by economic necessity and her commitment to providing for her children back home and her baby here.

Key Challenges:

- **Lack of Safe and Stable Housing:** Mira has moved multiple times and currently relies on temporary support from her cousin, and community organizations like JRS Finding Safety Project, which is not sustainable in the long term.
- **Financial Hardship:** With a young baby and no stable income, Mira faces economic difficulties that limit her options for independence.
- **Immigration and Legal Barriers:** Mira's ability to stay and work legally in Australia is uncertain, making her more vulnerable to exploitation.
- **Trauma and Mental Health Concerns:** Mira has endured significant emotional distress, including domestic violence, workplace exploitation, and the stress of separation from her children.

- **Limited Support Networks:** Aside from her cousin and assistance from FSP, Mira has limited social support, making it challenging to access services and resources.

Interventions:

- **Visa and Legal Assistance** FSP Connected Mira with Legal Aid for legal support.
- **Safe Housing Options:** It has been challenging to find transitional housing or emergency shelter that can provide her with stability and security.
- **Counselling and Mental Health Support:** Access to trauma-informed counselling could help her recover from her experiences and plan for a more secure future.

However, these steps remain challenging due to Mira's disengagement caused by a language barrier, financial hardship, communication issues, and transportation difficulties.

Mira's case highlights the vulnerabilities faced by seasonal workers, particularly women, who experience exploitation, domestic violence, and financial instability.