

22 September 2015

Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
CANBERRA CITY 2601

By email: workplace.relations@pc.gov.au

Dear Commissioners,

Thank you for the opportunity to appear in the public hearing before the Commission on Friday 11th September.

Following the hearing, we continue to hold concerns about the lack of clarity of the scope of the 'migrant workers' issue that will be addressed by the Commission's report on the Workforce Relations Framework. There is an opportunity to better define the scope of this issue, which would assist with the formulation of better recommendations.

As outlined in our submission on the draft report, the circumstances of different categories of migrants are very different. We suggest that the Commission clarify in its final report which visa holders are included in the category of 'migrant workers'; for example, 457 workers, working holiday makers and/or international students.

We also seek that the Commission differentiate between the circumstances of 'migrant workers' and 'unlawful migrant workers'. 'Unlawful migrant workers' are those working in breach of their visa conditions. As detailed in our submission, many of these workers may be unknowingly or unwillingly in breach. These workers are particularly vulnerable to exploitation and mistreatment. We believe that the *Fair Work Act* does not apply to unlawful migrant workers. We draw your attention to the submission made on the Commission's draft report by Professor Andrew Stewart, Associate Professor Shae McCrystal and Dr Joanne Howe which explains the uncertainty of this area of law (pp 24-25) and makes the recommendation that the *Fair Work Act* be amended to allow a court of tribunal to disregard the illegality of an employment arrangement in proceedings brought under the Act. As outlined in our submission, we recommend that the *Fair Work Act* be amended to apply to undocumented workers (or unlawful migrant workers). This recommendation has also been made by Victorian Legal Aid in its submission on the draft report (p 3). We have written to the Fair Work Ombudsman seeking to clarify how the Act applies to various workers including those in breach of their visas.

The issue of workplace conditions and applicability of the *Fair Work Act* of migrant workers is complicated and topical. We look forward to your final report addressing this important issue in your final report.

Yours sincerely

Gulnara Abbasova
FECCA Director

Heather Moore
Advocacy Coordinator
Freedom Partnership to End Modern Slavery