Response to
Department of Immigration and Citizenship
Discussion Paper – Exploring a Template Labour Agreement for the Tourism and Hospitality Industry

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About United Voice

United Voice is a union of 120,000 workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. The majority of United Voice members are women, and members are generally employed on a casual or part-time basis. United Voice members come from culturally and linguistically diverse backgrounds, and work in industries including aged care, health care, early childhood education and care, school education, cleaning, security, tourism and hospitality, and manufacturing. United Voice members are united by their belief in the dignity of workers, the right to fair and just treatment in the workplace, and fair and just access to wealth, security and a voice in our community. United Voice has sought to evolve beyond the Australian union movement’s traditional focus solely on the jobs and work of its members. In doing so, we are embracing a broader role as a community advocate for an alternative economic and social agenda.

United Voice Perspective on Skilled Migration

United Voice members come from culturally and linguistically diverse backgrounds, and work in a range of industries and regions. United Voice believes that both permanent and temporary migrants make a significant contribution to Australia, and should be afforded the same labour and work rights as citizens.

We have been actively involved in advocating change to immigration and labour market programs to ensure the contribution of all workers are valued. This has included recent submissions to the 2012-2013 Migration Program Consultation and to the Strategic Review of the Student Visa Program in 2011.

In our work, we have articulated a number of principles relating to overseas workers and migration. These principles are summarised below.

- Australia’s migration program should recognise the inherent economic and social contribution all migrants make to the country.

- All migrants should enjoy the same labour and work rights as citizens. Engagement of migrant labour – whether through permanent or temporary visa pathways – should not be used as a way to undermine wages and conditions through utilisation of a precarious workforce vulnerable to labour market exploitation.

- DIAC should distinguish between industries and employers that rely heavily on precarious forms of labour and those industries and employers that invest in the local workforce. Those industries or employers with unsustainable business models should not be afforded additional pathways to access temporary or permanent migrant labour.

- Reliance on precarious forms of labour is the dominant business model in some industries. Workers may only be offered work on the employer’s terms, for example, cash-in-hand work or hours in excess of those allowable under a student visa. Workers are effectively silenced from reporting illegal work practices by the fear of their visas being cancelled. Strong cross-agency cooperation is required to adequately enforce penalties against employers who facilitate breaches in visa conditions in order to undermine migrant workers’ employment conditions.
• To minimise the exploitation of migrant workers and prevent undermining of the domestic labour market, migrant workers should be paid genuine market rates. Wage rates should reflect the average collective agreement rate for a given occupation in a given market. In-kind payments and wage loadings should be considered separately to base wage rates. Consideration should also be given to the adequacy of base wage rates to meet costs of living within the given region.

• The integrity of current English language testing (IELTS) arrangements should not be compromised in recognition that workers with higher English language skills are less susceptible to exploitation.

• Information on work rights should be supplied to all temporary overseas workers at point of arrival with materials developed in consultation with unions, employer associations and community groups.

Summary of Recommendations

• United Voice agrees with DIAC that establishing whether there is a genuine labour market need for overseas workers is the primary focus when exploring the option of a template labour market agreement.

• We question why employers in the tourism and hospitality industry wish to develop a template labour agreement when there are existing options for accessing migrant labour.

• United Voice’s firm view is that concessions to the standard Subclass 457 Business (Long Stay) Visa Program are inappropriate in this industry due to the lack of investment in local labour; prevailing rates of low pay and conditions; as well as the high level of employer sanctions under the existing Subclass 457 Business (Long Stay) Visa Program.

• Existing provisions within the Subclass 457 Business (Long Stay) Visa Program relating to market salaries; skill levels; English language requirements; labour market testing; guaranteed earnings and full-time hours; and local training benchmarks should not be compromised under a template labour agreement. In determining market salaries, the higher of the local collective agreement rate or Temporary Skilled Migration Income Threshold should be used.

• Occupations that cross industry boundaries should be excluded. Employers seeking to access the template labour agreement for occupations unique to the tourism and hospitality industry should be required to provide strong evidence of a direct relationship between services delivered and visitors comprising at least 50% of the turnover of the business.

• Any template labour agreement should explicitly exclude those regions where tourism is not a major component of the local economy. This would include most metropolitan areas.

• Any template labour agreement should be responsive to changes in local labour market conditions to ensure that genuine, temporary workforce shortages are mitigated without displacing local labour.
• Any template labour agreement should include provisions to pre-empt and prevent problems arising from the actions of unscrupulous labour hire companies.

• Employers that pay wages above the average collective agreement rate for the given region should have their applications prioritised. Employers with previous sanctions under the Subclass 457 Business (Long Stay) Visa Program should be prevented from accessing the template labour agreement.

• In order to ensure that overseas workers are supported, unions should be given broader access to conduct workplace visits.

Is there a labour market need for overseas workers in the tourism and hospitality industry?

In addition to our contribution to the debate on migration policy, United Voice has contributed to the debate over workforce shortages in the tourism and hospitality industry. We have been in discussions with the Commonwealth over the extension of the Pacific Seasonal Workers Program to the tourism industry; made submissions to Skills Australia in relation to the inclusion of chefs on the specialised occupation list; consulted with the Apprenticeships for the 21st Century Expert Panel; and have contributed to broader industry debate as a member of the National Long-term Tourism Strategy Labour and Skills Working Group.

We understand that the DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry seeks feedback on whether there is a genuine labour market need for overseas workers in the tourism and hospitality industry. We agree that this is the central question that must be considered in relation to exploration of a template labour agreement or any other pathway that seeks to broaden the tourism and hospitality industry’s access to overseas workers.

United Voice believes that in order to establish a genuine labour market need, it is necessary to establish that a skills shortage persists despite the implementation of adequate retention strategies including payment of competitive wages and decent working conditions. That is, a skills shortage cannot be established simply by pointing to vacancy rates. A paper prepared by Service Skills Australia for the National Long-term Tourism Strategy Labour and Skills Working Group considers the following definition of skills shortage as one of the most comprehensive produced to date:

“(A skills shortage is)a market disequilibrium between supply and demand in which the quantity of workers demanded exceeds the supply available and willing to work at a particular wage and working conditions at a particular place and point in time”\(^2\).

The Service Skills Australia paper concludes that:

“Though there is not yet consensus, evidence of poor contract (and individual-based) training completion rates for apprentices, significant staff turnover (“employer churn”) and high labour

mobility within chef and cook occupations suggests that the (tourism and hospitality) industry is experiencing “recruitment difficulties” which contributes to a “skill shortage”\(^2\).

The perceived ‘skills shortage’ in the tourism and hospitality industry is a function of poor retention as a result of low wages and unfavourable working conditions. This is borne out by the finding of a national survey of employers in the industry:

The Australian Tourism Labour Force Report finds that the turnover in the tourism and hospitality industry averages 64% nationally\(^3\).

This data suggests that the DEEWR Job Outlook Data that indicates high vacancy rates and strong growth for some tourism and hospitality occupations shows only half the picture.

In some states, turnover in the tourism and hospitality industry is as high as 118\(^4\)%. Although competition from the resources sector in these states may have an impact on recruitment and retention in the tourism and hospitality sector, there is no evidence of a one-way flow of workers between the industries. It is more likely that the very high cost of living makes it impossible for low-paid tourism and hospitality workers to live in these resource regions.

In any case, the turnover figures in the non-resource states remain startlingly high: 58\% in Tasmania and 57\% in Victoria\(^5\). This is a reflection of the low wages and working conditions prevalent across the industry regardless of location.

Projections of strong workforce growth tend to be used to back up claims of a labour market need for overseas workers. However, figures in the Australian Tourism Labour Force Report should be approached with caution as they reflect projected employee numbers rather than full-time equivalent (FTE) employee numbers. Whilst the projected demand for employees is 56,000 workers by 2015 and the shortfall of workers is projected to be around 15,000\(^6\), the FTE figures are more moderate. Projected FTE demand has been estimated by the report’s authors at 45,000 workers and the shortfall of workers is projected to be around 12,000 FTE positions by 2015\(^7\). In any case, projections of future solid workforce growth are not relevant in establishing a skills shortage or a labour market need for overseas workers given that labour market testing occurs at the point of the overseas worker’s entry to Australia.

In addition, the fact that three of the top ten occupations in demand identified in the Australian Tourism Labour Force Report are ‘unskilled’ jobs suggests that current ‘skills shortages’ are likely to


\(^7\) Email communication from Deloitte Access Economics to the National Long-term Tourism Strategy Labour and Skills Working Group, 15 Dec 2011.
be a function of the very low wages these positions attract. Kitchen-hands and housekeepers receive wages at or very close to the national minimum wage. The DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry identifies these occupations as occupations with inappropriate skill levels for the skilled migration program. It would certainly be inappropriate to allow access to overseas workers to fill these positions when improved wages and working conditions would be sufficient to attract local labour.

Higher skilled occupations within the tourism and hospitality industry are also low paid. It is no surprise that the industry struggles to attract and retain qualified chefs and waiters given median weekly earnings of full-time employees in the tourism and hospitality industry are well below the all-industry average\(^8\). In addition, it is well known that many hospitality workers are required to work unpaid overtime, reducing their real wages significantly.

In terms of employer commitment to up-skilling the workforce, the issues around lack of employer support in the tourism and hospitality industry leading to extremely low apprenticeship completion rates have been well canvassed by independent commentators as part of the Final Report of the Expert Panel / A Shared Responsibility Apprenticeships for the 21st Century. This report found that:

“Inferior employment conditions, such as excessive unpaid overtime, too few hours, not being allowed to take breaks, or not being paid correctly are common concerns, particularly for those in the hospitality industry. Personal safety concerns through both workplace bullying and unsafe work practices are also relatively common”\(^9\).

Rather than continuing to rely heavily on overseas workers, it makes more sense for the tourism and hospitality industry to redirect efforts towards solving structural labour market failures that undermine industry sustainability.

**Are existing labour market programs inadequate?**

United Voice questions why employers in the tourism and hospitality industry wish to develop a template labour agreement when there are existing options for accessing migrant labour.

The industry has access to and utilises the:

- Subclass 457 Business (Long Stay) Visa Program;
- Subclass 485 Skilled Graduate Temporary Visa Program;
- Subclass 416 Pacific Seasonal Worker Scheme (from July 2012);
- Working Holiday Subclass 417 Visa Program;
- Work and Holiday Subclass 462 Visa Program; and
- Student Visa Program.

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With the industry heavily reliant on international students, former international students and working holiday-makers in lower skilled occupations, the Subclass 457 Business (Long Stay) Visa is used for higher skilled occupations because the Temporary Skilled Migration Income Threshold (TSMIT) requires payment of a $49,330 salary. This is considered a high salary in the tourism and hospitality industry.

As the DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry points out, the current market rates across the industry are well below the all-industry market rates and the industry engages employees primarily on a part-time or casual employment basis. It is unclear how a template labour agreement will assist employers given that it would provide access only to the Subclass 457 Business (Long Stay) Visa Program. This would necessitate payment of market rates at or above the TSMIT. The apparent explanation for the enthusiasm of some employers to embark on a template labour agreement is that they are seeking a range of concessions to the Subclass 457 Business (Long Stay) Visa Program through the template labour agreement. United Voice does not believe the granting of concessions to the tourism and hospitality industry to be appropriate when a genuine labour market need for overseas workers has not been established, and for additional reasons outlined below.

Is a template labour agreement appropriate for the tourism and hospitality industry?

The DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry states that:

“A labour agreement is a formal arrangement between the Australian Government and an employer which allows for the recruitment of overseas workers in occupations which are not eligible for standard migration programs or where concessions to standard requirements are sought by employers”.

United Voice has outlined the wide range of programs already accessible to and used by the tourism and hospitality industry. It is acknowledged that skill level restrictions under the Subclass 457 Business (Long Stay) Visa Program effectively limit the range of occupations that may be covered under this program. However, despite the fact that the TSMIT payable under this visa program is higher than the indicative market salary paid to local chefs, the program remains attractive to employers because the visa holder is required to remain with the one employer for the duration of the visa.

Many of the other pathways to access overseas workers are used to fill lower skilled positions and do not require the TSMIT to be paid or the provision of full-time guaranteed work hours. However, despite the industry relying heavily on international students and working holiday-makers as a source of labour, these pathways are less attractive to employers in the sense that the visa holder is not required to remain with the one employer.

Nonetheless, it is clear that there are a range of standard migration programs available to the industry across the range of occupations and that these programs are being used extensively.

In relation to the request for concessions to standard migration programs through the proposed template labour agreement, United Voice’s firm view is that concessions are inappropriate in this industry due to the lack of investment in local labour; prevailing rates of low pay and conditions; as
well as the high level of employer sanctions under the existing Subclass 457 Business (Long Stay) Visa Program.

If the proposed template labour agreement is to be implemented, it should not be seen as a way for employers to circumvent protections built into standard migration programs through seeking concessions. It is United Voice’s view that existing provisions within the Subclass 457 Business (Long Stay) Visa Program relating to market salaries; skill levels; English language requirements; labour market testing; guaranteed earnings and full-time hours; and local training benchmarks should not be compromised.

### Principles for any template labour agreement in the tourism and hospitality industry

- **No concessions to standard migration programs**
  
  There is no good reason why concessions should be allowed in any template labour agreement for the tourism and hospitality industry. The template labour agreement should allow employers to access the Subclass 457 Business (Long Stay) Visa Program as it currently stands.

- **Clear articulation of employer responsibilities**
  
  If a template labour agreement is implemented, it should play an educational role for employers in clearly setting out what is expected from them both in terms of conditions afforded to overseas workers and investment in the local workforce. It should articulate the expectations of DIAC and the community that the industry is responsible for finding solutions to workforce shortages above and beyond access to overseas labour. Above all, any template labour agreement should not be seen as a way for businesses to avoid paperwork and get around legal ‘technicality’ to find a quick fix to workforce shortages.

- **Clear definition of coverage**
  
  United Voice is in agreement with the view expressed in the *DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry* that it is essential to clearly define the boundaries of the tourism and hospitality industry for the purposes of a template labour agreement. Workers such as electricians, plumbers, butchers, drivers, chefs, pastry cooks and cooks may work exclusively in the tourism and hospitality industry, within other industries such as the healthcare and education industries, or across industries. For this reason, defining the tourism and hospitality industry by occupation is difficult. The approach taken by the Australian Bureau of Statistics Tourism Satellite Account assigns services to the tourism industry if there is a direct relationship between the service and the visitor. In practice, however, distinguishing between services delivered to visitors and Australians is difficult on a service-by-service basis when businesses and employees commonly provide services to both visitors and Australians.

  Occupations that cross industry boundaries should be excluded. This would include massage therapists, bakers, gaming workers, drivers, electricians, plumbers and butchers.

  Employers seeking to access the template labour agreement for occupations unique to the tourism and hospitality industry should be required to provide strong evidence of a direct relationship between services delivered and visitors comprising at least 50% of the turnover of the business.

- **No access in metro areas**
  
  Employers in regional areas are more likely to be able to provide evidence of a direct relationship between services delivered and visitors comprising at least 50% of the turnover of the business.
Any template labour agreement should seek to map the regions where tourism is a major component of the local economy. The template labour agreement should explicitly exclude those regions where tourism is not a major component of the local economy. This would include most metropolitan areas.

The mapping within the template labour agreement should serve as a guide for employers considering whether to access overseas workers. It should not excuse individual employers from the requirement for them to provide evidence of a direct relationship between services delivered and visitors comprising at least 50% of the turnover of the business.

Employers seeking access to overseas workers in regions with above-average unemployment should not be offered access to the template labour agreement.

- **No displacement of local labour**
  In order not to displace local labour, the skill level requirements current within the standard Subclass 457 Business (Long Stay) Visa Program should be maintained.

United Voice supports current government policy that does not allow ‘unskilled’ (skill level 5) overseas workers entry to Australia under the skilled migration program. We hold strong reservations about the inclusion of ‘semi-skilled’ occupations (skill level 4) in any template labour agreement given that this would involve a concession on the standard Subclass 457 Business (Long Stay) Visa Program. We would question why the industry is unable to find and retain local waiters and bar attendants. The DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry states that:

“In principle, for the purposes of a labour agreement, the Department will consider that a skill level 4 occupation with a minimum AQF Certificate III equivalent qualification plus three years’ relevant experience, is sufficiently skilled to seek entry, subject to other eligibility criteria. The Department would need to be satisfied that the independent skills assessment process will ensure that overseas workers have skills to Australian standards”.

Although DIAC would require relevant qualifications and experience for skill level 4 occupations, United Voice questions which authority will be tasked and resourced to independently assess the skills of these workers.

- **A demand-driven program**
  Any template labour agreement should be responsive to changes in local labour market conditions to ensure that genuine, temporary workforce shortages are mitigated without displacing local labour. For this reason, it is inappropriate for a template labour agreement to provide a permanent migration pathway for overseas workers. Labour-market testing should be required upon entry to Australia and again at the point that the overseas worker seeks a new visa. Such a system also mitigates the risk of placing overseas workers in a position of deference to individual employers by virtue of depending on employers to support worker applications for permanent residency at the conclusion of their visa terms.

- **Labour hire companies**
  United Voice is concerned that a template labour agreement could establish lucrative business opportunities for unscrupulous labour hire companies acting on behalf of individual employers seeking quick access to overseas workers. Proliferation of labour hire arrangements would make it more difficult to enforce provision of appropriate wages and working conditions at the workplace.
level. Any template labour agreement should include provisions to pre-empt and prevent such problems.

- **Employers of choice**
  Any template labour agreement should reward employers with a good track record in investing in the local workforce by prioritising their applications. In addition to the training benchmarks within the Subclass 457 Business (Long Stay) Visa Program, an appropriate benchmark for investment in the local workforce is payment of wages above the average collective agreement rate for the given region.

Employers with previous sanctions under the Subclass 457 Business (Long Stay) Visa Program should be prevented from accessing the template labour agreement.

- **Support for overseas workers**
  In order to ensure that overseas workers are supported, unions should be given broader access to conduct workplace visits. Overseas workers should be given information material on their workplace rights upon entry to Australia, with materials developed in consultation with unions, employer groups and community groups.

**Minimum requirements for any template labour agreement in the tourism and hospitality industry**

- **Requirement for full-time hours**
  The tourism and hospitality industry should not be given special concessions on the basis of the current heavy reliance on part-time and casual workers in the industry. Any request for concessions on the full-time hour requirement should not be allowed as it would be a very significant departure from the standard migration program and would place overseas workers in a vulnerable position.

- **Salary**
  United Voice agrees with the argument within the DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry that the adequacy of base salaries should be considered separate from any in-kind payments or loadings.

In determining the market rate for a given occupation, the higher of the local collective agreement rate or TSMIT should be used. This ensures that the protections afforded to overseas workers within the standard Subclass 457 Business (Long Stay) Visa Program are not eroded. It also ensures that local labour is not displaced and that salaries are sufficient to allow overseas workers to achieve an adequate quality of life in tourism regions where the cost of living is high.

- **Skill level**
  United Voice supports current government policy that does not allow ‘unskilled’ (skill level 5) overseas workers entry to Australia under the skilled migration program. We hold strong reservations about the inclusion of ‘semi-skilled’ occupations (skill level 4) in any template labour agreement given that this would involve a concession on the standard Subclass 457 Business (Long Stay) Visa Program. We would question why the industry is unable to find and retain local waiters and bar attendants.

Although DIAC would require relevant qualifications and experience for skill level 4 occupations, United Voice questions which authority will be tasked and resourced to independently assess the skills of these workers.
- **English language proficiency**
  The DIAC Discussion Paper - Exploring a Template Labour Agreement for the Tourism and Hospitality Industry – DIAC has clearly outlined the link between the level of English language skill and an overseas worker’s vulnerability to exploitation. As stated, United Voice firmly believes that concessions on the standard Subclass 457 Business (Long Stay) Visa Program will send the wrong message to tourism and hospitality employers.

Therefore, any template labour agreement should retain the requirement for a score of 5 in each component of IELTS English language testing rather than an overall average score of 5. This is consistent with DIAC’s priority for overseas skilled workers to have the English language skills to enable training of local workers leading to a decreasing reliance on overseas workers over time.

### Minimum requirements for employers seeking access to any template labour agreement

Requirements for employers seeking access to any template labour agreement should be consistent with requirements within the standard Subclass 457 Business (Long Stay) Visa Program in relation to market salaries; skill levels; English language requirements; labour market testing; guaranteed earnings and full-time hours; and local training benchmarks.

This includes the requirement that no more than one-third of an employer’s workforce consist of overseas workers.

In addition, the requirement for employers to back up their claims of local unmet demand should be strengthened. In particular, given the evidence that has come to hand through the Australian Labour Force Report, data should be collected on turnover rates as well as vacancy rates at the level of the business. Evidence should be required to back up claims of skills loss due to competition from the resources sector or claims of high labour costs in regional areas.

### Conclusion

The primary focus for debate on the proposed template labour agreement should be on establishing whether a genuine labour market need for overseas workers exists. United Voice questions whether the perceived ‘skills shortage’ could not be alleviated through payment of competitive wages and improved working conditions. In the event that the proposed template labour agreement is implemented, it is imperative that the integrity of the standard Subclass 457 Business (Long Stay) Visa Program is maintained. United Voice’s firm view is that concessions are inappropriate in this industry due to the lack of investment in local labour; prevailing rates of low pay and conditions; as well as the high level of employer sanctions under the existing skilled migration program.