Submission by Committee to Protect Vietnamese Workers
to the Senate Inquiry into Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements

About CPVW

The Vietnamese authorities, for political purposes and to maximise state-owned enterprises' profits, prevent workers from forming unions and taking industrial actions. We advocate for workers' rights including these.

The work we have done since our formation in 2006 includes:

- Working with Australia's textile union TCFUA to expose on Australian Channel 7 the serious and widespread human trafficking of Nike contract workers in Malaysia in 2008;
- Collecting evidence of sacking of strike-leaders in Vietnam and evidence on working conditions;
- Printing and distributing workers' rights newsletters to most Vietnamese provinces.

We collaborate with like-minded groups in Vietnam, which with us have formed the Free Viet Labor Federation ("Viet Labor ").

Recommendations: Do not allow 457 visas to be a conduit for recruitment agencies engaged in unethical, and sometimes criminal, practices including human trafficking

Nearly all of Vietnam's recruitment agencies are owned by the ruling party, government ministries, SOEs, party officials, or people associated with them.

The great majority engage in practices which are unethical and sometimes blatantly illegal, even criminal. These include confiscating workers' passports against their wishes, and using contracts which forbid workers to join unions or to strike (some even encroach on privacy, for example prohibiting heterosexual and homosexual relationships). The TV documentary resulting from our afore-mentioned work with TCFUA is part of the evidence of the former, ie. passport confiscation. We have also collected copies of contracts as evidence of the latter – see the APPENDIX.

While we have not photographed such documentary evidence for workers sent from Vietnam to Australia, we have been verbally told by workers that they are similarly warned against joining Australian unions.

These organisations charge workers 2-3 thousand dollars for a job in Malaysia. For a job in Australia, we have heard of 15-20 thousand. These are huge amounts, putting most workers into serious debt.

We submit that recruitment costs such as above be borne by employers as part of the cost of doing business. First, this unshackles workers from a big debt which usually forces them into submission to recuitment agencies and employers. Second, to do otherwise would tilt the playing field against their competitors in Australia who incur recruitment costs to employ Australian residents in similar jobs.

We therefore recommend that employers be required to fully reimburse workers all amounts recruitment agencies charge workers.

Presently, workers are discouraged from speaking up about wrongs committed by their recruitment agencies or by employers, for fear of losing their jobs and being sent home.

We therefore recommend that 457-visa workers be protected, and helped, if they speak up about wrongs committed by recruitment agencies or employers. In particular, if they are unemployed as a result of or in planning to speak up, their visa should be extended to allow them to find alternative employment.

Many 457-visa workers are quite apprehensive, even afraid, due to several factors such as language and cultural barriers, debt bondage, and overly restrictive contracts with recruitment agencies. Therefore, positive empowerment is needed.

We therefore recommend that all 457-visa workers be, within the first 3 months of their arrival in Australia, be given information on their rights under Australian laws as workers and as individuals. The information should include their own language.

They should also be shown how to exercise their rights, such exercises should be designed to turn information into actionable knowledge.

If their workplace has unions, such unions should be given the opportunity to provide access to the workers for these purposes.

Recommendations: Guard against use of 457 visas as purely a cost-cutting mechanism

We support worker mobility, but not if Vietnamese and other overseas workers are used as cheap labor replacing Australian workers for jobs in Australia. The rationale for their employment should be, and only be, that locals cannot do the work.

We therefore recommend that the onus be on employers to prove their claims that the vacancies cannot be filled by locals, that regulators have the power to examine such claims, and that third parties such as unions or labor-rights advocacy groups should have the right to submit information to regulators.

Further, we recommend that there be a presumption against an employer if, within a short time before making the above claims, it had laid off staff, or restructured / reorganised resuting in vacancies including ones now to be filled by 457-visa workers.

- End -

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Most of Vietnam's recuitment agencies are state-owned, and their contracts stipulate:
You must not move, strike, join unions, marry locals, have same- or opposite-sex relationship

This recruitment contract, from a recruitment agency whose website says it's owned by the Industry & Commerce Ministry, says the contract may be terminated early, and you (the exported worker) must pay compensations plus expenses if ..

4. NLĐ không thể tiếp tục thực hiện hợp đồng do bị đau ốm, bệnh tật trong quá trình làm việc.

PARAGRAPH 4 – you get sick or become disabled while working

9.Kết hôn hay chung sống với người khác giới hoặc những người đồng tính luyến ái.

PARAGRAPH 9 – you marry or live with a person of opposite or same sex

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From a page stipulating the worker's contractual obligations:

PARAGRAPH 5 - You must not change address or employer without the employer's permission

5. Không được rời khỏi nơi ở, nơi làm việc và tự ý chuyển đổi nơi làm việc đã được chỉ định mà không được Chủ lao động đồng ý.

7. Không được kết hôn với người Malaysia, không tham gia các hoạt động chính trị, hội họp bất hợp pháp, không được đình công hoặc vận động, đe doạ, lôi kéo người khác đình công trái pháp luật.

PARAGRAPH 7 – You must not marry locals, you must not take part in political activities or illegal gatherings, you must not strike or call on or threaten others into joining an illegal strike

- End of Submission -