

Policy Recommendations

# Temporary Foreign Workers Program in Canada

# *Migrant Worker Priorities 2019*

May 18, 2019

## **Submitted by**

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\*Migrant Workers Alliance for Change includes individuals as well as Asian Community Aids Services, Butterfly (Asian and Migrant Sex Workers Support), Caregiver Connections Education and Support Organization, Caregivers Action Centre, Durham Region Migrant Solidarity Network, FCJ Refugee House, GABRIELA Ontario, IAVGO Community Legal Clinic, Income Security Advocacy Centre, Migrante Ontario, No One Is Illegal – Toronto, Northumberland Community Legal Centre, OCASI – Ontario Council of Agencies Serving Immigrants, OHIP For All, PCLS Community Legal Clinic, SALCO Community Legal Clinic, Students Against Migrant Exploitation, UFCW, UNIFOR, Workers Action Centre and Workers United.

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## I. Introduction

There are a number of issues of key concern to migrant workers and their support organizations across Canada at this moment. These include:

1. Employment and Social Development Canada proposals for an occupation specific work permit;
2. *Interim Pathway* for Caregivers, set to expire on June 4th, 2019;
3. Proposal for the creation of permanent residency pilot program for non-seasonal agricultural workers and a permanent residency program for Caregivers; and
4. Regulations for the creation of an Open Work Permit Program for temporary foreign workers at risk of abuse.

For migrant workers at the receiving end of these programs and proposals, these issues are interconnected. To engage in separate consultations on each matter, and only speak to a part of an issue rather than the whole further fragments the ability of migrant workers to give meaningful input. For these reasons, we are submitting one document that addresses all four issues.

As elaborated below, migrant workers in Canada continue to demand:

1. Permanent resident status on arrival for all migrant workers in Canada through the creation of a Federal Workers Program for care workers, and in consultation with migrant workers in other streams;
2. In the interim, creation of open or occupation specific work permits that are not reliant on employers that would allow workers to move freely between jobs and workplaces and work for any employer in a sector;
3. The extension and then grandparenting of the *Interim Pathway* for care workers to ensure that no worker is left behind;
4. Immediate implementation of an Open Work Permit Program for workers facing risk of abuse or being abused.

In this policy memo, the Migrant Workers Alliance for Change\*, Association for the Rights of Household & Farm Workers (ARHW)- Montreal, Caregiver Connections Education and Support Organization (CCESO) – Toronto, Caregivers Action Centre – Toronto, Cooper Institute – PEI, FCJ Refugee Centre – Toronto, Immigrant Workers Centre (IWC) Montreal, Income Security Advocacy Centre – Toronto, Migrant Worker Solidarity Network – Manitoba, Migrant Workers Centre (BC), Migrante Alberta, Migrante BC, Migrante Canada, Migrante Manitoba, Migrante Ontario, Migrante Ottawa, Migrante Quebec, Migrants Resource Centre Canada – Toronto, PINAY - Quebec, RAMA - Okanagan, Sanctuary Health – Vancouver and Vancouver Committee for Domestic Workers and Caregivers Rights (CDWCR) propose a joint position on all these matters.

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## **II. Migrant workers in Canada**

Migrant workers are employed in various sectors of the economy, including as care workers, farm workers, greenhouse workers, and retail workers in food and retail services, with many classified as 'lower-skilled' (with high-school education or less, under the National Occupation Classifications C and D (NOC C & D)).

Migrant workers fall within several federal programs, including the Caregiver Program (formerly Live-in Caregiver Program, and comprised largely of Filipina, but also Indonesian and Latin American women); the Seasonal Agricultural Workers Program (SAWP, which is comprised largely of Black and Brown men from Mexico and the Caribbean), and the TFWP Stream for Low-wage Positions (which includes men and women from countries in the Global South) in primary agriculture and well as other streams.

For us, migrant workers also include other non-permanent residents engaged in low-waged work including those on study permits, asylum seekers or undocumented residents. However, in this memo, we are only referring to low-waged (NOC C & D) migrant workers on employer specific work permits.

The sectors where migrant workers labour are clearly not peripheral - our society could not function without the food, care, and service that they provide. Similarly, the labour that they perform is not temporary:

- the seasonal agricultural worker program is in its 52nd year (with some workers, and now their children, in the program for decades),
- the domestic worker or caregiver program has been around in one form or another since the late 1800s (with no sign of a universal child and elder care program in sight),
- the so-called low-skill (now low-wage) program has remained in high demand in some form since the late 1880s when Chinese railroad workers first arrived in Canada.

### **III. Closed Work Permits are Indentured Labour**

Closed work permits that are tied to a single employer are a modern form of indentured labour in which migrant workers are not free to circulate in the labour market like other workers. Closed work permits, coupled with inadequate monitoring and enforcement of labour standards, create the conditions that allow unscrupulous employers and recruiters to abuse migrant workers with impunity. Closed work permits facilitate employer control and exploitation of workers including working excessive hours without payment for overtime, unpaid hours of work and often less than minimum wage pay, illegal deductions and predatory recruitment fees.

There are a number of concerns with closed work permits, including some of those discussed below.

#### **III.a. Lengthy processing times and prohibitive costs**

For a migrant worker to change employers, they must receive a new job offer from a prospective employer, an employment contract, and an LMIA in order to apply for a new work permit. Employers apply for LMIA's, which take between three and five months if approved, and then the migrant worker must apply for a new work permit, which might additionally take three to five months.

During this time period, migrant workers are not allowed to work and are denied social assistance. In many instances, employers or recruiter agencies download the \$1,000 LMIA fee to migrant workers. Migrant workers face unique barriers to accessing Employment Insurance.

As a result, migrant workers may spend 6-10 months unemployed with no income source, despite having to pay taxes for these forms of income security.

#### **III.b. Conditions of abuse**

One consequence of these delays is that migrant workers feel they have no choice but to continue working under abusive conditions. For workers whose employment has ended through no fault of their own or who have chosen to leave abusive employers, many are compelled to engage in unauthorized and less protected work, such as beginning to work for a new employer while their work permits are still processing.

Because there is little cost or risk to employers for unauthorized employment of migrant workers, many employers require migrant workers to begin work before work permits have been processed. Recruitment agencies have been known to encourage migrant workers to start working while their work permits are being processed because employers need migrant workers who can start work right away. Performing unauthorized work puts migrant workers at risk of being arrested, detained and deported from Canada. Failing to perform such work puts migrant workers at risk of losing jobs and being unable to sponsor or support their families or pay back recruiter fees or agency loans. There is currently no system in place to monitor these mutually reinforcing pressures from employers and recruiters that are placed upon migrant workers.

The lengthy processing times and high financial costs associated with changing employers make changing jobs the least desirable option for workers. This delay is a fact that employers are well aware of. As a result, bad employers increase their demands on temporary foreign workers by asking for increased hours of work, refusing to pay for overtime, holiday or vacation pay, and not allowing for sick days.

Many migrant workers such as those in agriculture and care work live in employer provided or employer controlled housing. This arrangement gives employers substantial control over migrant workers' food, space, sleep and social networks. This leaves many open to intimidation and reinforces the inequality of power between the employer and migrant worker. There is often no clear boundary between being 'on-duty' and 'off-duty'.

### III. c. Dividing workers

Canadian citizen workers have workplace mobility and, through employment insurance and social assistance supports, have the ability to retrain for jobs or access basic income in between employment. This mobility and security gives workers the choice to leave jobs that are discriminatory, abusive or are making them sick.

Closed work permits create a layer of workers that do not have this choice - as a result wages and working conditions for these workers can be reduced. This impacts wages and working conditions in the entire sector and reduces public health and decent work for all.

## **IV. Overall Recommendation: Migrant Workers must get permanent resident status on arrival**

Immigration laws in Canada must be changed to ensure the provision of permanent resident status for all migrant workers.

All migrant workers must be able to immigrate to Canada on arrival independently and permanently without depending or relying on the sponsorship or good will of their

employers or third party agencies. This means that care workers should not have to rely on evidence of service requirement. Agricultural workers should not have to show proof of full time job offers - the requirement of such evidence increases the power of employers.

Such a program should not exclude on the basis of 'skill level', particularly as 'skill level' is often a cover for discrimination and devaluing certain work and contributions on the grounds of race, class, and gender that should otherwise be illegal.

Such a program should not exclude on the basis of language or educational requirements.

Care workers have called for the creation of a Federal Workers Program for care workers with specific proposals to ensure that no workers are left behind. A table outlining this proposal is attached as Appendix 1.

It is important to note that:

- This recommendation is distinctly separate from a provision of 'pathway to permanent residency'. A 'pathway' is a two-step process in which a worker must first work in Canada for a period of time with temporary status before some workers are considered eligible to apply for permanent residence. A 'pathway' is a that care workers already have, and leads to the same forms of abuse and vulnerability that are found in other parts of the program.
- Permanent residency ensures access to services: Many labour rights and basic services in Canada like healthcare and post-secondary education are tied to permanent immigration status. Migrant workers pay for all these services through taxes and deserve access to them.
- Permanent residency is the norm: Most immigrants – refugees, sponsored spouses, high-waged immigrants – arrive in Canada with permanent residence status which gives them peace of mind and the tools they need to lay deeper roots and build our society further as soon as they arrive.
- Permanent residency re-unites families: Landed status on arrival would also allow migrant workers to enter Canada with their families, thus eradicating family separation. Right now migrant workers must arrive in Canada with temporary status without their families. Even care workers who have a path to Permanent Residence suffer an average of 6 to 8 years of family separation while they complete the program and wait for their permanent residence applications to process. Eliminating this period of forced family separation will enable migrant workers to put down strong roots immediately on arriving in Canada and will eliminate the difficulties that arise on reunification due to forced family separation.

It is imperative that this program, as well as any other program that impacts migrant workers (such as recent announcements on recruiters / consultants) are done in consultation with migrant workers.

## **V. Regarding: Employment and Social Development Canada proposals for an occupation specific work permit guide**

In the absence of permanent resident status on arrival, all migrant workers must be granted open work permits. Basic labour mobility, without employer control through an LMIA should be treated as a right, and its denial continues indentured labour practices outlined in Section III above.

In the absence of an open work permit, an occupation specific work permit should be granted to all migrant workers in all industries, rather than piloted in a few industries.

Occupation specific work permit should not be restricted by National Occupational Classification (NOC) code. For example care workers in Canada do the exact same work, but are hired under two separate NOC codes. Restricting by NOC code unduly limits labour mobility.

Occupation specific work permits should not be restricted to LMIA approved employers. This is not a realistic option for workers to achieve basic labour mobility. This is because

- In most cases where an LMIA is approved for an employer, they are able to retain a worker. There are thus very few available positions for workers who need to leave an abusive employer;
- Even if such LMIA approved employers existed, workers would not be aware of them, as they could be anywhere in the country;
- To find an LMIA-approved employer, migrant workers will likely have little choice but to continue using third party recruiters for jobs.

Occupational work permits are narrower and more limiting than sector-based work permits. From the perspective of prevention of abuse, the more limiting one's labour market mobility is, the greater the potential for abuse.

Restricting occupation specific work permits to employers that already have an approved LMIA undermines the stated purpose of the pilot: ensuring labour mobility of workers. Instead, it would be a program that only ensures that employer needs are met.

Where a labour market assessment is required to ensure protection of the Canadian job market, employment needs should be assessed at a regional and occupational level, rather than per employer application. The Auditor General, in their 2017 Spring Report, urged the use of additional labour market information instead of relying on information provided by employers.

Even if a regional or occupational approach is not adopted, the fact that a migrant worker secured an active work permit should be evidence enough that there is a labour market shortage in that sector. Workers seeking a job in the same occupation should not be limited to LMIA-approved job openings.

ESDC has argued that if migrant workers were to work in jobs without LMIA's, ESDC would not be able to adequately protect workers. However, ESDC has neither the expertise nor the track record to ensure protection for migrant workers. For the overwhelming majority of workers, labour law and employment standards law falls under the purview of provincial labour departments who have trained officers, an active system where workers can make complaints, and a remediation system through which workers can gain access to justice. The ESDC does not have any of these systems, and lacks jurisdiction to enforce provincial laws.

If indeed ensuring labour rights protections requires knowing which employers have hired migrant workers, this goal could be achieved by requiring employers to register following a worker hiring.

## **VI. Regarding: *Interim Pathway for Caregivers, set to expire on June 4th, 2019***

In response to Care Worker organizing, the Federal government has created an Interim Pathway to provide care workers who are already here with a pathway to permanent residency.

IRCC introduced the Interim Pathway because of the problems care workers faced meeting requirements for permanent residency under the 2014 Caregiver Program 5-year Pilot Project.

To be eligible for the Interim Pathway, care workers need to meet these requirements:

1. 1 year work experience in Canada under the Caregiver Program since November 2014
2. Valid status in Canada
3. Canadian Language Benchmark (CLB) level 5
4. Education equivalent to a Canadian secondary diploma
5. Plan to live outside the province of Quebec

Care Worker groups across Canada have conducted several information sessions about the *Interim Pathway for Caregivers*. These sessions were attended by 71 care workers in Montreal, 125 in Toronto, and 77 in Vancouver. In total, feedback was received by 273 care workers at these information sessions.

These care workers identified many barriers to accessing the pathway:

1. The window for applications for the *Interim Pathway* is too short. The Interim Pathway should be extended and then grandparented in to ensure a better transition for care workers to become permanent residents.
2. In Toronto, 54% of care workers we received feedback from reported that preparing an application before June 4, 2019 would be challenging. This is due to the precariousness of their working conditions and inability to take a day off during the week. It also leaves very limited time to meet all their requirements, which involves gathering documents from inside Canada and their own home country.
3. Care workers have reported difficulty acquiring documents from their employers (e.g. Record of Employment (ROE), T4s, letters of employment). Some workers report that former employers have no interest in providing the necessary documentation and face no repercussions for not doing so. Others, still with their employer, report that their employers are resisting providing necessary documentation because employers fear losing control over them. In Vancouver, 89% of care workers reported difficulty acquiring documents from their employers.
4. The Interim Pathway excludes care workers who became undocumented. Care workers fall out of status when they face barriers to finding a new employer or face delays in processing time for Labour Market Impact Assessments (LMIAs) required to start work with a new employer.
5. Many care workers have not finished 12 months of official service because:
  - They arrived in Canada within the past year.
  - Their employer did not honour the contract and released them when they arrived.
  - Long processing times for LMIAs and work permits when care workers change jobs or lose their jobs.
6. The language test is set to a higher level benchmark compared to requirements for the Caregiver Program. The short window for application limits time to prepare for the exam, resulting in some workers failing the exam. Across all three cities, 50% of care workers we received feedback from reported the required language level as a barrier. Many care workers are anxiously waiting for their results, and if they do not meet the required CLB level 5, they might not have enough time to retake the exam. Aside from the high benchmark, the exam is also expensive (\$280 to \$319 for each time the exam is taken). Migrant workers are already functioning in their positions with the skills that they have. They are actively contributing to the Labour Market without the unrealistic expectations of the language requirements as they stand now.

7. The Educational Credential Assessment has a long processing time with no assurance of the result. Due to the high volume of evaluation requests, one of the evaluating agencies has informed care workers that it will take them longer to get results. Previously it had a processing time of 4 weeks and recently increased it to 7 weeks. Care workers are reporting prolonged wait times. This is stressful for care workers because educational credential assessment results have varied from agency to agency, even for care workers with the same educational background. These onerous educational requirements were not a feature of the previous Live-In Caregiver Program, and the educational requirements for their work permit application were much lower.
8. The Interim Pathway excludes care workers in Quebec who wish to remain in the province. Care workers consulted in Montreal are concerned about being excluded. They are now forced to make a very difficult decision to leave behind any social ties they have built in Quebec while working as a Care Worker. If they want to apply for the pathway, they will have to demonstrate their commitment to leave Quebec by providing a job offer or copy of a housing lease outside the province. At minimum, care workers should not be required to take on financial commitments in order to prove their intention to live outside of Quebec.
9. The medical exam was reinstated as a requirement for the permanent residency application. The exam had previously only been required upon entry into the Live-in Caregiver Program. But now care workers must get a second medical exam after their service when applying for PR. This will be a barrier for any care workers who acquired health conditions or illness while working in Canada due to difficult working conditions. Care workers with a family member who has a disability or illness may also be excluded if the annual medical costs to care for that family member exceeds \$19,965.
10. The cost of applying for Interim Pathway is too expensive. Care workers will have to spend significant amounts on fees. The cost could range from \$1,845 to \$5,000. This includes fees for the PR application, biometric requirements, medical exam, police certificate, language test, and educational credential assessment. The cost will also vary depending on how many family members a Care Worker has. These costs are prohibitive for low-wage Care workers.

Migrant care workers across Canada have united in the Landed Status Now: Care Workers Organize Campaign. Migrant care workers make a tremendous contribution to Canadian society and deserve the right to stay in Canada with rights and access to services, rather than be forced to become undocumented.

We call on the federal government to amend the Interim Pathway to:

- Significantly extend the window for applications;
- Expand the Interim Pathway to all workers who came to Canada under the 2014 Pilot Caregiver program (i.e., grandparent all current caregivers in the program)

under the Interim Pathway). For those without enough service accumulated, ensure workers can be grandparented into the new 2019 Caregiver Pilot Program;

- Allow care workers to apply if they have worked in Canada for 12 months, even if the work was done without a work permit;
- Allow undocumented workers to apply;
- Reduce the required language level. Care workers came to Canada with a required language level of CLB Level 3. Therefore, the language requirement for permanent residence should remain at Level 3, and not be increased to Level 5. With the extremely limited application window, if workers do not score at Level 5 in the first attempt, they may not be able to retake the test in time;
- Remove the requirement for second medical examination; and,
- Create an Interim Pathway for Quebec, in coordination with Quebec-based care worker groups and the Government of Quebec.

## **VII. Regarding: Proposal for the creation of permanent residency pilot program for non-seasonal agricultural workers and a permanent residency program for care workers**

The federal government has raised the possibility of two different programs that would allow some migrant workers to obtain permanent residency.

Firstly, in Federal Budget 2019, the government announced an intention to create a pathway to permanent residency for some agricultural workers: “To help the agri-food sector meet Canada’s ambitious export targets, and attract and retain needed labour, the federal government will launch a three year immigration pilot to bring in full time, non seasonal agricultural workers that will include a pathway to permanent residency.”

Currently, agricultural workers in Canada do not have federal access to permanent residence status. The announcement of such a program is a step in the right direction, however, no consultations have been announced in which migrant workers can provide their advice. Their experience and recommendations must be heard in order to ensure the program meets the needs and human rights of migrant workers themselves. We call on the government to immediately consult with workers in an open and transparent way and to create a program as outlined in Section IV.

Secondly, in March of 2019, the federal government announced its intention to create a Pilot Program for Caregivers. It is encouraging to see that the government has listened to some of the issues raised by migrant care workers during the *Landed Status Now* Campaign. However, the newly announced Caregiver Program is another pilot program, restricted to 5 years, and by ministerial order rather than by changes to law or regulations. Care workers have been coming to Canada for over a hundred years; what is needed is a permanent immigration program.

We reiterate our call for the creation of a Federal Workers Program - Care Workers, to allow low-waged, racialized women who do essential Care Work to come to Canada with permanent resident status, [as outlined in our submissions in November 2018 and attached to this letter](#) (see Appendix 1). Temporary status means precariousness and uncertainty for migrant care workers. Decent work for care workers can only happen when the individuals providing care labour in Canada have landed status on entry.

We support the decision of the government to allow care workers to be accompanied by their family, putting an end to the cruel policy of family separation, as well as the creation of sectoral work permits. However, the lack of real details on these promises is incredibly worrisome.

We call for the draft policy or regulations to be shared immediately with migrant care worker organizations, and our input be taken into account in the development and implementation of the program. The program must be in place well before the federal elections in October have the following features

- Migrant workers should be able to come to Canada with Permanent Resident status on arrival through a specific Federal Workers Program for care workers. If such a program is not created, then the pilot project must ensure that:
  - Care workers are able to apply for Permanent Residency after 1 year of work (or 1,950 hours); and
  - All care workers are able to get open work permits, and to renew work permits without an LMIA. The announcement of sector specific work permits leaves many questions about how the LMIA process will take place.
- Workers in the Live-In Caregiver or 2014 Caregiver Program should have access to a streamlined path to join the 2019 Caregiver Program if they so choose;
- There should be no requirement for one year of post-secondary education, particularly when details are unclear about how assessment will take place in sending countries. Higher educational thresholds may shut out low-waged workers who have historically come to Canada through the Caregiver programs;
- The language requirement established under the LCP of CLB Level 3 should be maintained;
- Care workers should be able to migrate to Quebec with their families through the creation of a program in coordination with care workers in Quebec and the Government of Quebec;
- The 2019 Caregiver Pilot Program should provide open work permits to working age dependent children of care workers, in addition to study permits and open work permits to spouses;
- Specific resources must be allocated to ensure that family members are able to settle in Canada, including affordable housing, full healthcare and the ability to

attend schools and postsecondary institutions without paying high international fees; and

- Section 38(1)(c) of the IRPA (“Medical Inadmissibility”) must be immediately repealed. Denying permanent resident status to an entire family because one member of the family has a disability or a health condition is discriminatory and fundamentally at odds with Canada’s stated values that support the participation of persons with disabilities in society; and
- There should be no second medical examination.

We urge Canada to sign and implement the International Labour Organization Domestic Worker Convention 189 and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, Canada must develop a Care Strategy that builds a joint approach to universal, public child care, elder care, health and rights for care workers, regardless of immigration status.

Temporary migrant care work has proven to be an unsustainable approach to Canada’s childcare and eldercare needs. The Live-in Caregiver Program and the 2014 reforms were short-sighted policies that caused long-standing harm to migrant care workers and their families. For decades, migrant care workers and their families have borne the costs of Canada’s temporary migration program and they are best placed to educate the government on what is needed and what must be avoided – and they have been consistent in their call for permanent status upon arrival. We urge the government to heed that call. Anything less, including the new program, no matter how well intentioned, will fall short of providing fair treatment and decent work for migrant care workers coming to Canada.

### **VIII. Regarding: Regulations for the creation of an Open Work Permit Program for temporary foreign workers at risk of abuse.**

In December of 2018, the federal government passed a regulation creating an open work permit program for temporary foreign workers at risk of abuse (Canada Gazette, Part I, Volume 152, Number 50: Regulations Amending the Immigration and Refugee Protection Regulations).

These regulations are a step in the right direction and must be implemented immediately. However, it is imperative that the policies that support the regulations strengthen the government’s ability to protect workers from abuse:

1. There must be a clear definition of abuse. It is deeply concerning that the proposed regulations do not define “abuse” and “risk of abuse”. This is dangerous because it leaves it up to the discretion of the person deciding the application, who could choose to define “abuse” very narrowly. The impact statement includes “detrimental health and

safety conditions” as abuse, but this is not in the regulation and there are no policies requiring decision-makers to include unsafe working conditions in their understanding of “abuse.”.

- We recommend that abuse be defined broadly to include (but not be limited to) physical, mental, emotional and/or economic abuse, as well as any violation or potential violation of law or contract. This definition would include breaches of laws governing labour relations, employment (including enforcement of the terms of the employment contract), human rights, recruitment protections, and health and safety laws. Violations or potential violations of minimum labour standards must be grounds for issuance of open work permits.
  - It is critical that these protections include protections from recruiter abuse. Presently, the provinces do not uniformly prohibit and protect from recruiter abuse, even though this is one of the most common forms of abuse experienced by migrant workers.
  - The program must be available to migrant workers who leave their employment due to abuse, as well as those who have been dismissed as a reprisal. It cannot be limited to workers who continue to work in conditions of abuse.
2. In the same vein of increased discretion, the proposed regulations do not include an appeal process. That means that, the only remedy for a worker denied an open work permit is to apply for judicial review at the Federal Court of Canada. A judicial review is not an appeal, rather it is a request to for the court to review the decision only on narrow and technical terms. A court considering a judicial review application does not have the power to re-assess the individual application on the basis of its merits or to consider new evidence. It is a lengthy, expensive and largely inaccessible avenue, particularly because the Federal Court will only agree to review a small percentage of judicial review applications . We propose a fast and accessible appeal process when applications are denied including:
- A requirement for the original decision-maker to give written reasons for their decision, so that workers understand why their application was denied. Without that knowledge, they cannot challenge the decision;;
  - After an application for an open work permit is denied, workers must have the right to ask a different decision-maker to reconsider the application;
  - To ensure that the process is fair and accountable, the reconsideration application must include an in-person hearing (with an interpreter if required), and an opportunity for the worker to make submissions;
  - To ensure that the worker can get an open work permit following reconsideration, decision-maker must have the power to grant an open work permit if they decide the first decision was wrong
3. Once abuse has been ascertained, there is no justifiable reason to not issue a work permit and therefore keep workers in harm’s way. The regulations state that work permits “may be issued” if there is abuse or risk of abuse. This must be amended to read that workers permits “**shall** be issued”.

4. The regulations say nothing about the length of the work permit. This is an oversight and must be corrected; we propose a minimum two year work permit, as it takes an average of 18 months for legal claims regarding abuse to be processed. Minimum work permit lengths must be clearly stated in the regulations.
5. In addition, workers who have lost their work permits and become undocumented because of abuse must be able to apply for these open work permits.
6. It is concerning that the open work permit cannot be renewed. The Impact Analysis Statement states that if it expires, the worker would need to get a new permit “through the normal process”. The normal process requires a Labour Market Impact Assessment for most workers, which is extremely difficult for workers to access without using expensive and often abusive recruiter agencies. Employers are known to blacklist workers that speak out, and therefore such workers would not be able to access the normal process. Speaking out, and then getting a non-renewable permit, therefore has a significant economic impact for workers who have already gone in debt to come work in Canada.
7. The regulations are a one-size-fit-all mechanism. This does not take into account the specific structures of the Temporary Foreign Worker Program. For example, migrants in the Live-In Caregiver Program and Caregiver Program (care workers) must complete 24 months of service within 48 months as one of the pre-conditions to apply for permanent residency. The regulations are silent on whether work on these open work permits will count towards the service requirement.

Without this clarification, many care workers will likely not access this program. If the open work permit for vulnerable workers only provides a time limited work permit to leave an abusive employer and does not allow for the work done under such a permit to be deemed work under the Caregiver Program for the 24 month service requirement, this will not provide a real remedy for care workers to leave abusive situations. Care workers will still not be able to leave abusive situations because they will fear being timed out of the pathway to PR under the Caregiver Program. Similarly workers in the Seasonal Agricultural Workers Program face blacklisting. Without a guarantee of employment in the future, or access to Permanent Residency, many workers will not access this program.

8. There is no specific provision or supports outlined if the worker is deemed not be at risk of abuse or facing abuse. This is a significant gap. Even if the concerns faced by the worker do not meet the standard outlined, it is likely that there are concerns at work to take such a drastic step. As such, we request that unsuccessful applicants be directed to contact the relevant authorities (Ministry of Labour for example), as well as be connected with a support organization that can review their concerns.

9. For the Open Work permit protections to be an effective support system for workers, migrant workers must be made aware of it. As such, we reiterate our call for multilingual, and comprehensive communication strategy so that workers are made aware of this program.
10. It is essential that workers themselves be able to apply for these open work permits, without assistance. As such a simpler, streamlined application process that is available in multiple languages and does not require sustained access to the internet or familiarity with forms must be developed.
11. Abuse and risk of abuse are time-sensitive situations. Workers often face coercive removal strategies when speaking out (for example, the employer drives them to the airport and hands them a ticket). These removals happen quite quickly, sometimes as soon as 24-48 hours. As such, these open work permits must be expedited. We propose a 48 hour turnaround time.
12. While open work permits provide greater labour mobility to escape abusive employers, migrant workers' access to health services is tied to their continued employment. For example, in Ontario, when migrant workers change employers, they must complete a new three-month waiting period to access medicare. Also migrant workers are denied provincial social benefits in between employment. As such, we reiterate the need for Interim Federal Healthcare provision through a Temporary Resident Permit - Type 86 along with the open work permit.
13. The regulations do not create specific avenues for investigation of the employer once a permit is granted. Particularly, they are silent on partnering with provincial agencies who are the competent and regulatory lead on much of the abuse that workers face. This limits the ability of workers to access remedies such as return of unpaid wages. Neither do the regulations bar the involvement of the Canada Border Services Agency (CBSA). The CBSA often partners with ESDC on investigations, but principally targets workers over employers. As such, we propose that investigations, where possible, be done by provincial authorities without the use of CBSA or policing powers.
14. The restriction on employment in "businesses related to the sex-trade" should be removed from these permits. Sections 185(1)(1.b) and 200(3)(g.1) of the *Immigration and Refugee Protection Regulations* prohibit migrant workers from sex work-related employment, even as federal law has decriminalized such work. The prohibition on work permits means that migrants engaged in legal occupations are forced into undocumented work, unable to assert their labour rights, and face abuse and exploitation. It also limits migrant ability to choose their own occupations.
15. The open work permit should be available to all workers on temporary employment permits including workers in the Seasonal Agricultural Workers Program, International Mobility Program, etc.

APPENDIX 1

**New Federal Workers Program (FWP) – Care Worker Stream proposed through modifications to existing Express Entry System**

| Criteria   | Proposed details  | Reasoning   |
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| <p>Modifying the Common Minimum requirements</p> | <p>Common minimum requirements are education, work experience, and language ability. The FWP-CW would maintain these categories but adjust the criteria to reflect the actual skills required to deliver care work in Canada and to establish a points threshold that is reflective of the actual requirements for care work.</p> <p>The federal government should guarantee processing of FWP-CW applications for permanent residency as part of developing a national care strategy for children, the elderly and people with disabilities which connects workers to a public, universal, accessible, licensed system of child care, elder care and care for people with disabilities that values care work as decent work.</p> | <p>Canada has a mixed economy and requires workers of all skill levels. It is important that workers of all skill levels can enter Canada with permanent residency status.</p> <p>At the same time, caregiving is skilled work requiring years of practice and constant learning. The skills that workers bring to this work must be recognized and rewarded with appropriate points for the purposes of immigration and in order to develop a national care strategy for Canada.</p> <p>The Federal Skilled Trades program is a precedent that shows that the permanent immigration system can be tailored to recognize the value and contribution of work in a mixed economy with jobs at various NOC levels.</p> |
| <p>Modifying Education and Work Experience</p>   | <p>Foreign nationals with high school education and either work experience or training in Care Work should be able to apply for the FWP-CW stream under a modified Express Entry program. High school education need not be equivalent to completion of secondary school in Canada. Work experience need not be paid work experience but can include practical experience, too.</p> <p>FWP-CW applicants should receive a set number of points if they meet these threshold requirements. Achieving these points will then translate to guaranteed processing of applications in line with developing a national care strategy that recognizes</p>  | <p>The FWP-CW stream will provide permanent residency in Canada for low-waged, racialized workers and their families from the Global South. It is critical that a permanent program continue to provide access to permanent residency to these workers. Despite the current structure of Express Entry, this new stream should not be skewed towards the exclusion of these workers, largely women, and their families. In providing such a program in the context of a national care strategy, Canada would lead the world in both immigration policy and in recognizing the value of decent care work.</p>  |

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|                            | the labour market gap in this sector. This process will also remove the need for individual LMIAs.   |  |
| Modifying Language Ability | Foreign nationals applying in the FWP-CW stream with a score of CLB Level 3 should be able to qualify under the modified Express Entry Program. Applicants meeting this threshold should receive a set level of points towards the guaranteed processing of their applications in line with developing the national care strategy. | Language ability should be assessed on a functional basis that is relevant to the work done by care workers. Migrant care workers currently in Canada – and who have worked for years in Canada – have been working successfully without meeting the elevated standards. Imposing a higher standard for permanent immigration does not correspond to the need for care work in Canada or workers’ actual abilities to provide care.  |
| Modifying Age              | The age requirement should be eliminated.  | The age requirement is discriminatory and does not reflect the level of expertise in a field or the future contributions of the primary applicant’s family members.  |
| Modifying the Job Bank     | Once FWP-CW applicants have created their profiles in the Express Entry system, they should be able to seek employment as care workers in Canada via a national job bank tied to the development of Canada’s care strategy.  | Developing a national care strategy will utilize the job bank as part of a public, universal, accessible, licensed system of care. The job bank will remove the power of recruitment agents who are a significant source of exploitation. This job bank will give more bargaining power to workers.  |
| Potential employers        | Potential employers seeking care workers can use the job bank to find care workers employees.<br><br>Employers must pay processing fees (equivalent to current LMIA fees) when they register for the job bank, and when they hire a migrant worker.  | Using the job bank ensures that employers are registered for program integrity purposes, that employers can be charged relevant processing fees, and that compliance with decent work standards and contracts can be more effectively subject to proactive oversight. Currently, only childcare employers with incomes over \$150,000 are charged processing fees.<br><br>As employers have to be registered, additional requirements can be integrated (such as advertising the job first for Canadian citizens or permanent residents). These requirements may be less relevant in the context of developing a national child and elder care strategy that recognizes the labour |

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|   |  | <p>shortage in this sector on a default or ongoing basis.</p> <p>It also ensures that care workers come to Canada with a guaranteed job contract so that they are able to take care of their families and fulfill labour needs.</p>  |
| Modifying the Labour market impact assessment | <p>The FWP-CW would eliminate the need for individual LMIA's. As part of its national care strategy, the federal government should conduct a regional and sectoral labour market assessment that recognizes current and future labour shortages with respect to care work in Canada. On the basis of this analysis, the government would identify the overall numbers of care workers who are needed in the labour market. This system-wide analysis would remove the need for LMIA's on an individual basis for employers in the FWP-CW stream.</p> | <p>In response to the Auditor General's Spring 2017 report on Temporary Foreign Workers, ESDC committed to utilizing Statistics Canada and other sources to produce better regional labour market assessments, including projecting future shortages.</p> <p>Quarterly re-assessments allow for adjustment if employers continue to be unable to find Care Worker employees.</p> |
| Modifying the Points Calculation              | <p>Once workers in the FWP-CW stream meet the adjusted minimum point threshold, their applications for permanent residency must be processed. In order to develop the national care strategy, these applications will be processed separately from the current Express Entry pool. This processing should not be dependent on an immediate job offer.</p>  | <p>The current system of selecting applicants with the maximum points in the Express Entry pool should not apply to the FWP-CW stream. Such a system automatically favors higher levels of education, language ability and experience. Such a system will not work for the Care Worker program or for the development of a national care strategy.</p>                           |
| Permanent residency and family unity          | <p>Primary applicants under the FWP-CW stream will be able to apply for permanent residence along with their family members (spouse or common-law partner &amp; dependent children)</p>  | <p>Family accompaniment is a significant determinant of mental and physical health for care workers and their families. Care workers and their families will integrate and settle into the country more easily when they arrive together.</p>  |