



WAGE THIEVES

enforcing minimum wages

Introduction

Wage theft continues to be routine for some employers, with businesses unashamedly advertising below award rates of pay, targeted at workers from culturally and linguistically diverse backgrounds.

For the second year, Unions NSW has undertaken an audit of job advertisements on Chinese, Korean and Spanish websites. This year the audit included a review of jobs written in Nepalese and Punjabi. The audit found 70% of advertised jobs are offering

rates of pay below those set in the relevant minimum award. This is a marginal improvement on the 2016-17 audit, which found 78% of jobs were advertised at below award rates.

Unions NSW audit demonstrates the need for increased efforts to combat wage theft and remove the structural barriers workers face in rectifying underpayment and stamping out exploitation.

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Recommendations

1. Right of entry in the *Fair Work Act* should be amended to provide unions with access to workplaces suspected of systematically underpaying workers.
2. The Federal Government should redirect the Fair Work Ombudsman funding to unions and peak industrial organisations to lead pro-active investigative efforts to identify and stamp out wage theft and exploitation based on the demonstrated effectiveness of their current recovery actions.
3. An immediate fire wall be established between the Fair Work Ombudsman and Department of Home Affairs to prohibit the sharing of personal data of temporary migrant workers, to prevent deportation of workers prior to their claims of underpayment are heard.
4. The 40 hour a fortnight restriction for international students should be removed to reduce the pressure that pushes workers into the cash economy and replaced with a strong focus on course attendance and successful subject completion.
5. The 88-day regional work placement requirement for working holiday makers should be removed to reduce the exploitation of vulnerable workers.
6. The Fair Work Commission (FWC) should be invested with the power to decide on wage underpayment disputes. This would provide a more simplified path and relieve temporary migrants of the onus to enforce their rights through the lengthy, expensive and complex court system.
7. Workers with outstanding claims for workplace entitlements including underpayments should have their visa extended to allow them to remain in the country with working rights until an underpayment claim has been settled and any unpaid entitlements recovered.

Part one

Audit of job ads

A large proportion of temporary migrant workers access community language websites and online social media groups to find employment in Australia.¹ In addition to job advertisements, these websites provide information on social events, rental accommodation and travel advice specifically targeted at temporary migrant workers.

Between August and November 2018, Unions NSW conducted an audit of online job advertisements written in Chinese, Korean, Spanish, Nepalese and

Punjabi. Advertisements were found on websites *Hojunara* (Korean),² *Sydney Today* (Chinese)³ and a number of Facebook groups targeted at the Nepalese,⁴ Spanish⁵ and Indian⁶ communities in Sydney.

The job audit identified 193 job advertisements including 32 in Chinese, 43 in Korean, 36 in Spanish, 57 in Nepalese and 25 in Punjabi. Job advertisements where the rate of pay could not be ascertained were excluded. This left a total of 150 job advertisements in the final analysis.

Job advertisements were audited by researchers, with information on the industry, position, rate of pay and other relevant data recorded.

This is the second job audit report from Unions NSW. The first report, released in July 2017, audited job advertisements in Chinese, Korean and Spanish languages and found 78% of ads offered rates of pay below the minimum award. The results from 2018 indicate there has been little improvement from the 2017 audit results.

Figure one⁷ A position advertised in Chinese for a waiter or waitress, paying \$15 an hour.

Marrickville 鬼佬唐餐招收夜晚流利英文服务员一名

更新时间 2018-11-04

浏览量 3455次

举报此信息

我要顶帖

公司名称 Mr. Dragon Chinese Restaurant

工作性质 兼职,Casual,全职

经验要求 需要

学历要求 不限

签证要求 学生签证,工作签证,永居签证,澳洲国籍,打工度假签证

性别要求 女

工资水平 \$15/h

联系人 MaxXiao

加入「今日澳洲」6月22天

联系我时请说明是在今日悉尼看到的, 谢谢!



公司简介

要求独立操作, 熟练英语。如果你确定你可以长期的做, 而且人品没问题后请再给我发信息一定要(简历)。非诚勿扰

Figure two⁸ A position advertised in Korean for a waiter or waitress, paying \$16 an hour.

혼스비 웨스트필드쇼핑센터안에 위치한 강남BBQ를 함께 꾸려나갈 홀직원 구합니다

\$16-0 / 시급

No Company Logo

HOJUNARA
info@hojunara.com

강남바베큐 자세히

대표자: 배만길

회사주소: Westfield Hornsby Level 2 | Shop 2r, hornbsy, NSW 2077

사업내용: 음식점/주점>한식전문점

채용담당자: 배만길

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- 근무지역 NSW > Hornsby
- 모집부문 홀서빙
- 담당업무 홀서빙
- 근무형태 기타
- 경력구분 무관
- 모집인원 1
- 연령제한 0-0
- 학력구분 무관
- 성별구분 무관
- 비자조건 기타

Figure three⁹ A position advertised on Facebook for a cleaner, paying \$15 an hour.

 **Aus Ma Rojgar**
10 December at 10:15 · 🌐

Required cleaner and helper workers

Pay rate is \$15 p/h cash

For more details visit Link==>><https://goo.gl/f9zPmY>

👍 2 1 Comment

👍 Like 💬 Comment ➦ Share



Results

The job audit analysed 150 job advertisements, this included 24 ads in Chinese, 43 in Korean, 28 in Spanish, 48 in Nepalese and only seven in Punjabi.

The two most common industries for job advertisements were hospitality (57) and cleaning (59). This was followed by retail (8), construction (6) and education (5). See figure four for a breakdown of job advertisements by industry.

The audit of job advertisements compared the hourly rate offered per position with the relevant award minimum rate of pay.

Overall, 70% of the advertised rates of pay were below the relevant award minimum. Of these the average rate of pay was \$18.87 per hour representing an average underpayment of \$4.60 per hour when compared to the relevant minimum award rate.

Not all advertisements published their rate of pay and phone calls were made to those businesses to confirm the rate of pay being offered. However, 72% of businesses who advertised below award rates of pay included the hourly rate in the text of their advertisement.

The lowest rate of pay advertised was \$10 an hour offered by two employers one seeking an ice-cream server, the other for a milk tea maker. Both positions would be covered by the Fast Food Industry Award and have a minimum hourly rate of \$20.79.

Only 14 job advertisements clearly indicated the work was casual. As a result, for the majority of job advertisements the advertised rate was compared to the part-time/full-time rate in the relevant award. Given the high rate of casualisation in industries such as hospitality, where 79% of all workers are casual, it is likely a

Figure Four Underpayments by industry

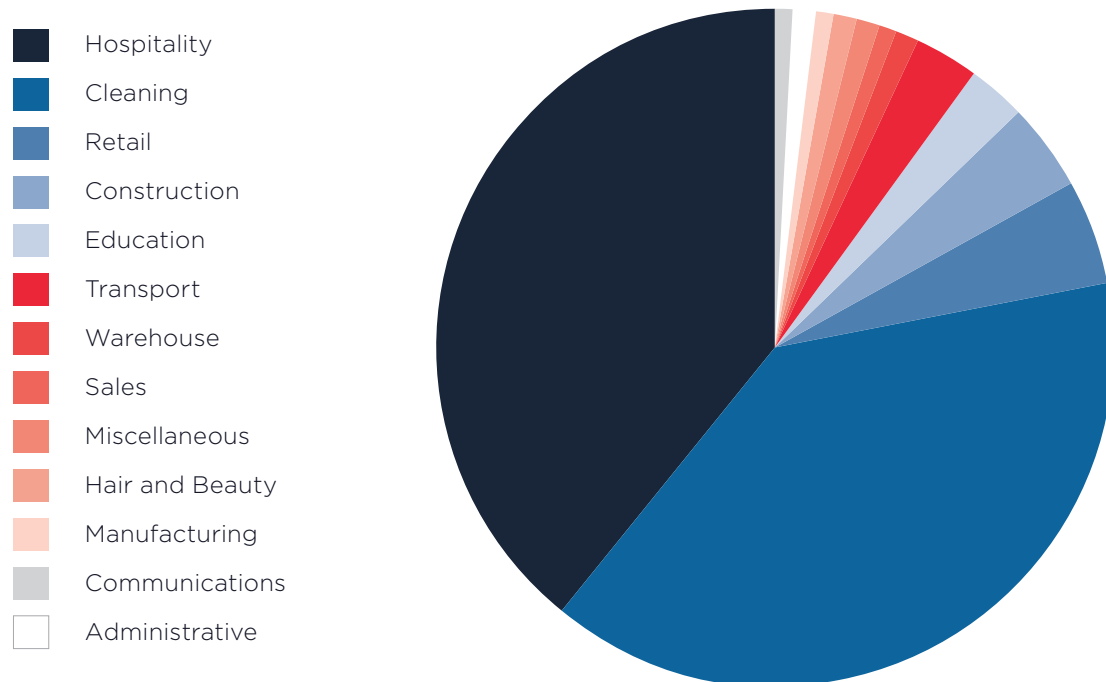
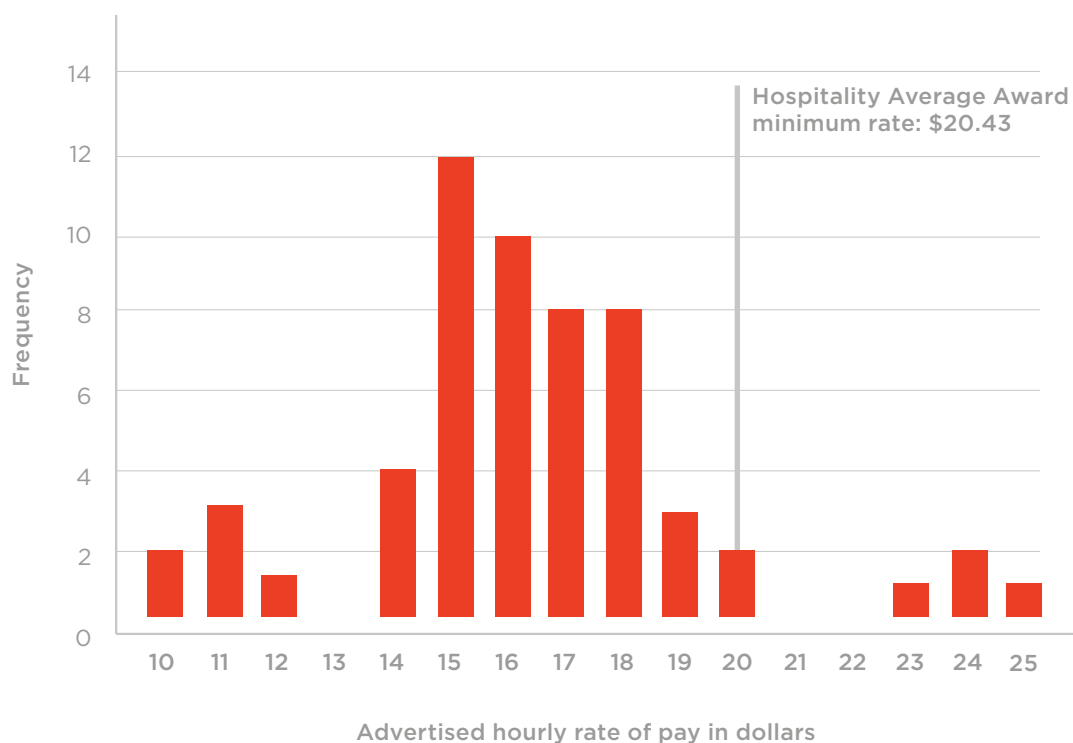


Figure Five *Hourly rates of pay in the hospitality industry*



much larger proportion of job advertisements were actually offering casual work.¹⁰ If casual loadings were included then the size of underpayments would be significantly higher.

Underpayments by industry

Hospitality

In the hospitality industry 93% of advertised jobs were below the award minimum wage. Rates of pay in the hospitality industry ranged from \$10 per hour (2 job ads) to \$25 per hour (1 job ad). The average advertised rate of pay was \$16.36 per hour. See figure five for a distribution of rates of pay in the hospitality industry.

The average size of underpayment in the hospitality industry was \$4.64 per hour. If an employee worked an average of 20 hours a week, over a one-year period this would equate to a total underpayment of \$4,825.

Job advertisements in hospitality were most common on Chinese and Korean websites. On Chinese websites, 71% of all advertisements were for jobs in the hospitality industry, for Korean websites this was 77%. Only 6% of Nepalese job advertisements were in hospitality.

Cleaning

Of the job advertisements in the cleaning industry, 46% were advertised at below award rates. The average advertised rate was \$20.50 per hour. The lowest rate of pay in the cleaning industry was \$15 per hour.

The average size of the underpayment in the cleaning industry was \$4.07 per hour. If an employee worked an average of 20 hours a week, over a one-year period this would equate to a total underpayment of \$4,233.

Figure six

Industry	Number of advertisements	Average advertised hourly rate	Average Award minimum hourly rate	Proportion of advertisements with below Award rates of pay
Cleaning	59	\$20.50	\$22.25	46%
Hospitality	57	\$16.36	\$20.43	93%
Retail	8	\$15.19	\$21.16	100%
Construction	6	\$27.76	\$23.68	0%
Education	5	\$23.00	\$22.15	40%

Underpayment by language group

Job advertisements in Chinese

The audit included 24 jobs advertisements in Chinese, predominately from the website *Sydney Today*. The most common industries for job ads were hospitality (71%), retail (17%) and education (8%).

All jobs were advertised at a rate below the award. The average advertised rate was \$13.69 per hour. The average size of underpayment was \$6.51 per hour. Over a year, for someone working 20 hours a week, this would equate to an underpayment of \$6,773.

Job advertisements in Korean

There were 43 Korean job advertisements in the audit from the website *Hojunara*. The largest industry was hospitality (77%), with a small number of jobs in warehousing, retail, cleaning and hair and beauty.

Almost all (97%) of jobs were advertised at a rate below the relevant award. The average advertised rate was \$16.73 an hour. The average size of the underpayment was \$3.69 per hour.

Job advertisements in Nepalese

There were 48 Nepalese job advertisements found on various Facebook pages. The

majority of advertisements were for jobs in the cleaning industry (79%) with small numbers of jobs in hospitality (6%), education (4%) and transport (4%).

Just under half (44%) of jobs were advertised at a rate below the relevant award.

The average advertised rate was \$20.16 per hour, the average underpayment was \$3.21 per hour.

Job advertisements in Spanish

There were 28 Spanish job advertisements found on various Facebook pages. The majority of advertisements were for jobs in the cleaning industry (68%) with a smaller number of jobs in construction

(18%). **Of all the Spanish advertisements, 60% were advertised at a rate of pay below the relevant award.**

The average advertised rate was \$23.10 per hour, the average underpayment was \$3.40 per hour.

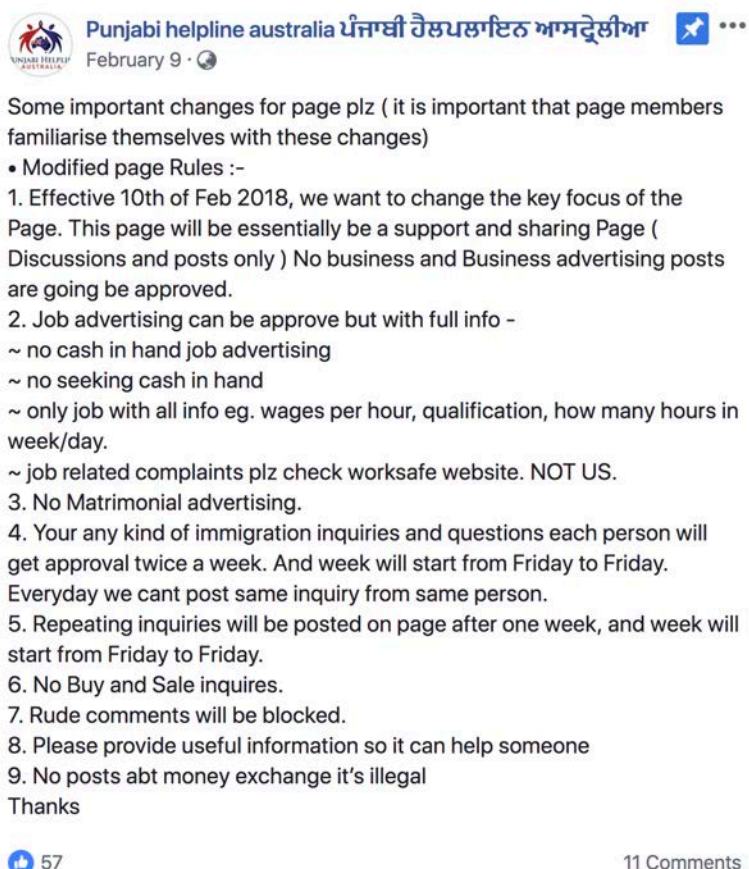
Job advertisements in Punjabi

There were only seven job advertisements in Punjabi where the pay rate could be ascertained, from a total of 25 jobs ads originally identified. There were four in hospitality, two in sales and one in cleaning. Only one advertisement in sales had a below award rate of pay (\$11.30 an hour).

The lack of underpaying advertisements may be attributed to the key Punjabi Facebook page identified for the audit, *Punjabi Helpline Australia*. The page has a pinned post outlining the Facebook page rules which includes a requirement for any job postings to include full details including the rate of pay with a restriction on any

job ads offering cash in hand payments. This demonstrates the positive influence community regulation of job advertisements can have in the online space. However, the high number of jobs that did not include a rate of pay, may indicate employers are more cautious in their approach to paying below Awards rates of pay.

Figure seven A screenshot taken from the Facebook page Punjabi Helpline Australia



Punjabi helpline australia ਪੰਜਾਬੀ ਹੈਲਪਲਾਈਨ ਆਸਟ੍ਰੇਲੀਆ February 9 · 🌐

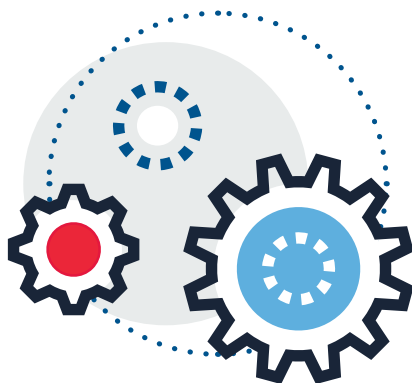
Some important changes for page plz (it is important that page members familiarise themselves with these changes)

- Modified page Rules :-

1. Effective 10th of Feb 2018, we want to change the key focus of the Page. This page will be essentially be a support and sharing Page (Discussions and posts only) No business and Business advertising posts are going be approved.
2. Job advertising can be approve but with full info -
 - ~ no cash in hand job advertising
 - ~ no seeking cash in hand
 - ~ only job with all info eg. wages per hour, qualification, how many hours in week/day.
 - ~ job related complaints plz check worksafe website. NOT US.
3. No Matrimonial advertising.
4. Your any kind of immigration inquiries and questions each person will get approval twice a week. And week will start from Friday to Friday. Everyday we cant post same inquiry from same person.
5. Repeating inquiries will be posted on page after one week, and week will start from Friday to Friday.
6. No Buy and Sale inquires.
7. Rude comments will be blocked.
8. Please provide useful information so it can help someone
9. No posts abt money exchange it's illegal

Thanks

👍 57 11 Comments



Part two

How the Federal Government and the Fair Work Ombudsman are letting workers down

Lack of proactive investigation

The Fair Work Ombudsman (FWO) is empowered to undertake pro-active audits of businesses to check their compliance with workplace obligations. While the FWO claims these are targeted and strategic audits, they fail to effectively respond to the endemic levels of wage theft currently being experienced by migrant workers.

Despite over 15,000 anonymous reports, the FWO undertook only 4,500 pro-active audits in 2017-18. **Based on this rate, businesses can expect to have their wages and conditions audited once every 192 years.¹¹**

A FWO compliance check of the hospitality industry in July 2018 audited 243 restaurants. Almost three quarters of businesses were non-compliant, a rate similar to the underpayments found in the Unions NSW job advertisement audit. A total of \$471,904 was recovered for 616 employees which is an average of \$766 per employee.¹² This is an inconsequential amount compared to estimated levels of underpayment across the hospitality industry and migrant communities. The Unions NSW audit of job advertisements estimated migrant workers in the hospitality industry are underpaid on average \$4,825 a year and researchers have predicted migrant workers

have been underpaid in excess of \$1 billion.¹³

The ability of the FWO to adequately respond to complaints raised by migrant workers has been brought into question. The *National Temporary Migrant Workers Survey* found only nine per cent of migrant workers who had experienced wage theft sought to recover their wages. One third of these workers sought assistance from the FWO and in 58% of cases, the FWO was unsuccessful in recovering any wages.¹⁴

The FWO has a powerful repertoire of options available to compel employers to pay workers, however these are not being utilised effectively. **In 2017-18 the FWO utilised the compliance and enforcement tools available to them in only 4% of requests for assistance.¹⁵**

By refusing to employ the enforcement power available to them, the FWO is failing to police and penalise employers breaking the law and is contributing to the normalisation of wage theft.

The emphasis of funding for the FWO also contributes to its ineffectiveness in this area. Between the 2017-18 and 2018-19 Budgets, the Federal Government reduced funding for 'compliance with workplace relations legislation by employees and employers' by \$3.8 million (3.1%). At the same time the Registered Organisations Commission (ROC), tasked with investigating trade

unions received a 22% boost in funding.¹⁶

Unions are best-placed to recover unpaid wages

Recommendation 1

Right of entry in the *Fair Work Act* should be amended to provide unions with access to workplaces suspected of systematically underpaying workers

Recommendation 2

The Federal Government should redirect the Fair Work Ombudsman funding to unions and peak industrial organisations to lead pro-active investigative efforts to identify and stamp out wage theft and exploitation based on the demonstrated effectiveness of their current recovery actions.

Unions have a strong record advocating on behalf of workers who have been underpaid and successfully recovering unpaid wages. The *National Temporary Migrant Workers Survey* found workers who approached a trade union for assistance with underpayments had at least some wages recovered in 70% of cases. This contrasts with the FWO's rate of success in 42% of cases.¹⁷

In the past five years the NSW Construction and General Division of the Construction Forestry Mining Maritime and Energy Union (CFMMEU) recovered \$31.2 million in unpaid entitlements for members. The average amount of underpaid wages recovered for each member was \$2,261.54.¹⁸

In NSW just four unions, collectively recovered an average of \$20.93 million over a one year period.¹⁹

In April 2017, the Health Services Union (HSU) acted on behalf of members at Guardian Property Services who had been paid as little as \$14 an hour. Following negotiations with the union, the company agreed to pay two workers \$90,000 in unpaid wages.

Recent research has identified many migrant workers accept being underpaid because the low rates of pay they receive are comparable to what their peers are earning.²⁰ Employers have taken a similar approach to market testing the wages of other local businesses, leading them to justify ongoing underpayment.²¹ The complacency of some employers was evident in the Unions NSW job audit where 72% of employers included the hourly, below award, rate of pay in the text of their advertisements.²²

Systematic and ongoing audits and investigations of employer compliance are needed to remove the onus on individual workers to make complaints about wage theft. The industrial relations system must simplify the processes for reporting while also empowering as many actors as possible to enforce workplace rights.

Right of entry provisions within the *Fair Work Act* should be amended to provide unions with access to workplaces suspected of systemically underpaying workers. Unions have demonstrated their effectiveness as organisations which assist workers in the recovery of stolen wages. At the same time, unions provide a deterrent to employers non-compliance in the long term by removing the belief ‘community rates of pay’ can be offered by employers.

The Federal Government should directly fund unions and peak industrial organisations to undertake pro-active investigations to identify and stamp out wage theft and exploitation. This includes re-directing funding from the FWO to peak industrial organisations to undertake investigations and run underpayment claims. Organisations would be funded for each case where they successfully recover unpaid wages.

With three-quarters of the advertised jobs Unions NSW reviewed offering rates of pay below the award minimum, there is clearly a systematic issue of underpayment within certain sectors of the economy. To address this issue a culture of disincentivising wage theft with increased oversight should be introduced rather than persisting with the failed sporadic investigative approach overseen by the FWO.

Information sharing between departments

Recommendation 3

An immediate fire wall needs to be established between the Fair Work Ombudsman and Department of Home Affairs to prohibit the sharing of personal data of temporary migrant workers as it may result in deportation of workers prior to their claims of underpayment being heard.

A significant barrier to temporary migrant workers making a complaint about wage theft is the fear it will affect their visa status. This is particularly the case for those who may be working in contravention of their visa requirements. For international students this would mean working in excess of 40 hours per fortnight while for working holiday makers this would mean working for longer than six months with a single employer.

The FWO has attempted to counter these concerns claiming, since February 2017, there is an agreement with the Department of Home Affairs (DHA) protecting temporary migrant workers from having their visa cancelled if they assist the FWO with their investigation, even if they have worked in breach of their visa restrictions.²³

Freedom of Information Requests (FOI) made by Unions NSW to the FWO and the DHA in January 2017 have found no such agreement

with DHA exists. Instead there is a referral protocol, which provides a *'ready reckoner'* for FWO officers to use in determining whether a worker who approaches them with an underpayment matter should be referred to the DHA because of a breach of their visa.

Further, the FWO claims once a referral has been made, they have no control over the actions taken by the DHA in relation to the worker's visa.²⁴

The FWO refused to provide information on what factors its inspectors consider when deciding whether to refer a temporary migrant worker to the DHA. The FWO would not release this information as it argued it would affect *'law enforcement and protection of public safety'* because the release of this information would influence the type of information workers provide to the FWO. It appears the FWO is refusing to provide this information over concerns exploited migrant workers may use the information to avoid the immediate cancellation of their visa.

The FWO referral form for processing personal details of migrant workers, provides the DHA with information on:

- the visa the worker holds;
- the assistance the worker is providing the FWO;
- the likelihood of the case leading to an enforcement outcome against an employer; and
- if the worker's expectations have been managed regarding the referral process.

No information is provided by the FWO to the DHA on the details or severity of the workplace underpayment being investigated.

At 24 March 2017, the FWO had made 13 referrals to the DHA including 11 individuals in matters related to 7-Eleven franchises.

This scenario causes a significant issue whereby migrant workers exposed to workplace exploitation are seeking assistance from the FWO who is potentially at the same time reporting them to DHA for visa breaches and possible deportation.

The Federal Government also matches data between the DHA and the Australian Tax Office (ATO). In January 2018 the ATO claimed this would *"identify non-compliance with obligations under taxation and superannuation laws"*. To date, few details have been provided on the success of the data-matching project, while no assurances have been made that the information will not be used to negatively impact the visa status of temporary migrant workers. The ATO has rejected Unions NSW Freedom of Information requests seeking further information to clarify the situation.

Information sharing between government departments has the potential to assist in identifying instances of wage theft and exploitation. However, the Federal Government is placing the visa security of exploited workers at risk, by refusing to provide assurances their visa status will not be negatively impacted during an investigation of their employer's misconduct.

An immediate fire wall is required between the FWO and DHA which prohibits the sharing of personal data of temporary migrant workers which could result in their deportation while an investigation is ongoing.

Visa restrictions that amplify exploitation

International students

Recommendation 4

The 40 hour a fortnight restriction for international students should be removed to reduce the pressure that pushes workers into the cash economy, and replaced with a strong focus on course attendance and successful subject completion.

Current visa restrictions placed on international students further compounds experiences of exploitation and requires reform.

International students are restricted to working 40 hours a fortnight during their course and unlimited hours during course break. Research has shown large numbers of international students regularly work over these restrictions.²⁵ The low, often below award rates of pay many temporary migrant workers are subjected to, often drive them to work additional hours in order to earn a living wage.

The 40-hour work restriction on international students drives them to the cash

economy and further exploitation and is not an effective means of ensuring the visa class is being used appropriately.

International students working outside their work restrictions may seek to disguise their visa violation by accepting 'cash in hand' jobs. Given the 'off the books' nature of these employment relationships, migrant and student workers are unlikely to receive payslips for their work which creates an evidentiary issue when workers seek to recoup unpaid wages.

There is also confusion around the application of the 40 hour working limit to independent contractors, particularly those who work in transport services like taxi driving and gig-economy food delivery. For these workers, although they are only earning money while actually driving a passenger or delivering food, waiting time between jobs, is still counted as 'work'.²⁶ For food delivery riders, taking into account the time between jobs, the hourly rate of pay can be as low as \$6.67 an hour.²⁷

International students working outside of their visa restrictions are reluctant to report or seek to rectify underpayment, due to fear of alerting government authorities of their additional working hours.

The aim of the 40 hour work restriction is to ensure international students are genuinely studying while in Australia on a student visa. However, it is evident the intent of the restrictions is not achieving its goal. It is instead contributing to the exploitation and

underpayment of workers acting as a push factor towards the need for international students to work additional hours to afford to live in Australia.

The Federal Government should scrap the 40 hour limit on international students and focus on attendance and academic performance requirements of international students as a sufficient means of ensuring students are genuinely studying and complying with their visa requirements.

Working holiday visas

Recommendation 5

The 88-day regional work placement requirement for working holiday makers should be removed to reduce the exploitation of vulnerable workers.

The requirement for working holiday makers (WHM) to undertake 88 days of regional work to receive a second-year visa intensifies the vulnerability of temporary migrant workers. An additional visa condition that prevents WHMs from working for one employer for longer than six months, severely limits employment opportunities and creates another barrier for reporting exploitation.²⁸

The underpayment of WHM is a standard practice among many employers. The *National Temporary Migrant work survey* highlighted 32% of WHM were paid \$12 per hour or less²⁹ which is consistent with the findings of the Unions NSW audit.

The six month employment restriction placed on WHM, limits their employment opportunities³⁰ while employers are reluctant to invest time into training employees, restricting workers to casual or temporary employment opportunities. WHMs who have worked for an employer for more than six months are violating their visa requirements and face the prospect of visa cancellation. This is a similar scenario to international students working in excess of 40 hours per fortnight, creating an additional barrier to taking action against employers to recoup stolen wages.

The Unions NSW audit focused on the experience of temporary migrant workers in Sydney. However, an online search of backpacker forums reveals a large number of job advertisements for regional work placements with questionable working conditions (see figures 8-10).

In 2016, a FWO inquiry into the 417 Working Holiday Visa Program acknowledged the 88 day requirement had facilitated the extensive exploitation of workers.³⁴ In November 2018, another FWO inquiry confirmed there had been no improvement to the situation. It found the 88 day requirement facilitated WHMs working for less than the minimum wage.³⁵ Inquiries have also found it has led to increased exposure to unsafe situations,³⁶ longer working hours,³⁷ hazardous work environments, discrimination and sexual harassment.³⁸

Since December 2015, WHMs seeking a second-year visa must provide pay slips to DHA evidencing wages during their 88 days of regional

work are consistent with award minimums.³⁹ While the purpose of the new regulation was to reduce exploitation it has accentuated the dependence of WHMs on employers providing pay slips⁴⁰ in order to remain in the country and reducing the preparedness of workers to make formal complaints.

On 5 November 2018, the federal government announced proposed changes to the Working Holiday Visa Program.⁴¹ The changes included the introduction of a third-year visa option for WHMs who undertake six months of specified work in regional Australia. While the announcement lacked operational details it is clear

the focus of the changes will not disturb the priority to support agriculture businesses.⁴² No measures have been announced to combat wage theft or the exploitation of temporary migrant workers.

Despite the FWO's knowledge of the abuse and exploitation of working holiday makers, few proactive actions have been undertaken to effectively protect these workers or to reduce exploitation. Arguably, the government's proposed changes do nothing to protect workers while prioritising the labour needs of businesses.

The 88-day regional work placement requirement for working holiday makers

should be removed and the period a WHM can remain with the same employer should be extended from six to twelve months across all industries.

Enforcement and visa status

Recommendation 6

The Fair Work Commission (FWC) should be invested with the power to decide on wage underpayment disputes. This would provide a more simplified path and relieve temporary migrants of the onus to enforce their rights through the lengthy, expensive and complex court system.

Recommendation 7

Workers with outstanding claims for workplace entitlements including underpayments should have their visa extended to allow them to remain in the country with working rights until an underpayment claim has been settled and any unpaid entitlements recovered.

The process for recovering underpaid wages through the court system is overly complex, time consuming and expensive. It can take months for the court to provide a decision and this does not include the time required to have a court order enforced. For example, a former employee of Allans Billy Hyde received a favourable court decision, but months later, had not been paid.⁴³ In such cases, the onus falls on the

Figure eight³¹

A position advertised on Facebook offering work for accommodation.



Figure nine³² A position advertised on Facebook for a carpenter, paying \$20 an hour.



Mark Longpré

November 12 at 4:20 PM

carpenter/handy man required in country NSW. \$20 p/h accommodation provided, start ASAP. Counts for 2nd year.

Post on here or call me on 02 9552 2064 or 02 9552 1550

Cheers

Mark Longpré

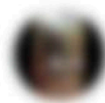


3

3 Comments 1 Share



Figure ten³³ A position advertised on Facebook for a farm worker.



ABC6544421 is in Coffs Harbour, New South Wales.

June 20

Coffs harbours 蓝莓农场开始了 🇦🇺 Australia

人数：20-40人

时薪：\$14-\$18

计件：桶-\$4.00-\$8.00 公斤-\$2-\$3.80

住宿：\$110-\$130

电话号码：02 9552 2064

微信号：ABC6544421

马上就可以开工了!!!

w3337k

Coff harbours blueberry farm

[See Translation](#)

worker to commence further proceedings to have the court order enforced.

A more simplified process is urgently needed. The Fair Work Commission (FWC) jurisdiction should be expanded and invested with the power to decide on disputes regarding wage underpayment. The FWC process is quicker, less reliant on technicalities and is more accessible for workers. This will provide a more user-friendly forum for temporary migrant workers to enforce their entitlements.

The recent Queensland Inquiry into Wage Theft highlighted the frustrations generated by long court proceedings. Submissions documented the many temporary migrant workers dissuaded from taking action due to the lengthy and costly litigation process.⁴⁴ LawRight, a pro bono organisation, described the case of 'Jun', a temporary migrant worker from China who was forced to leave Australia before recovering his stolen wages because of the long court proceedings.⁴⁵

Visa conditions prevent temporary workers from

accessing justice with many temporary workers waiting until the employment relationship has ended or their temporary visa is close to expiry before pursuing legal action to avoid the risk of dismissal or visa cancellation. This means exploited workers have significantly reduced time available to pursue underpayment through the legal system while providing an advantageous position to employers exploiting workers.

The case law identifies the deficiencies of the current visa regime. In 2017, a French citizen, Sebastien, made an unfair dismissal claim against the Italian restaurant, Baia the Italian Pty Ltd.⁴⁶ Sebastien had his visa sponsorship withdrawn by his former employer while lodging an underpayment claim of \$11,000. Although an expediated hearing before the Fair Work Commission was requested, the process was slowed down by the company's refusal to respond to the application or to identify the appropriate office bearer. The company had previously told Sebastien to 'go ahead' and contact the FWO as the company had never been prosecuted.

By the time the Fair Work Commission ruled in favour of Sebastien he had already returned to France, making enforcement of the finding against the company, who refused to participate in the hearing, near impossible.

Lengthy court processes and visa limitations, create a disincentive for migrant workers to enforce their rights. Workers who have had their wages stolen should not have their claims limited by their ability to remain in the country

Workers pursuing workplace entitlements should be granted a visa extension allowing them to remain and work in Australia until their claim has been settled. A similar safeguard already exists for witnesses or complainants in criminal law cases,⁴⁷ providing them with the right to temporarily remain in the country, for the period needed to assist with the case. No equivalent alternative is available for victims of wage theft or other workplace rights violations.

Conclusion

The Federal Government and the FWO have failed to take appropriate action to eradicate the exploitation and wage theft experienced by temporary migrant workers. Employers continue to flagrantly disregard minimum wages and unashamedly advertising rates as low \$10 an hour.

The FWO's lack of proactive investigation and refusal to use their enforcement powers has greatly contributed to the normalisation of worker underpayment, with employers willing to break the law, knowing there is a limited chance of being caught, let alone prosecuted.

The FWO's failure to protect temporary migrant workers contrasts with the demonstrated effectiveness of unions and peak industrial organisations to advocate

on behalf of workers and recover their unpaid wages. Based on compelling results by unions, the Federal government should redirect FWO funding to peak industrial organisations and unions to undertake proactive investigations and further advocate for worker underpayment claims.

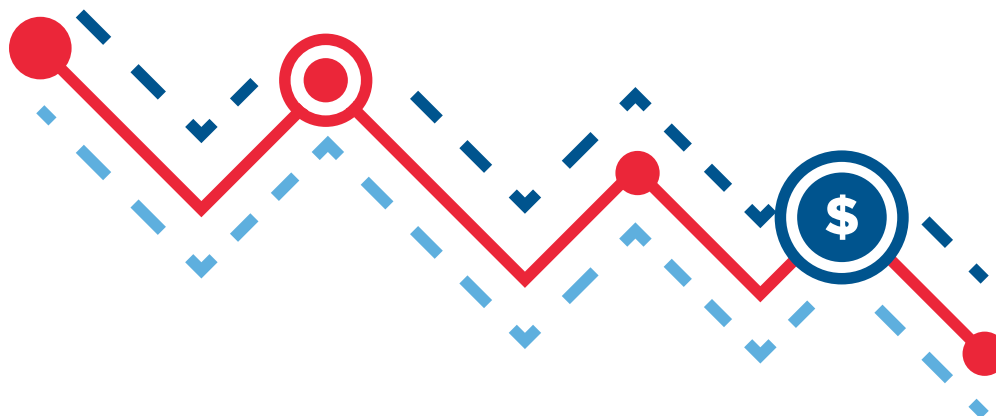
Right of entry provisions within the Fair Work Act should be amended to provide unions with access to workplaces suspected of systematically underpaying workers.

The current visa regime prevents access to justice and discourages workers from pursuing their underpayment claims. The Government must reform the Visa system, removing the most obvious opportunities for exploitation. This includes creating a

fire-wall between the FWO and DHA, removing the 40 hour work restriction on international students and scrapping the 88-day regional work requirement for WHMs.

Finally, the processes for recouping underpayments must be simplified and temporary migrant workers must be given the right to remain in the country to pursue unpaid workplace entitlements.

Wage theft of migrant workers is endemic and the Federal Government's failure to take proactive steps to address and stop the exploitation of migrant workers has made them complicit in this exploitation. ■



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