

IARC and Unions NSW Submission

Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]

28 January 2022



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Submission

1. Unions NSW is the peak body for trade unions and union members in New South Wales with 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW and its affiliated unions have a proud history of engaging in the parliamentary process to protect and represent the interests of union members. Unions NSW frequently makes submissions to inquiries involving industrial relations and other issues which may impact members. The plight of temporary migrant workers is one such issue, and one with which this organisation has a deep and ongoing engagement.
2. IARC is a not-for-profit community legal centre that provides free immigration advice to migrants experiencing vulnerability. IARC's practice focuses on providing immigration advice and assistance to people on visas experiencing family violence, people applying for family stream visas, people seeking asylum and people facing workplace exploitation.
3. Both IARC and Unions NSW have extensive experience in engaging with migrant communities and advocating for the rights of migrant workers, who constitute 11% of our workforce and represent the second largest migrant workforce in the world.¹
4. IARC in partnership with Unions NSW has developed a project called "Visa Assist", which is currently in its third year of operation. Visa Assist was created to address the growing need for immigration advice for migrant workers facing workplace exploitation. Unions NSW has observed a reluctance for migrant workers to enforce their workplace rights where they were on a visa as they were concerned about the implications for their visa. Visa Assist provides free, confidential legal advice and assistance to union members in relation to migration issues and promotes a fairer immigration system through community education, law reform and advocacy on behalf of temporary migrants.
5. Since its inception, Visa Assist has provided almost 1600 legal services to almost 700 union members. A large number of these services relate to unscrupulous employer behaviour and workplace exploitation towards migrant workers by using the threat, perceived or otherwise, of the loss of their visa and lawful status in Australia should they complain.
6. Both IARC and Unions NSW seek to rely on our previous submission made to the Department of Home Affairs (**the Department**) on the exposure draft of the *Migration*

¹ Organisation for Economic Cooperation and Development, *International Migration Outlook 2019* (online edition, 2019) Chapter 3.

Amendment (Protecting Migrant Workers) Bill 2021 (Bill). We understand that the Bill seeks to protect migrant workers from unscrupulous employers by enhancing the existing penalty, compliance, and enforcement framework within the *Migration Act 1958* (Cth) (**Act**). IARC and Unions NSW support changes that will protect migrant workers in Australia, including measures that seek to deter unscrupulous employers such as those set out in the Bill, but have a number of concerns and recommendations to ensure the efficacy of the Bill.

7. Disappointingly, the recommendations made in our previous submissions to the Department were not adopted in the review of the exposure draft, nor do they appear in the latest version of the Bill. IARC and Unions NSW are of the view that the exploitation of migrant workers is predominately caused by the enormous opportunity which exists for employers to take advantage of their workers in order to cut costs with very little chance of being caught.
8. The vulnerability to exploitation faced by migrant workers does not occur in a vacuum and is a direct result of the current visa system making them reliant on their employers due to the precarious nature of their visa status. In its current form, the Act, Regulations and general immigration system facilitates exploitation by creating an additional dependency by the employee on the employer, where the employee is practically reliant on their employer to maintain their lawful status in Australia. In our experience, employers frequently use the threat of reporting visa holders to the Department and consequential visa cancellation to ensure that their own unscrupulous treatment of the employee is not reported. Only an overhaul of this system in line with the recommendations set out in Annexure A would begin to adequately address the constructed detrimental dependency of migrant workers on employers.
9. It is only through the development of a regime that promotes compliance by enabling and empowering migrants to report exploitation by employers without consequences to their visa status will migrant workers be effectively protected from workplace exploitation.
10. Unions NSW and IARC hope this process and consideration of our submission by the Committee will allow for meaningful engagement with our recommendations to allow for meaningful reform that will truly protect and empower migrant workers to report exploitation by employers without consequences to their visa status.
11. Please note this submission is intended to compliment and not supersede any submission from an affiliate union of Unions NSW.
12. This submission is accompanied by the following previous submission and Unions NSW publications:

- Annexure A: “IARC and Unions NSW Submission: Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021, 20 August 2021)”
- Annexure B: “Lighting Up the Black Market: Enforcing Minimum Wages”;
- Annexure C: “Wage Thieves: Enforcing Minimum Wages”;
- Annexure D: “Wage Theft: The Shadow Market”;
- Annexure E: “Wage Theft: The Shadow Market, Part Two: The Horticultural Industry”;
and
- Annexure F: “Working for \$9 a day: Wage Theft and Human Rights Abuses on Australian Farms”.

ANNEXURE A

IARC and Unions NSW Submission

Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021

20 August 2021



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Introduction

1. Unions NSW is the peak body for trade unions and union members in New South Wales with 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW and its affiliated unions have a proud history of engaging in the parliamentary process to protect and represent the interests of union members. Unions NSW frequently makes submissions to inquiries involving industrial relations and other issues which may impact members. The plight of temporary migrant workers is one such issue, and one with which this organisation has a deep and ongoing engagement.
2. IARC is a not-for-profit community legal centre that provides free immigration advice to migrants experiencing vulnerability. IARC's practice focuses on providing immigration advice and assistance to people on visas experiencing family violence, people applying for family stream visas, people seeking asylum and people facing workplace exploitation.
3. Both IARC and Unions NSW welcome the opportunity to make submissions on the exposure draft of the *Migration Amendment (Protecting Migrant Workers) Bill 2021 (Bill)*. We understand that the Bill seeks to protect migrant workers from unscrupulous employers by enhancing the existing penalty, compliance, and enforcement framework within the *Migration Act 1958 (Cth) (Act)*. IARC and Unions NSW support changes that will protect migrant workers in Australia, including measures that seek to deter unscrupulous employers such as those set out in the Bill, but have a number of concerns and recommendations to ensure the efficacy of the Bill.
4. Both IARC and Unions NSW have extensive experience in engaging with migrant communities and advocating for the rights of migrant workers, who constitute 11% of our workforce and represent the second largest migrant workforce in the world.¹
5. IARC in partnership with Unions NSW has developed a project called "Visa Assist", which is currently in its third year of operation. Visa Assist was created to address the growing need for immigration advice for migrant workers facing workplace exploitation. Unions NSW has observed a reluctance for migrant workers to enforce their workplace rights where they were on a visa as they were concerned about the implications for their visa. Visa Assist provides free, confidential legal advice and assistance to union members in relation to

¹ Organisation for Economic Cooperation and Development, *International Migration Outlook 2019* (online edition, 2019) Chapter 3.

migration issues and promotes a fairer immigration system through community education, law reform and advocacy on behalf of temporary migrants.

6. Since its inception, Visa Assist has provided almost 1200 legal services to more than 550 union members. A large number of these services relate to unscrupulous employer behaviour and workplace exploitation towards migrant workers by using the threat, perceived or otherwise, of the loss of their visa and lawful status in Australia should they complain.
7. Please note this submission is intended to compliment and not supersede any submission from an affiliate union of Unions NSW.
8. This submission is accompanied by the following Unions NSW publications:
 - Annexure A: “Lighting Up the Black Market: Enforcing Minimum Wages”;
 - Annexure B: “Wage Thieves: Enforcing Minimum Wages”;
 - Annexure C: “Wage Theft: The Shadow Market”;
 - Annexure D: “Wage Theft: The Shadow Market, Part Two: The Horticultural Industry”;
 - and
 - Annexure E “Working for \$9 a day: Wage Theft and Human Rights Abuses on Australian Farms”.
9. This submission will explore the merits and flaws of the Bill while also suggesting further, and more effective avenues the Department of Home Affairs (**the Department**) and Federal Government can pursue to effectively combat the exploitation of migrant workers.

Recommendations

In respect of this submission, IARC and Unions NSW makes the following recommendations:

- (1) The Department to consider altering discretionary provisions to vest courts with powers to make additional enforcement orders including adverse publicity orders and banning orders prohibiting employers from employing migrant workers and people under the age of 25 for a fixed term following a finding of non-compliance.
- (2) Create a process to grant visa extensions to migrant workers who have proceedings on foot in relation to an employment matter. This will be on par with the current provisions for victims of crime to remain in Australia whilst their matter is heard.
- (3) Better Government regulation of migration agents and increased funding to community legal centres with the expertise and a history of successfully dealing with these issues, such as IARC.
- (4) Additional funding to expand the current union migration law program, Visa Assist run by Unions NSW and IARC. Currently, Visa Assist provides free immigration advice and legal services to any union member in NSW who requires it, but with an increase in funding the program could be expanded nationally.
- (5) Place requirements upon universities and colleges to provide international students with information about their workplace rights and encourage them to join their relevant union.
- (6) Remove the 40-hour fortnightly work limit on international students to empower workers to report more instances of exploitation.
- (7) Amend Schedule 8 to the *Migration Regulations 1994* (Cth) (**Regulations**) so visa holders will not have breached a work-related condition where there is a credible claim of workplace exploitation or unscrupulous conduct by their employer.
- (8) Update Departmental policy around cancellation of visas under s 116 of the Act, to ensure workplace exploitation and unscrupulous employer conduct is an express factor against visa cancellation.
- (9) Create a firewall between the Fair Work Ombudsman and the Department so vulnerable workers feel they can seek assistance and take action against those who

have exploited them, without the additional fear of visa cancellation or removal from Australia.

(10) Abrogate the 88 days' farm work required for Working Holiday visa (**WHV**) holders to secure their second-year visa.

(11) Abolish the visa condition preventing WHV holders from working for one employer for longer than six months.

(12) Amend Schedule 2 to the Regulations to allow certain skilled visas to still be granted in cases of workplace exploitation (where the applicant would otherwise be ineligible due to loss of employment). This could be drafted similarly to the Family violence provisions for Partner visas.

(13) The creation of a new substantive temporary visa subclass for people who have experienced workplace exploitation that has no visa application charge and can be applied for even if a visa has been refused or cancelled due to workplace exploitation.

(14) The creation of a permanent residency pathway whereby holders of Subclass 457 visas or Temporary Skill Shortage visa (subclass 482) working in their nominated occupation for a period of 3 years or more are automatically eligible to apply for a subclass 189 or 190 visa (without having to be invited to apply after lodging an expression of interest). This will negate the need for ongoing sponsorship by an employer.

New Employer Sanctions

10. IARC and Unions NSW note the Federal Government accepted Recommendation 7 of the Migrant Workers' Taskforce to give courts specific power to make additional enforcement orders, including adverse publicity orders and banning orders, against employers who underpay migrant workers, the main feature of migrant worker exploitation.²
11. While the proposed Bill introduces new criminal offences for coercion, it additionally merely empowers the Minister to use their discretion to make such banning orders, in the form of 'prohibitions'. Reliance on ministerial guidelines to provide a framework for the exercise of discretion overlooks the need for legislated clarity on measures to truly protect migrant workers from exploitation. Already workers and their unions have little faith in the ability of government to effectively police or prevent exploitation. Relying on ministerial guidelines will not be sufficient to alleviate these concerns and clear precise regulation/s should be included in the legislative framework.
12. New criminal offences introduced in ss 245AAA and 245AAB serve as a possible deterrence mechanism from employers hiring temporary migrants in what would be a breach of their visa conditions. However, ultimately, such penalties do nothing to prevent the exploitation of migrant workers if employers and labour hire companies are not being monitored and in the case of labour hire companies licenced.
13. There is evidence to suggest that, in the case where exploitation is mostly committed by corporations rather than individuals (who are more difficult to prosecute), increasing the severity of penalties are not effective deterrents. Orthodox deterrence theory suggests rational entities will weigh up the costs and gains of compliance when deciding whether to comply or make an active decision not to comply with relevant laws.³
14. As Purse and Dorian highlight, there is growing evidence "employers do not gauge general deterrence in accordance with cost-benefit calculus presumed by traditional deterrence theory".⁴ Hardy and Howe confirm, in their study of Australian hairdressing and restaurant sectors, there is no particular connection between increased risk perception and more compliance. That is, an increase in penalties, did not increase compliance. They instead

² Migrant Workers Taskforce, Commonwealth of Australia, Report of the Migrant Workers' Taskforce (2019) 9.

³ John Howe and Tess Hardy 'Creating Ripples, Making Waves: Assessing the General Deterrence Effects of Enforcement of the Fair Work Ombudsman' (2017) 39(4) Sydney Law Review 471, 474.

⁴ Keith Purse and Jillian Dorrian, 'Deterrence and Enforcement of Occupational Health and Safety Law' (2011) 27(1) International Journal of Comparative Labour Law and Industrial Relations 23, 99.

found the “perceived risk of detection, not the severity of the sanction” is more likely to increase compliance.⁵

15. As such, the Department must implement effective enforcement strategies to increase the risk of detection of breach of the new provisions and be consistent in its application of s.245AYA, that is, the declaration of “Prohibited Employers”.
16. **Recommendation:** The Department to consider altering discretionary provisions to vest courts with powers to make additional enforcement orders including adverse publicity orders and banning orders prohibiting employers from employing migrant workers and people under the age of 25 for a fixed term following a finding of non-compliance.

⁵ Howe and Hardy (n1).

Enforcement and Regulation of Employers

17. A further issue with the introduction of the proposed offences of coercion, as well as listing of “Prohibited Employers” is neither the Bill nor context paper make reference to, or propose effective enforcement strategies that take into account the unique plight of migrant workers. It is not evident how the Department will enforce such new criminal offences, whether there will be further resources allocated to assess compliance with the Bill and culturally competent staff to conduct investigations who will be able identify breaches in a range of contexts.
18. Page 2 of the explanation of the exposure draft correctly identified that as per the Migrant Workers’ Taskforce, many temporary migrant workers “have poor knowledge of their workplace rights, are young and inexperienced, may have low English language proficiency...” which makes them particularly vulnerable to exploitation. The new offences and related civil penalty provisions proposed do not serve to protect such migrants from exploitation by virtue of their passage through law, nor does it make provision to empower migrant workers to enforce their rights.
19. The National Temporary Migrant Work Survey showed 42% of participants would not try to recover wages from their employer because they “don’t know what to do”, whilst 16% responded “the forms are too complicated”, demonstrating this group had attempted to start the process but were deterred by the inherent difficulty posed by the accessibility of the current processes.
20. Lengthy court processes and visa limitations (see paragraph 35) create a disincentive for migrant workers to enforce their rights. Workers who have been exploited and had their wages stolen should not have their claims limited by their ability to remain in the country.
21. Visa holders pursuing workplace entitlements should be granted a temporary visa option allowing them to remain and work in Australia until their claim has been settled (see recommendations 2 and 9). A similar safeguard already exists for witnesses or complainants in criminal law cases⁶, 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 workplace exploitation.

⁶ Migration Act 1958 (Cth) ss155 –161.

22. Without the appropriate resources the Department will not only be unable to “inform potential migrant workers”⁷ about the risks of exploitation but will also be unable to effectively enforce and prosecute the proposed offences.
23. **Recommendation:** Create a process to grant visa extensions to migrant workers who have proceedings on foot in relation to an employment matter. This will be on par with the current provisions for victims of crime to remain in Australia whilst their matter is heard.
24. **Recommendation:** Better Government regulation of migration agents and increased funding to community legal centres operating in this space, such as IARC.
25. **Recommendation:** Additional funding to expand the current union migration law program, Visa Assist run by Unions NSW and IARC. Currently, Visa Assist provides free immigration advice and legal services to any union member in NSW who requires it, but with an increase in funding the program could be expanded nationally.

Compliance Notices and Enforceable Undertakings

26. In explaining the Bill’s introduction of enforceable undertakings and compliance notices, page 8 of the context paper cites the need to emulate responses taken by the Fair Work Ombudsman to “drive behavioural change without the need to prosecute all cases through the courts”. The Department assumes such measures effectively support “higher levels of voluntary compliance”. However, the proposed Bill fails to take into account the ineffectiveness of the Fair Work Ombudsman’s enforcement regime, in many cases by the Ombudsman’s own admission.
27. The exploitation of migrant workers is predominately caused by the enormous opportunity for employers to take advantage of workers in order to cut costs with very little chance of being caught. A disproportionate number of migrant workers are subjected to these systematic illegal practices.
28. We understand the Ombudsman has approximately 177 inspectors conducting workplace investigations under the current system of auditing.⁸ This equates to approximately one inspector for every 72,000 employed people in Australia and is obviously not enough to protect and enforce the rights of workers effectively.⁹ Presently, the chance of an employer

⁷ Page 4 context paper

⁸ David Marin-Guzman, ‘Employer groups should police underpayments: unions’, The Australian Financial Review (online), 5 March 2020 .

⁹ Australian Government, Industry Information (3 February 2020) Labour Market Information Portal .

getting caught for underpaying staff and other exploitative practices is attractively low for those seeking to exploit migrant workers.

29. The annexed Unions NSW reports include audits of job advertisements perpetuating Wage Theft and wider exploitation of temporary migrant workers. With three-quarters of the advertised jobs reviewed by Unions NSW offering rates of pay below the Award minimum, there is clearly a systematic practice of underpayment and exploitation within certain sectors of the economy.
30. To address this issue a culture of disincentivising exploitation with increased oversight by the Department should be introduced rather than persisting in emulating the failed sporadic investigative approach overseen by the Fair Work Ombudsman who seeks to take enforcement action in no more than 1 in 10 requests for assistance”.¹⁰ The Department cannot seek to emulate such a model and expect any increase in protections for migrant workers or any improvement in compliance.

¹⁰ Fair Work Ombudsman, Commonwealth of Australia, Annual Report 2018-19 (2019) 11.

Safeguards for migrant workers' visas

31. We believe migrant workers' visa status needs to be protected in order to ensure the efficacy of the Bill. By safeguarding a migrant worker's visa this will ensure they are secure in the knowledge if they report unscrupulous employers their visa will not be cancelled or refused. This, enables the Department to be more effective in taking enforcement action and penalties against employers engaging in illegal practices to deter such conduct as the Bill intends.
32. The Bill (and the Act) in its current form results in migrant workers risking their own lawful status in Australia by reporting workplace exploitation to the Department. This is due to the fact that the reporting of an unscrupulous employer by a visa holder may also alert the Department to:
 - a. a visa holder breaching a condition of their visa, which can lead to visa cancellation; and
 - b. a visa applicant being unable to meet the requirements of a subsequent visa leading to the refusal of their visa application.
33. If their visa is cancelled or refused it may also mean they are unable to lodge further substantive visa applications to remain in Australia.

Visa conditions

34. Most temporary visas are subject to certain conditions the visa holder must comply with during the term of their visa. If a visa holder does not comply with their visa conditions the visa holder is liable to have their visa cancelled under s 116 of the Act. It is a discretionary power where the Minister "may" cancel someone's visa. While Departmental policy provides guidance to decision makers regarding factors that may be considered when contemplating cancelling a person's visa, we note workplace exploitation and unscrupulous employers do not expressly form part of that same consideration.
35. In Unions NSW and IARC experience, in situations where a visa holder is being exploited in their workplace, it is likely the visa holder will also be breaching a condition of their visa. For example:
 - a. Condition 8105 – imposed primarily on Student visa subclass 500. This condition imposes a limitation of 40-hour work fortnights on students while their course is in

session. However, students often work in excess of the 40-hours imposed by this condition due to severe underpayments by employers. Employers then threaten to report students' non-compliance and possible visas cancellation if the student reports their experience of workplace exploitation (see below paragraphs 36 -44).

- b. Condition 8607(6) – imposed on Temporary Skill Shortage (**TSS**) visas subclass 482. This condition imposes a requirement for a visa holder to remain employed with their employer in their nominated occupation or to find a new sponsor within 60 days of losing their employment. TSS visa holders will often refrain from reporting unscrupulous employers for fear of losing their employment and ultimately their visa. TSS visa holders who lose their employment due to unscrupulous practices often find it difficult to find a new sponsor as a result of the tight 60-day requirement caused by their employer's behaviour.

Student visas

- 36. Current visa restrictions placed on international students compound experiences of exploitation and require reform. International students are restricted to working 40 hours per fortnight during their course and unlimited hours during course breaks. Research has shown large numbers of international students regularly work over these restrictions.¹¹ The low, often below Award rates of pay, mean many temporary migrant workers are forced to work additional hours in order to earn a living wage.
- 37. Although the Department has announced a temporary relaxation of working hours in a number of sectors, there is no indication that this “flexible approach” will continue following the COVID-19 pandemic, or beyond such a time as the Department sees fit.¹²
- 38. The 40-hour work restriction drives international students into the cash economy exposing them to further exploitation and this undermines the integrity of this visa subclass as a result.
- 39. Given the ‘off the books’ nature of these employment relationships, migrant and student workers rarely, if at all, receive payslips for their work which creates an evidentiary issue when workers seek to recoup unpaid wages.

¹¹ Laurie Berg and Bassina Farbenblum, ‘Wage theft in Australia: Findings of the National Temporary Migrant Work Survey’ (20 November 2017) 17.

¹² <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500/temporary-relaxation-of-working-hours-for-student-visa-holders>

40. 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 driving a passenger or delivering food, waiting time between jobs is still counted as 'work'.¹³ For food delivery riders, considering the time between jobs, the hourly rate of pay can be as low as \$6.67 per hour.¹⁴
41. The aim of the 40-hour work restriction is to ensure international students are genuinely studying while in Australia on a student visa. However, Unions NSW and IARC believes the intent of the restrictions is not achieving the intended goal. Instead the restriction is contributing to the exploitation and underpayment of workers acting as a powerful push factor towards the need for international students to work additional hours to simply afford to live in Australia.
42. Unions NSW and IARC believe the Federal Government should remove the 40-hour limit on international students and instead rely on visa condition 8202 (Meet course requirements)¹⁵ which already places obligations on international students in respect of attendance and academic performance requirements. This provides sufficient means to ensure students are genuinely studying and complying with their visa requirements.
43. Removing the 40-hour fortnightly work limit on international students will enable these workers to seek jobs which are compliant with legal requirements from employers paying the appropriate legal entitlements, rather than pursuing exploitative environments by necessity. It will also ensure those students who work in various sectors of the gig economy will not risk being penalised for breaching their visa conditions when their non-active waiting time is counted as "work".

Case Study 1

Julie arrived in Australia on a Student visa subclass 500 to study a Bachelor of Psychology. She thought she had saved enough money to stay in Australia without having to work much. However, after a few months she discovered that Sydney was much more expensive than her

¹³ *Verma v Minister for Immigration & Anor* [2017] FCCA 69 at 15.

¹⁴ Transport Workers Union, *Snapshot: on demand food delivery riders* (2018).

¹⁵ Department of Home Affairs, *Check visa details and conditions* (13 December 2019) Immigration and citizenship <<https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/seeyour-visa-conditions#>>>.

home country. She applied for many jobs but no one wanted to hire someone on a Student visa due to the 40-hour fortnight work condition on her visa.

Eventually she found a job at a local café that didn't seem to care that she was on a Student visa. They originally offered her \$12.06 an hour, which she accepted having already struggled to find a job. This soon dropped to \$8.06 per hour as the owner said they were struggling (although they seemed quite busy to her) and that he would "make it up to her". She also had to start working additional shifts to make up for the lost money to make ends meet.

After a few months, she had become tired of the exploitative situation and her studies were starting to be affected by the extra work. She approached her union and received advice that she was being significantly underpaid and that this was illegal in Australia. Her union was happy to help her approach her employer and request that she be paid appropriately and receive backpay but she was nervous about her visa.

She eventually decided to approach her employer, thinking that it may cause less issues for her if she had an informal chat with him. When she tried to raise the underpayments with her employer, he told her if she tried to report him, he would report her for breaching her Student visa conditions and he had other employees sent home before for similar reasons but he's still here. She stayed in the job another 8 months due to the fear of being reported to the Department and losing her visa.

Case study 2

Cindy arrived in Australia with her husband and two young children on a TSS visa to work as a registered nurse in a local medical practice. For the first few months she seemed to get on with her employer and things were going well. However, soon after this, her employer started acting differently towards her. He would get angry at her for no reason and was constantly late paying her. He would also threaten her physically at work.

Things started escalating when she started receiving death threats to her home and one time discovered her tyre had been punctured with a knife. She called the police but that didn't seem to go anywhere. She didn't feel safe at home and at work.

She approached HR at the medical practice and was told they would investigate – but nothing happened. Eventually, she left her employer as she couldn't take it anymore. She tried to find another employer but could barely leave her home due to the past trauma.

She received a notice of intention to cancel her visa from the Department of Home Affairs as she was no longer with her sponsor and had not found another sponsor in time. She wrote to them telling them about what had happened to her. The Department proceeded to cancel her visa as she could not provide “sufficient evidence” to support her claim and her employer “denied all allegations”.

Unions NSW and IARC recommend additional changes be made to ensure visa holders are able to report unscrupulous employers without putting their visa at risk of cancellation. This will ensure the Bill is able to achieve its aim to deter exploitative practices by employers and protect migrant workers.

44. **Recommendation:** Place requirements upon universities and colleges to provide international students with information about their workplace rights and encourage them to join their relevant union.
45. **Recommendation:** Remove the 40-hour fortnightly work limit on international students to empower workers to report more instances of exploitation.
46. **Recommendation:** Amend Schedule 8 to the Regulations so that visa holders will not have breached a work-related condition where there is a credible claim of workplace exploitation or unscrupulous conduct by their employer.
47. **Recommendation:** Update Departmental policy around cancellation of visas under s 116 of the Act, to ensure that workplace exploitation and unscrupulous employer conduct is an express factor against visa cancellation.
48. **Recommendation:** Create a firewall between the Fair Work Ombudsman and the Department so vulnerable workers feel they can seek assistance and take action against those who have exploited them, without the additional fear of visa cancellation or deportation.

Ineligibility for further visas

49. If a migrant worker on a temporary visa reports their employer for unscrupulous conduct, they may also limit their options for future visa opportunities and even permanent residency. For example:
- a. holders of TSS visas may need their current employer to sponsor them for permanent residency (e.g. under the Temporary Residence Transition stream for the subclass 186 Employer Nomination Scheme visa);
 - b. in order for Working Holiday visa (WHV) holders to obtain subsequent WHVs they need to have completed a certain amount of regional work which is suitably evidenced (see below paragraphs 51 – 57);
 - c. if a visa is refused, people may not be able to apply for further visas while they remain in Australia (i.e. due to the operation of s 48 of the Act).
50. In the experience of Unions NSW and IARC, TSS visa holders endure severe workplace exploitation due to the prospect of the employer sponsoring them for permanent residency (which often doesn't come into fruition). We have experienced employers withholding documents required to complete subsequent visa applications (i.e. payslips for subsequent WHV applications) for no valid/lawful reason.

Case Study 3

In 2014, 7 women were sponsored on subclass 457 visas from Thailand as massage therapists. When they arrived in Australia, they were subject to severe exploitation by their employer including:

- being forced to sleep on the floor in the sponsor's accommodation (all in the same room);
 - working 6 days a week for over 12 hours each day;
 - restricted in leaving the home, what they could eat and drink and forming any relationships; and
 - being significantly underpaid and being forced to pay back certain "costs" to their employer from their already low wage.

If they breached any rules set by their sponsor, they were threatened with their visas being cancelled and they would be removed from Australia and their families killed.

They were eventually sponsored for permanent residency by their employer. After which, they managed to escape and seek help from the Salvation Army and eventually a union. The employer

then had its nomination of the women refused by the Department (in part due to the treatment of the women). This in turn meant that the women's permanent residency applications were also refused at the Department stage and on appeal at the Administrative Appeals Tribunal. This refusal meant that the 7 women were unable to apply for almost all other visas while in Australia.

Case study 4

Sunil arrived in Australia on a Training visa. He came to Australia to follow his lifelong passion to be a chef and to learn about the culinary diversity of Australia. He started working at a hotel as part of his training and felt welcomed by his colleagues. However, when he received his first pay he realised substantial deductions were being taken from his pay which he never agreed to. The deductions were for:

- accommodation, which was a tiny room in the Hotel with a shared bathroom; and
- meals, which included leftovers from the hotel's breakfast buffet (if there were any) and a lunch and dinner he or his colleagues would make themselves.

After lodging a complaint about his treatment, he was terminated from his traineeship, evicted from his accommodation, and forced to live in a hostel. His employer also reported him to the Department who wrote to him about cancelling his Training visa.

Sunil then applied for a Student visa in an attempt to continue his culinary training in Australia. That Student Visa was refused by the Department as they did not believe he was a "genuine student" given the pending cancellation of his Training visa (which they later decided not to cancel) and the inference "if he was serious about becoming a chef, he would have stayed with his employer on his Training visa". The Department also called all of his allegations regarding his former employer "hearsay" and refused to give any weight to them.

Case study 5

Li arrived in Sydney, Australia on a Working Holiday visa. He wanted to extend his stay and to do so he would need to work regionally for 88 days. He arranged his farm work through a phone number he got on a Working Holiday visa group on Facebook. He was told the employer could

arrange accommodation, food and equipment and pay him a fair wage. The employer told him he had many Working Holiday visa holders before.

Unfortunately, when he arrived at the farm his experience was very different. He was told he would be paid based on the amount of fruit he picked, piece rates. He would also have to pay for his own bucket to put the fruit in and his accommodation and food would come out of his pay.

By the end of the 88 days the farmer told Li he owed him money and he would not sign anything or give him any payslips until he paid him back. Li was concerned he would have to go through this all again so he paid the employer the money. He is still waiting on the payslips he was promised and is unable to apply for another Working Holiday visa.

Working Holiday Visa Holders

51. The requirement for Working Holiday visa holders to undertake 88 days of regional work to receive a second-year visa creates an exploitative vulnerability for temporary migrant workers. An additional visa condition preventing WHV holders from working for one employer for longer than six months severely limits employment opportunities creating another barrier for reporting exploitation.¹⁶
52. The underpayment of WHV holders is a standard practice among many employers. The *National Temporary Migrant Work Survey* highlighted 32% of WHV holders were paid \$12 per hour or less¹⁷ which is consistent with the findings of the Unions NSW report which is **Annexure B: Wage Thieves: Enforcing Minimum Wages**, to this submission.
53. The six-month employment restriction on WHV holders limits their employment opportunities¹⁸ as employers are reluctant to invest time in training employees which in turn restricts workers to casual or temporary employment. WHV holders 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

¹⁶ Visa subclasses 417 and 462.

¹⁷ Laurie Berg and Bassina Farbenblum, 'Wage theft in Australia: Findings of the National Temporary Migrant Work Survey' (20 November 2017) 26.

¹⁸ United WHY, *Vulnerabilities of Working Holiday Makers and Policy Recommendations* (2016) 9.

students working in excess of 40 hours per fortnight; for both, an additional barrier is created to taking action against recalcitrant employers to recoup stolen wages.

54. As discussed previously, the Ombudsman – in conducting inquiries – has found a continued level of exploitation of WHV holders associated with the requirement for them to perform 88 days of regional work. Various inquiries have also found the 88 days of regional work has led to increased exposure of visa workers to:

- unsafe situations¹⁹;
- longer working hours²⁰;
- hazardous work environments, discrimination; and
- sexual harassment.²¹

55. Since December 2015, WHV holders seeking a second-year visa have had to provide pay slips to the Department evidencing wages earned during their 88 days of regional work are consistent with Award minimums.²² While the purpose of this regulation was to reduce exploitation, in practice it has accentuated the dependence of WHV holders on employers providing pay slips²³ in order to remain in the country and reducing the preparedness of workers to make formal complaints.

¹⁹ Fair Work Ombudsman, Commonwealth of Australia, *Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program* (2016) 6.

²⁰ Ibid.

²¹ Senate Education and Employment References Committee, Commonwealth of Australia, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016) 167.

²² Department of Home Affairs, *Specified subclass 462 work* (17 January 2020) Working Holiday Maker (WHM) program < <https://immi.homeaffairs.gov.au/what-we-do/whm-program/specified-work-conditions/specifiedwork-462>>.

²³ Fair Work Ombudsman, Commonwealth of Australia, *Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program* (2016) 43.

56. Below are several examples of social media advertisements which demonstrate common Wage Theft conditions experienced by WHV holders seeking to satisfy their visa requirements:

Vietnamese job ad for a nail technician offering \$10 an hour.¹³

Tìm nữ phụ dọn dẹp trong shop và làm việc linh tinh trong shop Nails

Ngày đăng: Thứ bảy, ngày 29/02/2020 **Lương: 10\$/Hour**
Khu vực: Haymarket, NSW (Inner Sydney)

Tìm nữ phụ dọn dẹp trong shop và làm việc linh tinh trong shop Nails

Cần tìm 1 bạn nữ 18 tuổi-25 tuổi

Không cần kinh nghiệm sẽ được training

Lương : thỏa thuận

Vui lòng liên hệ qua số điện thoại để biết thêm thông tin chi tiết

Thông tin liên hệ

Liên hệ: [redacted]
Mobile: [redacted]
Email: [redacted]
Địa chỉ: Haymarket
Lưu ý: Khi bạn gọi điện liên hệ với người đăng tin này, xin vui lòng nói cho họ biết bạn biết được thông tin này trên website
"http://nguoiviettauc.com" (Người Việt Tại Úc.COM). Xin chân thành cảm ơn!

Thông tin bài đăng

Khu vực: Haymarket, NSW (Inner Sydney)
Lĩnh vực: Cleaner & Housekeeper
Mã tin: [redacted]
Ngày cập nhật: 29/02/2020
Ngày kết thúc: 29/03/2020
Loại tin: Tin thường

Korean ad advertising jobs in hospitality, with an hourly rate of \$11.¹¹

시티 원야드 스시혼 이자카야에서 홀스텟,롤메이커,키친핸드 구합니다

\$1-11 / 시급

No Company Logo HOJUNARA
info@hojunara.com

바랑가루 스시혼 자세히

대표자: 스시혼

사업내용: 음식점/주점>기타음식점

채용담당자: 바랑가루

담당부서: -----

연락처: 0430 202 ***[번호 필치기]

e-메일: [redacted]

- 등록직종 음식/식품/제과.제빵 > 요리,조리사.주방장
- 근무지역 NSW > Sydney
- 모집부문 홀스텟,롤메이커,키친핸드
- 담당업무 홀스텟,롤메이커,키친핸드
- 근무형태 파트타임
- 경력구분 무관
- 모집인원 1
- 연령제한 20-0
- 학력구분 무관
- 성별구분 무관
- 비자조건 기타

57. Despite the Department and Fair Work Ombudsman's knowledge of the abuse and exploitation of WHV holders and temporary migrants few proactive actions have been implemented to effectively protect these workers or to reduce exploitation. Arguably, the proposed Bill does nothing to practically protect vulnerable workers or to significantly penalise those engaged in systematic exploitation.

58. Unions NSW and IARC recommend further changes be made to ensure visa holders are eligible for current and future visa options where there has been workplace exploitation. This enables the Bill to be effective in deterring exploitative practices by employers while allowing employees to report practices without fear of losing future visa opportunities.
59. **Recommendation:** Abrogate the 88 days' farm work required for WHV holders to secure their second-year visa. By the Ombudsman's own admission, this requirement facilitates backpackers working for less than minimum wage.²⁴
60. **Recommendation:** Abolish the visa condition preventing WHV holders from working for one employer for longer than six months.
61. **Recommendation:** Amend Schedule 2 to the Regulations to allow certain skilled visas to still be granted in cases of workplace exploitation (where the applicant would otherwise be ineligible due to loss of employment). This could be drafted similarly to the Family violence provisions for Partner visas.
62. **Recommendation:** The creation of a new substantive temporary visa subclass for people who have experienced workplace exploitation that has no visa application charge and can be applied for even if a visa has been refused or cancelled.
63. **Recommendation:** The creation of a PR pathway created whereby holders of Subclass 457 visas or TSS visas working in their nominated occupation for a period of 3 years or more are automatically eligible to apply for a subclass 189 or 190 visa (without having to be invited to apply after lodging an expression of interest). This will negate the need for ongoing sponsorship by an employer.

²⁴ Fair Work Ombudsman, Commonwealth of Australia, Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program(2016) 30.

Conclusion

64. IARC and Unions NSW believe the exploitation of migrant workers is predominately caused by the enormous opportunity which exists for employers to take advantage of their workers in order to cut costs with very little chance of being caught. The vulnerability to exploitation faced by migrant workers does not occur in a vacuum and is a direct result of the current visa system making them reliant on their employers.
65. In its current form, the Act and general immigration system facilitates exploitation by creating an additional dependency by the employee on the employer, where the employee is completely reliant on their employer. Only an overhaul of this system in line with the above recommendations would begin to adequately address the constructed detrimental dependency of migrant workers on employers.
66. It is only through the development of a regime that promotes compliance by enabling and empowering migrants to report exploitation by employers without consequences to their visa status will migrant workers be effectively protected from workplace exploitation.

ANNEXURE B



\$ \$ \$
\$ \$ \$



LIGHTING UP THE **BLACK MARKET**

enforcing minimum wages



Contents:

- | | |
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| 2. Introduction | 12. Enforcing minimum wages |
| 3. Audit of job advertisements | 13. Conclusion |
| 4. Results | 15. Endnotes |
| 8. Who's getting underpaid and why? | |
| 10. Structural issues feeding underpayment | |

Introduction

In some sections of the workforce underpayment of wages has become routine. Employers are unashamedly advertising below Award rates for vacant positions.

This seedy underbelly of exploitation and wage theft has been exposed through high profile examples of migrant worker exploitation. Workers have been threatened against making complaints, with employers taking advantage of workers who have poor English, are on temporary work visas and are young.

A Unions NSW audit of job advertisements on Chinese, Korean and Spanish language websites, found 78% of businesses advertised rates of pay below the minimum Award wage.

The current approach to redressing migrant worker underpayment and *Fair Work Act* protections are not working. The system relies heavily on individuals reporting underpayments to unions or the Fair Work Ombudsman. There is no recognition of how difficult and dangerous it is to take this first step.

When considering making a complaint, workers from culturally and linguistically diverse backgrounds face the dual barriers of language and awareness of their workplace rights. They must also consider how a complaint could threaten their visa or residency status.

These barriers are compounded by industry and legal structures which normalise and perpetuate underpayment. There is a flourishing culture of underpayments in some sections of the workforce where businesses ignore Awards and instead defer to unregulated 'local wage markets' to determine the rates of pay for their staff. Unions have been restricted from accessing these workplaces to investigate and rectify underpayments.

A new approach to uncovering and investigating underpayment is required. Unions need access to workplaces suspected of underpayments in order to investigate contraventions and represent and organise workers to collectively enforce their rights. Penalties for

employers found to have knowingly or intentionally underpaid their staff should be significantly increased, including the introduction of criminal penalties and restrictions on individual offenders from managing a corporation. Further, companies found to have underpaid workers should be named and shamed on a national public register of employers.

As a result of this report, Unions NSW will actively audit job advertisements and identify businesses who advertise rates of pay below Award minimums. We will initially seek to engage with these workplaces to ensure they are aware of their workplace obligations. Businesses who are aware of their employment obligations and continue to systematically underpay workers will be pursued by Unions NSW under the Fair Work Act and named and shamed on the Unions NSW webpage

www.wagethieves.com.au

Audit of job advertisements

Online there is an extensive network of websites and social media pages directed at people from specific nationalities and language groups who are new to a particular city or town. The pages provide information and advertisements on social events, rental accommodation and travel advice in specific cities. The pages are generally written in the language of the target community and skew towards young people, particularly those who may be temporarily living in a new city or country. Pages are also a popular place for job advertisements for young people from culturally and linguistically diverse backgrounds.

In March 2016 and April 2017 Unions NSW conducted two audits of online job advertisements written in Chinese, Korean and Spanish. Advertisements were randomly selected from webpages *Hojunara*¹ (Korean), *Sydney Today*² (Chinese) and a number of Facebook groups targeted at Spanish speakers from Latin America³. They were translated with information recorded on the industry, job, rate of pay and additional information. Some follow up phone calls were made to businesses to collect information on rates of pay if this information was not included in the original advertisement. See *figures one, two and three* for examples of job advertisements.

Figure one

A position advertised in Korean for a serving and kitchen aid in a restaurant in Strathfield, paying \$13 an hour.

스트라필드집 오후타임 \$13-0 / 시간

Hand made noodle [지배사]

대표자: A.A.A.

주소: Strathfield NSW 2135

사업내용: 기타> 기타

제용금액: A.A.A.

담당자: ...

연락처: 02-9827 4447 (한국어, 영어)

c 메일: strathfield@home.com

모집요강

스트라필드 집 옆에 위치한 순화국수집입니다.

월~토 02:10~17:00
주일은 쉽니다

1. 보통 4시간씩 일시합니다.

주방보조, 요리보조 및 기타업무입니다.
최소한 1년 이상 근무해야 합니다.
실용어가 가능하면 좋습니다.
비행기 등도 마다않고 해주시는 분들 환영합니다.

문의: 02-9827 4447

Figure three

A position advertised in Chinese for work in a warehouse, paying \$600 a week for 7.5 hours of work a day, equating to an hourly rate of \$16.

Smithfield 纪念品仓库招工8090后欢迎试工FULL TIME

发布时间: 2017-05-02 | 浏览量: 2462次 | 回复此信息 | 我要应聘

公司名称: Smithfield 纪念品仓库 | 联系人: Terry

工作性质: 全职

经验要求: 需要

学历要求: 不限

性别要求: 男

工资水平: 试工\$100一天, 以\$600一周

公司简介

Smithfield 纪念品仓库

工作介绍

Smithfield 纪念品仓库招工 (80,90后), 欢迎试工! | FULL TIME

工作时间: 早8:30到下午16:30, 中午半小时吃饭时间! 周一到周五! 轻松, 不累!

马上联系我, 马上安排试工, 急招!!! 请大家踊跃!!!

仓库都是年轻人, 希望(80,90后)赶快约重彩们踊跃报名!!! 只招一名男生, 经验, 英文不限!!! (需要长期稳定的)。

Figure two

A position advertised on Facebook in Spanish for a cleaner, paying between \$15 and \$20 an hour.

Jhon Alexander Gonzalez Sanchez

9 March 2016 · Belmore South, NSW

Buenas tardes,

Se necesita **mujer responsable** y con experiencia para **trabajar** mañana **jueves** en **limpieza** todo el día.

Preferiblemente que viva cerca a Maroubra o Coggie, el pago está entre 15 y 20 dólares la hora dependiendo la experiencia.

Se empieza a trabajar a las 7:00 Am y se termina a las 2 o 3 Pm.

Porfavor enviar mensaje al 02-9827 4447, no dejar mensaje en inbox ya que no se van a leer.

See Translation

Results

A total of 200 job ads were analysed in two separate audits in March 2016 and April 2017. Over the two audits, 87 advertisements were in Chinese, 72 in Korean and 41 in Spanish. The main industries were hospitality (86), cleaning (37), transport (16), construction (13) and retail (13) (see *figure four* for a breakdown by industry).

This is a relatively small sample size; however the results showed overwhelming rates of underpayment. The results are a snapshot in time of underpayments and provide strong evidence of endemic underpayments of workers from culturally and linguistically diverse backgrounds.

Overall, 78% of the businesses we looked at, advertised rates of pay below the relevant minimum award rate. On average, underpaid jobs were advertised at \$14.03 an hour, representing an average

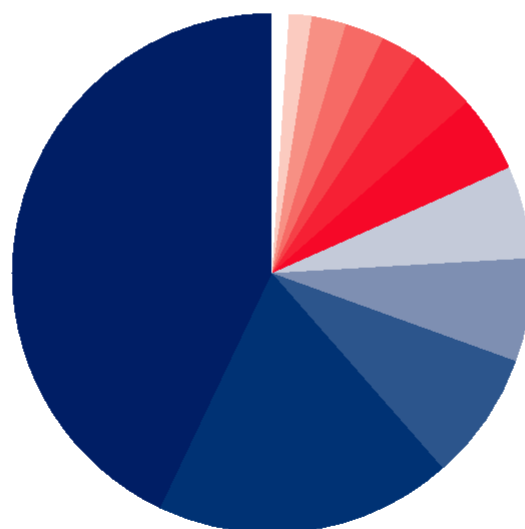
underpayment of \$5.28 an hour when compared to the relevant minimum awards*. The lowest rates of pay were \$4.20 an hour for a nanny (Minimum award \$18.91 in 2015-16) and \$9 an hour for an office clerk (Minimum award \$18.38 in 2015-16) (both advertised in Chinese in March 2016).

The underpayment of workers has worsened over the year of the project. In 2016, 74% of jobs were advertised below the relevant Award rate, this increased to 83% in 2017. The size of the underpayments remained relatively stable over the two years, on average underpaid jobs represented a wage discount of 27% for both years (\$5.20 an hour below the award in 2016 and \$5.35 an hour below the award in 2017).

Underpayment of temporary migrant workers tends to coincide with the undermining

of other labour standards and workplace conditions. A Fair Work Ombudsman inquiry into 417 visas in 2015 found evidence that the underpayment or non-payment of wages was often accompanied by other violations of workplace rights, including working for free in exchange for accommodation, sexual harassment and employer disregard for workplace health and safety obligations⁴. The Unions NSW audit did not collect information on the payment of penalty rates, casual loadings, leave or superannuation. Companies who advertise below Award rates are unlikely to be making additional award payments. As such, it is expected the quantum of the underpayment identified in the audit is probably significantly higher than reported.

Figure four



* All minimum Award rates refer to the relevant awards for the industry/occupation of each advertisement and correspond with the year the position was advertised.

Underpayments by industry

Some industries are worse than others (see *figure five*).

Of the job advertisements audited, 97% in the hospitality industry were below Award minimums. The lowest rate of pay was \$10 an hour. In 2016 three companies advertised jobs at this rate, in 2017 this increased to seven companies.

Over the two audits, the average advertised rate in hospitality was \$13.60 an hour, \$5.79 an hour below the average Award minimums. See *figure six* for a breakdown of hourly rates of pay. Hospitality jobs were common on Chinese and Korean language websites, with both making up about 50% of advertisements, only 22% of Spanish advertisements were in the hospitality industry.

Over 60 per cent of the audited cleaning jobs advertised a rate of pay below the average minimum Award

rate of \$18.66 an hour. The lowest rate of pay advertised was \$10 an hour.

Retail jobs had a high proportion of below Award rates of pay (85%). Of the underpaying jobs, the average rate was \$12.09 an hour, representing an average underpayment of \$7.36 an hour.

Figure five

Industry	Number of advertisements	Average advertised hourly rate	Average Award minimum hourly rate	Proportion of advertisements with below Award rates of pay
Hospitality	10	\$13.60	\$19.39	97%
Cleaning	37	\$17.26	\$18.66	65%
Transport	16	\$17.72	\$18.98	56%
Retail	13	\$14.08	\$19.38	85%
Construction	13	\$20.54	\$21.90	62%

Figure six Hospitality rates of pay

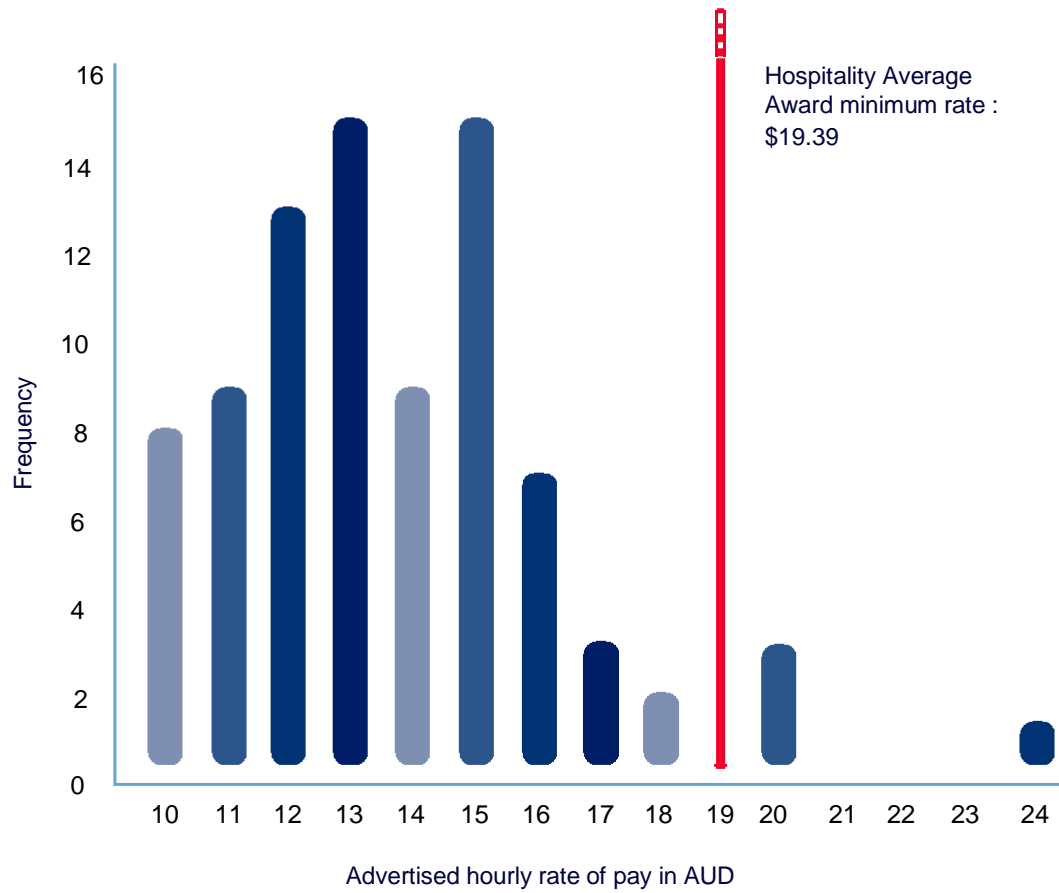
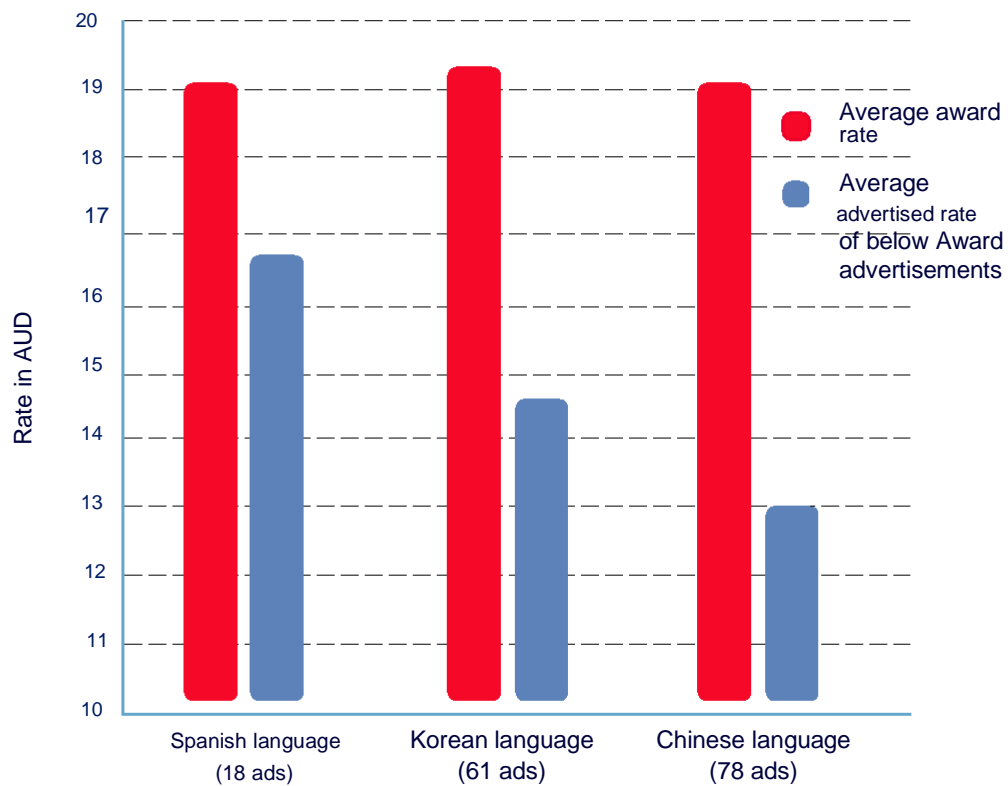


Figure seven Underpayments by language group



results continued

Underpayments by language group

Job advertisements in Chinese

There were 87 Chinese language advertisements translated from *Sydney Today* (46 in 2016 and 41 in 2017). Over the two years 89% of advertisements offered rates of pay below the minimum Award rate. In 2017, 100% of jobs advertised rates of pay below the minimum wage. The most common industries were hospitality (43), retail (9), transport (8) and administration (7). The average advertised payment was \$14.10 an hour. Of the jobs advertising below the Award rate, the average rate was \$12.99 an hour, an average underpayment of \$6.25 an hour.

Job advertisements in Korean

There were 72 Korean language advertisements translated from *Hojunara* (38 in 2016 and 34 in 2017) with 84% offering rates of pay below the minimum Award rate. The most common industries were hospitality (35), cleaning (13) and hair and beauty (6). The average advertised payment was \$15.75 an hour. Of the jobs advertising below the Award rate, the average rate was \$14.61 an hour, an average underpayment of \$4.81 an hour.

Job advertisements in Spanish

There were 41 Spanish language advertisements translated from Latin American Facebook pages (21 in 2016 and 20 in 2017) with 44% paying below the minimum wage. Job ads were targeted towards Latin Americans. The most common were cleaning (18), hospitality (9), construction (5) and transport (5). Of the jobs advertising below the Award rate, the average rate was \$16.56 an hour, an average underpayment of \$2.70 an hour.

The audit of job advertisements identified an endemic underpayment of workers, particularly in cleaning, hospitality and retail industries. Job advertisements provide a clear indication of intent to pay below the minimum wage and imply other workers in these businesses are also underpaid.

Who's getting underpaid & why?

Based on the websites/pages used to advertise jobs, workers employed in these positions are likely young and from a culturally and linguistically diverse background. Workers applying for these positions may also be working on a temporary work visa with a number of advertisements making specific reference to visa requirements. Research

indicates these three

characteristics are strongly correlated with underpayment and exploitation in the workplaces.

A 2016 survey of 1433 international students and 959 local students from Sydney, found 87% of international students and 43% of local students who worked in hospitality were underpaid for weekday work⁶.

A recent Fairfax investigation

in Wollongong put a human face to underpayments with 67 young people coming forward to tell their story. These workers were offered rates of pay as low as \$10 an hour⁷. In 2015/16 the Fair Work Ombudsman received 1,820 requests for assistance from visa holders with only 38 civil penalty litigations undertaken involving a visa holder⁸.

A mix of individual and demographic characteristics as well as legislative gaps feed into exploitation and prevent underpayments from being reported. specifically:

Undocumented work

Working outside of visa restrictions has been used to prevent workers from making complaints, fearing it will affect their ability to remain in Australia⁹. There are a number of ways workers on temporary visas can be considered to be working illegally. Working holidaymakers are working illegally if they are employed by the same employer for more than six months. International students are restricted from working over 20 hours a week and 457 visa workers are restricted

from working in any job/industry not included in their visa. Additionally, temporary visitors may be working without a visa that allows work rights or may have overstayed their original visa. There are serious penalties for visitors and migrants who contravene their visa requirements including deportation.

Second year visa

Working holidaymakers (417 visa) can apply for a second year visa by performing 88 days work in a regional area. An investigation by the Fair Work Ombudsman found the desire for a second year visa has led to workers agreeing to work below minimum standards and at times for

free¹⁰. In some cases migrant and visitor exploitation goes beyond just the workplace with reports of sexual harassment, bullying and assault on their prope

Youth unemployment

Across Australia youth unemployment is sitting at 13.3%, significantly higher than the overall unemployment rate of 5.9%¹¹. Youth unemployment is higher in regional areas such as 15.6% on the Central Coast and 20.1% on the Mid-North Coast¹². High rates of youth unemployment and fears of being 'blacklisted' for complaining can lock young people into jobs, even if they are underpaid.





Awareness of rights

For young people who haven't worked for long, or international guests who are working in Australia for the first time, it's hard to know exactly what the minimum rate of pay is, what your rights at work are or who to ask for help. It's impossible for workers to make a complaint about the violation of a workplace right or of an [unfair dismissal claim](#) if they don't know it exists.

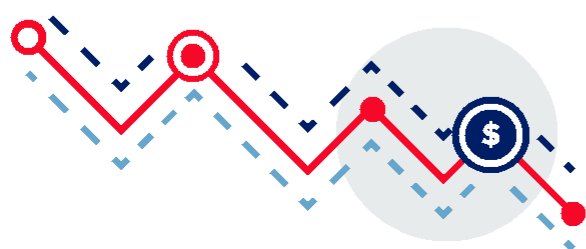
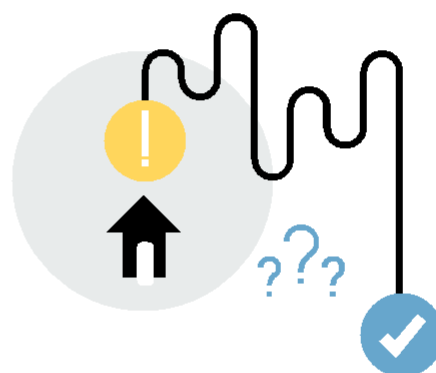
Language barriers

The majority of information on workplace rights and the process for making a complaint are in English. For workers from culturally and linguistically diverse backgrounds this may act as a barrier to seeking further information or assistance. Migrants and visitors who do not speak English often rely on other members of their community for information. This relationship of inter-community dependence allows nefarious employers to take advantage of recent migrants and workers from culturally and linguistically diverse backgrounds.



Structural issues feeding underpayment

There are broader structural issues at play which allow businesses to routinely underpay workers without fear of consequence. A culture of local wage markets, restricted access for unions to audit underpayments and limited human resource capacity within small businesses has seen a flourishing of underpayments. Unfortunately, there is also a dark underbelly of businesses who go unchecked and prey on vulnerable workers, purposefully threatening and underpaying workers for personal business gain.



Artificial wage markets

The audit of job advertisements identified endemic underpayment of culturally and linguistically diverse workers in cleaning, hospitality and retail industries. Employers in these industries, who have been caught underpaying workers, have often claimed they were guided by an artificial wage market within their industry/geographical area.

In 2016 the Fair Work Ombudsman took action against the Malaysian restaurant Mamak and found 6 employees had been underpaid \$87,000. In his findings Judge Smith noted the underpayments stemmed from informal market research undertaken by the owners on what other restaurants in Sydney's Chinatown were paying workers¹³. This excuse was also employed by a Queensland Korean cleaning business that paid workers \$14 an hour and was forced to make \$16,000 in back payments to two workers¹⁴. In 2015 Sydney Sushi Bar, Sushi Izu and Cairns cleaning company JHH International also claimed to have relied on local markets and research to set pay rates¹⁵.

Right of entry

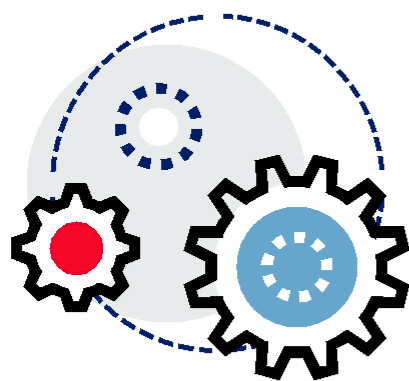
The Fair Work Act now restricts unions from conducting workplace checks on businesses suspected of underpaying and exploiting workers. The audit of job advertisements has demonstrated rampant underpayments in the majority of businesses. Despite this, unions are now only able to check the pay records of union members. The barriers culturally and linguistically diverse workers face in making complaints, often also hinder union membership where workers are scared to 'rock the boat'.

The Fair Work Ombudsman undertakes audits of businesses to ensure compliance with workplace laws. These audits have recovered underpaid wages for workers, particularly those from culturally and linguistically diverse backgrounds. However, audits have also uncovered a number of repeat offenders, who despite being caught and fined, continue to underpay workers.

Just this year, Fire and Stone Restaurant faced \$72,000 in penalties for its second offence of underpaying workers¹⁶, multi-million dollar packing service Rapid Pak underpaid workers \$23,4798 and had previously underpaid workers \$60,000¹⁷ and Gold Coast Restaurant Samurais Paradise was found to have paid a worker as little as \$8 an hour. Immediately following the payment of back pay, it reverted back to the \$8 rate¹⁸.

Unions are the most effective organisation to empower workers to ensure they are paid fairly in the long term. Only unions can collectively organise workers to ensure they are able to hold employers accountable long after a Fair Work Ombudsman investigation has finished.

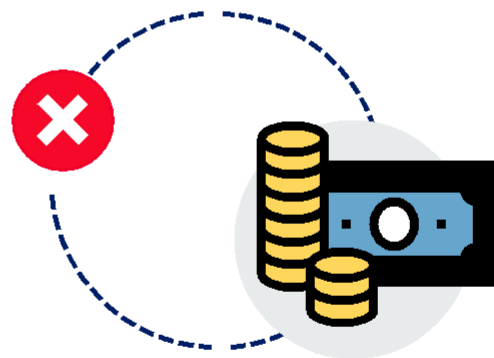
Not enough is done to proactively ensure business compliance with workplace laws or to ensure ongoing compliance. There are 12 million workers across Australia¹⁹, yet the Fair Work Ombudsman only has 240 inspectors nationwide. More resources are needed to ensure workplaces are systematically audited. The right for unions to audit records in businesses suspected of underpaying workers must be reinstated so they can proactively assist in redressing the systematic underpayment of workers.



Small business

The audit of job advertisements indicated a high number of small businesses were advertising below Award rates. In underpayment cases, small businesses have argued they do not have the resources or industrial knowledge to be aware of Award minimums. These claims have often been rejected by the courts, particularly when businesses have not made efforts to reach out to the Fair Work Ombudsman or employer associations for assistance²⁰. Whether such claims are correct or not, there is an opportunity for business peak bodies to be more proactive in communicating the obligations of being an employer.

Small workplaces may also act as a barrier to workers speaking out against underpayment. They are unlikely to be unionised and workers are often working side-by-side with their employers.



Intentional underpayment of workers

Some underpayments are just malicious and intentional where employers exploit the power imbalance and vulnerability of workers, even threatening workers with interference in their visa processes to coerce them against making a complaint.

Investigations of 7/11 convenience stores revealed the franchise business model was reliant on the underpayment of workers. An elaborate scheme of book-keeping forgery and threats to staff was used to hide rampant underpayment of workers mostly from culturally and linguistically diverse backgrounds and on temporary work visas²¹. The use of blackmail to underpay and silence workers was also found to be rampant

on farms and factories across Australia²². These investigations uncovered wide scale underpayments; however it's suspected many other businesses, particularly small businesses continue to operate similar business models and go unchecked.

Enforcing minimum wages

There are a number of barriers which prevent individuals from making complaints as well as resource and structural issues which feed the cycle of underpayment. The current approach to stamping out underpayment of culturally and linguistically diverse workers under the *Fair Work Act* is not working. A shift is needed to remove the onus on individual workers to make complaints towards providing opportunities for unions to empower workers to collectively challenge underpayments. There is also a need to increase penalties against businesses advertising below Award rates of pay, including ensuring compliance and increasing pressure on non-compliant businesses through reputational damage.

Strengthening rights for union audits

Where there is evidence of underpayment in a workplace, unions should be able to exercise their right of entry to investigate further. The *Fair Work Act* should be amended to provide unions with access to these workplaces and the opportunity to speak to the affected workers.

Workers have the right to organise and collectivise in their workplaces, this is the most effective way for workers to win and maintain their rights at work. The current approach of 'spot audits' by the Fair Work Ombudsman has not delivered sustainable or long term results for workers, with many employers systematically re-offending after being audited.

Harsher penalties for repeat offenders

Some businesses knowingly underpay their workers and the current fines are not acting as a sufficient deterrent. The consequences for wage theft need to be significantly increased, with the introduction of new offences under the *Fair Work Act* making it a criminal offence to knowingly and/or repeatedly underpaying workers. The legislation should maintain discretion for first time offences. However, if an employer systematically underpays workers, they are stealing wages and this should be treated as theft.

Some employers have demonstrated, through repeated and intentional underpayment, they are not capable of upholding their legal responsibilities. In these instances, courts should be empowered to make orders against individual employers, disqualifying them from being the director of a company for a certain period of time.

Many businesses who exploit and underpay workers are customer facing and are open to brand damage. Employers who have been found guilty of underpaying workers should be listed on a public register that is searchable and updated regularly. A register currently exists which lists all companies issued penalties by the NSW Food Authority relating to offences which would have an impact on public health or safety²³. The register ensures businesses are accountable to their customers and the broader community when it comes to maintaining health standards. Similarly, businesses should be held accountable to the public when it comes to paying their workers.

Actively policing jobs advertisements

Posting a job advertisement with below award rates is a clear intent to underpay a worker. Unions NSW will actively monitor job advertisements on non-English language sites to identify businesses underpaying staff. Unions NSW is interested in working with these employers to rectify underpayments and ensure workers receive back pay. Further, Unions NSW will consider all options available under the *Fair Work Act* to ensure non-cooperative businesses comply with their workplace obligations. This will include publishing a register of underpaying businesses on the Unions NSW website.

Conclusion

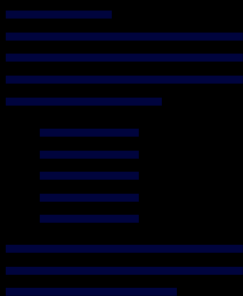
Swift and proactive steps need to be made to stamp out exploitation and wage theft from workers from culturally and linguistically diverse backgrounds. Relying on individual workers to assert their rights ignores the reality of their vulnerability and facilitates an environment of wage theft.

Unions play a crucial role in upholding and enforcing workplace rights. But legislative change is needed to ensure all workers have the right to collectively organise, particularly

in the face of such endemic and gross exploitation and underpayment. Unions need to be able to investigate and speak with workers in businesses where there is evidence the business is underpaying their workers.

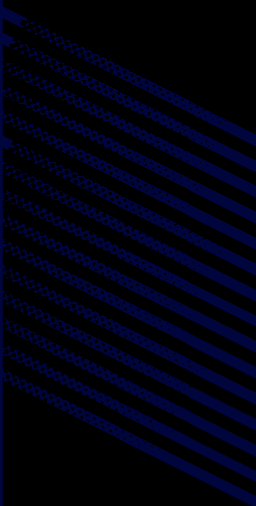
Workers need to be empowered to collectively enforce their rates of paid conditions at work, while companies who underpay workers need to be held publicly and legally accountable for their actions.

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Endnotes:

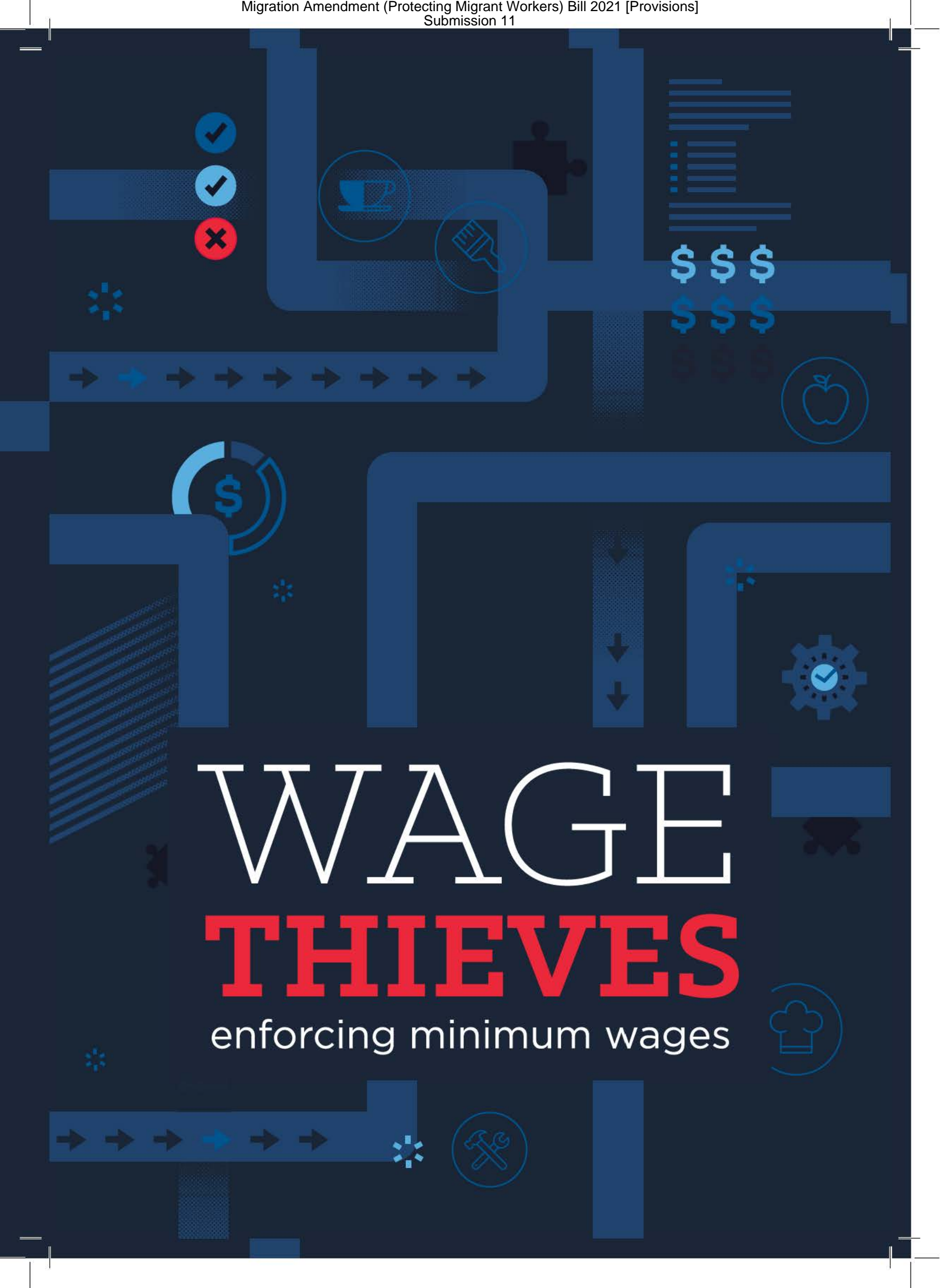
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ANNEXURE C

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

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！

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

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
18999

HOJUNARA
info@hojunara.com

강남바베큐 **자세히**

대표자: 배만길

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

사업내용: 음식점/주점>한식전문점

채용담당자: 배만길

담당부서: 홀

연락처: 0412930***[번호 필치기]

e-메일: baemangil@gmail.com

- 등록직종: 홀서빙/키친핸드/배달직 > 홀서빙,바텐더
- 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

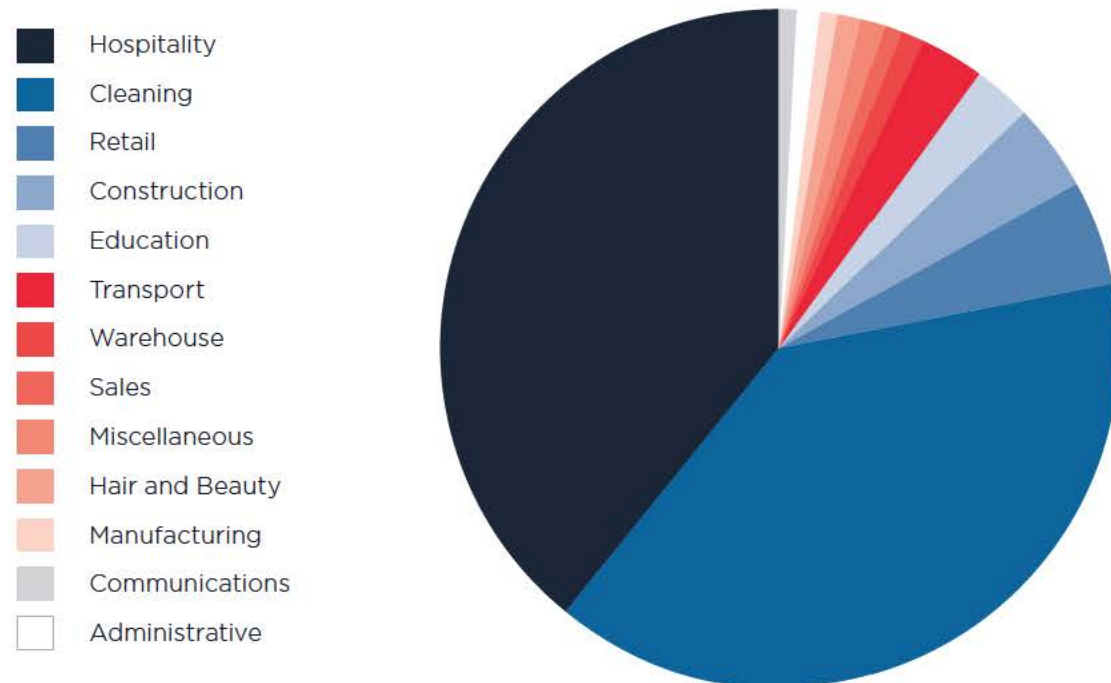
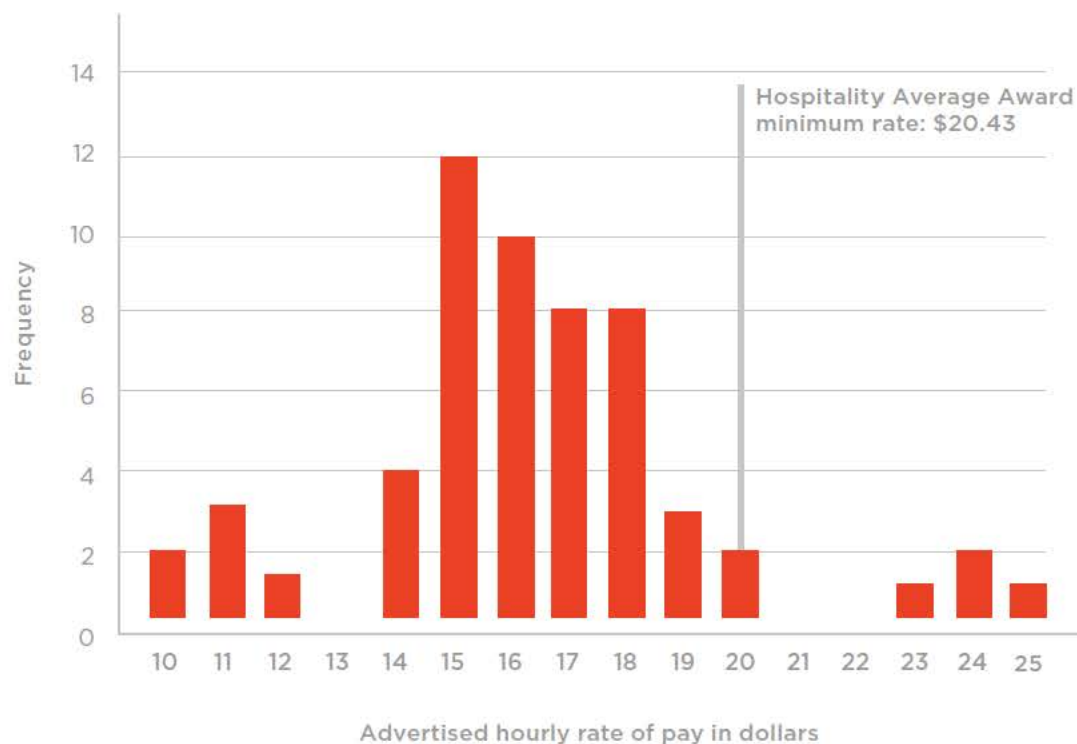


Figure Five *Hourly rates of pay in the hospitality industry*



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.

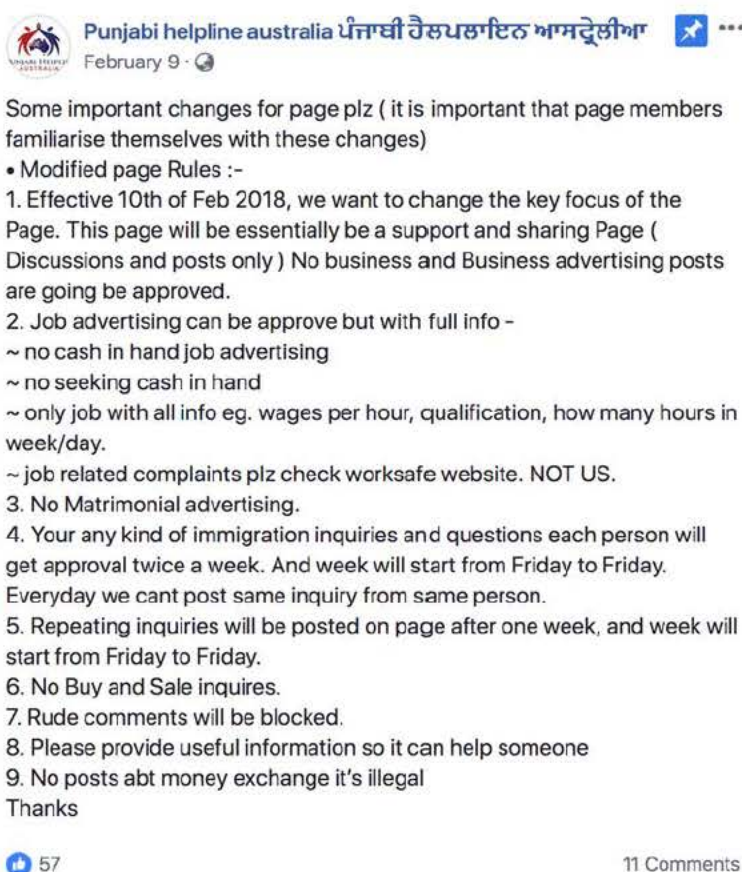
Job advertisements in Punjabi

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 · 🌐

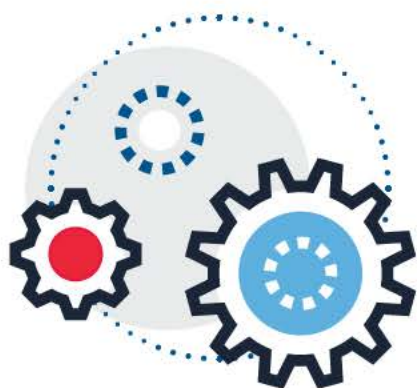
Some important changes for page plz (it is important that page members familiarise themselves with these changes)

- 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 nine ³² A position advertised on Facebook for a carpenter, paying \$20 an hour.



Mark Carpenter

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 5555 5555 or 02 5555 5555

Cheers

Mark (May 1988)



3

3 Comments 1 Share



Figure ten ³³ A position advertised on Facebook for a farm worker.



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 5555 5555

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 expedited 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. ■

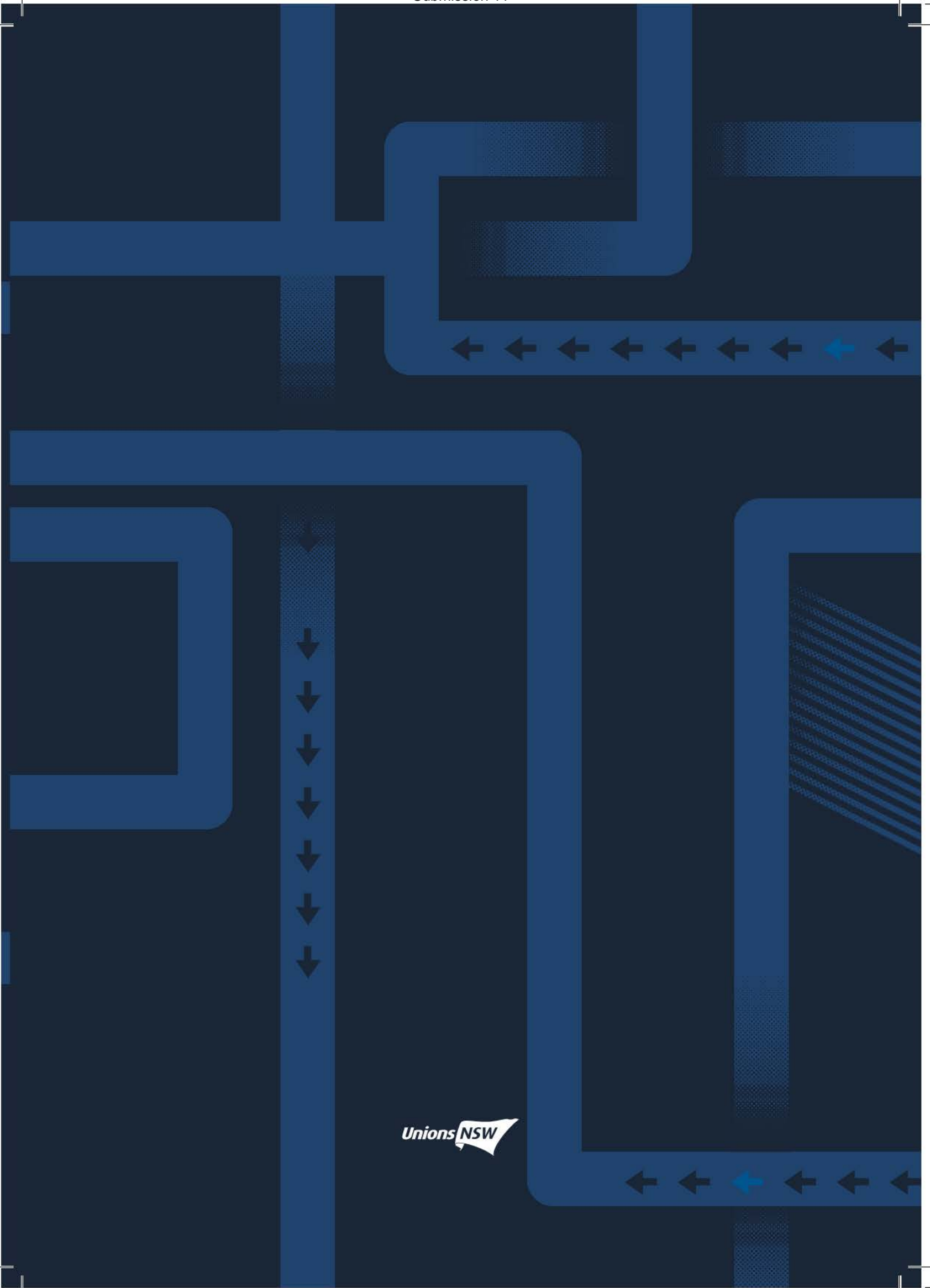


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ANNEXURE D

WAGE THEFT

THE SHADOW

MARKET

Unions **NSW**

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Introduction

The exploitation of temporary migrant workers in Australia is a common and known problem that appears to be endemic throughout Australian workplaces. This exploitation persists despite numerous government inquiries,¹ legislative reforms² and in 2019, the establishment of The Migrant Workers' Taskforce whose recommendations are yet to be implemented.³

The practice of advertising employment positions in foreign languages, with rates of pay that are below the minimum wage, was first exposed by Unions NSW in our 2017 and 2018 wage theft reports.⁴ The custom was subsequently acknowledged in the Migrant Workers' Taskforce's 2019 report, which included a recommendation that a specific prohibition on advertising jobs with pay rates below the minimum wage be included in the Fair Work Act.⁵ This recommendation has not been implemented.

This is the third year since 2017 that Unions NSW has conducted an audit of jobs advertised in foreign languages that target temporary migrants. This year, over 4,000 ads were reviewed, making it the first large scale audit of job advertisements in foreign languages ever conducted in Australia. Over 1,000 of the ads were for positions in the horticultural industry, and will be discussed in a separate report.

This report will focus on the audit results of foreign language jobs advertised in NSW, excluding the horticultural industry. Our research analysed more than 3,000 ads, primarily in six languages; Chinese, Korean, Vietnamese, Nepalese, Spanish and Portuguese. The audit found that 72% (2,189) of the ads indicated a rate of pay, of which 88% offered rates below the minimum wages contained in the relevant Modern Award.

Unsurprisingly, this result reveals a serious setback when contrasted with the audit results of 2017 and 2018, which found 77% and 70% of the ads respectively to be advertising jobs below the minimum wage.

The audits of foreign language job advertisements conducted by Unions NSW in recent years demonstrate that current strategies to combat wage theft are ineffective and highlight an urgent need to remove the structural barriers that prevent the stamping out of exploitation of temporary migrants. Current barriers include a lack of visa system reform. Funding of unions and peak industrial organisations to lead proactive wage theft investigations is also recommended as a much needed strategy to mitigate the terrible effects of Australia's black market economy.

Key findings

- ♦ 72% of the 3,000 ads for jobs in NSW audited, specified a rate of pay for the role advertised.
- ♦ 88% of ads that provided a rate of pay were below the minimum wage stipulated by the relevant Modern Award.
- ♦ At 97.3%, the highest percentage of jobs advertised below the minimum wage were in the construction industry, followed by cleaning at 91.8%, hair and beauty at 87.9%, fast food at 87.5%, retail at 87.1%, hospitality at 87%, clerical at 84.3% and transport at 66.7%.
- ♦ 90.7% of job ads in Vietnamese were below the minimum wage, as were 88.3% of Korean ads, 87.9% of Chinese, 86.3% of Nepalese, 83.9% of Portuguese and 76.4% of Spanish ads.
- ♦ The COVID-19 crisis has intensified employer exploitative practices, with temporary migrants reporting an increase in sham contracting and offers of free trials lasting several hours.
- ♦ The self-acknowledged limitations of the Fair Work Ombudsman (FWO) to conduct investigations and mediations during the COVID-19 pandemic, have contributed to intensified wage theft and underscore the need to fund unions and peak industrial organisations to lead wage theft investigations.

Recommendations

- 1** The Federal Government to directly fund peak industrial organisations (both union and employer peak bodies) to undertake proactive investigations and prosecutions to identify and stamp out wage theft and exploitation. The COVID-19 crisis evidences the ineffectiveness of the FWO's strategy to eradicate wage theft.
- 2** The Federal government to provide welfare support for temporary migrants affected by the COVID-19 crisis, which has exacerbated their vulnerability to employers' exploitative practices.
- 3** Abrogate the 40 hours per fortnight visa condition for international students, to reduce pressure that prevents them from reporting exploitation.
- 4** Create a firewall between the FWO and the Department of Home Affairs (DHA) so vulnerable workers feel that they are not prevented from taking action against their employer for fear of visa cancellation or deportation.
- 5** Amend the Fair Work Act 2009 (Cth) to include a prohibition on advertising jobs with pay rates below the minimum wage, in line with the Migrant Workers' Taskforce 2019 recommendations.

Part One

Methodology

The Unions NSW audit 2020 focused specifically on online job advertisements. This approach is consistent with findings in academic research suggesting that almost half of temporary migrants find their jobs online.⁶ 36% of temporary migrants use Facebook for job search and Asian migrant workers routinely use websites that are exclusively in their native language.⁷

The audit was conducted by a multilingual and multidisciplinary group of eight researchers, under the supervision of a senior employment lawyer. Researchers' areas of expertise included law, IT, data analysis, translation, social work and political science. Tasks were distributed in line with researchers' language proficiencies and skills.

The researchers joined over 200 migrant community Facebook groups and categorised them by primary language used in the group, number of members and posting frequency to identify their relevance in the corresponding community. Researchers audited the six most used groups in each language.

Additionally, researchers audited the most popular websites used by speakers of various Asian languages, as directed by information gathered through migrant community focus groups. Ads in VietNews (hard copy newspaper) were also audited, following recommendations by the Vietnamese focus groups. Figures 1 and 2 provide examples of websites and social media channels used by migrant communities to find jobs in Australia.

The audit was conducted between late-December 2019 and August 2020 and focused on advertisements written in Chinese, Korean, Spanish, Nepalese, Portuguese and Vietnamese. These languages are consistent with the top ten nationalities of temporary migrants in Australia, according to government data.⁸

Researchers used coding, data extraction, online alerts and other IT methods to audit the highest number of ads possible. Over 3,000 ads for jobs across many industries (excluding the horticulture industry) were reviewed, with 2,189 indicating a rate of pay. Employers were contacted in cases where the rate of pay in the ad was not sufficiently descriptive to establish the level of underpayment. Ads that did not provide a rate of pay were excluded from the analysis. See Figure 3 for an example of an ad where phone calls were required to clarify rate of pay.

Ad rates of pay were compared with the legal wage, according to the relevant Award for that industry and position and consideration was given to differing rates for different contract types and times of work.

Importantly, job ads advertising internships and commission only based roles were excluded from the analysis. Additionally, repeated job ads on the same platform or cross - platforms were excluded.

Figure 1. Examples of foreign language websites.⁹



**Brasileiros em Sydney -
brasileiros.com.au**

Private group · 114.4K members



Figure 2. Examples of websites and social media channels identified during focus groups.

KOREAN	SPANISH	VIETNAMESE	NEPALESE	PORTUGUESE	CHINESE
www.hojunara	Colombianos en Sydney Australia	www.nguoiviettauc.com	nepali.kam.1 FB group	Brasileiros.com.au FB group	Sydney today
Korean Australian Community-Facebook	Espanoles y latinos en Sydney	www.chouc.com	Ranjan Adhikari (Australiama Kaam)	Brasileiros em Sydney 2020	www.1688sydney.com
Koreans in Sydney	LATINOS en SYDNEY	www.timnhanhvietuc.com	Nepali lai kaam	Brasileiros na Australia brasileiros.com.au	www.yeeyi.com
Hojubada	Argentinos en Australia	VietNews	www.nepalilaikaam.com.au	Brasileiros na Australia - Estudantes	Chinese Community in Australia! FB group.

Figure 3. Example of an ad in which the employer was contacted to clarify rate of pay.

The Spanish add offered cleaning and painting work for AU\$130 per 8 hours work (hourly rate, \$16.25).¹⁰



Hola, (solo chicas) alguna interesada en trabajar en pintura (pintura, preparacion, limpieza) de viviendas en su mayoría, (interiores y exteriores) lunes a viernes de 7:00 am a 3:00 pm - 130 dolares al dia, para empezar el proximo lunes, que viva cerca a wolli creek o que tenga la
Posibilidad de ser recogida en wolli creek station o sus alrededores, gracias.

Characteristics and number of ads

Foreign language websites and social media groups are a main source of information for temporary migrants in Australia to find employment opportunities, social events, accommodation and other services. Unions NSW audit was conducted between December 2019 and August 2020 and focused on online job advertisements in Chinese, Korean, Vietnamese, Nepalese, Spanish and Portuguese. Our research analysed 2,189 ads that indicated a rate of pay.

As shown in Figure 4, the ads reviewed included, 1273 in Korean, 571 in Chinese, 151 in Vietnamese, 146 in Nepalese, 31 in Portuguese and 17 Spanish.

The majority of audited ads advertised positions in the cleaning industry (620). 486 were in hospitality, 404 were in retail, 224 were in construction and 99 were in hair and beauty, as shown in Figure 5.

Figure 6 contains a disaggregation by language of jobs advertised in each industry. At 317, a large proportion of ads

in Korean were in hospitality, while 305 were in retail, 216 in cleaning, 181 in construction and 45 were in hair and beauty.

Most Chinese ads advertised jobs in cleaning (287), while 91 were in hospitality and 56 in retail.

Ads in Vietnamese were mostly in hair and beauty (50), followed by retail (40) and hospitality (38).

Nepalese ads were mostly in cleaning (82) and hospitality (37).

Ads in Spanish and Portuguese were predominantly in construction and cleaning.

Ads in hospitality were advertised in the six languages, although considerably lower in Spanish and Portuguese, with only one job in Portuguese and two in Spanish being in hospitality. Figures 7 and 8 provide examples of Chinese and Korean ads in the hospitality industry.

Figure 4. Ads disclosing pay rate by language.

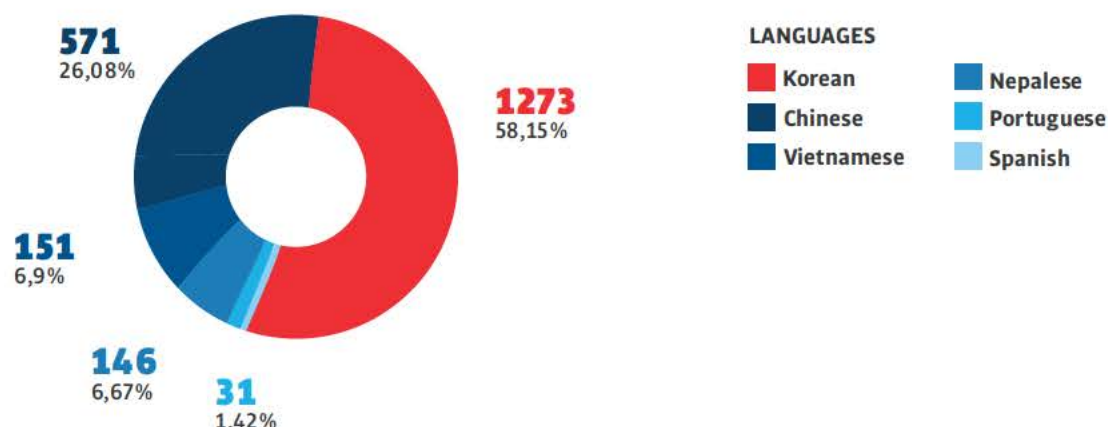


Figure 5. Ads audited per Industry.

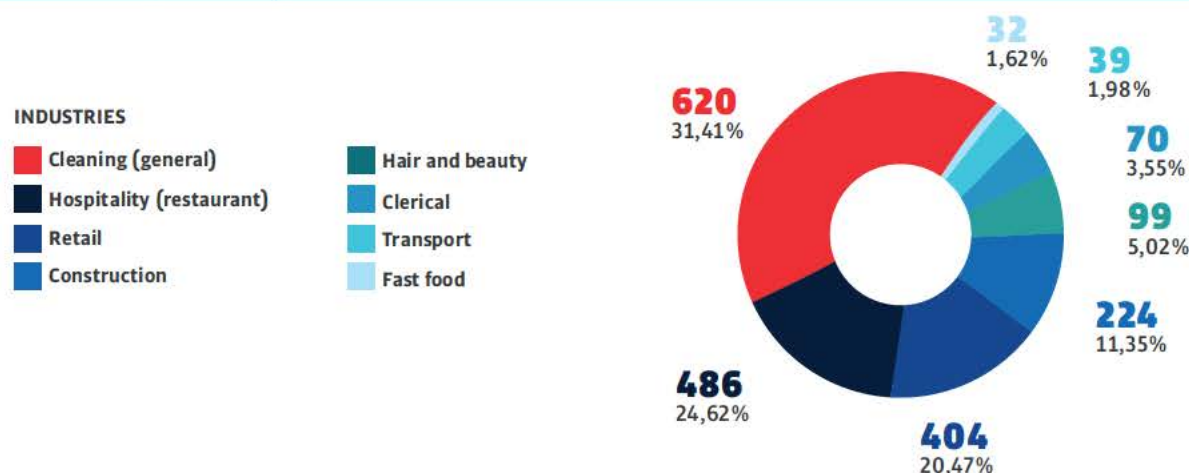


Figure 6. Number of ads audited, Industry vs language.

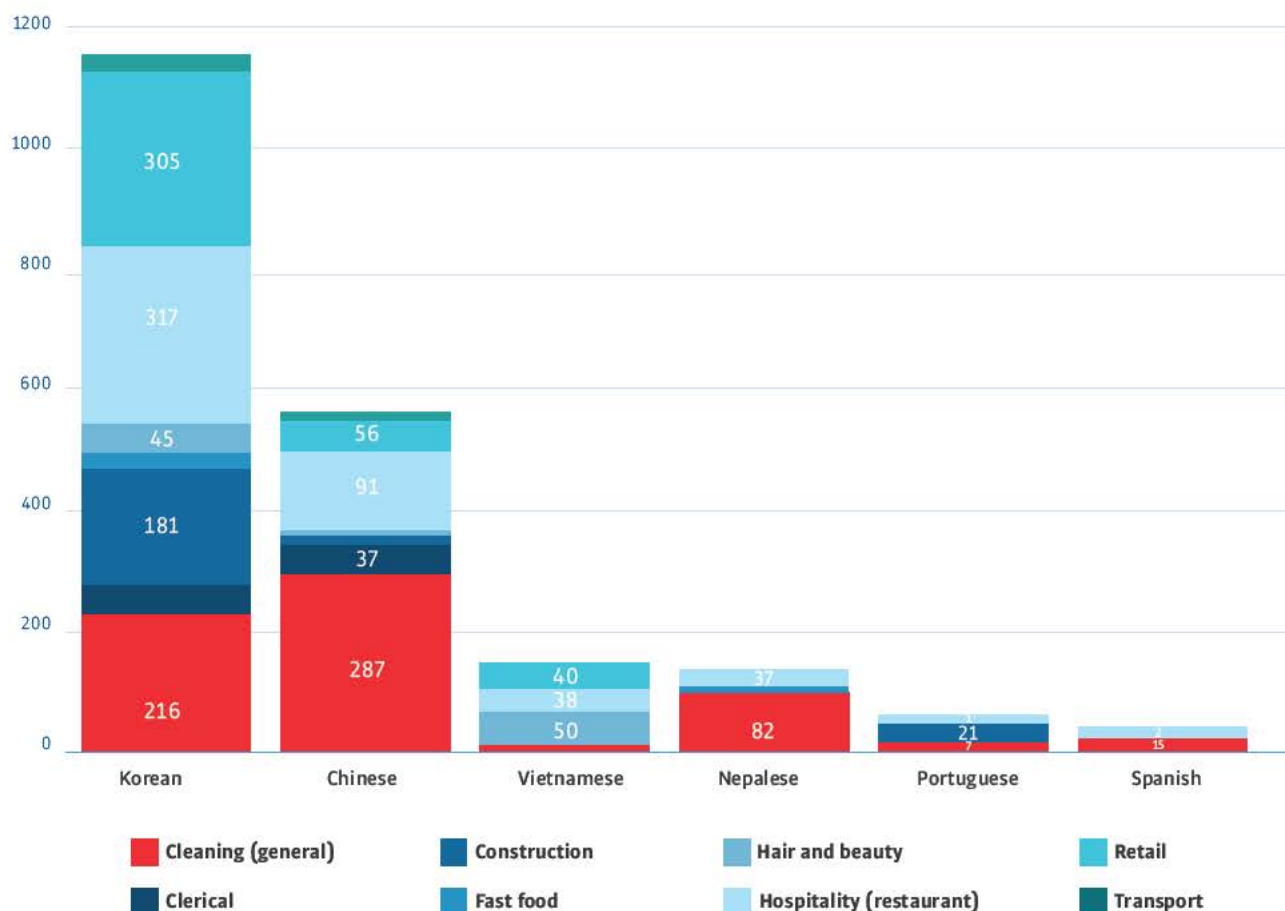


Figure 7. Korean ad advertising jobs in hospitality, with an hourly rate of \$11.¹¹

시티 원아드 스키온 이자카야에서 홀스텝,클메이커,키친핸드 구합니다 \$1-11 / 시급

등록직종 음식/식품/제과, 제빵 > 요리, 조리사, 주방장
근무지역 NSW > Sydney
모집부문 홀스텝, 클메이커, 키친핸드
담당업무 홀스텝, 클메이커, 키친핸드
근무형태 파트타임
경력구분 무관
모집인원 1
연령제한 20-0
학력구분 무관
성별구분 무관
비자조건 기타

바탕가루 스키온 자세히
대표자: 스키온
사업내용: 음식점/주점>기타음식점
채용담당자: 바탕가루
담당부서: -----
연락처: 0430 202 ***[번호 필치기]
e-메일: info@hokumana.com

Figure 8. Chinese ad advertising a waiter position for \$12 per hour.¹²

服务生招聘3人
更新时间 2020-02-26 浏览量 113次 举报此信息 我要顶贴

公司名称 Rosebery饭店
工作性质 兼职
经验要求 不限
签证要求 不限
性别要求 不限
工资水平 \$12/时薪
工作亮点 老板人好,提成丰厚,离车站近

联系人 杜先生
联系我时请说明是在今日悉尼看到的, 谢谢!

作品介绍
醉江湖饭店招聘服务生3名, 基本工资12刀+大量提成要求干活麻利, 勤快, 擅长交际, 人脉广者优先, 非常勿扰

Audit Results

As illustrated in Figure 9, 1,928 (88%) of the 2,189 ads disclosing a rate of pay were offering an hourly rate below the minimum wage under the applicable award.

The majority of ads (31%) offered \$19 to \$20 an hour, 25% offered \$17 to \$18 and 23% offered \$13 to \$16. Only 9% of the ads offered \$21 to \$22 and 6% were willing to pay \$23 or more an hour. An hourly rate of \$10 to \$12 was advertised in 5% of the ads (Figure 11).

The lowest rate of pay advertised was \$8 per hour, for a position as a nail technician. The second lowest rate was \$10 per hour, with 38 jobs offering this rate (Figure 12).

The majority of ads audited (51%) were unclear about the type of contract (casual, full-time or part-time) and some referred to various types of contracts without indicating a

different rate of pay for casual, part-time or full-time. Similarly, no differing rate of pay was indicated for work during weekends or overtime.

Researchers made phone calls or sent text messages where necessary to confirm the type of contract and work times, and whether there was a different rate considering these criteria.

In instances where it was not possible to clarify the type of contract and work times, the rate provided in the ad was compared to the hourly rate for full-time or part time employees contained in the relevant award.

After researchers verified the type of contract, it was identified that 26% of the ads were offering casual work (Figure 10).

Figure 9. Percentage of job ads advertising positions below the minimum wage.

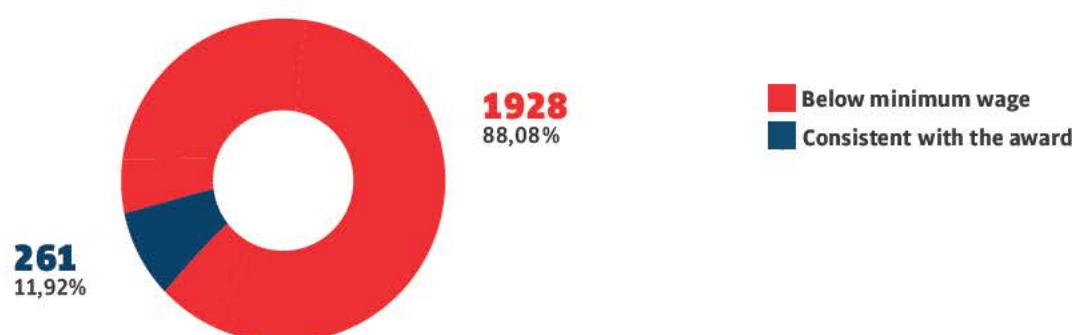


Figure 10. Type of contract.

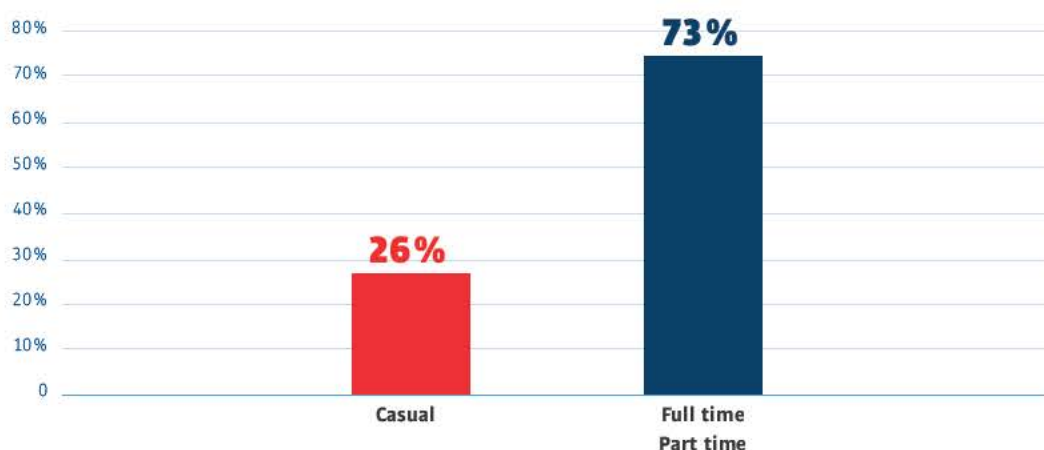


Figure 11. Hourly wage rates advertised.

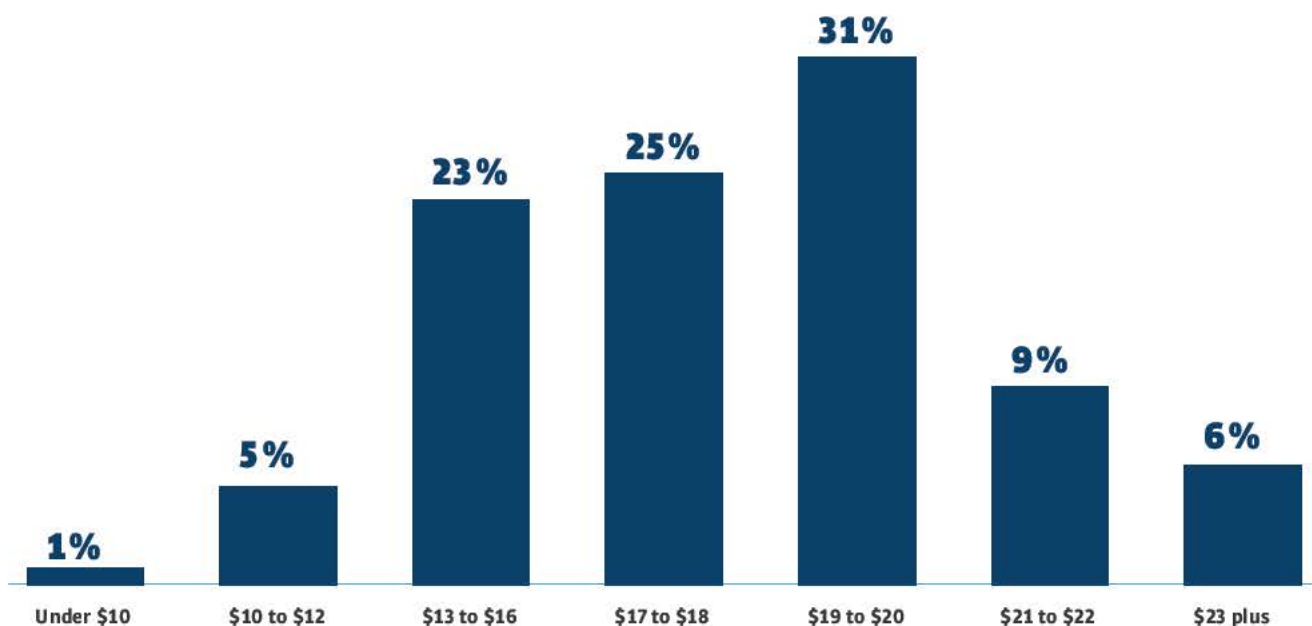


Figure 12. Vietnamese job ad for a nail technician offering \$10 an hour.¹³

Tìm nữ phụ dọn dẹp trong shop và làm việc linh tinh trong shop Nails

Ngày đăng: Thứ bảy, ngày 29/02/2020 **Lương: 10\$/Hour**
Khu vực: Haymarket, NSW (Inner Sydney)

Tìm nữ phụ dọn dẹp trong shop và làm việc linh tinh trong shop Nails

Cần tìm 1 bạn nữ 18 tuổi-25 tuổi

Không cần kinh nghiệm sẽ được training

Lương : thỏa thuận

Vui lòng liên hệ qua số điện thoại để biết thêm thông tin chi tiết

Thông tin liên hệ

Liên hệ: [Redacted]
Mobile: [Redacted]
Email: [Redacted]
Địa chỉ: Haymarket

Lưu ý: Khi bạn gọi điện liên hệ với người đăng tin này, xin vui lòng nói cho họ biết bạn biết được thông tin này trên website "http://nguoivietaiuc.com" (Người Việt Tại Úc.COM). Xin chân thành cảm ơn!

Thông tin bài đăng

Khu vực: Haymarket, NSW (Inner Sydney)
Lĩnh vực: Cleaner & Housekeeper
Mã tin: [Redacted]
Ngày cập nhật: 29/02/2020
Ngày kết thúc: 29/03/2020
Loại tin: Tin thường

Underpayment by industry

Construction

In the construction industry, 97.3% of advertised jobs offered an hourly rate of pay below the applicable award. 40.2% ranged from \$13 to \$16, 25% from \$17 to \$18 and 20.1% from \$19 to \$20. Only 10.7% offered \$23 or more.

The average underpayment in the construction industry was \$6.2 per hour. See Figure 14 for a distribution of rates of pay in the construction industry and Figure 15 for the average level of underpayment in the Industry.

14% of job advertisements in Korean and 68% in Portuguese were in construction. See Figure 6 above.

Cleaning

As illustrated in Figure 13, of the job advertisements in the cleaning industry, 91.8% were offering an hourly rate below the award. A large proportion (35.32%) offered \$19 to \$20 an hour, while 10% offered \$17 to \$18, 14.2% offered \$13 to \$16 and 12.1% offered \$23 or more.

The average underpayment in the cleaning industry was \$5 per hour.

88.2% of job advertisements in Spanish were for cleaning, as were 50.3% of jobs advertised in Chinese and 56.2% of jobs in Nepalese. See Figure 6 above.

Hair and beauty

In the hair and beauty industry, 87.9% of advertised jobs offered an hourly rate of pay below the award minimum wage. 42.4% of the rates of pay ranged from \$19 to \$20 per hour, 28.3% from \$13 to \$16 and 11.1% from \$17 to \$18.

The average underpayment in the hair and beauty industry was \$4 per hour.

33% of job advertisements in Vietnamese were in hair and beauty. See Figure six above.

Fast food, retail and hospitality

In fast food, 87.5% of jobs were advertised at below award rates.

In retail 87.1% of jobs were advertised at below award rates. For 37.1% and 22.2% of the advertised retail positions, the rate of pay ranged from \$19 to \$20 and \$17 to \$18 per hour, respectively.

In Hospitality, 87% of jobs were advertised at below award rates. 34.3% of the rates of pay in the hospitality industry ranged from \$17 to \$18 and 27.9% from \$13 to \$16 per hour.

Figure 13. Underpayment by industry.

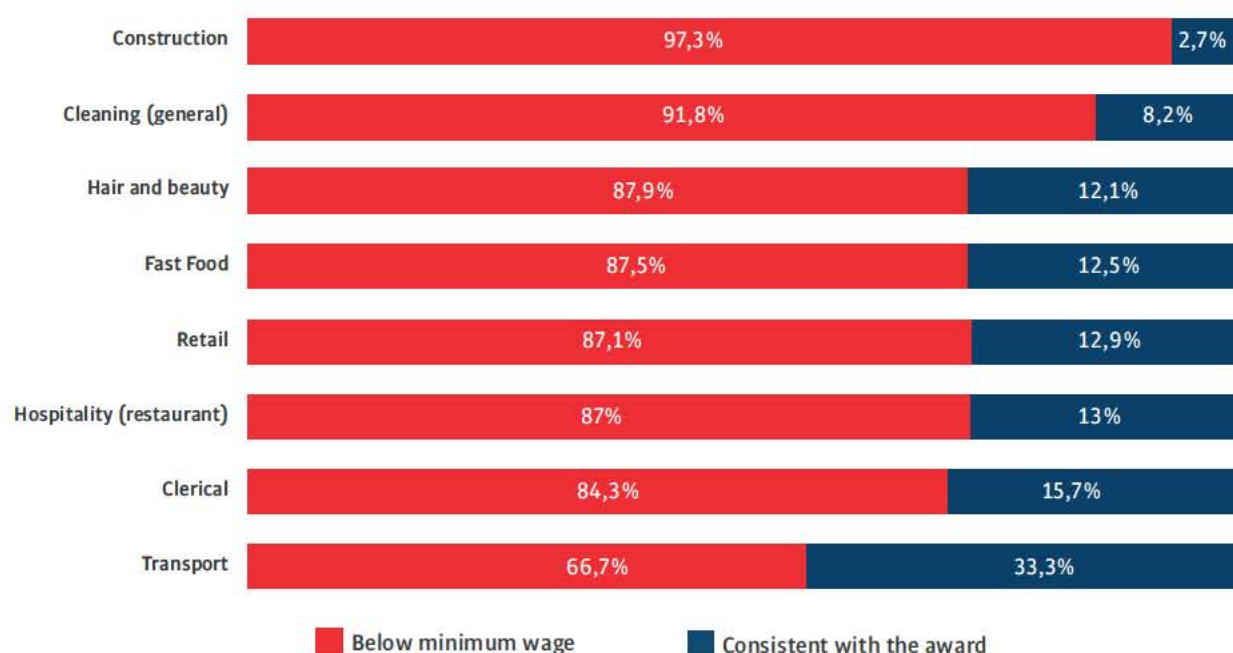


Figure 14. Advertised rate of pay by industry.

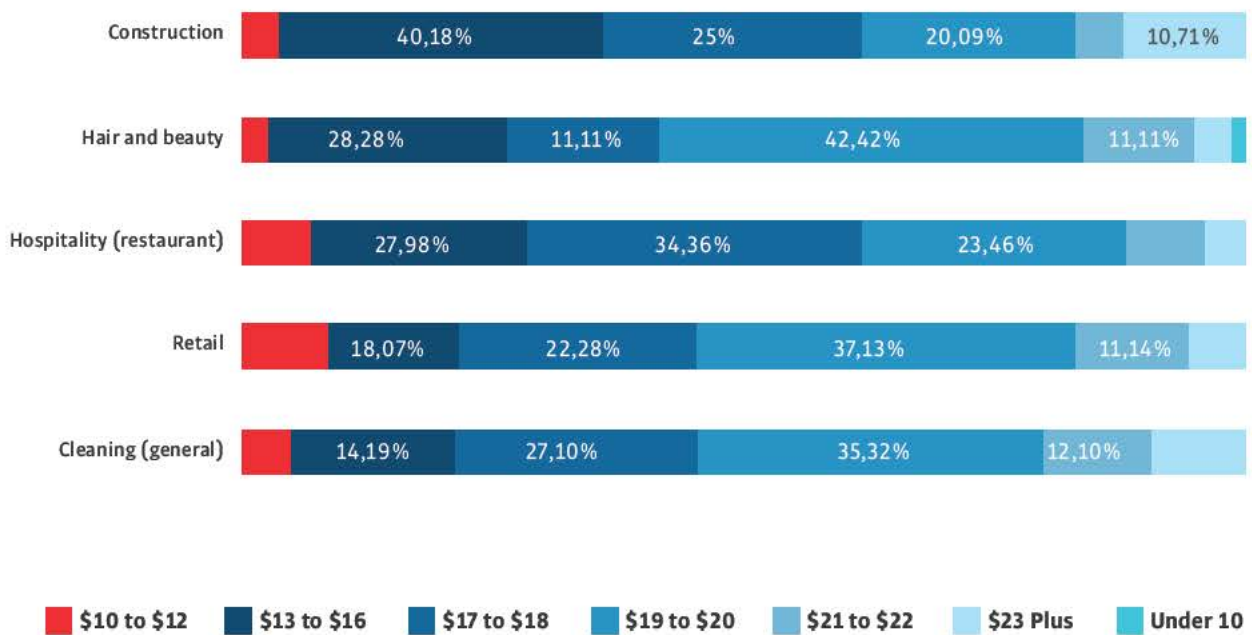
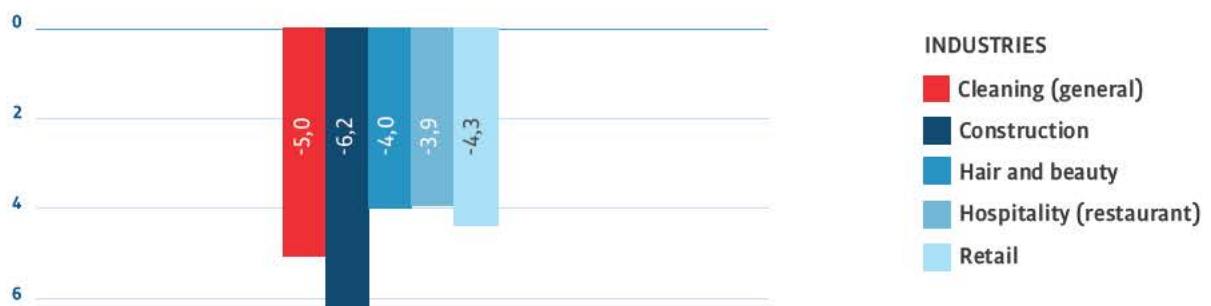


Figure 15. Average underpayment by industry.



Underpayment by language group

Job advertisements in Vietnamese

An overwhelming majority of the ads in Vietnamese advertised rates of pay below the minimum wage (90.7%). A significant number of those ads offered positions in hair and beauty (34.1%), retail (29.5%), hospitality (25.8%) and cleaning (9.1%) (Figure 17).

As indicated in Figure 18, the majority of ads offered an hourly rate of pay from \$13 to \$16 (46%), while 21% offered \$10 to \$12 and 17% offered \$19 to \$20 an hour.

Job advertisements in Korean

As shown in Figure 16, 88.3% of the job ads in Korean offered hourly rates below the minimum wage. Of those ads, 27.3% were in hospitality, 25.3% in retail, 20.8% in cleaning and 17.4% in construction.

The rate of pay offered in the majority of Korean ads ranged from \$19 to \$20 an hour (35%). Only 9% of the ads offered \$21 to \$22 an hour. A large proportion of the ads (32%) offered \$17 to \$18, while 19% offered \$13 to \$16 (Figure 19).

Job advertisements in Chinese

As illustrated in Figure 16, 87.9% of the job ads in Chinese offered rates below the minimum wage. 54.2% were in cleaning, 18.4% in hospitality and 11.3% in retail.

The largest share of Chinese job ads (30%) advertised an hourly rate of \$13 to \$16. 27% offered \$19 to \$20, 18% offered \$17 to \$18 and 11% offered \$10 to \$12 an hour.

Job advertisements in Nepalese

86.3% of the job ads in Nepalese advertised an hourly rate below minimum wage. Of those, 68.4% were in cleaning and 23.1% were in hospitality (Figure 17).

In 30% of the Nepalese job ads, the offered rate of pay ranged from \$19 to \$20 an hour. 25% offered \$17 to \$18 and 18% offered \$21 to \$22 per hour.

Job advertisements in Spanish and Portuguese

83.9% of job ads in Portuguese offered an hourly rate below the award minimum wage, as did 76.5% of those in Spanish. 73.1% of the Portuguese ads were for positions in the construction industry and 23.1% were in cleaning. 100% of Spanish job ads offering hourly rates below award minimum wage were in cleaning (Figure 17).

In Spanish ads, 94% offered \$23 or more an hour, as did 87% of those in Portuguese.

Figure 16. Underpayment by language group.



Figure 17. Underpayment by language and industry.

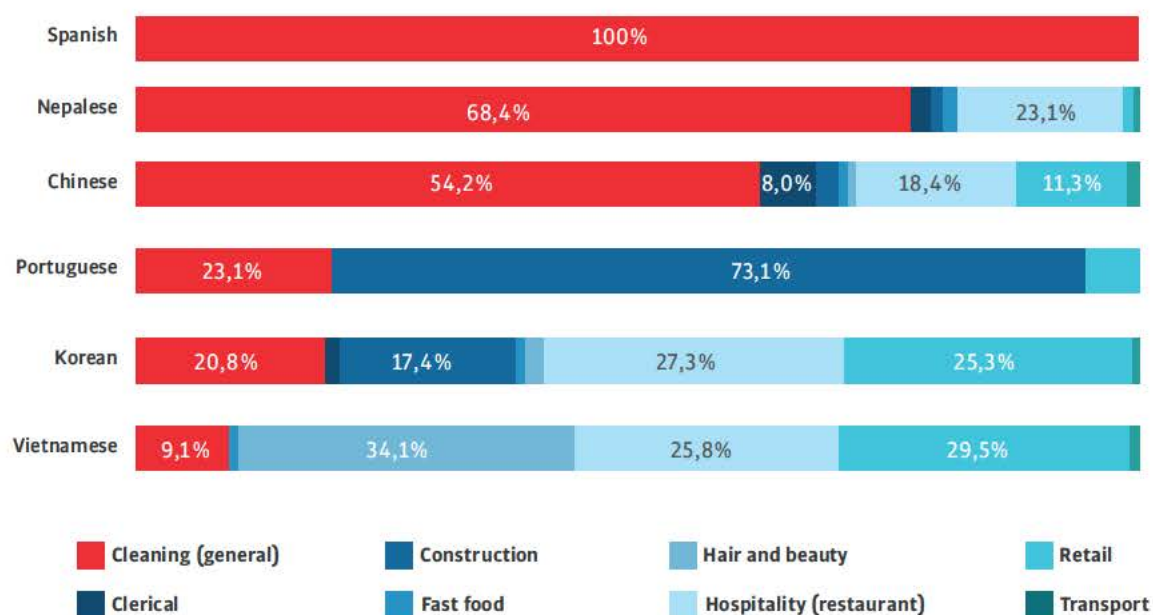


Figure 18. Vietnamese ads rate of pay.

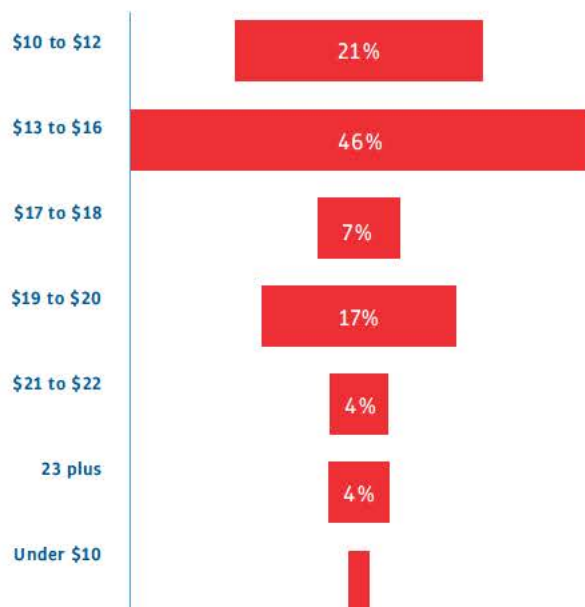
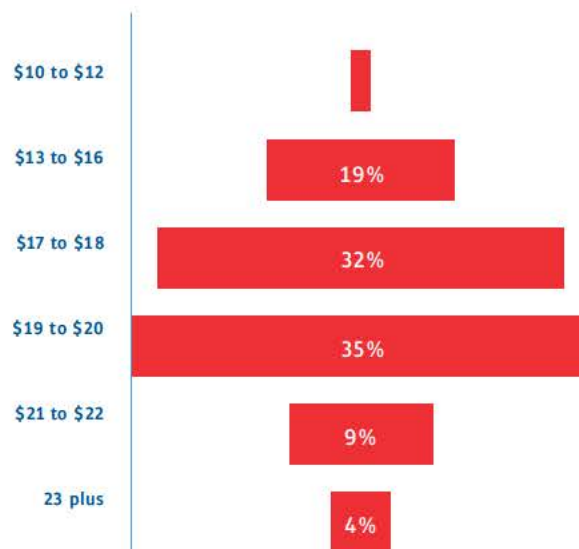


Figure 19. Korean ads rate of pay.



Part Two

Intensification of other exploitative practices

Sham Contracting

Other forms of exploitation were evidenced in Unions NSW Audit, including employers disguising an employment relationship as one of 'client' and 'independent contractor', or sham contracting. Employees who have been victim of sham contracting were often required by their employer to provide an Australian Business Number (ABN).¹⁴

Sham contracting encourages an arm's length commercial relationship between parties and usually involves the purported 'client' (the employer) paying the 'independent contractor' (the employee) an agreed hourly rate and not affording entitlements such as penalty rates and leave accruals contained in the applicable industrial award.¹⁵

A large majority of the ads audited in Spanish and Portuguese did not disclose a rate of pay. Of the 86 Portuguese ads audited, only 31 indicated a rate of pay, as did only 17 of the 126 Spanish ads. Importantly, ads in those languages also showed the lowest level of underpayment, with over 87% of the ads offering a rate of pay of \$23 or more.

Despite this finding suggesting a lower level of wage theft in those communities, 38% of ads in Portuguese that disclosed

a rate of pay required workers to hold an ABN and operate as an independent contractor, as did 25% of those ads in Spanish. This practice was also observed in Korean and Nepalese ads, although to lesser degrees. However, despite the purported requirement to operate using an ABN, a significant number of these ads suggest the existence of an employment relationship. At law this relationship is established by a multi-factorial test which requires an assessment of the totality of the relationship including but not limited to regularity of working hours, level of employer control and supervision, provision and/or requirement of a uniform and whether or not the worker has a right to delegate the work.¹⁶ Figure 21 illustrates the typical content of ads requiring an ABN.

Numerous temporary migrant social media posts in Portuguese and Spanish suggest a widespread practice of sham contracting, with temporary migrants frequently reporting negative experiences. Temporary migrant experiences with sham contracting are illustrated by Figures 22 and 24.

Figure 20. Portuguese ads requiring an ABN.

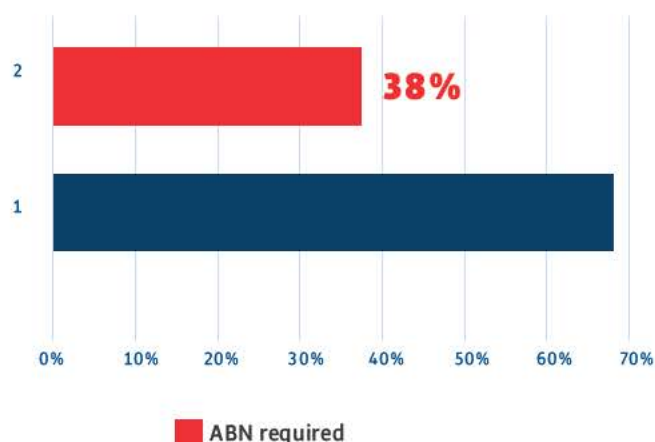


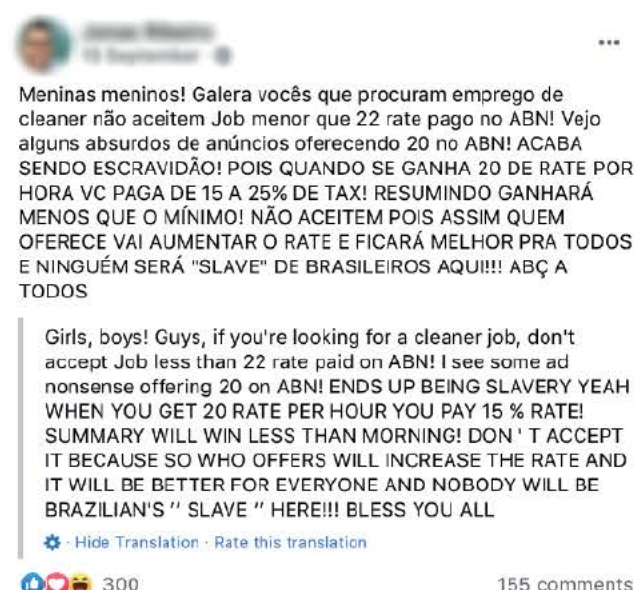
Figure 21. Nepalese ad requiring an ABN.¹⁷



Figure 22. Student victim of sham contacting desperately looking for guidance after his employer refused to recognise an employment relationship.¹⁸



Figure 23. International student warning about ABN requirement as an exploitative practice and tax implications.¹⁹



Sham Contracting focus group

A focus group of twenty temporary migrants who were or had worked using an ABN was hosted in August 2020. Participants were asked 20 questions to establish whether their relationship fulfilled the characteristics of an employment relationship or if they performed their work as independent contractors. None of the temporary migrants interviewed performed their role without supervision.

The requirement of an ABN was frequently justified by employers under the misleading statement that they were trying to protect international students who were working more than 40 hours per fortnight.

Figure 24. Focus group, sham contracting findings.²⁰

	CONTROL	HOURS	RISKS AND EXPECTATIONS	HOURLY RATE	PAYMENT	OTHER OBSERVATIONS
Juan	Juan was working as an air conditioner technician. An ABN was required in order to start receiving payments.	Juan had regular hours from 9 am to 5 pm and worked at the same site for over 2 years.	He was supervised by the same boss as Australian born workers working with a TFN.	\$25 · No superannuation.	Weekly	He was fired during the COVID-19 crisis, with his employer saying he was not entitled to a redundancy payment.
Lu	Lu was working as a cleaner for a contractor of the state government and was required to have an ABN to start work.	She had regular hours, Monday to Friday from 6 am to 2 pm and also had to work on weekends after 5 pm.	Employer was constantly supervising her work and threatening to fire her when not satisfied with the work.	\$19 · Same payment for weekends and overtime. · No superannuation. · Male workers were paid a higher rate. · Irregular reimbursement for cleaning products.	Fortnightly	Lu was fired after complaining about the low rate and that she had suffered a back injury.
Pedro	Pedro was working as a cleaner in a construction site for over a year. He was constantly forced to work more than 20 hours a week and was required to provide an ABN so that, according to the employer, he would not have problems with immigration.	Regular working hours, Monday to Friday three times a week from 12:30 am to 4:30 am.	Constant bullying and supervision.	\$20 · Same rate during weekends and night-time. · No superannuation.	Pedro was regularly paid every two weeks but was not paid for the last two periods.	Pedro has tried to pursue the payment of his wages but the employer is falsely arguing that Pedro caused some damages in the construction site and that the amount in damages is equivalent to the wages due.
Gautamm	Gautamm was doing drafting work for a construction company.	He was working every day from 9 am to 5 pm and a roster for weekend work was given weekly.	His hours of work were permanently supervised by the employer.	\$25 · No superannuation. · Same rate during weekends and night-time.	Gautamm was not getting paid and decided not to return to the office until he was.	Employer has threatened to report him to the Immigration Department as he was working more than 20 hours a week. Gautamm is scared and prefers not to pursue any action as he expects to be able to apply for PR in the future.

COVID-19 crisis and intensification of exploitative practices

During the COVID-19 crisis, the Federal Government excluded temporary migrants from the JobSeeker and JobKeeper assistance schemes, ignoring academics, unions, not-for-profit organisations and businesses warning about a looming humanitarian crisis and the economic consequences this could have for Australia as a whole.

The level of hardship experienced by temporary migrants was well documented by Unions NSW through a large-scale survey of over 5,000 temporary migrants,²¹ which indicated that 65% had lost their job, 23% experienced a reduction in work hours and 43% were skipping meals on a regular basis to survive.

Unsurprisingly, the lack of government support to temporary migrants led to an increase in another forms of work exploitation, which has been reported in migrant community social media groups. Temporary migrants have been reporting unpaid trials of excessive length. See Figure 25 of a temporary migrant reporting a 14-hour unpaid trial.

Other temporary migrants have reported employment offers establishing a trial period for several days with a payment well below the minimum wage. See Figure 26.

A significant number of temporary migrants are experiencing delays or non-payment of their wages and have approached the FWO, only to be told that they are not able to assist due to the COVID-19 crisis. See Figure 28 for a response by FWO to a temporary migrant reporting exploitation. A statement by the FWO regarding their limited assistance during COVID times is also published on their website. See Figure 29.

Figure 25. International student reporting a 14-hour unpaid trial.²²



Figure 26. International student received an offer for a 5-day trial, paying \$8.75 an hour.²³

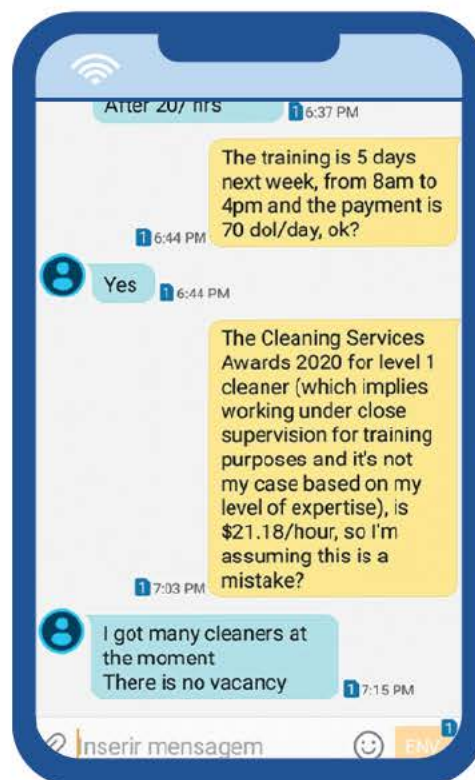


Figure 27. Temporary migrant expressing her frustration with no success through legal action.²⁴



Figure 28. Response by the FWO to a temporary migrant reporting exploitation.²⁵

In a letter to them Fair Work wrote:

“My review revealed a range of complex legal issues relating to employment award coverage or award-free employees.

To determine award coverage requires months of work, including multiple site visits and interviews.

In this current COVID climate, I cannot conduct site visits or interviews.

Also the business has closed and may not reopen in the future”

Figure 29. FWO statement acknowledging limitations to support workers.²⁶

What has changed

Demand for our services is significantly higher because of COVID-19.

In order to meet the increased demand for services, we are giving higher priority to customers whose workplaces have been disrupted by COVID-19.

We are prioritising customers seeking advice, education and assistance about workplace entitlements and obligations in the following areas:

- employers and employees who have been impacted by COVID-19
- small business employers
- employees who are currently employed

What it means for you

We are experiencing a higher than usual volume of calls and enquiries, occasionally resulting in longer than usual wait times for matters that are not COVID-19 related. We are updating the information on our website regularly to help you find the information you need and answers to your questions. We also have information and resources to help you try to resolve issues in the workplace.

We encourage employees and employers to work together to find practical solutions to any issues that arise in the workplace.

We are prioritising requests for assistance where there are allegations of serious non-compliance with workplace laws, including (but not limited to) the JobKeeper provisions on the Fair Work Act.

In adjusting our services to meet the changing needs of the community, we currently have limited capacity to offer some of our regular dispute resolution and mediation services.

To help contain the spread of COVID-19, we have also closed our offices for face-to-face counter service and appointments.

Part Three

The Federal Government should fund unions and peak industrial organisations

The COVID-19 crisis evidences the FWO's failure to stamp out the exploitation of temporary migrant workers. FWO's failure to assist migrant worker victims of exploitation during the crisis has only intensified already severe levels of exploitation.

In the experience of Unions NSW, wage theft is predominantly caused by the enormous opportunity that exists for employers to take advantage of their workers, in order to cut costs with very little chance of being caught. Unions NSW understands the FWO has approximately 250 inspectors conducting workplace investigations under the current system of auditing. This equates to roughly one inspector for every 51,000 employed people in Australia, which is blatantly not enough to competently and adequately protect the rights of workers. Presently, the chance of an employer getting caught underpaying staff is attractively low.

The Federal Government should fund unions and peak industrial organisations to lead investigations of wage theft. Unions have a strong record of advocating on behalf of workers who have been underpaid and successfully recovering unpaid wages. Academic survey results suggest that workers who approached a trade union for assistance with underpayments had at least some wages recovered in 70% of cases.²⁷ This contrasts with the FWO's rate of success in 42% of cases. In NSW alone, an assessment of just four unions found they collectively recovered \$20.93 million over a one-year period.

Unions have been working intensively with migrant communities, identifying their needs and providing funding to initiatives that respond to migrant worker concerns. In 2019, Unions NSW pioneered its Visa Assist program partnership with the Immigration Advice and Rights Centre (IARC) to provide free immigration advice and legal assistance to migrant workers who are union members in NSW. The need for this type of service free from bias is increasingly important and the program has been operating at full capacity since its launch.²⁸

Unions NSW and IARC know anecdotally that there are a number of less than transparent migration agents and immigration lawyers who mislead migrants when it comes to the rules governing their stay in Australia. In some circumstances, migrants are even encouraged to apply for visas not in their best interests.

Of the 4,322 respondents to the National Temporary Migrant Work Survey, conducted by the Migrant Workers Justice Initiative, more than 2,250 responded they had been victim of Wage Theft, with only 1 in 10 seeking to recover what was owed to them. Of the underpaid respondents, 32% stated that they would not seek to recover stolen wages due to fear of immigration consequences or not wanting to be involved with the Government.

7% of survey respondents disclosed they had undertaken unauthorised work in contravention of their visa conditions (for example, by working more than 40 hours per fortnight on a student visa), and of these, 39% indicated they would not make a claim to recover unpaid wages due to fear of immigration consequences. A service such as Visa Assist is a crucial service for vulnerable migrant workers whose employment issues are increasingly intertwined with their visa conditions.

Unions are also better equipped than the FWO to assist migrant workers as many employ multilingual and bilingual organisers, themselves often part of the migrant communities. These elements are key to overcoming the barriers that in many instances prevent temporary migrants from reporting exploitation and organisations from conducting accurate wage theft investigations.

Figure 30. Case study: Unions NSW successfully recovering wages for a migrant worker.²⁹

CASE STUDY

Ms Hun is originally from Korea. She worked in a restaurant from 2016 to 2019. During this time, Ms Hun was paid well below the minimum wage established by the Restaurant Industry Award 2010. She was also not paid superannuation, provided payslips or given regular breaks during her shifts.

Ms Hun was aware she was being underpaid but was too afraid to bring it up with her employer. She eventually quit her job and approached the Fair Work Ombudsman in an attempt to recover her unpaid wages.

The mediation process conducted by the Fair Work Ombudsman was unsuccessful. Ms Hun experienced great frustration at the power imbalances and cultural and language barriers, and what she perceived as a hopeless process after being exploited for more than three years.

Ms Hun joined her union. Unions NSW assisted Ms Hun during negotiations with her employer and acquired for her more than \$140,000, including \$17,000 in unpaid superannuation.

Visa reform

International students are restricted to working 40 hours per fortnight during their course and unlimited hours during course breaks. Research has shown that a large number of international students regularly work beyond these restrictions.³⁰

Academics, unions and other organisations have highlighted that this restriction is not an effective means of ensuring that international students are genuinely studying and in fact facilitates wage theft and other exploitative practices by employers.³¹

The increase in reports of sham contracting through migrant community social channels exposed in this report evidences the need to abolish the 40-hour working limit, which is currently used by employers to exploit temporary migrants' fear of being deported if in breach of their visa conditions.

The Federal Government should scrap the 40-hour work limit on international students and focus on attendance and academic performance requirements to ensure international students are genuinely studying when in Australia. During the COVID-19 crisis, the Government temporarily lifted this restriction for international students working in supermarkets and permanently for those working in care industries.³² This showed that there is no policy justification for maintaining the 40-hour limit.

Additionally, a firewall between the Fair Work Ombudsman and the Department of Home Affairs must be created to facilitate temporary migrant workers in seeking redress for underpayment, without the fear of visa cancellation.

Conclusions

The Unions NSW Audit shows an increase in the number of advertised jobs offering rates below applicable minimum wages and exposes the failure of the FWO to take appropriate action to stamp out exploitation and wage theft among temporary migrant workers.

The COVID-19 crisis has intensified the already endemic exploitation of temporary migrants, with the lack of assistance by the FWO encouraging employment abuse, as employers know well that breaches of industrial laws will seldom be investigated.

Based on Unions NSW's experience, employees who seek the FWO's assistance are encouraged to compromise to reach settlements by negotiating of money to which they were unequivocally entitled in the first place. Contemporaneously, as pecuniary penalties cannot be enforced in mediation, employers are able to move on unscathed, unpenalised and likely undeterred from repeating their behaviour.

Noting the incompetence of the work conducted by the FWO, unions urge the Federal Government to fund unions and peak industrial organisations to lead proactive investigative efforts to identify and stamp out wage theft and exploitation. By having the power to prosecute, peak bodies will also be able to support businesses who are paying their employees correctly and consistently according to industrial instruments by seeking pecuniary penalties for those who do not. Without penalising employers who are underpaying, anti-competitive behaviour is effectively encouraged to the detriment of businesses who are abiding by their legal obligations.

The increase in sham contracting identified by Unions NSW research exposes the 40-hour per fortnight visa restriction on international students as an ineffective mechanism to ensure that international student are genuine students, and only facilitates employer exploitative practices, using migrants' fears against them.

Foreign job ads offering positions for below the minimum wage are increasing, and the Federal Government should immediately implement the recommendations of the Migrant Workers' Taskforce, including the recommendation to amend the Fair Work Act to include a prohibition on advertising jobs with pay rates below the minimum wage.

Endnotes

- ¹ Senate Standing Committee on Education and Employment, Australian Parliament, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016).
- ² Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 (Cth).
- ³ Attorney General's Department, *Migrant Workers Taskforce* (2019) <<https://www.ag.gov.au/industrial-relations/migrant-workers-taskforce>>.
- ⁴ Unions NSW, 'Lighting Up the Black Market: Enforcing Minimum Wages' (Report 2017); Unions NSW 'Wage Thieves: Enforcing Minimum Wages' (Report 2018).
- ⁵ Attorney General's Department, *Migrant Workers Taskforce* (2019) <<https://www.ag.gov.au/industrial-relations/migrant-workers-taskforce>>.
- ⁶ Elsa Underhil and Sherry Huang, 'Using Social Media to Improve Temporary Migrant Workers' Access to Information About Their Employment Rights' (2020) 84 (Summer) *Journal of Australian Political Economy* 147.
- ⁷ Ibid.
- ⁸ Department of Education, Skills and Employment, *Temporary Visa Holders in Australia* (June 2020) data.gov.au <<https://data.gov.au/data/dataset/temporary-entrants-visa>>.
- ⁹ Hojunara <hojunara.com>, Sydney Today www.sydneystoday.com, Brasileiros.com.au, Facebook Community: *Brasileiros em Sydney* <https://www.facebook.com/BrasileirosSydney>.
- ¹⁰ *Espanoles y latinos en Sydney, Australia* (2020) Facebook <<https://www.facebook.com/groups/226496487917208>>.
- ¹¹ www.hojunara.com.
- ¹² www.sydneystoday.com.
- ¹³ Vietnamese job ad for a nail technician offering \$10 an hour. Nguoi viet tai uc www.nguoiviettaiuc.com.
- ¹⁴ Fair Work Ombudsman, *Contractors and Employees What's the Difference?* (August 2020) <<https://www.fairwork.gov.au/ArticleDocuments/723/Contractors-and-employees-whats-the-difference.pdf.aspx>>.
- ¹⁵ Fair Work Ombudsman, *Contractors and Employees What's the Difference?* (August 2020) <<https://www.fairwork.gov.au/ArticleDocuments/723/Contractors-and-employees-whats-the-difference.pdf.aspx>>.
- ¹⁶ Fair Work Ombudsman, *Contractors and Employees What's the Difference?* (August 2020) <<https://www.fairwork.gov.au/ArticleDocuments/723/Contractors-and-employees-whats-the-difference.pdf.aspx>>.
- ¹⁷ Nepali Lai Kaam, Facebook <<https://www.facebook.com/santoshtiwari.gurkhasecond.sydneyst>>.
- ¹⁸ Student victim of sham contacting desperately looking for guidance after his employer refused to recognise an employment relationship post available at <https://www.facebook.com/groups/226496487917208>.
- ¹⁹ International student warning about ABN requirement as an exploitative practice and tax implications. Post available at <https://www.facebook.com/groups/brasileirosemsydney>.
- ²⁰ Summary of focus groups findings, August 2020. Participants names have been changed.
- ²¹ Unions NSW, 'No Worker Left Behind: Support Equal Access to Welfare for Temporary Migrants' (Report, 2020).
- ²² International student reporting a 14 hour unpaid trial. Available at <https://www.facebook.com/groups/1568077793522354> Facebook group Colombianos en Sydney.
- ²³ International student received an offer for a 5 day trial, paying \$8.75 an hour, text messages provided with user consent.
- ²⁴ Temporary migrant expressing her frustration with no success through legal action. Available at <https://www.facebook.com/groups/1568077793522354>, Facebook group Colombianos en Sydney.
- ²⁵ Vincent Michael, 'International students facing 'perfect storm' of exploitation and coronavirus could make it worse', ABC online, 30 June 2020 <<https://www.abc.net.au/news/2020-06-30/international-students-wage-theft-exploitation-coronavirus/12405332>>.
- ²⁶ <https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/how-coronavirus-covid-19-has-affected-our-services>.
- ²⁷ Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, Migrant Worker Justice Initiative, 20 November 2017); Bassina Farbenblum and Laurie Berg, *International Students and Wage Theft in Australia* (Report, Migrant Worker Justice Initiative, 2020).
- ²⁸ Visa Assist partnership Unions NSW and IARC, available at <https://iarc.asn.au/help/visa-assist-program/>.
- ²⁹ Case study: Unions NSW successfully recovering wages for a migrant worker. Name was changed following member request.
- ³⁰ Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, Migrant Worker Justice Initiative, 2017) ('Wage Theft in Australia').
- ³¹ Ibid.
- ³² <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500/temporary-relaxation-of-working-hours-for-student-visa-holders>.

ANNEXURE E

WAGE THEFT THE SHADOW MARKET

PART TWO: THE HORTICULTURAL INDUSTRY

Unions **NSW**

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Introduction

At time of writing migration to Australia is at an all-time low. Many nations have begun their roll out of vaccines for the COVID-19 virus however the pandemic still poses a serious threat to lives and economies. To limit the spread of the virus in Australia the federal government has continued its restriction on international arrivals and particularly its halt on immigration to Australia. Many industry representatives including those advocating for the horticultural industry have complained the limits on migration are severely impacting their ability to attract workers and as such their ability to harvest produce. In contrast, employee advocates believe ready labour is available in the form of increased numbers of unemployed local workers and the horticultural industry is struggling to attract workers because it has a preference for vulnerable migrant workers who are easily exploited with illegally low wages and poor conditions.

This report reveals exploitation of migrant workers in the horticultural sector has continued during the period of the pandemic and it is severe, despite the ongoing commentary labour shortages. The Horticulture and Wine Industry awards allow farmers to pay workers either a piece rate, according to how much they picked, packed, pruned or an hourly rate¹. Year after year horticultural workers report employer exploitative practices backed by piece rate agreements. Recent reports have provided evidence of migrant workers earning as little as \$3 per hour through the piecework system.²

This report is part two of 'Wage Theft, The Shadow Market.'³ Part one was released by Unions NSW in December 2020 and included the audit of jobs advertised below the minimum wage outside the horticulture industry. This report includes a review of 1,000 job ads for positions in the horticultural industry. Ads were predominately in English, Chinese, Japanese and Korean, and an overwhelming majority (88%) offered a piecework rate. Analysis suggests over 96% of the piece rates advertised would not allow a worker to earn the national minimum wage, and in several instances, workers would earn less than \$1 an hour.

Recent Government enactments mistakenly focus on diversifying the regional workforce to ensure labour supply for regional businesses. They do not address the problems at the core of the horticulture industry, labour exploitation, poor working conditions and wage theft. Incentives to diversify the regional workforce with local workers are a 'low-hanging fruit approach' to address labour distribution imbalances. This approach will not attract workers towards an industry that already has a reputation for underpayment and exploitation.

Key findings

- 88% of the ads for jobs audited offered wages by piece rate;
- 96% of the piece rates advertised would not allow a worker to earn the national minimum wage;
- 65% of the ads for strawberry picking and 22% for grape picking would allow workers to earn less than \$2 an hour;
- 33% of the ads for blueberry picking would allow a worker to earn \$10 to \$12 an hour, and 43% would allow an employee to earn \$13 to \$14 an hour;
- 64% of the ads for capsicum picking would allow a worker to earn \$10 to \$12 an hour;
- 24%, 10% and 29% of the ads for zucchini picking would allow a worker to earn \$10 to \$12, \$13 to \$14 or \$15 to 16 an hour, respectively;
- 5% of the job ads for raspberry picking would allow a worker to earn less than \$2 an hour, while 5%, 15% and 25% would allow a worker to earn \$3 to \$5, \$10 to \$12 or \$15 to \$16 an hour, respectively;
- The lowest piece rates were identified in Bundaberg, with 80% of the jobs ads advertising a rate that would allow a worker to earn less than \$2 an hour. Similarly, 78% of the job advertisements in Caboolture and Beerwah would enable a worker to earn under \$2 an hour. 71% of picker job ads for Banksia Grove also offered rates that would lead to earn less than \$2 an hour.

Recommendations

1 To amend the Horticulture and Wine Industry awards to guarantee a minimum wage to all workers in the sector. Piece work rates should be abolished due to compelling evidence of their systematic misuse to exploit workers and their inconsistency with minimum wage guarantees contained in modern awards covering other industries.

2 The regional work placement requirement for working holiday makers to extend their stay in Australia by 12 months should be lifted so as to reduce pressure that prevents temporary migrant workers from reporting exploitation.

3 Create a firewall between the Fair Work Ombudsman (FWO) and the Department of Home Affairs (DHA), so that vulnerable workers are not prevented from taking action against their employer for fear of visa cancellation or deportation.

Part 1

Methodology

Commencing in 2017, this is the third year that Unions NSW has conducted an audit of jobs targeting migrant workers and advertising below the minimum wage. From late-December 2019 to early September 2020, more than 1,000 ads, for positions in the horticultural industry were reviewed.

The research, Wage Theft: The Shadow Market in the Horticultural Industry used fundamentally the same methodology as part one, Wage Theft: The Shadow Market, although given the prevalence of job ads offering piece rates this review included additional interviews with workers and focus groups were also necessary to establish the levels of underpayment.

The job ads reviewed were all distributed through online channels, with the majority found on Facebook community groups targeting backpackers and fruit pickers. In a recent survey of 1,000 workers in the horticultural industry conducted by Unions NSW, over 50% of the respondents indicated that they had found their job online and 35% through Facebook.

The audit was conducted by a multilingual and multidisciplinary group of eight researchers, under the supervision of a senior employment lawyer. Researchers joined over 70 community Facebook groups, specifically for backpackers and farm

work job hunting. The majority of job ads for roles in the horticultural sector were written in Chinese, Korean, Japanese or English.

Additionally, researchers audited the most popular websites used by Chinese and Korean speakers, as directed by information gathered through migrant community focus groups and Gumtree ads. Figures 1 and 2 provide examples of websites and social media channels used by migrant workers to find jobs in the horticultural industry.

Researchers used coding, data extraction, online alerts and other IT methods to audit the highest number of ads possible. Of the 1,008 jobs reviewed 88% offered wages by piece rate, and employers were contacted in cases where the advertised piece rate was unclear. Piece rates offered were usually approximated to payments per kilogram.

Importantly, ads that did not provide a rate of pay and repeated jobs ads in the same platform or cross-platforms, were excluded from the analysis. Advertised rates of pay were compared with the legal wage, according to the relevant Award for the horticultural industry and the national minimum wage.

Figure 1. Example of farm worker jobs search social media channels



Figure 2. Examples of focus group findings of popular social media groups and websites

KOREAN	JAPANESE	CHINESE	EXAMPLES OF POPULAR ENGLISH FB GROUPS
www.hojunara	Farm Kangaroo ～オースト ラリアファーム	www. backpackers. com.tw	Farm work Australia - 88daystowork for Backpackers
Hojubada		www.yeeyi.com	Farm work Australia
Koreans in Sydney		Coffs Harbour Aus working holiday backpacker group	Farm Work in Australia 2021
			MILDURA Backpackers (VIC) Farm Work and Fruit Picking
			FARM WORK AUSTRALIA BACKPAKERS 2021
			Australia Farm Jobs for Backpackers
			Australia Solo Backpackers 2020
			BRISBANE - QLD Backpackers
			East Coast Backpackers Australia 2020/2021

Characteristics and number of ads

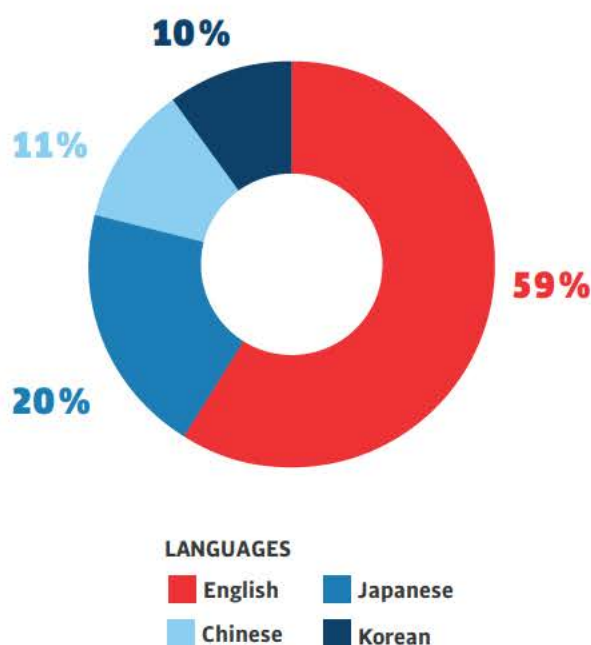
The audit examined over 1,000 ads published on social media platforms between December 2019 and early September 2020, advertising positions in the horticultural sector. A significant decline in the number of job ads was found during the COVID-19 lockdown period, particularly from March to April. An increase in the number of positions advertised was observed in July and August (426), accounting for 42% of the ads audited.

The research analysed ads for positions related to 17 crops, with the majority being for positions for strawberry (34%), blueberry (30%), grapes (10%), zucchini (5%) and raspberry (3%) picking.

Contrary to findings in other industries, a considerable number of the ads reviewed were written in English (59%), following by Japanese (20%), Chinese (11%) and Korean (10%) (Figure 3).

The ads reviewed positions in over ten locations, including Coffs Harbour (29%), Caboolture (15%), Bundaberg (13%), Beerwah (9%) and Mildura (4%).

Figure 3. Ad languages



Under the Horticultural and Wine Industry awards, an employee can agree with their employer to be paid a piecework rate or an hourly rate. Under the piecework rate, an employee's earnings are based on the amount they have picked, packed or pruned. The rate must allow the 'average competent employee' to earn at least 15% or 20% more than the hourly rate established under the horticulture or wine award, respectively.

As illustrated in Figure 4, unsurprisingly, an overwhelming number of the ads reviewed offered piece rate arrangements. The audit revealed farm employers vastly prefer piecework over hourly rates. 88% of ads advertised piece rates, while only 12% offered an hourly rate.

Audit Results

Previous reports and audits have uncovered systematic underpayment and wage theft of workers in Australia. In the horticultural industry, the National Temporary Migrant Workers Survey 2017 reported that 15% percent of fruit and vegetable picking and farm related workers were paid \$5 an hour or less, while 31% earned only \$10 an hour or less. Of all the workers surveyed across different industries, those in crop planting, picking, sorting and packaging were the most underpaid.⁴

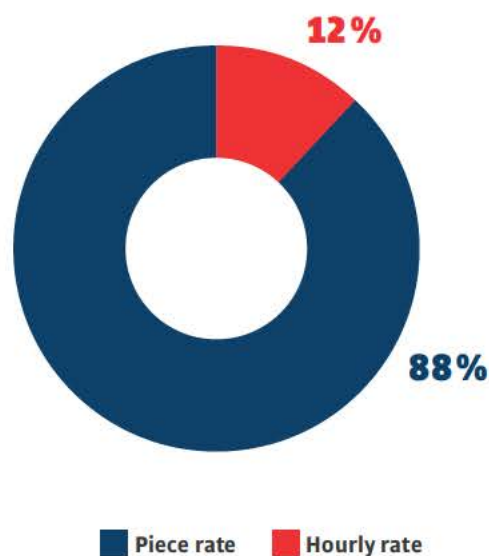
Unions NSW's audit confirms the levels of exploitation in the horticultural industry reported in academic research remains unchanged, despite farm sector's claims of labour shortages.

Payment arrangements such as piece rates were conceived to encourage and reward greater productivity in the industry, however this audit reveals that employers systematically misuse piece rates to underpay horticultural workers. 96% of the piece rates reviewed would not allow a worker to receive the national hourly minimum wage of \$19.84 per hour (Figure 5).

The percentage of ads offering hourly rates below the minimum wage are likely to be higher if comparing the advertised rate with the \$24.80 and \$24.73 award wage for casuals established in the Horticulture Industry and Wine Awards, respectively.

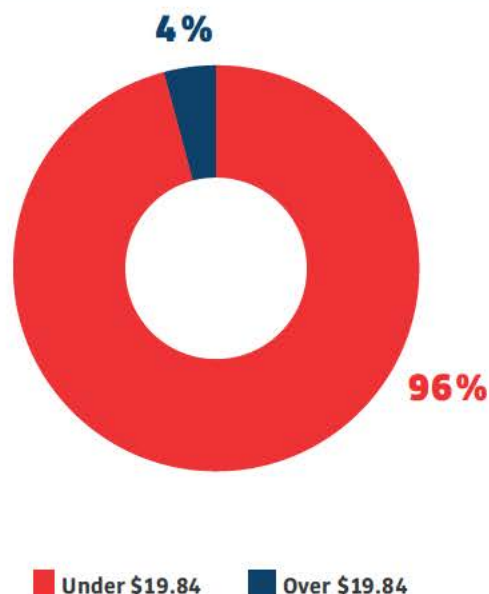
The Horticulture and Wine modern awards state that piece rates must enable an average competent employee to earn 15% or 20% more than the award hourly rate, respectively. However, to assess the

Figure 4. Percentage of ads advertising a piecework rate



'average competent employee' is not an easy task, as there is no clear standard for the industry or its subsectors regarding the performance expected from the average competent employee. Assessment can lead to different outcomes, depending on the employee's level of experience on a specific farm, stability of the workforce, crop type, terrain conditions and the size of the enterprise, among others. Furthermore, even farms with the same crop and location may have a different standard for 'average competent employee'.

Figure 5. Percentage of job ads advertising piece rate positions below the minimum wage

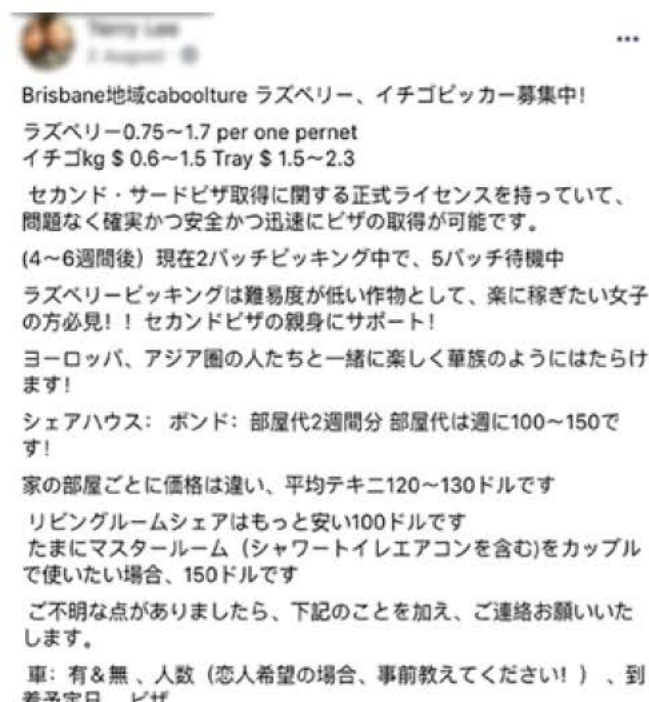


Temporary migrants under the Working Holiday Makers Program (WHMs) undertake the majority of the work in the horticulture sector and most do not have previous experience in the industry. Their level of training is limited to a period of 88 days or six month period, which is the length of farm work required under their visa to gain a second or third year in Australia. During their farm work period, most report little improvement in their wages and under the piece rate work system, are unable to ensure a minimum wage.

Average earned hourly rate

Between December 2019 and early September 2020, Unions NSW researchers interviewed over 100 horticultural workers, enquiring as to the average hourly rate earned per eight hour workday. Information on over 17 crops was collected and grouped per crop. The average and lowest hourly rates earned were able to be identified, and none met the minimum legal wage. The lowest hourly rates earned by workers were in \$1.25 for blueberries, followed by \$4.10 for peaches, \$4.80 for strawberries and \$4.90 for grapes (Figure 7).

Figure 6. Example ad advertising a piecework rate



Brisbane地域caboolture ラズベリー、イチゴピッカー募集中!

ラズベリー0.75~1.7 per one pernet
イチゴkg \$ 0.6~1.5 Tray \$ 1.5~2.3

セカンド・サードビザ取得に関する正式ライセンスを持っていて、問題なく確実かつ安全かつ迅速にビザの取得が可能です。

(4~6週間後) 現在2パッチピッキング中で、5パッチ待機中

ラズベリーピッキングは難易度が低い作物として、楽に移ぎたい女子の方必見!! セカンドビザの親身にサポート!

ヨーロッパ、アジア圏の人たちと一緒に楽しく華族のようにはたらけます!

シェアハウス: ボンド: 部屋代2週間分 部屋代は週に100~150です!

家の部屋ごとに価格は違い、平均テキニ120~130ドルです

リビングルームシェアはもっと安い100ドルです

たまにマスタールーム (シャワートイレエアコンを含む)をカッブルで使いたい場合、150ドルです

ご不明な点がありましたら、下記のことを加え、ご連絡お願いいたします。

車: 有&無、人数 (恋人希望の場合、事前教えてください!)、到着予定日 レザ

Figure 7. Piece rate focus groups findings

CROP	LOWEST HOURLY RATE	AVERAGE HOURLY RATE	LOWEST NUMBER OF KG PICKED PER HOUR
Blueberries	\$1.25	\$15	0.75
Blackberry	\$7.81	\$15	0.45
Raspberry	\$6.30	\$15.52	0.5
Cherry	\$6.25	\$16	2.7
Strawberry	\$4.80	\$14	1.42
Apple	\$7.30	\$16	30
Dragon fruit	\$9.90	\$12.20	5.71
Pear	\$10	\$11	5
Peach	\$4.10	\$14.37	15
Avocado	\$6.36	\$13	50
Mango	\$14	\$17	25
Grape	\$4.90	\$12	2.5
Capsicum	\$8	\$17	10
Eggplant	\$15	\$19	100
Onion	\$18	\$19	51
Tomato	\$8	\$17	-
Zucchini	\$9	\$16	60

CASE STUDY: HELEI

Helei is a 30-year-old working holiday visa holder from Taiwan. She worked on the Robinvale grape farm in Victoria from March 2020 until June 2020 under a piece rate agreement, to fulfil her 88 day farm work requirement. When she started to pick grapes, she earned about \$40 a day for 8 hrs work, and was required to pay \$100 per week to her employer for rent. After several weeks, her speed increased and she was able to pick around 200 kg/day, which earned her an extra \$10 a day (\$50/day in total).

Helei summarised the breakdown of pickers daily income on her farm:

- 20% earned less than \$30 per day
- 25% earned \$31 - \$50 per day
- 25% earned \$51 - \$100 per day
- 30% earns more than \$100 per day

Helei considered it very unlikely that a working holiday maker could earn \$100 a day, with just 88 days of experience.

Figure 8. Example piece rate agreement

Piecework Agreement

Agreement between: _____ (Employer) and _____ (Employee)

The Employer and the Employee agree to enter into this Piecework Agreement (Agreement) under clause 15 (piecework rates) of the *Harvesting Award 2010 (MA000000)* (Award). The Employer and Employee mutually agree as follows:

1. The work to be performed under this Agreement is as described in **Schedule A**.
2. The minimum piecework rate/s which must be paid by employer to the Employee for performing the Work is as specified in **Schedule A** to the Agreement.
3. The piecework rate/s fixed by this agreement enables the average competent Employee to earn at least 12% more per hour than the minimum hourly rate prescribed in the Award for the type of employment and the classification level of the employee.
4. The piece work rate/s in this Agreement must be paid for all work performed in accordance with this Agreement and will be paid instead if the hourly or weekly wages specified in clause 14 of the Award. The calculation of piecework rates for casual employees will include the prescribed casual loading.
5. The piecework rate/s in this Agreement will be reviewed in light of any changes in the Award rate, or in the nature of the work, or the conditions under which it is performed. This ensures that the minimum requirements set out in clause 15 of the Award continue to be met.
6. The Employee's earning will depend on their productivity. This Agreement does not guarantee that the Employee will earn at least the minimum ordinary time weekly or hourly wage in the Award for the type of employment and the classification level of the Employee or the National Minimum wage.
7. The Employer and Employee will each keep a copy of this Agreement.
8. The Employee is employed as a casual employee.
9. The date this agreement starts is 22/4/2019.

Employer signature: _____ Employee signature: _____

Print name: _____ Print name: _____

date: 22/4/2019 date: _____

CONTRACT RATE : SCHEDULE A

Piece work rates:
Starting date: _____
Property name: _____
Property address: _____

Piece work rate 1:	Piece work rate 2:	Piece work rate 3:	Piece work rate 4:
STRAWBERRY	STRAWBERRY	STRAWBERRY	STRAWBERRY
Planting Strawberry plants	PICKING Green Tree Normal Pickings	Grooming Strawberry plants	FLAT PACK
\$35 per 1000 plants	\$250 per 300	\$40 per 1000 plants	\$0.15 Per Parcel

Piece work rate 5:	Piece work rate 6:	Piece work rate 7:
STRAWBERRY	STRAWBERRY	
SQUARE PACK	SECOND PACK	
\$0.17 per Parcel	\$0.17 Per Parcel	

MINIMUM SET WAGE RATES

Important notes

- The rate for an average competent pieceworker may change from day-to-day depending upon variables like weather conditions, ripening process, type of bin, type of picking (e.g. selective or stripping), size of trees/plants, density of trees/plants. These variables need to be factored into a piecework agreement.
- If the piece work rate/s is varied, it must be agreed with the Employee, put in writing and signed by the Employer and the Employee.
- The Employer must give the employee a copy of the piecework agreement and keep it with their time and wages records.
- The following clauses of the Award do not apply to an employee on a piecework rate:
 - (a) Clause 22 - Ordinary hours of work and rostering;
 - (b) Clause 24 - Overtime and;
 - (c) Clause 24.1 - Meal allowance.
- Any party can end this agreement at any time.

SANU HARVEST PTY LTD

A disaggregation of the piece rates advertised in the ads reviewed by Unions NSW per crop revealed in several crops, underpayment of less than \$2 an hour was not rare.

65%, 22% and 5% of the job ads for strawberry, grape and raspberry picking, respectively, would see a worker make under \$2 an hour.

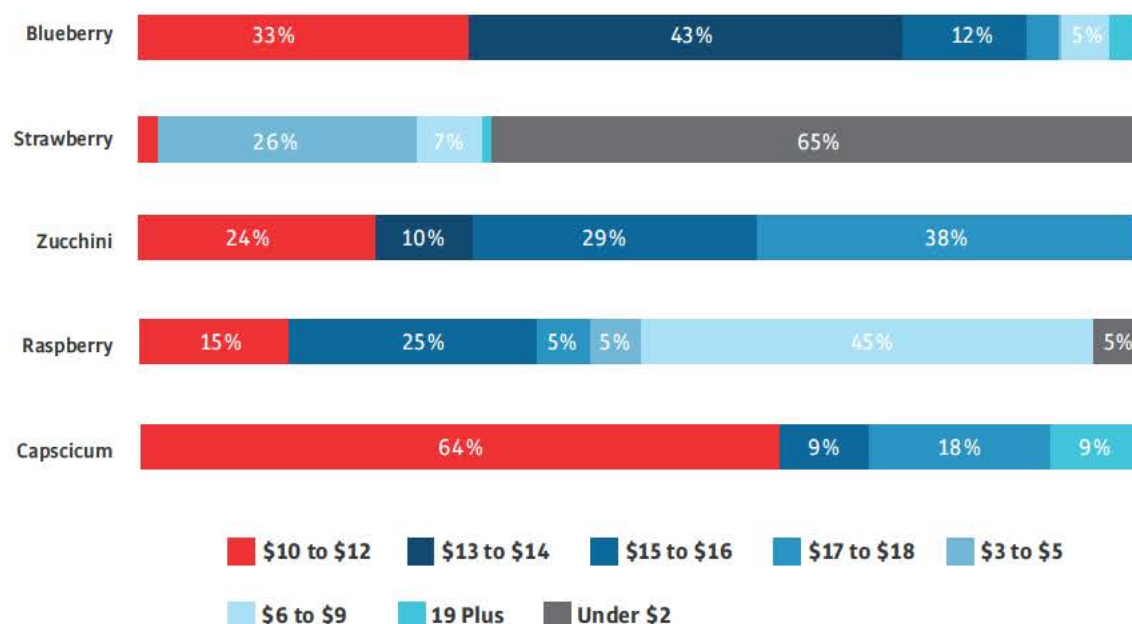
33%, 64%, 24% and 15% of the ads for blueberry, capsicum, zucchini and raspberry, respectively would see a worker earn \$10 to \$12 an hour.

43% of the ads for blueberry picking and 10% of those for zucchini picking would allow a worker to earn \$13 to \$14 an hour. 25% of the ads for raspberry and 29% of those for zucchini picking would see a worker earn \$ 15 to \$16 an hour.

Figure 9. Example of payslip - average competent employee

PAYSIP			
EMPLOYEE NO.		2	
PAY PERIOD		29.08.2019~04.09.2019	
Pay Date		12. Sep 2019	
EMPLOYEE NAME		[REDACTED]	
Passport name		[REDACTED]	
JOB CLASSIFICATION		Fruit Picker	
DESCRIPTION	Rate per unit	Unit	Amount
Hourly	24.36	0.00	0.00
29/8	1.52	110.00	167.20
30/8	1.51	83.00	125.33
1/9	1.50	108.00	162.00
2/9	1.49	130.00	193.70
4/9	1.47	105.00	154.35
30/8 Hand	2.80	0.00	0.00
2/9 Hand	2.23	0.00	0.00
Gross			802.58
Tax			120.39
Net pay			682.19
Deduction - Accom	0.00	1.00	0.00
Net pay			682.19
Gross YTD			7147.96
Tax YTD			1072.19
NET YTD			6075.77
If you have any enquiry or problem		Format	
Please leave a text message as this format.		worker num. name	
		problem or enquiry	

Figure 10. Piece rate ranges per crop



Piece rates per location

As shown in Figure 11, the lowest piece rates were identified in Bundaberg, with 80% of the jobs advertising a rate that would see a worker earn less than \$2 an hour. This is consistent with media reports suggesting high levels of exploitation across the area.

Similarly, 78% of the ads advertising jobs in Caboolture and Beerwah would allow a worker only to make under \$2 an hour. Additionally, 71% of Banksia Grove job ads offered rates that would see a worker earn less than \$2 an hour.

Figure 11. Piece rate ranges per location

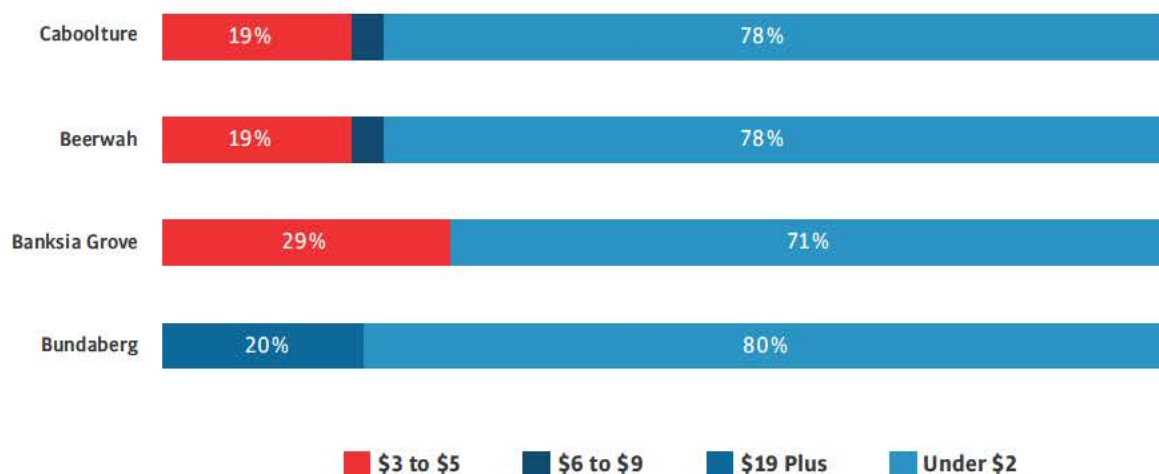


Figure 12. Lowest piece rates per location

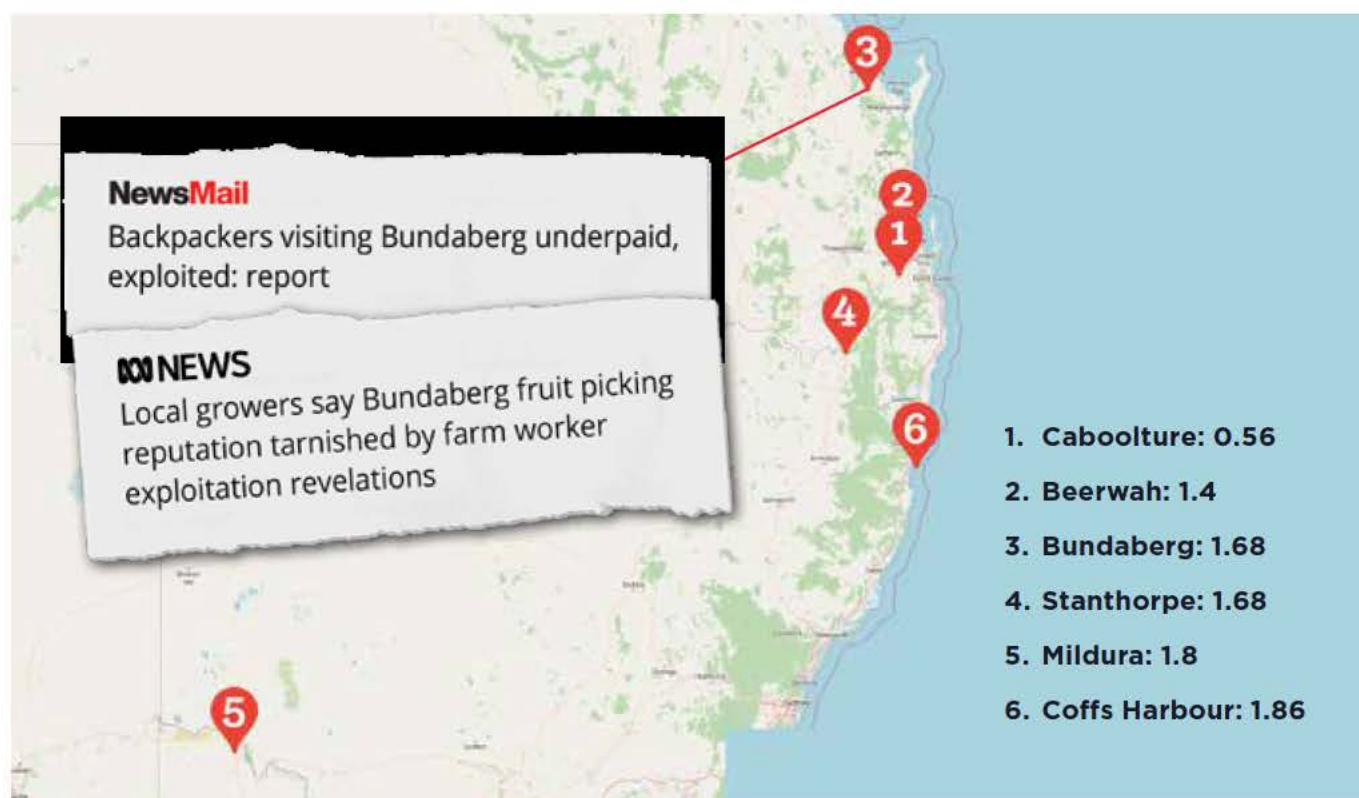


Figure 13. Temporary migrant warning about exploitative piece rate in strawberry picking

WARNING! Stay away from A&A Berries in Beerwah, Queensland. It's strawberry picking so you can probably understand why...

- Piece rate sometimes less than \$1.30 a kg, a tray is about 2kg
- You have to pay \$150 upfront and then a \$200 bond on top of that for a shit room
- Work even when it's raining which makes it impossible to push the trolley. You still get told to sit down and try to push it though...honestly it's so hard just to get the trolley moving through the mud never mind focusing on picking forget that
- As it's piece rate you don't get paid for the 20 minutes it can take to weigh your strawberries or anything else I'm between picking
- Sometimes there is barely any strawberries on the row you get told to pick
- Can speak for all houseshares but when I first got there I was expected to sleep on a mattress that had blood on it & without a duvet
- The supervisors threaten you, I've attached screenshots
- The supervisors call everyone for a 10 min "meeting" to waste time. They get paid by the hour. So if everyone is working fast, they'll call everyone over and repeat the same things "don't pick green" "remember to pick rubbish" "don't miss any"
- There's obviously many more reasons why you shouldn't do strawberry picking or work for A&A berries especially but I can't be bothered to list them all. I wouldn't recommend working for them at all EVEN if you only need your 88 days and no money.

CASE STUDY: ELLEN

Ellen is a 26-year-old working holiday visa holder from Taiwan. She worked for a month on a cherry farm in Cobram, earning \$8 to \$9 an hour, for picking 30 kg a day. She stressed the salary was not enough to allow her to pay her living expenses, and was disappointed she could not earn close to the \$1000 a week, which the Facebook job ad suggested.

Underpayment piece rate vs ads language

As mentioned previously, the majority of reviewed ads were written in English (59%), following by Japanese (20%), Chinese (11%) and Korean (10%). See, Figure 5. However, the analysis does not suggest piece rates were substantially lower in ads written in languages other than English. 100% of the ads in Chinese advertised piece rates that would not allow a worker to earn the national minimum wage, as did 98% in Japanese, 96% in English and 88% in Korean.



Figure 14. Underpayment piece rate per language



CASE STUDY: NADIA

Nadia Wang was a working holiday maker from Taiwan, who worked throughout December 2019 and January 2020 picking strawberries.

She indicated that she had been badly exploited by the foremen, who were contracted by the farm owners. She was forced to work during harsh weather, including rainy days, and was threatened with their payslips being withheld if they complained about the poor working conditions. She remained silent and endured so she could apply for her second year visa.

She also reported the pickers did not have a toilet in their workplace and were not given time to drink water.

70% of the pickers in her workplace were making less than \$10 an hour and more than half were working to fulfil their 88 days farm work requirement.

Nadia believed the piece rate is problematic because in reality, the amount workers can earn is not dependent upon how skilful or experienced they are.

The income of pickers depends on numerous factors, such as the weather, management of the farm and the density of fruit on the terrain. "Piece rate work is unable to ensure that workers are paid the minimum legal wage."

Migrant workers views on piece rates

“

Piece rates are a form of abuse. We don't earn much, and farmers should be forced to pay a minimal hourly wage. They could provide incentives to make us work more, but we should all be paid a minimum wage.

“

Please be fair to all humans in Australia, no matter which country they're from! Please set clear rules for paying hourly rates for all pickers! No more piece rates! No more grey areas, which allow dodgy contractors to do the wrong thing! Please do the hiring directly and don't try to hire 'contractors' in order to avoid paying taxes!

“

Lots of blueberry farms in Coffs Harbor pay low piece rates. Plus, the fruit is sparse and they hire lots of people. They also post very misleading advertisements on every Facebook job seeking group.

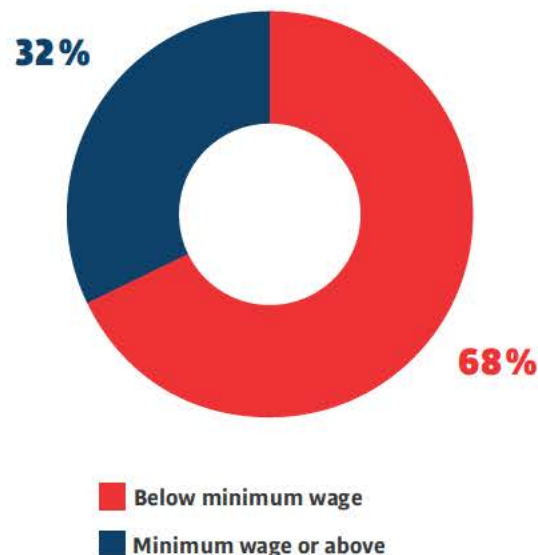
Underpayment ads offering hourly rate

Only 12% of the ads reviewed offered an hourly rate, with the average offered being \$18.53. This is below the national minimum wage of \$19.84. The level of underpayment in the hourly rate ads is likely to be higher if compare with the relevant casual award rates of \$24.80 and \$24.73 for the Horticulture and Wine Industries, respectively.

These comparisons do not account for the required unpaid overtime reported by some workers due to weather conditions.

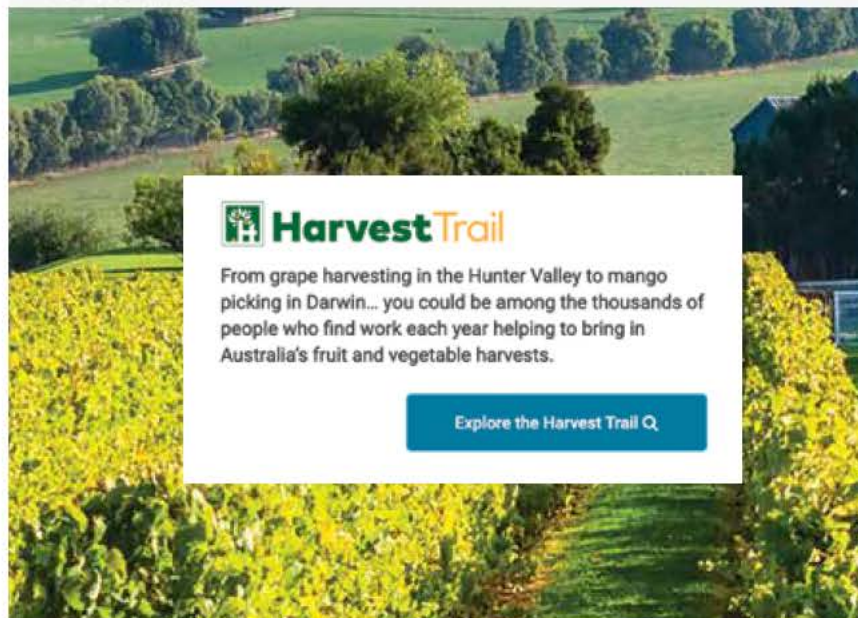
In almost 70 percent of ads offering an hourly rate, the wage was below the National Minimum Wage.

Figure 15. Percentage of underpayment - ads offering an hourly rate



jobactive
powered by JobSearch

Home / Harvest Trail



CASE STUDY: CATALINA

Catalina applied for a picker job through the Harvest Trail. It wasn't until the end of her first day that she was told she would only earn \$15 per hour. When Catalina told the contractor that it was illegal, he threatened to not provide payslips or payment at all. The accommodation provided by the employer had no bathrooms or showers.

Figure 16. Examples of ads offering hourly rates below the minimum wage



澳盛集团 顶级培训, 专业保驾护航

Job Offers

City: Springvale 3171, Melbourne
Specific position: Technician/worker/apprentice cutting grapes
Company Name: Cut grapes
Nature of the work: Unlimited
Visa status: Unlimited
Experience requirements: Not needed
Number of recruits: 5-people
Superannuation: no
annual leave: no
Wages: Hourly Wage \$15 or less
Contact: [redacted]
phone: [redacted]
WeChat: [redacted]
Live in springvale/clayton for convenient pick-up

Job Offers

City:	Rochester, Melbourne	Specific position:	Packer
Company Name:		Nature of the work:	full time
Visa status:	Unlimited	Experience requirements:	Not needed
Academic requirements:		Number of recruits:	3 people
Superannuation:		Annual leave:	
Wages:	Hourly rates under \$15	age requirement:	Unlimited
Contact:	[redacted]	mailbox:	
phone:	[redacted]	WeChat:	[redacted]
QQ:			

[Recruitment] Fruit packaging plant recruitment

Other forms of exploitation

Accommodation

Due to the lack of regulation of secondary services, the bundling of wages to secondary expenses such as food, transport and accommodation are common practice across the industry.⁵ These arrangements do not give the worker the option to choose more suitable or affordable options to cover these services. Migrant workers are often left with high fixed costs, which obligate them to remain in those jobs to be able to pay for the secondary services.

Figure 17. Example of accommodation provided charging \$165 per person weekly

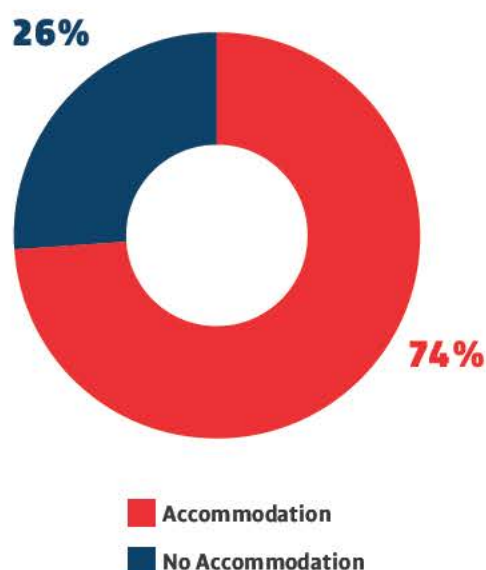


Other common practices identified during the round of interviews of workers conducted by Unions NSW include:

- requesting the employee to take the employer's choice of accommodation as a condition to receiving the job;
- contracts requiring disproportionate upfront payments of bonds and rent;
- accommodation that does not comply with tenancy and safety laws; and
- misrepresentation of accommodation quality and their rates.

Unions NSW audit found 74% of the ads included a fixed cost for accommodation provided by the employer. These ads did not give employees the option to make separate arrangements.

Figure 18. Ads offering accommodation



CASE STUDY: HUN

Hun worked on a strawberry farm and was forced to stay in the accommodation provided by the employer. The house was overcrowded, with 8 people having to share 1 kitchen and 1 bathroom. Each person had to pay \$165 for the accommodation, although only earned around \$100 a week for the first 7-8 weeks. Essentially, during this period, she paid the employer for the opportunity to work on their farm. When the busier season started, she never made more than \$400 a week. Whenever they questioned anything to do with pay or expenses, the owners became very vulgar and basically said, 'if you don't like it, fuck off'.

Sexual harassment

Unions NSW audit confirms academic research and media stories of sexual harassment perpetrated by employers.⁶ The audit observed a proliferation of Facebook posts created by migrant workers to provide mutual support and warn others about events of abuse. These social media posts uncover a lack of processes that are both appropriate and safe for temporary migrant workers to report sexual harassment and other forms of abuse. Migrant workers in remote areas are constantly seeking help, although confused about the correct avenues and available assistance. There are also reports of local authorities in regional and remote areas not dealing with complaints of sexual assault or harassment (Figure 19).

Impact of COVID-19

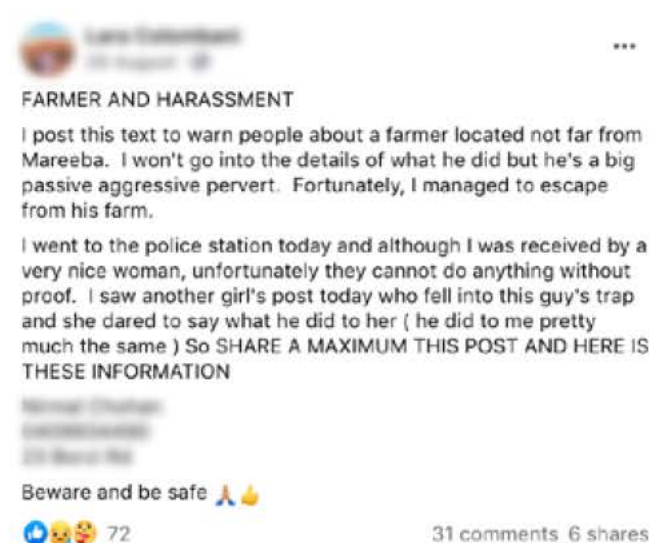
Temporary migrant workers have been severely affected by COVID-19 and government related responses. They have not received any form of financial support during the crisis with many suffering severe financial hardship.

A large-scale survey of over 5,000 respondents conducted by Unions NSW between late March and mid-May 2020, indicated that working holidays visa holders were one of the demographics most impacted by job losses in the early stages of lock down. Close to 70% of farm workers surveyed reported to have lost their jobs during the crisis.⁷ A reduction in the number of hours also impacted 13 percent of farm workers.⁸

Facing government restrictions and difficulties maintaining a source of income to meet their basic needs, a considerable number of working holiday makers left the country. The Department of Home Affairs estimated that around 28 percent of working holiday makers have left Australia between March and June 2020.⁹

This finding is consistent with media reports between late March and April, exposing the mobilisation of backpackers to rural Australia in search of farm work due to the collapse of hospitality jobs in cities.¹⁰ While farmers also had to cope with the security restrictions that prevented them from offering jobs to already displaced backpackers, the latter had to face the imminence of homelessness and inability to meet their most

Figure 19. Temporary migrant reporting sexual harassment



basic needs. Ultimately, the difficult situation faced by backpackers force them to depart Australia, a decision that contributed to the horticulture industry's struggle to find a labour force for the 2020-21 fruit and vegetable season.

Despite Australia depending on this labour to sustain economic growth, temporary migrants were denied financial support during the COVID-19 crisis. This is a government policy which has directly impacted labour sources in regional and rural areas.

Furthermore, despite the claimed labour shortages, new forms of exploitation have been incentivised by the government's lack of support for working holiday makers. Unions NSW audit identified a proliferation of social media forum ads offering work for accommodation and food only (Figure 20).

Hundreds of social media groups were created in every state to control homelessness and labour shortages through the move from systematic underpayment to unpaid work. This finding is consistent with an academic survey conducted by the University of New South Wales (UNSW) and the University of Technology Sydney (UTS) on the impact of COVID-19 on temporary migrants,¹¹ in which 29% of backpackers reported since 1 March, they had performed work in return for food and housing rather than wages.

Figure 20. Example of a backpacker group offering work for accommodation



Discrimination

Unions NSW audit also found an increase in the number of backpackers reporting through social media channels they had been the victim of workplace discrimination. Hundreds of Facebook posts reported abusive language and mistreatment by their employer based on their nationality. This finding is consistent with the UTS and UNSW survey finding that 1,600 of the 5,000 surveyed respondents had experienced racist 'verbal harassment, physical abuse or being shunned in public spaces, workplaces and housing.'¹²



Figure 21. Facebook post, working holiday maker reporting discrimination



104

14 comments

Recommendations

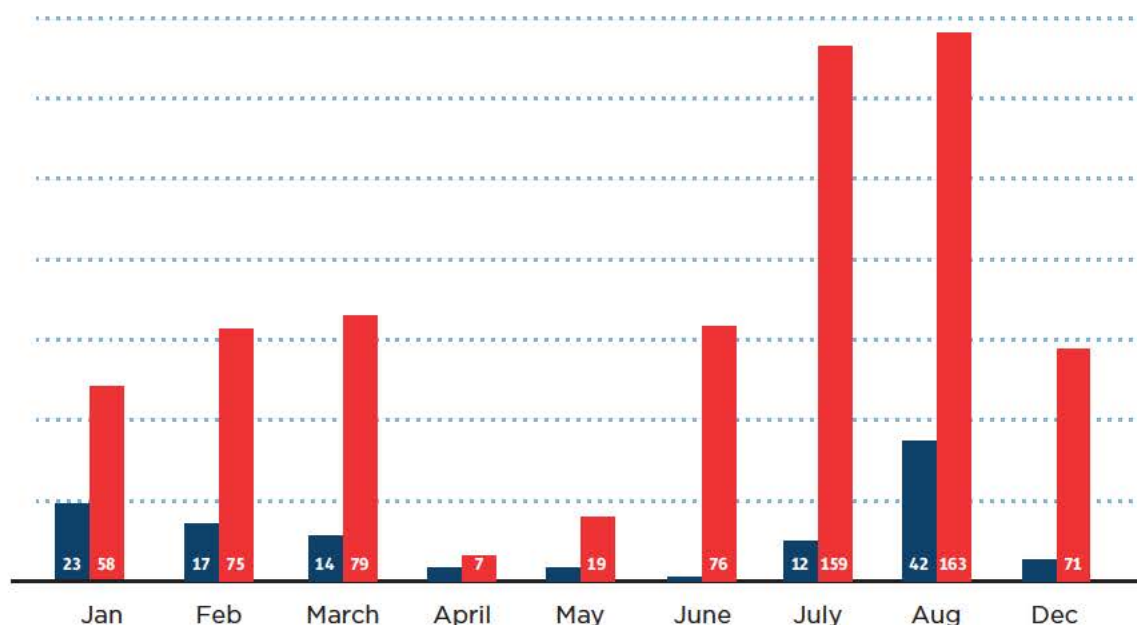
Piecework rate abolishment

The government's recent policy changes are focused on addressing claimed labour shortages in regional areas.¹³ The new measures concentrate on diversifying the regional workforce allowing international students to work more than 20 hours if performing farm work and giving junior workers receiving youth allowance incentives to work on farms. However, the experiences of young workers reveal the policy focus should be about combating labour exploitation, poor working conditions and wage theft from dominating the Australian horticulture industry. Young Australians who undertook the experience to do farm work stated it was impossible to make over \$1,000 a week and characterised the job as physically demanding, with health and safety risks.¹⁴ Many reported that hostel costs were higher than the wages earned under the piece rate agreement.

The Horticulture and Wine Industry awards should be amended to abolish piece rates. Unions NSW's audit, academic research and media coverage have provided compelling evidence to demonstrate that despite the claimed piece rate benefits to incentivise higher productivity, instances of employees working under piece rates earning 15% or 20% more than the relevant hourly award rate are less than rare.

Research has consistently shown over the years that piece rate agreements are systematically misused to pay workers below the minimum wage. The employees' preference to earn an hourly rate is evidenced in Unions NSW audit which showed an increase in the number of ads offering an hourly rate during August, a month in which there was an increase in the number of positions advertised, suggesting a higher demand for workers (Figure 22).

Figure 22. Number of ads offering an hourly rate per month vs number of ads per month



Recommendations

Visa reform

The exploitation of workers and wage theft in the horticulture sector is a significant policy and rights issue. Temporary migrants under the working holiday maker program undertake most of the work in the horticulture sector, whilst being a very vulnerable group subject to abusive employment practices and poor and unsafe working conditions.¹⁵

The requirement for working holiday makers to undertake 88 days of regional work to receive a second-year visa or 6-months to attain a third-year visa intensifies the employer's power and the vulnerability of temporary migrant workers, who are afraid to report exploitation for concern of a negative impact on their visa.

The Fair Work Ombudsman inquiry into the 417 Working Holiday Visa Program acknowledged the 88-day requirement has facilitated the extensive exploitation of workers highly dependent on employers to comply with their visa conditions.

The requirement has facilitated workers to work for less than the minimum wage and increased the exposure of migrant workers to unsafe situations. Extremely long working hours, hazardous work environments, discrimination, sexual harassment and other criminal offences are a frequent occurrence in regional worksites.

The conditioning of a migratory status to the performance of work through second- and third-year visa extensions makes employees in the horticulture industry targets for exploitation from contractors and recruitment agents.¹⁶ Visa extensions without proper and regular oversight and monitoring of working conditions will favour and perpetuate non-compliance of labour standards and workplace regulations in this industry. The requirement for working holiday makers to undertake farm work to extend their time in Australia should be abolished in its current form.



Conclusions

Unions NSW audit confirms the systematic exploitation of workers in the horticultural industry aided by the piece rate system. Despite arguments piece rates encourage higher productivity, research consistently shows employers' preference for piece rates, to systematically pay workers below the minimum wage. The government has mistakenly focused on diversifying the regional workforce to ensure labour supply for horticultural businesses. However, the focus should be shifted to addressing poor working conditions and wage theft. Any other measures will be ineffective at attracting a workforce towards an industry with a reputation for underpayment and exploitation. Piece rates should be replaced by a minimum hourly wage for horticultural workers.

Temporary migrants on working holiday maker visas perform the majority of work in the horticultural industry and are especially susceptible to poor employment conditions, underpayment and abusive practices from employers. Most are afraid of negative impacts upon their visa if they report exploitation. The requirement for working holiday makers to perform farm work to gain a second or third year visa extension should be abolished to ensure that migrant workers can enforce their rights.



Endnotes

1. Fair Work Ombudsman, Horticulture Showcase, accessed 5 October 2020 <https://www.fairwork.gov.au/horticulture-showcase/pay-piecework-rates#pay-rates>.
2. Edward Cavanough and Connor Wherrett, 'Wage theft and other labour infringements in the NSW Mid-North Coast's berry harvest', The Mckell Institute, 2019/20.
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10. Brad Thompson, David Marin-Guzman and Elouise Fowler, Farmers swamped by displaced backpackers wanting work, Financial Review (24 March 2020) accessed 6 October 2020.
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12. Laurie Berg and Bassina Farbenblum, 'As if We Weren't Humans: The Abandonment of Temporary Migrants in Australia during COVID-19' (October 11, 2020).
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14. <https://www.abc.net.au/news/2021-01-14/when-backpackers-went-home-these-australians-tried-farm-work/13047062>
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ANNEXURE F

Working for \$9 a day

WAGE THEFT & HUMAN RIGHTS ABUSES ON AUSTRALIAN FARMS



A JOINT STUDY FROM UNIONS NSW
AND THE MIGRANT WORKERS CENTRE



About Migrant Workers Centre

The Migrant Workers Centre (MWC) is a non-profit organisation open to any workers in Victoria who are born overseas. The MWC assists and empowers workers from emerging communities to seek long-term solutions to migrant worker exploitation. The centre organises workshops, conducts research, develops policy recommendations, and bridges language barriers that limit workers' access to information.

About Unions NSW

Unions NSW is the peak body for trade unions and union members in New South Wales, with 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW aims to create a fairer and just society and actively campaigns to improve workplace pay and conditions for all workers in New South Wales, regardless of their linguistic or cultural background.

In 2019, Unions NSW, in partnership with the Immigration Advice and Rights Centre (IARC), created Visa Assist, a non-for-profit service which provides free immigration advice and legal support to migrant workers in New South Wales who are union members. Campaigns led by Unions NSW under the Visa Assist umbrella have engaged over 20,000 migrant workers. The Visa Assist program has also provided over 500 legal services since its creation a year ago.

Acknowledgements

The Migrant Workers Centre (MWC) and Unions NSW respectfully acknowledge Australia's Aboriginal and Torres Strait Islander community and their rich culture and respect their Elders' past and present. We acknowledge Aboriginal and Torres Strait Islander peoples as Australia's first peoples and as the Traditional Owners and custodians of the land and water we rely on.

We recognise and value the ongoing contribution of Aboriginal and Torres Strait Islander people and communities to Australian life and how this enriches us. We embrace the spirit of reconciliation, working towards the equality of outcomes and ensuring an equal voice.

We also acknowledge and respect the Traditional Owners of lands across Australia, their Elders, Ancestors, cultures, and heritage, and recognise the continuing sovereignties of all Aboriginal and Torres Strait Islander Nations.

EXECUTIVE SUMMARY

Labour is vital to the Australian horticulture industry. Seasonal variation and the transient nature of the work makes the farmworker population difficult to measure. It is estimated that approximately 142,000 people work in the horticulture industry. Fruit grape and nut farms employ around 104,000 workers and vegetable farms employ 38,000 workers. Over 40% of the workforce are on temporary visas, including Working Holiday and Seasonal Worker Program. The total number of temporary visa holders working in the sector ranged from 65,000 in February 2019 to 44,000 in October 2019. The demand for overseas workers is relatively high, particularly in remote areas.

Over the years, we have often heard that migrant workers are vulnerable to exploitation, particularly in the Australian farm sector. The high demands for labour during the harvest season have led to increased use of the temporary workforce. Since the mid-1990's, the Australian government has introduced temporary visa schemes to fulfil the workforce shortage. However, the demands-driven and employer-sponsored designed program inevitably gives employers too much power and puts too many roadblocks in front of workers trying to report any workplace misconduct. The Senate Standing Committee Inquiry (2016) also raised concerns that migrant workers may fear repercussions when relying on their employer to sign their visa application forms and ensuring they comply with their visa restrictions.

A significant amount of research , reports , and a number of parliamentary committees have been explicit about the widespread noncompliance with workplace laws and the poorly regulated labour market in the Australian horticultural sector. The vulnerability of temporary migrant workers arises from a series of overlapping mechanisms that contributes to their precarious status, including dependence on a third party for the right of residence, authority to work and social security network .

During the COVID pandemic in 2020, the Migrant Workers Centre (Victoria) and Unions NSW organised an online backpacker forum where people on temporary visas reported being stranded in Australia when country borders closed. The Australian government provided no social safety net support whatsoever.

During the forum, participants raised a range of issues including a lack of COVID safety measures, unsafe work practices and low wages connected with the piece rate system. The National Horticulture Industry Piece Rate Survey was conducted to build solid evidence on the working experience of horticultural workers, focusing on piece rate worker groups across a variety of crops, exploring their rates of pay, other entitlements and common grievances that occur during employment.

More than 1,300 workers completed the survey. 52% of the respondents were female and 44% were male, from 54 countries, across 6 regions. The survey results indicate that piecework pay is commonly applied in the Australian horticultural industry; up to 91% of survey participants had been paid by piece rate. The majority, 84%, of survey participants, were on temporary visas, with 89% being on a Working Holiday or Work and Holiday visa.

The Horticulture Award requires employers and employees to have genuinely agreed to piece rate work. Our survey evidence is that many employers fail to comply with this requirement; 63% of respondents were not given a choice between piece rates or being paid an hourly rate. 34% said they had never signed a piece rate agreement.

Piece rate workers' daily working hours are unpredictable, and this variability contributes to income instability and employment insecurity. On average, the maximum and minimum daily working hours shown are highly irregular; the maximum daily working hours across all crops was 20 and the minimum was 1.

The National Horticulture Industry Piece Rate Survey results demonstrate that wage theft is widespread within the horticulture industry and experienced under both payment systems, hourly rate and piece rate, although it was more severe amongst those being paid by piece rate. The survey results revealed that 78% of horticulture workers were underpaid.

Lastly, a significant proportion of survey respondents stated that they had experienced work-injuries, discrimination, bullying, sexual assault or harassment at work. Many had also experienced problems with exploitative transport arrangements and the overpriced, unsanitary and overcrowded nature of employer-provided accommodation.



KEY FINDINGS

An overwhelming majority of the survey respondents were victims of wage theft.

- 78% of the survey respondents were underpaid at some point when working in the horticulture industry.
- Survey respondents were more likely to experience wage theft when being paid a piecework rate. 80% of participants were underpaid when getting paid a piece rate, while 61% were underpaid when earning an hourly rate.
- Underpayment levels were severe. Piece rate workers reported, in some instances, earning less than \$1 an hour. 15% of piece rate workers indicated earnings between \$0 to \$7 an hour, 29% earned \$8 to \$11 an hour, 19% between \$12 to \$15 an hour and 16% earned \$16 to \$19 an hour. Only 11% were paid \$20 to \$23 an hour. Contrary to suggestions that the piece rates allow workers to earn above the minimum wage, only 2% reported earning \$26 or more an hour.
- The lowest daily wages were reported by piece rate workers employed on grape and zucchini farms, earning an average \$9 per day, followed by blueberry farm workers \$10 per day, melons \$18 per day, watermelons \$21 per day, tomatoes \$23 per day, and strawberries \$24 per day.



A significant number of workers in the horticulture industry have not only experienced wage theft but have been exposed to other insecure and unsafe working conditions that intensify the precariousness of their employment.

- 71% of survey participants were employed as casual employees.
- 63% of respondents were never given a choice between piece rate or hourly rate.
- 34% stated that they never signed a piece rate agreement.
- 12% of respondents reported having worked as many as 20 hours a day under piece rate at least once, while 25% of respondents reported having had shifts as short as 1 hour a day.
- Survey participants were given a multiple-choice question to identify the employment law issues they had experienced when working in the horticulture industry, if any. Of those who answered the question, 49% reported problems related to accommodation and transport, 26% reported issues relating to employer breaches in work health and safety laws and 35% stated grievances related to discrimination, harassment, and bullying.

RECOMMENDATIONS

Recommendation 1. The Fair Work Commission should amend Clause 15.2(i) of the Horticulture Award 2020 to guarantee that all workers in the horticulture sector are paid at least the applicable minimum wage, including any overtime rates that would be applicable even when engaged on piece-rate agreements.

Recommendation 2. The Fair Work Commission should remove clause 15.2 (e) of the Horticulture Award 2020, which currently removes for piece rate workers entitlements to ordinary hours of work and rostering arrangements, meal allowance, and overtime.

Recommendation 3. Introduce an enforcement program targeting backpackers' accommodation to combat widespread non-compliance with state and local government housing laws.

Recommendation 4. The federal government should provide workplace rights information in regional areas where the horticultural industry has a significant presence, funding trade unions and community legal centres to deliver information sessions on workplace rights regularly in community languages.

Recommendation 5. The federal government should strike out the restrictive and inequitable conditions that apply to various temporary visa schemes, which in practice prevent visa holders from exercising their workplace rights and fighting against discrimination and exploitation.

Recommendation 6. The federal government should introduce a sustainable temporary visa scheme that provides a pathway to permanent residency, to prevent visa holders entering an endless bureaucratic roundabout that is exposing them to visa status vulnerability.

Recommendation 7. The federal government should criminalise wage theft, including where employers have breached, falsified, or failed to apply payslip and record-keeping obligations in order avoid workers' entitlements, superannuation, and taxation obligations. The federal government must ensure all workers are well-protected and can exercise their workplace rights and be free from workplace discrimination.

Recommendation 8. The federal government should introduce a national labour-hire licensing scheme. This scheme should be based on the best practice of the existing models in Queensland and Victoria.

Recommendation 9. The federal government should expand the social safety net to cover all temporary migrant workers. Civil society organisations, including trade unions, migrant community organisations, and community legal centres, should be assisted with adequate funding to extend their services to migrant workers and meet their social, economic, and cultural needs.

Recommendation 10. The federal government should establish a migrant workers hub in regional areas where the horticultural industry has a significant presence, allowing migrant workers to seek assistance or make an enquiry about their workplace exploitation, harassment, or injury, which would enable them to access the national justice system.

1. INTRODUCTION

Horticulture workers are frequently subjected to exploitation. Migrant workers and temporary visa holders are one of the worker cohorts most likely to experience exploitation. We found many complaints where temporary visa holders were paid less than the Award minimum and subject to extremely long working hours. We also identified widespread exploitation in the horticulture industry, significantly within labour-hire and supply chain networks. Furthermore, workers are often reluctant to report employer misconduct for fear of jeopardising their visa status.

Workers earning a piece rate are struggling to earn a living wage. Many workers are forced to pay exorbitant prices for accommodation and transport provided by their employers. Such oppressive conditions are, at times, endured because of the need to meet requirements for a visa extension.

During the COVID-19 pandemic crisis, Australia's border shut, resulting in grower apprehension of workforce shortages during the harvest season. This report shows that with increased demand, improving industrial compliance is key to improving labour supply.

In June 2020, the Migrant Workers Centre (Victoria) and Unions NSW collaborated with several grassroots organisations to host an online backpackers forum. During the session, backpackers raised concerns over piece rate work. Workers reported a lack of information from the government about their work entitlements, leading them to make uninformed decisions when accepting piece rate work opportunities. They also described the many difficulties commonly experienced when making a complaint to the Fair Work Ombudsman or other organisations about workplace grievances and disputes. As a result, the Migrant Workers Centre (Victoria) and Unions NSW launched the National Horticulture Industry Piece Rate Survey in September 2020.

1.1 Methodology

The survey was conducted online and was open for responses from late September 2020 until late February 2021. The survey was distributed through Migrant Workers Centre and Unions NSW social media channels and to different migrant communities by email, online events, and social media platforms such as Line, Kakao Talk, WhatsApp, and Facebook. Researchers and volunteers from diverse linguistic and cultural backgrounds led the survey distribution to ensure participation from different demographics. The survey was presented in Chinese and English.

The survey examines workplace relations in the Australian horticulture industry, particularly piece rate arrangements. We adopted the quantitative survey research method and asked the participants to provide their contact details to follow up with in-depth interviews if they wished to share their personal experience in more detail. The report is structured along the following three main themes.

First, the participants were asked for their age, nationality, gender identity, current visa status, and whether they worked in the horticulture industry and the location of their work.

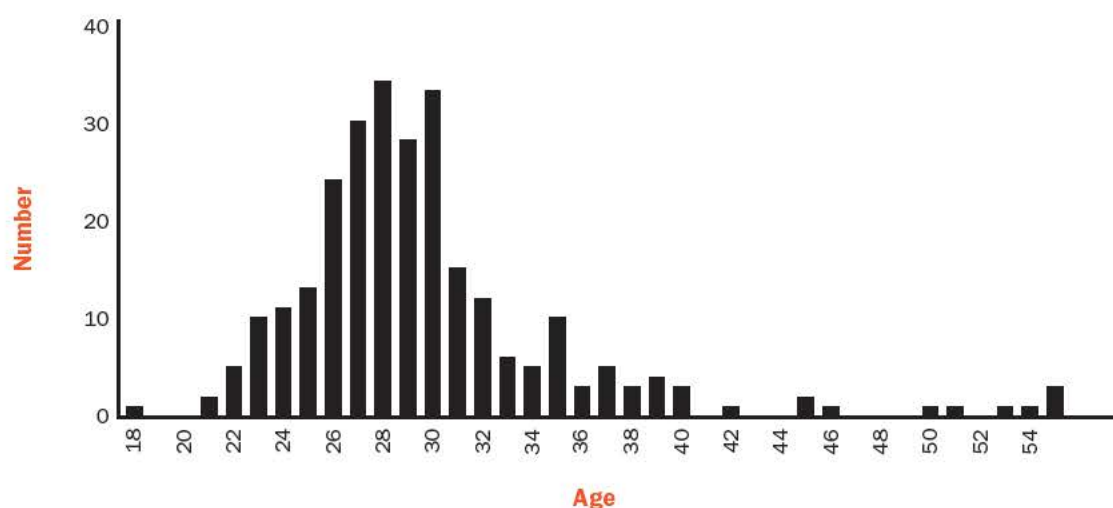
Second, the survey asked participants about piece rate agreements and other employment conditions. Then, we asked participants about their experience working with specific crops. Questions were focused on 34 crops that we identified in previous research as more commonly advertised through social media platforms and websites. Participants were asked what role they performed when working with specific crops, how their employer calculated the piece rate for the specific crop, the farm's name, and location.

Finally, participants were asked about their employment type and their wages more generally. Questions also explored other employer misconducts and grievances that respondents experienced during employment.

1.2 Participants demographic

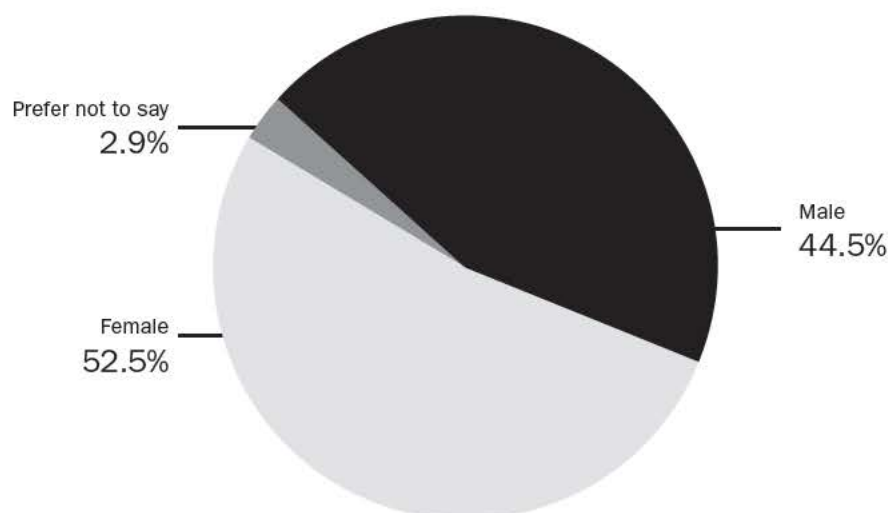
More than 1,300 people participated in the survey. 1,001 responded that they have been working on the Australian farm in the last two years. Our analysis focuses upon the responses of these 1,001 farm workers. Top three ages of respondents were: 28 years old, (12%), 30 years old, (12%) and 29 years old (11%).

Figure 1 : Age group



52% of the respondents were female and 44% male, with the remainder (3%) preferring not to say.

Picture 1: Gender

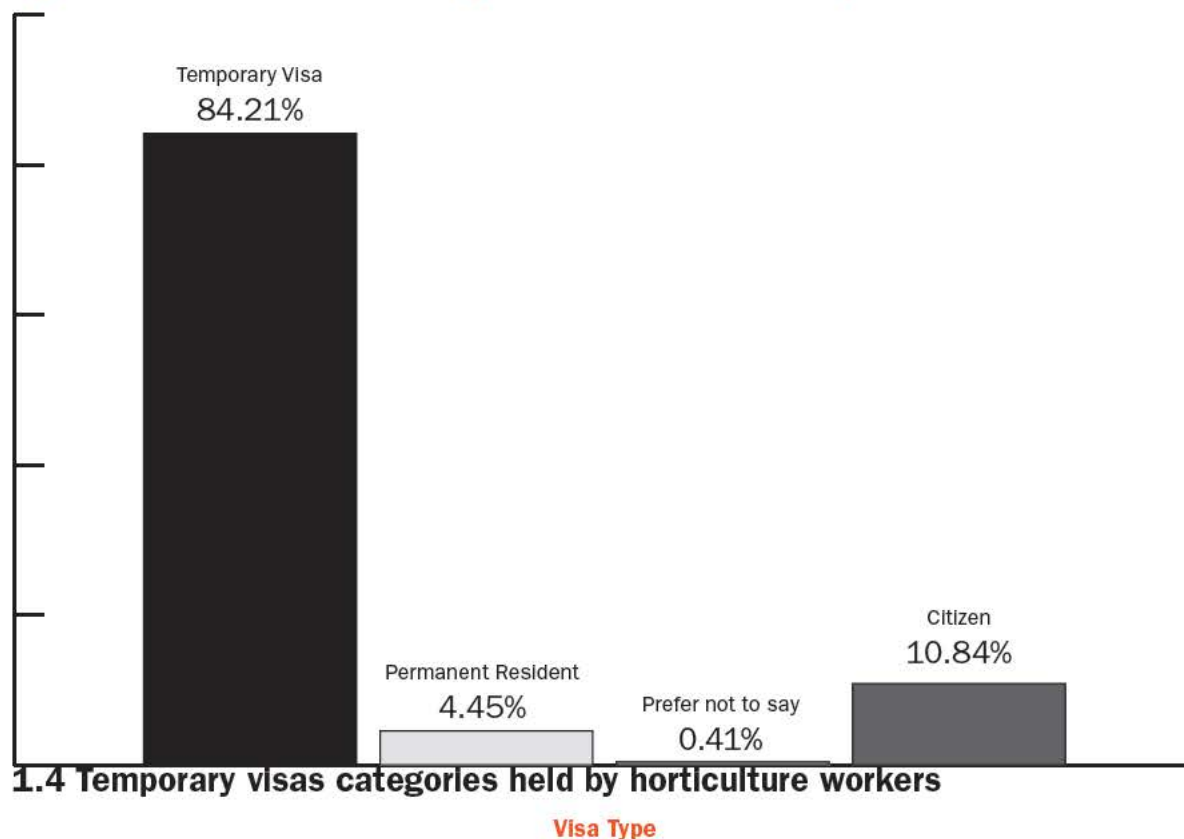


Participants were from 54 countries, across 6 regions. The top 5 most common places of origin were Taiwan (36%), Malaysia (6%), Chile (5%), Hong Kong (5%) and United Kingdom (5%). By the geographical region and Continent, 58% were from Asia, 19% from Europe, 8% from North America, 10% from South America and 3% from Oceania.

1.3 Visa status when working in the horticulture Industry

The majority of participants, 84%, were on a temporary visa. 11% were Australian citizens and 5% were permanent residents.

Figure 2: Visa status when working in the horticultural industry

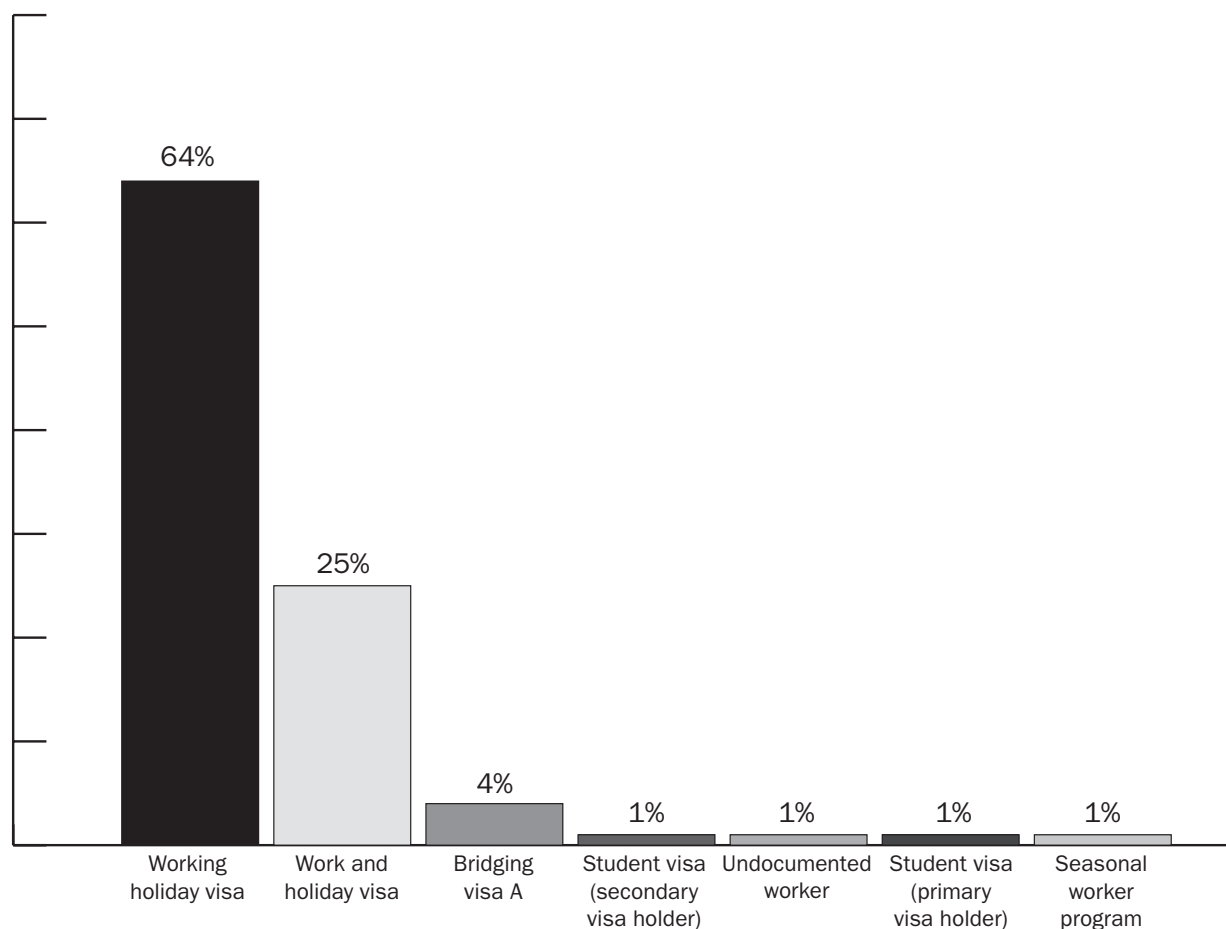


1.4 Temporary visas categories held by horticulture workers

There are seven major visa categories listed under immigration guidelines. From previous temporary migrant worker reports, FWO's annual report and our experience assisting workers in the industry, we have identified the following eleven temporary visa holder categories most likely to undertake farm work when in Australia.

64% of participants were on a Working Holiday visa, 25% were on a Work and Holiday visa, 4% were on a Bridging A visa, 1% were on a student visa, 1.4% were on a student dependent visa, and 1% were seasonal workers, with another 1% being undocumented workers.

Figure 3: Visa holder category working in the horticulture industry



1.5 Temporary visa category while working in the horticultural industry and current visa category

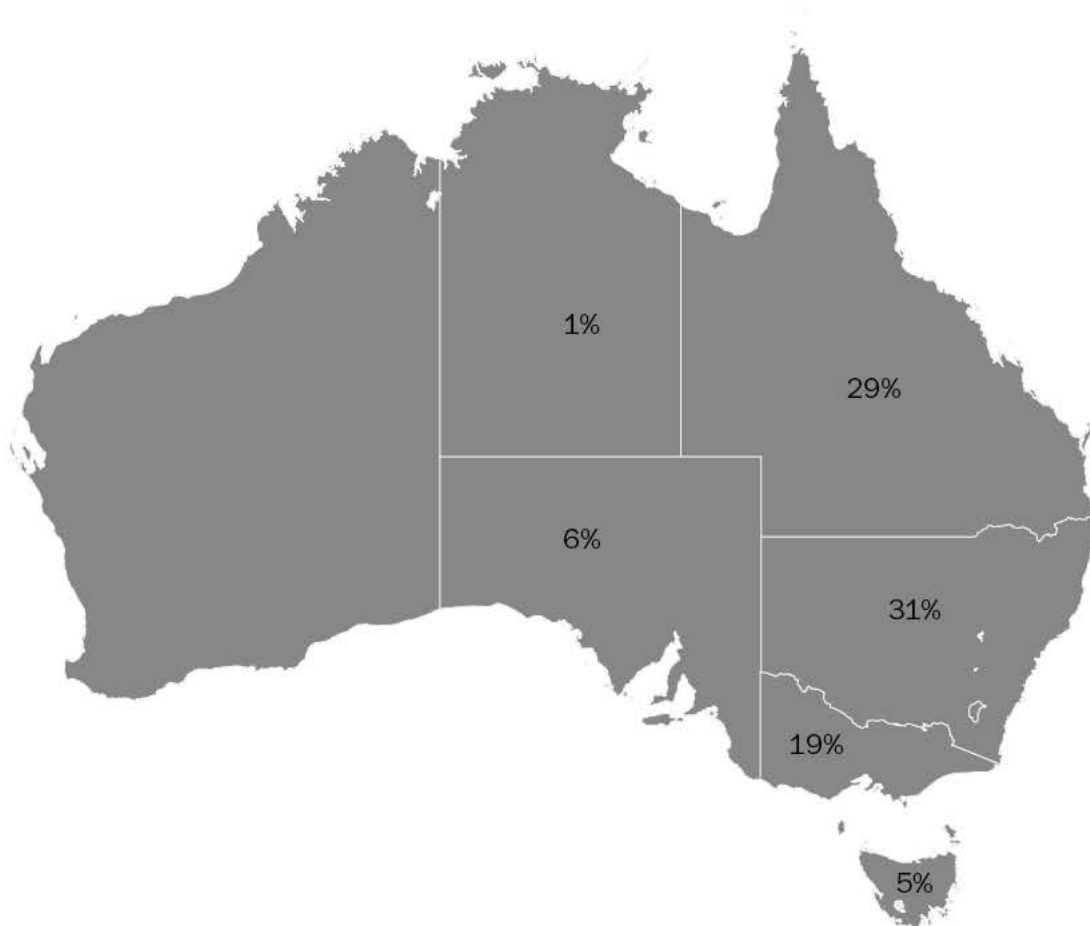
731 survey participants held a temporary visa when working in the horticulture industry of which 723 were still in Australia at the time of responding to the survey. The survey results indicate most temporary visa holders remained in the country.

711 (97%) participants indicated that they remain on some form of temporary visa. 609 (84%) continued to hold visas of the same visa category. 89 (12%) participants transferred to another temporary visa category. 12 (1.6%) participants had upgraded their temporary visa to permanent residency visas or the Provisional Partner visa.

1.6 Location when working in the horticulture industry

429 participants identified their location when working in the horticulture industry. 31% of participants were in NSW, 29% of participants were in QLD, 19% were in VIC, and 6% were in SA. TAS had 5% of survey participants. 1% of participants were in NT.

Figure 4: Location when working in the horticulture industry



2. PIECE RATE EMPLOYMENT ARRANGEMENTS IN THE HORTICULTURE INDUSTRY

The following section examines piece rate work undertaken on farms. We asked about employment arrangements including the employment type, locations, and whether the farmers provided a choice between hourly rate and piece rate. We also asked if workers signed an agreement if they undertook piece rate work.

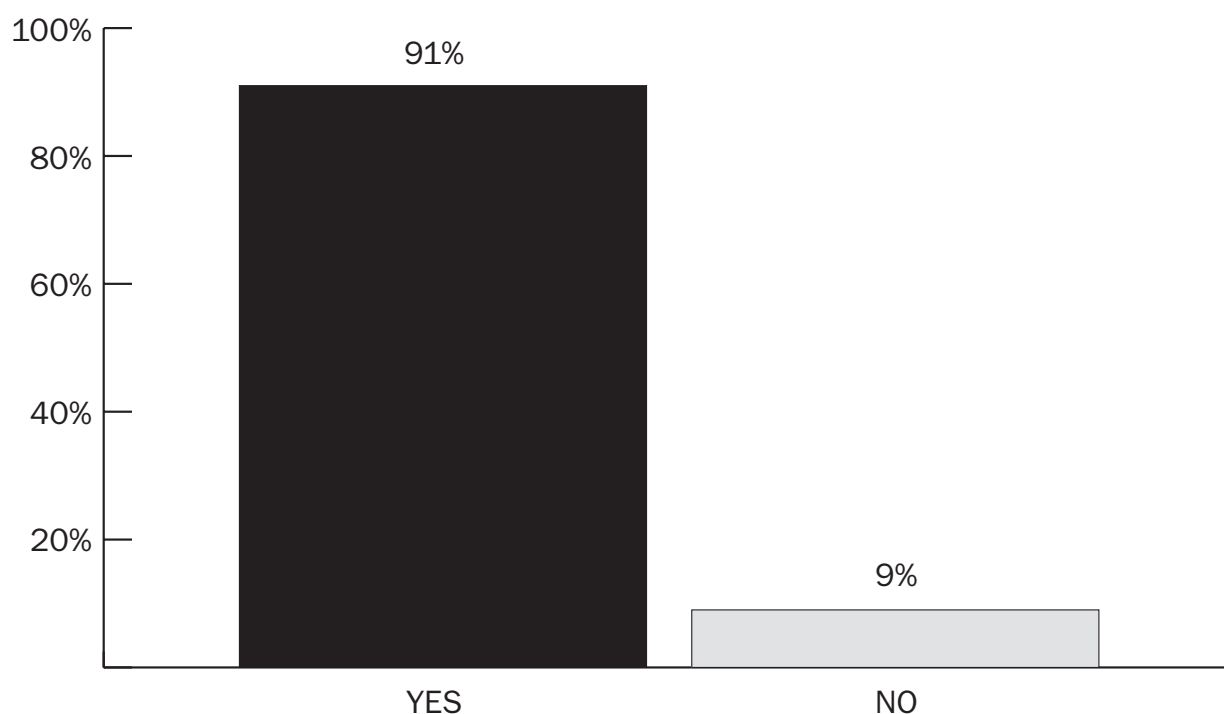
After reviewing and searching the most common social media platforms and websites that temporary migrant workers use for job matches, we identified the 34 most common crops in the industry. We asked the survey participants about the type of harvest roles they performed, how the farmers calculated the rate for these crops, the workers' daily working hours, and the amount they picked, packed, and harvested. We also converted their daily earnings to the hourly rate to compare their earnings with the legal hourly minimum.

2.1 Piece rate and employment arrangement

When working in the horticulture industry, have you ever been paid by piece rate?

91% of participants stated they had been paid under piece rate work arrangements when working in the horticulture industry. 9% had never undertaken piece rate work. The following survey questions involved a series of details about piece rate arrangements.

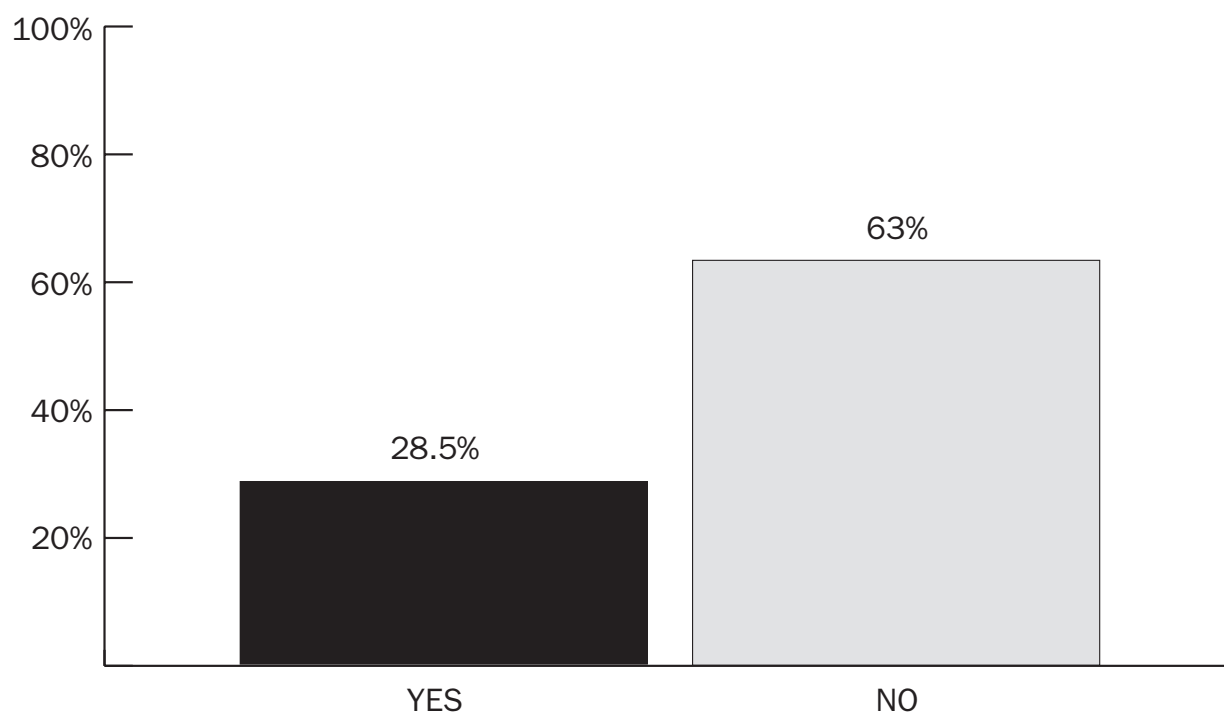
Figure 5: When working in the horticulture industry, have you ever been paid by piece rate?



Were participants offered a choice between piece rates and hourly rates?

63% of respondents were not given a choice between piece rate or hourly rate, and 29% of respondents considered it positive.

Figure 6: Given a choice between piece rate or hourly rates



Did you sign the piece rate agreement with your employer?

A total of 66% of survey participants responded “yes”, and around one-third of respondents, 34%, said they had never signed any agreement with their employers.

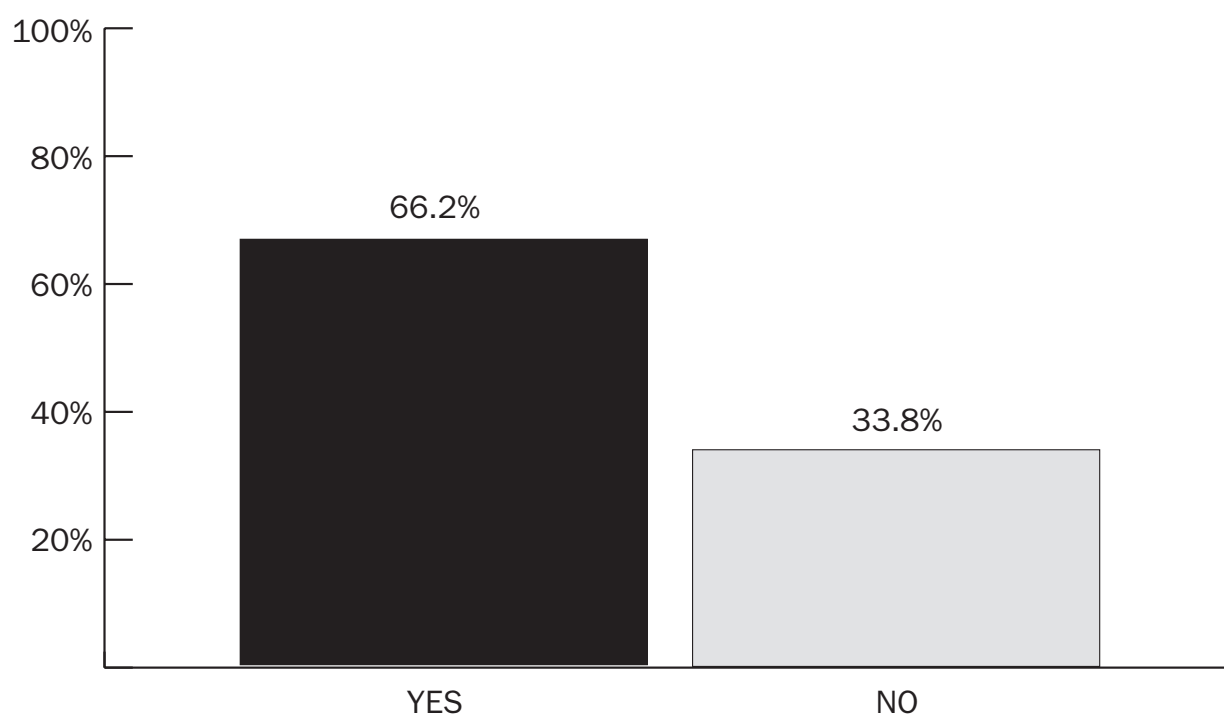
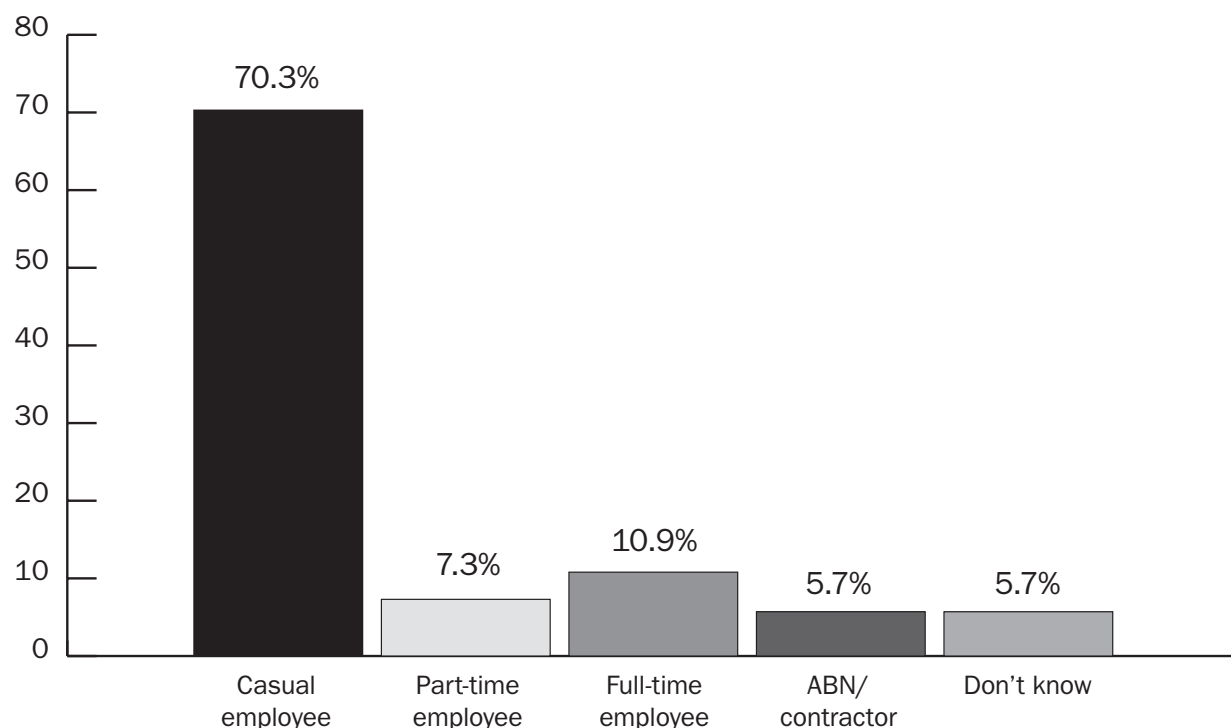


Figure 7: Were you sign the piece rate agreement with your employer?

Employment type when working in the horticulture industry

70% of the survey participants were employed as casual employees. 11% were full-time employees, 7% were part-time employees, while 5.7% claimed they were ABN workers. 5.7% of participants were unsure what type of employment they had.

Figure 8: The employment type when working in the horticulture industry



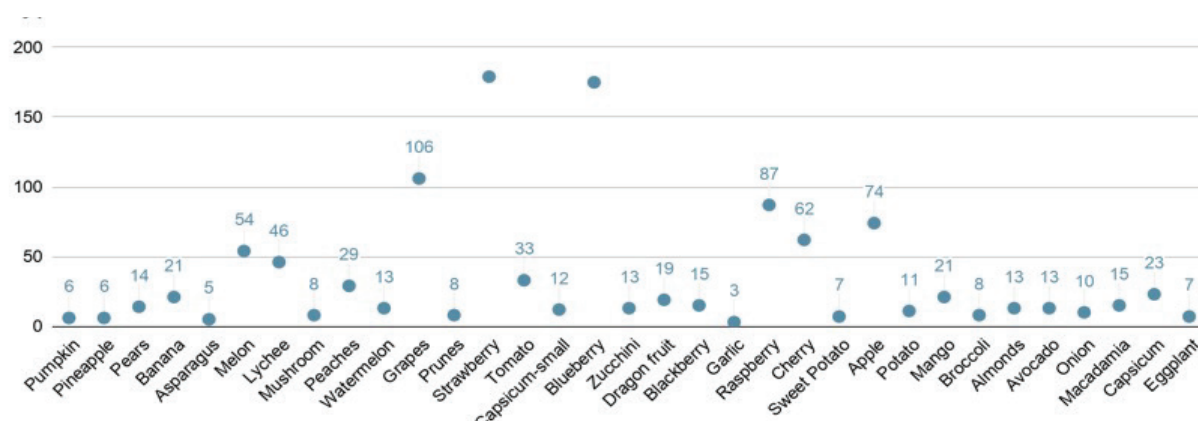
2.2 Piece rate arrangement within different crops and the harvest roles undertaken

The following section explores the piece rate arrangements in the Australian horticulture industry. Before we conducted the survey, we reviewed more than 1,000 job advertisements on top job-matching websites and social media platforms. The survey participants were asked to provide information on what type of crops they worked on, the job roles they undertook, whether it was a piece rate or hourly rate employment arrangement, the rate that farmers applied for each crop, and furthermore, information on working hours and farm locations.

Which type of crops workers performed work on under piece rate arrangements

1,140 responded (multiplied) to the crops on which they performed work in harvest roles under piece rate arrangements. From most common to least: strawberry (179), blueberry (175), grapes (106), raspberry (87), and apple (74), cherry (62), melon (54), lychee (46), tomato (33), peaches (29), capsicum (23), banana & mango (21), dragon fruit (19), blackberry (15), pears (14), almonds, zucchini & avocado (13), small-capsicum (12), potato (11), onion (10), mushroom, broccoli & prune (8), eggplant & sweet potato (7), pumpkin & pineapple (6), asparagus and garlic (3).

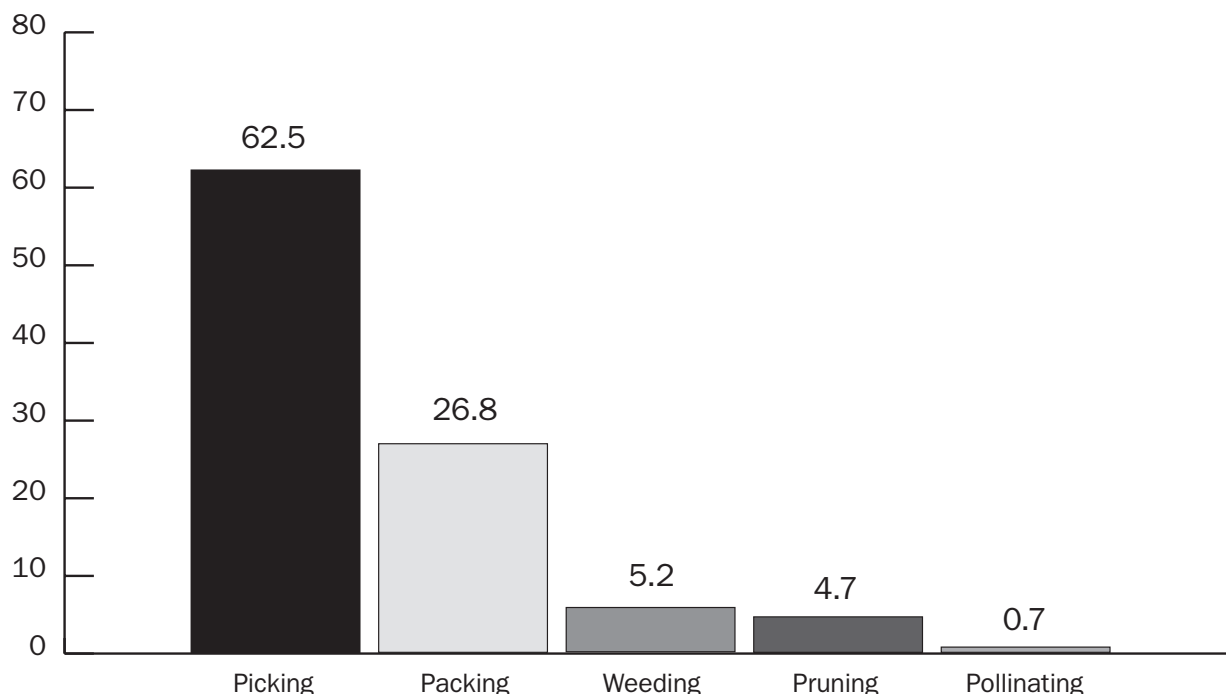
Figure 9: Which type of crops workers performed work on under piece rate arrangements



Type of harvest roles workers performed

Information was sought on the type of harvesting roles workers undertook when working in the horticulture industry. There were 1,397 respondents (multiplied) who responded to the survey question. The most common harvest role they undertook was picking crops with 63% of respondents, followed by packing at 27%. 5% responded they had performed weeding. 5% performed pruning. 1% of respondents performed a pollinating role.

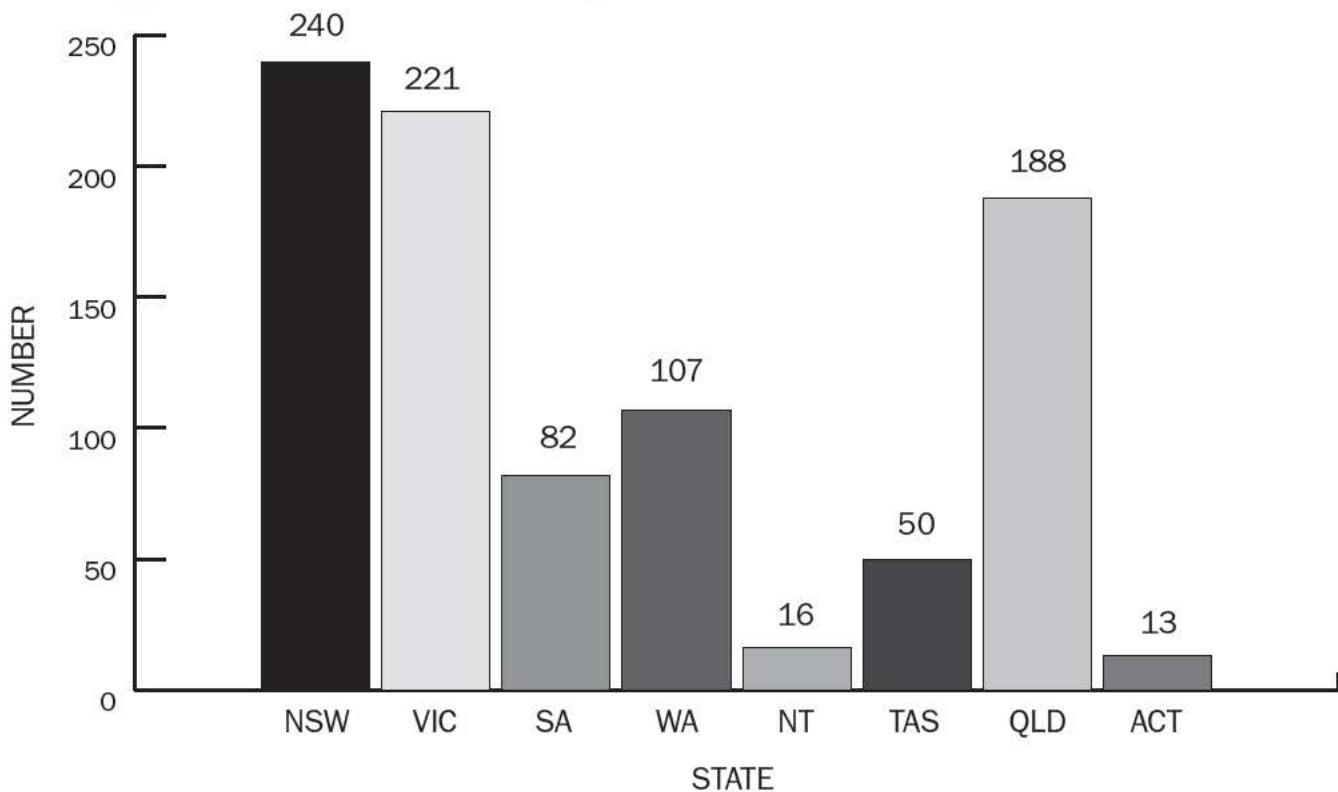
Figure 10: Type of harvest roles workers performed



In which State or Territory were you working on a piece rate?

When survey participants were asked about the locations they worked under a piece rate, 917 respondents completed the survey question. 26% were in New South Wales when they undertook piece rate work, Victoria 24%, Queensland 21%, Western Australia 12%, South Australia 9%, Tasmania 6%, Northern Territory 2%, and a few respondents, 1%, worked under piece rate arrangements in the ACT.

Figure 11: Location when working under piece rate



2.3 Average working hours and daily earnings under piece rate arrangements in the Australian horticulture industry

How many hours did you work per day under piece work arrangements when working with this crop?

In total, 941 survey participants completed the survey questions about daily working hours. The average working hours for piece rate workers was 8.47 per day. However, the maximum and minimum daily working hours varied significantly. The number of working hours was unpredictable, contributing to income instability, which had numerous effects on workers' mental and physical health.

In terms of the longest working hours per day, 115 (12%) responded that they worked a maximum of 20 hours per day when working at blueberry farms. 49 workers at melon farms worked a maximum of 19 hours per day. 8 eggplant farm workers and 12 almond farm workers worked up to 17 hours per day. 15 raspberry farm workers reported maximum working hours of 15 hours per day. A number of crop types had workers reporting a maximum of 14 hours worked per day, including dragon fruit with 18 workers, 55 for apples, and 45 for lychees. 13 workers working with watermelons, 12 with pears, 88 with grapes, 29 with tomatoes, 57 with cherries, and 6 at onion farms reported up to 13 hours per day worked. For the following 8 crops, workers performed up to 12 hours' work, including zucchinis (12 workers), small capsicums (11), capsicums (19), bananas (19), peaches and mangoes (22), mushrooms (5) and pumpkins (4). Those working with asparagus (4), pineapple (6), broccoli (8), macadamia (12) and avocado (11) worked up to 11 hours' work per day. Sweet potatoes had 7 workers working up to 10 hours per day. Garlic (4) and potatoes (7) had workers working up to 9 hours per day.

As for minimum working hours, 247 workers (26%) responded that they at least once worked only 1 hour per day with the following crops: macadamia, zucchini, small capsicum, watermelon, pear and blueberry. 88 grape workers at least once worked only 2 hours per day. The following 7 crops

had workers who worked only 3 hours per day at least once: capsicum (19), tomato (29), lychee (45), blackberry (12), almonds (12), melon (49), cherry (47). 121 strawberry workers, 6 raspberry workers, and 55 apple workers worked only 4 hours per day at least once. The following 8 crops had workers who on at least once occasion worked only 5 hours that day: garlic (4), sweet potato (7), asparagus (4), broccoli (8), pumpkin (4), banana (19), eggplant (8), potato (7). A number of crops had workers working at least 6 hours per day: prunes (6), avocado (11), peach (22), dragon fruit (18), and mango (22). 6 workers at the pineapple farms counted minimum working hours at 7 hours per day. Lastly, onion (6) workers and mushroom (5) workers counted a minimum of eight hours of work per day.

	N	Mean	Minimum	Maximum
Other crop	74	8.12	0	13
Macadamia	12	7.67	1	11
Zucchini	12	7.00	1	12
Capsicum small	11	7.45	1	12
Watermelon	11	7.82	1	13
Pear	12	8.25	1	13
Blueberry	115	8.13	1	20
Grapes	88	8.66	2	13
Capsicum	19	7.95	3	12
Tomato	29	7.79	3	13
Cherry	47	8.13	3	13
Lychee	45	8.22	3	14
Blackberry	12	9.67	3	15
Almonds	12	8.92	3	17
Melon	49	9.02	3	19
Apple	55	8.82	4	14
Raspberry	60	8.93	4	15
Strawberry	121	9.45	4	18
Potato	7	7.43	5	9
Garlic	4	7.50	5	9
Sweet potato	7	8.43	5	10
Broccoli	8	8.38	5	11
Asparagus	4	8.50	5	11
Pumpkin	4	9.00	5	12
Banana	19	9.16	5	12
Eggplant	8	9.25	5	17
Prunes	6	7.33	6	8
Avocado	11	9.36	6	11
Peach	22	8.14	6	12
Mango	22	8.50	6	12
Dragon	18	9.28	6	14
Pineapple	6	8.67	7	11
Mushroom	5	9.80	8	12
Onion	6	9.33	8	13
Total	941			

2.4 Rate scale range across all types of crops

Participants were asked what they earned daily when working with each crop under the piece rate system and the average number of hours worked daily. The analysis reveals that underpayment levels were severe, and in some instances, piece rate workers earned less than \$1 an hour.

15% of piece rate workers indicated earnings between \$0 to \$7 an hour, 29% earned \$8 to \$11 an hour, 19% earned \$12 to \$15 an hour and 16% earned \$16 to \$19 an hour.

Only 11% of the survey participants were paid \$20 to \$23 an hour in their lowest paid job and 8% earned \$24 to \$25 an hour. Contrary to suggestions that the piece rates allow workers to earn above the minimum wage, only 2% reported earning \$26 or more an hour.

Table 2: Rate scale range across all types of crops

	Frequency	Valid Percent
\$0 to \$7	92	15%
\$8 to \$11	181	29%
\$12 to \$15	115	19%
\$16 to \$19	96	16%
\$20 to \$23	69	11%
\$24 to 25	52	8%
\$26 plus	11	2%
total	616	

Average daily income under piece rate crosses all crops

In this section, the survey participants informed us of their daily income when working under a piece rate arrangement. In total, 939 respondents provided figures across all crops; average daily earnings were \$139.52. That indicates significant wage exploitation under piece rate arrangements. 47 survey participants responded that they went unpaid at least once when working on cherry farms. 602 (64%) responded that they have at least once experienced daily income of as low as \$30. 139 respondents (14%) at least once only earned \$30 to \$50 per day, while 162 survey participants (17%) only earned \$50 to \$80 per day under piece rate arrangements.

The lowest daily wages under selected crops were (from low to high): cherry \$0, grapes and zucchini \$9, blueberry \$10, melon \$18, other crops \$19, watermelon \$21, tomato \$23, strawberry \$24, lychee \$26, pears \$29, macadamia \$30, peaches \$33, broccoli \$34, raspberry and pumpkin \$37, blackberry \$41, capsicum-small \$43, sweet potato \$45, prunes \$49, mushroom and asparagus \$50, apple \$57, avocado and garlic \$60, capsicum \$61, almonds and dragon fruit \$62, mango \$72, eggplant \$76, potato and pineapple \$80, banana \$83, and onion \$122.

Table 3: The average daily income across all crops under piece rate

	N	Mean	Minimum
Cherry	47	143.57	0
Grapes	88	116.38	9
Zucchini	12	125.67	9
Blueberry	115	122.67	10
Melon	48	123.04	18
Othercrop	73	127.10	19
Watermelon	11	115.45	21
Tomato	29	137.00	23
Strawberry	121	130.64	24
Lychee	45	101.40	26
Pear	12	121.50	29
Macadamia	12	150.83	30
Peach	22	131.18	33
Broccoli	8	159.75	34
Pumpkin	4	126.75	37
Raspberry	60	143.75	37
Blackberry	12	144.33	41
Capsicum small	11	135.73	43
Sweet potato	7	153.57	45
Prunes	6	114.00	49
Asparagus	4	109.00	50
Mushroom	5	147.20	50
Apple	55	157.00	57
Garlic	4	146.75	60
Avocado	11	155.00	60
Capsicum	19	154.74	61
Dragon	18	124.67	62
Almonds	12	162.42	62
Mango	22	170.59	72
Eggplant	8	182.25	76
Pineapple	6	116.00	80
Potato	7	159.29	80
Banana	19	162.11	83
Onion	6	172.50	122
Total	939		

Average daily income converted with hourly rate.

We cross-tabulated piece rate workers' working hours and their daily earnings for all crops and calculated their average hourly pay rate. With 937 respondents, the average hourly rate was \$17.33. For up to 89% of workers across 26 different crops, their hourly pay rate was below the legal minimum for a full-time level 1 Horticulture Award employee. In fact, across all crops, the average hourly rate was below legal minimum hourly rates for casuals.

The top 5 lowest average rates for crops were (from low to high): lychee (\$12.10) asparagus (\$13.15), pineapple (\$13.85), grapes (\$13.90), and melon (\$14). Notably, some workers experienced extreme wage theft. Some who worked with potatoes had at least once received zero payment, with grapes and zucchini (\$1 per hour at least once), blueberry (\$1.25), melon (\$1.50), and watermelon (\$2.10) being almost as serious.

Table 4: Average daily income converted with hourly rate

	N	Mean	Minimum
Potato	7	22.9940	0.00
Grapes	88	13.9012	1.00
Zucchini	12	20.4605	1.00
Blueberry	115	15.8580	1.25
Melon	48	13.8966	1.50
Watermelon	11	18.4619	2.10
Strawberry	121	14.2224	2.40
Other crop	72	16.1864	2.71
Peach	22	16.9119	4.13
Broccoli	8	19.9972	4.25
Pumpkin	4	14.1866	4.63
Raspberry	60	16.5831	5.00
Sweet potato	7	18.6127	5.00
Dragon	18	14.6470	5.64
Tomato	29	17.5081	5.75
Avocado	11	17.4522	6.00
Apple	55	18.2181	6.00
Mushroom	5	15.1278	6.25
Cherry	46	18.4461	6.25
Prunes	6	15.5208	7.00
Asparagus	4	13.1523	7.70
Blackberry	12	15.2580	7.82
Capsicum	19	20.0152	8.00
Capsicum small	11	22.8030	8.00
Banana	19	17.9770	8.33
Lychee	45	12.0891	8.67
Pear	12	17.2646	9.00
Pineapple	6	13.8442	10.00
Almonds	12	19.0758	10.00
Macadamia	12	20.1689	11.33
Garlic	4	18.9792	12.00
Mango	22	20.7297	12.00
Onion	6	18.5444	12.20
Eggplant	8	20.0972	13.11
Total	937		

Wage theft and type of rate: cross-tabulation

We observed that severe wage exploitation in the horticulture sector occurred regardless of whether the workers were paid by piece rate or by hourly pay rate. A total of 616 workers completed the survey question on the lowest-paid job they ever performed in the Australian horticulture industry. When compared to the Horticulture Award legal minimum, 31 workers at 60.8% who received an hourly rate were the victims of wage theft, and 450 survey participants at 79.6% were underpaid as pieceworkers.

Table 5: Wage theft and the type of rate: cross-tabulations

			lowest type		total
			hour rate	piece rate	
underpaid	0	Count	20	115	135
		% within lowest type	39.2%	20.4	21.9%
	1	Count	31	450	481
		% within lowest type	60.8%	79.6%	78.1%
total		Count	51	565	616
		% within lowest type	100%	100%	100%

Comparing visa type to likelihood of underpayment when working in the horticulture industry

The cross tabulation below indicates temporary migrant workers are more likely to be underpaid when working in Australian horticulture sector. Out of 608 respondents 80.1% temporary visa holders were alleged underpaid, followed by 71.2% Australian citizens, and 63% of permanent visa holders are likely to be underpaid.

Table 6: Comparing visa type to likelihood of underpayment when working in the horticulture industry.

			Visa type when working in the horticulture industry				total
			Australian Citizen	other	permanent resident	temporary visa holder	
underpaid	0	Count	21	0	10	101	132
		% within Visa type when working in the horticulture industry	28.8%	0%	37%	19.9%	21.7%
	1	Count	52	1	17	406	476
		% within Visa type when working in the horticulture industry	71.2%	100%	63%	80.1%	78.3%
total		Count	73	1	27	507	608
		% within Visa type when working in the horticulture industry	100%	100%	100%	100%	100%

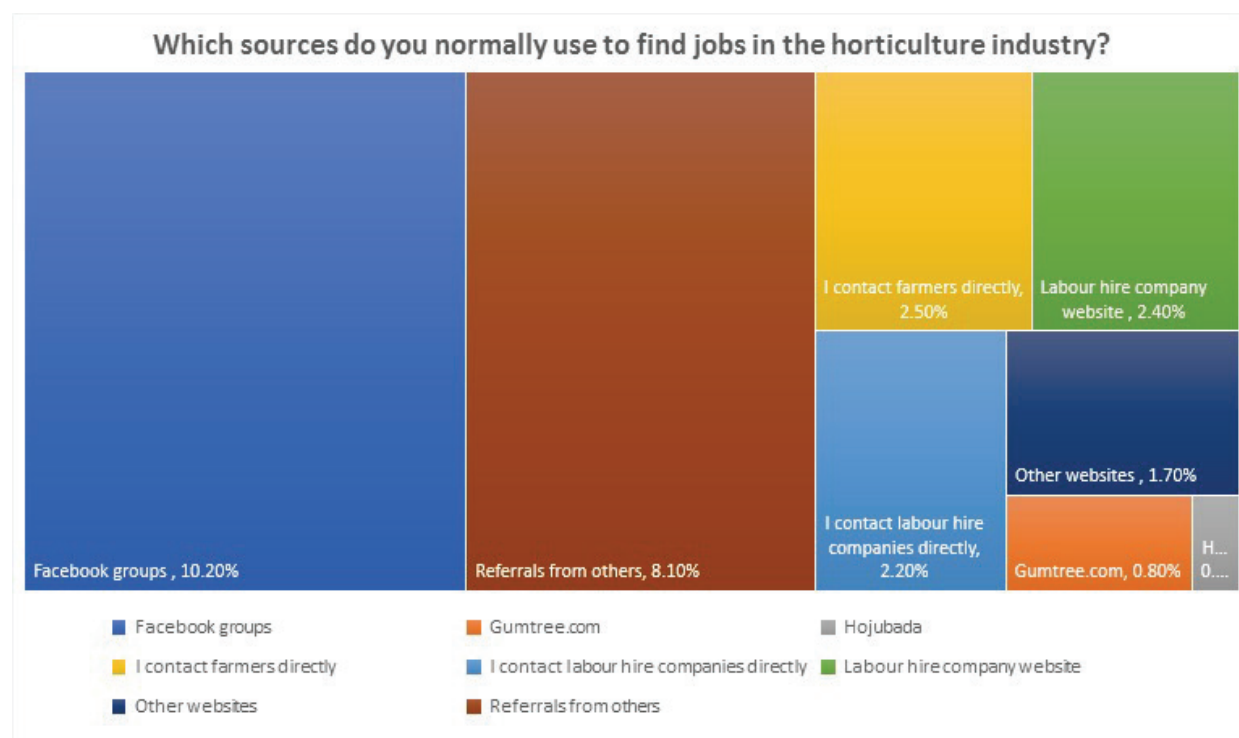
3. JOB SEARCHING AND WORKPLACE ISSUES IN THE HORTICULTURE INDUSTRY

The following section explores workplace relations in the horticulture sector. The participants provided details on how they found work, the state of workplace relations at their job, and the grievances arising from their work.

3.1 Which sources do you usually use to find jobs in the horticulture industry? (Multiple choices)

In this section, the survey participants were asked to provide information on the way they found jobs. In total, 719 respondents completed the survey questions. Up to 10.2% were using Facebook as their primary source to find work, 8.1% of job seekers found jobs through friends, 2.5% contacted farmers for jobs, 2.4% sought work through labour hire websites, 2.2% of job seekers contacted labour hire companies directly, and 1.7% used other websites to locate jobs. 0.8% of survey participants used Gumtree and 0.2% of users used Hojubada.

Chart 1: Which sources do you usually use to find jobs in the horticulture industry



3.2 Other grievances

Grievances related to employment in the horticulture sector

The second part of the survey categorised grievances that occur at work. It asked participants to identify issues they had experienced, if any, when working in the horticulture industry. Grievances were divided into five groups.

The initial group of questions asked participants to identify whether they had experienced issues related to their wages and minimum entitlements, including having been paid less than they were owed, not being paid at all for a period of time, force to work very long hours, being paid in cash or not receiving payslips, not being paid penalty rates or casual loading, not being paid superannuation and the employer making illegal deductions from their payroll or asking them to provide an ABN. They were also asked if the employer borrowed their TFN for illegal purposes.

The second group of questions asked participants about employer breaches of work health and safety laws, including if the worker suffered an accident or injury at work and was forced to see the employer's own doctor, the employer failed to pay workers compensation cover, or the worker lost their job as a result of being injured.

The third set of questions explored issues regarding accommodation and transport, including if they worked only for accommodation and/or food, were forced to take accommodation provided by the employer, forced to pay for overcrowded accommodation provided by the employer or forced to pay transportation fees.

The fourth set of questions aimed to identify whether participants had been victims of discrimination, harassment, or bullying. Additionally, participants were asked whether they were threatened with not being given payslips or signatures for second or third-year visa applications, to be reported to immigration or deported or not have their passport returned.

The final group of questions inquired as to other common issues experienced by horticulture workers, such as, whether they had paid fees to a tourist company, hostel or similar to find a job or had lost their job because of reporting employer breaches of law.

Overall, of those participants who answered the questions, 49% reported problems related to accommodation and transport, 26% reported employer breaches related to work health and safety laws and 35% stated grievances related to discrimination and bullying.

450 participants responded to the question. 84 workers indicated they had been underpaid, 67 participants were not paid for some time, and 120 workers were forced to do overtime. 80 workers were paid in cash or never received payslips. Furthermore, 117 survey participants were not paid penalty rates or casual loading. 98 workers alleged the employers failed to pay superannuation. 30 workers stated that their employers made an unlawful deduction from their pay. 17 workers expressed concerns over the employers asking them to provide an ABN, and 8 workers alleged a tax scam where employers borrowed their TFN.

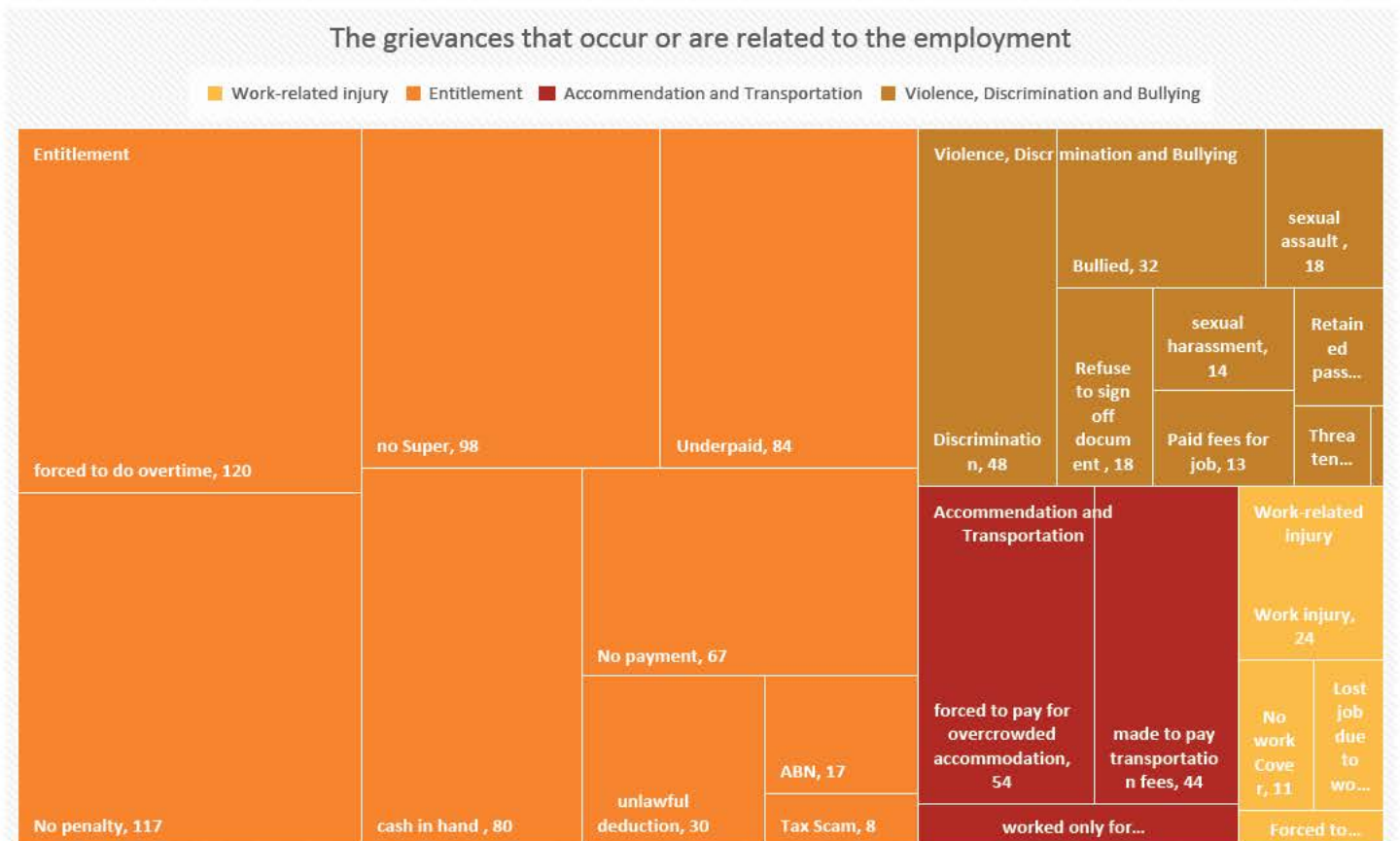
In total, 116 workers reported work injury-related grievances. 24 workers reported suffering a work-related injury. 5 workers acknowledged that once they suffered an injury, their employer forced them to see an employer-nominated doctor. 11 survey participants reported that employers failed to pay workers' compensation. 10 lost jobs because they were injured.

222 survey participants reported issues with accommodation and transport. 13 responded that

they had worked in return for only accommodation and food and no remuneration. 62 workers were forced to accept accommodation provided by their employers. Of these, 54 participants reported that the accommodation provided by their employers was overcrowded. 49 workers paid for reportedly low quality accommodation provided by their employers and 44 workers were made to pay transport fees.

160 survey respondents reported grievances related to discrimination, harassment and bullying. 48 workers experienced discrimination and 32 had been bullied in their workplace. 14 reported sexual harassment, and 18 respondents reported experiencing sexual assault at work. 18 respondents had employers who threatened a refusal to give payslips or sign off on documents supporting an extension to their visa. 6 workers' employers threatened to report them to immigration authorities for deportation. 10 workers alleged their employers had retained their passport. Furthermore, 13 respondents paid fees to a tourist company or hostel to find a job. One worker claimed they lost their job because they complained about discrimination at the workplace.

Chart 2: Grievances related to employment



CONCLUSION

This report confirms widespread exploitative wage conditions in the Australian horticulture industry. Piece rate arrangements are common in the sector. However, the current Horticulture Award provisions fail to provide proper protection against wage theft and abuse of piece rate arrangements. According to the survey, 78% of respondents were underpaid at some point when working in the horticulture industry. Survey respondents were more likely to experience wage theft when being paid a piece rate. 80% of participants were underpaid when getting paid a piece rate, while 61% were underpaid when earning an hourly rate.

Piece rate workers reported severe underpayment, in some instances earning less than \$1 an hour. 15% of piece rate workers indicated earnings of between \$0 to \$7 an hour, 29% earned \$8 to \$11 an hour, 19% earned \$12 to \$15 an hour and 16% earned \$16 to \$19 an hour. Only 11% were paid \$20 to \$23 an hour. Contrary to suggestions that the piece rates allow workers to earn above the minimum wage, only 2% reported earning \$26 or more an hour.

A significant number of workers in the horticulture industry have not only experienced wage theft but have been exposed to other insecure and unsafe working conditions that intensify the precariousness of their employment. 71% of survey participants were employed as casual employees. 63% of respondents were never given a choice between piece rate or hourly rate. 34% stated that they never signed a piece rate agreement. In addition, workers' daily working hours under piece rates is unpredictable, and this variability of work hours contributes to income instability. 12% of respondents worked 20 hours a day at least once, and 25% of respondents at least once only worked an hour a day. The daily rate converted to an hourly rate shows significant wage exploitation. 89% of workers across 26 different crops had hourly pay rates below the legal minimum under the Horticulture Award. The lowest daily wages were reported by piece rate workers employed on grape and zucchini farms, earning an average \$9 per day, followed by blueberry farm workers \$10 per day, melons \$18 per day, watermelons \$21 per day, tomatoes \$23 per day, and strawberries \$24 per day.

Due to widespread abuse of piece rate arrangements, the Fair Work Commission should amend Clause 15.2(i) of the Horticulture Award 2020 to guarantee that all workers in the horticulture sector are paid at least the applicable minimum wage. The Commission should also remove Clause 15.2 (e) so workers retain entitlements to minimum hours of work, meal allowance and overtime. The federal government should criminalise wage theft to ensure all workers are well-protected, can exercise their workplace rights, and are free from workplace discrimination. This will prevent gaming of piece rates arrangements where employers attempt to circumvent minimum worker entitlements.

This report also confirms the widespread exploitative working conditions among the temporary migrants in the Australian horticulture industry. However, the layers of dependence on sponsoring employers are the main factor contributing to the vulnerability of the temporary visa workers to breaches of their workplace rights. Of those who answered, 22% reported problems related to accommodation and transport, 16% had grievances related to discrimination and bullying, 13% indicated that their employer failed to provide access to worker's compensation and 8% reported having suffered a workplace injury.

The Australian government ought to reframe the current temporary visa scheme model under which visa holders are significantly dependent on other parties. This would allow visa holders to exercise their workplace rights and fight against discrimination and exploitation. A sustainable temporary visa scheme should be introduced which provides a permanent residency pathway and prevents visa-holders from being exposed to visa status vulnerability.

Finally, the Australian government should fund trade unions and community legal centres to deliver workplace rights information sessions in regional areas. Migrant workers hubs should be established, allowing migrant workers to seek assistance or enquire about any workplace exploitation they experience, and enabling them to access the national justice system. Furthermore, an enforcement program should be introduced for backpackers' accommodation to combat non-compliance with state and local government laws.



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