

# **THE MIGRANT WORKERS' TASKFORCE AND THE AUSTRALIAN GOVERNMENT'S RESPONSE TO MIGRANT WORKER WAGE EXPLOITATION**

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In October 2016 the Australian Government established a Migrant Workers' Taskforce (MWTF), comprising high level representatives of key departments and regulators whose activities impinged in various ways on employment remuneration issues. Establishment of the Taskforce had been an election commitment of the Liberal-National Coalition Government along with strengthening the *Fair Work Act* and increasing the powers and resources of the regulator, the Fair Work Ombudsman. The underlying concern of the Taskforce was to ensure an effective whole-of-government response was adopted to deal with the problem of under-payment of wages to migrant workers. Media exposure of cases of under-payment, especially concerning 7-Eleven, and subsequent parliamentary inquiries had pointed to this being a significant problem<sup>1</sup>.

According to Senator Michaelia Cash (2016), then Minister for Employment, the Taskforce was established to bolster the Government's efforts to protect at-risk workers. She noted 'Exploitation of any worker in Australian workplaces will not be tolerated by this Government', and that 'Overseas workers are potentially more susceptible to exploitive practices, which is why we are introducing stronger measures to maintain the integrity of their working experience in Australia.' Further, she indicated the Taskforce would 'focus on action and results. Compliance or

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<sup>1</sup> See especially Senate, Education and Employment References Committee (2016).

**Fels, A. and D. Cousins (2019)**  
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**Response to Migrant Worker Wage Exploitation'**  
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regulatory weaknesses that allow exploitation cases to occur will be a key focus.'

The Terms of Reference for the MWTF required it to

identify further proposals for improvements in law, law enforcement and investigation, or other practical measures to more quickly identify and rectify any cases of migrant worker exploitation. This includes monitoring the progress of existing and new cross-portfolio initiatives to combat exploitation in the workplace. The Taskforce will support the effective on going collaboration between agencies to ensure that activities have a whole of-government focus.

Specifically, the Taskforce would:

- Identify regulatory and compliance weaknesses that create the conditions that allow exploitation of vulnerable migrant workers
- Develop strategies and make improvements to stamp out exploitation of vulnerable migrant workers in the workplace
- Consider ways agencies can better address any areas of systemic and/or widespread exploitation of vulnerable migrant workers, including considering ways in which agencies can better collaborate to avoid such situations arising or to swiftly rectify them.

The Taskforce would do this by:

- Monitoring progress by 7-Eleven in rectifying its breaches
- Receiving updates on implementation of the Government's Protecting Vulnerable Workers Policy
- Engaging with Taskforce Cadena and other relevant compliance operations
- Considering particular industries of vulnerable migrant workers where there are systemic problems with exploitation and underpayment
- Assessing labour hire practices for companies that employ migrant workers
- Taking into consideration other relevant inquiries and activities in relation to vulnerable migrant workers (for example Senate Inquiry reports and cross-government action on human trafficking)
- Monitoring emerging issues that relate to exploitation of migrant workers in the workplace
- Any appropriate means identified by the Taskforce.

Members of the Taskforce included:

- Department of Jobs and Small Business
- Fair Work Ombudsman
- Department of Home Affairs
- Australian Border Force
- Attorney-General's Department
- Department of Education and Training
- Australian Taxation Office
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Department of Agriculture and Water Resources.

The MWTF was chaired by Professor Allan Fels AO, with Dr David Cousins AM as Deputy Chair. The Chairs were independent of the Australian Government bureaucracy, but both had been involved in 7-Eleven's wage remediation efforts and had extensive experience in competition and consumer policy and enforcement. The MWTF was supported by a secretariat in the Department of Jobs and Small Business.

The Taskforce held roughly bi-monthly meetings through 2017-2018. It considered evidence of the prevalence of the under-payment of wages, underlying causes of this, existing approaches of the agencies and regulators to dealing with the issues involved and measures which might be adopted to enhance the effectiveness of these responses. MWTF representatives met with key stakeholders and explored options with the agencies. Specific issues were considered in more detail particularly in the education sector with the deputy chair being appointed to a Working Group of the Council of International Education considering related issues. Submissions were received from academics and key stakeholders. Overseas experience, especially relating to the UK and New Zealand, was examined to see what lessons might be learned from it.

The Taskforce considered the work of other Government and Parliamentary reviews and met with representatives of The Black Economy Taskforce, the Phoenix Taskforce and the Human Trafficking and Slavery Roundtable. To avoid duplication with these other bodies, it mainly focused on matters closely relating to *Fair Work Act* and related legislation. Further, in considering where it could make the most impact, the Taskforce prioritised its efforts on the employment issues experienced

by unsponsored temporary visa holders, particularly international students and working holiday makers (back packers).

Over the past decade there has been a significant growth in temporary migrants which has been particularly driven by international student visa holders, who have reasonably generous work rights. Under-graduate international students can work up to 40 hours per fortnight on their visas. Not all visa holders will however enter the workforce.

**Table 1: Growth of temporary visa holders with work rights in Australia, 2008-2018**

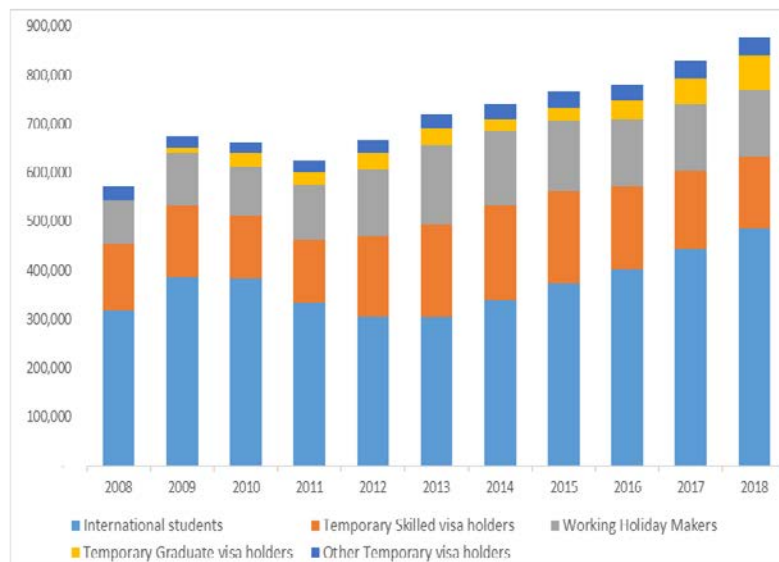


Table 1 above provides information on the main specific temporary visa categories. The growth in international students (up 53 percent over the 10 year period) and the introduction of the Temporary Graduate visa have been the key drivers of overall growth in temporary visa holders. There is no cap on the number of international student visa holders. The number of working holiday makers, where visa numbers are also uncapped, peaked in 2013–14, but was still 51 per cent higher in 2018 than in 2008. Temporary

skilled visa holders work under sponsored arrangements, which are more regulated than are the unsponsored visa categories. The number of Temporary Skilled (subclasses 482 and 457) visa holders reached a peak of just over 200,000 in 2013–14, but by 30 June 2018 had dropped to around 147,000, 7 per cent more than the number of visa holders in 2008.

The Taskforce prompted a number of initiatives by member agencies including more active enforcement responses by the Fair Work Ombudsman (FWO) and Border Force and greater cooperation between agencies especially in relation to information sharing and the information and education for market participants. In February 2018, the Taskforce completed a Final Report to the Government. This was only around three months before an Election was to be held. The Government responded relatively quickly by welcoming the report and indicating its acceptance in principle of all 22 recommendations.

## **The problem**

The problem the Taskforce was dealing with was essentially that many migrants working under temporary visas were being paid less than they were entitled to under the awards that applied to their employment. Under-payment, or as many refer to it, wage exploitation or wage theft, manifests itself in various ways including: being paid a flat dollar rate per hour that was below the award rate, not being appropriately classified, for example being treated as a contractor rather than an employee, not having overtime, leave or superannuation entitlements properly recognised, being required to work as a low paid or unpaid trainee, having to make payments to an employer to get or maintain a job including cash back payments, and not making correct deductions for taxation. Closely related matters may be non-compliance by employers with laws relating to deductions from wages for items like accommodation, training, food and transport and laws relating, to unfair dismissal, discrimination and workplace health and safety.

Under-payment is not restricted to migrants. However migrants are often more vulnerable to under-payment because they may have weak English language skills, less knowledge of their entitlements and of how to enforce these; they are often more economically dependent on getting employment, have fewer alternative job opportunities than local people, and can be more readily coerced by unscrupulous employers, for example

by being required to breach work related visa conditions and being threatened to be exposed to the authorities. For example, backpackers seeking an extra year on their visas can be vulnerable to unscrupulous employers seeking to exploit them, although requiring pay slips to be provided to workers and allowing these to provide evidence of employment should help to reduce this risk over time.

The evidence suggests that often migrant workers are aware that they are being under-paid, but they do not complain as they need the work and fear adverse consequences if they do so. The fact that wages may still be significantly higher than compared to where they came from may still be a factor, but expectations of what they can expect in Australia appear also to be significant. A Sydney study relating to international students suggested that lower than lawful wages are normalised and accepted among peers (Clibborn forthcoming).

Cultural and family relationships can also be factors which work to discourage migrants from complaining of under-payment. There are examples where this has been the case in the hospitality sector and by labour hire operators in the meat processing and horticulture sectors.<sup>2</sup>

Temporary migrant workers often work in industries where labour hire firms have a dominant role. Employees in these industries can be subject to exploitative practices as firms strive to minimise costs and maximise profits.

At the outset the MWTF sought to ascertain the extent of the problem. The 7-Eleven experience indicated that the problem was very widespread among its franchisees and had existed for many years. Many of the under-paid 7-Eleven workers were working under international student visas. Unite, an unregistered-union, had publicly drawn attention to this issue affecting the company as early as 2007. The company claimed that it was not alone in this context, but no overall quantitative assessment of the economy-wide size of the problem was available and there was limited evidence of where it existed. However, as the work of the Taskforce proceeded, the FWO and others became more involved in compliance and enforcement activity and academic researchers devoted more attention to it, the extent of the problem became clearer.

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<sup>2</sup> For instance, see Industrial Relations Victoria (2016: 308); and Senate Education and Employment References Committee (2016: 233).

The Final Report of the MWTF referenced some of the work undertaken by these groups. The FWO completed a number of reports highlighting the under-payment and other problems in a number of sectors especially where there were extended competitive supply chains subject to limited oversight by the primary supplier. For example, there were reports covering the Baiada Group contractors in New South Wales, 7-Eleven and its franchisees, Woolworths' trolley collection services, and Caltex service stations. High levels of non-compliance were highlighted in the FWO's Harvest Trail report and the coercive use by employers of visa conditions was noted in its report covering the Working Holiday Visa Program.<sup>3</sup>

The hospitality sector was identified as a major problem area and high profile with numerous small and elite restaurant operators identified as under-paying their employees by the FWO.

In 2017–18, migrant workers made up an estimated 6 per cent of the Australian workforce,<sup>4</sup> however they accounted for 20 per cent of all formal disputes the FWO helped resolve (up from 13 per cent in 2015–16) and featured in 63 per cent of the court cases commenced by the FWO in the same year (Fair Work Ombudsman 2018a: 17).

Academic survey results also suggested that the wage under-payment problem was very widespread for international students and backpackers. A significant 2017 report (Berg and Farbenblum 2017) indicated that among the 4,322 responses received from temporary migrant workers to a questionnaire:

- almost a third (30 per cent) said they earned \$12 per hour or less and 46 per cent said they earned \$15 per hour or less in their lowest paid job<sup>5</sup>
- one quarter of international students and one third of working holiday makers (32 per cent) were paid around half the legal minimum wage

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<sup>3</sup> See Fair Work Ombudsman (2015); Fair Work Ombudsman (2016a, b, c); Fair Work Ombudsman (2018a, b).

<sup>4</sup> This percentage has been derived by dividing the number of selected visa types with working entitlements by total persons in the labour force: Department of Home Affairs (2016: 3); ABS (2018: Table 1).

<sup>5</sup> At the time of the survey the national minimum wage was \$17.70 per hour, or \$22.13 for casual employees.

- underpayment was especially prevalent in food services, and in fruit and vegetable picking
- 44 per cent of respondents were paid in cash and half rarely received a pay slip
- 91 participants (3 per cent) had their passport confiscated by their employer and 77 (2 per cent) by their accommodation provider. Four per cent reported that their employer asked them to pay money back in cash (Berg and Farbenblum 2017: 5-7).

The problem of wage under-payment is increasing as more and more temporary migrants seek employment. Larger numbers of temporary migrants seeking work add to downward pressures on wages and may make it easier for unscrupulous employers to under-pay. And more temporary migrants are exposed to the prevalence of under-payments. Competitive pressures among employers will make it more and more difficult for otherwise ethical firms to comply with minimum wage requirements.

The MWTF generally concluded that a significant proportion of temporary visa holders are being exploited. Moreover, the problem had existed for too long and was likely to get worse as the number of temporary migrants increased.

## **7-Eleven**

The involvement of the MWTF in monitoring the progress of 7-Eleven in rectifying under-payments to franchisee employees followed 7-Eleven's abrupt dismissal of its Independent Franchisee Review and Staff Claims Panel, comprising Professor Fels and Dr. Cousins. The Panel was dismissed at a time when the number of applicants to the Panel had been increasing strongly and the average size of claim determinations had also been growing. Expectations then were that wage remediation payments would go beyond \$100 million. This was not welcomed by 7-Eleven and the company sought to gain more control over the process by dismissing the Panel.

7-Eleven had voluntarily established the Independent Panel to assess claims at a time when it was under extreme pressure from the media spotlight. Its reputation and brand value were very much under threat. It responded by promising that it would make good the under-payments of



its franchisees. The scheme that it initially established had many good features. In particular, it was controlled by an independent panel working to ensure appropriate redress for franchisee employers. The Panel had access to payroll data covering all franchisees over a long period of time, although the accuracy of the payroll data was a significant concern. It developed effective channels of communication with claimants, especially through the use of social media. Claimants were assisted to lodge their claims and they did not have to have full knowledge of award rates needed to calculate under-payments. The Panel had this data. Claims were also assessed on the basis of what was reasonable in light of all the available information and circumstances. Standards adopted by the courts were not deemed appropriate when the employers were often responsible for inaccurate and incomplete records. Importantly also, claimants were given assurances that their details would not be disclosed to their employers, to ensure there could be no retribution.

The monitoring indicated that 7-Eleven had taken numerous steps to try to prevent their franchisees under-paying employees. This included stronger centralised control and monitoring of payroll and identification of employees, in-house investigation of allegations of non-compliant franchisee behaviour, enhanced internal communications, staff training and establishment of an independent help line. The company also amended its franchise agreement to allow a greater share of gross revenue to go to franchisees, thus reducing the financial pressures on franchisees which may have contributed to under-payment of employees, as well as adding to the profits of 7-Eleven. A further step was to sign a Proactive Compliance Deed with the FWO as a demonstration of its intent to prevent under-payments occurring in the future and to remediate past under-payments.

7-Eleven reported to the Taskforce that by the time it closed the Wage Repayment Program, it had received 5,348 expressions of interest from potential claimants, and 3,628 claims had been paid amounting to \$160,146,668 in wages, superannuation and interest. This amount dwarfed any other wage under-payment remediation scheme operated by private firms or through FWO. However, the Taskforce report noted reasons why the amount paid out to employees may nevertheless have been less than it should have been. First, the eventual number of claimants was lower than the Independent Panel had expected. Only around one-quarter of the employees on the central payroll over the previous 20 years had submitted expressions of interest. This, lower than expected number,

was linked to the cessation of the Panel's social media campaign following its demise. Second, only two-thirds of the expressions of interest submitted actually resulted in claims being paid. There may have been a few attempts to make fraudulent claims, but there was limited evidence to support this and the numbers would not explain why many expressions of interest did not result in claims. 7-Eleven altered the methodology used for determining claims from that used by the Panel. The impact of this change was to reduce the claim amounts determined. For example, 7-Eleven applied a lower interest rate adjustment to historical claims than the Panel had considered appropriate.

The MWTF considered that there were a number of key learnings from the 7-Eleven experience. First, 7-Eleven had a strong motive for dealing effectively with the situation. This motive primarily concerned its awareness of the impact of under-payments on its reputation and brand value. The threat of enforcement action by the regulator was, perhaps, less a factor given the weaknesses of the existing law when applied to the franchisor, rather than the direct franchisee employers. However, no doubt the regulator reminding the company that it had a moral and ethical responsibility for what had happened had some impact.

The role of the Independent Panel was crucial in enhancing access to the scheme and for developing the methodology for determining fair amounts of remediation for employees. Whilst 7-Eleven made changes to the processes and methodology involved, the impact of these was muted somewhat by what had gone before. The cost of remediation, which went well beyond the re-payments made to employees, was, however, clearly a factor which encouraged the company to change important aspects of its business operations to ensure that it never happened again.

Another key factor at play was the high degree of transparency involved in the wage remediation process. This included at the outset publication of details of how under-payment had come about by the media, the use of the media by the Panel to explain its approach and encourage participation, and the review of the issues involved by the FWO published in a separate public report. One area where the Taskforce expressed concern related to the Proactive Compliance Deed signed by the FWO and 7-Eleven. The concern here was that the Deed, in fact, restricted the transparency of the changes to the methodology for determinations made by 7-Eleven after it dismissed the Panel.

Subsequent experience involving Caltex and other franchisees indicated that the reputational considerations, independence in managing claims and transparency apparent in the 7-Eleven matter were unlikely to be replicated in other cases unless the law was appropriately changed to require this. Caltex (2017) implemented a more limited remediation scheme in response to media claims of under-payment of employees in its franchised outlets. Details of the extent of under-payment or the circumstances involved were scant.

### **The Fair Work Amendment (Protecting Vulnerable Workers) Act**

The Government's initial response to the 7-Eleven and other under-payment cases highlighted prior to the 2016 Federal Election was to introduce the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*. With some amendments, this legislation was passed and came into effect on 15 September 2017, with some provisions (relating to franchisors and holding companies) commencing on 27 October 2017. The MWTF through the Chair and Deputy Chair provided direct policy input to the development of this legislation in 2017, though their recommendations were not always acted on.

Some key elements of the legislation were:

- introduction of a new category of 'serious contraventions' (with penalties 10 times higher) for deliberate and systematic breaches of specified laws. A 'serious contravention' happens when the person or business knew they were contravening an obligation under workplace law and the contravention was part of a systematic pattern of conduct affecting one or more people
- increased penalties for breaches of record-keeping and pay slip obligations and, where an employer does not meet record-keeping or pay slip obligations, and does not have a reasonable excuse, requires the employer disprove allegations made in court that they did not pay the employee correctly or give the right entitlements.
- extended the liability of franchisors and holding companies for breaches of certain provisions of the *Fair Work Act* by their franchisees or subsidiaries. These provisions apply where franchisors and holding companies knew (or could reasonably be expected to

have known) that a contravention by the franchisee or subsidiary would occur. For franchisors, they must also have a significant degree of influence or control over the business affairs of the franchisee. Both franchisors and holding companies will not be liable if they can show that they took reasonable steps to prevent the contraventions. A franchisor or holding company that is required to rectify underpayments by a franchisee or subsidiary due to the operation of these provisions will be able to commence proceedings to recover any amounts paid from the franchisee or subsidiary, ensuring that the direct employer continues to be liable for the breach.

- clarified the law around ‘cash-back’ arrangements by expressly prohibiting an employer from unreasonably requiring employees to make payments.
- strengthened the evidence-gathering powers of the FWO by allowing it to apply to the Administrative Appeals Tribunal for a ‘FWO Notice’ to compel a person to provide information, documents or attend an examination to answer questions, particularly where no relevant documents appear to be available and an investigation has stalled. In addition, there was a new offence of hindering or obstructing a Fair Work Inspector, and increased penalties for providing false or misleading information to the FWO.

These amendments to the *Fair Work Act* were important initial steps by the Government to strengthen the *Fair Work Act* which was seen as necessary to deal with the problem of worker exploitation. Some of the key reforms relating to serious contraventions, franchisor and holding company liability and information gathering powers were limited as a result of conservative legal drafting, industry lobbying and Opposition amendment. Some MWTF members had a strong view that further amendments to the *Act* should wait until the impact of these amendments could be fully assessed. It is important that the FWO does test the effectiveness of these amendments as soon as it has an opportunity to do so.

### **Early initiatives of the Taskforce**

The Final Report of the MWTF briefly describes a number of initiatives it prompted in the early stages of its operation. These ‘lower hanging fruit’ tended to be within the scope of individual Taskforce members or were not considered particularly controversial in nature. However, taken as a whole

they were not considered by the Taskforce to provide an adequate response to the problem. These initiatives included:

- an Assurance Protocol to support migrant workers and encourage reporting of workplace issues and reduce the fear of visa cancellation or removal from Australia
- a new Anonymous Report tool developed by the FWO to enable non-English speakers to report potential workplace issues in their own language, without being identified
- improved cross agency data sharing, particularly through a Data Analytics Working Group, comprising the Australian Tax Office, Department of Home Affairs, Department of Jobs and Small Business and FWO, which focused on improving the data-sharing and intelligence-gathering capabilities
- a revised Fair Work Information Statement, which the FWO is required to prepare and publish under section 124 of the *Fair Work Act*. Employers are required to give every new employee a copy of this statement before, or as soon as possible after, they start their new job. The Statement was revised with effect from 1 July 2018 to contain information about the current national minimum wage rates for adult permanent and casual employees with the aim of ensuring both employers and employees are more aware of their minimum obligations and entitlements.
- improved migrant worker engagement and communication, including a Taskforce-sponsored research project about communication preferences of migrant workers.

### **The Inter-agency assurance protocol**

Evidence, largely anecdotal, suggests that migrants working on temporary visas are often reluctant to bring to government agencies their complaints of under-payment. Trust in government agencies may be influenced by cultural background and by fear of possible adverse consequences, especially if there is a possibility that the complainant may have breached their visa conditions. In these circumstances any assurance that there will not be adverse consequences may help to encourage complaints and in turn assist regulators to deal with non-compliance by employers. It could also

reduce the threat of adverse action being taken against an employee by a disreputable employer.

In January 2017, the MWTF announced a new inter-agency Assurance Protocol to support and encourage migrant workers to come forward with their workplace complaints. This was, in effect, a generalisation of the protocol which the 7-Eleven Independent Panel had negotiated with the then Immigration Department covering employees of 7-Eleven franchisees.

Under the Assurance Protocol, the Department of Home Affairs (DHA) agreed that an individual who had breached the work-related conditions of their temporary visa would generally not have their visa cancelled if they:

- believe they have been exploited at their work
- have reported their circumstances to the FWO
- are actively assisting the FWO in an investigation
- commit to adhere to visa conditions in the future
- there are no other grounds for visa cancellation (such as on national security, character, fraud or health grounds)

For any temporary visa holder who does not have a work entitlement attached to their visa, the DHA made no commitment other than to consider the case on its merits.

FWO requested the DHA apply the Assurance Protocol to more than 46 visa holders (as at 31 October 2018) who had reported their circumstances to the FWO and met the requirements of the Assurance Protocol.

The effectiveness of this Protocol was assessed by these agencies after it had been operating for around 18 months. None of the 35 cases considered had had their visa cancelled for breaching visa conditions and positive responses were received from people who had accessed the Protocol. Some minor changes were proposed to the operation of the Protocol, including better targeting information about it to working holiday visa holders.

The DHA and the FWO were generally opposed to the notion of a firewall between them such that the FWO would not seek information on a complainant's visa status or report on this to DHA. The agencies were concerned that this might jeopardise their investigation, enforcement and joint operations, particularly under their joint Taskforce Cadena. However, given the small number of cases that have come forward under the Protocol

this option seems worth further consideration. Moreover, any further consideration of the Protocol should consider the experience and views of people who could have used it but chose not to do so. Accordingly, a further review of the Protocol was recommended by the Taskforce in its Final Report.

### **Migrant worker engagement and communication**

On commencement of the Taskforce, agencies undertook a stocktake of existing communications strategies across government to inform workers, including visa holders with a work right, about their work rights and obligations. From this stocktake, it became clear that government agencies were investing a great deal in disseminating information about workplace laws and conditions. This included website content, information included in the visa grant letter, fact sheets, social media, innovative digital solutions, including the VEVO system and myVEVO app<sup>6</sup>, paid advertising and direct community engagement efforts. The FWO, in particular, has focused on addressing migrants' vulnerability due to lack of English language proficiency through the design of in-language digital solutions.

However, the stocktake also demonstrated that agencies often took a siloed approach to their communications work, and that there was an overall lack of cohesive messaging and delivery strategies being used across federal government agencies. The stocktake further highlighted that MWTF agencies could benefit from greater insight into how useful migrant workers found the formats and messages and whether they could be improved. The Taskforce asked the Department of Jobs and Small Business and the FWO to conduct research into the information needs of migrant workers which could inform future whole of government communication strategies with migrant workers. The MWTF Final Report included as an appendix a copy of the consultant's report.

The consultant's report was based on an online survey that received 2010 responses, as well as three forms of qualitative research: eight-person focus groups, one-on-one in-depth interviews, and five-person group

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<sup>6</sup> Visa Entitlement Verification Online (VEVO) is a system run by the Department of Home Affairs that allows visa holders, employers, education providers and other organisations to check visa conditions. The system can be accessed via a smartphone app called myVEVO.

evaluations of existing government communications materials. The researchers also conducted a workshop with staff of relevant government agencies, and interviewed representatives of key employee, employer, education and community stakeholders. The quantitative and qualitative research was conducted in 11 languages as well as English. Some findings from the research were that:

- Many migrant workers do not have a good knowledge of workplace rights in Australia
- The timing of communications about workplace rights is important
- Employers, family and friends, and educational institutions are important sources of information on workplace rights
- Migrant workers' misconceptions influence whether, and how, they engage with workplace rights information and government agencies
- Employers' knowledge of workplace rights also affect employees' access and knowledge
- Government communications materials, and efforts to disseminate them, can be improved

In the light of these findings the MWTF Final Report made a number of specific recommendations aimed at improving information and education communications for temporary migrant workers and emphasising the importance of adopting a whole of government approach in this regard.

## **Overview of the Final Report recommendations of the Taskforce**

The Taskforce recommendations reflect an understanding that the problem of wage under-payment is widespread particularly in relation to temporary migrants holding international student and working holiday visas. The Taskforce Chairs (Australian Government 2018: 6) noted that wage under-payment

offends our national values of fairness. It harms not only the employees involved, but also the businesses which do the right thing. It has potential to undermine our national reputation as a place for international students to undertake their studies and may discourage working holiday makers from filling essential gaps in the agricultural workforce. It is a problem that has persisted for too long and it needs concerted action to overcome it.



The Chairs (Australian Government 2018: 6) also noted that

Wage underpayment is simply non-compliance with existing legal requirements. It is not a problem of having too many temporary migrants. And whilst some might suggest the problem might be reduced if minimum wages were lower, we do not consider this to be the appropriate response. We recognise the importance of our national wage setting mechanisms in determining appropriate living wages.

The MWTF made 22 recommendations for Government action. These are outlined (and numbered as in the Taskforce report) below along with a brief summary of their rationale in each case. The recommendations are loosely categorised as relating to compliance and enforcement, new regulation, redress, education and agriculture sector support for employment law, *Migration Act* support for employment law, and institutional relationships, although there are also cross-overs between these categories.

### **Issue: Compliance and enforcement**

*Recommendation: 5* – the general level of penalties for breaches of wage exploitation related provisions in the *Fair Work Act 2009* be increased to be more in line with those applicable in other business laws, especially consumer laws.

*Rationale:* Increasing penalties will help to deter future non-compliance. Penalties under the *Fair Work Act* were significantly lower overall than under other laws affecting business, even taking into account the significant increases for serious contraventions under the *Fair Work Amendment (Protecting Vulnerable Workers) Act*, which could have been applied to a broader range of provisions of the *Act*.

*Recommendation: 6* – for the most serious forms of exploitative conduct, such as where that conduct is clear, deliberate and systemic, criminal sanctions be introduced in the most appropriate legislative vehicle.

*Rationale:* The availability of criminal sanctions will add further to deterrence of serious non-compliant behaviour. Criminal sanctions are available in other legislation regulating business conduct.

*Recommendation: 7* – the Government give the courts specific power to make additional enforcement orders, including adverse publicity orders and banning orders, against employers who underpay migrant workers.

*Rationale:* It is common for other regulators of business to have access through the courts to these kinds of orders. Whilst the legislation now contains a general order making power, making specific reference to these kinds of orders enhances the likelihood of them being issued and of employees complying with the legislation.

*Recommendation:* 8 – the *Fair Work Act 2009* be amended by adoption of the model provisions relating to enforceable undertakings and injunctions contained in the *Regulatory Powers (Standard Provisions) Act 2014 (Cth)*.

*Rationale:* The current powers available to the FWO are unnecessarily restrictive in these areas and it is desirable that they are expressed in the same way as with other regulation affecting businesses.

*Recommendation:* 9 – the Fair Work Ombudsman be provided with the same information gathering powers as other business regulators such as the Australian Competition and Consumer Commission.

*Rationale:* The Government sought to achieve consistent information gathering powers for the FWO when it introduced the *Fair Work Amendment (Protecting Vulnerable Workers) Bill*. However, these were amended in the Senate so as to severely limit their efficient use. This recommendation would overturn this in so far as the FWO's role in protecting workers is concerned.

*Recommendation:* 11 – the Government consider additional avenues to hold individuals and businesses to account for their involvement in breaches of workplace laws, with specific reference to:

a) extending accessorial liability provisions of the *Fair Work Act 2009* to also cover situations where businesses contract out services to persons, building on existing provisions relating to franchisors and holding companies

b) amending the *Fair Work Act 2009* to provide that the Fair Work Ombudsman can enter into compliance partnership deeds and that they are transparent to the public, subject to relevant considerations such as issues of commercial in confidence.

*Rationale:* Increasing fragmentation of labour markets is creating problems for regulators enforcing *Fair Work Act* employment standards. Amendments to the *Fair Work Act* in 2017 made franchisees and holding companies responsible for under-payments of franchisees and subsidiaries in certain circumstances. These provisions should be further extended to cover situations where businesses contract out services to persons.

In the absence of effective supply chain regulation, the FWO has utilised Proactive Compliance Deeds as a way to encourage head organisations to take greater responsibility for what happens in their supply chains. There should be legislative recognition of the power to enter these Deeds and to the extent possible full public transparency of their operation. Experience with 7-Eleven highlighted the type of concerns that may arise when this transparency is lacking.

**Issue: New regulation**

*Recommendation:* 3 – legislation be amended to clarify that temporary migrant workers working in Australia are entitled at all times to workplace protections under the *Fair Work Act 2009*.

*Rationale:* This recommendation deals with the confusion that many temporary migrant workers and employers appear to have as to the application of the Fair Work legislation. Although the FWO and Government lawyers consider that the legislation does apply to temporary migrants even if working in breach of their visas, there are also differences of view among academic lawyers.

*Recommendation:* 4 – legislation be amended to prohibit persons from advertising jobs with pay rates that would breach the *Fair Work Act 2009*.

*Rationale:* Whilst it is a breach of the law to under-pay, it is not necessarily a breach of the law to advertise a job at a pay rate which is below award conditions. The Taskforce considered this should be readily fixed by legislative change.

*Recommendation:* 14 – in relation to labour hire, the Government establish a National Labour Hire Registration Scheme with the following elements:

- a) focused on labour hire operators and hosts in four high risk industry sectors — horticulture, meat processing, cleaning and security — across Australia.
- b) mandatory for labour hire operators in those sectors to register with the scheme.
- c) a low regulatory burden on labour hire operators in those sectors to join the scheme, with the ability to have their registration cancelled if they contravene a relevant law.
- d) host employers in four industry sectors are required to use registered labour hire operators.

*Rationale:* The Taskforce noted that labour hire companies had frequently been associated with poor employment practices in some industries which are significant employers of temporary migrant workers. Whilst subject to existing *Fair Work Act* provisions, the nature of the operations of these businesses make it more difficult to ensure their compliance with these laws.

The Taskforce considered that there needed to be greater direct control over the operations of these companies in these specific industries. Self-regulatory schemes, whilst beneficial, were considered unlikely to be effective in dealing with unscrupulous operators. The Taskforce examined the State-based labour hire regulatory schemes then in contemplation. It considered the objectives it contemplated would be better achieved by a national scheme which was tightly focused on the areas of key concern and which did not impose undue regulatory constraints on the businesses. A registration scheme, with negative licensing, was the preferred model.

#### **Issue: Redress**

*Recommendation:* 12 – the Government commission a review of the *Fair Work Act 2009* small claims process to examine how it can become a more effective avenue for wage redress for migrant workers.

*Rationale:* Procedures for employees obtaining redress for under-payment need to be readily accessible, low cost and timely in their operation. The small claims procedure now operates in court and is limited to under-payments of up to \$20,000. It only deals with a relatively small percentage of potential cases and requires the assistance of the regulator in many cases to proceed. The procedure is bound by excessive legalism and all aspects of it need detailed review. There may be a greater role for the Fair Work Commission in this.

*Recommendation:* 13 – the Government extend access to the Fair Entitlements Guarantee program, it should be done following consultation regarding the benefits, costs and risks, and it should exclude people who have deliberately avoided their taxation obligations.

*Rationale:* The FEG provides last resort protection for employees where their employer's business fails and they have outstanding unpaid entitlements. The scheme excludes from its coverage temporary migrants (but not New Zealand citizens under a Special Category visa). Extending coverage to include temporary migrants recognises that this is

fundamentally an employment protection rather than a social security measure, and that temporary migrant employers will have already contributed to the cost of operating the scheme through their own taxation payments. The Taskforce agreed that employees without work rights and any who consciously avoided their taxation obligations should be excluded.

*Recommendation:* 21 – the Fair Work Ombudsman and the Department of Home Affairs undertake a review of the Assurance Protocol within 12 months to assess its effectiveness and whether further changes are needed to encourage migrant workers to come forward with workplace complaints.

*Rationale:* The Protocol was adopted in January 2017 to support and encourage temporary migrants to come forward with their allegations of under-payment. A review by FWO and the DHA considered it to be working well, whilst recommending a number of minor changes to it. Only a relatively small number of temporary migrants had utilised the Protocol and the view of people not using it had not been canvassed as part of the review. An alternative approach would be to implement an appropriate firewall between the relevant agencies. A further review in 12 months should consider these issues.

#### **Issue: Education sector support for employment law**

*Recommendation:* 15 – education providers, including through their education agents, give information to international students on workplace rights prior to coming to Australia and periodically during their time studying in Australia.

*Rationale:* The National Code of Practice for Providers of Education and Training to Overseas Students 2018 now requires education providers to provide international students with information on their employment rights and how to resolve workplace issues as part of their orientation programs. Information should be provided on a timely basis when it is most needed and not just at orientation. The role of education agents in this process also needs to be recognised.

*Recommendation:* 16 – education providers, through their overseas students support services, assist international students experiencing workplace issues, including referrals to external support services that are at minimal or no additional cost to the student and that specific reference

to this obligation be made in the National Code of Practice for Providers of Education and Training to Overseas Students.

*Rationale:* The National Code of Practice for Providers of Education and Training to Overseas Students 2018 does not specifically require providers to support international students on workplace matters. As a result, practice varies widely. It is necessary to amend the Code so the education sector regulators can exercise influence over the providers in this area.

*Recommendation:* 17 – the Council for International Education develop and disseminate best practice guidelines for use by educational institutions.

*Rationale:* There is a wide variation between education providers in the quality of assistance provided to international students on work place matters. Providers would benefit from guidance on best practice in this area.

#### **Issue: Agriculture sector support for employment law**

*Recommendation:* 18 – the Minister write to the Prime Minister requesting that accommodation issues affecting temporary migrant workers be placed on the Council of Australian Governments (COAG) agenda. Through COAG, the Australian Government should work with state and territory governments to address accommodation issues affecting temporary migrant workers – particularly working holiday makers undertaking ‘specified work’ in regional Australia.

*Rationale:* Exploitative practices in relation to accommodation have been widely reported in rural and remote areas by temporary migrant workers particularly on working holiday visas. These practices include excessive pricing, poor quality, over-crowding and use of accommodation to coerce workers in different ways. Often existing laws cover the conduct involved, but the laws are poorly enforced and there is a lack of coordination between responsible authorities. Since all levels of government have an involvement in these matters, the Taskforce considered COAG was the appropriate forum to coordinate appropriate action to deal with the highlighted problems.

**Issue: Migration Act support for employment law**

*Recommendation:* 19 – the Government consider developing legislation so that a person who knowingly unduly influences, pressures or coerces a temporary migrant worker to breach a condition of their visa is guilty of an offence.

*Rationale:* Unscrupulous employers have utilised the visa restrictions on international student and working holiday maker visas to coerce temporary migrants to act in ways that they would not otherwise do. Existing law does not adequately deal with this behaviour. If the relevant restrictions on these visa categories are to be retained, the legislation should be broadened to directly prevent the behaviours concerned.

*Recommendation:* 20 – the Government explore mechanisms to exclude employers who have been convicted by a court of underpaying temporary migrant workers from employing new temporary visa holders for a specific period.

*Rationale:* New Zealand immigration law currently applies a stand down and public naming procedure to employers who sponsor migrants for employment but breach workplace requirements. Australia following the *Migration and other Legislation Amendment (Enhanced Integrity) Act 2018* now has a similar but less formal approach. It is not clear, however, why a similar approach could not be implemented in relation to unsponsored visa categories. If an approach along these lines could be developed, it would provide further support and enhance the effectiveness of employment law.

**Issue: Institutional arrangements**

*Recommendation:* 1 – the Government establish a whole of government mechanism to further the work of the Migrant Workers' Taskforce following its completion.

*Rationale:* The key issue here is that there needs to be a clear focus within Government for taking the work of the Taskforce forward. There is firstly the need to ensure appropriate implementation of agreed recommendations, but also a continuing focus on monitoring the overall impact of the recommendations once implemented. There is a continuing need to ensure agencies work together under whole of government priorities. The establishment of a Director of Labour Market Enforcement

in the UK provides an interesting example of how to develop and achieve a consistent set of priorities between agencies for enforcement and to monitor on a whole of government basis the implementation of agreed strategies.

*Recommendation: 2* – a whole of government approach to the information and education needs of migrant workers be developed. It is recommended that this approach be informed by findings of the research project, *The Information Needs of Vulnerable Temporary Migrant Workers about Workplace Laws*, with implementation of the following measures:

- a) improve the delivery and accessibility of personalised, relevant information to provide the right messages at the right time to migrant workers
- b) use behavioural approaches to encourage and advise migrant workers how to take action if they are not being paid correctly
- c) enhance the promotion of products and services already available from government agencies — particularly in-language information — through search engine optimisation, expanded use of social media channels, and cross-promotion of Fair Work Ombudsman material by other agencies
- d) improve messaging in government information products so they are translated, simple, clear and consistent
- e) work with industry and community stakeholders to educate employers and address misconceptions about the rights and entitlements of migrant workers in Australian workplaces.

*Rationale:* This recommendation reflected the findings of a stocktake of the communications activities of the agencies represented on the Taskforce and the results of commissioned research relating to the Information needs of Vulnerable Temporary migrant Workers. The consultant's report was published as an appendix to the Taskforce report. The stocktake indicated that agencies frequently did not take adequate account of what other agencies were doing and they could have achieved more by closer cooperation.

*Recommendation: 10* – the Government consider whether the Fair Work Ombudsman requires further resourcing, tools and powers to undertake its functions under the *Fair Work Act 2009*, with specific reference to:

- a) whether vulnerable workers could be encouraged to approach the Fair Work Ombudsman more than at present for assistance



- b) the balance between the use of the Fair Work Ombudsman's enforcement and education functions
- c) whether the name of the Fair Work Ombudsman should be changed to reflect its regulatory role
- d) getting redress for exploited workers, including the use of compliance notices and whether they are fit for purpose
- e) opportunities for a wider application of infringement notices
- f) recent allocations of additional funding.

*Rationale:* The Taskforce considered that a stronger enforcement approach is needed to deal with the under-payment problem. This requires that the regulator has adequate resources, tools and powers for the task. The FWO currently does not have a high profile and is not well known to many migrant workers. The name of the organisation suggests an emphasis on adjudicating disputes rather than enforcement of the law. The balance between informing and educating market participants and enforcement needs to be altered in favour of the latter. At the same time FWO should be more forceful in seeking redress by being less conservative in the use of compliance notices and infringement notices. Unnecessary legislative and administrative barriers to the use of these notices need to be removed. Funding for community organisations needs to be directed more to those organisations which directly assist vulnerable employees.

*Recommendation:* 22 – the Government give a greater priority to build an evidence base and focus its existing research capacity within the Department of Jobs and Small Business on areas affecting migrant workers. It should do this to better understand the extent, nature and causes of any underpayment and exploitation migrant workers may experience. The department should work across departments where appropriate. Separately, and in addition:

- a) the Department of Education and Training should work with the Council for International Education and peak organisations to help identify mechanisms for providers to collect data about student visa holders' experiences of working in Australia
- b) the Department of Education and Training should conduct regular surveys of overseas students that include workplace experience
- c) the Government should support work being undertaken by ABARES, the science and economics research division of the Department of

Agriculture and Water Resources to increase data collection in relation to agricultural labour.

*Rationale:* There are significant gaps in the information within government agencies on which to evaluate the status of labour market issues and specifically the under-payment problem. More information is needed in relation to the drivers of under-payments, the incidence and the extent of under-payments across different sectors of the economy, the experience in other countries and the impact of different policy responses. The Taskforce was hampered in its work by this lack of research and evidence and identified these specific areas for attention.

In addition to the recommendations in each area outlined above, the Chairs separately emphasised a number of other matters for Government consideration. Most notably, they proposed that a public capability review of the FWO be undertaken to ensure it had the right resources, tools and culture to provide a stronger enforcement and litigation response to the problem. Further they recommended consideration be given to changing the name of the FWO to something which better reflects the organisation's regulatory role.

The ACTU (2019) claimed that the report failed 'to acknowledge the critical role of unions in the enforcement of employment standards'. They had a point. Historically unions have played a significant role in the enforcement of employment standards and award wages, but this role has declined especially in many of the fragmented industries in which temporary unskilled migrants work. Short term employees and contractors often do not see significant benefits of union membership. And unions have difficulties organising in these industries, sometimes being actively discouraged by the actions of unscrupulous employers from doing so. The major retail sector unions were largely absent from the 7-Eleven franchisee sector, but did seek to gain more attraction when there was a lot of publicity given to wage underpayment. However, the potentially important role that unions could play was highlighted by Unite. This was the first group to really take action not only by engaging directly with 7-Eleven, but also by taking underpaid workers to the FWO, which resulted in the latter's first case against a 7-Eleven franchisee.<sup>7</sup>

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<sup>7</sup> *Fair Work Ombudsman v Bosen Pty Ltd & Anor* (unreported, Magistrates' Court of Victoria Industrial Division, 21 April 2011).

Officials assisting the MWTF strongly suggested that the role of unions was outside the scope of the Taskforce terms of reference. Whilst this was questionable, the fact was that most Taskforce members considered it better to focus on other areas where there was less Government sensitivity and where progress was more likely to be achieved.

Many organisations in the community could provide greater support and assistance to temporary migrant workers. This includes education providers, who benefit greatly from the presence of international students, not for profit groups including churches, who already provide support especially for seasonal workers, as well as unions. The community as a whole would be better off if this support helped prevent the incidence of under-payment and the avoidance of costly remediation and enforcement actions later on.

Issues highlighted by unions with the Taskforce particularly related to the enforcement of *Fair Work Act* provisions protecting the ability of workers to join, participate in and act through unions; and application of the restrictions on the right of entry to workplaces where breaches of the *Fair Work Act* are reasonably suspected, including the ability to inspect relevant documents.

## **Government response to report**

The Government (2019) welcomed the Taskforce report, reiterated its commitment to deal with the problem and noted the steps it had already taken in this regard.

The then Minister for Jobs and Industrial Relations, Kelly O'Dwyer MP (2019) noted that 'the Government has carefully considered each of the Taskforce's 22 recommendations and accepts in principle all the report's recommendations'. She indicated that an additional \$14.4 million had been provided to the FWO to focus on the protection of migrant workers. It subsequently became clear that this amount, spread over four years, included \$4 million to establish a National Labour Hire Registration Scheme (recommendation 14) and \$10.8 million to enhance the FWO's capacity to conduct investigations into underpayment and related issues and deliver information and education activities (recommendation 10) (Australian Government 2019: 150).

Separately, an additional \$1.3 million was provided for in the Budget to the Department of Jobs and Small Business to implement a 12 month pilot program to improve small farmers' access to seasonal workers and \$1.6 million to the FWO to increase education, monitoring and investigation activities relating to Seasonal Worker Employees participating in the Pilot (Australian Government 2019: 151). The Taskforce Chairs had flagged a concern that the Seasonal Worker Program did not appear to be immune from wage under-payment and accommodation concerns and that this area should be subject to future review.

There was no indication that the National Labour Hire Registration Scheme proposed by the Taskforce would not provide the framework for what will eventually be adopted. The Government considered the scheme would 'reduce worker exploitation, improve accountability provide greater transparency and drive behavioural change in high risk sectors, without causing major disruption to the entire labour hire industry'.

The Government did not comment on the other specific proposals for regulation under the *Fair Work Act* (recommendations 3 and 4), but these are not considered contentious.

Criminal sanctions have not previously applied in relation to breaches of under-payment laws. However, the Government's response was a strong indication of its intention to closely consider this matter (recommendation 6). It indicated it would 'consider the circumstances and vehicle in which criminal penalties will be applied for the most serious forms of deliberate exploitation of workers'. Criminal sanctions could be included in the *Fair Work Act* itself, the *Criminal Code*, or some other legislation. The Government noted that criminal sanctions would complement existing offences for serious criminal forms of labour exploitation, including forced labour, servitude and debt bondage in the *Criminal Code 1995 (Cth)*. Further, it agreed that the addition of criminal penalties would be a clear indication of the Government sending a strong and unambiguous message to employers who think they can get away with exploiting employees.

Reports subsequently have indicated that the Government is indeed moving to draft new legislation to criminalise wage theft. It has confirmed that legislation would be introduced before the end of 2019 (The Australian 2019; The Guardian 2019).

However, in relation to the recommendation to further lift the general level of civil penalties (recommendation 5), the Government's response was less supportive in only agreeing that this should be reviewed when the higher

penalties for serious breaches introduced by the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* had had time to take effect.

Disappointingly the Government made no specific commitment to review the operation of the small claims courts to enable easier and more timely access to redress for wage under-payment claims (recommendation 12) or to enhance the effectiveness of compliance and infringement notices (recommendations 10 d and e) to enable the regulator to obtain redress for those under-paid. Rather it seemed to just express support for the existing model. 'The Government recognises the positive work undertaken by the FWO in recovering wages, settling disputes and deterring and disrupting illegal workplace practices, particularly its recent work on the Harvest Trail Inquiry. To make sure the FWO can continue to undertake this important work, the Government will continue to ensure it is sufficiently resourced and has the appropriate powers and tools to be effective at addressing worker exploitation'.

The FWO's Harvest Trail report (Fairwork Ombudsman 2018) found widespread breaches of workplace laws by more than 50 per cent of the 638 firms investigated, including deliberate and significant underpayments of base pay rates, falsification of records, deliberate withholding of payslips, non-payments and authorised deductions. However, the regulator's response could be considered to be a very light handed one. Only eight cases were taken to court, with penalties averaging around \$86,000, there were 7 enforceable undertakings, 13 compliance notices, 132 infringement notices and 150 formal cautions. Around \$1 million was recovered for 2503 employees, or just over \$400 per employee. As the report notes, outstanding worker entitlements are likely to be significantly higher than this.

It is unlikely that the sanctions and refund requirements imposed on firms following the FWO's Harvest Trail Inquiry will be anywhere near sufficient to change compliance culture in this industry. For this to be achieved, further early follow up investigation, tougher sanctions and a more vigorous pursuit of redress for workers will be necessary.

An important step forward was the Government's response to the Taskforce recommendation relating to the Fair Entitlement Guarantee Scheme (recommendation 13). Temporary migrants have been ineligible to be covered by this scheme, which could be considered tantamount to the Government tolerating under-payments to temporary migrants, but not to Australians or permanent residents. The Government said it 'will

examine whether to extend the FEG to migrant workers with work rights. Where these workers have been doing the right thing by satisfying their taxation obligations, the Government considers it reasonable that they, in turn, be protected by the FEG program. Consultation will soon commence on this proposal.'

The Government accepted that the FWO should have enforcement powers equivalent to the ACCC at least in relation to information gathering. (Recommendation 9) It did not comment on the range of enforcement orders the regulator could seek from the courts (recommendation 7) or the application of model provisions to the enforceable undertaking and injunction powers (recommendation 8).

The Government indicated it would examine options to enhance the role of Proactive Compliance Deeds in further promoting compliance with workplace laws, which was not quite the intent of the Taskforce recommendation (recommendation 11b). The key issue here relates to the transparency of operation and public interest focus of these Deeds. The need to use these Deeds would also be lessened if accessorial liability provisions of the *Fair Work Act* were broadened (recommendation 11a). The Government indicated it would examine options for this.

A number of recommendations particularly concerning the DHA involved further consideration of specific proposals. These included making it an offence for a person to knowingly pressure or coerce a temporary migrant worker to breach a visa condition (recommendation 19), to explore mechanisms to exclude employees who are convicted by a court for underpaying migrant workers from engaging new temporary visa holders for a specific period of time (recommendation 20) and to further review the existing Assurance Protocol between the Department and FWO to ensure it is working as intended (recommendation 21). These three recommendations were all accepted by the Government.

The Taskforce's key recommendation in relation to the Education sector essentially was to further amend the National Code of Practice for Providers of Education and Training to Overseas Students to require providers to provide more assistance to students having difficulties in the workplace (recommendation 16). This recommendation was not generally supported by the sector or the Council for International Education and the Government's response has been influenced by this. It was to address recommended changes to the National Code as part of its next review. No time has been set for this review. The other education sector

recommendations (recommendations 15 and 17) were less contentious with the sector and are seen as being covered by a Package of Actions on Student Workplace Exploitation being implemented by the Council for International Education.

The Government indicated that it would seek to have accommodation issues for temporary migrant workers especially in regional Australia considered at a future ministerial council of COAG, as recommended by the Taskforce (recommendation 18).

The Government has so far not addressed the institutional reforms proposed by the Taskforce (recommendations 1,2, 10 and 22). These are critical to ensuring reforms are effectively implemented, not just now but also on a continuous basis in response to changes in circumstances. It is clear that a whole-of -government approach to dealing with the problem is necessary, but there is no indication of how this will be achieved. Past experience has highlighted the problems of not having a strong central oversight and direction in this area where departments and regulators have widely varying interests and priorities.

The FWO has a critical role to play in regulating the labour market, particularly with the demise of unions over recent decades, which used to have a stronger influence in maintaining minimum standards. Concerns exist as to whether the FWO has the necessary capability to undertake the task required of ensuring much higher levels of compliance across many sectors of the economy. It needs to have the right tools, resources and culture. There is concern that the FWO places too much emphasis on information and education and mediation and not enough on enforcement. Its legislative framework and name point it in these directions. A public review of the organisation's capability should be seriously considered by the Government.

### **Assessment of the Taskforce**

Overall, the Taskforce was considered by its members to have been successful in achieving a stronger whole of government focus on dealing with the temporary migrant worker under-payment problem. The Taskforce was able to generate new ideas and suggest both changes in policy and administrative and enforcement practices. It achieved agreement on a significant package of reforms that, if adopted, should have a significant impact over time on reducing under-payments.

*Professor Allan Fels AO and Dr. David Cousins AM were the Chair and Deputy Chair respectively of the Migrant Workers' Taskforce.*

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# Labour and Industry



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