



Select Committee on Temporary Migration

Inquiry into the impact of temporary migration on the Australian economy, wages and jobs, social cohesion and workplace rights and conditions

Submission

Uniting Church in Australia Synod of Victoria and Tasmania and The Salvation Army Australia

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Statement of Recognition

The Salvation Army and the Uniting Church in Australia acknowledge the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia.

We also acknowledge the forced labour, servitude and enslavement of Aboriginal and Torres Strait Islander peoples and Pacific Islander peoples in Australia's history and we recognise the trauma and impact those injustices have had on individuals, their families and communities.

Background Information

Uniting Church in Australia, Synod of Victoria and Tasmania

The Synod of Victoria and Tasmania is part of the Uniting Church in Australia, the country's third largest Christian denomination. The Uniting Church in Australia was formed in 1977, when three congregations – the Methodist Church of Australasia, the Presbyterian Church of Australia and the Congregational Union of Australia – came together.

We are one of six Synods, comprising 600 congregations and more than 60,000 members. We also have 12 schools. We worship every week in more than 40 languages. Through worship, sharing the story of Jesus, and service in the community, we witness to the belief that life is most fully found in God.

Through UnitingCare, the Uniting Church in Australia is the largest non-government provider of community services in Australia, employing more than 70,000 Australians.

We have formal partnerships with 32 churches in Asia and the Pacific and have also been instrumental in pioneering interfaith relationships, including other Christian denominations

We have a strong sense of social justice and actively campaign on a range of issues, including the environment, modern slavery, asylum seekers, fair work and gambling.

We have campaigned against modern slavery in seafood production and processing from Thailand, garment production in India, cotton production out of Uzbekistan, palm oil production from Malaysia and on Australian farms.

The Salvation Army

The Salvation Army is an international Christian movement with a presence in 131 countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army anti-slavery programs work to mobilise community, business and government to recognise and respond to modern slavery, including early and forced marriage in Australia.

Since 2008, The Salvation Army has independently operated the only refuge in Australia dedicated exclusively for women who have experienced modern slavery. The Safe House also supports men, women and children in the community who may be at risk of modern slavery and severe labour exploitation. To date, we have assisted over 300 individuals impacted by these crimes. In addition to direct services, The Salvation Army also raises awareness, provides education and training and works in partnership with the community to ensure that people who have experienced slavery are adequately protected and that slavery can be eradicated in Australia.

Introduction

The Salvation Army and the Synod of Victoria and Tasmania, Uniting Church in Australia, welcome the opportunity to submit to this inquiry into temporary migration.

The vulnerabilities that migrant workers experience are well documented both internationally and domestically.

Some groups remain more vulnerable than others, such as women, children, people from refugee backgrounds, and people on temporary visas. Limited English language skills, lack of awareness of Australian workplace laws, and fear of visa cancellation or removal from Australia are only some of the factors which make migrant workers particularly vulnerable to workplace exploitation. Those with irregular status, in particular, are often denied basic entitlements and services.

Whilst temporary visa holders have been subjected to higher rates of exploitation, wage theft and human trafficking, it is not the act of migration itself that is the root cause of the problem. Rather, we submit that at the heart of all forms of labour exploitation are two issues:

- (1) Visa conditions which foster reliance on a potentially unscrupulous employer and which limit an employee's right to remain in Australia to access justice and return to work in Australia if they are unfairly dismissed for reporting unlawful conduct; and
- (2) Poor enforcement of labor and criminal laws, which consequently has cultivated a low risk, operating environment for those doing the wrong thing.

The submitting bodies acknowledge the Government's commitment to protecting all vulnerable workers, including migrant workers. The introduction of more stringent penalties, additional resources and strengthened investigative powers for the Fair Work Ombudsman (FWO) are some of the steps taken by the Government to eliminate exploitation in some Australian workplaces. However, more needs to be done to ensure that temporary workers experience equal protection under Australian law.

The submitting bodies believe there is a role for temporary migration in the Australian workforce. There are areas where employers are unable to attract permanent residents to take up the work. However, in some cases the inability to attract permanent residents is because the sector is plagued with wage theft and mistreatment of workers. The experience of systemic wage theft has been our experience in horticultural and the cleaning businesses.

Where possible, permanent migration is to be preferred over temporary migration as it removes the reliance on a particular employer for the right to work in Australia, thus reducing vulnerability to exploitation. Being a citizen also means a person is more invested in the good of the Australian community.

The submitting bodies would welcome the opportunity to discuss the content of this submission should any additional information be of assistance.

Recommendations

The submitting organisations request the Committee make the following recommendations:

1. The Commonwealth Government should follow through with its commitment to introduce a national labour hire registration scheme, which incorporates the existing state based labour hire licensing schemes. The scheme needs to ensure the real owners and controllers of labour hire companies are identified. It needs to make it an offence to operate a labour hire business that is not registered. It also needs to be a serious offence for a business to use the services of a labour hire business that is not registered.
2. Wage theft, where sustained, substantial and intentional, should be made a criminal offence. Penalties for all wage theft (criminal or civil) must provide sufficient deterrence against the behavior (such as penalties being a multiple of what has been stolen and both the legal entities and the controllers of the legal entity engaged in wage theft being subject to penalties);
3. Create and fund a framework for social inclusion for temporary workers to diversify the sources of information and assistance available to workers, many of whom are fearful or mistrustful of government complaint helplines.
4. Fund existing community-based organisations to deliver mandatory orientation sessions for all work-related visa holders and their family members - to provide meaningful and sustained linkages to community based support and to reduce social isolation. Many people on temporary work visas come from cultures where face-to-face contact is vital to having the trust to report exploitation. Thus, simply giving people on temporary visas written information about their rights and who to report exploitation to is inadequate and contact with a community organisation is essential.
5. The Parliament should pass the legislation introducing a Director Identification Number;
6. The Australian Business Number system should be reformed to ensure the information attached to the ABN is accurate and up-to-date;
7. The Parliament should pass the legislation to improve the business registry. Regulations should be introduced to ensure the information contained in it is accurate and up-to-date and managed by a regulator that is committed to that outcome;
8. The government should introduce an ultimate beneficial ownership register. However, this would only be helpful if the information contained in the register is made public so as to assist employees who have been subjected to wage theft to know who is likely to be ultimately responsible;
9. The government should abolish the use of piece rates in the horticulture sector, given their demonstrated wide-scale misuse for exploitation;
10. Building in portability to visa conditions to enable workers to leave bad employers;

11. Publicly reward employers with good track records to empower workers to make informed decisions about who they work for and incentivise good behaviour by employers;
12. Build in pathways to permanence for some workers;
13. Create incentives for workers to report unlawful workplace conduct by creating a temporary immigration mechanism allowing exploited workers a right of stay to remain legally in Australia to pursue civil action against offending employers.
14. All immigration integrity operations, including those of Taskforce Cadena, should include specialists in slavery and trafficking who are guided by victim management protocols reflective of best practice in trafficking victim identification and management.
15. Create a 'firewall' between immigration and other regulators or sources of support for exploited workers, such as the Fair Work Ombudsman, to provide safe and confidential avenues to report unlawful workplace conduct.
16. Increase resources to the Fair Work Ombudsman and the Australian Federal Police to investigate and prosecute reported or detected cases of labour exploitation and forced labour (respectively).

The submitting organisations responses to particular terms of reference are provided below.

(a) government policy settings, including their impact on the employment prospects and social cohesion of Australians and (b) the impact of temporary skilled and unskilled migration on Australia’s labour market;

Concerns about social cohesion could be addressed by increasing the social inclusion of workers on temporary visa programs. In past submissions, we have recommended this be done through establishing social inclusion frameworks similar to the settlement support framework and by ensuring that Australian workers are not replaced by lower-paid, non-unionised visa holders in industries like coastal shipping, oil and gas, dairy and meat processing.

Migrant-blaming narratives have been unhelpful in diverting attention away from the true culprits—dodgy employers—to migrant workers.

The government should endeavour to ensure that the policy settings around temporary migration prevent an employer bringing in temporary workers to undermine the pay and conditions of permanent residents. This may be done by:

- Building in portability to visa conditions to enable workers to leave bad employers;
- Publicly rewarding employers with good track records to empower workers to make informed decisions about who they work and incentivise good behaviour by employers. This could be done by disseminating information on successful remediation to key stakeholders, requiring employers to notify their employees, and making information more readily available on government websites rather than relying on press releases;
- Build in pathways to permanence for some workers;
- Creating and funding a framework for social inclusion for temporary workers to diversify the sources of information and assistance available to workers, many of whom are fearful or mistrustful of government complaint helplines.

(e) the impact of wage theft, breaches of workplace rights and conditions, modern slavery and human trafficking on temporary migrants;

Vulnerability and Exploitation

People working on temporary visas have been demonstrated to be more vulnerable to wage theft and other forms of exploitation, including cases of modern slavery.¹ However, wage theft and exploitation are not restricted to people on temporary visas and therefore it is inappropriate to lay blame for wage theft, exploitation and modern slavery on temporary

¹ International Labour Organisation (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office; Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report No 76* (30 November 2015).

migration. Instead the Committee should recommend a range of measures to address wage theft, exploitation and modern slavery across the workforce.

In relation to people on temporary visas, their vulnerability to wage theft and exploitation would be reduced if their rights in relation to their employers were improved. Visas that grant employers the ability to have workers removed from Australia where the worker has no effective ability to appeal against the removal particularly make people on temporary visas vulnerable to exploitation. For example, in 2016 the Fair Work Ombudsman found 417 visa holders as especially vulnerable to exploitation.² The Fair Work Ombudsman also concluded “their vulnerability is increased if they choose to undertake an 88 day placement, because of the remoteness of their working location and their dependence on employers to obtain eligibility for a second year visa.”³

The Fair Work Ombudsman reported receiving information about the following forms of exploitation and abuse of 417 visa holders:⁴

- Underpayment or non-payment of wages;
- Visa holders offering (or being induced to offer) payment to employers and third parties for assistance to gain a second year work rights visa;
- An increased dependency on the employer by the visa holder seeking employment during the 88 day specified work requirement of the 417 visa program in order to secure a second year visa and stay in Australia;
- Sexual harassment and workplace health and safety issues;
- Employers recruiting workers with the offer of unpaid work to meet the second year visa eligibility requirements; and
- Visa holders working for free in exchange for non-certified accommodation programs.

In an investigation of issues on the 416 visa program, the Fair Work Ombudsman investigation concluded that the 416 visa program created an environment where:⁵

- Unreasonable and unlawful requirements are being imposed on visa holders by unscrupulous businesses;
- Exploitative workforce cultures/behaviours are occurring in isolated and remote workplaces; and
- Employers are making unlawful deductions from visa holders’ wages, or are unlawfully requiring employees to spend part or all of their wages in an unreasonable manner.

The inquiry found that amongst 416 visa holders:⁶

- Almost a third did not receive payment for some or all of the work they did;
- A quarter described their accommodation conditions as poor;
- 14% had to pay to secure regional work;

² Fair Work Ombudsman, ‘Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program’, October 2016, 3.

³ Fair Work Ombudsman, ‘Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program’, October 2016, 3.

⁴ Fair Work Ombudsman, ‘Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program’, October 2016, 3.

⁵ Fair Work Ombudsman, ‘Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program’, October 2016, 4.

⁶ Fair Work Ombudsman, ‘Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program’, October 2016, 4.

- 6% had to pay an employer to 'sign off' on their regional work requirement for working the 88 days;
- More than a third claimed they were paid less than the minimum wage; and
- Of those who were paid for their regional work, around 27% were paid in cash.

At present, the rights of many migrants remain precarious, as highlighted by a report recently published by the United Workers Union⁷ which focused on the exploitation occurring in the Australian farm sector. The research found that only 35% of the workers speaking out reported holding a valid work visa, with two-thirds of all the farmworkers surveyed earning below the minimum wage.

In the experience of the submitting bodies, piece rates under the Horticultural Award have been widely misused to underpay workers. Businesses themselves have told the submitting bodies of farms where not a single person working on the farm gets the competent employee rate, which lacks all credibility. One working holiday maker report to us she and the other workers on the farm were paid a piece rate to pick zucchinis on a farm in NSW. Having cleared the field of the zucchinis that were of the acceptable commercial size, she and the other workers were told they had to carry out unpaid work to collect the rest of the zucchinis that could not be sold before being allowed to move onto the next field.

There is a close connection between abuses and severe forms of exploitation, like forced labour, and the shadow economy. It is estimated that the shadow economy could be as large as 3 per cent of GDP (roughly \$50 billion).⁸ The shadow economy undermines the integrity of Australia's economy, tax and welfare systems by creating an uneven playing field. If left unchecked, it enables and entrenches the exploitation of workers and gives rise to criminal forms of exploitation, including forced labour, debt bondage, deceptive recruitment and human trafficking, all of which comprise, among other crimes, modern slavery

Modern Slavery

Research from the Australian Institute of Criminology and our own experience demonstrates that exploitation of migrant workers occurs in the same context where modern slavery occurs.⁹ The International Labour Organisation's Special Action Programme on Forced Labour has stated that ending forced labour requires robust monitoring of the labour market and strong enforcement of labour laws. As such, we strongly argue that the integrity of Australia's anti-slavery framework relies on robust protections for migrant workers; otherwise, we risk undermining our domestic anti-slavery response, our position as a leader in the region, and potentially our international human rights obligations.

⁷ National Union of Workers (2019). 'Farm workers speak out'. Retrieved from https://www.nuw.org.au/sites/nuw.org.au/files/farm_workers_speak_out_nuw_report_web.pdf

⁸ Commonwealth of Australia (2017). Black Economy Taskforce: Final Report. Retrieved from https://treasury.gov.au/sites/default/files/2019-03/Black-Economy-Taskforce_Final-Report.pdf

⁹ Fiona David (2010). *Labour trafficking*. Australian Institute of Criminology Research and Public Policy Series No. 108. Canberra: AIC.

Whilst Australia has taken some important steps to address modern slavery in supply chains, through the recent passage of the Modern Slavery Act 2018 (Cth), there remain significant gaps in the criminal justice response to modern slavery, including poor screening and engagement of suspected victims, limited or no collaboration with NGOs to assist victims to make an informed decision about whether to cooperate with law enforcement (which is a requirement to access government support); and poor data collection to inform policy and budget decisions under the National Action Plan to Combat Modern Slavery (NAP 2020).¹⁰

The result of these has been low identification of victims¹¹ (for every one victim, four go undetected) and very low prosecution of offenders (only 22 people have been convicted of a slavery related offence).

To address these issues, we have recommended:

- Allocate appropriate funding for the full implementation of the new National Action Plan to Combat Human Trafficking and Slavery, with an emphasis on building local capacity across the country to identify and effectively engage victim-survivors.
- Establish a national modern slavery data collection and reporting framework to inform the national response and ensure accountability across all relevant stakeholders.
- Work with the states and territories to establish a place-based, nationally consistent framework through which to drive ongoing, evidence-based responses to modern slavery.

We have also recommended additional measures to incentivise reporting of crimes, including:

- Create a temporary immigration mechanism allowing exploited workers a right of stay to remain legally in Australia to pursue civil action against offending employers.
- All immigration integrity operations, including those of Taskforce Cadena, should include specialists in slavery and trafficking who are guided by victim management protocols reflective of best practice in trafficking victim identification and management;
- Create a 'firewall' between immigration and other regulators or sources of support for exploited workers, such as the Fair Work Ombudsman, to provide safe and confidential avenues to report unlawful workplace conduct; and
- Increase resources to the Fair Work Ombudsman and the Australian Federal Police to investigate and prosecute reported or detected cases of labour exploitation and forced labour (respectively).

Environment of Impunity

¹⁰ The Salvation Army and Uniting Church of Australia Synod of Victoria and Tasmania (2020) Submission to public consultation for the National Action Plan to Combat Modern Slavery 2020-2024. Available on request.

¹¹ Samantha Lyneham, Christopher Dowling, and Samantha Bricknell (2019) Estimating the dark figure of human trafficking and slavery victimisation in Australia. Statistical Bulletins No. 16, Canberra: Australian Institute of Criminology.

The Migrant Workers' Taskforce Report concluded "the problem of wage underpayment is widespread and has become more entrenched over time", with as many as half of temporary migrant workers may be underpaid.¹² Its analysis confirmed deliberate, unscrupulous labour hire practices exist to "help take advantage of vulnerable workers." It found that contractors often create "complex operating environments that make it harder to ensure compliance with the law", including sophisticated pyramid structures, multiple sub-contracting arrangement, involvement of related business, such as accommodation.

The report found that amongst drivers for unscrupulous practices were:

- Desire to avoid regulatory requirements
- Believing that the monetary gains from non-compliance outweigh the risk of being caught and penalized
- Lack of visibility from host businesses regarding the behaviour of labour hire operators, especially when there is a stronger economic imperative to have the work done (e.g. have the crop picked on time)
- Lack of accountability in supply chain at bottom end
- High/short demand for labour; limited supply in areas/occupations
- Low profit margins in some labour-intensive industry sectors
- Relative large supply of vulnerable workers and
- Unscrupulous labour hire operators are accepted as a standard part of the market.

Other research supports these findings, including one study from Monash University, which found that authorities are not only failing to detect exploitation but are disproportionately focused on removing workers found to be in breach of visa conditions which consequently creates a low risk operating environment for dodgy operators.¹³

Addressing the scale of exploitation of people on temporary visas, as well as permanent residents, require solutions that increase the real and perceived risk of apprehensive and adequate sanctions being applied to exploitive employers. Review of criminological literature on what works to deter crime finds that there is substantial evidence that it is the perceived risk of apprehension that is more effective in deterring crimes than the level of penalty once the level of punishment is adequate.¹⁴ This literature finds that perceived certainty of punishment is associated with reduced intended offending, assuming again the penalty is adequate.¹⁵ The conclusion is that with an adequate penalty, it is the risk of apprehension and not the severity of the legal consequences ensuing from prosecution that is the more effective general deterrent.¹⁶

¹² Commonwealth of Australia (2019). Report of the Migrant Workers' Taskforce. Retrieved from <https://www.ag.gov.au/industrial-relations/industrial-relations-publications/Pages/report-migrant-workers-taskforce.aspx>

¹³ Marie Segrave (2018), Exploited and illegal: Unlawful migrant workers in Australia (Interim Report), https://monash.figshare.com/articles/Exploited_and_illegal_Unlawful_migrant_workers_in_Australia/7159193

¹⁴ Daniel S Nagin (2013), 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, 201.

¹⁵ Daniel S Nagin (2013), 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, 201.

¹⁶ Daniel S Nagin (2013), 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, 202.

The submitting bodies are concerned that when penalties are limited by what a business can afford to pay, it means the business owners are capable of knowing the size of their business will limit the size of the penalty. Further, it provides incentives to those engaged in deliberate wage theft to structure their business arrangements to avoid higher levels of penalty by making sure they can argue that a higher penalty will drive them out of business. There is a need to acknowledge where a company has engaged in substantial wage theft, they may have gained a significant competitive advantage, resulting in other businesses collapsing with the employees and shareholders in those businesses harmed. Further, they may have destroyed the ability of other employers to provide decent jobs for their employees if they wish to remain competitive. Therefore, where business owners have engaged in deliberate and substantial wage theft, the penalties should not be limited by what the business can afford. Driving criminals out of business is likely to be better for the industry in question as a whole. Further penalties need to flow over onto the individuals involved, to remove the incentives to set up legal arrangements that limit the impact of sanctions. For example, it is our understanding that both unions and community legal centres often encounter structures where employees are employed by a company with no assets so that there are no assets to pursue in a wage theft case. A separate company owns the real assets of the business.

The penalties for wage theft need to be sufficient to ensure that it is not worthwhile for the business to engage in deliberate wage theft or reckless underpayment of wages. A small fine and repayment of the wages will not be sufficient to deter business owners that are willing to steal from their employees. Thus the penalty should be calculated as a multiple of what has been stolen. However, the size of the final penalty would be left to the discretion of the regulator, in this case, the Fair Work Ombudsman.

For example, with the Australian laws covering bribery of foreign officials, the penalties for a body corporate can be three times the benefit obtained, if the benefit from the bribe can be calculated. If the benefit from the bribe cannot be calculated, then the penalty is 10% of the company's annual turnover.¹⁷

Given the anecdotal high use of shell companies with few assets as vehicles for wage theft, penalties must attach directly to those who own and control the body corporate used to carry out the wage theft as individuals. Significant financial penalties only aimed at the corporate vehicles are likely to encourage those that deliberately carry out wage theft to set up such corporate arrangements to ensure there are insufficient assets attached to the body corporate to be able to repay the wages stolen and certainly nothing to pay a fine.

For a more substantial penalty, flexibility could be allowed for the conditions of repayment, allowing the stolen wages and associated fine to be repaid within a reasonable timeframe.

¹⁷ Australian Government, Attorney General's Department, 'Foreign Bribery. Fact Sheet 2', <https://www.ag.gov.au/Crime/Foreignbribery/Documents/Factsheet-Theforeignbriberyoffence.pdf>

As noted above, limiting the penalties based on what a business can afford to pay and stay in business will continue to encourage people setting out to conduct wage theft to set up corporate structures for that purpose. The structures conducting wage theft have few assets.

The role that artificial corporate structures play in cases of wage theft highlights the need for the other corporate reforms the government has conducted consultations on, including:

- The introduction of a Director Identification Number;
- Reforms of the Australian Business Number system to ensure the information attached to the ABN is accurate and up-to-date;
- Improvements of the business registry, ensuring the information contained in it is accurate and up-to-date and managed by a regulator that is committed to that outcome; and
- The introduction of an ultimate beneficial ownership register. However, this would only be helpful if the information contained in the register is made public so as to assist employees who have been subjected to wage theft to know who is likely to be ultimately responsible.

The Fair Work Ombudsman investigation into the network of labour hire businesses that were used to employ workers at several sites of chicken processing corporation Baiada highlighted the problems with the current system of corporate regulation. The use of shell companies with false addresses was used to frustrate the Fair Work Ombudsman. For example, concerning the Hanwood site, the Fair Work Ombudsman reported:¹⁸

As Figure 5 demonstrates, this site has a complicated procurement chain at the bottom level and the Inquiry was unsuccessful in its efforts to engage with a number of the lower level contractors, with all but one ceasing operations when contacted by the FWO.

DMY Trading Pty Ltd and Yu Lin Trading Pty Ltd, operated by husband and wife directors, provided Fair Work Inspectors with records for their six subcontractors at the Hanwood site. When Fair Work Inspectors attempted to serve a Notice to Produce on one subcontractor, they found an automotive workshop. The director of that business advised he had been at the registered address for 25 years and had never heard of the subcontractor named in the Notice.

Contact with two further entities identified they operated as clothing manufacturers and were not involved in the poultry processing industry. One of these entities had ceased operating in 2012, and the other ceased operating during the course of the Inquiry. Referrals are being made to other relevant enforcement agencies.

¹⁸ Fair Work Ombudsman (2015), 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', 23.

As a further example of labour hire companies under investigation for wage theft just shutting down in an attempt to disappear and escape sanction, in the Baiada investigation the Fair Work Ombudsman reported:¹⁹

In one example, the director of DHA Australia Pty Ltd operating in Hanwood and Azurenet Pty Ltd operating in Beresfield agreed to meet with Fair Work Inspectors. The day before the meeting was to take place, he sent an email advising Fair Work Inspectors that as a result of the inquiry, he was liquidating the entities. The liquidator sought records from the director, which he failed to provide.

In another example, a labour hire business with weak identification of the real ownership and control structure was reported by FWO as not being able to account for a large amount of money it had been paid and was shut down to avoid repaying workers it had stolen money from. As reported by FWO:²⁰

Early on in the Inquiry, another principal contractor Mushland Pty Ltd (Mushland), provided a limited number of records though failed to disclose information that was specifically requested by Fair Work Inspectors. During the course of the Inquiry, the phones of both the company director and accountant were disconnected, and the Baiada Group was unable to provide any further contact details for the parties.

Analysis of the limited records, which included invoices and pay records provided by Mushland, identified the entity was paid \$255,415.07 by the Baiada Group for the month of October 2013 (the Inquiry's sample period). The records also disclosed Mushland paid \$52,460.85 in wages to 18 employees during this period, leaving a margin of \$202,954.22.

An underpayment of \$3,378.76 for 11 employees during the one month sample period was also identified. Mushland deregistered on 16 July 2014 without back payment to the workers being made.

As far as the submitters are aware, there were no consequences for the wage theft for the managers and ultimate beneficial owners of Mushland Pty Ltd, whomever they might have been.

While increased penalties are welcome, on their own, they are not likely to have much impact. There is a need also to increase the probability of being caught and to ensure that any financial sanction imposed is paid.

¹⁹ Fair Work Ombudsman (2015), 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', 11.

²⁰ Fair Work Ombudsman (2015), 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', 18.

The case of labour hire business Maroochy Sunshine Pty Lt and its director illustrates the point.²¹

The company was subject to a penalty of \$227,300 for deliberately exploiting people on temporary visas after luring them to Australia with a string of false promises.²² Twenty-two seasonal workers from Vanuatu were underpaid \$77,649 over just seven weeks when they were employed to pick fruit and vegetables at sites in the Lockyer Valley, Sunshine Coast and Bundaberg areas.

Maroochy Sunshine Pty Ltd was penalised \$186,000 and its sole director, Emmanuel Bani, a further \$41,300 in the Federal Circuit Court in Brisbane in March 2017 following legal action by the Fair Work Ombudsman.

In his judgment, Judge Michael Jarrett described Mr Bani's "appalling treatment" of the workers as having deprived them of the appropriate basic living standards expected in Australia and causing a "profound impact" upon them and their families.

One of the workers gave evidence that working for Mr Bani's company was like "slavery times" and that he had "never before experienced working a full day without even a cup of tea and only being fed tomatoes". Workers were sometimes forced to work entire days harvesting produce without any food or drink and for no pay.

The Court heard that Mr Bani would get angry and scream if workers asked him about their pay, sometimes threatening to call the police and have the workers thrown in prison.

The Court ordered Maroochy Sunshine to back-pay the workers their outstanding entitlements of \$77,649. If the company did not make the back-payment, the Court ordered that the penalty imposed on Mr Bani go towards partially rectifying the underpayment of the workers. However, the workers who had their wages stolen have not, to date, been repaid the money ordered by the court, suggesting that Emmanuel Bani was able to escape the court-imposed penalty.

There is a need for a national labour hire registration scheme to ensure that unscrupulous operators cannot abuse labour hire arrangements and take advantage of vulnerable workers, including those on temporary visas. A 2018 report released by the Senate Education and Employment References Committee considers that such an initiative would be highly beneficial in assisting lead firms in choosing ethically sound and legally compliant

²¹ Sparkes, ABC Rural, 'Labour-Hire Company Faces Court over Allegations of Exploiting Pacific Island Workers in 416 Visa Program', 14 January 2016, <http://www.abc.net.au/news/2016-01-13/labor-hire-company-faces-allegations-of-416-visa-breaches/7086100>, accessed 3/3/2020. R. Narayan, 'Queensland Labour-Hire Company Maroochi [sic] Sunshine Ripped Off Vanuatu Workers, Court Finds', 15 March 2016, <http://www.loopvanuatu.com/content/queensland-labour-hire-company-maroochy-sunshine-ripped-vanuatu-workers-court-finds>. Accessed 3/3/2020.

²² Fair Work Ombudsman, Media Release (28 March 2017), 'Queensland labour-hire operator slammed for "appalling and egregious treatment" of visa holders', <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/march-2017/20170328-maroochy-sunshine-penalty>, accessed 3/3/2020.

labour hire operators to engage with.²³ Labour hire licensing schemes already exist in Queensland, Victoria and South Australia. The Commonwealth Government has also started consultation on the design of a national labour hire registration scheme.

As noted above there is a need for substantial reforms to the business registration system. At the moment ASIC takes almost no responsibility to enforce the *Corporations Act* provisions relating to a person providing false information about who the directors are and their addresses. In the current case of Philip Whiteman, for example, it is alleged that a number of people were appointed as directors of companies without their knowledge and it appears ASIC never checked that these people even agreed to be directors.²⁴ The reality is that criminals are able to set up companies with straw directors almost with impunity, making the task of other law enforcement agencies to identify the real criminals in wrong-doing by companies more difficult.

There are businesses that offer a service to provide 'straw' nominee directors, like ABN Australia.²⁵ As stated on their website, they assist foreigners in hiding their identities as directors and controllers of companies registered in Australia:

Maintain your personal privacy – clients are often in a position where it is unwise for their name to appear on the corporate registers of a company, especially where such registers are available to be viewed via a basic company search. We can provide you with a Resident Director as well as registered office and business address – which will help to protect your reputation, other business interest, current employment, family & associates.

The company's registered office address is the address of the nominee director service. However, the submitters are not aware of any cases where this particular service has been used to carry out criminal activity.

The submitting bodies largely have had a positive experience with the Seasonal Worker Program. The Uniting Church in Australia is notified of every placement on the program and seeks to connect workers to local churches in the area they are working in, if that is of interest to them. The Salvation Army churches around Australia often provide informal social supports to seasonal and other migrant workers in various parts of the country.

The Seasonal Worker Program has improved over time. Overcharging on accommodation and transport by employers remains a suspected problem, but often the overcharging is small by comparison to the exploitation and wage theft experienced by working holiday makers and undocumented workers. Further, the safeguards on the Seasonal Worker Program mean that employers are readily identifiable and the Department of Education, Skills and Employment and the Fair Work Ombudsman are able to investigate and follow up

²³ Commonwealth of Australia (2018). Wage theft? What wage theft?! The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024233/toc_pdf/WagetheftWhatwagetheft!.pdf;fileType=application%2Fpdf

²⁴ Ben Butler, 'Locksmith used in phoenix scheme to stash away millions', *The Australian*, 29 August 2018, 23; Sarah Danckert, 'How country boy Tim got duped in scam', *The Age*, 29 August 2018, 25; and Sarah Danckert, 'Rats chasing tails': An accused fraudster's contempt for the law', *The Age*, 1 September 2018, 9.

²⁵ <https://www.abnaustralia.com.au/business-services/nominee-director>

with employers when problems arise. By comparison, when a working holiday maker reported to the Uniting Church in Australia she had worked 40 hours packing grapes in Mildura for a labour hire company, the employer could not be identified or located. The working holiday maker stated she had been paid \$170 for 40 hours work and then was subjected to deductions of \$100 for accommodation, \$30 for travel and \$10 for wi-fi access. She reported her employer was a labour hire company run by Max Lion. The Uniting Church was unable to identify a Max Lion in the area and formed the strong belief that it was a false name.

The Seasonal Worker Program is strongly supported by governments of a number of Pacific countries that face substantial problems with poverty and high rates of unemployment. Thus, being able to have workers travel to Australia and New Zealand provides much needed employment and generates valuable remittance for Pacific Island economies. The submitting bodies have direct experience of workers on the Seasonal Worker Program and their families benefiting from the program. There are social impacts from workers being absent from their families for up to nine months at a time. However, without the Seasonal Worker Program, Pacific Island nations would experience increased social problems as the result of increased unemployment.

The Uniting Church in Australia has been present at meetings with Pacific Island government officials who have stated their preference for temporary migration programs to Australia. They fear increased permanent migration from the Pacific to Australia would cause them to lose some of their best and most capable people.

(f) any related matters.

We note the Committee has interest in specific case examples of wage theft and forced labour. We have provided case studies previously submitted to government through the JSCDFAT's inquiry into establishing a Modern Slavery Act here.

Case Studies of Modern Slavery in Australian Supply Chains

As discussed, it is difficult to confirm with absolute certainty the prevalence of modern slavery. The following case studies provide some examples of what modern slavery looks like in Australian supply chains across a range of industries, visa types and victims' countries of origin.

1. Samuel Kautai²⁶

"In 2006, Samuel Kautai, a young man from the Cook Islands, along with another four young men, all about 17–18 years of age, had been living with and working for Manuel Purauto. Samuel was recruited by the employer's brother for construction work, who promised that while he would not get any wages for the first three weeks, after that he would get paid the full amount and that Mr Purauto would send money back to his family in the Cook Islands. However, he was never paid more than \$50 per month.

Samuel and some of his coworkers were physically abused, underfed, and endured long working hours without decent breaks. Samuel's passport was also confiscated. In an affidavit provided to the court, Samuel stated: "If Manuel Puruto was not satisfied with our progress

²⁶ David, p 30.

he would get very angry. I often saw him become very aggressive to the other workers. On several occasions, I suffered injuries from being physically abused and hit by Manual Puruto.”

The case was pursued by the CFMEU under industrial mechanisms and by the NSW Police Force under state criminal law. The case was decided both times in favour of the applicant, which resulted in Mr Purauto having to pay back Sam Kautai and another employee. In criminal proceedings, the Magistrate said this case was sufficiently serious that it should have been prosecuted in the District Court as they can sentence up to seven years—but that the Magistrate was bound by the decision of the NSW Director of Public Prosecutions on this. Accordingly, he imposed the maximum sentence possible in Magistrates Court (2 years). In sentencing, the Magistrate noted Mr Purauto was ‘deliberately and calculatedly violent and abusive’ to his workers and he hit Mr Kautai, ‘knowing that he was a subservient young man who would not dream of defending himself or complaining’.”

2. Indian Stonemasons²⁷

“A group of seven Indian stonemasons were recruited by a temple committee in approximately 1999 to work on a temple in regional New South Wales. The men were brought to Australia on 457 visas and lived on the work site in two shipping containers, where the only ventilation was the door. The men bathed with the hose on the construction site. The construction site had a fence all the way around it with barbed wire on top. The gates were permanently locked. At various points, they sought permission to have the key to the locked gate so they could leave the site but this was denied. They were taken out once a month for about half a day under the direct supervision of a person from the temple. Their passports had been confiscated and they were threatened if they complained (CFMEU NSW personal communication 2009). The men had been promised decent wages but were, in fact, paid approximately \$10–15 per week. They generally worked seven days a week. They were only taken to a doctor very occasionally when they were very ill, otherwise they just had to suffer through bouts of illness. The CFMEU ran a lengthy case against the temple. This resulted in a negotiated settlement (CFMEU NSW personal communication 2009).”

3. Filipino Carpenter²⁸

“A Filipino carpenter was recruited to work with a stonemasonry company. Once on the job site, he was required to do manual labour, such as lift heavy slabs of rock and other odd jobs. He lived in accommodation provided by the employer. After lifting some heavy stones, he nearly injured himself. He asked about his working conditions and was shown a bullet by his employer, who threatened him, told him he owed money to the recruiter and to the company and that the recruiter in the Philippines has a direct line to his family. He made contact with a volunteer from Migranté who assisted him to make contact with a union. He was very scared. The community organisation and the union were able to assist him to find a place to live but not another job. While he was trying to sort out his situation, his family in the Philippines was visited by an associate of the recruiter who threatened them should they not

²⁷ David, 31.

²⁸ David, p.31

be able to encourage him to return to his employer (Migranté WA personal communication 2009; Unions WA personal communication 2009).”

4. Filipino Welders²⁹

“Dartbridge Welding recruited approximately 40 welders from the Philippines. The welders were charged a \$3,000 recruitment fee and interest on this debt. On arrival in Australia, they were taken to a bank where they were presented with direct debit authorities to sign to give the employer and the recruitment company the right to directly debit money from their bank accounts. The welders were placed in houses, two to a room, for which the employer collected \$1,400 per house per week from the workers. Dartbridge directly employed a small number of these workers, with the rest placed with a host employer. The welders were paid the minimum legislated salary but after the direct debits were taken out, their salary was less than \$27,000. The workers were subjected to a great deal of verbal abuse and threatening behaviour by the owner of Dartbridge. Following contact with the AMWU, the welders joined the union. Three of the most outspoken welders were dismissed and others were threatened with dismissal and deportation (AMWU 2008).

It is not suggested that the Dartbridge case is necessarily an instance of labour trafficking. However, this is an example of the complex intersection of debt, unlawful deductions and threats about loss of visa and deportation in the manufacturing sector.”

5. Meat Industry³⁰

“One particular abattoir that was recently sanctioned for underpaying 457 visa holders was described as ‘a very oppressive place’; it was surrounded by fencing, there were security cameras in rooms for no apparent reason and once workers went inside, they had to get a foreman to let them out. It was noted that these kinds of security or surveillance measures were not in place in any other abattoirs (AMIEU WA personal communication 2009).

The issue of the potential for exploitation of spouses was also raised in the context of the meat industry (AMIEU WA personal communication 2009; Kinnaird personal communication 2009; Unions WA personal communication 2009). For example, as many primary visa holders and their spouses are employed at the same abattoirs, unscrupulous employers who wanted to punish or control the primary visa holders (generally the husbands) for some perceived infringement, can seek to do this through requiring their spouses (generally the wives) to do very dirty and demeaning work (such as cleaning up the manure in the areas where the animals are slaughtered). An example was given of a company that had described this practice in an internal company memo.

Another participant noted situations involving underpayment and coercion of spouses of 457 visa holders in Queensland. In summary, the employer told the employees that they would employ their wives, but for a very low rate of pay. The arrangement was if the visa holder kept quiet about this, then both he and his wife would have work and eventually be sponsored for permanent residency.

²⁹ David, p. 34

³⁰ David, p. 33

It is not clear if any of the specific examples that were given would cross the line into criminal conduct. However, it was noted that:

'What this demonstrates is the wretchedness, the powerlessness, the power relationship with an employer who can exercise that level of control, where employees will do things they would rather not do, they will put themselves in jeopardy, they will not claim statutory entitlements, because if they do and it costs their employer money, they fear for their continued sponsorship. It demonstrates their vulnerability. If you wanted to sexually exploit someone, you could. If you wanted to physically intimidate someone, you could. If you wanted to use people for illegal activities, you could (AMIEU WA personal communication 2009).

Similarly, another participant noted: In terms of the forced labour aspect, if I have to put money on where you'd find it in the 457 program, then I'd have a look at the spouse situation at the low end of the skills market, with workers who have come from very low wage countries (Kinnaird personal communication 2009).

6. Maritime Industry – The Pocomwell Case

The Pocomwell case involved four Filipino workers hired as painters on drilling rigs off the coast of Western Australia. The workers were paid only AU\$3.00 AU per hour, worked 12 hours per day, seven days per week. The manner of recruitment mirrored common tactics of traffickers with layers of recruitment agents, contractors and subcontractors. According to K & L Gates³¹:

Each painter was employed by Pocomwell Limited, a company incorporated in Hong Kong. The terms of their contracts of employment were agreed in the Philippines and governed by the law of the Philippines. Survey Spec Pty Ltd, an Australian company, hired the painters from Pocomwell through agent Supply Oilfield and Marine Services Inc. (SOMS), incorporated in the Philippines. The drill rig operator (Operator) then hired each painter from Survey Spec at a daily rate of approximately AU\$300. Survey Spec was hiring out the painters to the Operator at a rate more than nine times greater than the monthly payments made to the painters by Pocomwell.

The FWO filed a case in the Federal Court alleging contravention of the *Fair Work Act 2009* (Cth) (Fair Work Act), however, the judge ruled the Act did not apply on the basis that the platforms were not "fixed" to the seabed and the crew were not majority Australian. This decision raised significant questions about employer accountability in the zone and gaps within the Fair Work Act affording adequate and equal protections for migrant maritime workers.

7. Domestic Worker Trafficked by Foreign Diplomat³²

Cristina (not her real name) was recruited to work for a foreign diplomat in Australia. Cristina

³¹ Thompson, S. & Roper, H. (2013). No Fair Work Act for foreign rig workers. Labour, Employment and Workplace Safety Alert. <http://www.klgates.com/no-fair-work-act-for-foreign-rig-workers-11-21-2013/>

³² For further information, analysis and recommendations, see: *Improving Protections for Migrant Domestic Workers in Australia*, Policy Brief June 2015, The Salvation Army-Freedom Partnership to End Modern Slavery and Walk Free Foundation at: <https://assets.globalslaveryindex.org/content/uploads/2016/08/30110219/Improving-Protections-for-Migrant-Domestic-Workers-in-Australia.pdf>

had a written contract that said she would be paid \$2,150 per month for 40 hours per week as a live-in housekeeper. Cristina was granted an Australian domestic worker visa subclass 426 (diplomatic or consular). From the time she arrived, Cristina's conditions and pay were not as agreed. Cristina's passport was taken by her employer, she worked seven days per week, was not allowed out, not paid according to her contract and was forced to sign false declarations about payment of her salary. Cristina's employer told her there were cameras in the house watching her.

She described feeling like a prisoner. "I'm not allowed to talk, I'm not allowed to go out, even throwing out the rubbish." Cristina's employer also threatened that there were many poor people in her country where "there is a lot of corruption and a man's life is only worth \$100." He told her about his many friends and connections in her country. Cristina began to feel increasingly unsafe and contacted her country's embassy to help her escape. She was referred to the Support for Trafficked People Program for a short period; however, she was later discharged from the program and was unable to access the visa framework.

Cristina's only successful remedy for redress was a private lawsuit brought by Salvos Legal on her behalf under the Fair Work Act against her employer after efforts with criminal justice agencies failed (due to diplomatic immunity) and the Fair Work Ombudsman declined to pursue her case. It took Cristina over 3 years to get an outcome in relation to her case.

8. Private Domestic Worker

Susan³³ was trafficked from her home country into domestic servitude in the private home of an Australian family who confiscated her passport. After months of providing domestic and child care services without pay, deprived of food and proper living conditions, restriction of movement and verbal abuse Susan requested access to her own passport. Susan was told by her employer that she had no rights in Australia and to do as she was told. Susan sought help from a neighbour and an altercation ensued with her employer who assaulted her and ordered her to return to the house. Susan feared that she would suffer physical violence if she returned. The NSW Police arrived on scene shortly thereafter, at which point, Susan's employer began throwing her belongings out of the house and told the police to deport her as she was "illegal." Susan states that when the police arrived they only took information from her employer and she was given no opportunity to tell her side of the story.

Susan was taken to the police station which she described to be very unjust as the police were not willing to hear her side of the story; "I was there to tell them what was happening to me...they didn't give me a chance; they were just listening to my employer. It felt like ... my country, because the people who have power are the people from high class (who) don't allow the people from the lower class to talk...I find it's another country without freedom of speech."

During the five hours Susan spent at the police station, the police did not ask her what had happened, why her passport had been held or how she came to be in Australia.

³³ Not her real name.

She was referred to two other community organisations before coming into contact with The Salvation Army. Once referred to The Salvation Army, staff noted that Susan was in pain and had not been offered any assistance/medical care in relation to being assaulted. To date, Susan still has health issues related to this injury.

9. Horticulture- Operation Cloudburst

In June 2015, media outlets reported a “trafficking ring” was discovered exploiting unlawful workers in Victoria’s north. Authorities involved in immigration compliance operations that would later culminate in Taskforce Cadena were investigating two labour hire subcontractors suspected of “pocketing hundreds of thousands of dollars by exploiting illegal Malaysian workers and supplying them to local farms.”

According to one report, workers were allegedly subjected to threats and intimidation and in some cases, their passports confiscated and wages withheld.³⁴ In one of the raids, three Malaysian men were found hiding inside a property and refused to answer when authorities arrived at the house they were in. Reports suggested the men were expected to be removed in a matter of weeks.

The operation was one of 11 that took place across the country, including Western Australia, South Australia, Queensland, New South Wales, Victoria and Tasmania. In all, 11 businesses and 12 residences were visited by authorities. In all, 38 unlawful workers were detained; however, despite the reports of worker exploitation and trafficking indicators, no information was provided about the welfare of the workers or their fates, including whether they were assisted to recover unpaid wages. It is presumed they were removed. This case is but one that represents problems existing at the nexus of civil and criminal frameworks where immigration priorities appear to supersede other priorities.

10. Malaysian Fruit Pickers (Woolgoolga, NSW; Bullsbrook, WA; Pemberton, WA)

Taskforce Cadena operations continue to raid properties in a crackdown on illegal work and visa fraud. Three cases reported in August 2016, October 2016 and February 2017 are examples of cases involving unlawful Malaysian workers working in horticulture. Reports describe indicators on possible forced labour or other slavery-related crimes, including non- or under-payment of wages, poor living conditions either provided by the employer or at the work site, and irregular immigration status of workers.

Speaking confidentially to a local newspaper, one government official close to the investigation in Woolgoolga expressed his frustration with the exploitative conduct of labour hire syndicates. The official said the dishonest treatment towards workers goes beyond pay conditions. “We often see these workers crammed into homes, sometimes with 20 people living in one house, They're made to pay \$100 each per week in rent, so the owner is collecting \$2000 on a house that should be worth maybe \$400 a week.”

³⁴ <http://www.heraldsun.com.au/news/law-order/alleged-illegal-farm-workers-to-be-deported-after-police-raids-in-shepparton/news-story/eda19c42427b802ae23d3caff2e64d24>

Images provided by Border Force investigators showed a single Woolgoolga garage set up as a bedroom for at least seven people. The official said workers are often charged from \$6 per day for transport to the farm which, in addition to rent, leaves little money left for other expenses.

Research conducted by The Salvation Army revealed a cohort of Malaysian workers who pay \$3000 for what they think is a work visa. Upon arriving however, they discover they have been working illegally, which may be used as leverage to prevent them from reporting their circumstances to authorities. There is no available information on how authorities screen groups of workers to identify those who may be unlawful through force, fraud or coercion.

11. Backpacker severely exploited on Kangaroo Island

Appearing on the Insight program on SBS in 2016, a young woman described her experience on a Working Holiday visa. She described being deceptively recruited by a farmer on Kangaroo Island, SA and subjected to intimidation, wage theft and slavery-like conditions for two weeks. The woman found the job through an online posting for farm work that would enable her to complete the 88 days required to extend her visa. She checked out the employer who appeared to be legitimate and who told her he had a family and was a regular employer of backpackers. However, the employer was drunk when he collected her from the airport and upon arriving at the farm, she discovered it was only the two of them in the house.

She explained how her employer refused to pay her when she made inquiries, telling her she would get her wages when he was ready to pay her. The man had a passcode on the phone so she was unable to use it to call for help and because the farm was approximately 20 kilometres away from the town centre, she felt unable to run away safely as he could easily spot her from the road in the vast farmlands surrounding the area.

Her employer invited friends over who would taunt her whilst she locked herself in her bedroom and he would force her to watch him slaughter animals to intimidate her. Fortunately, the young woman was skilled in IT and successfully hacked his modem when he left the house for groceries. She phoned the family for whom she had worked as an au pair in Sydney, who contacted SA Police who assisted her to leave the property. Despite the employer being known to police, they advised that there was nothing that could be done because she was never actually harmed. When she later reported the situation to the DIBP, they refused to apply the two weeks toward her 88 days.

12. Restaurant operator penalised for exploitation of Indian couple³⁵

A former Victorian restaurant operator was penalised more than \$50,000 for his “morally moribund” and “calculated and deceitful” exploitation of an Indian couple who were paid no wages for more than a year’s work. Farok Shaik was found to have exploited a husband and

³⁵ <http://www.sbs.com.au/yourlanguage/punjabi/en/article/2016/09/09/indian-restaurant-operator-penalised-50872-exploiting-indian-couple>; See also FWO Press Release at: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/september-2016/20160909-shaik-penalty>.

wife who stated they endured the exploitation because Shaik had threatened to have them deported if they quit. The woman gave evidence that Shaik had threatened to kill her. Despite having promised to pay the couple a combined income of \$1600 week, Shaik provided them only food and accommodation and short-changed them a total of \$85,844 (\$42,922 each) between August 2012 and October 2013. The workers had been reluctant to complain about the lack of payment earlier because they were reliant on Shaik's support for the woman's Regional Sponsored Migration Scheme Visa application, which they hoped would lead to permanent residency in Australia.

The wife gave evidence that Shaik had responded to her requests for payment by threatening to withdraw his support for her visa and take steps to have her and her husband deported if they quit. In a sworn affidavit, the wife stated that when she questioned Shaik about the visa application and progress, Shaik "said words to her to the effect that if she asked about the visa he would kill her". The wife gave evidence that "she suffered a great deal of mental distress mainly on account of the fact that she was receiving no money for the work she performed and the bills that required payment were increasing". Despite working long hours at Shaik's restaurants, the couple was forced to borrow amounts of up to \$2000 from friends and family and take on extra work cleaning motels "simply to survive".

Shaik also delayed telling the couple about the Department of Immigration and Border Protection's refusal of the wife's application for permanent residency in a timely manner, affecting her ability to respond. The Fair Work Ombudsman submitted that the conduct was aimed at keeping the couple working at the restaurant as long as possible. Judge Wilson found that there was "a great deal of force in the Fair Work Ombudsman's submission that (Shaik) exploited the vulnerability of (the couple) in a way that was morally moribund and legally improper". "His conduct was calculated in the sense that it was deliberate and well thought out. His strategy was deceitful in the sense that he deceived (the couple) to continue working when he had not paid them and, self-evidently, had no intention of paying them."

Judge Wilson also said the penalty should create general deterrence. "I accept without reservation that this case is a further, lamentable, illustration of a prevalent phenomenon in the hospitality industry where employers exploit vulnerable workers by underpayment of salary entitlements and in other ways," he said.

13. Brisbane Slave House³⁶

In August 2015, a man fled an elegant home in suburban Brisbane and flagged two passers-by down shouting: "Help, help, help! Wallet, phone, ID, passport, taken. Share house. Other people, about 20 of me. Locked doors, run away." Police later found 50 Taiwanese nationals being held against their will in this and another Brisbane house, forced to operate a phone scam extorting money from Chinese nationals in Australia. They were allegedly forced to work 12 hours a day, seven days a week, for no pay. All the windows were blacked out and security cameras were found hidden on the premises.

According to media reports, the victims were crammed 7-8 persons per bedroom, forced to

³⁶ <http://www.sbs.com.au/news/article/2017/02/08/taiwanese-men-jailed-over-qld-slave-house>.

shower at the same time, and were told it was “impossible” to leave. One victim told police when he asked to leave, the “employers” abused him and forced him to stand in the middle of the room for five hours. Another expressed fear for himself and his family because the employers are well connected to local gangs in Taiwan. Other alleged victims told police they had been threatened since the witness initially escaped and another was threatened to withdraw testimony by an unknown person. One of the defendants was found to be providing transportation for the operation, picking up the workers from Brisbane airport and delivering them to the houses.

On 8 February 2017, two Taiwanese men pleaded guilty to causing a person to enter into servitude, and were sentenced to three and two and a half years’ imprisonment respectively. This was the first prosecution and sentence for an offence of servitude. The two men were released on good behaviour after time (18 months) already served, to be immediately deported to Taiwan.

In addition to the above case studies, there have been numerous reports of labour exploitation that describe indicators of more severe forms of exploitation, including deceptive recruiting and forced labour, which have either been treated as civil matters or where workers were removed without further action. A table providing some detail of these cases is provided in Appendix B.

14. Major customers relieved of culpability of supply chain partner

Over the course of several months in 2014, three employees of a chocolate packaging manufacturing company were underpaid collectively the sum of \$23,479.53. A case was brought by the Fair Work Ombudsman and significant penalties were imposed. However throughout his reasons for judgement Judge Riethmuller noted that “it seemed most unfair to the customers of Rapid Pak that they were named due to the damage that this would cause them in their own businesses, as on the material placed before the Court it would not be reasonable to expect that the customers would have been aware that the First Respondent was engaging in this conduct or even on notice that they ought to make inquiry: the profitability of the First Respondent shows that the customers were paying reasonable prices set at a level for the work that it allowed the Respondents to make a very significant profit.”³⁷ Judge Riethmuller further noted that “on the evidence the manufacturers appear to have been paying rates high enough to enable the First Respondent to pay proper entitlements and still make a profit, but the Second Respondent chose instead to make a million dollar profit at the expense of entitlements of workers. Thus, on the material before me it does not appear to be open to argue that the manufacturers must have some form of imputed knowledge of the breaches as a result of the contract rates (unlike cases where payments to suppliers are so low that it is apparent that workers must be being underpaid or the business making a loss).”³⁸

Though not an example of modern slavery, this case demonstrates the prevailing belief that

³⁷ Fair Work Ombudsman v ACC Services (Aust) Pty Ltd T/as Rapid Pak & Anor [2017] FCCA 516 (22 March 2017) at [30] per Riethmuller J

³⁸ Ibid at [32] per Riethmuller J

industry partners are not required, or justified, in being held responsible for the conduct of those with whom it interacts in the course of business dealings. Discrete and explicit legislation requiring manufacturers, wholesalers and retailers to make diligent enquiries into each link in the supply chain is needed to reinforce the notion that wilful blindness is a contributory factor in the continuation of exploitative practices. The issue is particularly relevant in this matter because the Fair Work Ombudsman noted that this breach represented a course of conduct known to have continued over more than a decade and that Rapid Pak and its director were the subject of several interventions by the Ombudsman throughout 2008, 2009 and 2012.

In addition to the above case studies, there have been numerous reports of labour exploitation that describe indicators of more severe forms of exploitation, including deceptive recruiting and forced labour, which have either been treated as civil matters or where workers may have been removed without further action. A table providing some detail of these cases is provided below.

Cases of labour exploitation with indicators of severe forms of exploitation			
<i>Dozens of farm workers found living in five-bedroom building in Latrobe in Tasmania's north</i>	7/2/2020	https://mobile.abc.net.au/news/20-02-07/dozens-of-foreign-workers-live-in-five-bedroom-building/11942660?pfmredir=sm	Workers subjected to overcrowded living conditions with significant sanitation and fire hazards; overcharging for transportation; and evasive behaviour by the employer.
<i>Foreign worker exploitation exposed in latest ABF operations</i>	24/2/2019	https://newsroom.abf.gov.au/releases/foreign-worker-exploitation-exposed-in-latest-abf-operations	ABF officers in Victoria, NSW and Queensland discovered workers being exploited in a range of industries, including agriculture, plastering and tiling, and construction. In one instance, a 16-yr old boy was found living on a mattress in a garage.
<i>Foreign workers ripped off, bullied and harassed, investigation finds</i>	27/6/2018	https://thenewdaily.com.au/news/national/2018/06/27/foreign-workers-labour-exploitation/	A three-year investigation into worker exploitation by Australia's workplace watchdog has found some foreign workers on Australian farms are "bonded like slaves" to dodgy labour hire contractors. The nation's multibillion-dollar fruit and vegetable sector has been under intense scrutiny in recent years, following revelations of poor working and pay conditions for some farm workers, who are often from overseas.
<i>Key farm scheme badly rorted, migrant workers paid \$8 an hour</i>	19/5/2018	https://www.smh.com.au/business/workplace/key-farm-scheme-badly-exploited-migrant-workers-paid-8-an-hour-20180518-p4zg53.html	Workers living a caravan park were exposed to dangerous working conditions, including chemical spraying, accuse Agri Labour of misleading, underpaying and threatening them when they tried to join a union.
<i>88 Dangerous Days</i>	21/3/2017	https://www.themonthly.com.au/blog/rosie-ayliffe/2017/21/2017/1490070435/88-dangerous-days	Written by the mother of murdered backpacker, detailing stories of exploited backpackers in Australia.
<i>'He made me scared': 7-Eleven worker speaks of intimidation, 47 cents per hour wage</i>	17/02/2017	http://www.abc.net.au/news/2016-02-16/7-eleven-worker-speaks-of-intimidation/7174896	7-Eleven worker Mr Ahmed made 47 cents per hour and expressed fears former boss who threatened him; Worker allegedly owed \$12,000

Malaysian restaurant owners fined over \$200,000 for exploiting workers with 'similar culture'	07/02/2017	http://www.sbs.com.au/news/article/2017/02/07/malaysian-restaurant-owners-fined-over-200000-for-exploiting-workers-similar-culture	Five workers - holding student, bridging and partner visas - were underpaid \$148,710. Judge said the fact that Song and Yeoh had exploited employees of a similar cultural background was particularly disturbing.
Employer lured, exploited and berated young backpackers, before leaving them stranded	19/12/2016	https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/may-2016/20160519-jackson-penalty	A business operator made bogus claims in job ads to lure young backpackers to a remote area of western Tasmania, paying them as little as \$1.35 an hour and then leaving them stranded.
Chia Tung - Taiwanese company penalised after paying overseas workers less than \$5 an hour	08/12/2016	https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/december-2016/20161208 chia-tung-penalty	29 foreign workers exploited in south coast ethanol plant; working up to seven days a week for as little as \$4 an hour, while living in cramped and degrading conditions.
<i>Fruit pickers paid a pittance, forced to work five weeks straight, Sydney Morning Herald</i>	25/8/2016	http://www.smh.com.au/business/workplace-relations/fruit-pickers-paid-a-pittance-forced-to-work-five-weeks-straight-20160824-gqzrz3.html	A dozen pacific islanders with limited English skills were exploited by a labour hire company on blueberry farms near Coffs Harbour.
Border Force detains 34 illegal Woolgoolga workers, The Coffs Coast Advocate	24/08/2016	http://www.coffscostadvocate.com.au/nocache/news/illegal-workers-detained-after-woolgoolga-afp-sear/3081517/	ABF raided labour hire companies in Woolgoolga and detained workers, including two minors, in detention facilities to await deportation back to Malaysia
Strawberry pickers claim they were paid as little as \$4 an hour in 'labour camp' conditions, ABC	01/08/2016	http://www.abc.net.au/news/2016-08-01/strawberry-pickers-claim-they-were-paid-as-little/7680520	Second time this farm has been in a FWO investigation. Worker was forced to work excessive hours for \$200 a week.
Indian-Origin Blueberry farmer penalised in NSW	18/05/2016	http://www.sbs.com.au/yourlanguage/hindi/en/article/2016/05/18/indian-origin-blueberry-farmer-penalised-nsw	Blueberry farmer, Gurmakh Dosanjh, found to have significantly underpaid up to 60 picking staff, many of whom were on 417 visas, at any one time. Substantial breach of record keeping, to the extent that Dosanjh had no means of contacting former staff to rectify underpayments.

<p>Food wholesaler penalised \$85,000 over “inexcusable” underpayment of workers</p>	<p>15/02/2016</p>	<p>https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/february-2016/20160215-quality-food-world-penalty</p>	<p>Quality Food World Pty Ltd, which operates from a warehouse at Mordialloc, underpaid 46 employees a total of \$149,137.</p>
<p>Shocking conditions exposed in Federal Government’s Seasonal Worker Program, The Weekly Times</p>	<p>16/12/2015</p>	<p>http://www.weeklytimesnow.com.au/news/national/shocking-conditions-exposed-in-federal-governments-seasonal-worker-program/news-story/46a5db6adb9611b8db30a2a41689cc25</p>	<p>Workers fired after complaining about restriction of movement, excessive work and underpayment. Labour hire company told them the Immigration Department had been notified of their impending departure and that “the remaining time on your visa will be cancelled”.</p>
<p>Australia Post major contractor arrested and accused of running immigration racket</p>	<p>05/08/2015</p>	<p>http://www.abc.net.au/7.30/content/2015/s4287814.htm</p>	<p>The program investigated the contractor Baljit Singh who was running the Australia post ‘posties’; Mr Singh owns a number of private international colleges in Australia (charging up to \$100,000 for diplomas)</p>
<p>Claims of police protecting houses occupied by foreign workers emerge in Sunraysia region, The Weekly Times</p>	<p>05/08/2015</p>	<p>http://www.weeklytimesnow.com.au/news/national/claims-of-police-protecting-houses-occupied-by-foreign-workers-emerge-in-sunraysia-region/news-story/baad19344e6b080ae7b64ec7be156922</p>	<p>Farm accused of using labour contractors to supply workers; these workers forced to reside in house owned by the labour hire contractors; paid up to \$3000 to get a job and a work visa but were only given a non-work tourist visa. Workers made to sleep outside without bedding on a farm after an immigration raid.</p>
<p>Foreign workers exploited at chicken production plants, SBS</p>	<p>18/06/2015</p>	<p>http://www.sbs.com.au/news/article/2015/06/18/foreign-workers-exploited-chicken-production-plants</p>	<p>Overseas workers paid as little as \$11.50 per hour for shifts of up to 19 hours/day. Many workers reported that renting accommodation from contractors a condition of employment and that rent was illegally deducted from their wages. The FWO found company used a sophisticated system of outsourcing and labour hire deals.</p>

<p>Workers Unpaid as Labour Hire Company Folds, Newcastle Herald</p>	<p>29/04/2015</p>	<p>http://www.couriermail.com.au/news/queensland/a-group-of-allegedly-illegal-workers-have-been-detained-at-redcliffe/news-story/b55566ffb4c73d2069fb68a0f3cd4c7c</p>	<p>Raid on multi-storey construction site after passer-by noticed workers staying unusually long working hours. Illegal workers detained.</p>
<p>Foreign workers allege pay shortfall at major salad farm Tripod Farmers, The Weekly Times</p>	<p>19/01/2015</p>	<p>http://www.theherald.com.au/story/2826715/workers-unpaid-as-labor-hire-company-folds/</p>	<p>Meat company's labour hire companies liquidated and disappeared after FWO investigation into wages of staff members</p>
<p>Estonian Welders – WA Jury Discharged Over Extortion Trial</p>	<p>07/11/2014</p>	<p>http://www.skynews.com.au/news/local/perth/2014/11/07/wa-jury-discharged-over-extortion-trial.html#sthash.z5n2vYM2.dpuf</p>	<p>Two Estonian welders were allegedly recruited with promises of a new life, but then subjected to debt bondage, confiscation of identity documents, threats and intimidation.</p>
<p>Foreign workers allege pay shortfall at major salad farm Tripod Farmers</p>	<p>02/07/2014</p>	<p>http://www.weeklytimesnow.com.au/agribusiness/horticulture/foreign-workers-allege-pay-shortfall-at-major-salad-farm-tripod-farmers/news-story/4f9a0cab13fb42cfd0c2f92ca075a55b</p>	<p>Workers underpaid and charged \$500 signing fee to register their 88-day slip. Workers stated they received no OHS training, alleging her contactor coerced her into signing a form acknowledging she had received this training.</p>