

Australian Greens' Additional Comments

1.1 Widespread underpayment and exploitation of workers, particularly migrant workers, has been exposed all across Australia. The extent to which this is occurring indicates that practices such as wage theft have become customary amongst some of Australia's major employers.

1.2 The ACTU noted in its submission that 'unfortunately the prevalence of wage theft in some recent examples of exploitation of vulnerable workers is a clear sign that this has been the prevailing business model'.¹

1.3 Current workplace laws and policies are failing to keep up with the changing and dynamic nature of contemporary workplaces in Australia. They are not sufficient to prevent the exploitation of vulnerable workers. The Greens support this bill, the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, as a start in addressing the shortcomings of our current system, however it does not go far enough in addressing the systemic exploitation of workers prevalent in many sectors across Australia.

1.4 Whilst the Greens support making franchisors accountable for underpayments by their franchisees or subsidiaries, we believe the provisions in this bill are too narrow. The Greens have previously introduced the Fair Work Amendment (Recovery of Unpaid Amounts for Franchisee Employees) Bill 2015.

1.5 The bill should provide for employees employed by a franchisee to recover unpaid remuneration from the franchisor or head office entity and broaden the scope of 'responsible franchisor entity' by removing the requirement for significant degree of control or influence.

1.6 Allowing workers to claim any underpayments directly from head office will bring about a culture shift. Instead of leaving it to vulnerable workers to uphold the law through expensive legal action, head offices would take more responsibility for what happens in the stores that carry their name.

1.7 The failure of an employer to keep records can result in the burden of proof falling to vulnerable workers when attempting to prove wage theft. In these instances, as WESTjustice points out, the current legislative framework rewards employers who fail to keep employee records. It is also apparent that penalties do not always act as an adequate deterrent to exploiting workers, particularly if the penalties can be easily absorbed by the franchisor. The Greens support the increase of penalties, however the bill should be amended to reverse the onus of proof when employees make claims and the employer has failed to keep records in accordance with the law. This will incentivise employers to maintain adequate records.

1.8 Current provisions in the *Fair Work Act 2009* cannot be relied upon to hold all third party organisations in labour hire arrangements or supply chains accountable and in some cases, can encourage deliberate ignorance regarding the exploitation of

1 Australian Council of Trade Unions, *Submission 8*, p. 4

vulnerable workers. WEstjustice noted in its submission, ‘we have seen...in situations where clients in labour hire arrangements, supply chains or franchises are left without a remedy against a host employer, principal or franchisor, who in many circumstances should be held, wholly or partly, responsible for the terms and conditions of the worker.’² Whilst this bill extends responsibility to franchisors, the bill should be amended to extend responsibility for some contraventions to ‘indirectly responsible entities’, which includes supply chain heads and labour hire hosts.

Recommendation 1

1.9 The bill should be amended to broaden the scope of ‘responsible franchisor entity’, so that ‘head office’ franchisors are liable to meet any underpayment of their franchisees’ employees, leaving open the ability of the franchisor to later pursue the franchisee to recoup the amount of the underpayment.

Recommendation 2

1.10 The bill should be amended to incentivise employers to maintain records by reversing the onus of proof in claims where the employer has failed to keep proper records.

Recommendation 3

1.11 The bill should be amended to extend the responsibility of workers terms and conditions to include other third parties such as supply chain heads and labour hire hosts.

Senator Lee Rhiannon