



Australian Government
Attorney-General's Department

Senate Select Committee on Temporary Migration

Submission of the Attorney-General's Department

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I. Introduction

The Attorney-General's Department welcomes the opportunity to make a submission to the Senate Select Committee on Temporary Migration (the Committee) Inquiry into the impact of temporary migration on the Australian economy, wages and jobs, social cohesion, and workplace rights and conditions.

Portfolio responsibility for industrial relations matters is held by the Attorney-General's Department (the department), which supports the Minister for Industrial Relations to ensure safe, fair and productive workplaces. The department's submission mainly addresses paragraph (e) of the terms of reference.

The number of temporary migrants in Australia has grown significantly, with a 54 per cent increase¹ over the ten years to 2018 – partially driven by the international education sector, which has expanded to become one of Australia's key service industries. As at the end of December 2019, there were over 1.5 million temporary visa holders with a work right in Australia, according to data from the Department of Home Affairs.

Wage underpayment and breaches of workplace rights and conditions can have a significant negative impact on the experience of being in Australia for temporary migrants. The Government has put in place a range of measures to strengthen workplace protections available to temporary migrants and continues to build on these reforms in order to ensure that migrant workers, and indeed all workers, receive their correct entitlements. This submission outlines measures in place and being considered to protect temporary migrant workers in Australia.

II. Protecting migrant workers from exploitation

Deliberate and systematic non-compliance with workplace laws has a number of negative impacts, including: denying workers the minimum wages and conditions to which they are entitled; undercutting law-abiding employers in the labour market and putting them at a competitive disadvantage; and damaging Australia's international reputation as a desirable place to visit and work. In extreme cases, exploitation of migrant workers can take the form of human trafficking, slavery, and slavery-like practices (such as forced labour and debt bondage).

In 2016, following a number of high profile cases where vulnerable migrant workers were found to have been underpaid and exploited at work, the Government announced the Protecting Vulnerable Workers policy. The policy was designed to combat the exploitation and abuse of migrant workers, and contained a number of elements, including establishing the Migrant Workers' Taskforce (the Taskforce) and, through legislation, increasing penalties, introducing new offences and strengthening the powers of the Fair Work Ombudsman (FWO) to more effectively deal with employers who intentionally exploit workers.

Australian citizens and permanent residents face many of the same workplace issues as temporary migrants. However, the FWO has noted that migrant workers are over-represented in its disputes, reflecting their unique circumstances.² For migrant workers, their circumstances can sometimes compound the difficulties that they face. Factors, like a lack of familiarity with Australian workplace laws, including avenues for assistance and the potential for language and cultural barriers, can make temporary migrants more vulnerable to workplace exploitation.

¹ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 21.

² Fair Work Ombudsman, *Annual Report 2018-19*.

Migrant Workers' Taskforce

The Taskforce was asked to identify proposals for improvements in law, law enforcement and investigation, and other practical measures to more quickly identify and rectify any cases of migrant worker exploitation.

The Taskforce provided its report to Government in March 2019, making 22 recommendations ([Attachment A](#)) aimed at improving workplace protections for migrant workers, all of which were accepted in-principle by the Government. The Taskforce report and Government response are available on the department's website.³

The Taskforce report notes the benefits that temporary migration has on the Australian economy and labour market. In 2018, the international education sector was worth \$34.9 billion to the Australian economy making it Australia's fourth largest export industry and largest services export. In 2016, working holiday makers contributed almost \$3.3 billion in tourist spending in Australia, staying longer, spending more and dispersing more widely throughout the country than most other tourist groups. The Taskforce had a particular interest in working holiday makers and student visa holders who constitute over 70 per cent of all temporary visa holders with a right to work in Australia (excluding New Zealand citizens).

The Taskforce report also noted evidence suggesting that many migrant workers know they are being exploited:

Many factors may explain why they allow this situation to continue. The need to obtain and retain employment in a competitive labour market is one. People are often inclined to take what is available because they need the income or maybe feel that employment is necessary for them to achieve their ultimate goal of ongoing residency in Australia. Not knowing what to do about their underpayment or who to go to for help are other influences. Fears about the consequences of approaching government agencies are common among migrants from less democratic countries than our own.⁴

Protecting Vulnerable Workers legislation

On 15 September 2017, the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Protecting Vulnerable Workers Act) commenced. This Act addressed increasing community concern about the exploitation of vulnerable workers, including migrant workers. It followed a range of reports examining the exploitation of vulnerable workers, including a report of the FWO's Inquiry into 7-Eleven⁵ which noted systematic underpayment of migrant workers.

Recognising there was scope for improvement to existing arrangements, the Protecting Vulnerable Workers Act introduced a higher scale of penalties for serious contraventions of workplace laws. Deliberate and systematic contraventions of these workplace laws now attract a penalty of up to \$630,000 per contravention for companies and \$126,000 per contravention for individuals, a ten-fold increase on the previous maximum penalties. A number of additional measures were also introduced through the Protecting Vulnerable Workers Act aimed at increasing the protections for vulnerable workers, including temporary migrant workers:

- doubling of penalties for record-keeping and pay slip breaches;
- extending liability to franchisors and holding companies for breaches by their networks where they knew or could reasonably be expected to have known of contraventions, and failed to take reasonable steps to address them;

³ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019.

⁴ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p 13.

⁵ Fair Work Ombudsman, *Identifying and addressing the drivers of non-compliance in the 7-Eleven network*, April 2016.

- additional evidence gathering powers for the FWO, including the power to compel witnesses to provide evidence or attend an interview;
- outlawing cashback arrangements—making it unlawful for an employer to require an employee to unreasonably spend their money or give it to their employer;
- new provisions and penalties for hindering an investigation, or providing false or misleading information, documents or employment records; and
- a reverse onus of proof, so employers that don't meet records or pay slip requirements have to disprove an allegation of underpayment in court.⁶

Since the commencement of the Protecting Vulnerable Workers Act, the FWO has commenced 13 court matters involving the new provisions, including matters related to alleged misconduct by businesses against migrant workers.⁷ By way of examples, some outcomes achieved by FWO in these matters include:

- on 21 August 2019, the first court decision was handed down under the Protecting Vulnerable Workers Act.⁸ The case was brought by the FWO against operators of two sushi outlets in Queensland for failing to keep proper time and wages records, including for visa holders, and failing to issue pay slips, securing penalties of \$125,000; and
- in November 2019, a further penalty judgment was handed down, in which the FWO secured \$75,400 in court ordered penalties against a pizza store and its director for underpaying visa holders and a young worker, including a penalty for providing false and misleading documents and information to a Fair Work Inspector under section 718A of the Fair Work Act.⁹

The protections framework

Temporary visa holders with a work right are entitled to the same basic rights and protections as Australian citizens and permanent residents under applicable workplace laws. For temporary migrant workers covered by the federal workplace relations system, their rights and protections include the minimum employment conditions, access to superannuation, and coverage under workers' compensation and workplace safety laws. These rights and protections are enforceable under industrial relations laws.

Minimum employment conditions

The National Employment Standards (NES) are 10 minimum standards of employment that apply to employees, including migrant workers, covered by Australia's national workplace relations system. These include entitlements to annual leave, personal/ carer's leave, unpaid parental leave, notice of termination, redundancy and maximum weekly hours of work. There are also 122 industry and occupation based modern awards that provide minimum terms and conditions of employment on top of the NES. These include entitlements like minimum wages, hours of work, rosters, breaks, allowances, penalty rates and overtime.

Terms in modern awards, enterprise agreements (or other registered agreements) or contracts of employment cannot exclude or provide for an entitlement less than the NES. All national system employees must be paid no less than the relevant minimum wage, which depends on their industrial instrument. The 122 modern awards set minimum wages by industry and occupation, while for employees covered by an enterprise

⁶ *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*

⁷ Ms Sandra Parker, Fair Work Ombudsman, *Supplementary Estimates Hansard*, 23 October 2019, p. 87.

⁸ Fair Work Ombudsman, 'Sushi operators penalised \$125,000', 21 August 2019, www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/august-2019/20190821-sushi-79-penalty-media-release.

⁹ Fair Work Ombudsman, 'Former Crust pizza franchisee penalised', 19 November 2019

agreement minimum pay rates are set out in the agreement (base rates of pay in agreements cannot be below the relevant modern award or minimum wage order).

Work health and safety and workers' compensation laws

Commonwealth, state and territory work health and safety laws apply to all employers, with all workers being afforded the same protection under these laws, irrespective of their status as Australian citizens, permanent residents or temporary visa holders. Compliance is enforced by Commonwealth, state and territory work health and safety regulators.

Similarly, Commonwealth, state and territory workers' compensation laws apply equally to all employers, with all employees or workers having the right to access compensation under the laws, irrespective of their status as Australian citizens, permanent residents or temporary work visa holders and irrespective of whether they are employed on a casual basis or under labour hire arrangements.

The compliance and enforcement framework

The compliance and enforcement framework that supports Australia's national workplace relations system is designed to ensure the highest level of compliance with workplace laws. Actions within the framework range from education and training, provision of advice, right through to prosecution in the case of serious breaches. The framework applies to all national system employees, including temporary migrants with work rights.

Civil penalties

The courts have access to a range of civil penalties to deter non-compliance with industrial relations laws. The Fair Work Act prescribes the maximum penalty a court can award for each contravention of a civil remedy provision, which can range from a \$420 fine for some record keeping failures, up to a monetary penalty of \$630,000 for serious contraventions committed by body corporates.

The *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) also sets out the maximum penalties a court can award for particular contraventions relating to investigations in the building and construction industry. These penalties range from \$4,200 for failing to comply with a notice to produce records or documents through to \$210,000 for a body corporate that hinders or obstructs an Australian Building and Construction Commission (ABCC) inspector exercising compliance powers.

It is important to note that orders relating to employee entitlements will typically take priority over penalty orders imposed by courts.

Accessorial liability

The Fair Work Act extends accessorial liability for contraventions of workplace laws in circumstances where a person or company is involved in that contravention, but is not the principal person or company responsible for the contravention. Since the introduction of the Protecting Vulnerable Workers Act, franchisors or holding companies can also be held liable for contraventions by their franchisees or subsidiaries where they were reasonably expected to know that the breach would occur, and did not take reasonable steps to prevent the contravention from occurring.

Sham contracting arrangements

Sham contracting generally refers to the practice of an employer wrongly treating someone whose relationship with the employer should properly be characterised as an employee (whether full- or part-time) as an independent contractor. The motivation for such conduct would usually be to avoid paying employee entitlements such as minimum wage, paid leave, and superannuation contributions.

Under the Fair Work Act, an employer can be held liable for sham contracting arrangements, including with temporary migrant workers. These arrangements can include:

- misrepresenting an employment relationship as an independent contracting arrangement, with a defence for those who can show that they did not know, and were not reckless about whether, the individual was an employee;
- dismissing or threatening to dismiss an employee to engage them as an independent contractor; and
- knowingly making a false statement to influence an employee to become an independent contractor.

Employers found to have engaged in sham contracting arrangements, including with temporary migrant workers, may be penalised separately for sham contracting and underpayment contraventions.

Industrial relations regulators

As an independent statutory agency that regulates compliance with the Fair Work Act, the FWO performs a range of compliance and enforcement functions under section 682 of the Act. The FWO's *Compliance and Enforcement Policy* provides guidance for how the FWO performs these statutory functions.¹⁰ The policy states that the FWO will assess each matter before deciding how to respond by drawing on the range of tools and powers at its disposal which are most appropriate for the particular situation, including:

- providing education, advice, and dispute resolution services;
- commencing an investigation or inquiry into the potential non-compliance;
- exercising compliance powers to enter premises or require production of information or documents; and
- exercising enforcement tools, including issuing a compliance notice or an infringement notice, entering into an enforceable undertaking, or commencing legal proceedings.

In 2019, the FWO's *Compliance and Enforcement Policy* was reviewed, simplified and updated in response to changing community expectations about how regulators use their statutory enforcement tools. The FWO has announced its intention to send a strong message of deterrence to would-be lawbreakers by striking the right balance between using enforcement tools, and getting a timely outcome for those employees who have been underpaid.¹¹ This entails a significant increase in its use of Compliance Notices,¹² and court enforceable undertakings being the minimum requirement for companies that self-disclose workplace contraventions.

The FWO litigates strategically, reserving court action for matters that act as a general or specific deterrence or provide clarification of the law, including cases involving serious and deliberate non-compliance, exploitation of vulnerable workers, and failure to cooperate with the regulator.

The Government has provided the FWO with more than \$60 million in new funding in recent years, including \$20 million over four years from 2019-20 to conduct more education and investigations relating to underpayments (including underpayments of temporary migrant workers), take action to deter non-compliance and establish a dedicated sham contracting unit. The funding will also support information and education activities to raise migrant workers' awareness and understanding of their rights under Australian

¹⁰ Fair Work Ombudsman, *Compliance and Enforcement Policy*, July 2019.

¹¹ Fair Work Ombudsman, FWO launches 2019–20 priorities, 3 June 2019, <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/june-2019/20190603-aig-pir-media-release>.

¹² Between 1 July 2019 and 31 December 2019, the FWO had already issued 602 compliance notices, compared to 274 notices issued for the whole of the preceding 12-month period.

workplace laws. This followed \$20.1 million provided to the FWO in 2016-17 as part of the Protecting Vulnerable Workers policy, to assist the regulator to deal more effectively with employers who intentionally exploit workers, in particular overseas workers or those belonging to ethnic communities.

The FWO has also developed, with the Department of Home Affairs, a visa assurance protocol, whereby a temporary migrant worker's visa will generally not be cancelled if they have breached their visa conditions due to workplace exploitation and have:

- sought advice or assistance from the Fair Work Ombudsman and are assisting them with their inquiries;
- not complied with the work-related conditions only and there is no other basis for visa cancellation; and
- committed to abiding by visa conditions in the future.

Similar to the FWO, the ABCC is an independent industrial relations regulator for the building and construction industry. The ABCC has similar powers to the FWO, which includes enforcing compliance with the Fair Work Act in relation to the building and construction industry, as well as the BCiIP Act. The ABCC undertakes a combination of proactive and reactive audits and investigations to recover and ensure workers' remuneration, including that of temporary migrant workers, has been paid in accordance with legislative requirements. The ABCC has established a dedicated, stand-alone team responsible for wages and entitlements audits and recoveries.

The ABCC undertakes educational campaigns, including presentations and the publication of information on the ABCC website, to ensure all workers, employers and other building industry participants understand their rights and obligations. Additionally, the ABCC provides an online facility for workers, including migrant workers, and other building industry participants to anonymously report potential contraventions of industrial relations laws.

Recovery of unpaid entitlements

Section 548 of the Fair Work Act makes provisions for certain proceedings to be dealt with as small claims proceedings in a state or territory court or the Federal Circuit Court. Temporary migrant workers can access this process to recover underpayments.

The small claims process is designed to be quick, cheap and informal, and deal specifically with underpayments of \$20,000 or less.¹³ The aim is to settle disputes quickly and fairly, with minimum expense to the parties. Matters are usually resolved during the preliminary stage or with only one hearing, and without the involvement of lawyers. The Fair Work Act sets out that legal representation requires leave of the court, with leave only granted if no party is unfairly disadvantaged.

Applicants can lodge a small claims application in the Federal Circuit Court or the relevant state or territory court.¹⁴ The FWO may provide applicants and respondents with assistance in respect of small claims matters, including discussing different options, explaining the process, preparing and presenting calculations, completing court application and response forms, and filing and serving court documents.

¹³ See also *Fair Work Regulations 2009*, regulation 4.01.

¹⁴ Final and compulsory determination of an underpayment claim, or the making of binding orders, requires the exercise of judicial power, which is why these matters must be dealt with by courts.

Protection from adverse action

People, including temporary migrant workers, who expose workplace non-compliance are protected from adverse action taken by their employer under the general protections provisions in Part 3-1 of the Fair Work Act. The general protections provide that an employer must not take any 'adverse action' against an employee (including prospective employees), because that employee has a workplace right, has exercised a workplace right or proposes to exercise that workplace right. Adverse action is taken by an employer against an employee if the employer threatens to, organises, or takes action by:

- dismissing the employee;
- injuring the employee in his or her employment;
- altering the position of the employee to the employee's prejudice;
- discriminating between the employee and other employees of the employer;
- refusing to employ a prospective employee; or
- discriminating against the prospective employee in the terms of conditions on which the prospective employer offers to employ the prospective employee.

III. Further reform initiatives

As noted above, a key measure of the Government's Protecting Vulnerable Workers policy was the establishment of the now-concluded Migrant Workers' Taskforce. The department has responsibility for implementing a number of the recommendations of the Migrant Workers' Taskforce. For many of these recommendations, detailed matters related to implementation are being considered through the Government's industrial relations consultations. Work is also underway to implement other Taskforce recommendations. While progress on some aspects of the Government's reform agenda has been impacted by the COVID-19 pandemic, the Government remains committed to progressing the recommendations of the Migrant Workers' Taskforce.

Whole-of-government oversight of progress on the recommendations is provided through the Migrant Workers Interagency Group, chaired by the department, which includes as members the Department of Home Affairs, Australian Border Force, the Department of Education, Skills and Employment, the Department of Agriculture, Water and the Environment, the Australian Taxation Office, the FWO and the Department of Foreign Affairs and Trade.

Industrial relations consultation and discussion papers

In 2019, the Prime Minister asked the Attorney-General, in his capacity as Minister for Industrial Relations, to take a fresh look at the industrial relations system. The Government is examining the system to identify how it is operating and where there are impediments to shared gains for both employers and employees, with a view to strengthening the economy, increasing wages, jobs growth and protecting employees' rights. As part of this consultation process, the Government is issuing discussion papers on various topics to ascertain stakeholders' views and identify specific opportunities for improvement.¹⁵ This consultation process has been paused due to disruptions caused by the COVID-19 pandemic, although the department is continuing to accept submissions made on the discussion papers released this year.

¹⁵ All discussion papers, including those closed for consultation, can be found on the Attorney-General's Department's website at <https://www.ag.gov.au/Consultations/Pages/industrial-relations-consultation.aspx>.

The two discussion papers of particular relevance to this inquiry are:

- *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance* (strengthening penalties paper), released September 2019; and
- *Improving protections of employees' wages and entitlements: further strengthening the civil compliance and enforcement framework* (compliance and enforcement paper), released February 2020.

The strengthening penalties paper sought feedback on issues related to recommendations of the Migrant Workers' Taskforce, including: the adequacy of the existing civil penalty framework; the potential introduction of criminal sanctions; whether greater deterrents are needed to sham contracting; and the suitability of employers' liability where entities in their supply network contravene employment laws. Consultation on this paper has closed and the Government is in the process of considering submissions.

The compliance and enforcement paper also seeks feedback on Taskforce recommendations, relating to: faster, more efficient remedies for workers to recover unpaid wages; and empowering the FWO to pursue banning and disqualification order applications against directors.

Criminalising underpayments

The Taskforce recommended that criminal sanctions be introduced for the most serious forms of exploitative conduct.¹⁶ In response to the recommendation, the Government has commenced drafting legislation to criminalise the underpayment of employees. Timing for this legislation has been delayed due to the COVID-19 pandemic.

Adding criminal penalties to the suite of penalties available will provide regulators and the courts with the appropriate tools to address serious contraventions of the Fair Work Act. It sends a strong and unambiguous message to employers that they cannot get away with exploiting vulnerable employees, including by underpaying wages and other entitlements.

It is equally clear that such sanctions should be reserved for the most serious and culpable forms of workplace misconduct and would not be designed to capture employers who have made inadvertent mistakes leading to underpayment. The potential of criminal penalties for wage underpayment and employee exploitation is expected to enhance specific and general deterrence, and reduce the harmful effects of this unlawful conduct.

As part of the strengthening penalties paper, the Government sought stakeholder views on criminalising underpayments, including the potential fault element of the offence, attributing criminal liability, interaction with the civil penalty regime and with other criminal laws, and enforcement considerations. Submissions made in response have been considered in the legislative drafting process.

National labour hire registration scheme

The Government has committed to establishing a national labour hire registration scheme to regulate Australia's labour hire industry, which was a recommendation of the Taskforce.¹⁷ The scheme will help ensure

¹⁶ Recommendation 6 of the Migrant Workers' Taskforce - 'It is recommended that for the most serious forms of exploitative conduct, such as where the conduct is clear, deliberate and systemic, criminal sanctions be introduced in the most appropriate legislative vehicle'.

¹⁷ Recommendation 14 of the Migrant Workers' Taskforce - 'It is recommended that in relation to labour hire, the Government establish a National Labour Hire Registration Scheme with the following elements:

workers receive their entitlements under workplace laws while ensuring businesses can compete on a fair and level playing field..

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- (a) focussed 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’.

Attachment A – Recommendations of the Migrant Workers' Taskforce Report

Recommendation 1

It is recommended that the Government establish a whole of government mechanism to further the work of the Migrant Workers' Taskforce following its completion.

Recommendation 2

It is recommended that 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:

- improve the delivery and accessibility of personalised, relevant information to provide the right messages at the right time to migrant workers
- use behavioural approaches to encourage and advise migrant workers how to take action if they are not being paid correctly
- 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
- improve messaging in government information products so they are translated, simple, clear and consistent
- work with industry and community stakeholders to educate employers and address misconceptions about the rights and entitlements of migrant workers in Australian workplaces.

Recommendation 3

It is recommended that 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*.

Recommendation 4

It is recommended that legislation be amended to prohibit persons from advertising jobs with pay rates that would breach the *Fair Work Act 2009*.

Recommendation 5

It is recommended that 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.

Recommendation 6

It is recommended that 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.

Recommendation 7

It is recommended that 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.

Recommendation 8

It is recommended that 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).

Recommendation 9

It is recommended that the Fair Work Ombudsman be provided with the same information gathering powers as other business regulators such as the Australian Competition and Consumer Commission.

Recommendation 10

It is recommended that 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:

- whether vulnerable workers could be encouraged to approach the Fair Work Ombudsman more than at present for assistance
- the balance between the use of the Fair Work Ombudsman's enforcement and education functions
- whether the name of the Fair Work Ombudsman should be changed to reflect its regulatory role
- getting redress for exploited workers, including the use of compliance notices and whether they are fit for purpose
- opportunities for a wider application of infringement notices
- recent allocations of additional funding.

Recommendation 11

It is recommended that the Government consider additional avenues to hold individuals and businesses to account for their involvement in breaches of workplace laws, with specific reference to:

- 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
- 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.

Recommendation 12

It is recommended that 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.

Recommendation 13

It is recommended that 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.

Recommendation 14

It is recommended that in relation to labour hire, the Government establish a National Labour Hire Registration Scheme with the following elements:

- focused on labour hire operators and hosts in four high risk industry sectors — horticulture, meat processing, cleaning and security — across Australia
- mandatory for labour hire operators in those sectors to register with the scheme
- 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
- host employers in four industry sectors are required to use registered labour hire operators.

Recommendation 15

It is recommended that 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.

Recommendation 16

It is recommended that 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.

Recommendation 17

It is recommended that the Council for International Education develop and disseminate best practice guidelines for use by educational institutions.

Recommendation 18

It is recommended that 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.

Recommendation 19

It is recommended that 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.

Recommendation 20

It is recommended that 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.

Recommendation 21

It is recommended that 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.

Recommendation 22

It is recommended that 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.