

Senate Education and Employment References Committee Inquiry into The Exploitation of General and Specialist Cleaners Working in Retail Chains for Contracting or Subcontracting Cleaning Companies

Responses to questions on notice by

Professor Andrew Stewart
Adelaide Law School, University of Adelaide

Dr Tess Hardy
Melbourne Law School, University of Melbourne

We thank the Committee for the opportunity to give evidence by telephone at the Caboolture and Devonport hearings respectively.

At Caboolture, Andrew Stewart was asked the following question by Senator Hume:

You've spoken a lot about section 558B and you did say that it hasn't yet been tested in court. I'm wondering whether you think the application of that style of legislation in this circumstance would have any unintended consequences that you might be able to identify.

The answer, which was interrupted by the telephone line dropping out, was to the following effect. It is true that s 558B of the Fair Work Act, which has only recently taken effect, has not yet been tested out in court. It is possible that decisions on the liability of (say) a franchisor for breaches by its franchisees may reveal problems or unintended consequences with the application of the new provision. But if that happens, it seems far more likely to involve an interpretation that unduly *narrows* the operation of s 558B, given the number of hurdles that must be overcome to hold a franchisor liable. This might entail the courts taking an overly strict view of what it means for a franchisor to have 'a significant degree of influence or control' over a franchisee's affairs, or being reluctant to find that a franchisor has constructive knowledge about the likelihood of franchisee breaches. Concerns have indeed been expressed about the possibility of the new provision being hard to invoke in practice.¹ If those concerns turn out to be justified, it might be necessary to look at refining s 558B. But that is not a reason in itself for not broadening s 558B to cover other corporate or contractual arrangements, as we have proposed.

At Devonport, Tess Hardy was asked the following question on notice by Senator O'Neill:

From a mental health point of view, I am interested in whether you are aware of any research internationally about the intersection between sound industrial relations law and the protection of wages for vulnerable workers and mental health outcomes.

¹ See, eg, Maurice Blackburn, Submission No 24 to Senate Standing Committee on Education and Employment, *Inquiry into the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*, 11 April 2017; Stephen Clibborn and Chris Wright, 'Employer Theft of Temporary Migrant Workers' Wages in Australia: Why has the State Failed to Act?' (2018) 29 *Economic and Labour Relations Review* 207, 217–8.

There is a growing body of research which is concerned with the relationship between health outcomes and labour market conditions, including wage levels, precarious work and income security.² Much of this research confirms that maintaining an adequate safety net of wages and working conditions is essential in ensuring that workers can meet their basic economic needs, including adequate nutrition, housing, transportation, leisure and rest.

Empirical studies have further shown that where this safety net is compromised – because of precarious working conditions, underemployment or non-compliance with wage and hour regulation – this may exacerbate pre-existing inequalities and generate poorer health outcomes, including through higher levels of stress.³ For example, in their examination of longitudinal data in the US, Leigh and Du found strong negative correlations between wages and hypertension, particularly among younger workers (aged between 25 and 44 years) and women.⁴

A number of recent surveys – mainly undertaken in the US context – have specifically considered whether there is any link between so-called wage theft and poor health outcomes. For example, a study conducted by Bhatia and colleagues showed that ‘the adoption and enforcement of labor laws protect and promote social economic and physical determinants of health, while incomplete compliance undermines these laws and contributes to health inequalities.’⁵ Expanding on a similar theme, Siqueira and colleagues found that:

Loss of income due to wage theft results in less funds to meet one’s needs, such as paying for housing, food, heating, child care, transportation, or health care. This can result in increased homelessness, overcrowding, hunger, decreased mobility, and/or difficulty accessing health care and paying medical bills.⁶

More specifically, a 2014 case study of wage theft in San Francisco’s restaurant sector, found that non-compliance with industrial relations laws undermined healthy working and living conditions for many workers. On the basis of their findings, Minkler and colleagues

² See, eg, Michael McGann, Kevin White and Jeremy Moss, ‘Labour Casualization and the Psychosocial Health of Workers in Australia’ (2016) 30 *Work, Employment and Society* 766; Paul Leigh and Roberto De Vogli, ‘Low Wages as Occupational Health Hazards’ (2016) 58 *Journal of Environmental Medicine* 444; Aaron Reeves et al, ‘Introduction of a National Minimum Wage Reduced Depressive Systems in Low-Wage Workers: A Quasi-Natural Experiment in the UK’ (2017) 26 *Health Economics* 639; Rajiv Bhatia and Mitchell Katz, ‘Estimation of Health Benefits from a Local Living Wage Ordinance’ (2001) 91 *American Journal of Public Health* 1398; Jenn Hagedorn et al, ‘The Role of Labor Unions in Creating Working Conditions That Promote Public Health’ (2016) 106 *American Journal of Public Health* 989; Jeanette Zoeckler et al, ‘Low-Wage Work in Syracuse: Worker Health in the New Economy’, Report, Low-Wage Workers’ Health Project, 2014.

³ Rajiv Bhatia et al, ‘Protecting Labor Rights: Roles for Public Health’ (2013) 128 *Public Health Reports* 39, 41.

⁴ Paul Leigh and Juan Du, ‘Are Low Wages Risk Factors for Hypertension?’ (2012) 22 *European Journal of Public Health* 854.

⁵ Bhatia et al, above, 39.

⁶ Carlos Siqueira et al, ‘Effects of Social, Economic and Labor Policies on Occupational Health Disparities’ (2014) 57 *American Journal of Industrial Medicine* 557.

argued that ‘wage theft is a serious and largely overlooked problem with important public health implications.’⁷

⁷ Meredith Minkler et al, ‘Wage Theft as a Neglected Public Health Problem: An Overview and Case Study from San Francisco’s Chinatown District’ (2014) 104 *American Journal of Public Health* 1011, 1017.