


Annexure G



WAGE THEFT

THE SHADOW MARKET

EMPOWERING

MIGRANT WORKERS TO

ENFORCE THEIR RIGHTS

Unions **NSW**



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Introduction

Unions NSW is the peak body for employee organisations in NSW. Through our affiliates, Unions NSW represents around 600,000 workers and is also an affiliate of the national peak, the Australian Council of Trade Unions (ACTU).

Three years ago, Unions NSW, in partnership with the Immigration Advice and Rights Center (IARC), established Visa Assist, a migrant resource centre. Visa Assist advocates and assists migrant workers by providing free legal support for immigration and employment matters.

This report is the culmination of 18 months of research and provides the latest large-scale national data on migrant worker exploitation post-Covid 19 and its ensuing labour shortages. Over 7,000 job ads were reviewed, across more than ten industries, in primarily five languages: Chinese, Japanese, Vietnamese, Spanish and Portuguese. Additionally, over 1,000 migrant workers shared their experiences when working or applying for work in Australia.

The audit also assessed the impact of the Fair Work Commission's decision to modify the Horticulture Award, which established a 'minimum wage guarantee' for piece rate workers. In the horticulture industry specifically, more than 1,000 job ads were reviewed, 223 employers were audited, and over 200 workers were surveyed.

The audit found that 60.24% of job ads in the top eight industries audited offered rates of pay below the relevant award wage. This is an improvement on the 2019-20 audit, which found that 88% of job ads were advertised at below award rates, however the exploitation of migrant workers persists as a systematic practice.

Unions NSW has been collecting data for over five years on migrant worker exploitation and has audited over 10,000 foreign language job ads. Year after year, our research has found that an overwhelming number of job ads offer a rate of pay below the minimum wage.

Unions NSW research demonstrates that the exploitation of migrant workers in Australia is endemic and a direct result of the current visa system that makes workers reliant on their employers due to the precarious nature of their visa status. It is only through the development of a regime that promotes compliance by empowering migrants to report employers' exploitation without consequences to their visa status that migrant workers will be effectively protected from workplace exploitation.

Key findings

Horticulture industry

From January 2021 to 27 April 2022:



56.79%
of ads audited offered
HOURLY WAGES



38.72%
of ads audited offered
**WAGES BY
PIECE RATE**



4.49%
of ads audited offered
BOTH OPTIONS



64%
of ads audited offered
HOURLY WAGES



25%
of ads audited offered
**WAGES BY
PIECE RATE**



11%
of ads audited offered
BOTH OPTIONS

Employer compliance with the Horticulture Award changes



57% of employers
that advertised piece rate wages
were **COMPLIANT** with the
Horticulture Award's new rules and
offered a minimum wage guarantee.



46% of employers
that offered a minimum wage guarantee
to piece rate workers **SUBJECTED**
their **EMPLOYEES TO THREATS**
of being fired if a picking target was not
reached.



43% of employers
did not offer a minimum wage guarantee
for piece rate workers or advertised a
minimum wage guarantee for only a
short period of time after employment
commencement.



27% of employers
who did not guarantee a minimum
wage disclosed that they pay a lower
rate to employees who did not have
or had an expired visa.

Additional findings

- Since 28 April 2022, at 41.94% and 23.08%, the highest proportion of ads offering wages by piece rate were observed in New South Wales and Queensland, respectively, and
- At 54.55% and 45.24%, ads offering piece rate wages were prevalent among blueberry and strawberry picking positions, respectively
- The percentage of ads offering piece rate wages was slightly higher in ads written in languages other than English. 46% of ads written in Chinese advertised piece rates, as did 42% in Japanese, compared to 30% in English

Horticulture worker experiences

Following the changes to the Horticulture Award, of the over 200 employed horticulture workers surveyed being paid by piece rate:



51%

were only guaranteed a minimum wage for a short period of time after employment commencement



20%

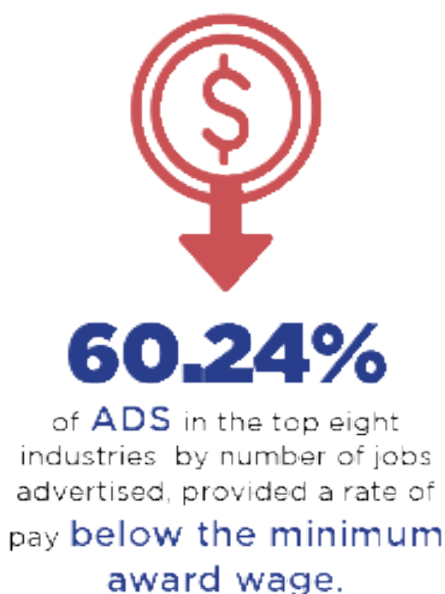
were subjected to threats of being fired if a picking target set by the employer was not reached



18%

were paid a lower rate than other employees because of their visa type, they did not have a visa, or their visa had expired

Hospitality, cleaning, retail and other industries



- At 84.59%, the highest percentage of jobs advertised below the minimum award wage were in retail, followed by cleaning at 66.76%, transport at 48.22%, building and construction at 47.56%, hospitality at 45.49%, and hair and beauty at 42.55%
- 61.1% of job ads in Chinese offered below the minimum award wage, as did 49.3% in Spanish, 30.3% in Vietnamese and 28.4% in Portuguese
- At 64.8%, the highest percentage of ads offering below the minimum award wage was in Sydney, followed by Melbourne at 60.4%

Migrant worker experiences when working or applying for a job in australia



Recommendations

Visa System Reform

To ensure that migrant workers are empowered to enforce their workplace rights, visa reform that secures their status in Australia and demystifies the visa system is needed.

Visa protections for workers reporting exploitation

- ✓ Create a new substantive visa to allow workers with outstanding claims for workplace entitlements, including underpayments, to remain in the country with work rights until their claim has been settled and any unpaid entitlements recovered. This visa should also not prevent the holder from applying for other visas while in Australia
- ✓ Enshrined in law an express factor against visa cancellation in circumstances where a visa holder has been exploited during their employment
- ✓ Work-related visa conditions should be amended so that a visa holder is not taken to have breached a visa condition where they have been subject to workplace exploitation
- ✓ Visa holders should still be eligible for subsequent visas while in Australia in circumstances where they are unable to meet the eligibility criteria for a visa due to workplace exploitation
- ✓ Create a firewall between the Fair Work Ombudsman and the Department of Home Affairs (DHA) so that vulnerable workers are empowered to act against unscrupulous employers without fear of their visa being compromised

Lift visa restrictions that intensify exploitation

- ✓ Abolish the farm work requirement imposed on working holiday visa holders to secure their second- and third year visas
- ✓ Permanently remove the 40-hour per fortnight work limit on student visas
- ✓ Replace the current employer-sponsored visa framework with an industry sponsorship model

Create clear and reliable pathways to permanent residency

Visa Assist

- ✓ Provide additional funding to expand the current migration and employment law program, Visa Assist, run in partnership by Unions NSW and Immigration Advice and Rights Centre (IARC)

Other recommendations

- Extend access to the Fair Entitlement Guarantee to temporary migrant workers

Methodology

Unions NSW's research was conducted from January 2021 to September 2022. The analysis was performed by a multidisciplinary and multilingual group of researchers, including lawyers, data analysts and IT professionals. 7,059 job ads were reviewed from all Australian states.

The audit covered more than 10 industries, including horticulture, hospitality, construction, cleaning, transport and hair and beauty, and focused on advertisements written in Chinese, Vietnamese, Japanese, Spanish and Portuguese.

Researchers audited the most popular websites and social media channels used by Chinese, Vietnamese, Japanese, Spanish and Portuguese speakers, according to information collected through focus groups and data from previous Unions NSW audits. 81% of the job ads audited (5,718) specified a rate of pay. Advertised rates of pay were compared with the legal wage, according to the relevant Award for that industry, including the rates for different types of employment and times of work. Employers were contacted in cases where the rate of pay in the ad was not sufficiently descriptive. When it was not possible to clarify the employment type, it was assumed to be part-time/ full-time.

Ads that did not provide a rate of pay or advertised commission-based jobs were excluded from the audit, as were repeated job ads.

Over 1,000 ads for positions in the horticulture industry, predominantly in English, Chinese, and Japanese, were reviewed and subjected to separate analyses to establish the per cent offering wages on the piece rate system. The majority were audited between January 2021 and June 2022.

Unions NSW's research also assessed the impact of the Fair Work commission's decision to modify the Horticulture Award, which established a 'minimum wage guarantee' for piece rate workers and came into effect on 28 April 2022. Researchers contacted over 223 employers in the horticulture sector between 28 April 2022 and 15 July 2022 through text messages and phone calls, inquiring about current job vacancies, salary, working hours, accommodation and whether a 'minimum wage guarantee' was paid to piece rate workers. Additionally, over 200 horticulture workers were surveyed to assess employers' compliance with the new laws.

Examples of social media groups and websites

Cairns凯恩斯Chinese华人

Public group · 3.8K members



backpackers.com.tw

背包客棧自助旅行論壇 –
背包攻略旅遊維基百科 –
便宜機票比價 / 訂房比價



Horticulture Industry

Characteristics and number of ads audited

The audit examined 1,382 job ads published on social media and other online platforms between January 2021 and June 2022 for positions in the horticulture industry. 1,167 of the ads reviewed provided a rate of pay. A majority of the ads were for picking (54.6%) or packing positions (19.2%) (Figure 1).

Most of the ads were written in English (57.53%), followed by Chinese (38.28%) and Japanese (4.2%) (Figure 2).

The research analysed ads related to 30 crops, with the majority being for positions associated with strawberry (24.52%), blueberry (8.09%), apple (5.25%), raspberry (4.17%) and cherry (3.75%) harvests.

The ads reviewed positions in over ten locations, including Caboolture (9.19%), Robinvale (8.03%), Stanthorpe (7.89%), Bundaberg (6.22%) and Mildura (3.91%).

Figure 1. Total ads grouped by the most prevalent positions

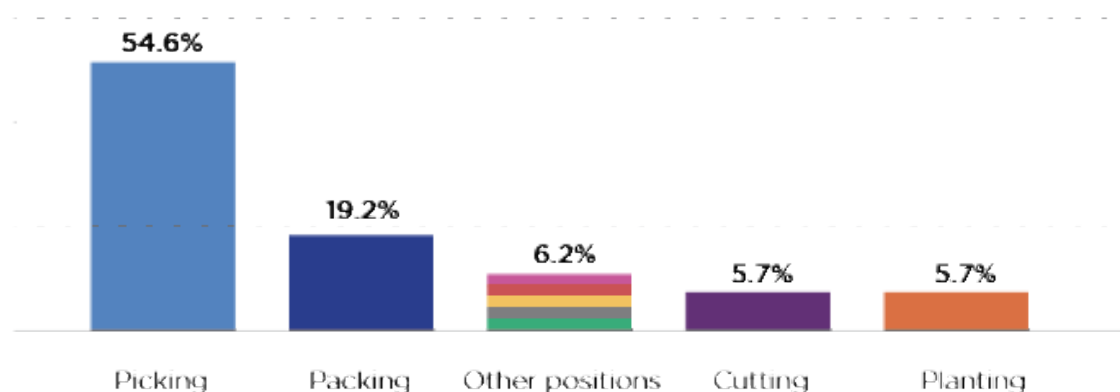
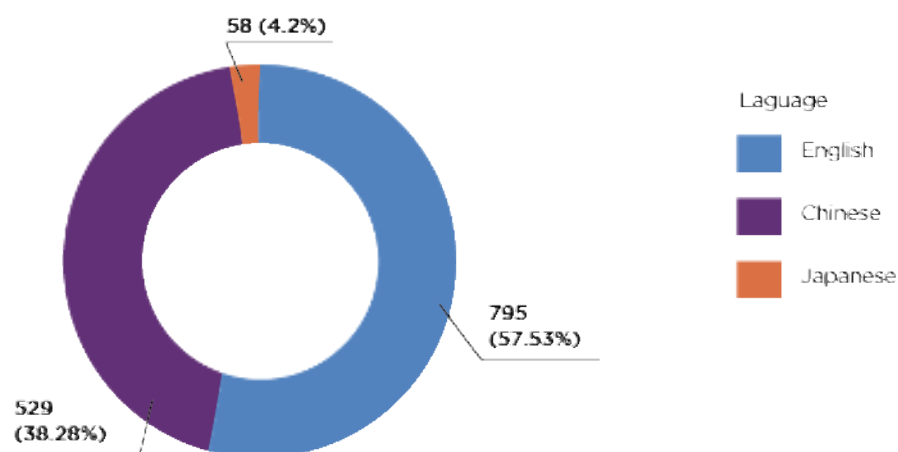


Figure 2. Ads by language



Audit Results - Horticulture Industry

Previous Unions NSW reports uncovered endemic underpayment and wage theft in the horticulture industry and employers systematic misuse of the piece rates system to underpay workers, with some earning as little as \$1 an hour.

The Australian Workers' Union and United Workers Union achieved a historic win for horticulture workers by successfully applying to vary the Horticulture Award and ensuring a minimum wage guarantee for piece rate workers. Under the new rules, piece rates are still permitted, although workers must be paid no less than the minimum hourly rates of pay established under the Horticulture Award. Under the award, the current hourly rate for a casual adult level 1 employee is \$26.73 per hour and \$21.38 for a full-time or part-time level 1 employee.

The Fair Work Commission's decision came into effect on 28 April 2022, and the positive impact on wages for horticulture workers is already apparent. Since its implementation, 64% of ads advertised hourly rates, 25% advertised piece rates, and 11% provided the option to choose between hourly or piece rates. This is a significant improvement on the 2019-20 Unions NSW audit, which found that 88% of ads advertised piece rates and only 12% offered an hourly rate.

Contrary to employers' suggestions that piece rate arrangements were preferred by workers, even leading up to the Horticulture Award changes coming into effect, a significant reduction in the number of job ads offering piece rate arrangements was observed in attempts to attract workers to the industry to fill labour shortages. Between January 2021 and 27 April 2022, 56.79% of ads advertised hourly rates, 38.72% advertised piece rates and 4.49% provided the option to choose between hourly or piece rates.

Figure 3. Percentage of ads, from 28 April 2022, offering piecework arrangements

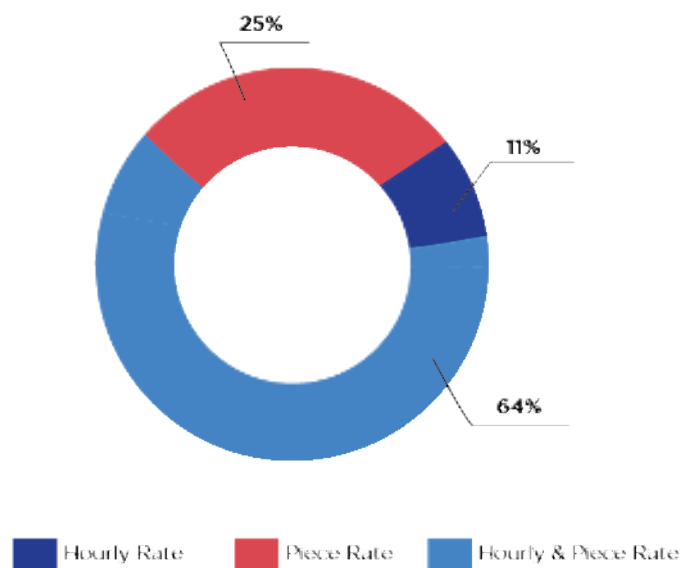


Figure 4. Percentage of ads, prior to 28 April 2022, offering piecework arrangements

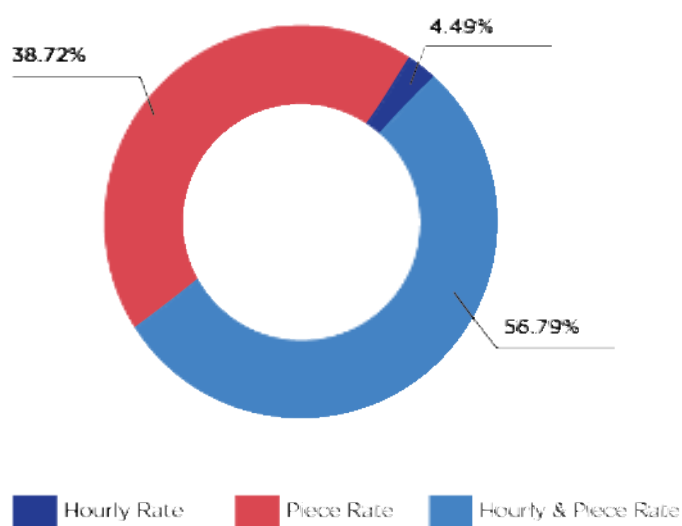
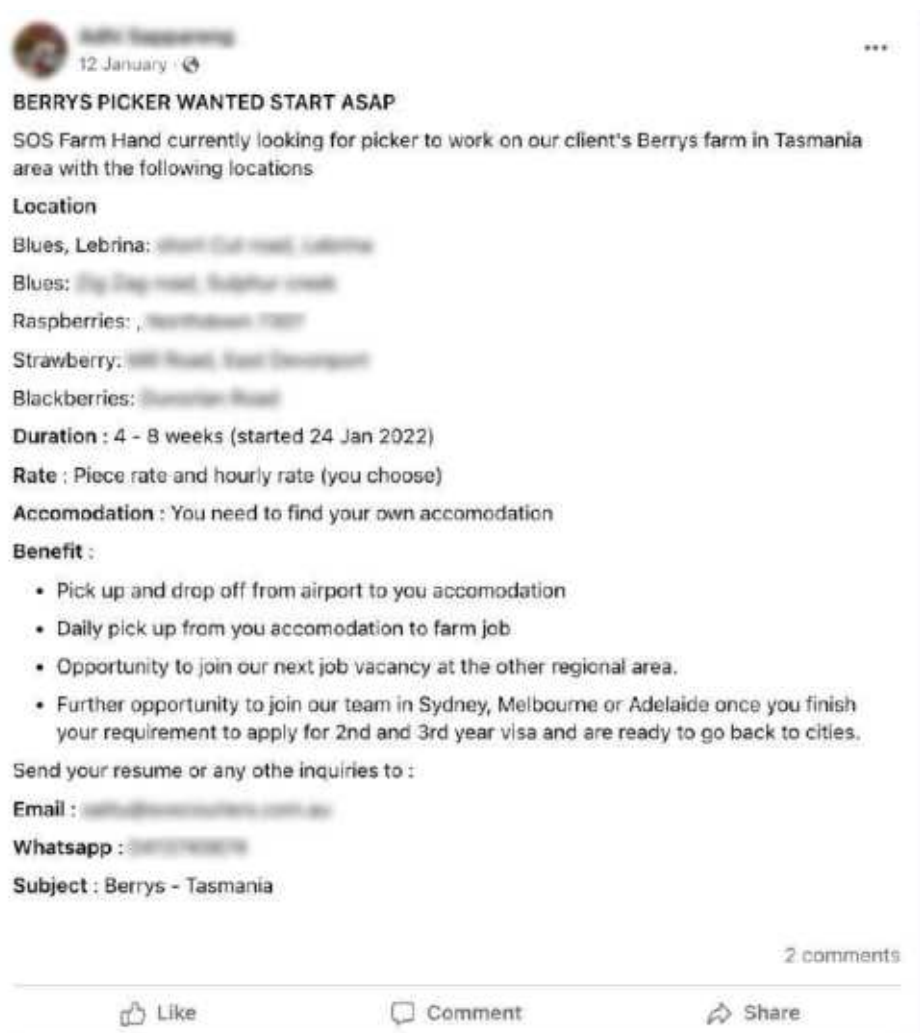


Figure 5. Example of an ad offering an hourly rate¹



Figure 6. Example of ad providing a choice between piece rate and hourly rate ²

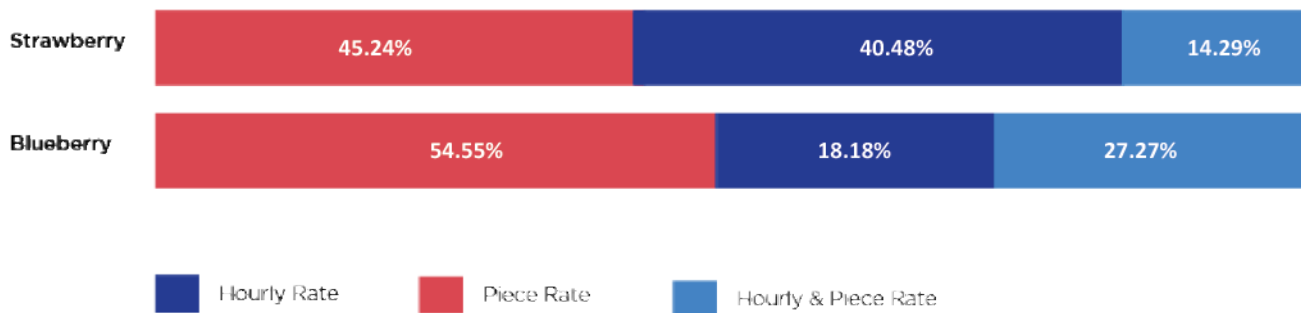


Percentage of job ads offering piece rate positions per crop

A disaggregation of the job ads audited by Unions NSW per crop revealed that the highest percentage of job ads offering piece rate positions, from 1 January 2021 to 27 April 2022, were for blueberry picking (63.16%), raspberry picking (54.05%), strawberry picking (48.91%) and cherry picking (42.87%).

From 28 April 2022, the highest percentage of job ads advertising piece rate positions were for blueberry picking (54.55%) and strawberry picking (45.24%).

Figure 7. Percentage of job ads offering piece rate positions by crop from 28 April 2022



Percentage of ads offering piece rate positions by location

Prior to 28 April 2022, the highest percentage of job ads offering piece rate positions was in Victoria (50.28%), followed by New South Wales (42.92%) and Queensland (31.69%).

positions were in New South Wales (41.94%) and Queensland (23.08%). The highest percentage of ads offering piece rate positions were identified in Caboolture and Bundaberg, at 47.6% and 26.3%, respectively.

As shown in Figure 8, from 28 April 2022, the highest percentage of job ads offering piece rate

Figure 8. Percentage of job ads offering piece rate positions by location from 28 April 2022

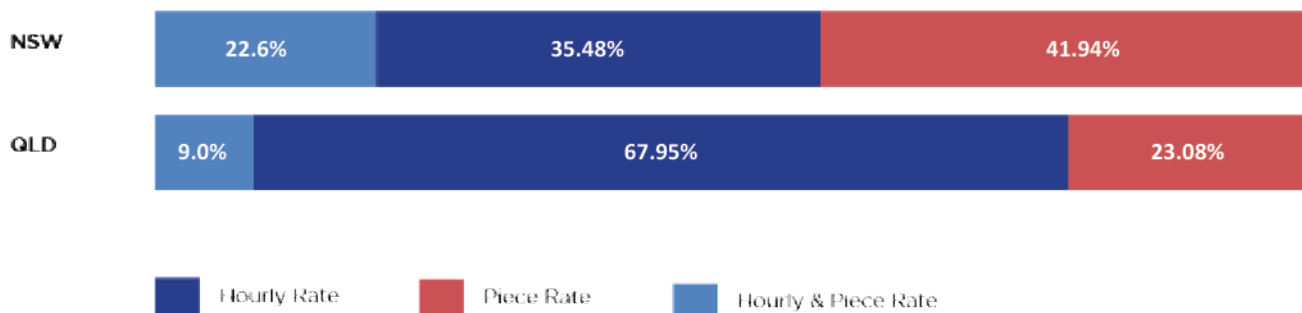
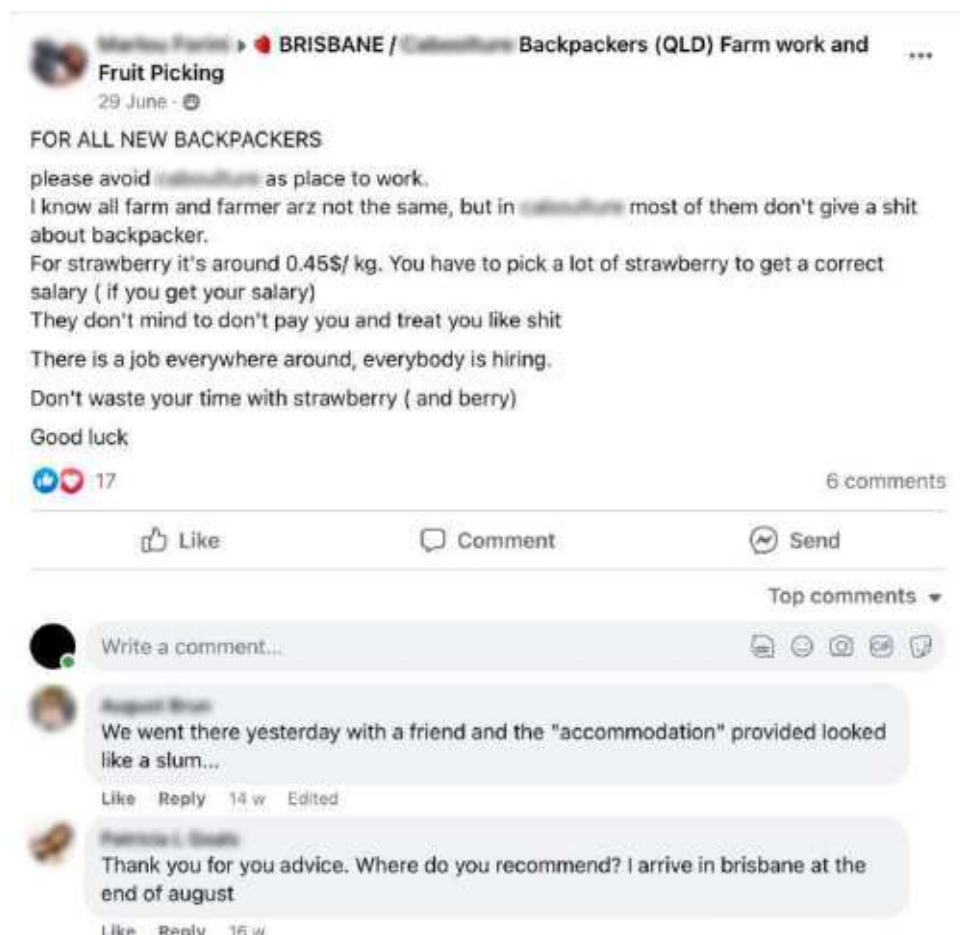




Figure 9. Backpacker post warning about poor working conditions in Caboolture³

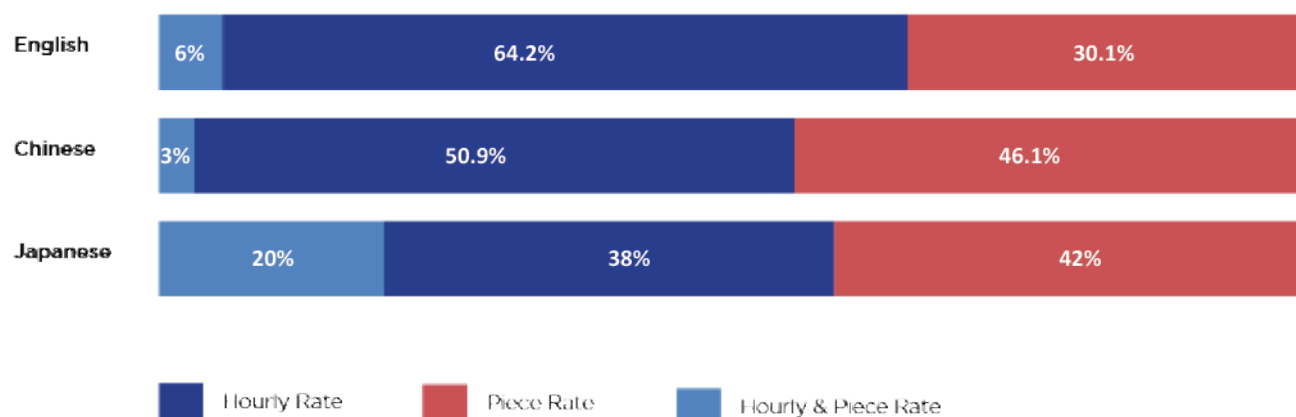


Piece rate job ads by language

Analysis of the job ads audited by Unions NSW shows that the percentage of ads offering piece rate positions was higher in ads written in languages other than English.

As shown in Figure 10, 46.1% and 42% of ads written in Chinese and Japanese, respectively, advertised piece rates position, compared with 30% of ads written in English.

Figure 10. Piece rate job ads by language



Underpayment in ads offering an hourly rate

From January 2021 to early June 2022, 58% of ads reviewed offered an hourly rate, and only 10% offered a rate below the award wage. There has been a significant improvement from the 2019–2020 audit where 68% of ads offered an hourly rate below the minimum wage.

or part-time/full-time. If the type of employment was unclear, the advertised rate was compared to the part-time/full-time rate in the relevant award. The percentage of ads offering a wage below the award is likely to be higher if compared to the casual award rate.

However, only a small proportion of job ads clearly indicated whether the work was casual

Figure 11. Percentage of underpayment in ads offering an hourly rate

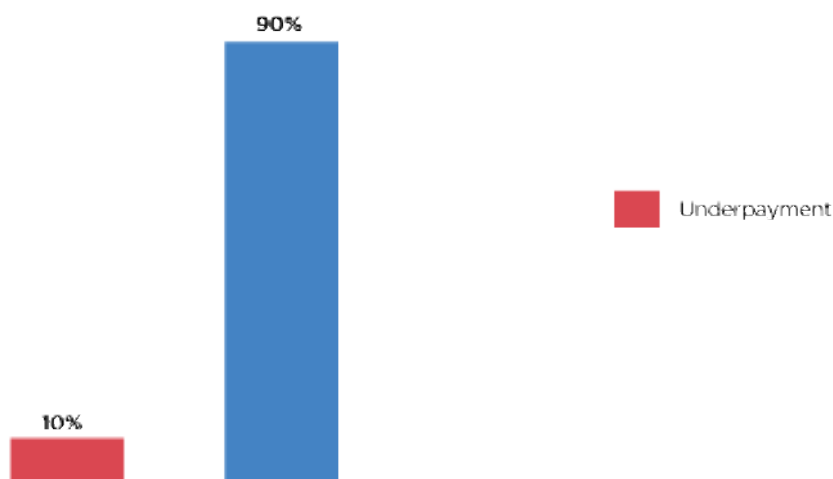


Figure 12. Picking job position offering an hourly rate of \$15 (ad originally written in Chinese)⁴

An outdoor farm in a shed in a small town in Sydney is urgently hiring agricultural workers

166 | Reply | share

#1

2021-10-06, 08:38

Agency fee: None **Location:** Central coast **Closing time:** None **Number of people:** 2 **Job content:** Vegetable planting, picking, packaging **Hourly wage:** Hourly wage

The farm is about an hour away from Sydney. We urgently need a man and a woman. No work experience is required. There is no age limit and no English communication skills. Any nationality or visa is welcome. You can go to work immediately without having to wait for a job, and you have a job all year round.

Work 6-7 days a week, 9 to 11 hours a day (you can request the number of days and hours), \$15 cash per hour (the salary will be increased after you get familiar with the work), and the salary is paid every Sunday.

There is an accommodation arrangement of \$100 a week, which includes internet, water, electricity, coal, cooking utensils and tableware, and the fare is \$6 a day. No accommodation is required, and you can find accommodation by yourself.

If you are interested, please contact [redacted] May. The peak season is coming, please do not disturb if you are not interested.

166 views

little flower | Reply

Employers compliance with new piece rate rules

Unions NSW audited 223 employers from the horticulture industry between 28 April 2022 and 15 July 2022. Multilingual researchers contacted employers through text messages and phone calls about current job vacancies and working conditions such as salary, working hours and accommodation.

57% of the employers contacted were complying with the new rules under the Horticulture Award and indicated that they pay a minimum wage guarantee for piece-rate work. However, 46% of those employers subjected their employees to threats of being fired if a picking target set by the employer was not reached. 43% of the employers contacted did not pay a minimum wage guarantee for piece rate workers or offered to pay a minimum wage guarantee only for a short period of time, usually one or two weeks after employment commencement.

27% of employers who were not guaranteeing minimum wage payment disclosed that they pay a lower rate to employees who do not have a visa or have an expired visa. Additional findings suggest that employers are reluctant to hire women and inexperienced workers due to fear of being obligated to pay the minimum wage to underperforming workers. When contacted by a female researcher, employers expressed concerns regarding their capability to perform the job and, in some instances, withdrew employment offers.

When contacted by a researcher in a language other than English, employers were more comfortable disclosing their underpayment practices. Several calls were made in different languages when employers were reluctant to disclose payment conditions by text message or in English.

Figure 13. Percentage of employers paying a minimum wage guarantee to piece workers

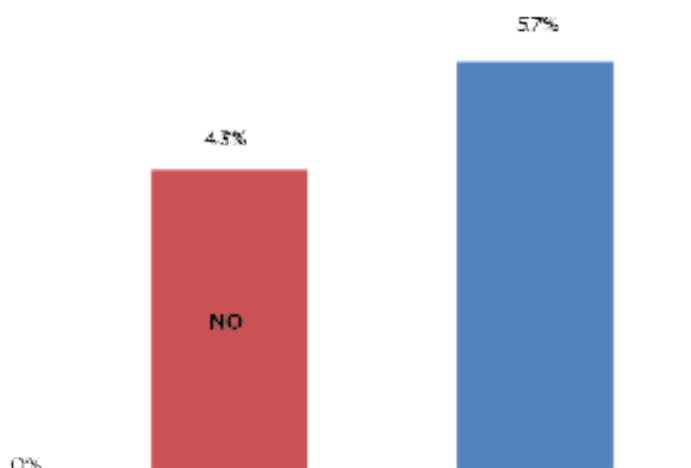


Figure 14. Text message interaction with an employer unwilling to provide a minimum wage guarantee

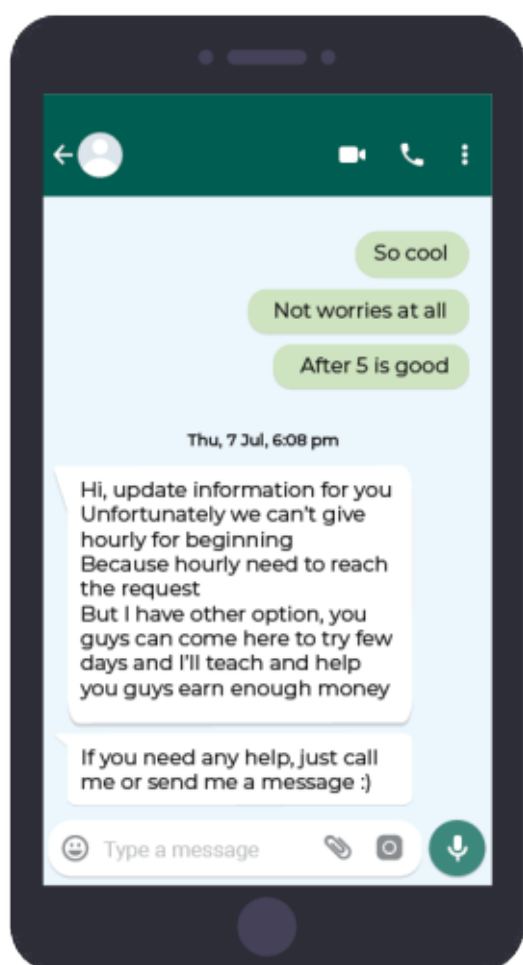


Figure 15. Text interaction with employer reluctant to hire a female worker



Figure 16. Employer offering a minimum wage guarantee for the first week only (ad originally written in Chinese)⁵

2022-05-31, 13:09

Agency Fee: No Agency Fee Location: Caboolture Deadline: 1 September Number of People: 20
Job Content: Strawberry Picking

Here is the strawberry farm in Queensland

We need to add 20 workers

The current work content is as follows:

Minimum wage guarantee for newcomers in the first week of fruit picking (\$3~\$4/1tary pruning operation (1 seedling/0.02~0.04\$)

Currently almost every day Go to work
You can arrange 1 to 2 days off by yourself a week , about 6 to 9 hours a day, the

new package provides services such as pick-up and drop-off tax number bank processing
(you do not need to wait in the city for two weeks to get a bank card, you can legally enter within two days if you want If you need help , please send a private message

We have a legal salary and tax declaration.
You can get a second visa here. We

provide accommodation without boarding.
If you have a car, you can also rent a house outside by yourself. In the

beginning and the end of the season, we may go to other farms to support us.
We need willingness , Cooperating workers

Fill in the following basic information and send it to
Line: reddunhill
Tel:

1. Arrival time:
2. Time in Australia:
3. Number of people:
4. Is there a car (yes/no
- 5) Do you need to provide accommodation (yes/no


Figure 17. Job ad not offering the minimum wage guarantee⁶

23 October at 2:43

Coffs Harbour - Blackberries and blueberries Pickers wanted!

We are looking for 5 pickers to start working in our blackberries and blueberries farm (the season will start on 10 Nov until the end of Jan).
Location 2456 , 2nd and 3rd year visa sign off eligibility

Payment is piece rate, income will depends on how fast you are. Last season, The fast pickers earned 300\$ up to 700\$ and the slowest was 100-150\$ for 5-7 working hours.
Supporting transport (fee) and accomodation (110-130\$/week)
message me if you need more info



10 96 comments

Like Comment Send

Top comments

Write a comment...

Theresa Ann O'Hagan
Please provide a ph number so we can contact you
Like Reply 3.8

my Lien - Author
Theresa Ann O'Hagan ring me with what you want
Like Reply 3.8

Reply to Theresa Ann O'Hagan

Jarzynski Ebony
I need more information
Like Reply 3.8

my Lien - Author
Jarzynski Ebony ib me pls
Like Reply 3.8

Reply to Jarzynski Ebony...

I'm interested. Where so I find more details?

I assume you are paying the FWC mandated minum amount of \$25.41 per hour as legislated in the Horticulture Award that came into effect on April 28 of this year ?
Like Reply 2.8

Horticulture worker experiences

Piece rate workers

Unions NSW surveyed over 200 horticulture workers who had worked in the industry on or after 28 April 2022. The survey was online, distributed through migrant worker community leaders and farm work social media channels.

Preliminary survey results expose the challenges involved in enforcing the new Horticulture Award rules. 51% of the piece rate workers surveyed indicated that their employer only guaranteed a minimum wage for a short period of time after employment commencement. 29% of the participants were offered an hourly rate but paid by piece rate and below the minimum wage, and 20% were subjected to threats of being fired if a picking target set by the employer was not reached.

Survey findings also highlighted the vulnerabilities generated by workers' immigration status. 18% of survey respondents were paid a lower rate than other employees because of their visa type, if they did not have a visa, or if their visa had expired.

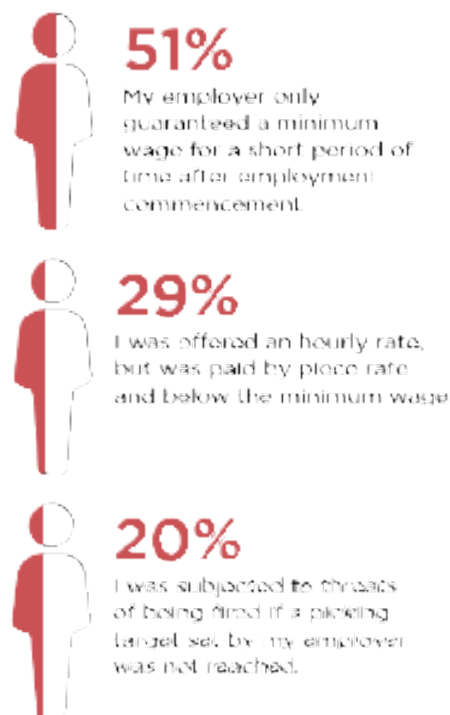
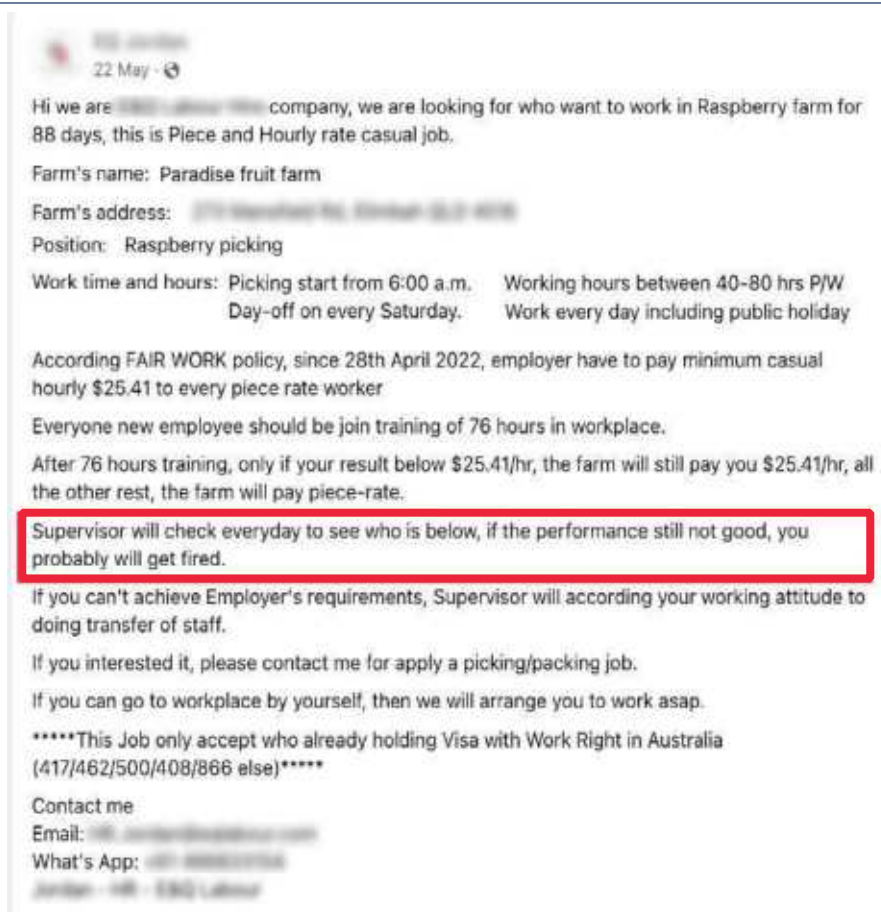


Figure 18. Example of an ad warning of being fired upon underperformance⁷



Other exploitative practices

Accommodation

The bundling of wages to secondary expenses such as food, transport and accommodation continues to be common practice in the horticulture industry. 30% of ads included the cost for accommodation

provided by the employer. 51% of those ads did not give employees the option to make separate arrangements.

Figure 19. Bundling of employment with accommodation



Sham contracting and unpaid wages

Other common practices indicated by survey respondents include sham contracting and non-payment of wages to workers on visas.

13% of respondents were not paid at all for a whole period and 5% were required to provide an ABN.

Figure 20. Facebook post of a worker reporting unpaid wages⁸



Figure 21. Job ad requiring an ABN for a position in the horticulture (ad originally written in Chinese)⁹



Hospitality, cleaning, retail and other industries

Unions NSW's audit included the review of job ads in other industries that had a high proportion of workers on visas. The audit was conducted between January 2021 and September 2022 and focused on online job advertisements in Chinese, Vietnamese, Spanish and Portuguese. Our researchers analysed 4,551 ads that indicated a rate of pay.

Most job ads audited were for positions in hospitality (1,016), cleaning (717), clerical (604), transport (329), retail (314), building and construction (249), hair and beauty (245), and manufacturing (154), plus 923 in other sectors including education, the meat industry, childcare and home care and disability.

Figure 22. Ads disclosing pay rate: Top 8 industries

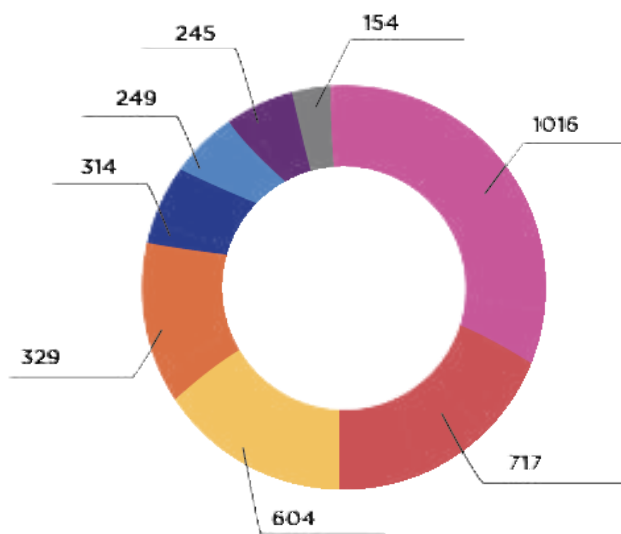
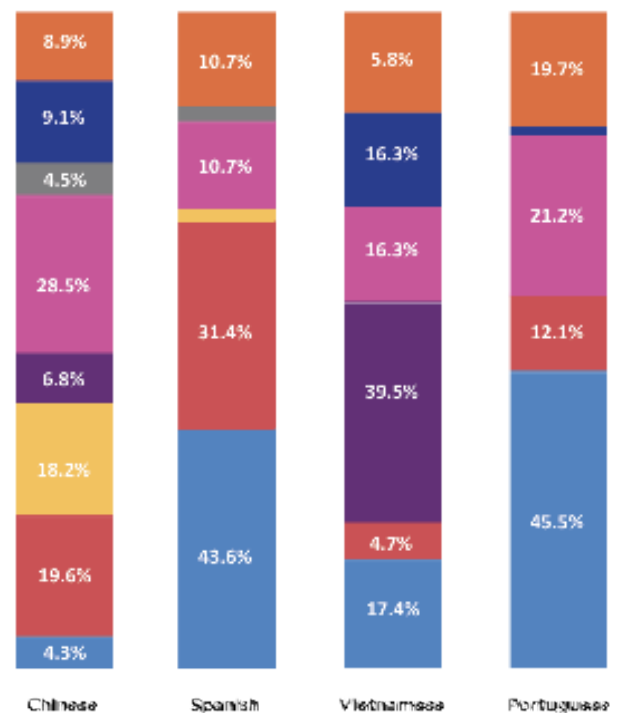


Figure 23 contains a disaggregation of job ads by language. Most Chinese ads sought employees in hospitality (28.5%), while 19.6% were in cleaning, 18.2% in clerical, and 9.1% in retail.

Ads in Vietnamese were mostly in hair and beauty (39.5%), while 17.4% were in building and construction, followed by hospitality and retail, both at 16.3%. Spanish ads were mostly in building and construction (43.6%) and cleaning (31.4%).

Ads in Portuguese were predominantly for workers in building and construction (45.5%), followed by hospitality at 21.2%.

Figure 23. Job ads by language for top 8 industries



Audit results - hospitality, cleaning, retail and other industries

Unions NSW's audit shows an improvement on previous years, with 60.24% of ads in the top eight industries by number of jobs advertised, offering an hourly rate below the applicable minimum award wage (see Figure 24). This was a significant improvement on the 2019-2020 audit, which found that 88% of ads were offering an hourly rate below the relevant award wage.

Most of the ads did not provide enough information to determine the type of employment (casual, full-time, or part-time), although the researchers contacted employers to verify the contract type where possible. In instances where clarification was not possible, the rate offered was assumed to be for full-time or part-time employment (lower rate of pay than casual employment). Resultantly, 80.63% of ads were determined to be for full or part-time employment.

40.05% of the ads offered \$17 to \$21 an hour, 21.04% offered \$16 an hour or under, 19.12% offered \$25 to \$26 an hour, and 19.16% offered \$27 an hour or more (Figure 25).

Figure 24. Job ads offering below-minimum wage

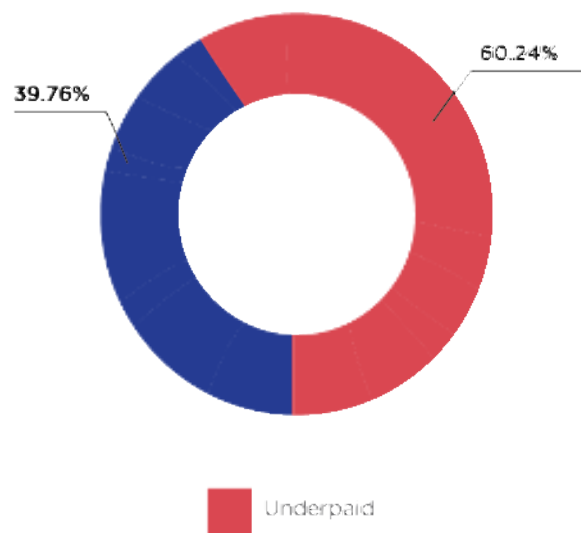


Figure 25. Job ad hourly wage rates

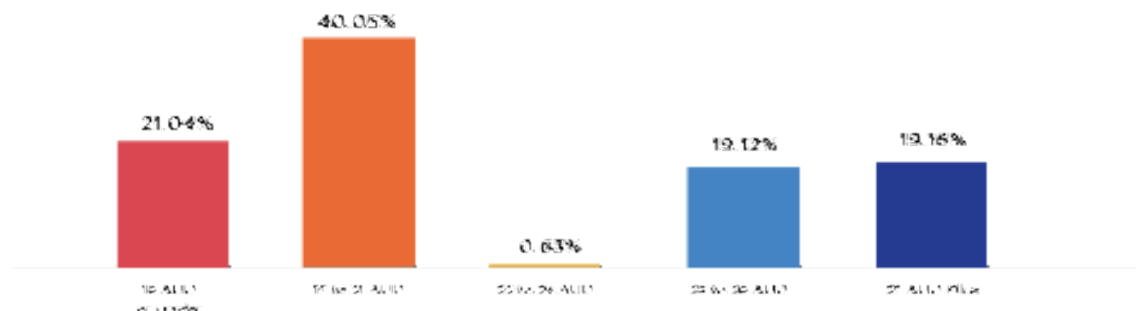


Figure 26. Example of a Chinese ad offering a wage of \$15 an hour¹⁰

注册时间: 2021-01-20 用户组: 幼儿园 私信

所在地区: Melbourne City 墨尔本 VIC

公司名称: [Redacted]

招聘职位: 厨师/服务员/普工/外卖

工作性质: 全职

签证状态: 工作签

经验要求: 需要

招聘人数: 1

工资待遇: Hourly Wage \$15以下

姓名: Yang

电话: *****9999 [显示电话](#)

联系我时, 请注明来自亿亿网! 未经书面许可, 严禁转载!

Figure 27. Example of a Vietnamese ad advertising a wage of \$17 an hour¹¹

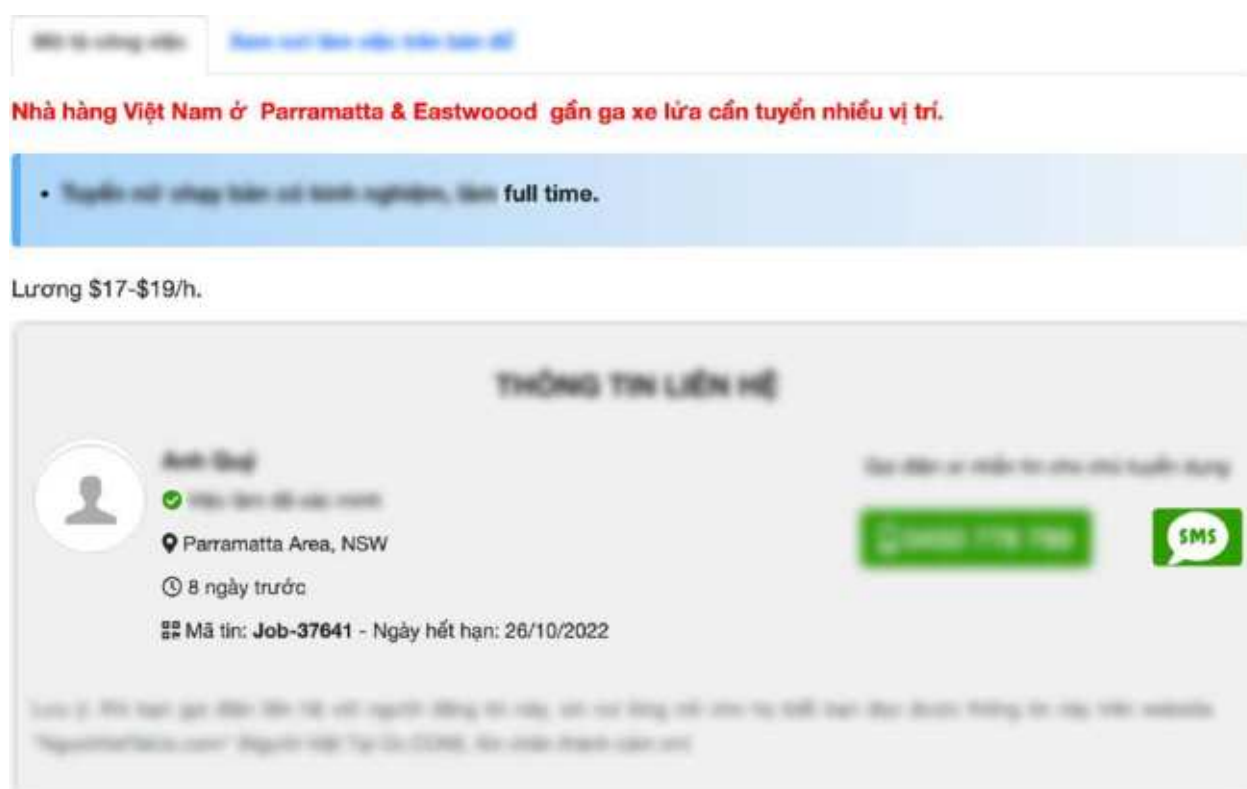


Figure 28. Facebook post of worker reporting a wage of \$17 an hour¹²

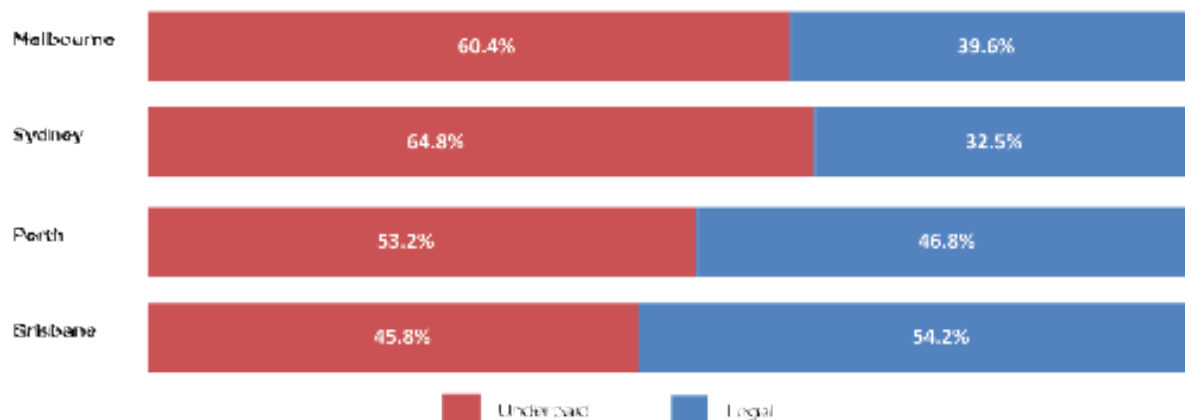


Underpayment by city

Unions NSW's 2021-2022 audit, for the first time, covered 10 sectors nationally, and provided data on levels of underpayment for each Australian capital city. As shown in Figure 29, at 64.8%, the

highest proportion of jobs below the award wage was in Sydney. Similarly, 60.4% of advertised jobs in Melbourne were below the relevant award wage, as were 53.2% of ads for positions in Perth.

Figure 29. Job ads advertising positions below the minimum wage by city



Underpayment by industry

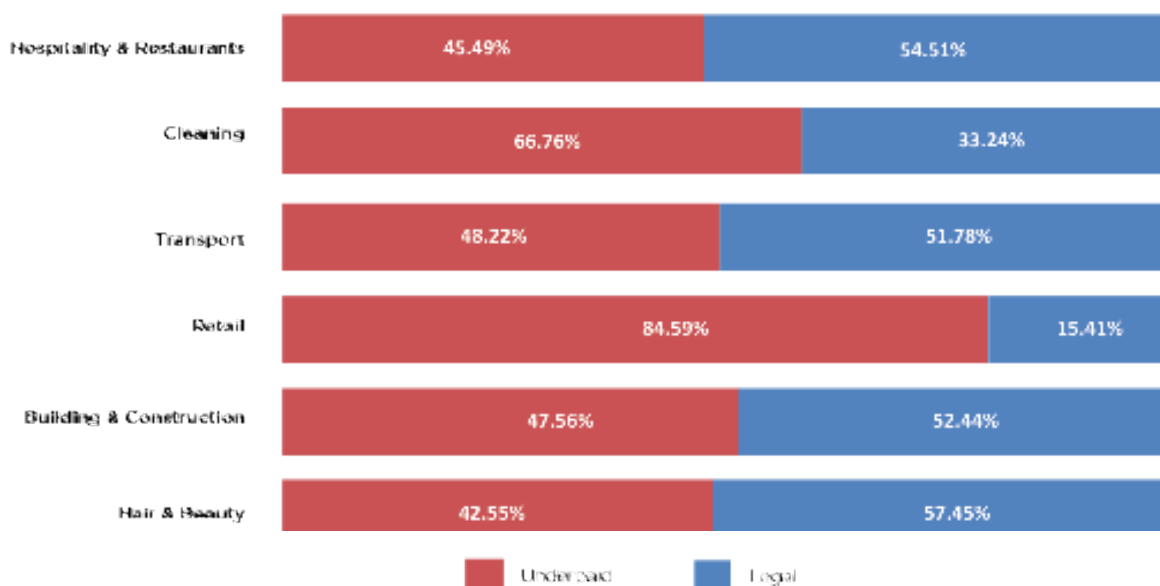
At 84.59%, the highest percentage of jobs offering wages below award rates was in retail. For 55.6% of the advertised retail positions, the rate of pay ranged from \$17 to \$21 an hour, and 27.2% offered \$16 an hour or under.

As illustrated in Figure 30, 66.76% of job ads in the cleaning industry offered an hourly rate below the

relevant award, followed by transport (48.22%), building and construction (47.56%), hospitality (45.49%) and hair and beauty (42.55%).

At 32.2%, the highest proportion of job ads offering a rate of \$16 an hour or less was in hospitality.

Figure 30. Underpayment by industry



Underpayment by language group

A significant number of job ads in Chinese offered rates of pay below the award (61.1%). This was especially so for positions in retail (86.64%), cleaning (70.03%), transport (51.09%) and hospitality (45.77%).

49.3% of ads in Spanish advertised rates of pay below the award. 57.38% of those ads were for

positions in building and construction, and 36.36% were for cleaning roles.

30.3% of ads in Vietnamese offered a rate of pay below the relevant award, with 42.86% of those ads being for positions in retail. 28.4% of ads written in Portuguese advertised rates of pay below the award rate.

Figure 31. Underpayment by language group

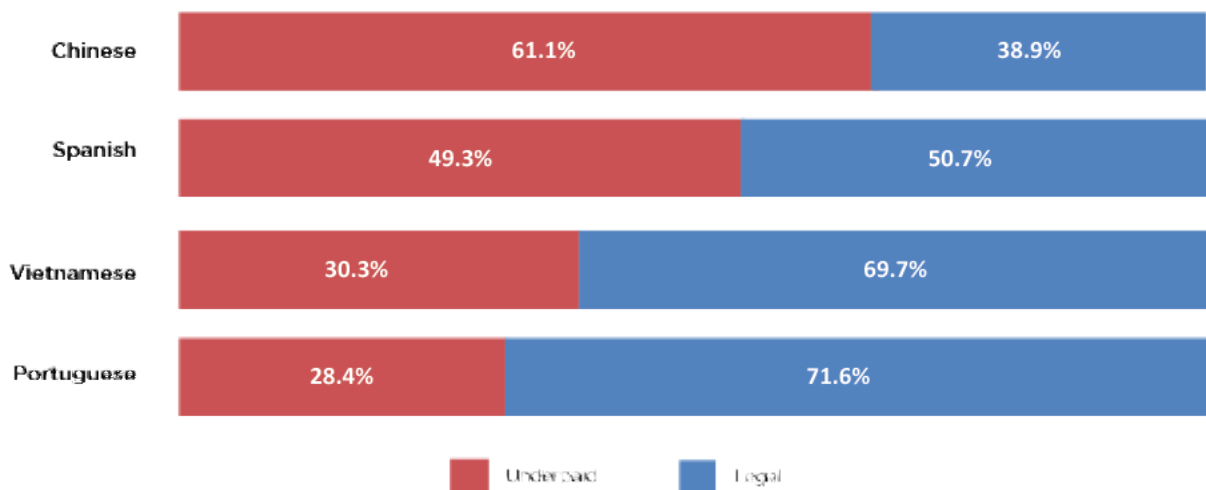
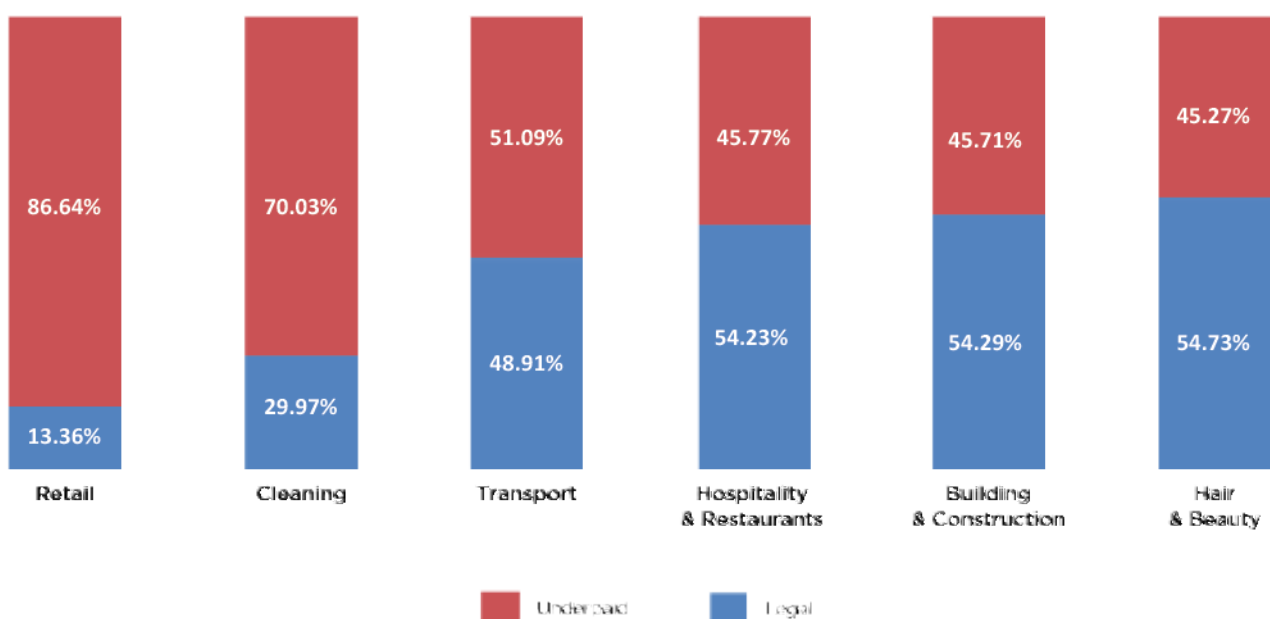


Figure 32. Underpayment in Chinese job ads



Other exploitative practices

Numerous posts were found in social media migrant community groups, suggesting a widespread practice of unpaid trials and wages, with temporary migrants frequently sharing negative experiences with their peers and seeking assistance on how to recoup their unpaid wages. Additionally, sham contracting continues to be a prevalent practice,

especially with job ads written in Spanish and Portuguese, as highlighted in Unions NSW's 2019–2020 audit.

Temporary migrant experiences are illustrated in Figures 33, 34, 35 and 36.

Figure 33. Facebook post warning about an employer not paying wages¹³

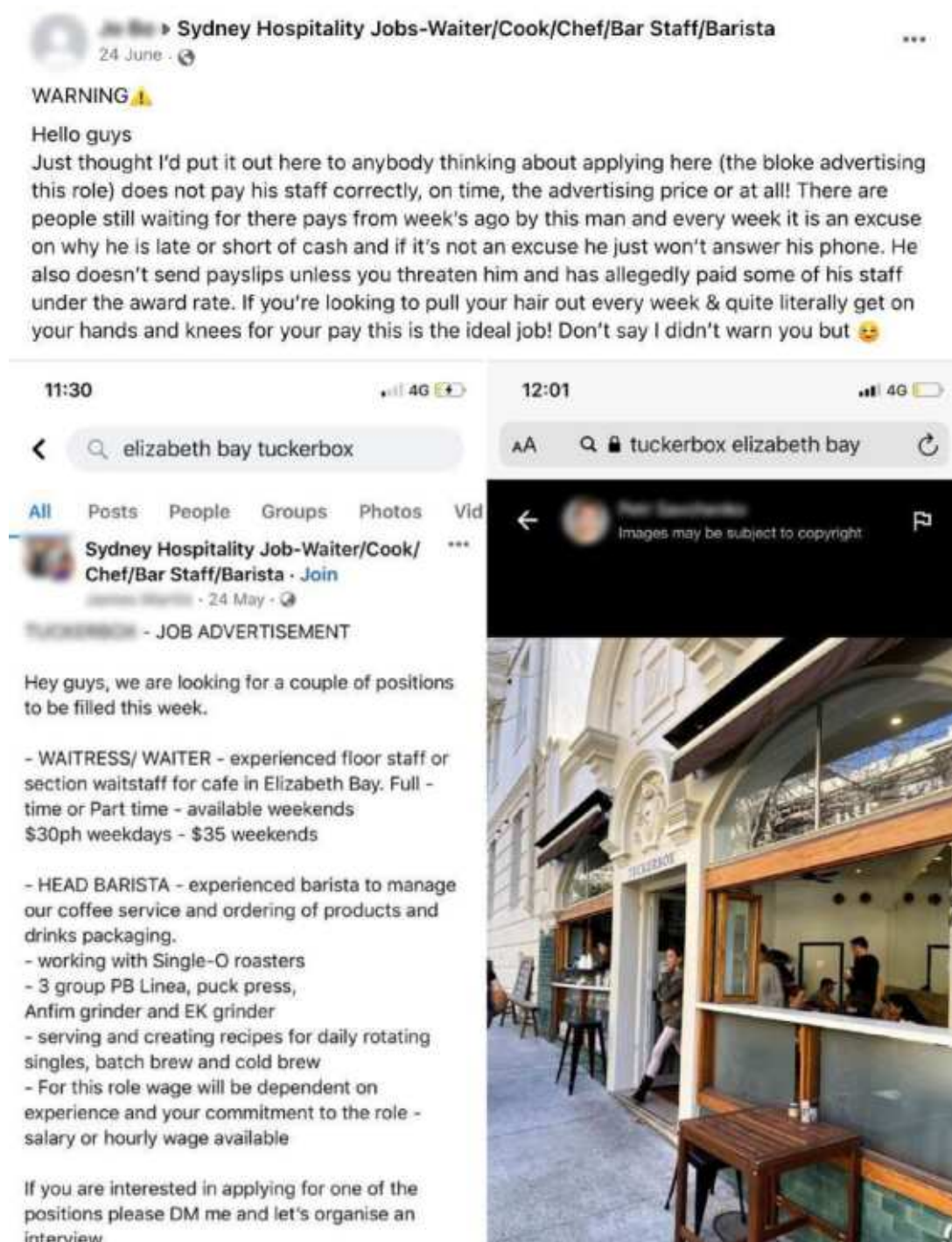


Figure 34. Example of an unpaid trial¹⁴



Figure 35. Example of a worker reporting unpaid wages due to company liquidation (ad originally written in Portuguese)¹⁵

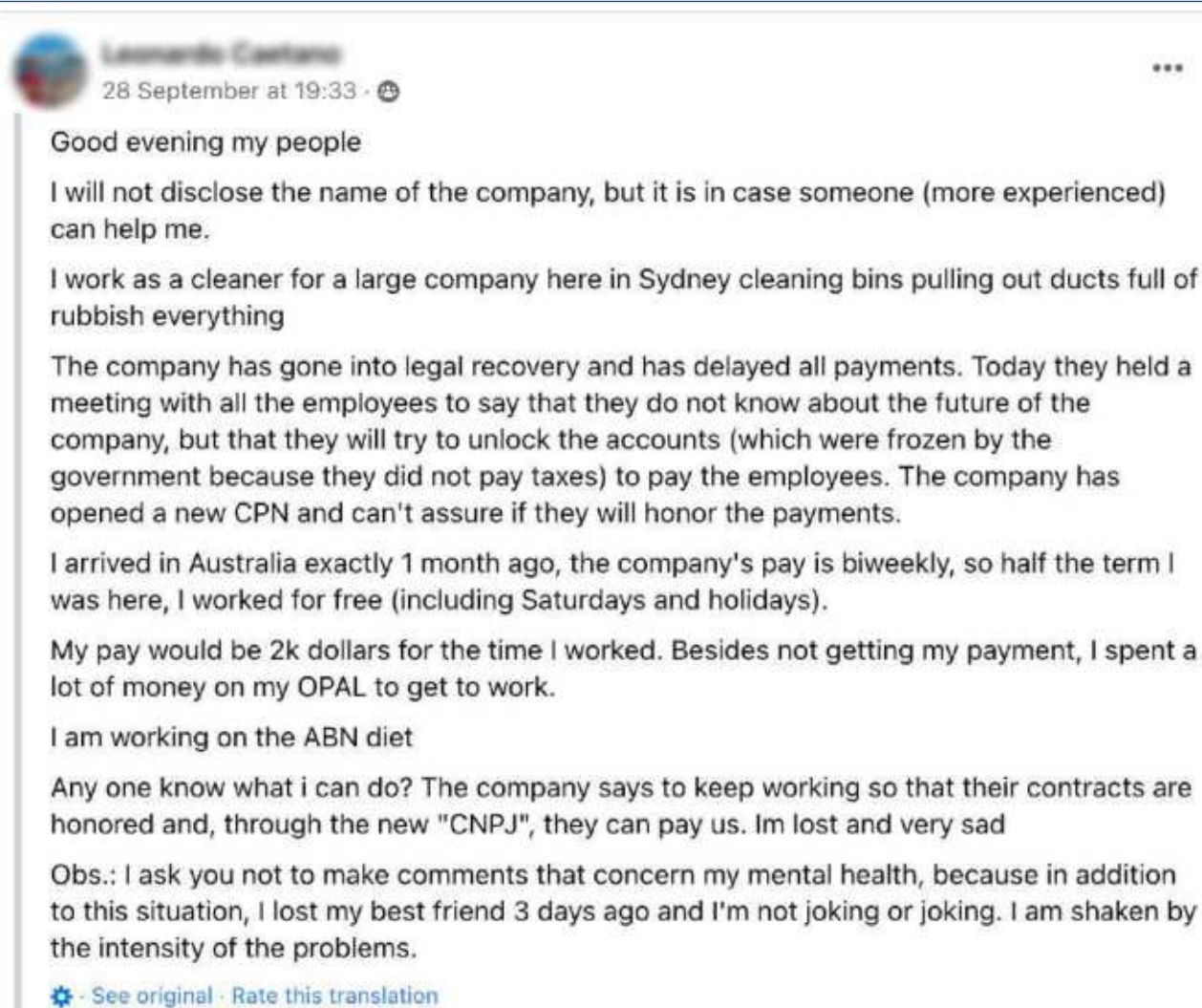
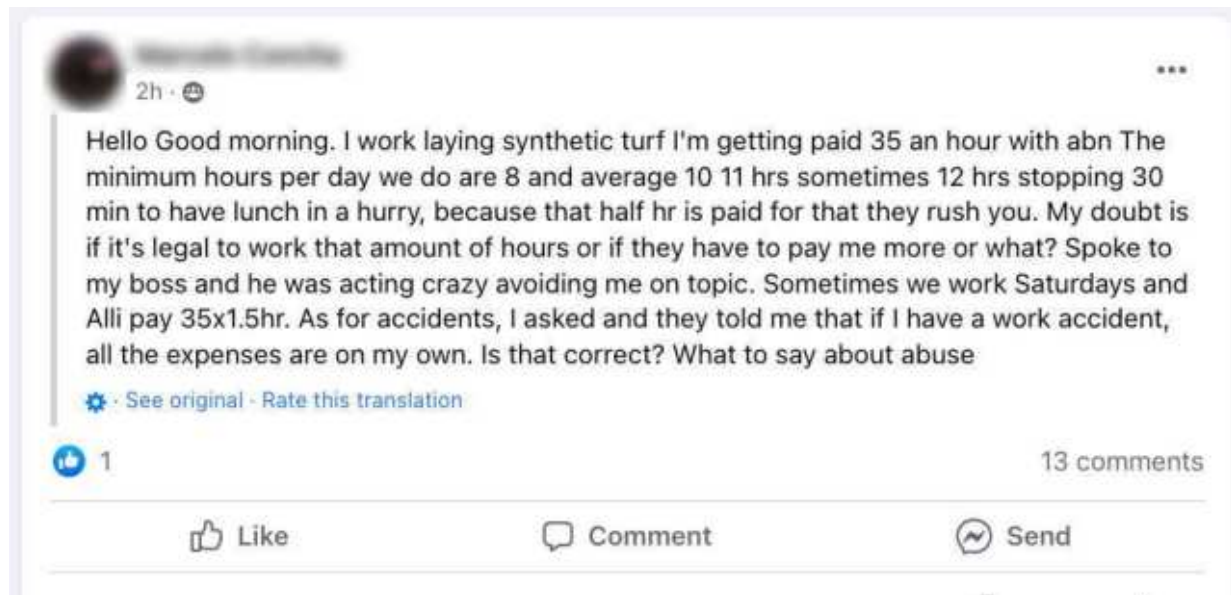


Figure 36. Example of a worker seeking guidance on their rights when working with an ABN (ad originally written in Spanish) ¹⁶



Migrant worker experiences

Unions NSW conducted an anonymous survey on migrant worker experiences when working or applying for work in Australia. The survey was online, distributed through migrant worker community groups and social media channels. Most participants were on student visas (23%), followed by 8% on employer sponsorship visas, 8% on graduate visas, and 7% on working holiday visas. Over 1,000 workers participated in the survey, with 30% of those also sharing their personal stories and views.

Preliminary survey results expose migrant workers' vulnerabilities to exploitation because of their visa status. 35% of respondents indicated that they were paid or offered a lower salary because of their visa type, and 27% were paid or offered a lower wage because of their nationality. Additionally, 14% experienced bullying due to their visa status or nationality.

Workers on student visa

43% of student visa holders were paid or offered a lower salary because of their visa type, and 24% were paid or offered a lower wage because of their nationality. 12% experienced bullying due to their visa status or nationality.

Workers on student visa



43%

I was paid or offered a lower salary because of my visa type.

Workers on graduate visa

28% of graduate visa holders were paid or offered a lower salary because of their visa type, and 9% were paid or offered a lower wage because of their nationality. 16% experienced bullying due to their visa status or nationality.

Julie – International student

Julie arrived in Australia on a Student visa subclass 500 to study a Bachelor of Psychology. She thought she had saved enough money to stay in Australia without having to work much. However, after a few months, she discovered that Sydney was much more expensive than her home country.

She applied for many jobs, but no one wanted to hire someone on a Student Visa due to the 40-hour per fortnight work condition on her visa. Eventually she found a job at a local cafe that didn't seem to care that she was on a student visa. They originally offered her \$12.06 an hour, which she accepted because of the difficulty in finding a job. This soon dropped to \$8.06 per hour, as the owner said they were struggling (although they seemed quite busy to her) and that he would "make it up to her". She also had to start working additional shifts to make up for the lost money to make ends meet. After a few months, she had become tired of the exploitative situation and her studies were starting to be affected by the extra work. She approached her union and received advice that she was being significantly underpaid and that this was illegal in Australia. Her union was happy to help her approach the employer and request that she be paid appropriately and receive back pay, but she was nervous about her visa. She eventually decided to approach her employer, thinking that it may cause less issues for her if she had an informal chat with him. When she tried to raise the underpayment with her employer, he told her if she tried to report him, he would report her for breaching her Student Visa conditions and he had other employees sent home before for similar reasons. She stayed in the job for another 8 months due to fear of being reported to the Department of Home Affairs and losing her visa.

Student and graduate visa holder's views



"I went to an interview with a construction company. They discriminated against my race and country. The pay was lower, and the job was much heavier."



"Many times, places get the advantage of you working for lower salary, and they let you know it's because you're not from here."



"Because I cannot work permanently in Australia, I was underpaid."



"I've worked in an *** restaurant in ***** (Syd), and the boss always asked me to buy him cigarettes. Once I was doing the dishes, and he said I looked sexy in red lipstick, and slapped my bum. I was shocked. After a few weeks, a new person bought the restaurant and fired me because she wanted to pay \$14/h instead of \$15 I was getting."

Sponsorship visa holders

20% of workers on an employer sponsored visa indicated that their employer asked them to pay for their sponsorship. 29% were paid a lower wage because of their visa type, 20% felt afraid to report underpayment or other breaches of workplace

laws because of concerns they could lose their visa, 20% experienced bullying, and 10% lost their job because they complained about their employers' exploitative practices.

Figure 37. Facebook post - Migrant worker, looking for sponsorship¹⁷



Workers on employer sponsored visas



Example: Invoice sponsorship

Services	Quantity	Price	Amount
Professional fees	1	\$704.00	\$704.00
and 494 Nomination Application Lodgement			
Government Fees	1	\$3,000.00	\$3,000.00
Skilling Australians Fund (SAF) Levy			
Subtotal:			\$3,704.00
1%.			\$30.00
GST 10%.			\$70.40
Total:			\$3,804.40

Cindy – sponsored visas and migrant worker dependency

Cindy arrived in Australia with her husband and two young children on a TSS visa to work as a registered nurse in a local medical practice. She seemed to get on with her employer for the first few months, and things were going well. However, soon after, her employer started acting differently towards her. He would get angry at her for no reason and was constantly late with her pay. He would also physically threaten her at work.

Things escalated when she began receiving death threats at her home, and one time discovered that her tyre had been punctured with a knife. She called the police, but that didn't seem to go anywhere.

She didn't feel safe at home or work. She approached HR at the medical practice and was told they would investigate, but nothing happened. Eventually, she left her employer as she couldn't take it anymore. She tried to find another employer but could barely leave her home due to the past trauma. She received a notice of intention to cancel her visa from the Department of Home Affairs as she was no longer with her sponsor and had not found another in time. She wrote to them telling them about what had happened to her. The Department proceeded to cancel her visa as she could not provide "sufficient evidence" to support her claim, and her employer "denied all allegations".

Sponsorship visa holder's views



"Wish I'd never come to Australia, it cost us our life savings. I feel exploited, particularly financially, by many, from recruitment to migration agents. I wouldn't recommend it unless you're very young, under 25 years old, it's just not worth the stress."



"When on a temporary skills shortage visa, you are tied to a company. The issue happens when you want to leave the company, as by leaving, you effectively must start the process to get PR all over again, so you can be unhappy in a job but stay just so that you can get PR. This means companies do not have to treat you as well."



"You have to do whatever they want on their terms because you signed the contract for a visa."



"I felt like I had very little power to complain about difficult work conditions and was pressured to do a lot of overtime before they would agree to complete my visa. I also had to pay for my visa."



"The last sponsor only increased my salary because I was receiving less than the minimum that home affairs requires to approve the 482 position."



"There were periods of time during this current year that I felt really discriminated against by some employees and one of the company's owners. It feels annoying because I know I should stay relaxed and not complain about it; otherwise, I could lose my sponsorship."



"The employer thinks that they own you, so you can't be yourself at all."

Policy proposals

Visa System Reform

Visa protections for workers reporting exploitation

Unions NSW and the Immigration Advice and Rights Centre (IARC) recommend that additional changes be made to the immigration system to ensure visa holders are able to report unscrupulous employers without putting their visas at risk of cancellation or refusal. Protecting migrant workers' visa status is fundamental to ensuring the enforcement of labour laws.

Migrant workers are generally concerned that by reporting an unscrupulous employer, they may alert the Department of Home Affairs about breaching a condition of their visa, which could lead to visa cancellation or make them unable to meet the requirements of a subsequent visa, leading to the refusal of their visa application.

In situations where a visa holder is being subjected to workplace exploitation, it is likely the visa holder will also be breaching a condition of their visa. For example, student visa holders are subject to the limitation of a 40-hour work fortnight while their course is in session. However, students often work more than the 40 hours limit imposed by this condition due to severe underpayment by employers. Employers then threaten to report students for non-compliance and with visa cancellation if they report their experiences of workplace exploitation.

By safeguarding migrant workers' visa status, we can ensure they are secure in the knowledge that if they report unscrupulous employers, their visas will not be cancelled or refused. This will also result in an improvement in the effectiveness of enforcement actions and the imposition of penalties against employers engaging in illegal practices to deter exploitation.

Create a new substantive visa to allow workers with outstanding claims for workplace entitlements, including underpayments, to remain in the country with working rights

Unions NSW and IARC also recommend that visa holders pursuing workplace entitlements should be eligible for a substantive temporary visa option allowing them to remain and work in Australia until their claim has been settled and any unpaid entitlements recovered. A similar safeguard already exists for witnesses or complainants in criminal law cases, providing them with the right to temporarily remain in the country for the period needed to assist with the case. No equivalent alternative is currently available for victims of workplace exploitation.

This substantive temporary visa should:

- have unqualified work rights;
- not prevent the holder from applying for other substantive visas while in Australia;
- not limit the holder's access to permanent residency;
- allow family members to be included in the application as secondary applicants; and
- be accessible to people who may be subject to certain statutory bars and do not hold a substantive visa.

Protect against visa cancellation and ineligibility for future substantive visas

Unions NSW and IARC also recommend that the Migration Regulations and Departmental policy need to be updated to ensure that temporary migrant workers will not have their visas cancelled or be ineligible for future visas where there has been workplace exploitation. This will ensure that migrant workers are empowered to hold unscrupulous employers to account. As noted above, when a temporary migrant worker is being exploited, it is likely that they are also breaching a condition of their visa or may be found to be ineligible for a subsequent visa, which can lead to visa cancellation or refusal.

Proposed reforms include:

1. Migration Regulations are amended to ensure that workplace exploitation and unscrupulous employer conduct is an express factor against visa cancellation – this can be enlivened through s 116(2) of the Act and associated Migration Regulations
2. Work-related visa conditions should be amended so that temporary visa holders will not have breached their visa conditions in cases of workplace exploitation or unscrupulous conduct by their employer
3. Departmental policy around cancellation of visas under s 116 of the Act should be updated to ensure that workplace exploitation and unscrupulous employer conduct is an express factor against visa cancellation
4. Visa eligibility should be amended to ensure that temporary migrant workers who would have been eligible for a subsequent visa but for workplace exploitation are still eligible for that visa
5. Workplace exploitation should form part of the Ministerial Intervention guidelines

Create a firewall between the Fair Work Ombudsman and the Department of Home Affairs, so vulnerable workers are empowered to act against unscrupulous employers

The Fair Work Ombudsman (FWO) has attempted to counter concerns regarding the lack of protections for the visa status of migrant workers reporting exploitation by claiming that since February 2017, there is an agreement with the Department of Home Affairs protecting temporary migrant workers from having their visa cancelled if they assist the FWO with their investigations, even if they have worked in breach of their visa restrictions.¹⁸ However, Freedom of Information Requests (FOI) made by Unions NSW to the FWO and the Department in January 2017 found that no such agreement exists. Instead, there is a referral protocol, which provides a ‘ready reckoner’ for FWO officers to use in determining whether a worker who approaches them with an underpayment matter should be referred to the Department because of a breach of their visa. Further, the FWO claims that once a referral has been made, they have no control over actions taken by the Department in relation to the worker’s visa.¹⁹

The FWO refused to provide information on what factors its inspectors consider when deciding whether to refer a temporary migrant worker to the Department. The FWO would not release this information, arguing it would affect ‘law enforcement and protection of public safety’ by influencing the facts workers choose to disclose to the FWO.

The FWO referral form for processing the personal details of migrant workers provides the Department with information on the visa the worker holds; the assistance the worker is providing the FWO; the likelihood of the case leading to an enforcement outcome against an employer; and if the worker’s expectations have been managed regarding the referral process. No information is provided by the FWO to the Department on the details or severity of the workplace underpayment being investigated.

Lift visa restrictions that intensify exploitation and cause migrant worker’s dependency on their employers

Abolish the farm work requirement imposed on Working Holiday Visa holders to secure their second- and third-year visas

The underpayment of Working Holiday Visa (WHV) holders is a standard practice among many employers. The National Temporary Migrant Work Survey highlighted that 32% of WHV holders were paid \$12 an hour or less.²⁰ Similarly, in 2021, a joint survey report by Unions NSW and the Migrant Workers Centre found that 78% of respondents, the majority working holiday makers, were underpaid at some point when working in the horticultural industry; 80% were underpaid when paid a piece rate and 61% were underpaid when earning an hourly rate.²¹

The Fair Work Ombudsman has found a continued level of exploitation of WHV holders associated with the requirement for them to perform 88 days of regional work. Various inquiries have found that the 88 days of regional work has led to increased exposure of visa workers to: unsafe situations;²² longer working hours;²³ hazardous work environments; discrimination; and sexual harassment.²⁴

Since December 2015, WHV holders seeking a second-year visa have had to provide pay slips to the Department evidencing that wages earned during their 88 days of regional work are consistent with Award minimums.²⁵ While the purpose of this regulation was to reduce exploitation, in practice, it has accentuated the dependence of WHV holders on employers providing pay slips²⁶ in order to remain in the country and reduced the preparedness of workers to make formal complaints. The 88 days requirement has resulted in devastating consequences for the many families who have lost their relatives when working in Australia as working holiday makers. The death of British working holiday visa holder Mia Ayliffe-Chung in August 2016, while performing the 88 days farm work to extend her visa for a second year, resulted in a campaign asking for abolishment of the 88 days requirement. The proliferation of media stories and campaigns advocating for reform of the Australian Working Holiday Maker Program preceded the abolishment of the 88 days requirement in the Australia and United Kingdom Free Trade Agreement, which was celebrated by UK advocates and the families of many victims as a response to their claims, and a recognition that the Australian Working Holiday Scheme was not safe. Unions NSW and IARC call for abolishment of the farm work requirement for Working Holiday Visa holders for all nationalities.

Additionally, the visa condition preventing WHV holders from working for one employer for longer than six months should be abolished. The six-month employment restriction on WHV holders limits their employment opportunities²⁷ as employers are reluctant to invest time in training employees, which in turn restricts workers to casual or temporary employment. WHV holders who have worked for an employer for more than six months are violating their visa requirements and face the prospect of visa cancellation.

Permanently remove the 40-hour per fortnight work limit on student visas

Student visa holders are restricted to working 40 hours per fortnight during their study terms and unlimited hours during course breaks. Research has shown that large numbers of international students regularly work over these restrictions.²⁸ The low, often below Award rates of pay, mean that many temporary migrant workers are forced to work additional hours to earn a wage sufficient to pay living expenses.

The aim of the 40-hour work restriction is to ensure international students are genuinely studying while in Australia on a student visa. However, Unions NSW and IARC believe that the restrictions intent is not being achieved. Instead, the restriction is contributing to the exploitation and underpayment of workers, acting as a powerful push factor towards the need for international students to work additional hours to simply afford to live in Australia.

To address workforce shortages, the Department of Home Affairs has implemented a temporary relaxation of working hours for international students. However, the Government recently announced that this will end on 30 June 2023.²⁹

Unions NSW and IARC believe that the 40-hour limit should be removed. Instead, visa condition 8202 (Meet course requirements), which already places obligations on international students with respect to attendance and academic performance requirements, should be relied upon. This provides sufficient means to ensure students are genuinely studying and complying with their visa requirements. International students' prioritisation of their studies can also be encouraged through a skilled visa system that provides points or waivers to international students who demonstrate academic excellence or other achievements during their studies.

Removing the 40-hour fortnightly work limit on Student visas will enable international students to seek jobs that are compliant with legal requirements, including employers paying the appropriate legal entitlements, rather than pursuing exploitative environments by necessity.

Replace the current employer-sponsored visa framework with an industry sponsorship model

An employer-sponsored visa is one of the few options available for temporary migrants to transition to permanent residency. Under the current regime, to sponsor a worker, the occupation must be on the relevant skilled occupation list, the employer must pay the Skilling Australians Fund (SAF) levy, conduct Labour Market Testing (LMT), and the job salary must satisfy an income threshold. Workers depend on their employment relationship to stay in the country, and if the employment relationship ceases, a sponsored worker has only 60 days to find a new sponsor.

Employers-sponsored visa requirements are

aimed at ensuring migrant workers are not paid less than an Australian worker would be in the same role, but they have proven ineffective and have instead intensified workers' dependency on their employer and prevented migrant workers from enforcing their labour rights due to the risk of losing their visa.

Unions NSW proposes to streamline the skilled work visa framework. The skilled list system should be removed over time, allowing migrant workers to be sponsored, provided the job pays 30 per cent above the median annual wage paid to employees within the occupation. A new regime must create clearer paths for permanent residency and de-link visas from employers. An industry sponsorship model provides a better option to fulfil skill shortages and prevent migrant worker exploitation.

Create clear and reliable pathways to permanent residency

The current system does not provide a clear pathway for people on temporary visas to obtain permanent residency. Obtaining permanent residency can depend on many conditions outside the temporary visa holders' control, including:

- Employer nomination to access permanent residency under the Subclass 186 visa scheme
- Skilled Occupation lists, which dictate which occupations are eligible for permanent residency and are subject to change (often without notice)
- Ongoing sponsorship by the same employer to access the Temporary Residence Transition stream of the Subclass 186 visa

The uncertainty around obtaining permanent residency and the power held by the employer over the ability of the temporary visa holder to obtain permanent residency can often mean that employees remain in exploitative situations in order to obtain it. Unfortunately, in many cases, the employer decides not to nominate the employee for permanent residency, leaving the temporary worker's visa status in a precarious state.

We consider that to dispel some of the uncertainty around permanent residency and to empower migrant workers to both report and leave exploitative employers, amendments should be

made so that:

- All visa subclasses with work rights can access permanent residency without the need for an employer to nominate them (e.g., a person who has worked for the equivalent of 5 years full-time in Australia on a temporary visa can then apply for permanent residency in their own right without the need for an employer nomination)
- The Skilled Occupation List should be abolished so that temporary visa holders are not held to the behest of changing Skilled Occupations Lists.

Reliable permanent residency pathways for international students

International students have a variety of reasons to pursue studies in Australia, including improved career prospects, personal growth, and permanent migration to Australia. However, those who intend to stay in Australia face numerous obstacles to gaining permanent residency. It is estimated that over 80% of international students leave the country after 20 years, and only 16% are granted permanent residency.³⁰ Under the current immigration system, little to no recognition is provided to international students who live and work in the country for several years and chose to attain their qualifications from Australian institutions.

Currently, after concluding their studies, international students may be able to apply for a Temporary Graduate Visa (subclass 485). The visa has two main streams, Post-Study Work Stream and Graduate Work Stream. The regime is intended to allow international graduates to gain experience in their field of study and boost the attractiveness of the Australian educational sector. The regime has become a 'de facto' pathway to permanent residency for many international graduates.³¹

Unfortunately, graduate visa holders have limited opportunities to find a job, and employers are cautious to invest time and money in training graduates whose transition to permanent residency is uncertain. The limitations in finding a job are also exacerbated by the 40-hour working restriction imposed on international students, which prevents them from gaining experience in their relevant area of study or from building a network before concluding their degree.

Research suggests that most graduate visa holders take over a year to find a job or end up

performing a job unrelated to their profession or below their qualifications. For a bachelor graduate, this generally translates to only being able to gain experience in their field for a year or less.³²

Graduate visa holders generally have two options to transition to permanent residency, via employer sponsorship or by applying for an independent point-based skilled visa, with both systems having experience requirements that graduate visa holders are unlikely to satisfy. Additionally, the constant change to the skilled list generates uncertainty for many graduates, who, after planning a life in Australia, invest money living and studying in the country for several years, only to see their profession removed from the skilled occupation list. Unions NSW and IARC welcome the federal government's announcement to increase the duration of post-study work rights for international students for degrees in areas of skill shortages³³ and support to extend these provisions to all graduate visa holders.

Additionally, Australia must recognise the invaluable human talent and contribution of international students to our economy and society by providing reliable and significantly shorter permanent residency pathways for international students transitioning from student to graduate visas who have lived in the country for three or more years.

Our skilled points-based visa system must be reviewed, and better incentives should be awarded to international graduates who have shown academic excellence, gained local work experience and/or lived in the country for several years, amongst other achievements.

A streamlined pathway for international students to permanent residency and accompanying opportunities to gain local experience in their area of study will positively impact wages. Graduates who have gained local work experience and integrated into Australian society are more likely to earn a salary aligned with their experience and academic qualification.

Provide additional funding to expand nationally the current migration law program, Visa Assist, run in partnership by the Immigration Advice and Rights Centre (IARC) and Unions NSW

Unions NSW research highlights that the exploitation of migrant workers in Australia is endemic and a direct result of the current visa

system that makes them reliant on their employers due to the precarious nature of their visa status. Unions NSW findings are consistent with academic research suggesting that almost 62% of international students do not speak up about exploitation for fear that their visa may be cancelled or they could lose their job.³⁴

To address migrant worker concerns, in 2019, Unions NSW, in partnership with the Immigration Advice and Rights Centre (IARC), created Visa Assist, a not-for-profit service that provides free immigration advice and legal support to migrant workers in New South Wales. Visa Assist combines visa and immigration advice with workplace advice into a single service. The program is the only significant service of its kind in Australia and has provided over 2,000 legal services during its 3 years of operation.

Mainstream community services are currently not utilised enough by migrant workers. Visa Assist's existing, long-term, and trusted relationship with migrant worker communities facilitates access to information and reports that are not available to government authorities, giving the program greater sight of incidences of exploitation. Additionally, Visa Assist is uniquely positioned to assist migrant workers, given their multilingual and culturally diverse staff with a successful record of organising migrant communities, reducing language and/or cultural barriers and leading effective engagement strategies to better assist migrant communities.

An expanded Visa Assist program will provide free legal advice nationally to targeted low-income and high-risk visa workers, proactively distribute multi-lingual visa and workplace resources through online and offline channels to visa workers, and deliver information sessions, seminars and training with migrant community leaders and high-risk community groups.

Increased funding to expand the Visa Assist program will assist in reducing migrant worker exploitation while also increasing visa system compliance by resolving disputes and providing legal advice to migrant workers to ensure they comply with their visa conditions.

Visa Assist case study: Sunil, Student visa

Sunil arrived in Australia on a training visa, to follow his lifelong passion of becoming a chef and learning about the culinary diversity of Sydney's hospitality sector.

However, when he received his first pay cheque, he realised that substantial deductions were being taken from his pay which he never agreed to, including accommodation in a tiny room, meals which included leftovers from the hotel's breakfast buffet (if there were any) and a lunch and dinner he or his colleagues would make themselves.

After lodging a complaint about his treatment, he was terminated from his traineeship, evicted from his accommodation, and forced to live in a hostel. His employer also reported him to the Department, who wrote to him about cancelling his Training Visa.

Sunil applied for a Student Visa in an attempt to continue his culinary training in Australia, but he was refused by the Department as they did not believe he was a "genuine" student given the pending cancellation of his Training Visa.

They told him words to the effect that, "If he was serious about becoming a chef, he would have stayed with his employer on his Training Visa". The Department also called all his allegations regarding his former employer hearsay and refused to give them any weight.

Sunil then approached Visa Assist. IARC assisted Sunil in appealing the decision with the Administrative Appeals Tribunal and provided submissions on his behalf. IARC attended Sunil's tribunal hearing and made oral submissions on the day.

The Tribunal was so persuaded by Sunil's evidence and IARC's submissions that the Tribunal remitted the matter on the same day, finding that Sunil was a "genuine student".

Other areas of reform

Extend access to the Fair Entitlement Guarantee to temporary migrant workers

The Fair Entitlements Guarantee Act 2012 (Cth) allows for financial assistance to workers who have not been fully paid for work done for insolvents or bankrupts. However, the Fair Entitlement Guarantee is limited to workers who are Australian citizens or holders of permanent residency or special category visas under Australian immigration laws.³⁵ Temporary migrant workers are not covered by the scheme and are left completely unprotected if their employer goes into liquidation.

The Migrant Workers' Taskforce recommended that the government extend access to the Fair Entitlements Guarantee program to temporary migrant workers, following consultation regarding the benefits, costs, and risks, excluding those who have deliberately avoided their taxation obligations.³⁶

Conclusion

Unions NSW's research demonstrates that the exploitation of migrant workers in Australia is endemic and persists despite a low migration influx and claims of labour shortages. A significant number of job advertisements offered below award wages and migrant worker experiences reflect the vulnerabilities generated by the current visa system that makes them dependent on their employers due to the uncertainty of their visa status.

To empower migrant workers to enforce their rights, visa protections should be provided, and visa restrictions that intensify migrant worker dependency on their employers should be lifted. The visa system needs to be reformed to develop a regime that promotes compliance by empowering migrants to report employers' exploitation without consequences to their visa status.



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