

Chapter 6

Temporary skilled worker compliance and enforcement arrangements

Introduction

6.1 This chapter outlines the evidence received by the committee in relation to the extent and prevalence of the exploitation of workers on temporary skilled visas, as well as information on the awareness of workers on their workplace rights. Importantly, the committee was also provided with a number of case studies of worker exploitation.

6.2 The committee considered the current initiatives for awareness raising for both workers and employers, and the skilled visa compliance and enforcement frameworks, as well as evidence on the inadequacies of the current enforcement arrangements.

6.3 During the latter part of the committee's inquiry, the release of the Report of the Migrant Workers' Taskforce provided a comprehensive assessment on the current enforcement arrangements and considered recommendations on areas to be addressed in future.

The extent of skilled visa worker exploitation and awareness of workplace rights

6.4 The committee heard evidence on the prevalence of the exploitation of workers on temporary skilled visas, including the difficulties on obtaining accurate information on the extent of this issue.

6.5 The Construction, Forestry, Maritime, Mining and Energy Union described the exploitation and underpayment of temporary working visa holders as 'not a series of isolated incidents', but 'endemic'.¹ Mr Mathew Kunkel, Director, Migrant Workers Centre, indicated that barriers to temporary migrant workers reporting issues means that there will always likely be underreporting of incidence of exploitation in these areas.² The Victorian Trades Hall Council provided context for the reasons that workers rarely come forward to the Fair Work Ombudsman or other government authorities:

[Results from the National Temporary Migrant Worker Survey show that less] than one quarter of migrant workers on temporary work visas said they would speak out for fear of losing their visa. This is due to the complete dependence of migrant workers on their employer.

The structure of visas is such that, if a migrant work on a temporary work visa loses their employer's good grace, they only have 60 days to find

1 *Submission 38*, [p. 14].

2 *Proof Committee Hansard*, 7 March 2019, p. 40.

another job, or they must leave the country or be in breach of their visa. This creates a huge power imbalance where migrant workers are tied to their employers, no matter their wages or conditions. These workers have no capacity to exercise power.³

6.6 The Victorian Trades Hall Council also noted:

Even more concerning, 5% of migrant temporary workers indicated they paid some form of 'deposit' for their job in Australia, and 4% were required pay cash back out of their wages to their employer.⁴

6.7 Mr Kunkel explained the implications of this in terms of workers seeking redress:

The temporary nature is one aspect of why workers are having problems in the workplace. We would say it's not only the temporary nature of the visas that causes the problem but the way in which workers are, in effect, bonded to employers such that, when there are problems in the workplace, workers are faced with a difficult choice of going up against the person that is effectively the only thing keeping them in the country. So, it's an additional barrier to seeking redress on these issues.⁵

6.8 Mr Kunkel, while agreeing that the number of temporary skilled visas may be declining, contended that this did not necessarily mean that worker exploitation was less likely:

I think the issue is that it's not necessarily the number of people on these temporary skill visas that's creating the exploitation opportunities; it's the insecure nature of the workers' position in the country that creates it. In the transition from 457 visas to the new temporary skills system, the numbers for the visa class might have changed, but the scams remain the same. The other thing that we've seen is, in some cases, student visas becoming a de facto work visa because of the holes in our wider migration system.⁶

6.9 In terms of the extent of underpayment of migrant workers, Unions NSW cited the results of an audit it had performed on job advertisements which estimated that migrant workers in the hospitality industry were underpaid on average \$4,825 a year. Unions NSW noted that researchers have predicted migrant workers have been underpaid in excess of \$1 billion.⁷

6.10 Commenting on exploitation experienced by international students working in Australia, the National Tertiary Education Union (NTEU) stated:

3 *Submission 22*, [p. 3]. See also Law Council of Australia, *Submission 36*, pp. 14–15.

4 *Submission 22*, [p. 4] (citing findings from the 2017 National Temporary Migrant Worker Survey).

5 *Proof Committee Hansard*, 7 March 2019, pp. 39–40.

6 *Proof Committee Hansard*, 7 March 2019, p. 40.

7 *Submission 45*, Attachment 1, p. 10.

In addition to underpayment, International student workers have also reported bullying and intimidation by their employer to the Fair Work Ombudsman, with cases of employers threatening to deport or "blacklist" the student workers for future work if they complained.⁸

6.11 The ACTU reported that sham contracting practices extend to temporary visa holders, particularly in the construction and cleaning sectors. The ACTU described sham contracting as 'the practice of disguising an employment relationship as one of principal and independent contractor'.⁹ The motivation behind sham contracting is to enable the employer to avoid paying leave entitlements and superannuation, and is often achieved by requiring the worker to have an Australian Business Number (ABN). The ACTU explained that:

...manipulation of ABNs facilitates and legitimises sham contracting, wage theft, and phoenixing by attempting to put the ABN holder outside of the reach of the PAYG system and the ambit of industrial legislation.¹⁰

6.12 The Report of the Migrant Workers' Taskforce acknowledged the 'ongoing issues around sham contracting' but did not further investigate the issues because of work currently being done by government agencies. The Taskforce noted that:

The ATO and the Department of Home Affairs are implementing strong integrity measures for visa holders obtaining ABNs to address cases of misuse of ABNs and sham contracting. This includes providing more information to prospective ABN holders and employers, better identifying visa holders when they are applying for an ABN, and taking action with employers who incorrectly treat their employees as contractors by making them wrongly apply for an ABN.¹¹

6.13 The ACTU argued, however, that workers on temporary skilled visas have no need for ABNs at all, because their reason for being in Australia is employment and not conducting a business (which would require a different visa). The ACTU concluded that:

...ABNs are not and should not be available to temporary visa workers. There should be a screening process put in place by the ATO to ensure that these categories of workers are not issued with ABNs and so are not subject to the exploitative practice of sham contracting.¹²

Awareness of Australian workplace laws and protections

6.14 There was evidence provided to the committee on the extent to which migrant workers were aware of Australian workplace laws and protections. The Law Council of Australia referred to some of the findings of its Justice Project, a national,

8 *Submission 4*, [p. 7].

9 Australian Council of Trade Unions, *Submission 11*, p. 24.

10 Australian Council of Trade Unions, *Submission 11*, p. 24.

11 *Report of the Migrant Workers' Taskforce*, March 2019, p. 74.

12 Australian Council of Trade Unions, *Submission 11*, p. 24.

comprehensive review into the state of access to justice in Australia for people experiencing significant disadvantage, which reported in August 2018 that:

...temporary work visa holders are less likely to know of their legal rights and,...where holders of this visa type are aware of their legal rights, they are less likely to enforce them. The Justice Project noted that temporary work visa holders may have a limited understanding of Australian laws and society, and therefore are unable to identify that they have a legal need. The Justice Project further cited findings that some employers have exploited the lack of knowledge of the Australian legal system by discouraging employees from taking their grievances further.

Additionally, [Temporary Skill Shortage (TSS)] visa holders often do not speak English as a first language, which maybe a barrier to accessing assistance to enforce their rights. It was reported in the Justice Project that low levels of English language proficiency impede access to legal information and support services.¹³

6.15 The NTEU indicated that students on visas with work rights are aware of their work rights, but other factors, including work insecurity, financial pressures and the need to keep the employer happy lead to visa breaches. The NTEU also noted that only a small number of the workers had reported the exploitation they experienced.¹⁴

Case studies

6.16 Submitters and witnesses provided a number of case studies that demonstrated non-compliance with visa conditions and exploitation of workers. In many instances, both visa non-compliance and worker exploitation were occurring concurrently.

6.17 The Australian Council of Trade Unions (ACTU) noted that despite the requirement for the subclass 400 visa that the work be 'highly specialised', the visa is being used to fill semi-skilled positions for which qualified Australian applicants are available. The ACTU provided the following examples:

Chinese labourers flown in to dismantle the former Mitsubishi car plant in the Adelaide Hills paid \$1.90 an hour, Filipino metal fabricators paid \$4.90 an hour to install animal feed mills in NSW, and nine Indonesian timber workers flown into Tasmania and promised bonuses when they returned home.¹⁵

6.18 The ACTU's submission claimed that in cases such as these, subclass '400 visas are sometimes approved within 24 hours with seemingly little oversight'.¹⁶

13 *Submission 36*, p. 15.

14 *Submission 4*, [p. 7].

15 *Submission 11*, p. 23. See also Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, pp. 27–28.

16 *Submission 11*, p. 23. See also Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, pp. 27–28.

6.19 The Electrical Trades Union's (ETU) submission referred to the case of four people, two from the Philippines and two from Thailand, brought into Australia to work on a solar farm construction project outside of Townsville on subclass 400 visa arrangements. Those four workers were being paid \$40 per day plus and additional \$42 for food and accommodation.¹⁷ The ETU stated that the workers were brought in on skilled specialist visas, however, their qualifications and licences were never assessed:

Schneider Electric had brought over [the four workers] workers on subclass 400 "Specialist" visas on the basis of the unavailability of locally skilled workers despite Townsville having an unemployment rate of 8.77% as at the 2018 June quarter and the ETU being aware of numerous unemployed members in the region who had been refused employment on the project despite applying.

The work which these 4 individuals were to perform, as stated to Immigration, includes licensed electrical work but their skills and qualifications were never assessed, the workers were not licenced to perform it... In fact Schneider's lawyers were adamant that, as these 4 are employed by a foreign entity, Schneider Electric Australia:

- had done nothing illegal; and
- was under no obligation to pay.¹⁸

6.20 The ETU noted that Schneider Electric had settled the matter, increasing the workers' wages and paying backpay. However, as these payments went to an offshore bank account there was no way to confirm: if the payments were received by the workers; who owned the bank account the payments were directed to; and whether the workers were, ultimately, able to keep the money.¹⁹

6.21 A further case was referred to by the Victorian Trades Hall Council, in which a worker who was working in hospitality in Melbourne had been charged \$50,000 for a permanent visa:

In a flagrant disregard for this worker's wages and the visa process, he was asked [to] transfer half of the deposit to his employer's friend's account: a friend who had no relationship to the restaurant or work. This worker is too afraid to report his employer because he does not want to interfere with any change of gaining permanent residency.²⁰

Compliance measures and protections for workers, enforcement arrangements and sanctions frameworks

6.22 The joint submission by the Department of Home Affairs (Home Affairs), Department of Jobs and Small Business, and Department of Education and Training

17 *Submission 49*, pp. 13–14.

18 *Submission 49*, pp. 13–14.

19 *Submission 49*, p. 14.

20 *Submission 22*, pp. [4–5].

(Joint Departmental Submission) sets out the measures for compliance checking and protection for workers, enforcement arrangements and sanctions frameworks. The release of the Migrant Workers' Taskforce's final report in March 2019, although focussed on the experience of temporary migrants who derived work rights from international student and working holiday visas, provided the committee with some additional information on the adequacy of compliance, enforcement and sanction aspects of the temporary skilled visa system. Submissions and evidence to the committee also addressed these issues.

6.23 The Joint Departmental Submission advised:

All temporary visa holders with a work right, including those sponsored by Australian businesses on TSS and subclass 400 visas, are entitled to the same basic rights and protections as Australian and permanent residents under applicable workplace laws including work, health and safety, and workers compensation.²¹

6.24 The Joint Departmental Submission noted the Commonwealth agencies responsible for arrangements for the skilled visa system include the Fair Work Ombudsman, Home Affairs and the Australian Border Force. The Australian Border Force also works with other agencies, such as the Australian Federal Police, the Australian Criminal Intelligence Commission and the Australian Taxation Office to target individuals involved in the exploitation of vulnerable persons.²²

6.25 The aforementioned Migrant Workers Taskforce was established in 2016 'as part of the Australian Government's commitment to protect vulnerable workers'. It was asked to identify further 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.²³

Compliance initiatives and protections for workers

6.26 In terms of raising the awareness of overseas workers of workplace laws and informing employers of their obligations, Home Affairs has been working with the Fair Work Ombudsman on a range of communication approaches:

This includes high level messaging at key points in an overseas worker's journey, SMS nudge notifications providing messages about workplace rights and protections, reviewing communications across government for simplicity and consistency, messaging across government websites and products, and promoting messages in locations visited by overseas workers. A trial of 'push messaging' began with Working Holiday Maker visa holders (subclass 417 and 462) on 18 November 2018. Home Affairs

21 *Submission 40*, p. 22.

22 *Submission 40*, p. 22.

23 Department of Jobs and Small Business, *Migrant Workers Taskforce*, <https://www.jobs.gov.au/migrant-workers-taskforce> (accessed 21 March 2019).

communication activities and initiatives are due to be completed within the 2018–19 program year.²⁴

6.27 In addition, Home Affairs operates a Visa Entitlement Verification Online system (VEVO) which allows visa holders, employers, education providers and other registered organisations to check visa conditions, including work rights.²⁵

6.28 The Law Council of Australia referred to the information provided to visa holders upon being granted a TSS visa, and expressed the view the information pack provided to visa holders could be improved:

An information pack should be developed that outlines in plain English all necessary information under both immigration law and employment law about the visa that they hold, its conditions, as well as their rights and protections under the Migration Act and Fair Work Act, and how to access support.²⁶

6.29 One of the initial tasks at the commencement of the Migrant Workers' Taskforce was a stocktake of existing communications strategies being used by government departments and agencies to inform workers, including visa holders, of their work rights and obligations. In discussing these strategies, the Migrant Workers' Taskforce observed:

[I]t became clear that government agencies are investing a great deal in disseminating information about workplace laws and conditions... However, the stocktake also demonstrated that agencies often take a siloed approach to their communications work, and that there is an overall lack of a cohesive messaging and delivery strategies being used across government agencies. The stocktake further highlighted that Taskforce agencies could benefit from greater insight into how useful migrant workers found the formats and messages and whether they could be improved.²⁷

6.30 The Migrant Workers' Taskforce had commissioned the Department of Jobs and Small Business and the Fair Work Ombudsman to conduct research into the information needs of migrant workers in order to inform future whole-of-government communications strategies. The Report of the Migrant Workers' Taskforce summarised the key findings from that research:

- many migrants do not have a good knowledge of workplace rights in Australia;
- after arriving in Australia migrant workers are somewhat more receptive to workplace rights information;
- the timing of communications about workplace rights is important;

24 *Submission 40*, p. 23.

25 *Submission 40*, p. 22.

26 *Submission 36*, pp. 15–16.

27 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 55–56.

- employers, family and friends, and educational institutions are important sources of information on workplace rights;
- migrant workers' misconceptions influence whether, and how, they engage with workplace rights information and government agencies;
- employers' knowledge of workplace rights also affect employees' access and knowledge;
- government communications materials, and efforts to disseminate them, can be improved.²⁸

6.31 The research also found that awareness of the VEVO app was low, and that feedback from those using the app was mixed, with 'some participants suggesting the app could be expanded to include more detailed information on workplace laws and conditions'.²⁹

'Anonymous Report' function

6.32 The Joint Departmental Submission also referred to the 'Anonymous Report' function, launched in 2016 and operated by the Fair Work Ombudsman, which enables members of the community—including workers, consumers, concerned citizens and businesses—to anonymously notify the ombudsman of potential non-compliance with workplace laws. The service has been promoted to migrant workers through a digital and traditional media campaign. Reporting can also be done 'in-language', as a means to encourage and support people from culturally and linguistically diverse backgrounds to report workplace issues.³⁰

6.33 As at 30 June 2018, the Fair Work Ombudsman had received 15 138 anonymous reports, 1 294 of which were in languages other than English. In 2017–18, hospitality was by far the most reported industry (37 per cent of all reports), followed by retail (13 per cent), and building and construction (five per cent).³¹

6.34 The Migrant Workers' Taskforce provided the following assessment of the 'Anonymous Report' Function:

Used in combination with other operational data and research, anonymous reports have helped the [Fair Work Ombudsman] to improve its targeting for compliance activities, allowing the agency to focus on a particular precinct, location, sector or type of conduct where there may be systemic problem. For example the [Fair Work Ombudsman] relied on intelligence from anonymous reports as part of a hospitality campaign that targeted specific food precincts in Melbourne, Sydney and Brisbane.³²

28 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 56–59.

29 *Report of the Migrant Workers' Taskforce*, March 2019, p. 59.

30 *Submission 40*, p. 23.

31 *Report of the Migrant Workers' Taskforce*, March 2019, p. 53.

32 *Report of the Migrant Workers' Taskforce*, March 2019, p. 53.

Fair Work (Protecting Vulnerable Workers) Act 2017

6.35 The Joint Departmental Submission referred to the *Fair Work (Protecting Vulnerable Workers) Act 2017* (Protecting Vulnerable Workers Act) which commenced in October 2017. The submission stated that the Protecting Vulnerable Workers Act strengthens protections for vulnerable workers by:

- Increasing penalties for breaches of record-keeping and pay slip obligations and introduced a new category of 'serious contraventions' (with penalties 10 times higher) for deliberate and systematic breaches. A 'serious contravention' happens when the:
 - Person or business knew they were contravening an obligation under workplace law.
 - Contravention was part of a systematic pattern of conduct affecting one or more people.
- Providing stronger provisions to make franchisors and holding companies responsible for breaches of the *Fair Work Act 2009* (Fair Work Act) in certain circumstances.
- Expressly prohibiting employers from unreasonably requiring employees to make payments (i.e. 'cash-back' arrangements).
- Strengthening the evidence gathering powers of the [Fair Work Ombudsman].³³

6.36 The Report of the Migrant Workers' Taskforce provided an overview on the implementation of the Protecting Vulnerable Workers Act, including activities undertaken by the Fair Work Ombudsman to support employer compliance, such as:

- publishing information and resources on [the Fair Work Ombudsman's] website aimed at assisting workplace participants to understand and comply with their obligations
- launching a new Record Keeping and Pay Slip Online Learning Course to educate employers and make record-keeping practical and easy
- hosting a roundtable with key franchise sector stakeholders to discuss how the new laws affect franchisors, and publishing new information on the [the Fair Work Ombudsman's] website
- considering how, and to whom, [the Fair Work Ombudsman] will apply the new franchising and serious contravention provisions.³⁴

6.37 The Fair Work Ombudsman has also commenced its first legal action involving new provisions that prohibit a person from providing false or misleading information or documents to a Fair Work Inspector. Further, the Fair Work Ombudsman has also commenced the first legal action using new reverse onus of proof provisions, which

33 *Submission 40*, p. 22.

34 *Report of the Migrant Workers' Taskforce*, March 2019, p. 63.

require employers to disprove underpayment allegations where there is inadequate time and wages records or a failure to issue payslips.³⁵

6.38 The Report of the Migrant Workers' Taskforce noted, given that the Protection of Vulnerable Persons Act only came into operation in late 2017, that it would take some time to see the full impact of the amendments.³⁶

Enforcement arrangements and sanctions frameworks

6.39 The Joint Departmental Submission outlined that Home Affairs and the Australian Border Force have sanction frameworks for employers/sponsors who do not comply with legislative requirements. The sanctions framework has graduated tiers, and current sanctions include warnings, infringement notices, barring or cancelling a sponsor from engaging in a program, civil penalties and referrals to the Commonwealth Director of Public Prosecution for criminal prosecution.³⁷

6.40 Monitoring efforts to ensure that sponsors comply with their obligations include: writing to sponsors to request information; site visits, with or without notice; and information exchanges between Commonwealth, state and territory government agencies.³⁸

6.41 The Report of the Migrant Workers' Taskforce also noted the range of enforcement tools available to the Fair Work Ombudsman in cases of deliberate or repeated exploitation of highly vulnerable workers by operators, including: compliance notices; enforceable undertakings; infringement notices; and court action.

Joint agency initiatives and data sharing

6.42 Home Affairs and the Fair Work Ombudsman have also engaged in a joint agency initiative, through the Australian Border Force Taskforce Cadena, since 2015, to cooperate on issues related to illegal work, visa fraud and exploitation of overseas workers. The Joint Departmental Submission stated that the Taskforce 'has identified a higher level of criminality than was originally understood' when the Taskforce was first established, including criminal syndicates involved in 'using complex financial structures to... avoid payment of taxes, creditors and employee entitlements'. The focus for the 2018–19 program 'is to detect and disrupt criminal syndicates that profit from the serious exploitation of foreign workers and Australia's migration system', especially where these have links to serious criminal offending.³⁹

6.43 The Joint Departmental Submission outlined that it has undertaken recent reforms to allow Home Affairs to identify, by sharing tax file numbers with the Australian Taxation Office, employers who are underpaying overseas skilled workers,

35 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 63–64.

36 *Report of the Migrant Workers' Taskforce*, March 2019, p. 64

37 *Submission 40*, p. 23.

38 *Submission 40*, p. 24.

39 *Submission 40*, p. 25.

and to publish on the Home Affairs website the details of sponsors who have breached their obligations.⁴⁰

6.44 The Migrant Workers' Taskforce noted:

The ability for government agencies to share information provides an important avenue to help identify potential non-compliance. It could also support successful prosecutions where patterns of non-compliance can be shown. Information sharing also supports agencies' education and compliance strategies to focus their priorities and direct their resources to those areas where they will have the greatest impact.

...

Information and intelligence is also shared by certain government agencies to support compliance and enforcement actions for particular purposes, such as Taskforce Cadena...⁴¹

6.45 The Migrant Workers' Taskforce also referred to limitations in data sharing between agencies:

Taskforce agencies noted that data sharing efforts have been constrained by agency specific legislative restrictions, inhibiting the sharing of data across government and between agencies. Within these constraints, agencies have continued to work to find ways to share and use data more effectively to the extent the law allows.⁴²

Limited Assurance Protocol

6.46 Since January 2017, Home Affairs and the Fair Work Ombudsman have engaged in a Limited Assurance Protocol, under which Home Affairs generally will not cancel an individual's visa where they have breached their work visa conditions but have also reported exploitation to the Fair Work Ombudsman.⁴³

6.47 The Migrant Workers' Taskforce referred to a review of the Limited Assurance Protocol⁴⁴ carried out by Home Affairs and the Fair Work Ombudsman in June and July 2018. The review focussed on 35 visa holders, almost 60 per cent of whom were on some form of international student visa and almost 23 per cent were 457 visa holders. No migrant worker referred under the Assurance Protocol had their visa cancelled for breaching work-related visa conditions.⁴⁵ Although the review found the Assurance Protocol is 'largely a positive initiative', Home Affairs and the Fair Work Ombudsman 'found a number of opportunities for improvements in the design,

40 *Submission 40*, p. 25.

41 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 53–54.

42 *Report of the Migrant Workers' Taskforce*, March 2019, p. 54.

43 *Submission 40*, p. 26; Independent Schools Council of Australia, *Submission 26*, p. 2.

44 The Migrant Workers' Taskforce referred to the Limited Assurance Protocol as the 'Assurance Protocol'.

45 *Report of the Migrant Workers' Taskforce*, March 2019, p. 50.

practical operation and promotion of the Assurance Protocol'.⁴⁶ In particular, it was found that there needed to be improved clarity on the operation of, and broadened access to, the Assurance Protocol.⁴⁷

Submitter and witness views on enforcement arrangements and sanctions framework

6.48 The Law Council of Australia noted the development of enforcement arrangements available to Home Affairs over the past decade, and expressed the view that Home Affairs 'has adequate enforcement powers under the Migration Act and *Migration Regulations 1994* (Cth) to refuse applications, cancel visas or take action against employers'.⁴⁸

6.49 The Migration Institute of Australia stated that Fair Work Australia must be commended for the 'significant amount of work they have put into identifying breaches of the rights and protections of overseas workers and the public resources they have developed in this space'. It commented further that recent legislative changes and media reporting should serve to discourage employers breaching their obligations.⁴⁹

6.50 The Migration Council of Australia argued that guidance needs to be developed and disseminated in relation to how specific breaches of employer obligations will be sanctioned:

Current enforcement options include [a]dministrative actions, enforceable undertaking and civil actions. Clear guidelines on the types of sanctions applicable to each breach of obligation including warnings, setting a range of fixed cumulative pecuniary penalties and barring egregious employers from the Program for a number of years or indefinitely depending on the severity of the breach, would reinforce program integrity.⁵⁰

6.51 The Migration Council also expressed support for legislative changes which would provide Home Affairs with the ability to publish information identifying sponsors who have not complied with their obligations:

This name and shame approach is both an incentive to ensure employers abide by their obligations and a warning to prospective workers who may consider working for a listed employer. Further details on the parameters of the naming policy (whether the breach and penalty will be publicised and the duration of the publication) and its effects remain to be seen. At the very least, this initiative increases transparency and accountability of the Program.⁵¹

46 *Report of the Migrant Workers' Taskforce*, March 2019, p. 50.

47 *Report of the Migrant Workers' Taskforce*, March 2019, p. 50.

48 *Submission 36*, p. 14.

49 *Submission 33*, p. 10.

50 *Submission 7*, p. 7.

51 *Submission 7*, pp. 7–8.

6.52 Other submitters and witnesses argued that despite recent developments, current compliance and enforcement arrangements are insufficient. For example, RDA Far South Coast described current enforcement arrangements in regional areas as 'woefully inadequate'.⁵² Mr Craig Thomas of the ETU told the committee that where law enabling compliance action to be taken exists, it 'is not enforced in any meaningful way whatsoever'.⁵³ Mr Thomas outlined some of the practical difficulties encountered when an attempt is made to raise concerns about migrant worker exploitation:

As far as reporting things goes, if you report to the department of immigration, the bureaucratic process of making a complaint is so difficult that, even for someone trained in it, it is almost impossible to do, let alone if you were a migrant worker concerned about exploitation. It is extraordinarily difficult, and normally the first thing that occurs—and we've made these reports—is that the department of immigration rings the employer. The employer gets really angry and gets rid of the complaining workers. That's been our experience... If we ring up the Fair Work Ombudsman to make complaints around these kinds of breaches, they tell us at times that they can't accept our complaints. They tell us that we don't have any authority because the migrant worker is not a member of the union. Where we do manage to contact a friendlier person within the department who takes the call—some are openly hostile—they'll thank us for the information and tell us that we have no right to know what they do with it, and we never hear anything again. I have never yet seen a situation where we've made a complaint and an actual official from either the department of immigration or the Fair Work Ombudsman actually attends the site.⁵⁴

Recommendations of the Migrant Workers' Taskforce

6.53 The Report of the Migrant Workers' Taskforce made a significant number of recommendations for further actions, which are relevant to the committee's inquiry. The full list of the Migrant Workers' Taskforce's recommendations are set out in Appendix 3 to this report.

6.54 In particular, the Migrant Workers' Taskforce recommended improving migrant workers awareness of rights and entitlements. This includes:

- developing of a whole-of-government approach to information and education needs of migrant workers (Recommendation 2).
- education providers providing information to international students about workplace rights, and provide support services for international students with workplace issues (Recommendations 15, 16 and 17).

52 *Submission 34*, pp. 3-4. See also: RDA Orana, *Submission 31*, p. 5.

53 Mr Craig Thomas, State Organiser (Mackay), Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, p. 35.

54 Mr Craig Thomas, State Organiser (Mackay), Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, p. 35.

6.55 The Taskforce made recommendations to better protect migrant workers by amending the *Fair Work Act 2009* (Fair Work Act) to:

- clarify that temporary migrant workers working in Australia are entitled at all times to workplace protections under the Fair Work Act (Recommendation 3); and
- prohibit persons from advertising jobs with pay rates that would breach the Fair Work Act (Recommendation 4).

6.56 The Migrant Workers' Taskforce also made recommendations to strengthen the enforcement regime by:

- increasing the general level of penalties for breaches of wage exploitation provisions in the Fair Work Act (Recommendation 5);
- introducing criminal sanctions for the most serious forms of exploitative conduct, such as where the conduct is clear, deliberate and systemic (Recommendation 6);
- providing courts with specific powers to make additional enforcement orders against employers who underpay migrant workers (Recommendation 7);
- amending the *Fair Work Act 2009* to adopt the model provisions relating to enforceable undertakings and injunctions contained in the *Regulatory Powers (Standard Provisions) Act 2014 (Cth)* (Recommendation 8);
- providing the Fair Work Ombudsman with the same information gathering powers as regulators such as the Australian Competition and Consumer Commission (Recommendation 11);
- ensuring that the resourcing for the Fair Work Ombudsman is adequate, noting that an increase may be appropriate (Recommendation 10);
- developing legislation to declare that it is an offence to knowingly unduly influence, pressure or coerce a temporary migrant worker to breach a condition of their visa (Recommendation 19); and
- excluding employers who have been convicted by a court of underpaying temporary migrant workers from employing new temporary visa holders for a specified period (Recommendation 20).

6.57 To ensure that temporary workers are confident in bringing forward complaints, the Taskforce also recommended a review of the Assurance Protocol between the Department of Home Affairs and the Fair Work Ombudsman within 12 months. The review should consider whether further changes are needed (Recommendation 21).

6.58 The Taskforce also recommended that the government give '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' (Recommendation 22). This recommendation also included additional specific courses of action, as follows:

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- 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;
 - the Department of Education and Training should conduct regular surveys of overseas students that include workplace experience; and
 - 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.

Committee view

6.59 By preventing the exploitation of workers on temporary visas, two benefits are achieved: overseas workers are afforded their full rights under Australian law and, secondly, these workers cannot be used to undermine the wages and conditions of Australian workers.

6.60 The evidence to the committee demonstrates that enforcement of visa arrangements and protection from exploitation of workers on temporary skilled visas remains a significant area of concern. The committee recognises that government agencies, particularly through the Fair Work Ombudsman and Home Affairs, have undertaken significant work in the last few years to address these issues. The committee notes the work of the Migrant Workers' Taskforce and the comprehensive assessment in the taskforce's final report on the progress of implementation of initiatives.

6.61 The committee is of the view that the recommendations in the Report of the Migrant Workers' Taskforce provide a considered course of action that, if followed, will address many of the concerns raised with the committee. The committee notes that in responding to the Report of the Migrant Workers' Taskforce, the Australian Government has accepted in-principle all recommendations of the taskforce. The committee commends the work of the Migrant Workers' Taskforce and supports the adoption and implementation of all the Taskforce's recommendations as soon as practicable.

6.62 In addition to the recommendations contained in the Report of the Migrant Workers' Taskforce, there are still several areas where the committee considers a more effective approach is required.

6.63 Unfortunately, there is currently insufficient data available about the location and number of workers on temporary visas. This makes it difficult for government agencies and support services (including unions) to provide targeted support to workers. Increased transparency in this area is important. Simple changes include requiring wages for temporary work visa holders to be paid directly into Australian bank accounts (and therefore within the oversight and jurisdiction of Australian agencies), and publication of data about the location of employers utilising temporary visa workers. The *Fair Work Act 2009* should also be amended to grant unions standing to commence civil actions for breaches of that Act, and breaches to the *Migration Act 1958* in relation to visa work conditions.

6.64 The committee notes the findings of the Migrant Workers Taskforce and research by the Law Society on the challenges currently facing temporary workers who want to know their rights and access support. It is important that temporary workers are provided with a copy of the relevant collective agreement, award or labour agreement upon commencement. This information should also include contact details for support services and the relevant union.

6.65 The committee notes the evidence from the ACTU and others that ABNs are misused by unscrupulous employers. While acknowledging current efforts the government has recently made to address this concern, the committee agrees that ABNs should not be available to temporary visa workers, including those on student visas and working holiday visas.

6.66 The Fair Work Ombudsman has an important role to perform in the enforcement of Australian law in this context, alongside the Department of Home Affairs and the Department of Jobs and Small Business. It is essential that relevant government agencies and departments are adequately resourced to ensure that enforcement action is effective.

6.67 The committee notes that the Department of Home Affairs and the Fair Work Ombudsman have also engaged in a joint agency initiative, through the Australian Border Force Taskforce Cadena, since 2015, to cooperate on issues related to illegal work, visa fraud and exploitation of overseas workers. Certainly this Taskforce has made an important contribution to reducing exploitation of workers. However, the evidence to this inquiry indicated that four years later, workers on temporary visas continue to be exploited. The Migrant Workers Taskforce recommended that a review be conducted of Taskforce Cadena in 12 months. As noted earlier, the committee supports this recommendation. However, based on the evidence provided, the committee considers that resourcing for this taskforce should be increased before the review is completed.

Recommendation 16

6.68 The committee recommends that the Australian Government implement all recommendations from the Report of the Migrant Workers' Taskforce as soon as practicable.

Recommendation 17

6.69 The committee recommends that the Australian Government increase funding for Taskforce Cadena—or a similar taskforce—to ensure that the Taskforce is adequately resourced.

Recommendation 18

6.70 The committee recommends that the Australian Government require that employers pay wages for temporary visa holders into an Australian bank account.

Recommendation 19

6.71 The committee recommends that the Australian Government propose amendments to the relevant law to make it unlawful for temporary visa workers, including persons on student visas and working holiday visas, to apply for or to hold, an Australian Business Number (ABN).

Recommendation 20

6.72 The committee recommends that the Australian Government consider amending the *Fair Work Act 2009* and the *Migration Act 1958* to grant unions standing, where appropriate, to commence civil actions for breaches of those Acts in relation to visa work conditions.

Recommendation 21

6.73 The committee recommends that the Australian Government ensure that unions have standing to complain to the Fair Work Ombudsman or the Department of Home Affairs about concerns relating to the exploitation of temporary visa workers, even if that worker is not a union member.

Senator Louise Pratt
Chair

