

We've let wage exploitation become the default experience of migrant workers

Written by Joo-Cheong Tham, Professor, Melbourne Law School, University of Melbourne

Australia's Fairwork Commission [has so far this year](#) examined more than a dozen cases of wage theft. Those cases involve hundred of workers and millions of dollars in underpayments.

And it's just the tip of the iceberg.

A significant report on the [exploitation of migrant workers](#) in Australia has been published this month. After a two-year inquiry by the federal [Migrant Workers's Taskforce](#), the report concludes that wage theft is widespread. Possibly as many as half of all temporary migrant workers are being underpaid.

Read more: [We need to hear the stories of exploited unlawful migrant workers, not just deport them](#)

The federal government has agreed ["in principle"](#) to act on all of the report's 22 recommendations. Attracting most media coverage is the recommendation to introduce criminal penalties for deliberate and systemic exploitation. [Employer groups oppose](#) this.

But this debate should not distract us from other important principles that need action.

Equality before the law

Of foremost importance is the principle of equality. The federal government's response to the report rightly declares that all workers, no matter their background, should be able to work [with out fear of exploitation](#).

Here the report contains two crucial recommendations.

The first is to amend the Fair Work Act so it expressly states it covers migrant workers. The second is to extend coverage of the federal [Fair Entitlements Guarantee](#) program, which covers the cost of entitlements left unpaid when a worker is left high and dry by an employer going into liquidation or bankruptcy.

The report also stresses the need for migrant workers to be adequately informed of their workplace rights. It proposes a “whole of government” approach to inform and educate workers.

Social licence

Another critical principle of the report is that of redress.

It recommends that the effectiveness of the small claims process under the Fair Work Act be reviewed.

It also recommends increasing penalties under the Fair Work Act. These include giving courts the power to impose an adverse publicity order, requiring an offending business to notify the public it has cheated workers; and for the most serious cases of exploitation, of course, it has suggested criminal sanctions.

For four high-risk industries – horticulture, meat processing; cleaning and security – the report recommends a National Labour Hire Registration Scheme. Companies failing to comply with workplace laws would face potential deregistration.

Read more: [***Cheating workers out of wages is easier than ever***](#)

It also asks the government to explore ways by which employers found to have underpaid workers can be banned from employing anyone for a specific period.

These last two proposals speak to a deep moral truth. The ability to operate a business is a social licence. Those who systematically disregard the rights of workers forfeit their right to this licence.

While noting the important work undertaken by the Fair Work Ombudsman, the report queries whether the office's funding, functions and power are equal to addressing the problem of wage theft. It recommends a public capability review to ensure the regulator is "fit for purpose".

Wider responsibilities

There should be little doubt that systemic industry practices (particularly in the agriculture and hospitality sectors) and business structures (such as franchises and labour-hire companies) are contributing to the problem.

Equally clear too is that the big end of town bears culpability. The roll-call of companies implicated in breaches include Caltex, Domino's Pizza, Woolworths and Pizza Hut. Restaurants owned by celebrity chefs [Heston Blumenthal](#) and [George Calombaris](#) have been found underpaying employees.

Read more: [*What is going rotten in the franchise businesses plagued by scandals*](#)

The report makes clear it is not just employers and the Fair Work Ombudsman that must ensure compliance with workplace laws. Other institutional actors are also responsible.

It recommends, for instance, businesses that outsource workers be deemed accessories to any crime of wage theft committed by labour-hire companies.

Significantly, it also draws attention to the responsibility of the higher education sector, given the sector profits from about [800,000](#) fee-paying international students in Australia. Many of these students take part-time jobs, and they are particularly vulnerable to being exploited. The report recommends education providers be obliged to provide information to them, and to assist them when they experience workplace issues.

A powerful blueprint

The report is clearly not meant to be the final word on dealing with wage theft. Its first recommendation is that the federal government establish a “whole of government mechanism” to continue the taskforce’s work.

For this work to be meaningful, another principle of the report must be acted upon: the need for systematic data collection and analysis. Without this we risk being blind to what is happening right before us. Consider, for example, the growing use of migrant labour as domestic workers badged as “au pairs”.

The report is certainly not without limitations. It could have gone much further on immigration law reform, given the pernicious role certain visa conditions have in encouraging exploitation. It fails to specifically discuss the crucial role of trade unions in protecting workers.

It is nonetheless a powerful blueprint to address the rampant problem of wage theft, which undermines the integrity and cohesion of our labour markets. It is incumbent upon all those in power to act on it.

Joo-Cheong Tham receives funding from the New South Wales Electoral Commission and the Victorian Electoral Commission. He has also been in receipt of grants from the Australian Research Council and has been commissioned for work by the New South Wales Independent Commission Against Corruption. He is the Deputy Chair of the Migrant Workers Centre, Melbourne.

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