



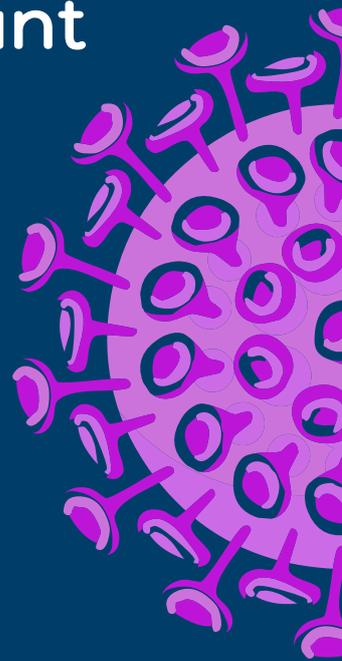
The Ethnic Communities' Council of Victoria

ISSUE BRIEF

JULY 2020

COVID-19 and Victoria's Migrant Workers

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A growing body of evidence has in recent years revealed the extent of exploitative work practices inflicted on temporary visa holders in Australia. The effects of the COVID-19 crisis on the economy and labour market are likely to exacerbate these, as temporary migrants find themselves in increasingly perilous circumstances. It is therefore now more important than ever for State and Federal Governments to take concrete actions to tackle this issue.

Introduction

A growing body of evidence has recently accumulated demonstrating the extent of exploitative practices in Australian workplaces. Studies also reveal that migrants residing in Australia on temporary visas (migrant workers) are particularly susceptible to such exploitation. There are worrying signs that the economic effects of the COVID-19 pandemic will exacerbate this problem as more temporary visa holders find themselves in vulnerable situations and become increasingly anxious to support themselves in any way possible.

This Issues Brief considers what was known about migrant worker exploitation prior to the COVID-19 pandemic, how the pandemic has changed the outlook and threatens to worsen the situation, and what steps should be taken by government to combat migrant worker exploitation in the short and longer term.

Background

In recent years an increasing body of evidence has pointed to the existence of large-scale exploitative practices in the employment of people living in Australia on temporary visas.^[1] Although exploitative practices are not confined to workers on temporary visas, their migration status and the nature of the work they do makes them particularly vulnerable to mistreatment.

It is estimated that at the outbreak of the COVID-19 pandemic, there were 2.17 million temporary visa holders in Australia.^[2] A significant part of them are international students, who are generally allowed to perform up to 40 hours of work per fortnight to support themselves while studying in Australia. Despite the fact that they pay tax and make essential contributions to the Australian economy, many temporary workers do not receive fair and equal treatment in the workplace. Some endure unacceptable work conditions.^[3] including wage theft, and in extreme cases are victims of slavery-like practices.^[4]

After a series of public scandals, the Federal Government in 2016 established the Migrant Workers' Taskforce to identify actions that could be taken to support vulnerable workers and to hold employers accountable for their actions. The Taskforce's Final Report, delivered in March 2019, made a number of recommendations, including the threat of criminal sanctions and jail time for employers found to have engaged in deliberate and systemic underpayment of wages to migrant workers.^[5]

Governments at state and federal level have already taken several important steps to reduce levels of exploitation in Australian workplaces. The Modern Slavery Act, which has since 1 January 2019 required all businesses with an annual consolidated revenue over \$100 million to regularly report on actions they are taking to mitigate the risk of slavery-like practices occurring in their supply chains.^[6] As the economic effects of the COVID-19 pandemic are felt throughout the economy, it is crucial that companies report specifically on how responses to COVID-19 may affect the risk of modern slavery in their supply chains.

Victoria, Queensland and South Australia have recently introduced labour hire licensing laws that oblige labour hire companies to hold a license that requires ongoing demonstration of compliance with all relevant employment, tax, immigration, and workplace health and safety laws, and make it illegal for employers to hire workers from unlicensed companies. As the Taskforce report demonstrated, however, much more needs to be done to reduce the levels of migrant worker exploitation occurring in Australia.

The COVID-19 pandemic arrived in an environment in which other trends were already leading to a risk of increasing exploitation of temporary migrant workers. In particular, ongoing increases to the number of temporary visa holders in Australia coupled with reductions to the number of permanent visas being offered annually is likely to see more people residing in Australia precariously on an ongoing succession of temporary visas.^[7] A continuation of these trends risks creating a group of “permanently temporary” migrants, who will be at greater risk of exploitation and have greater incentive to suffer it in silence. The reduction of pathways to permanent residency leaves a larger pool of lower-skilled temporary workers who will always have to consider the risks to their ongoing residency when considering whether to confront their exploitation.

Many temporary workers also rely on ‘tied’ visas (where the validity of the visa is linked to continued employment with a particular sponsor/employer), a situation which creates a clear vulnerability for the visa holder and has been linked to exploitative employer conduct.^[8] In many other situations temporary workers are reliant on their employers for information and as a source of social inclusion, creating a further disincentive for exploited/underpaid employees to take action or seek redress. Another major issue of concern is employers avoiding the provision of workplace entitlements through the practice of “sham contracting” - disguising an employment relationship as an independent contracting arrangement, often without the fully informed consent of the employee/contractor.^[9]

The pandemic gives greater urgency to other measures that State and Federal governments can take to reduce exploitative practices. A widespread survey of migrant workers that formed the basis for the Wage Theft in Silence report, published in 2018, found that despite widespread underpayment of wages, fewer than one in ten underpaid workers made an attempt to seek redress.^[10] The report found that migrant workers were generally aware of their rights and understood when they had been underpaid, disproving the common assumption that ignorance was a significant driver of exploitation. The main reasons that survey respondents gave for why they did not attempt to recover lost wages were a lack of knowledge about how to go about seeking redress, fear of consequences for their migration status^[11], and a belief that it would be pointless. This indicates the need for greater support to be provided to migrant workers to help them overcome these barriers.

The Effects of COVID-19

ECCV is concerned that the massive effects of the COVID-19 pandemic on the Australian economy and labour market have left temporary visa holders in an even more precarious position, and therefore at heightened risk of becoming victims of exploitation. The lack of government support for temporary visa holders and the loss or reduction of employment has left many temporary migrants not just struggling to make ends meet, but as potential prey for unscrupulous employers looking to take advantage of some of the most vulnerable people residing in Australia.

The nationwide lockdown introduced at the end of March caused immense hardship to many businesses, particularly in retail, hospitality and entertainment. To keep the lid on resultant unemployment, the Federal Government introduced the JobKeeper Payment, a \$1,500 per fortnight supplement available to employees of businesses hit particularly hard by the shutdown. From the start, however, temporary visa holders were excluded from it, as they were from other measures, such as the JobSeeker supplement, designed to cushion the financial impact of the pandemic on Australian citizens and permanent residents.

Without a government subsidy to cover their wages, many employers have not been able to continue to employ people on temporary visas. And with many migrant workers employed in industries hit particularly hard by the shutdowns, the inevitable result for many has been loss of jobs and deep financial distress. Refusing to extend its new support measures to temporary migrants, the Federal Government has instead stated that they should simply return home, even though in many cases travel restrictions make this difficult or impossible. The global impact of the pandemic has also in many cases reduced the levels of support that migrants can receive from family in their home countries, or placed them under greater financial stress through a need to be sources of support to overseas relatives themselves.

This has left a large group of migrants in Australia in a precarious situation and facing a highly uncertain future. Media reports have highlighted many examples of temporary migrants who have become reliant on community or charity support for food and accommodation.^[12] It is likely that their circumstances may also put them at greater risk of exposure to coronavirus. Many temporary migrants who were already in precarious work situations, particularly agricultural workers in regional areas, live in crowded accommodation in which social distancing isn't possible. Migrants with an uncertain future visa status often fear the consequences that engaging with the health system might have on the possibility of remaining in the country.

ECCV is deeply concerned that the lack of support for temporary visa holders may exacerbate the risk of exploitation of migrant workers that was already so prevalent before the COVID-19 pandemic reached Australia. The financial strain in which many temporary migrants now find themselves will likely encourage many to accept exploitative working conditions due to the lack of alternatives. The economic downturn likewise encourages exploitative practices by employers in many industries where tight margins and loss of business will leave many looking for ways to further reduce costs in order to survive. It is also likely that more employers will go out of business in the coming months. Australian citizens and residents owed unpaid wages and other entitlements in this situation can receive financial assistance through the Fair Entitlements Guarantee, but this is not available for temporary visa holders.^[13]

The situation is likely to become more acute if the JobKeeper program is not extended beyond its currently scheduled end date of 28 September. Resultant higher levels of unemployment, more job seekers on the market, and more employers struggling to maintain their workforces will create even greater incentives for exploitation to be risked.

Community legal centres and organisations such as the Migrant Workers Centre play a key role in helping migrants to exercise their rights, seek redress for exploitation and recover unpaid wages. Sufficient funding is required to enable them to provide increased levels of legal and casework support and run education sessions for vulnerable workers from migrant backgrounds. It is also important that the Federal Government clears up ambiguity about the extent to which the rights of migrant workers are protected through the Fair Work Act. It must be clearly stated that the Act applies to all workers regardless of visa status, as recommended in the Migrant Workers' Taskforce Report. The government's acceptance of this recommendation still lacks clarity about exactly how far it will go, i.e. whether it will include migrants working without a visa or without work rights.

ECCV Recommendations

In light of the issues raised in this Issue Brief, ECCV recommends that:

- 1** Income support payments for workers affected by the COVID-19 pandemic, such as JobKeeper payments and the JobSeeker coronavirus supplement, be expanded to include temporary visa holders.
- 2** Temporary migrants be eligible for the Fair Entitlements Guarantee so that they can receive financial assistance for unpaid wages and entitlements from employers who go out of business.
- 3** The Victorian Government ensures that community legal centres and organisations such as the Migrant Workers Centre are sufficiently funded to provide legal and casework support and run education sessions for vulnerable workers from migrant backgrounds in order to promote workers' rights in Victoria.
- 4** The Fair Work Ombudsman is given increased power to support migrant workers through the creation of a dedicated migrant worker support service, including a service for calculating underpayments for temporary migrants with the option to obtain assistance anonymously.
- 5** Companies be required to report on how responses to COVID-19 may affect the risk of modern slavery in their supply chains as part of their reporting requirements under the Modern Slavery Act.
- 6** A nationwide labour hire licensing scheme be introduced to provide greater protection for migrant workers forced into temporary work.

Endnotes

- [1] See for example Berg, L. and Farbenblum, B. (Nov. 2017) Wage Theft in Australia Findings of the National Temporary Migrant Work Survey, Hemingway, C. (2016) Not Just Work: Ending the exploitation of refugee and migrant workers (WEstjustice Employment Law Project Final Report), and Australian Senate Education and Employment References Committee (March 2016) A National Disgrace: The Exploitation of Temporary Work Visa Holders.
- [2] The Honourable David Coleman MP. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (2020), "Coronavirus and Temporary Visa Holders", Media release, 4 April, <<https://minister.homeaffairs.gov.au/davidcoleman/Pages/Coronavirus-and-Temporary-Visa-holders.aspx>> [Accessed 3 July 2020]
- [3] See for example A National Disgrace, p.155 - "They forced us to work unsafely because they never provided proper scaffoldings. We used an old harness. We did not have the right to refuse, although we knew it was unsafe" and p.223 - "Discrimination at the point of entry into the labour market produced vulnerability by 'channelling international student workers into precarious jobs, including those with illegal working conditions, through their willingness to accept inferior working conditions."
- [4] See for example Australian Government (March 2019) Report of the Migrant Workers' Taskforce, p.16 - "The Taskforce acknowledges the very grave matter of criminal labour exploitation in Australia, including human trafficking, slavery and slavery-like practices."
- [5] Report of the Migrant Workers' Taskforce
- [6] Department of Home Affairs, Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities
- [7] Parliament of Australia website, "Migration - permanent and temporary visa trends", <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/Migration> [Accessed 3 July 2020]
- [8] Parliament of Australia website, "Labour exploitation and Australia's visa framework", point 9.49, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report/section?id=committees%2Freportjnt%2F024102%2F25425> [Accessed 3 July 2020]
- [9] Fair Work Ombudsman website, "Independent contractors and employees", <<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees>> [Accessed 3 July 2020]
- [10] Berg, L. and Farbenblum, B. (Oct. 2018) Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages In Australia
- [11] A protocol currently exists between the Fair Work Ombudsman (FWO) and the Department of Home Affairs (DHA), stating that information provided to the FWO by temporary visa holders reporting exploitation/underpayment will not be shared with the DHA. Nonetheless, there is still considerable apprehension amongst migrant workers about approaching the FWO.
- [12] SBS website, "International Students", <<https://www.sbs.com.au/news/subject/international-students>> [Accessed 3 July 2020]
- [13] Attorney-General's Department website, "Fair Entitlements Guarantee (FEG)" <<https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg>> [Accessed 3 July 2020]