



28 April 2017

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

WEstjustice Submission to the Inquiry into establishing a Modern Slavery Act in Australia

Thank you for the opportunity to make a submission to the Committee's Inquiry into establishing a Modern Slavery Act in Australia.

The following submission is limited to briefly addressing the terms of reference most relevant to the WEstjustice Employment Law project: the nature and extent of wage exploitation of migrant and refugee workers, (ToR 1) the implications for Australia's visa regime, (ToR 2) whether a Modern Slavery Act should be introduced in Australia (ToR 6) and related matters (ToR 7).

In addition, we note that the Salvation Army's comprehensive submission to this Inquiry provides a more detailed explanation of the links between modern slavery and the exploitation of migrant workers. WEstjustice would like to express our support for recommendations set out in the Salvation Army's submission.

About WEstjustice and the Employment Law Project

WEstjustice (www.westjustice.org.au) is a community organisation that provides free legal assistance and financial counselling to people in the western suburbs of Melbourne on a range of everyday legal problems. With a long history of working with newly arrived communities, we identified a large unmet need for employment law assistance for these communities who are particularly vulnerable to exploitation at work.

In response, WEstjustice established the Employment Law Project in 2014, which seeks to improve employment outcomes for migrants and refugees. We do this by empowering migrant and refugee communities to understand and enforce their workplace rights, through an employment law legal service that provides comprehensive assistance to clients and an innovative education program, along with advocating for systemic change.

In the first two years of operation, the Employment Law Project: provided legal assistance to over 200 migrant workers from 30 different countries, successfully recovering or obtaining orders for over \$120,000 in unpaid entitlement and over \$125,000 in compensation for unlawful termination; and trained over 600 migrant workers, as well as leaders from migrant communities and professionals supporting these communities.

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The nature and extent of wage exploitation of migrant and refugee workers in Australia

Based on evidence from our work, and extensive research and consultation, WEstjustice has compiled the [Not Just Work Report](#)¹ (enclosed). The [Not Just Work Report](#) documents systemic and widespread exploitation of migrant workers across numerous industries.

Client story: Maricar

Maricar came from the Philippines to work in Australia. She and her partner worked 6-7 days per week for 13-16 hours each day. Their pay was a “package” of \$860 per week to share – approximately \$5 each per hour. They were then unfairly dismissed.

“We were jobless, homeless, hardly had friends with limited resources and knowledge on how and what to do. Sure there are workforce laws and regulations, but employers can easily get away from them as they are not strictly monitored. We were only but fortunate to come across WEstjustice.”

Maricar’s story is unfortunately commonplace. Exploitation not only harms vulnerable workers, but undermines the workplace relations framework: businesses that do the right thing are undercut by those breaking the law. As current systems are failing to stop the abuse, the Report details ten critical steps to stop exploitation of migrant workers:

1. Migrant voices must be heard
2. Diversity measures
3. Targeted education
4. Active and accessible agencies
5. Community-based employment law services
6. Improved laws and processes to stop wage theft
7. Increased accountability in labour hire, supply chains and franchises
8. Laws and processes to eradicate sham contracting
9. Reforms to stop discrimination, unfair and unsafe work
10. Strategic measures to protect vulnerable subgroups

Where relevant, these steps are discussed in more detail in this submission.

The implications for Australia’s visa regime

We need to take immediate steps to protect vulnerable workers on temporary visas, who are particularly vulnerable to exploitation. The Australian Government’s Migrant Worker Taskforce announced in February this year that where temporary visa holders with a work entitlement attached to their visa may have been exploited and they have reported their circumstances to the Fair Work Ombudsman (FWO), the Department of Immigration and Border Protection (DIBP) will generally not cancel a visa, detain or remove those individuals from Australia, providing: the visa holder commits to abiding by visa conditions in the future; and there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).² This agreement between DIBP and FWO has now been published on FWO’s website,³ and will hopefully be widely communicated by the government.

¹ Catherine Hemingway, ‘Not Just Work: Ending the exploitation of refugee and migrant workers’, WEstjustice Employment Law Project Final Report, available at <www.westjustice.org.au/publications/policy-reports-121>.

² Professor Allan Fels AO, *Chair’s Public Statement February 2017*, Migrant Worker Taskforce, Australian Government Department of Employment, available at <www.employment.gov.au/chairs-public-statement-february-2017>.

³ Fair Work Ombudsman information available at <<https://www.fairwork.gov.au/find-help-for/visa-holders-and-migrants>>.

While this is a positive development, alone it will not be sufficient to reassure vulnerable migrant workers on temporary visas that it is safe to come forward and report exploitation to the FWO (or other government agencies) without further legislative and other reform.

Of particular relevance to this inquiry, the [Not Just Work Report](#) suggests the changes to Australia's visa regime to stop the exploitation of vulnerable migrant workers.

We recommend that the *Migration Act 1958* (Cth) should be amended to:

- Introduce a proportionate system of penalties in relation to visa breaches
- Ensuring workers are not sent home before valid legal proceedings are concluded allow to remain in country, and
- Ensure visas have clear paths to permanent residency.

In addition, we support the introduction of a Ministerial Directive setting out a proportionate response to visa breaches, as recommended by the Redfern Legal Service.

Whether a Modern Slavery Act should be introduced in Australia and related matters

In conjunction with the implementation of the 10 steps to stop exploitation set out in the [Not Just Work Report](#), we support the call for the introduction of a Modern Slavery Act which establishes an Anti-Slavery Commissioner, Modern Slavery Statement Reporting and Repository.⁴

In our view, the establishment of a Modern Slavery Act will help focus attention on the issue of exploitation of vulnerable workers and encourage compliance with the workplace laws in Australia. However, it cannot be the only solution and must be established as part of other reforms to strengthen the workplace relations and corporate structure frameworks, the government agencies that regulate these.

In particular, the [Not Just Work Report](#) makes some specific recommendations to amend the *Fair Work Act 2009* (Cth) to:

- State that it applies to all workers, regardless of immigration status
- Insert a reverse onus of proof in wage claims
- Extend the unreasonable payments and deductions provision to prospective employees
- Extend liability for breaches of the FWA liability to labour hire hosts, supply chains heads and franchisor entities and all relevant indirectly responsible entities⁵
- Insert a statutory definition of employee and independent contractor that contains a presumption that workers are employees (for clarity a mirror definition could be inserted into the *Independent Contractors Act 2006* (Cth))
- Amend the 'recklessness/lack of knowledge' defence to place an obligation on employers to ensure they classify workers appropriately, and
- Strengthen the FWO's enforcement powers to ensure all parties engage with the FWO's processes (subject to protections for vulnerable workers).

⁴ Walk-Free Foundation, *Case for Modern Slavery Act*, available at <www.walkfreefoundation.org/resources/>

⁵ For more detail and drafting suggestions see the *WEstjustice submission to the Senate Inquiry into the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*, available at <www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/VulnerableWorkers/Submissions>.

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We also recommend the following key changes to help stop the exploitation of vulnerable workers:

- Establish a national labour hire licensing regime
- Expand the Fair Entitlements Guarantee (**FEG**) or introduce a wages insurance scheme introduced
- Apply more rigorous tests before an Australian Business Number (**ABN**) is given to an individual and increase on the spot ABN inspection and assessment, and
- Implement measures to limit phoenix activity.⁶

In addition to regulatory reform of ineffective laws and processes, without targeted education and assistance to understand and enforce their rights, vulnerable workers often cannot access the law at all, due to a variety of barriers explained in our [Not Just Work Report](#) (including language, practical and cultural barriers).

Active and accessible government agencies that have sufficient funding and powers to address non-compliance and promote systemic reform are essential. There is also strong consensus that community based employment services are critical to provide a sustained direct engagement with communities and a link between communities and government agencies. Yet there is a lack of resources being directed towards funding these services that play a crucial role in providing meaningful access to justice and achieving positive systemic change. A Migrant Communities Employment Fund (or something similar) is urgently needed to address this issue.

Finally, we note that many of the recommendations outlined above have been, or are being, considered by other Commonwealth Government Inquiries. Our submissions and evidence provided to these Inquiries set out our recommendations in more detail.⁷

Concluding comments

WEstjustice suggests a range of measure to stop the exploitation of migrant workers. Ideally, these measures would be implemented as a cohesive all-government strategy to tackle this insidious and entrenched problem. In this context, we endorse the introduction of a Modern Slavery Act as a complimentary mechanism to the 10 steps to stop migrant worker exploitation set out in the [Not Just Work Report](#).

Kind regards,



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⁶ See e.g. Professor Helen Anderson, Professor Ian Ramsay, Professor Michelle Welsh and Mr Jasper Hedges, Research Fellow, *Phoenix Activity: Recommendations on detection, disruption and enforcement*, February 2017, Melbourne University and Monash University, available at <<http://law.unimelb.edu.au/centres/cclsr/research/major-research-projects/regulating-fraudulent-phoenix-activity>>.

⁷ See e.g. WEstjustice's three submissions to *the Productivity Commission Workplace Relations Framework Inquiry 2015* available at <<http://www.westjustice.org.au/publications>> *Commonwealth Senate Inquiry into the Corporate Avoidance of the Fair Work Act 2016* and *Commonwealth Senate Inquiry into the Vulnerable Workers Bill 2017* available at <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/VulnerableWorkers/Submissions>.