



Australian Government

Australian Government response:
Report of the Migrant Workers' Taskforce

March 2019

The Government welcomes the Report of the Migrant Workers' Taskforce. The Government is resolute in its commitment to ensure all workers, no matter their background, are given the opportunity to make a positive contribution to the Australian economy, without fear of exploitation.

The Government has already taken unprecedented steps to protect all vulnerable workers, including migrant workers. This includes the introduction of tough new laws, a tenfold increase in penalties, additional resources and strengthened investigative powers for the Fair Work Ombudsman (FWO). The Government has also introduced reforms to protect employees' superannuation, address the black economy, ban payments for visa sponsorship and target illegal phoenix activity.

The Migrant Workers' Taskforce Report highlights the seriousness of exploitation in some Australian workplaces, as well as the significant impact of such conduct on individual workers, law abiding employers, the Australian economy and Australia's international reputation.

The exploitation of workers can take many forms, including payment of below-minimum wages, 'cash-back' schemes, unsafe working conditions, and for migrant workers, the threat of visa cancellation. Unfortunately, migrant workers are particularly vulnerable to workplace exploitation due to limited English language skills, lack of awareness of Australian workplace laws, and fear of visa cancellation or removal from Australia.

The work of the Migrant Workers' Taskforce has also shone a light on incidences of worker exploitation in industries that experience seasonal peaks that create an urgent need for labour, or where labour is outsourced or supplied through sham contracting arrangements.

Government Response to Recommendations of the Migrant Workers' Taskforce

The Migrant Workers' Taskforce Report was delivered to Government in February 2019. The Government has carefully considered each of the Taskforce's 22 recommendations and accepts in principle all the report's recommendations.

The recommendations comprise a broad range of actions the Government could take to complement and build on the reforms previously introduced by this Government to protect vulnerable workers. Recommendations include strengthening legislation to provide better protections for workers, improving the availability and accessibility of information about workplace rights, ensuring the FWO is adequately resourced, and introducing a new national regulatory scheme to provide better oversight of the labour hire industry.

The Government supports taking further measures to protect vulnerable workers and ensure law-abiding Australian employers are not undercut by unscrupulous competitors.

In a clear and strong signal that workplace exploitation will not be tolerated by this Government, the Government will consider the circumstances and vehicle in which criminal penalties will be applied for the most serious forms of deliberate exploitation of workers.

This complements existing offences for serious criminal forms of labour exploitation, including forced labour, servitude and debt bondage in the *Criminal Code 1995 (Cth)*.

By adding criminal sanctions to the suite of penalties available to regulators for the most egregious forms of workplace conduct, the Government is sending a strong and unambiguous message to those employers who think they can get away with the exploitation of vulnerable employees.

The Government agrees that our new regime of increased penalties for underpayment and other exploitation of workers should be reviewed once it has had time to take effect. If it is apparent that these penalties are not deterring such exploitation, the Government will also consider options for increasing penalties further.

The Government will finalise and introduce a model, in consultation with stakeholders, for a National Labour Hire Registration Scheme that will reduce worker exploitation, improve accountability, provide greater transparency and drive behavioural change among labour hire operators in high-risk sectors, without causing major disruption to the entire labour hire industry.

The Government will consider making it an offence for a person to knowingly pressure or coerce a temporary migrant worker to breach a visa condition. The Government will start exploring mechanisms to exclude employers who are convicted by a court for underpaying migrant workers from employing new temporary visa holders for a specific period of time.

The Government will also examine options for ensuring responsible companies cannot contract out of their workplace obligations, for example by extending accessorial liability to companies in appropriate circumstances.

While the Government has already enhanced the powers of the FWO, it will also examine options to enhance the role of Proactive Compliance Deeds in further promoting compliance with workplace laws.

The Government recognises the positive work undertaken by the FWO in recovering wages, settling disputes and deterring and disrupting illegal workplace practices, particularly its recent work on the Harvest Trail Inquiry. To make sure the FWO can continue to undertake this important work, the Government will continue to ensure it is sufficiently resourced and has the appropriate powers and tools to be effective at addressing worker exploitation.

The Government agrees that the FWO should have enforcement powers equivalent to the ACCC. The Government notes Taskforce recommendations to improve the information gathering powers of the FWO is consistent with Government policy and was put before Parliament in the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, but amended by the Labor Party in the Senate, who reduced the powers of the workplace regulator.

Australia's Fair Entitlements Guarantee (FEG) program is an important safety net of last resort that provides financial assistance to cover certain unpaid employment entitlements to eligible employees who lose their job due to the liquidation or bankruptcy of their

employer. To date, migrant workers have not been eligible to access this program. The Government will examine whether to extend the FEG to migrant workers with work rights. Where these workers have been doing the right thing by satisfying their taxation obligations, the Government considers it reasonable that they, in turn, be protected by the FEG program. Consultation will soon commence on this proposal.

In recognition of the accommodation challenges faced by some temporary migrant workers identified by the Taskforce, the Government will seek to have the issue discussed at a future meeting of a ministerial council of the Council of Australian Governments. The Government notes that this issue is particularly important in regional Australia.

The Taskforce raised concerns that some migrant workers are reluctant to come forward to the FWO as a result of worries that their information will be shared with the Department of Home Affairs and their working visa put at risk. The existing Assurance Protocol between the FWO and the Department of Home Affairs, which aims to provide assurance to migrant workers in relation to this issue, will be further reviewed to ensure it is working as intended.

The Government has already taken steps to prevent and protect international students from experiencing workplace exploitation.

From January 2018, the Government strengthened the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code) to require education providers to give information to international students about their work rights and conditions, and how to resolve workplace issues. The Government will address recommended changes to the National Code as part of its next review.

The Government notes that the Council for International Education is implementing a Package of Actions on Student Workplace Exploitation to assist education providers to help prevent students from experiencing workplace exploitation and support students to access legal services and report cases of exploitation to the FWO.

The Government will continue in its efforts to improve the availability and accessibility of information to vulnerable workers. This will include working with a range of key stakeholders, including state and territory governments, employers, education providers and the Council of International Education to ensure that all vulnerable workers across Australia have easy access to all the relevant information they require about their workplace rights and Australia's industrial relations system.

The Government thanks all stakeholders that contributed to the work of the Migrant Workers' Taskforce and the senior representatives from the 10 Commonwealth policy and regulatory agencies who made up the Taskforce. In particular, the Government would like to acknowledge the Chair, Professor Allan Fels AO and Deputy Chair, Dr David Cousins AM, for their efforts and commitment in examining this critical issue.