



Not **just** work.

Ending the exploitation of refugee and migrant workers

OVERVIEW

THE PROBLEM OF EXPLOITATION

"Living in that hostel made me see a very different side of Australia, the dark and uncivilised side."

Employment is widely recognised as the most vital step for successful settlement in a new country. However, recently arrived migrant and refugee workers face many barriers. Finding employment is difficult. For those who do find work, exploitation is widespread. Exploited workers are not aware of their rights, and rarely access help to enforce the law. Temporary migrant workers, women and young people face additional barriers. Exploitation continues unabated and employers gain a competitive advantage by breaking the law, while companies that do the right thing are disadvantaged. Exploitation not only damages individual workers, it also undermines the Australian workplace relations framework.

The problem of exploitation of migrant workers is well known. In the lead up to the 2016 Federal election, following the 7-Eleven wage scandal, both the Coalition and ALP made significant policy promises aimed at better protecting vulnerable workers. The Victorian Government recently held an Inquiry into the Labour Hire Industry and Insecure Work, the Senate Education and Employment References Committee has reported on temporary migrant worker exploitation, and in its recent report on workplace relations, the Productivity Commission acknowledged that migrant workers 'are more susceptible to substandard working conditions (such as being underpaid) than Australian citizens'. It is now time to act on these commitments and findings.

This report documents the working experiences of newly arrived and refugee workers in Melbourne's Western suburbs. It draws on surveys and extensive consultation with newly arrived and refugee workers, community leaders and staff at community organisations and agencies; as well as data and stories gathered through our pilot Employment Law Service and community education program. The report provides evidence-based recommendations for legal and policy reform. Recommendations are grouped into ten steps that stakeholders can take to eliminate exploitation.

Many of our recommendations align with Federal Government policy and the recommendations of the Productivity Commission, Senate Education and Employment References Committee and Ethnic Communities Council of Victoria. The report is targeted at State and Federal governments, policy makers, regulators, commissions, courts, agencies and community organisations. We have strived to ensure that migrant voices are heard in this report and hope that they are now heard by others and acted upon to stop exploitation and benefit all Australians.

1

Migrant voices must be heard

2

Diversity measures

3

Targeted education

4

Active and accessible agencies

5

Community-based employment law services

TEN STEPS TO STOP EXPLOITATION

The reasons for exploitation are multi-faceted and include: marginalisation of the voices of migrant workers; limited access to decent work; low awareness of workplace rights and services; lack of effective access to mainstream services; absence of targeted community services; and the problem of ineffective laws and processes. The 10 steps address each of these problems in turn.

"Most people who I know they lose their jobs just because they're a refugee background or they don't speak English fluent and be underestimated for their work experience."

—Community leader

Over the past three years, WEstjustice has witnessed extensive abuse across numerous industries including food processing, hospitality, cleaning, construction, distribution, security and care work. We have seen disturbing cases of underpayment and non-payment of wages, including two workers paid one salary between them. Migrant workers also experience discrimination, frequently lose their jobs, and are routinely denied basic entitlements including superannuation. They experience bullying, are forced into sham contracts and work in unsafe jobs with high injury rates.

Current systems are failing to stop the problem. Targeted responses are urgently needed and should be designed and delivered with the involvement of target communities.

"Community members cannot get secure jobs. They accept any jobs they are offered."

—Community leader

It is more difficult for refugees and newly arrived migrants to find work. Reasons include discrimination, lack of Australian experience and failure to recognise qualifications. Once employment is secured, many workers are too afraid to challenge exploitative practices. To reduce exploitation, it must be easier to find and retain decent employment. State and Federal Governments should investigate and implement incentives to employ newly arrived and refugee workers, including tax concessions, affirmative action, an employer education campaign and employment and procurement policies.

"Because of not understanding employment law or their rights at work, they don't get paid properly... To look on a website or fill out a complaint form is very complicated. My community doesn't have capacity to do this alone. They need help. Here the service is face to face, and one on one. This is important because this Centre has been working with the community, now they have confidence to come here."

—Community leader

Newly arrived and refugee workers generally understand little or nothing about Australian employment laws and services. Targeted, face-to-face education programs enable workers to understand and enforce their rights by raising awareness and building connections between communities and services. Programs must be provided for community members, community leaders (Train the Trainer) and agency staff working with newly arrived communities. State and Federal Governments should establish a fund to provide these targeted education programs.

"Many in my community do not contact agencies. They are afraid, because many have had bad experiences with people in authority back home."

—Community leader

As a result of low rights awareness, language, literacy, cultural and practical barriers, newly arrived workers rarely contact mainstream agencies for help. When they do make contact, meaningful assistance is needed. Agencies and commissions must take further steps to ensure that they are more accessible and responsive. This includes dedicated staff, intake checklists, providing support to complete forms, outreach, education, and proactive compliance. Regulators must have sufficient funding and powers to address non-compliance and promote systemic reform.

"I knew I was right and should bring my case. People told me not to. My boss is very powerful. At times I was scared, I was not sure. But you stood beside me and so I kept going."

—WEstjustice client

There is significant unmet need for legal assistance, and often workers cannot enforce their rights alone. With face-to-face support from a trusted community organisation, wages can be recovered, jobs saved and employers held to account. A community-based 'one-stop-shop' hub can assist vulnerable workers to navigate the system and enforce their rights by: delivering targeted education; providing legal assistance; and liaising with government agencies, regulators and policy makers to tackle systemic problems. State and Federal Governments should establish a dedicated fund for community-based employment law hubs for migrant workers.

6

Improved laws and processes to stop wage theft

“Because of you, I will be powerful to help other people.”

—WEstjustice client

Underpayment of wages and/or entitlements is the single-most common problem that our clients present with. However, unnecessary barriers are preventing workers from enforcing meritorious wage claims. If employers fail to keep employee records as required by law, they should have to disprove an employee's wage claim. Otherwise, employers are rewarded for breaking the law. To resolve claims quickly and avoid court, the Fair Work Ombudsman should have increased powers, including the power to determine claims. The Fair Entitlements Guarantee should be expanded or a wages insurance scheme introduced, along with measures to limit phoenix activity and unscrupulous jobactive provider behaviour.

7

Increased accountability in labour hire, supply chains and franchises

“The farm bus picked up the Cherry Tomato picking backpackers on the way back. The poor girls worked all day non-stop but they were only told that they earn 25-40 bucks for 9.5 hours work. Sounds terrible but the worse thing happened after that was we never got paid at all.”

—WEstjustice client

Newly arrived and refugee workers are frequently exploited in labour hire arrangements, by franchises and at the bottom of complex supply chains. Ways of working have changed, and our law has not kept up. Currently, big businesses benefit from the labour of newly arrived and refugee workers, but cannot be held accountable for unlawful conduct. The accessorial liability provisions of the Fair Work Act are not sufficient. To promote systemic compliance, laws must be amended to attribute greater vertical responsibility. This includes a labour hire licensing scheme and legislating for greater lead firm and franchisor accountability.

8

Laws and processes to eradicate sham contracting

“Clients don't know their rights and what they should be paid. They are taking jobs and using ABNs without knowing what that means.”

—Community worker

Migrants and refugees are often engaged as contractors with ABNs when they should actually be employees. This means that they are denied the right to minimum pay and other entitlements. WEstjustice has seen sham contracting in numerous industries including construction, cleaning and administration work.

To stop sham contracting, a statutory definition should be introduced that presumes workers are employees. The incentive to engage in sham contracting can be removed by amending the Fair Work Act's 'recklessness/lack of knowledge defence' and placing an obligation on employers to ensure they classify workers appropriately. In addition, more rigorous tests should be applied before an ABN is given to an individual. On the spot ABN inspection and assessment should also be increased.

9

Reforms to stop discrimination, unfair and unsafe work

“One of my friends lost his fingers in meat factory few years ago. The incident happen due to poor workplace safety, and no proper induction/training at workplace.”

—Community member

Refugee and migrant workers often suffer significant physical, financial and emotional harm from discrimination, unsafe work and unfair dismissals. Law and policy reform is required, including:

- increasing VEOHRC/AHRC powers and resources to investigate and enforce breaches of anti-discrimination and unfair dismissal law;
- broader remedies; and
- fairer time limits.

10

Strategic measures to protect vulnerable sub-groups

“It means a world to know even though I cannot be there, I feel supported, and I am grateful for your help and continuous following up with my case.”

—WEstjustice client*

Temporary migrant workers, women, young people and students face additional challenges that must be addressed to eliminate exploitation. Reforms include: amending the Fair Work Act to state that it applies to all workers; creating a clear path to permanent residency; ensuring workers are not sent home before valid legal proceedings are concluded; and limiting visa cancellation to serious breaches of visa conditions to remove workers' fear of being forced to leave Australia if they report exploitation. Measures for women and young people include outreach programs and targeted international student services at universities. Private Registered Training Organisations must be more accountable. A Training Ombudsman is needed. Finally, further research is required —particularly for high risk industries, rural Victoria, the gig economy and young people.

* WEstjustice client who worked on a 457 visa and was unfairly dismissed. Because client was dismissed his visa was cancelled and he was sent home before legal proceedings finished.

THE EVIDENCE

WEstjustice is a community organisation that provides free legal assistance and financial counselling for the benefit of people who live, work or study in the City of Maribyrnong, Wyndham or Hobsons Bay, in Melbourne's Western Suburbs. We provide a range of legal services including legal information, advice and casework, duty lawyer services, community legal education, law reform, advocacy and community projects. The WEstjustice Employment Law Project has explored employment experiences and legal processes by:

Face-to-face consultation: we met with 39 individuals or groups from settlement agencies, community legal centres, Victoria Legal Aid, law firms, unions, universities, government agencies and other community organisations, as well as attending numerous network meetings.

Surveys: we received 105 surveys—33 from AMES Community Guides, seven from community workers and 65 from members of newly arrived and refugee communities.

Employment Law Service (ELS): WEstjustice has provided employment law advice and/or representation to over 200 clients from 30 different countries. Clients were mostly of refugee background, but also included international students, asylum seekers and subclass 457/working holiday visa holders. 77% of clients spoke a language other than English at home. 60% of our clients had lived in Australia for less than five years. Qualitative and quantitative data was collected throughout. As at September 2016, the ELS had successfully recovered or obtained orders for over \$120,000 in unpaid entitlements and over \$125,000 in compensation for unlawful termination. The ELS had also helped clients access WorkCover, keep their jobs and/or increase hours of work.

Community Education Program: As at September 2016, WEstjustice has delivered over 60 CLE presentations to over 600 community members. We also delivered a 10-day Train the Trainer program with community leaders and presented sessions for agency staff working with newly arrived communities. Evaluation and findings of each program are detailed in the report.



WEstjustice Employment Law Project Final Report
Please contact Catherine Hemingway with any questions
03 9749 7720, catherine@westjustice.org.au