



Committee Secretary  
Education, Employment and Small Business Committee  
Parliament House  
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30 July 2020

Dear Committee Secretary

**Inquiry into the Criminal Code and Other Legislation  
(Wage Theft) Amendment Bill 2020**

We welcome the introduction of the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 and commend the Queensland government for taking this important step to address wage theft.

We welcome the introduction of a simplified process for bringing wage recovery claims. Our submission does not focus on the mechanics of the new wage claim process in the Queensland Industrial Magistrates Court. Rather, we seek to draw the Committee's attention to the support structures that will be essential for migrant workers to bring wage claims in this forum.

Our research has found that international students, Working Holiday Makers and other visa holders are reluctant to seek to recover unpaid wages. The *Wage Theft in Silence* report presenting findings from our survey of over 4,000 visa holders confirmed that the overwhelming majority of migrant workers (91%) endured wage theft in silence.<sup>1</sup> Our research has identified a range of barriers that impede migrant workers recovering unpaid wages in Australia.<sup>2</sup>

For a start, the complexity of labour law in Australia creates significant practical barriers to wage recovery. Migrant workers face substantial challenges in ventilating their claims, correctly identifying issues and adducing evidence of their claim. In particular, it is virtually impossible for most migrant workers to calculate the precise amount they have been underpaid as this involves correctly identifying the worker's classification under the relevant modern award, identifying applicable loadings and penalties, and applying these to relevant hours within each shift worked.

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<sup>1</sup> Bassina Farbenblum and Laurie Berg, *Wage Theft in Silence: Why Migrant Workers Do Not Uncover Their Unpaid Wages in Australia* (Report, Migrant Worker Justice Initiative, 2018) 10. See also Bassina Farbenblum and Laurie Berg, *International Students and Wage Theft* (Report, Migrant Worker Justice Initiative, 2020).

<sup>2</sup> See above, n.1. See also Laurie Berg and Bassina Farbenblum, '[Migrant workers' access to remedy for exploitation in Australia: The role of the national Fair Work Ombudsman](#)' (2017) 23(3) *Australian Journal of Human Rights* 314, 324; Laurie Berg and Bassina Farbenblum, 'Remedies for Migrant Worker Exploitation in Australia: Lessons from the 7-Eleven Wage Repayment Program' (2018) 41(3) *Melbourne University Law Review* 1035.

The FWO does not provide individualised assistance to calculate and recover unpaid wages other than for a very limited number of workers.<sup>3</sup> Rather, their focus is on telephone-based 'self-help', directing workers who seek assistance to online materials or referring them to external legal service providers. Self-help is inappropriate for vulnerable migrant workers who are generally unable to pursue wage claims (or enforce other rights) without individualised assistance. Language, cultural and other practical barriers impede migrant workers' ability to navigate information sources or articulate and pursue formal claims in any forum.

The introduction of a conciliation process can significantly reduce the complexity and time to resolution of a wage claim. However, the pronounced power disparity between migrant workers and their employers will leave them at a severe disadvantage unless they have an industrial or legal representative present. Community legal centres have cautioned that particularly vulnerable workers frequently require ongoing assistance to articulate their claim even in the informal processes of the FWO, and require assistance to effectively engage in any subsequent FWO investigations or mediations.<sup>4</sup>

For any wage recovery mechanism to be accessible to migrant workers, it must be accompanied by well-resourced individualised assistance to calculate wage claims, along with legal advice and representation. Legal service providers, unions and migrant workers have confirmed that legal advice and representation for migrant workers is limited but essential for wage recovery in any forum, even a simplified small claims jurisdiction.<sup>5</sup>

There is significant unmet need for these services among international students and other temporary migrants. In order for the Queensland Industrial Magistrates Court to provide an accessible wage recovery forum for temporary migrants, the Queensland government should either establish a dedicated duty solicitor office to assist temporary migrants (and potentially other vulnerable workers) to file and pursue claims. Alternately resources must be directed to expanding the capacity of community legal centres, trade unions, and university student legal services to provide individualised advice and representation to assist migrant workers to calculate and recover unpaid wages, formulate and lodge claims, and effectively participate in the conciliation and court process. Without this support, the new small claims process is unlikely to be used by temporary migrants and other vulnerable workers for whom it is most needed.

We welcome the opportunity to discuss these recommendations with the Committee.

Yours sincerely

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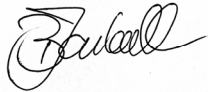
<sup>3</sup> Laurie Berg and Bassina Farbenblum, '[Migrant workers' access to remedy for exploitation in Australia: The role of the national Fair Work Ombudsman](#)' (2017) 23(3) *Australian Journal of Human Rights* 314, 324.

<sup>4</sup> Catherine Hemingway, *Not just work: Ending the exploitation of refugee and migrant workers* (WEstjustice Employment Law Project, 2016) 129.

<sup>5</sup> See Productivity Commission, *Access to Justice Arrangements* (Inquiry Report, vol 2, 5 September 2014) 734-736; Anna Booth, 'Report of the review of community-based employment advice services', (Report to the Fair Work Ombudsman, 30 September 2009).

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**Dr Laurie Berg**  
Associate Professor  
University of Technology Sydney

A handwritten signature in black ink that reads "Bassina Farbenblum". The signature is written in a cursive, flowing style.

**Bassina Farbenblum**  
Associate Professor  
UNSW Sydney