

# Chapter 2

## Background

### Overview of the bill

2.1 The bill would amend the *Fair Work Act 2009* (Fair Work Act) to protect vulnerable workers by:

- introducing a higher scale of penalties for 'serious contraventions' of payment-related workplace laws;
- increasing penalties for record-keeping failures;
- making franchisors and holding companies responsible for underpayments by their franchisees or subsidiaries where they knew or ought to have reasonably known of the contraventions and failed to take reasonable steps to prevent them;<sup>1</sup>
- expressly prohibiting employers from unreasonably requiring their employees to make payments (e.g. demanding a proportion of their wages be paid back in cash); and
- strengthening the evidence-gathering powers of the Fair Work Ombudsman (FWO) to ensure that the exploitation of vulnerable workers can be effectively investigated.<sup>2</sup>

2.2 The proposed amendments aim to more effectively deter unlawful practices that involve the deliberate and systematic exploitation of workers.<sup>3</sup>

### The need for the bill

2.3 Over recent years the exploitation of vulnerable workers (including migrant workers) has been examined in a range of reports. These include:

- the FWO's June 2015 inquiry report into the labour procurement arrangements of the Baiada Group in New South Wales;<sup>4</sup>
- the Productivity Commission's November 2015 report into the workplace relations framework;<sup>5</sup>

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1 Note: The new responsibilities will only apply where franchisors and holding companies have a significant degree of influence or control over their business networks.

2 Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, *Explanatory Memorandum*, p. i.

3 Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, *Explanatory Memorandum*, p. i.

4 Fair Work Ombudsman, *A Report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, June 2015, <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#baiada> (accessed April 2017).

- the Senate Education and Employment References Committee's March 2016 report entitled 'A National Disgrace: The Exploitation of Temporary Work Visa Holders';<sup>6</sup> and
- the FWO's April 2016 inquiry report into 7-Eleven.<sup>7</sup>

2.4 In particular, the Senate Education and Employment References Committee's inquiry into the impact of temporary work visa programs highlighted shocking instances of exploitation. The report found that such unscrupulous behaviour not only had a detrimental impact on the workers themselves, but also negatively impacted on Australia's labour markets, placing downward pressure on the wages and conditions of workers and undercutting the majority of legitimate employers that abide by Australian workplace laws.<sup>8</sup>

2.5 Media investigations have also detailed instances of serious worker exploitation from numerous well-known companies, including 7-Eleven, Pizza Hut, Caltex, Domino's Pizza and United Petroleum.<sup>9</sup>

2.6 As a result of these inquiry reports, as well as significant media attention, the Australian community has become concerned about deliberate and systematic non-compliance with the Fair Work Act. As the Explanatory Memorandum (EM) noted:

The bill addresses increasing community concern about the exploitation of vulnerable workers (including migrant workers) by unscrupulous employers, and responds to a growing body of evidence that the laws need to be strengthened.<sup>10</sup>

2.7 The EM further observed:

The *Inquiry into 7-Eleven* report [by the FWO in April 2016], for example, revealed not only systematic underpayment of migrant workers, but also a practice of some franchisees paying their employees the lawful rate, but then coercing them to pay back a certain proportion of their wages to the

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5 Productivity Commission, *Workplace Relations Framework: Final Report, No. 76*, November 2015, <http://www.pc.gov.au/inquiries/completed/workplace-relations/report> (accessed April 2017).

6 Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report) (accessed April 2017).

7 Fair Work Ombudsman, *A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven, April 2016*, <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#7-11> (accessed April 2017).

8 See Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

9 Dr Tess Hardy and Dr Joo-Cheong Tham, *Submission 26*, p. 5.

10 Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, *Explanatory Memorandum*, p. i.

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employer in cash. In some cases, records were deliberately falsified to disguise the underpayments and leave the impression that workers were being paid their lawful entitlements. A series of cases involving the exploitation of franchise workers (both preceding and following the 7-Eleven scandal) demonstrate more can be done to protect vulnerable workers.<sup>11</sup>

2.8 The negative impacts of deliberate and systematic non-compliance with workplace laws by unscrupulous employers are stark: employees are denied the minimum wages and conditions to which they are entitled; compliant employers are placed at a competitive disadvantage; and Australia's international reputation as a desirable place to visit and work is undermined.<sup>12</sup>

2.9 The FWO submission outlined the limitations of the current statutory provisions:

...the FWO has faced a range of challenges achieving lasting behavioural change in these circumstances [systematic exploitation of vulnerable workers] using the current tools available. The agency finds that the reality of what can be achieved in some limited but critically important areas, using the existing enforcement framework in the *Fair Work Act 2009*, falls short of community expectations.<sup>13</sup>

2.10 The Department of Employment stated that in developing the bill between October 2016 and February 2017 it undertook targeted consultations with a variety of stakeholders, including:

- employer and industry groups;
- unions;
- non-government organisations;
- state and territory governments;
- the Committee on Industrial Legislation under the National Workplace Relations Consultative Council; and
- the FWO.<sup>14</sup>

### **Committee view**

2.11 While the committee acknowledges that the majority of employers are compliant with Australian workplace laws, several recent high-profile cases have identified that the existing provisions within the Fair Work Act are insufficient to effectively deal with situations where vulnerable workers have been deliberately and systematically exploited.

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11 Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, *Explanatory Memorandum*, p. i.

12 Department of Employment, *Submission 1*, p. 3.

13 Fair Work Ombudsman, *Submission 4*, p. 3.

14 Department of Employment, *Submission 1*, p. 4.

2.12 The committee is of the opinion that the bill addresses a growing body of evidence that indicates that the Fair Work Act needs to be strengthened in order to better protect vulnerable workers, and appropriately punish those who deliberately and systematically break the law.