

Inquiry into Wage Theft
Private Sector Labour Relations Division
Department of Mines, Industry Regulation and Safety
Locked Bag 14
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By Email: wagetheftinquiry@dmirs.wa.gov.au

Attention: Mr Tony Beech

SUBMISSION FOR THE INQUIRY INTO WAGE THEFT IN WESTERN AUSTRALIA

The Humanitarian Group is grateful for the opportunity to make a submission to the Inquiry into Wage Theft.

Background: The Humanitarian Group

The Humanitarian Group is a not for profit organisation focused on empowering vulnerable people by providing professional and accessible migration assistance, legal advice and education. We strive to do this in a way that embraces diversity and strengthens communities. We help people new to Australia from culturally and linguistically diverse (CaLD) backgrounds, including humanitarian visa holders, asylum seekers, refugees and people who are otherwise disadvantaged in their access to legal services and who are located in Western Australia. Since its inception in 2002, The Humanitarian Group has grown to be a primary provider of specialist legal services to the recently-arrived CaLD community in Western Australia.

The Humanitarian Group has seen an ongoing and increasing demand for our services. In 2017 – 2018 we assisted 2093 people from 77 different countries, the majority of whom have experienced torture and trauma.

Our services

The Humanitarian Group provides specialist immigration and legal services.

- a) We assist people seeking asylum to claim protection (including assistance with temporary protection visas). We assist permanent visa holders from humanitarian backgrounds to sponsor or propose family members for Australian visas through our Family Reunion Program and we assist clients seeking administrative review through the relevant administrative tribunals and courts.
- b) We provide immigration and general legal advice to victims of family violence from CaLD backgrounds.

[Community focused legal services for people new to Australia](#)

- c) We provide a general legal service to clients from CaLD backgrounds about a broad range of civil, criminal and family law matters.
- d) We provide a wide range of Community Legal Education.

The Humanitarian Group employs six lawyers/registered migration agents on a part or full time basis. Our staff are assisted by over 200 volunteers. In 2017 – 2018 our volunteers recorded 7,400 hours. Our volunteers included 36 legal and administrative volunteers, 138 bilingual volunteers, 12 pro bono lawyers and 12 internships and placements.

Introduction

This submission reflects the knowledge and experience of The Humanitarian Group. It focuses on the experiences of new arrivals to Australia, including those with backgrounds of torture and trauma.

The Humanitarian Group's submission focuses particularly on responding to the terms of reference relating to:

1. **Whether there is evidence of wage theft occurring** in Western Australia, and the various forms wage theft may take.
3. **What is the impact of wage theft on workers**, businesses which are compliant with employment laws, and the Western Australian community and economy.
7. **Whether there are strategies that could be implemented by the Western Australian Government to address wage theft**, and if so, whether wage theft should be a criminal offence.

The Humanitarian Group wishes to raise the following issues in the context of the wage theft inquiry:

- a) the vulnerabilities of CaLD workers;
- b) case studies outlining the experiences of CaLD workers; and
- c) what should be considered in forming strategies to address wage theft in Western Australia.

Vulnerabilities of CaLD workers

The clients whom The Humanitarian Group assists are from CaLD backgrounds and face special vulnerabilities.

The Humanitarian Group's clients are diverse in terms of culture, religion, level of education, language(s) spoken, levels of skills or qualifications and social or political backgrounds. They may not fall neatly into categories of disadvantage identified by traditional measures, such as region, socio-economic status or local government area. Statistics in relation to the number of people born overseas, income, unemployment rates, level of education, social housing tenancies, Centrelink benefit recipients and ethnicity are crucial in providing an accurate demographic picture. However, they only tell part of the story for these clients.

Some of the particular vulnerabilities faced by our clients include the following:

- they have often come to Australia from backgrounds of torture and trauma;
- they frequently have limited capacity to understand, speak or write in English;
- they commonly come from environments where protection of human rights, enforcement of legal rights and access to justice has not been available to them;
- there are cultural differences at play which include fear of and resistance to accessing services;
- they find it particularly difficult to access the Australian legal system and to understand their rights. When they do access the legal system, they experience specific and significant challenges; and

- it is common for this group to additionally suffer from mental health issues, which further compounds the challenges they face.

Some of the particular vulnerabilities/circumstances faced by CaLD workers in Western Australia include the following:

- they may be a victim of human trafficking;
- they often lack understanding of the Australian legal system and their work rights;
- they often lack understanding of migration law and visas in Australia;
- they may not have work rights in Australia, making them fearful of accessing services or reporting their employer;
- they may not have a valid visa, making them fearful of accessing services or reporting their employer;
- they may be on a temporary visa and unable to pursue legal avenues to recover stolen wages due to departing Australia or from overseas;
- they may be a victim of family and domestic violence (FDV) whose circumstances impact upon their capacity to address issues of wage theft either due to situations of family employment or as a result of other family pressures;
- they may fear returning home due to fear of persecution and therefore are fearful of accessing services or reporting their employer;
- they may not report their employer out of fear that reporting wage theft will compromise their visa status or future residency in Australia;
- they may be unable to access or find it difficult to access support services;
- they may be unable to receive family or community support due to cultural or religious beliefs and/or being heavily affected by concepts of honour and shame;
- they may come from circumstances of little to no income;
- they may be impacted by the presence of agencies promising work or study in Australia; and
- they may be impacted by the presence of labour hire companies promising work in Australia and/or promising higher wages.

Unfortunately, victims of wage theft are usually vulnerable for multiple reasons. The multi-faceted circumstances of CaLD workers and their vulnerability to wage theft in Western Australia are illustrated in the case studies below.

Case Studies

CASE STUDY 1 – DANI*

Dani met her husband while he was on holiday in her home country. They married the following year. Once she arrived in Australia, her husband asked her to work on the family farm. She was not paid for her work. When Dani became unable to work on the farm due to health issues her husband tried to find alternative work for her including jobs for cash on other farms. He insisted that she work despite her health issues and limitations on her work rights as a temporary visa holder. Dani's husband continued to abuse her physically, emotionally, verbally, sexually and psychologically until the end of their relationship.

Dani is an example of wage theft within a family business. Due to family violence circumstances she was unable to make a complaint or access services. Dani was vulnerable to wage theft due to being a victim of family violence, pressure placed on her by her husband, a lack of understanding of the Australian legal system and work rights and an inability to access support

CASE STUDY 2 – HAMID*

Hamid saw an advertisement for work in Australia. He contacted the agency and was told that he could travel to Australia to work in factories for a weekly salary and the agency would organise his employment and visa. Hamid paid for the agency's services and travelled to Australia. Once he arrived he was taken to shared accommodation and told that the supervisor would find him work and his rent would be taken out of his weekly salary. His passport was taken from him.

For approximately 6 months Hamid worked at a fruit farm. On multiple occasions his pay was withheld. When he confronted his supervisor regarding his pay, his supervisor would tell him that he was not paid due to the cost of transport and living expenses. They also told Hamid that they would organise his visa but this never eventuated. After 6 months of work Hamid demanded payment as he wanted to leave the place of employment. He was given a small portion of the money owed to him and his passport was returned to him.

A short time after Hamid left the farm, a new agent found him work at another farm. Hamid paid the new agent to organise his visa. It was arranged that part of the payment for his visa would be deducted from his pay. After 3 months Hamid confronted his new agent as his visa had not been arranged as promised.

Despite seeking advice about his employment circumstances, Hamid did not want to complain about his employer or take further action due to his uncertain visa status.

Hamid is an example of a person being vulnerable to wage theft due to lack of knowledge and/or understanding of work rights in Australia, lack of knowledge and/or understanding of migration law in regard to his visa and the presence of agencies in Western Australia that employ CaLD workers for the purposes of exploitation. Hamid is an example of labour exploitation which potentially met the criteria to be considered trafficking, slavery or slavery-like practices.

CASE STUDY 3 – KORRA*

Korra was a victim of FDV whose husband was extremely controlling. Prior to their marriage, Korra's husband did not let her work in her home country and did not provide her with financial support. After Korra and her husband were married, she moved to Australia. Within a short time of moving to Australia, Korra's husband began to physically, sexually, psychologically and emotionally abuse her. Korra's husband owned a restaurant which he forced her to work in. However, her wages went directly into his bank account and she did not receive any payment. Because of the FDV experienced by Korra, she was extremely isolated and was unable to access services or disclose her experiences. Korra experienced family and cultural pressure to remain in the relationship despite her husband's abusive behaviour.

Korra is an example of wage theft within a family business. Due to family violence circumstances she was unable to make a complaint or access services. Korra was vulnerable to wage theft due to being a victim of family violence, a lack of understanding of the Australian legal system and work rights and an inability to access support services. She was also impacted by a lack of family support due to cultural beliefs which included pressure to remain in the relationship.

CASE STUDY 4 – AMY*

Amy came to Australia to work as a maid for a family after seeing an advertisement in her home country. While working as a maid Amy was regularly underpaid, was sexually assaulted and her circumstances met the criteria to be considered trafficking, slavery or slavery-like practices. Amy left her job because of her mistreatment. However, due to her vulnerability, she was further exploited by her new employers in the massage parlour industry. Amy was again underpaid and subject to behaviour that could be considered trafficking, slavery or slavery-like practices. Due to her extreme vulnerability Amy was not able to access support services, was not aware of what supports were available to her and was very fearful of engaging with authorities in Australia. She was particularly fearful of providing information about her identity or visa status.

Amy became vulnerable to wage theft due to the presence of agencies promising work in Australia and promising a good income, being a victim of trafficking, slavery or slavery-like practices, a lack of understanding of the Australian legal system and work rights, a fear of approaching authorities in Australia for assistance, a fear of disclosing her identity or visa status and a lack of understanding of migration law and visas in Australia.

CASE STUDY 5 – AMRITA*

Amrita and her husband arrived in Australia on a student visa. Both Amrita and her husband were hired for work in a restaurant, an arrangement facilitated by a friend from the same country of origin. It was agreed that the employer would sponsor Amrita and her husband for their visa. However, the employer did not pay their wages. Amrita and her husband were owed over \$20,000. Amrita and her husband were threatened when they made complaints about the unpaid wages, including with threats to harm their family in their home country. Amrita took the matter to the Fair Work Ombudsman. Following the complaint to the Fair Work Ombudsman, the employer withdrew sponsorship of Amrita and her husband's visas and they were forced to leave Australia. They did not know how to pursue the unpaid wages after departure from Australia and they were unable to obtain alternative sponsorship to remain in Australia. They were reluctant to cause further problems within their community by pursuing the employer.

Amrita's case is an example of how CaLD workers can become victims of wage theft due to their temporary visa status and lack of understanding of the Australian legal system and work rights. Amrita's case demonstrates the capacity of an employer to benefit from wage theft because of the power they have to withdraw sponsorship and exercise control over an employee's visa status. It also demonstrates the difficulties in pursuing complaints and legal action about wage theft for temporary visa holders who subsequently depart Australia.

CASE STUDY 6 – ARIANNA*

While in her home country, Arianna met with an agent who told her about an opportunity to study English in Australia. She was given information about obtaining a scholarship with a fortnightly stipend. Arianna made her own arrangements to come to Australia. Once Arianna arrived in Australia she met with the agent who told her to apply for a Protection Visa and that she had to work to pay for her application and living expenses. She was taken to a farm to start working. Arianna was told that she would be earning a weekly amount. However, she was not paid regularly and the agent took deductions from her pay. She was paid less than half the amount she was told she would be paid. Although she eventually obtained legal and migration advice from a community legal centre and given the option of assistance to pursue unpaid wages, she did not pursue this.

Arianna's story is an example of labour exploitation which potentially met the criteria to be considered trafficking, slavery or slavery-like practices. Arianna became a victim of wage theft due to exploitation by an agency which used her lack of understanding of the Australian legal system and work rights, lack of understanding of migration law and visas to exploit her. Arianna also had to rely on the agency's assistance as she could not speak English. This case demonstrates the challenges for CaLD workers in seeking advice and accessing support services and the difficulty in pursuing assistance as a result of complex personal circumstances.

CASE STUDY 7 – PRIJA*

Prija came to Australia on a temporary partner visa. She spoke no English and was hired to work in a restaurant as a dishwasher. She had no formal contract of employment. She worked in the kitchen for three weeks and was paid for the first two weeks in cash. However, no payments were made after that. She enquired about the missing pay with her employer and the employer stated that the business was not doing well therefore he could not afford to pay her. The employer denied that she was ever an employee and refused to engage in dispute resolution. Although Prija attempted to obtain assistance from the Fair Work Ombudsman, they were not able to assist because there was no proof of employment. Prija also attempted to obtain assistance from community legal centres but struggled to access services due to long wait times and difficulty accessing advice on telephone advice lines as a result of her language and cultural barriers. Prija's vulnerabilities meant that she did not feel confident in pursuing her unpaid wages.

Prija's case is an example of a CaLD work being vulnerable to wage theft in Western Australia due to language and cultural barriers and a lack of understanding of the Australian legal system and work rights. It also demonstrates the challenges for vulnerable CaLD clients in being able to access services and the importance of community legal centres being funded appropriately.

CASE STUDY 8 – TALIA*

Talia was a victim of FDV in her home country and came to Australia to escape the abusive relationship. She arrived in Australia and stayed with friends in another state. While she was there, a man offered to organise her visa if she came to Western Australia. He promised Talia work on a farm. She agreed to go to Western Australia, even though she did not know him or how he got her telephone number. When Talia arrived, the man told her that she could not work as she did not have work rights. However, he insisted Talia work with him on the farm, told Talia she had to do everyone's washing and cleaning and sexually abused Talia. Talia was not paid for the work she did. A neighbour finally helped Talia escape her situation after which she was able to obtain support from a broad range of community organisations, including obtaining legal and migration advice from a community legal centre.

Talia became a victim of wage theft due to circumstances of FDV. She was vulnerable to wage theft due to a lack of understanding of the Australian legal system and work rights, lack of understanding of migration law, visas and the services available for support in Australia. Talia was fearful of returning home due to being a victim of FDV in her home country. Talia is an example of labour exploitation which potentially met the criteria to be considered trafficking, slavery or slavery-like practices.

CASE STUDY 9 – SOPHIA*

Sophia was a victim of torture and trauma who suffered physical and financial abuse from her family in her home country and could not obtain protection from the authorities there. Sophia fled her home country out of fear for her safety and applied for a protection visa when she came to Australia. When she arrived she did not have any money or own anything of value. Although Sophia had no work rights, she was desperate to support herself and found employment on a farm. Sophia was not paid regularly and, when she was paid, she was paid less than she was told she would be paid. Sophia was fearful of complaining about her work conditions because she knew she was working without work rights. Sophia was eventually granted a protection visa to remain permanently in Australia.

Sophia's story is an example of a CaLD worker becoming vulnerable to wage theft due to a lack of understanding of the Australian legal system and work rights, lack of understanding of migration law and visas in Australia, not having the right to work, being fearful of accessing support services due to her vulnerable visa status, being a victim of torture or trauma and fearing returning to her country of origin due to torture or trauma.

Considerations for Strategies to Address Wage Theft

Strategies to address wage theft need to specifically take into account the particular vulnerabilities of clients from CaLD backgrounds.

In particular, strategies need to address:

- the vulnerabilities of temporary visa holders who hold real fears that their visas could be cancelled when they complain about an employer, particularly in circumstances where their visa is tied to a particular employer;
- that where CaLD workers suffer negative visa consequences as a result of making a complaint, this effectively means that the employee is punished for complaining instead of the employer;
- the vulnerabilities of those who do not have rights to work in Australia and who are subject to threats and exploitation by unscrupulous employers as a result;
- the interaction between employment and trafficking, slavery and slavery-like practices in which CaLD clients are particularly vulnerable and exploited;
- the lack of understanding of the Australian legal systems, particularly where clients have come from countries of origin where there is no strong history of protection of employee rights and where authorities are unable to protect employees who are exploited;
- the language and cultural factors which make it particularly difficult for clients to access services;
- the need for appropriate funding for community legal centres assisting CaLD clients who require intensive and specialised assistance;
- the challenges for clients who depart Australia in pursuing legal avenues to recoup lost wages.

Conclusion

We thank you for the opportunity to make a submission to the Inquiry into Wage Theft in Western Australia. It is our experience that CaLD workers are vulnerable to wage theft and require specific consideration in any Inquiry. Their vulnerabilities mean that CaLD workers can be more susceptible to wage theft, less able to obtain advice about their experiences and face particular challenges in pursuing legal remedies if they do make a complaint. We hope the insights of our clients can inform the development of strategies which address the specific needs of CaLD workers.

Please do not hesitate to contact us should you require any additional information.

Yours sincerely



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* Client's real names have not been used in case studies. In some instances, case studies are amalgamations of de-identified common client scenarios.