

INTERNATIONAL STUDENTS AND WAGE THEFT IN AUSTRALIA

EXECUTIVE SUMMARY

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Executive Summary

Introduction

Wage theft is endemic among temporary migrants in a number of industries in Australia. These include international students who are entitled to work up to 40 hours per fortnight on their student visa. This report responds to the need for empirical data on international students' responses to underpayment and other problems they encounter at work and potential effective interventions. It analyses findings from a nationwide survey of over 5,000 international students undertaken in 2019, as part of the Information for Impact project funded by StudyNSW.

The report examines survey findings on international students' rates of participation in the labour market and their wages in their lowest paid job, considering how these vary among different student cohorts. It also considers the prevalence of other forms of underpayment and record-keeping failures, dismissal after complaint to their employer, accidents and injuries, sexual harassment and overwork. After examining information- and help-seeking among international students who experienced problems at work, the report identifies key reasons why most international students did not seek information or help. Finally, it evaluates international students' knowledge of their work rights and the prevalence of common misperceptions that may contribute to their acceptance or acquiescence to underpaid work.

Since the survey was undertaken, in 2020 social distancing measures related to COVID-19 caused many international students to lose their casual jobs. Excluded from government assistance, many were left with no income and unable to pay rent and meet their basic living expenses. When the economy reopens, many international students will be more vulnerable to exploitation due to their highly precarious financial status and desperation for work in a more tightly constrained labour market. This will likely lead many to accept even poorer working conditions, and will intensify the factors that deter international students from seeking help or taking action when problems arise. The report lays the foundation for education providers and government to develop more targeted interventions to address exploitation, that are evidence-based and directly respond to international students' lived experiences captured through the survey.

Overview of the survey and participants

In 2018, UNSW Sydney and UTS established a sector-wide consortium to better understand the problems international students encounter in work and housing, and empirically identify key interventions that would have the greatest impact.¹ The Information for Impact project undertaken by the consortium included a nationwide survey of 5,968 international students between 9 April and 30 May 2019.

This report focuses on survey findings on international students' experiences of underpayment and other problems at work. It is based on survey responses from 2,472 participants, aged 17 and over, who received survey questions related to their experience at work. The overwhelming majority of respondents were reporting on recent experiences (78% arrived since 2017 with 58% having arrived within a year of the survey). The overwhelming majority (87%) were 20 years or older with a median age of 23. Respondents were nationals of 103 countries, with a quarter from China, followed by 14% from India. They were students at universities (60%), vocational and English language colleges (30%) and university foundation courses (10%). Seventy per cent were located in NSW, with 97% in major Australian cities. For the vast majority, their planned stay was not brief: 69% planned to stay for more than two years.

An earlier report on the survey, *Living Precariously: Understanding International Students' Housing Experiences*

¹ The *Information for Impact: Enabling education providers to address exploitation of international students in accommodation and at work* consortium included the Fair Work Ombudsman, English Australia, Redfern Legal Centre, International Student Education Agent Association, ISANA NSW, and Council of International Students Australia, as well as project advisors, Australian Taxation Office and the Commonwealth Department of Education.

in *Australia*,² published in 2019, addresses international students' housing decisions and experiences in Australia, based on responses of participants who received questions related to their experience with housing. In late 2020, survey findings will be published on interventions that can effectively guide students' decision-making including provision of information and services to address problems in housing and work.

Labour market participation of international students

Almost two thirds of respondents (65%) had worked in a paid job in Australia, among those who had been in the country at least 3 months.

Underpayment of international students

Underpayment of international students was systemic and widespread.³ Among those aged 20 and above at the time of their lowest paid job,

- A half (49%) were paid below the basic statutory minimum wage.⁴
- Over three quarters (77%) were paid below the minimum casual hourly wage.⁵

The proportion of international students reporting egregious levels of wage theft has not improved since the National Temporary Migrant Work Survey (NTMW Survey) in 2016. Over a quarter (26%) of all respondents earned \$12 or less per hour in their lowest paid job (approximately half of the minimum wage for a casual employee). This figure has remained unchanged since the 2016 NTMW Survey, in which 25% of the 2,392 international student participants earned \$12 or less in their lowest paid job.⁶ This figure has remained static despite increases in the statutory minimum wages since 2016,⁷ the introduction of legislative protections for vulnerable workers,⁸ and an increased focus on international students by the Fair Work Ombudsman.⁹

Underpayment was reported by a greater proportion of those with self-reported poor or fair English but was not confined to this cohort. Even among respondents who reported that they spoke good or very good English, over two thirds (68%) earned less than the statutory minimum hourly wage for a casual worker in their lowest paid job in Australia. However, those with self-reported fair or poor English fared even worse, especially at the most egregiously low wage rates: double the proportion of these respondents earned \$12 per hour or less (39%, compared with 20% of those with good or very good English).

Underpayment was not linked to international students' level of education or program of study. Almost two thirds (64%) of respondents in every program of study were paid less than the minimum wage for a casual worker, and almost a half (47%) were paid less than the statutory minimum wage (excluding PhD students). Students in

2 Laurie Berg and Bassina Farbenblum, *Living Precariously: Understanding International Students' Housing Experiences in Australia* (Report, December 2019).

3 This cohort constituted 82% of all respondents.

4 These respondents were paid \$17 or less per hour. At the time of the survey, the statutory minimum wage rate for employees in permanent positions was \$18.49 per hour for 20 year olds and \$18.93 per hour for 21 year olds.

5 These respondents were paid \$22 or less per hour. At the time of the survey, the statutory minimum wage rate for employees in casual positions was \$23.11 per hour for 20 year olds and \$23.66 per hour for 21 year olds.

6 Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings from the National Temporary Migrant Work Survey* (Report, November 2017) 27 (*'Wage Theft in Australia'*).

7 The statutory minimum wage rate for employees aged 21 years or above in permanent positions from July 2016 was \$17.70 while the minimum wage for such employees from July 2018 was \$18.93.

8 *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth).

9 *The Fair Work Ombudsman and Registered Organisations Commission Entity Annual Report 2016-2017* (Report, 2017) 18-19; *The Fair Work Ombudsman and Registered Organisations Commission Entity Annual Report 2017-2018* (Report, 2018) 18.

Bachelor's degree programs fared substantially worse than others at the most egregious levels of underpayment: a third (32%) were paid \$12 per hour or less -- the highest proportion of any student cohort.

Underpayment was experienced by international students across a range of nationalities. Among respondents of each of the top eight nationalities in the survey, at least two thirds of respondents (65%) were paid less than the minimum wage for a casual worker (\$22+ per hour), and over a third (35%) of respondents were paid less than the statutory minimum wage (\$18+ per hour).

One stark outlier was Chinese students who fared far worse than others at the most egregious levels of underpayment. Well over half (54%) were paid \$12 per hour or less. Approximately one in ten were paid less than \$10 per hour. Over four fifths (83%) earned less than the statutory casual minimum wage, and almost three quarters (71%) earned less than the statutory minimum wage.

International students experienced other wage issues at work in Australia. These included receiving wages in cash and not receiving a payslip, not being paid at all for a period, and being forced by an employer to pay wages back in cash. They also experienced sexual harassment, accidents and injuries, being required to work very long hours, and termination of employment because the student complained to their employer.

Why international students suffer in silence, and how to overcome barriers to seeking help

Among those who experienced any problem at work in Australia, almost two thirds (62%) suffered in silence and did not try to access help or even seek information to address the problem. They were asked to select the reasons why this was the case.

Fear of job loss and inability to effect change

By far the most common reason why international students did not seek information or help for problems was that they feared they would lose their job (selected by 48% of respondents). This fear appears well-founded, since 7% of respondents in this survey reported that they had indeed lost their job because they complained. While this proportion may at first glance seem small, that is not in fact the case. The cohort who complained to their employer about a problem would have been relatively small because only 55% of respondents experienced a problem at work, and only a small portion of these would have complained about the problem. The fact that 7% of all participants in the survey reported that they lost their job because they complained strongly suggests that many of those who complained to their employer did in fact lose their job. This finding underscores the importance of international students receiving expert representation and/or assistance, rather than being encouraged to approach an employer directly about a problem. It also suggests the importance of workers addressing problems collectively rather than individually to mitigate the risk of job loss if an international student seeks to assert her rights directly with her employer.

The risk of job loss far outweighs any potential benefit of taking action for many international students who perceive that there is nothing they can do to change their situation. Almost four in ten respondents (37%) reported that they did not seek information or help for a problem at work because they 'didn't think having information or help would change anything'. This suggests a perception of endemic non-compliance in international students' saturated labour market, where power resides almost entirely with the employer absent opportunities for collective or individual redress and effective government enforcement. This perception can only be mitigated through systemic reforms that empower international students (and other workers) to report non-compliance and obtain redress, including through the establishment of a new forum which expedites wage recovery and resourcing of legal services to advise and assist international students to pursue claims, including on campus. It also demands more effective government investigation and enforcement on the part of the Fair Work Ombudsman and other regulators.

Visa concerns

Almost four in ten students (38%) reported that they did not seek information or help for a problem at work because they did not want 'problems that might affect my visa'. This suggests the limited impact of the assurance protocol established between the Fair Work Ombudsman (FWO) and the Department of Home Affairs (DHA) in 2017. This may be partly because this protocol affirmatively requires the FWO to pass on the worker's information to the DHA to obtain protection from visa cancellation. It may also partly stem from the fact that, for many, fear of visa loss extends beyond their current visa to a fear of jeopardising their prospect of obtaining a future visa including permanent residency for which the protocol provides no protection. The most effective way to address this concern is to remove the 40 hour fortnightly work condition on student visas that gives rise to their vulnerability and related fear of visa cancellation. So long as this visa condition remains in place, the Australian government should establish an absolute firewall between the FWO and DHA that provides workers with the necessary assurance that if they seek help from the FWO for exploitation at work their information will not be shared with DHA.

Perceptions of culpability

International students' acute fear of jeopardising their visa has generally been discussed in connection with breach of the 40 hour fortnightly work condition that can result in visa cancellation. However, international students have a further set of work-related concerns that drive their fear of visa loss, based on a misperception of noncompliance. The authors sought to test a new hypothesis: international students may be reluctant to seek help for problems at work because they believe they may have broken the law by agreeing to wages less than the legal minimum.¹⁰ This was indeed the case for four in five respondents. Almost two thirds (62%) affirmatively held the misconception that a worker who agrees to be underpaid has themselves broken the law. A further 19% did not know whether this was the case or not. It is entirely rational that this overwhelming majority of international students who believe (or suspect) they have broken the law would not seek help or draw attention to their situation.

The survey also tested a further new hypothesis, that international students may be reluctant to seek help or report underpayment because they believe they are complicit in breaking the law when they accept payment of their wages in cash.¹¹ This misperception was indeed commonly held by respondents. Half (51%) were affirmatively under the misconception that a worker has broken the law if he or she is paid in cash. A further 18% did not know whether this was the case or not. Fewer than a third (31%) knew that it is not illegal to be paid in cash. Again, it is rational for these international students who believe (or suspect) they have broken the law to not seek help or draw attention to their situation.

These findings underscore the need for clear information to be delivered to international students to address both of these misconceptions. It is also important that government agencies and others exercise caution to frame their communications to avoid an impression that students are considered complicit if they accept underpayment.

Knowledge of entitlements

It is sometimes assumed that international students accept underpayment because they are unaware of the minimum wage in Australia. This was not the case. Only a small minority (16%) of respondents aged 20 and over did not know that the legal minimum hourly wage for an adult is at least \$18 per hour.

However, by contrast, three quarters of respondents (75%) did not know that the legal minimum hourly wage for an adult in a casual position is at least \$23 per hour. Given that many international students are casual employees,

10 Responsibility lies with an employer to pay their employee correctly; an employee is not in breach of employment law if they agree to underpayment.

11 It is not illegal to accept wages in cash provided they comply with taxation obligations. Nor it is illegal for an employer to pay wages in cash, provided they comply with payslip and taxation obligations.

and 77% of respondents who worked were paid less than the casual minimum wage, a very large proportion would not have known that they were being underpaid. This suggests that information campaigns for international students should focus on increasing awareness of casual loadings, penalty rates and other entitlements, not on the statutory minimum wage.

Another reason why international students may accept underpayment is that they are not aware that most international students who are in Australia for the full financial year are entitled to the tax free threshold (i.e. no tax is payable on the first \$20,570 of annual income). Because they assume they must pay tax on all wages, they mistakenly believe that being underpaid in cash and not declaring their income leaves them in a similar position as if they were paid correctly and complied with their taxation responsibilities. The majority of respondents (56%) did indeed hold the misconception that all international students must pay tax on all wages they earn, likely perceiving themselves no worse off earning illegally low wages in cash. This suggests the importance of educating international students about their tax responsibilities and entitlements, including eligibility for the tax free threshold, and providing them with advice and/or assistance to lodge a tax return.

A further potential explanation for international students' acceptance of underpayment is that they see themselves as operating in a separate labour market in which Australian labour laws do not apply. This was the case for close to one third of respondents (31%), who either believed international students were not entitled to the same wage rates as Australians or did not know whether this was the case. However, over two thirds (69%) knew they were entitled to the same wage as Australians and still did not seek information or help.

Social factors and attitudes

Four in ten students (40%) indicated that they did not seek information or help for a problem at work because many people around them had the same problems and they were not doing anything about it. Some participants may have wished to avoid the impression that they believed they were entitled to better working conditions than their peers. Others may have taken the cue from their peers that inaction was socially appropriate, or assumed that because their peers were not seeking information or help for problems there were good reasons for not doing so. Some may have concluded from others' inaction that taking action was futile or not worth the risks and costs. This could be addressed through supporting collective action by international students and other workers in a workplace, and through messaging that promotes help-seeking and provides examples where other international students have successfully done so. However, the findings on prevalence of job loss suggests that the risks of taking action are real, and caution should be exercised before encouraging students to approach their employer on the basis of examples where other international students achieved their desired outcome.

A quarter of students (26%) stated that they did not seek information or help for a problem at work because they 'did not want to make trouble' for their employer. Some may feel personal loyalty to their employer that overrides other factors. However, others may feel less strongly about protecting their employer if they were made aware of the extent of underpayment or other non-compliance or if co-workers were taking action. This reinforces the importance of targeted education and support for collective action.

Practical barriers

A third of students (34%) reported that they did not seek information or help for a problem at work because they did not 'know where to go for information or help'. Education level did not appear to affect the proportion of participants who selected this reason. Although there is a pressing need for dedicated legal assistance services for international students, especially on university campuses, this finding indicates that it is also important to raise awareness among international students of the services that exist.

Where international students sought information or help

Among those who experienced a problem at work in Australia, only 38% indicated that they tried to access help or seek information to address the problem. However, a large proportion of those sought information or help from their friends (23% of all who experienced a problem at work).

The next most common place that respondents sought information or help was searching online, though this was reported by only 17% of respondents who experienced a problem at work. Only one in ten sought information from an Australian government agency or website. Students with self-rated fair or poor English were half as likely to seek information from a government agency or website than those with good or very good English.

These findings suggest the importance of transmitting targeted information through peer networks, especially for those with poorer English language skills. They also indicate the importance of government and education providers investing resources not only in developing written materials online, but also in proactively delivering timely information and assistance to international students in other forms and forums.

While most universities have employment legal services on campus that are available to students, only 3 university students and 1 college student sought help from a legal service on campus for employment-related problems. Overall, only 5% of respondents sought information or assistance from staff or organised student groups at their education provider. This included 3% of college and university students who sought help from a student support officer at their institution, and 3% of university students who sought help or information from a student group. Clearly, there is an unrealised opportunity for education providers to provide far greater support to international students to avoid and address problems at work.

Conclusion

Findings from the Information for Impact survey confirm that the proportion of international students who are egregiously underpaid has remained essentially unchanged since 2016, with one in four still receiving less than half the minimum casual wage in their lowest paid job, even as the national minimum wage has increased. This is despite efforts from the Fair Work Ombudsman during this period and legislative changes including increased penalties. In the absence of effective interventions, this situation will likely worsen when international students return to work as COVID-19-related social distancing restrictions ease. This will have serious consequences for these workers and the labour market more broadly.

The findings in this report suggest a number of key interventions that government and other stakeholders should implement to reduce exploitation and enable more effective reporting and responses. These include an effective wage recovery mechanism, more effective government investigation and enforcement, removal of the 40 hour fortnightly work limitation on student visas, introduction of an absolute firewall between the FWO and DHA, greater access to legal assistance including through education providers, and better facilitation of collective action by international students and other workers.

The financial loss sustained by the international education sector during the pandemic has demonstrated the importance of international students to the Australian economy, and that the government will neglect international students' wellbeing to its peril. Australia has moral and human rights responsibilities to international students and can no longer treat them and their labour as a utilitarian commodity, despite the status of international education as Australia's fourth largest export industry. With Australia's reputation damaged as a result of its exclusion of international students from government financial support, it is more critical than ever that the government's commitment to addressing the Migrant Worker Taskforce recommendations be maintained and that it develop robust evidence-based interventions to prevent and address exploitation of international students.

