

Recovering lost wages is nearly impossible for Australia's underpaid migrant workers. Here's how to fix the problem

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The widespread [underpayment of migrant workers](#) in Australia is now well-documented. The vast majority [never recover](#) the wages they are owed.

In 2009, the federal "small claims" court process was established in the Federal Circuit and Family Court of Australia. The idea was to give workers a simple and accessible [forum](#) to claim unpaid wages and entitlements from their employers—without needing a lawyer.

But our new [research](#) has found that in reality, this process is virtually impossible to use without legal support.

The Fair Work Act aims to ensure a "[guaranteed safety net of fair, relevant and enforceable](#)" minimum legal rights and entitlements. But without widespread government enforcement or an accessible wage claims process, this is a pipe dream for many migrants and other vulnerable workers in Australia.

Reforms are urgently needed to make the small claims process work better for everyone.

It's just too hard to fight underpayment

Based on figures from a Grattan Institute [study](#) published last year, we estimate that between 490,000 and 1.26 million workers in Australia were paid less than the [minimum wage](#) in 2018.

Importantly, this figure does not include the many additional workers paid above the basic minimum wage but less than their full entitlements, who would also have substantial claims for unpaid wages.

There is no official data on the action taken by those workers. But our separate [2016 survey](#) revealed that among more than 2,200 migrant workers who knew they were underpaid, nine out of ten took no action.

For these people, the perceived risks and costs of taking action substantially outweighed the slim prospect of success.

[Recent data](#) confirms the very low number of workers using these processes. Only 137 people across Australia brought claims through the federal "small claims" process in 2022-23.

Through its compliance activities, the Fair Work Ombudsman [recovered](#) just over \$150,000 for people who identified themselves as migrant workers in 2022-23—a tiny slice of the \$509 million recovered for underpaid workers in total that year.

Why is it so hard to use the small claims process?

Let's use a fictional example to illustrate. An international student from Colombia works nights cleaning a local convenience store, and is paid a flat rate of \$16 per hour (the [national minimum wage](#) is now \$24.10 per hour).

After many months, she finds a better paying job and realizes she's been underpaid. She asks her [employer](#) to pay all of the money he owes—she thinks it could be more than \$15,000. He laughs at the request. So she considers trying to get her wages back through the small claims process.

First, she must lodge an application in court, which includes identifying the formal business name of her employer (she only knows the shop name and never received a contract or paystubs).

Then, she must precisely quantify her outstanding entitlements. This

means accurately identifying her job classification and applicable wage rates under a modern award or enterprise agreement (she has never heard of these).

After this, she must produce complex spreadsheet calculations for every hour worked, factoring in overtime and the different pay rates for evenings, weekends and public holidays.

If she manages to correctly file an application, she must then formally serve documents on her employer, attend court and participate in an online hearing, complying with its various technical requirements.

The challenges do not stop there. An employer may disappear or refuse to pay even after a worker wins in court. The worker's only option in that situation is to initiate enforcement proceedings—virtually impossible without [legal assistance](#).

And if an employer can't pay up, temporary visa holders are left without any safety net because they are ineligible for the [Fair Entitlements Guarantee](#).

The free legal assistance programs currently on offer are highly limited by underfunding. And if workers use private lawyers to recover their wages, much of what they recover goes to paying their legal costs.

What needs to change?

If dishonest employers know migrants and other vulnerable workers are too afraid to report exploitation, they will continue to systemically underpay them.

Our report—[All Work, No Pay](#)—sets out a roadmap for the changes that are urgently needed.

First, the government should expand free and affordable legal services that are essential for migrant workers to bring claims. This should include:

- a new free wages and superannuation calculation service
- shifting costs so a worker who brings a successful claim can recover their legal expenses from the employer
- increasing funding for community-based legal services, and a new duty lawyer service to assist self-represented litigants on their day in court.

Second, court processes should be simplified and made more flexible. This could include:

- creating a new jurisdiction to resolve wage claims within the Fair Work Commission, a more user-friendly forum that would dispense with the necessary formality of a court
- increasing the accessibility of the current small claims process—such as by making application forms and rules of service simpler and offering stronger case management support.

Third, all workers should be guaranteed payment when they obtain a court order against their employer. This would mean:

- creating a new government guarantee scheme to pay workers their wage judgment if their employer disappears or refuses to pay
- extending the Fair Entitlements Guarantee to all workers in Australia, regardless of immigration status.

A historic opportunity for change

A government review of the small claims process is [currently underway](#).

In July, the government will pilot new visa protections that will enable migrant workers to safely pursue wage claims [without jeopardizing their visa](#).

The government must further seize this historic opportunity and use its review to ensure that those [migrant workers](#) who are now willing to break their silence have an accessible process through which to enforce their rights and hold abusive employers to account.

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