

DR JAMES COCKAYNE, ANTI-SLAVERY COMMISSIONER

FIGHTING MODERN SLAVERY: WHAT ROLE FOR FARMS? REMARKS TO THE FAIR FARMS NATIONAL CONFERENCE COFFS HARBOUR, 14 OCTOBER 2022

1. Thank you to the organisers, Fair Farms, and to all of you for being here today.
2. I want to begin by acknowledging that we're on the country of the Gumbaynggirr people, and acknowledge their elders, past and present.
3. And I want to also acknowledge that coerced work, forced labour and other practices we today call 'modern slavery' are part of the story of settlement and agriculture in this country.
4. First Nations and Pasifika communities today continue to live with the inter-generational legacies of those practices.
5. Agriculture and horticulture have been central to the process of modern Australian settlement – central to its costs, but also of course central to the extraordinary opportunity it has offered many immigrants from around the world.
6. I am a part of that story. Four generations ago my forebears migrated from Ireland because of the promise that Australia offered, the chance of a fair go.
7. They set up a market garden on lands that just a couple of decades earlier were the country of the Jagera and Turrbul nations, on the fertile floodplain of the Brisbane River around St Lucia and Indooroopilly.

8. My family still lives and works on the land, on the traditional countries of the Gundungurra, Ngunnawal, Dharuwal and Nyoongar peoples around Australia.
9. This land has been good to my people, as I suspect it's been good to many of you and yours.
10. Not without its challenges: from droughts to floods, feast to famine.
11. But for us settlers, for us migrants and descendants of migrants, the land and society we've built upon it have offered opportunity and social mobility that couldn't be found elsewhere.
12. They've offered us a fair go, encapsulated in our national anthem: 'golden soil and wealth for toil'.
13. But what if you come here to Australia, to work the land, and you don't get a fair go? What if after all that toil you don't receive your fair share of the wealth you've helped to create?
14. That, sadly, appears to be the experience of too many people working in agriculture and horticulture in Australia in recent years.
15. There's no shortage of evidence of this going back a decade now, to the Fair Work Ombudsman's inquiry into the Harvest Trail, which began in 2013.ⁱ
16. No shortage of evidence of underpayment and wage theft.
17. Evidence of substandard working conditions.
18. Of coercion in the workplace.
19. And evidence of a culture of silence among the temporary migrant workers on whom much Australian horticulture today relies.ⁱⁱ

20. On their own, these things may not amount to ‘modern slavery’, as it is legally defined in NSW or nationally.
21. But put these factors together, and they can add up to modern slavery or forced labour.ⁱⁱⁱ
22. The High Court of Australia tells us that the essence of modern slavery is one person exercising ‘powers of ownership’ over another.
23. Denying people control over how and where and when they work. Denying them the chance to exit.
24. Hardly a fair go.
25. Giving workers that say over their own work, giving them a remedy when they feel exploited – these things are crucial in preventing labour violations becoming the disastrous system failure that we call ‘modern slavery’.
26. Research published in 2018 indicates that 91 per cent of surveyed migrant workers who suffer wage theft in Australia do so in silence – they don’t attempt to access remedy.^{iv}
27. Why not?
28. The answer often proposed is that it’s the characteristics of workers that prevent them accessing remedy – poor English, limited understanding of their rights, or cultural barriers – such as unwillingness to engage the state and the justice system.
29. But empirical research directly with temporary migrant workers points to different drivers of under-reporting.
30. The costs and risks that migrants perceive themselves as facing – risks to immigration status and employment status, additional abuse, or harm to family members overseas – those

risks are seen as outweighing the potential for a meaningful outcome from seeking remedy.^v

31. So even as we think about what is going on in specific workplaces, or in the relationships between labour-hire contractors and temporary migrant workers, we also need to think about the system itself.
32. Do our immigration and labour arrangements, our buying and invoicing practices, our piecework pay arrangements, even our pricing practices – do they unwittingly create the drivers of vulnerability?
33. We know from research around the world that modern slavery emerges where nefarious actors use institutional weakness to exploit vulnerable people.^{vi}
34. Unfortunately, that's *just* the situation we see in some parts of Australian agriculture and horticulture today.
35. Temporary work requirements in some visa programs risk creating power imbalances. These leave some workers vulnerable to exploitation, and give power to weakly regulated labour hire firms.^{vii}
36. Piecework pay arrangements too often shade into wage theft.^{viii} One recent study of over 1,000 job ads in this industry found that 65 per cent of ads for strawberry pickers would allow workers to earn less than \$2 an hour.^{ix}
37. This leaves workers vulnerable to coercion in the workplace, imposed debts, poor living conditions, and the broader welfare and health risks associated with income insecurity.
38. Dodgy labour hire firms are the nefarious actors that exploit this vulnerability.
39. But they're also enabled by employers, buyers and financiers who turn a blind eye.^x

40. And behind all this is the question, whether vulnerable people can protect *themselves*.
41. I put it to you: a system that stacks the burdens and risks of vindicating rights onto the worker alone is not a system offering a fair go.^{xi}
42. But that begs the question: who should bear the risks and burdens of ensuring those rights can be vindicated, that exploitation can be remedied?
43. *Who* should bear this burden of ensuring vulnerability to modern slavery does not become victimisation?
44. The answer, I think, is that this has to be a *shared* burden.
45. That's the Australian way. That's part of what we mean by a 'fair go': not that you're entirely on your own, but that – while you are your own master – help is also there when you need it.
46. Help from your peers, from your community, from government.
47. Farms – and all of you, as industry experts, growers, peak industry bodies and workplace relations specialists – have a critical role to play in preventing modern slavery.
48. But farms are already dealing with challenging market and environmental conditions, growing costs of capital and labour market disruption.
49. Farms have a key role to play – but they can't do it on their own. They need the support and close, purposeful cooperation of buyers, finance, and government.
50. Fair Farms, and this conference, represents an effort to share that burden, to solve these problems together.

51. That is to be applauded and supported, and that is why I'm here, and perhaps it's why you're here too.
52. Now we need to turn our minds to HOW we prevent vulnerability becoming victimisation.
53. About how workers can access meaningful remedy. How they can claim unpaid wages and lodge concerns around unfair costs, imposed debts, working conditions or maltreatment, without fearing loss of employment or immigration status.
54. I welcome the Fair Work Ombudsman's continued enforcement efforts in this industry.^{xii}
55. I also note concerns in some quarters regarding information-sharing between labour market enforcement authorities and immigration enforcement authorities.
56. We need a conversation about this, to make sure the system is fit for purpose.
57. We need a conversation about how major buyers can play a constructive role, without simply displacing compliance burdens onto suppliers. How they can ensure -- not simply that they're not purchasing products of modern slavery -- but also that their buying practices are effective in driving down modern slavery risks.
58. We need a conversation about how we ensure dodgy labour hire firms don't skew the playing field through recruitment fees, intimidation of workers' families, or debt bondage. And that when action is taken against them, they can't simply 'phoenix', being reborn under a new corporate guise.
59. About the critical role of unions in helping prevent vulnerability become victimisation, by fostering worker voice and access to remedy.

60. About how we use technology to automate identification of underpayment and evidencing of wage theft.
61. About the role of banks, investors and insurers in conducting due diligence to ensure they're not unwittingly financing business practices that turn vulnerability to modern slavery into victimisation.
62. As New South Wales' first Anti-slavery Commissioner, I'm committed to using my office to help foster these conversations, and to help all of you work together to find effective solutions.
63. I'm delighted to be here, to listen to and learn from all of you.
64. Life on the land can be both beautiful and hard.
65. Facing those hardships – together – is at the centre of our Australian sense of mateship and the 'fair go'.
66. Modern slavery is a failure of the fair go, a failure of our Australian system.
67. Let's work together, to make sure everyone who works in Australian agriculture and horticulture has that fair go we hold so dear.
68. Let's work together to ensure they benefit not only from our golden soil, but enjoy the wealth they are due from their toil.
69. Have a great conference. Thank you.

Notes

ⁱ Fair Work Ombudsman, *Harvest Trail Inquiry: A report on workplace arrangements along the Harvest Trail* (2018), available at <https://www.fairwork.gov.au/about-us/compliance-and-enforcement/inquiries/harvest-trail-inquiry>.

ⁱⁱ Johanna Howe, “How Effective Are Legal Interventions for Addressing Precarious Work? The case of Temporary Migrants in the Australian Horticulture Industry,” *New Zealand Journal of Employment Relations* 44, no. 2 (2019): 37.

ⁱⁱⁱ Martijn Boersma, Justine Nolan and Laurie Berg, “Message to Coles, Woolworths: Act now to end modern slavery,” *The New Daily*, 7 September 2019, <https://thenewdaily.com.au/news/national/2019/09/07/coles-woolworths-modern-slavery/>.

^{iv} Bassina Farbenblum and Laurie Berg, *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia* (Migrant Worker Justice Initiative, UNSW and UTS, 2018), p. 5. Available at <https://static1.squarespace.com/static/593f6d9fe4fcb5c458624206/t/62621a72d737a96241d7cdae/1650596473879/Wage%2Btheft%2Bin%2BSilence%2BReport.pdf>.

^v Ibid.

^{vi} See James Cockayne et al., *Developing Freedom: The Sustainable Development Case for Ending Modern Slavery, Forced Labour and Human Trafficking* (UNU CPR, 2021), available at www.developingfreedom.org.

^{vii} See Edward Cavanough and Connor Wherrett, *Blue Harvest: Wage Theft & Other Labour Infringements in the NSW mid-North Coast’s 2019/20 Berry Harvest* (November 2020), available at <https://mckellinstitute.org.au/research/reports/blue-harvest/>; Alexander Reilly et al., “Working holiday makers in Australian horticulture: labour market effect, exploitation and avenues for reform,” *Griffith Law Review* 27, no. 1, (2018): 107; Rachael Pearse, *Modern Slavery and Associated Labour Exploitation of Temporary Migrant Workers in the Australian Horticulture Industry*, Be Slavery Free, June 2021; Laurie Berg and Bassina Farbenblum, Ending impunity for Wage Theft against Migrant Workers: Here’s How, 9 December 2021, available at <https://www.ihrb.org/focus-areas/migrant-workers/ending-impunity-for-wage-theft-against-migrant-workers-heres-how>]; and Anna Boucher, *Patterns of Exploitation: Understanding Migrant Worker Rights in Advanced Democracies* (Oxford University Press, New York: 2022).

^{viii} See Harvest Trail, op. cit., p. 29.

^{ix} Unions NSW, *Wage Theft: The Shadow Market. Part Two - The Horticulture Industry* (2021), available at <https://www.unionsnsw.org.au/research/wage-theft-the-shadow-market-the-horticulture-industry-exploitation-via-piecerates/>.

^x Cavanough and Wherrett, op. cit.

^{xi} Berg and Farbenblum, op. cit.

^{xii} Fair Work Ombudsman, “Fair Work Ombudsman continues farm inspections”, Media release, 8 September 2022, available at <https://www.fairwork.gov.au/newsroom/media-releases/2022-media-releases/september-2022/20220908-agriculture-inspections-september-2022-media-release> .