



Short-changed: how to stop the exploitation of migrant workers in Australia

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Recommendations

Reform visa rules to make migrants less vulnerable to exploitation

1. Make temporary skill-shortage visas portable so workers can leave exploitative employers.
2. Allow sponsored workers to apply for permanent residency after two years with any sponsoring employer.
3. Limit working holiday maker visas to a single one-year visa, and abolish the rules that permit holiday makers to extend their stay in Australia if they perform 'specified work'.
4. Make visas issued under the Pacific Australia Labour Mobility (PALM) scheme portable.
5. Commission an independent review of international higher education in Australia.
6. Replace the Assurance Protocol with a strengthened Exploited Worker Visa Guarantee.
7. Create a Workplace Justice visa to empower workers to report exploitation and stay in Australia to pursue outstanding claims.
8. Apply a 'preventing exploitation levy' on temporary visas of \$30 for each year of work rights offered.

Strengthen the enforcement of workplace and migration laws

9. Rename the Fair Work Ombudsman the Workplace Rights Authority and boost funding by \$60 million a year to \$230 million a year.
10. Empower the Authority to issue infringement notices for underpayment.
11. Increase maximum penalties for Fair Work Act contraventions that cover underpayment.
12. Change the test for 'serious contraventions' from knowing and systematic to reckless and systematic.
13. Introduce criminal penalties, with a maximum penalty of 10 years imprisonment, for employers who knowingly underpay workers.
14. Conduct an independent capability review of the Ombudsman to inform the strategy, structure, skills and culture of the new Authority.
15. Require the Authority to produce an annual report on the extent of migrant worker exploitation.
16. Require businesses to report hours worked on the Single Touch Payroll system, to help detect underpayment.
17. Increase Department of Home Affairs funding by \$10 million a year.
18. The Australian Border Force should pursue criminal cases against employers who knowingly employ migrants in breach of their visa conditions and it should more investigations of suspect employers.
19. Establish new migrant exploitation offences in the Migration Act.
20. Issue all temporary visa-holders with work rights a tax file number upon arrival.

Close loopholes and better support migrants to pursue underpayment claims

21. Review the limits on data sharing among Phoenix Taskforce members and boost taskforce funding.
22. Change the sham contracting 'recklessness' test in the Fair Work Act to a test of 'reasonableness', and increase penalties.
23. Consolidate existing state schemes into a National Labour Hire Registration Scheme.
24. Establish a Migrant Workers Centre in each state and increase funding for Community Legal Centres.
25. Increase the number of points at which the Department of Home Affairs provides migrants with information about workplace laws and work rights.
26. Consider creating a new specialised workplace court or tribunal as part of the existing review of the small claims procedure.
27. Expand the Fair Entitlement Guarantee to include temporary visa-holders.

Short-changed: how to stop the exploitation of migrant workers

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- Up to 16% of recent migrants paid less than the national minimum wage (~22% before COVID)
- Migrants are twice as likely to be underpaid as long-term residents

Reform visa rules to make migrants less vulnerable to exploitation

- **Temp sponsored workers:** lift wage threshold to \$70k; introduce portability; better transition to PR
- **Working holiday makers:** replace regional req's for 2nd & 3rd visa with a single 1-year WHM visa
- **International students:** evaluate work rights via review international higher education in Australia
- **Strengthen visa protections for exploited migrants** that pursue claims for unpaid wages

Strengthen the enforcement regime to deter bad-faith employers

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 - **Resources:** boost funding by \$60 million per year
 - **Rename:** rename the Ombudsman the Workplace Rights Authority
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- **Better enforce migration laws to punish employers of migrants working in breach of visa rules**
- **Close loopholes such as illegal phoenix activity; sham contracting & better regulate labour hire**

Support migrants to pursue underpayment claims

- Establish a Migrant Workers Centre in each state & boost funding for community legal centres
- Reform the small claims court process & extend the Fair Entitlement Guarantee to include migrants

Our recommendations are fully funded via levy on temporary visas & larger fines on employers

Exploitation is bad for migrants, and many Australians

Exploitation is bad for the migrants who are exploited

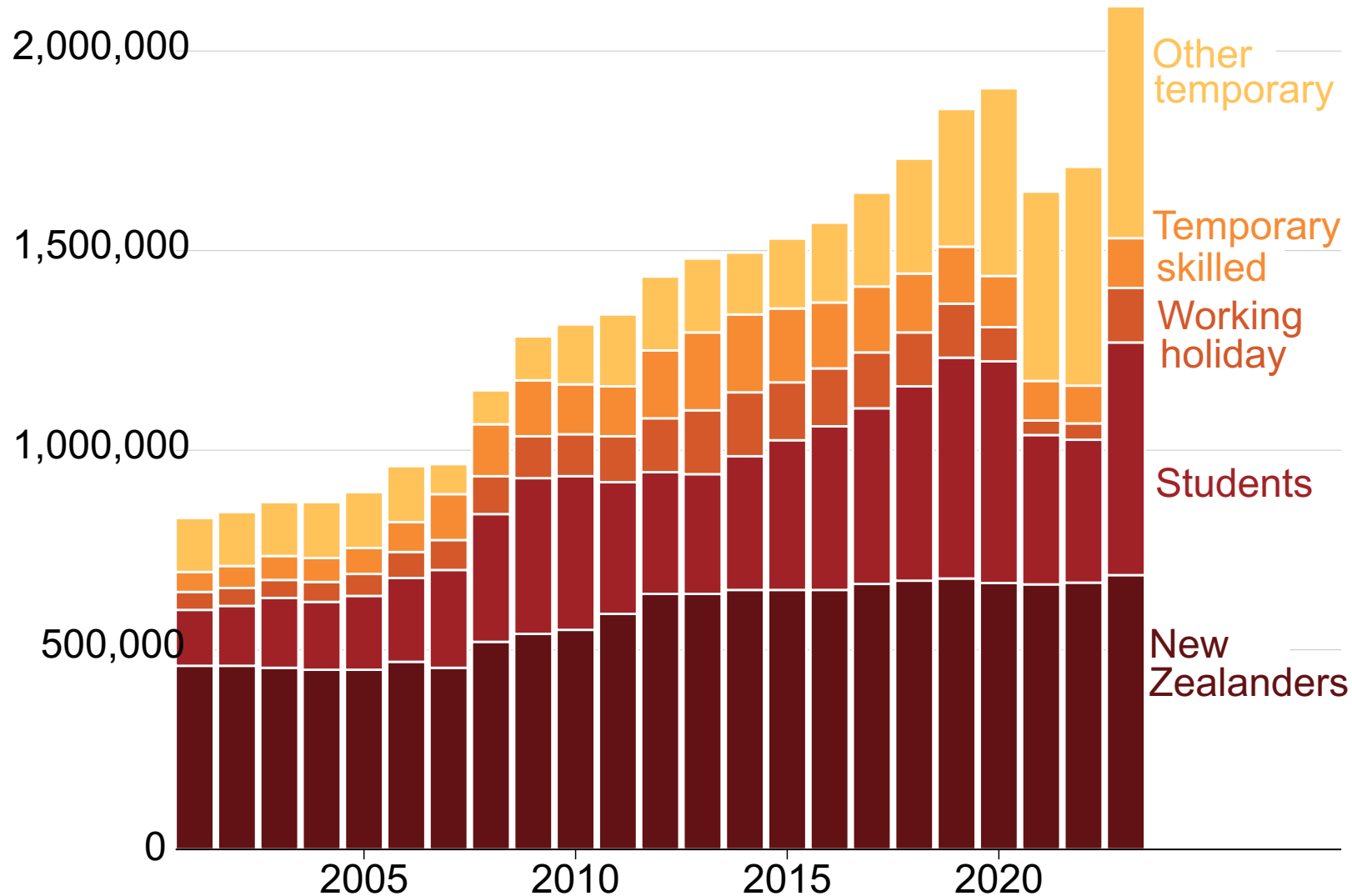
But exploitation of migrant workers also hurts many Australians:

- It weakens the bargaining power of workers and undermines the minimum wage
- It promotes a 'race to the bottom' for employers
- It harms Australia's ability to attract prospective skilled migrants

Exploitation also threatens public confidence in Australia's migration program

Migrants accounted for a growing share of Australia's workforce before the pandemic

Temporary visa holders as a share of total employed persons



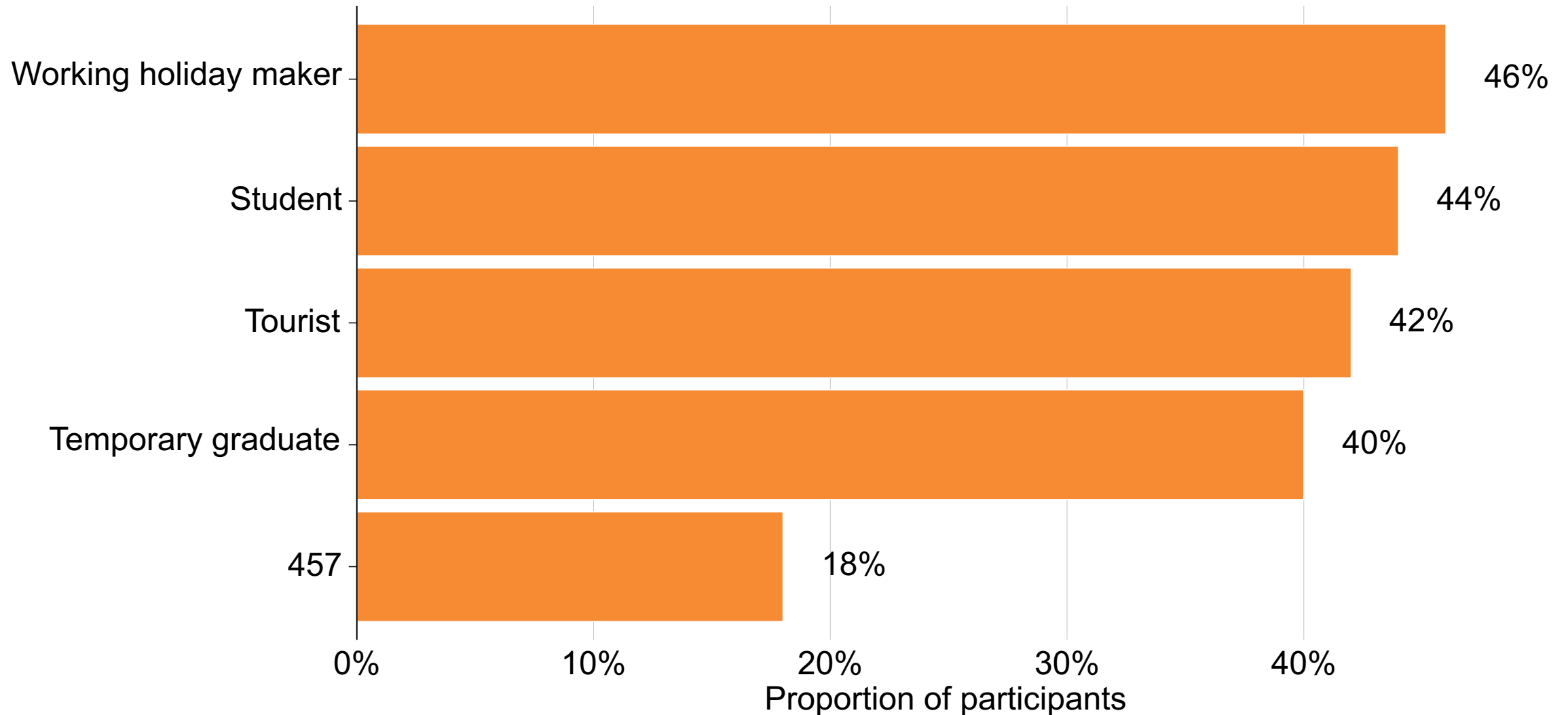
One in three workers in Australia were born overseas.

13% of all workers currently (or recently) held permanent visas

7% of all workers in Australia held temporary visas as of the 2016 Census (including Kiwis).

Previous surveys have found many migrants are underpaid, but these suffer from big selection biases

Participants earning less than \$15 an hour



Source: Berg and Farbenblum (2017). The minimum wage was \$18 in 2017, however, the survey asks respondents about their lowest ever wage which may have been several years earlier. The survey authors use \$15 as an indicator of underpayment.

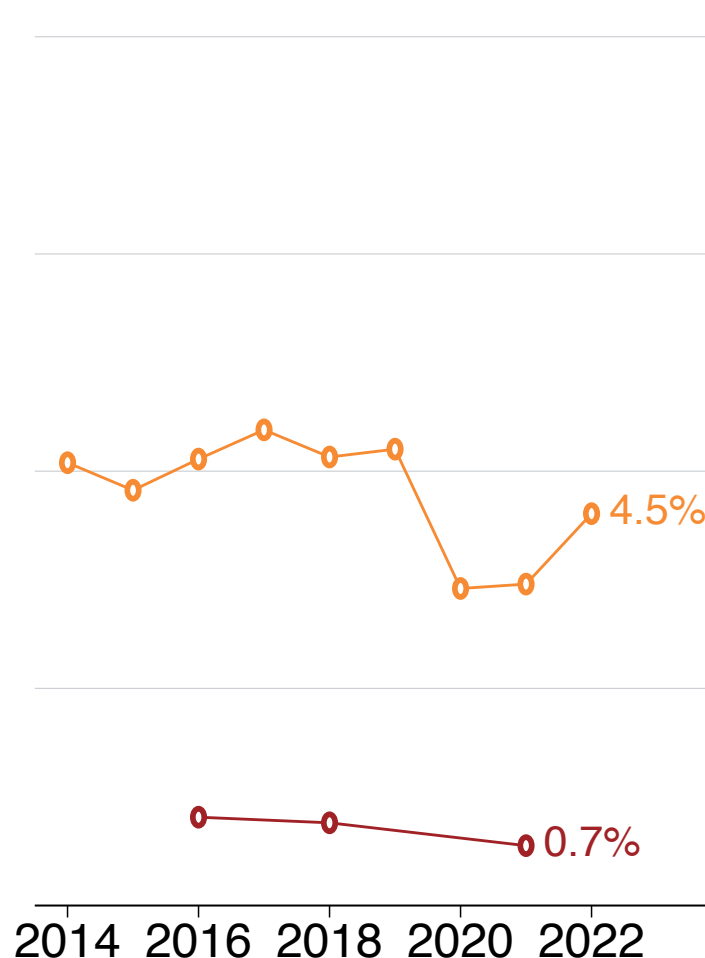
There are multiple data sources to measure underpayment in Australia

Proportion of individuals earning less than the minimum wage

Paid below minimum wage



Paid \$3 below minimum wage



There are multiple surveys of employees' remuneration:

- **Employee earnings and hours surveys employers' payrolls**
- **Characteristics of Employment surveys employees**, and reports their migrant status (i.e. length of stay in Australia)
- In practice rates of underpayment will be between these two surveys

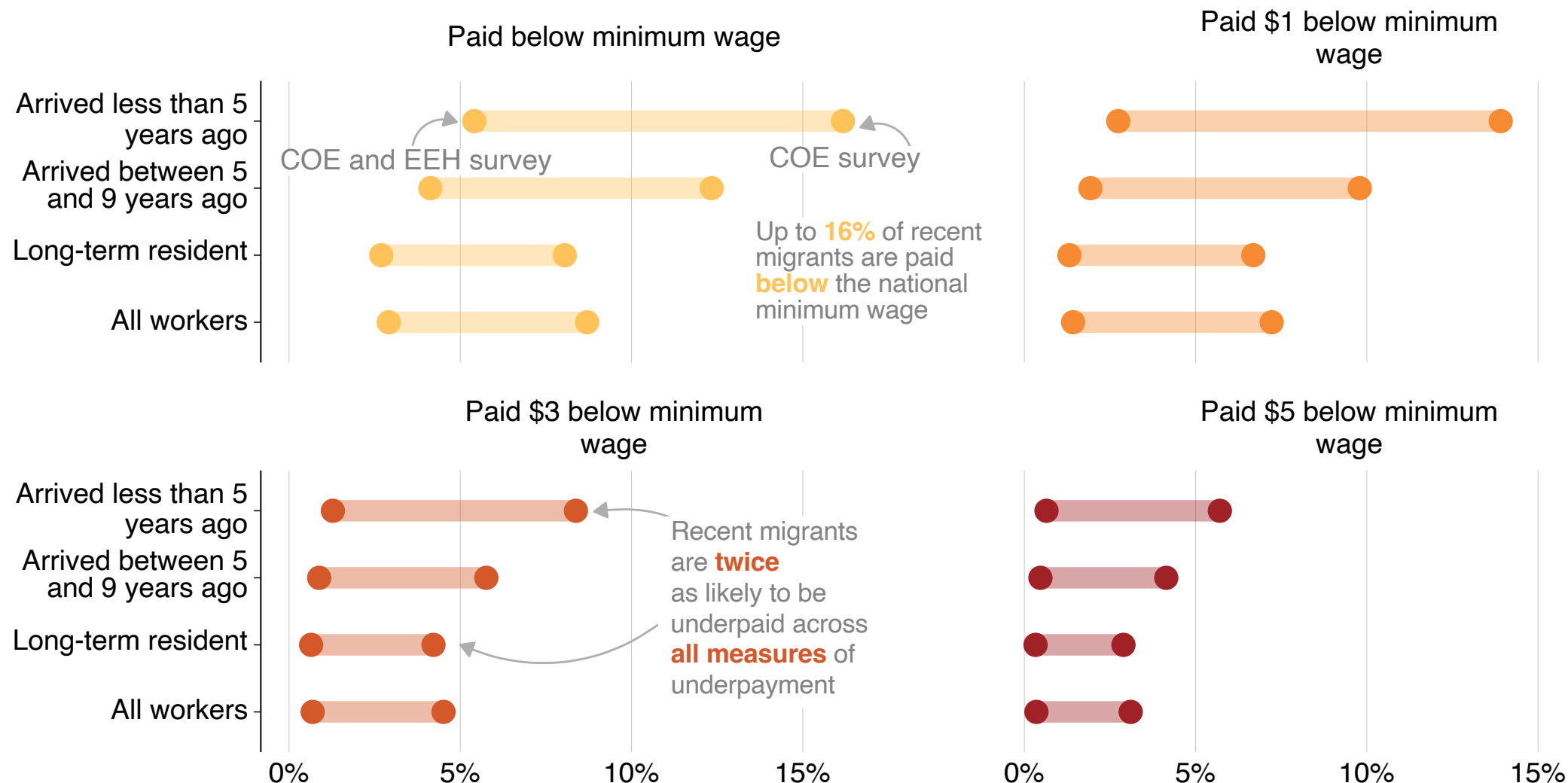
We estimate **rates of underpayment of recent migrants** as follows:

- **Upper bound:** use CoE estimates for recent migrants
- **Lower bound:** scale down CoE estimates for recent migrants by ratio of EEH / CoE underpayment

Source: Employee Earnings and Hours (2016, 2018, 2021), HILDA (2022) and Characteristics of Employment (2022). Notes: Dollars below minimum wage above adjusted. EEH asks businesses to report how much they pay employees, whereas HILDA and COE ask for self-reported earnings and hours worked. Recall bias means that HILDA and COE are more likely to overstate the underlying rate of underpayment, but EEH is more likely to understate the rate as employers are less likely to admit to underpaying employees.

Recent migrants are much more likely to be underpaid than long-term residents

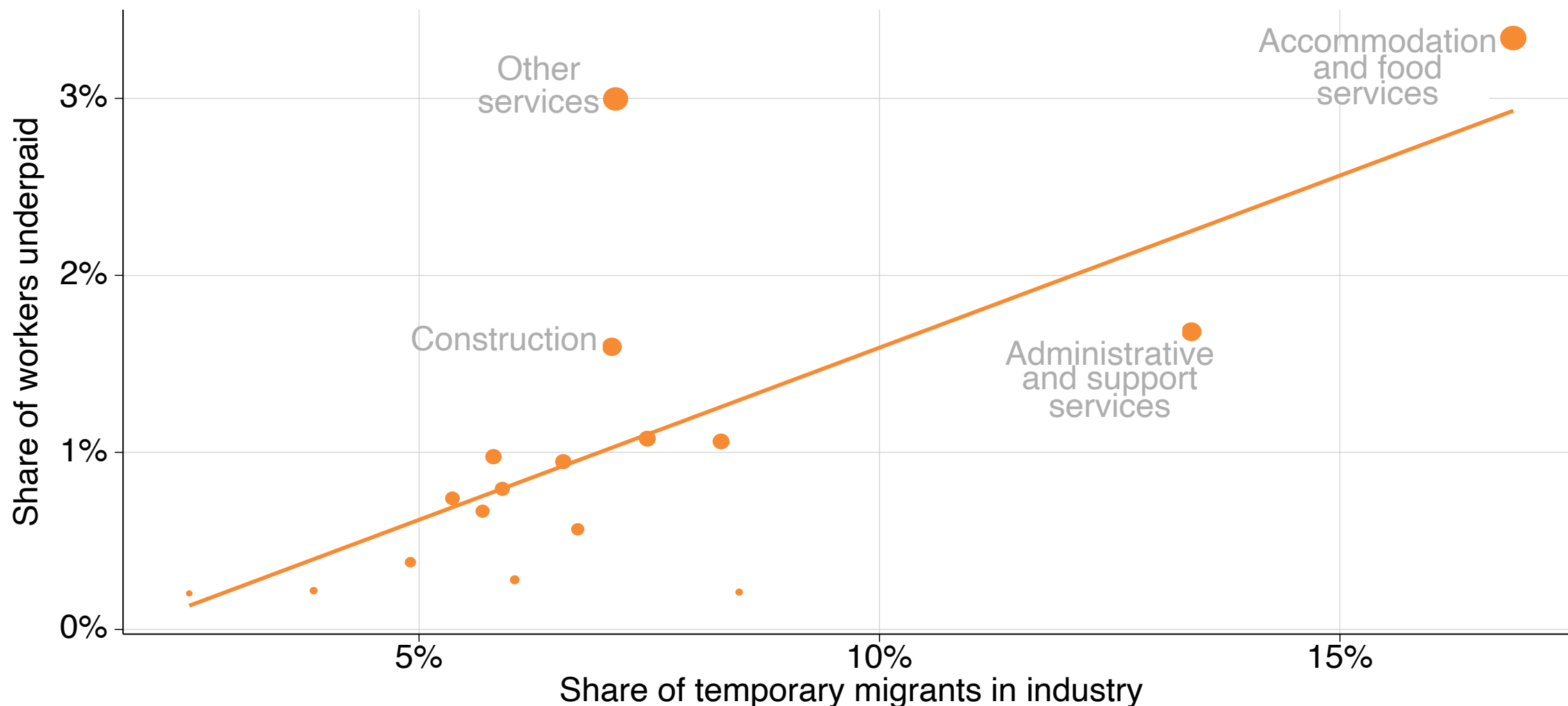
Proportion of employees paid below national minimum wage by year of arrival, 2022



Notes: Excludes award minimums, penalty rates, and other forms of underpayment. The upper bound estimate is from the Characteristics of Employment survey. The lower bound estimate is calculated by scaling the Characteristics of Employment proportions to reflect the proportion of employees underpaid in the Employee Earnings and Hours survey (which does not contain migrant status). Long-term residents = arrived 10 or more years ago or born in Australia. Source: Grattan Analysis of EEH and COE.

Migrants work in industries where underpayment is more prevalent

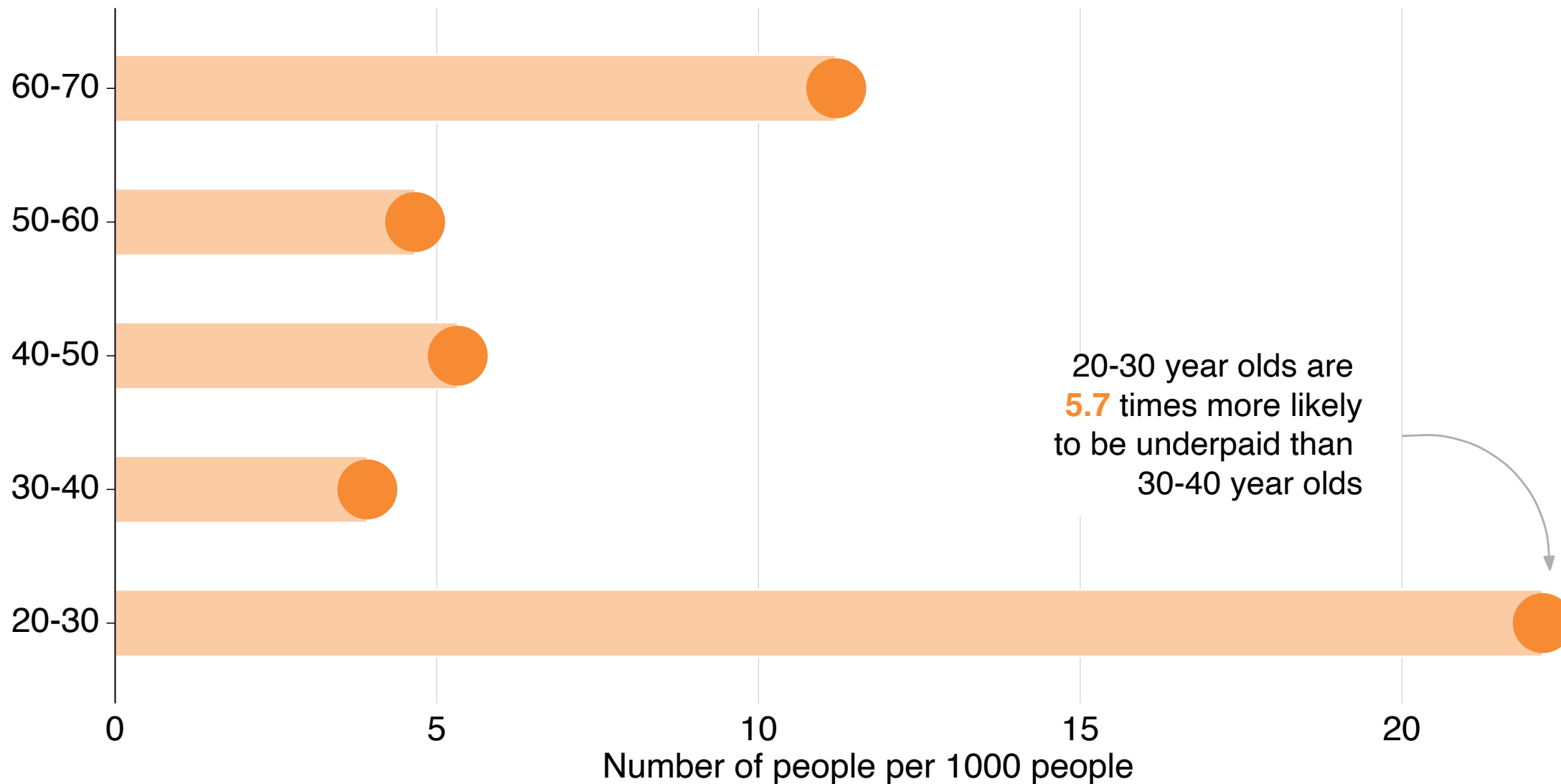
Share of workers underpaid by \$3 an hour and the proportion of workers who are temporary migrants by industry



Notes: 2016 and 2018 samples have been combined to increase the sample size. Data suppressed where counts are below 10. The Employee Earnings and Hours survey does not collect data from businesses in the agricultural industry. Source: ABS Census Temporary Entrants Integrated Dataset (2016), ABS Employee earning and hours (2016, 2018)

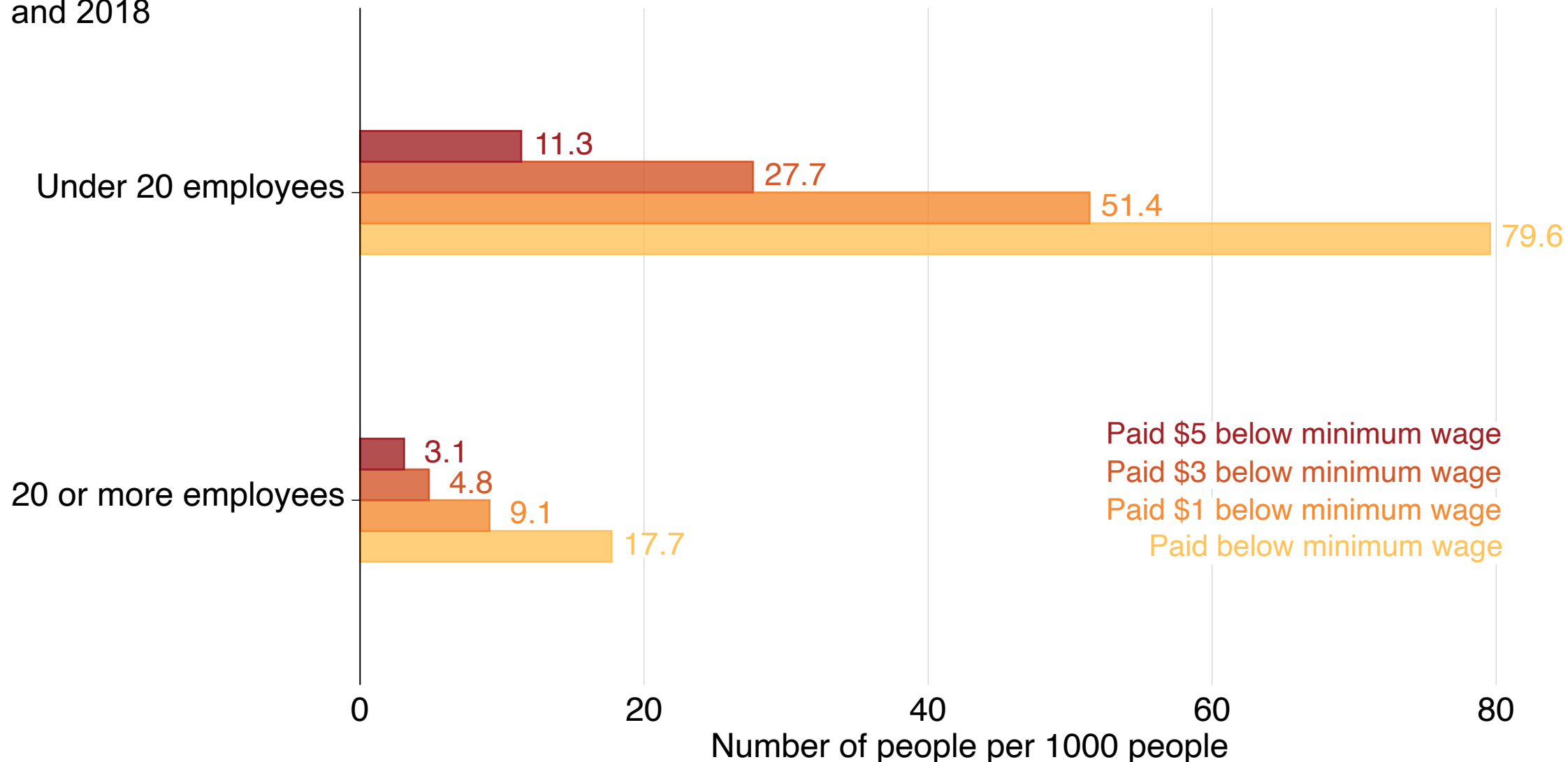
Migrants are younger, and young people are more much likely to be underpaid

Number of individuals earning 3 dollars less than the minimum wage per 1000 workers, 2016 and 2018



Workers at smaller business are nearly six times more likely to be underpaid

Number of individuals earning less than the minimum wage by business size per 1000 workers, 2016 and 2018



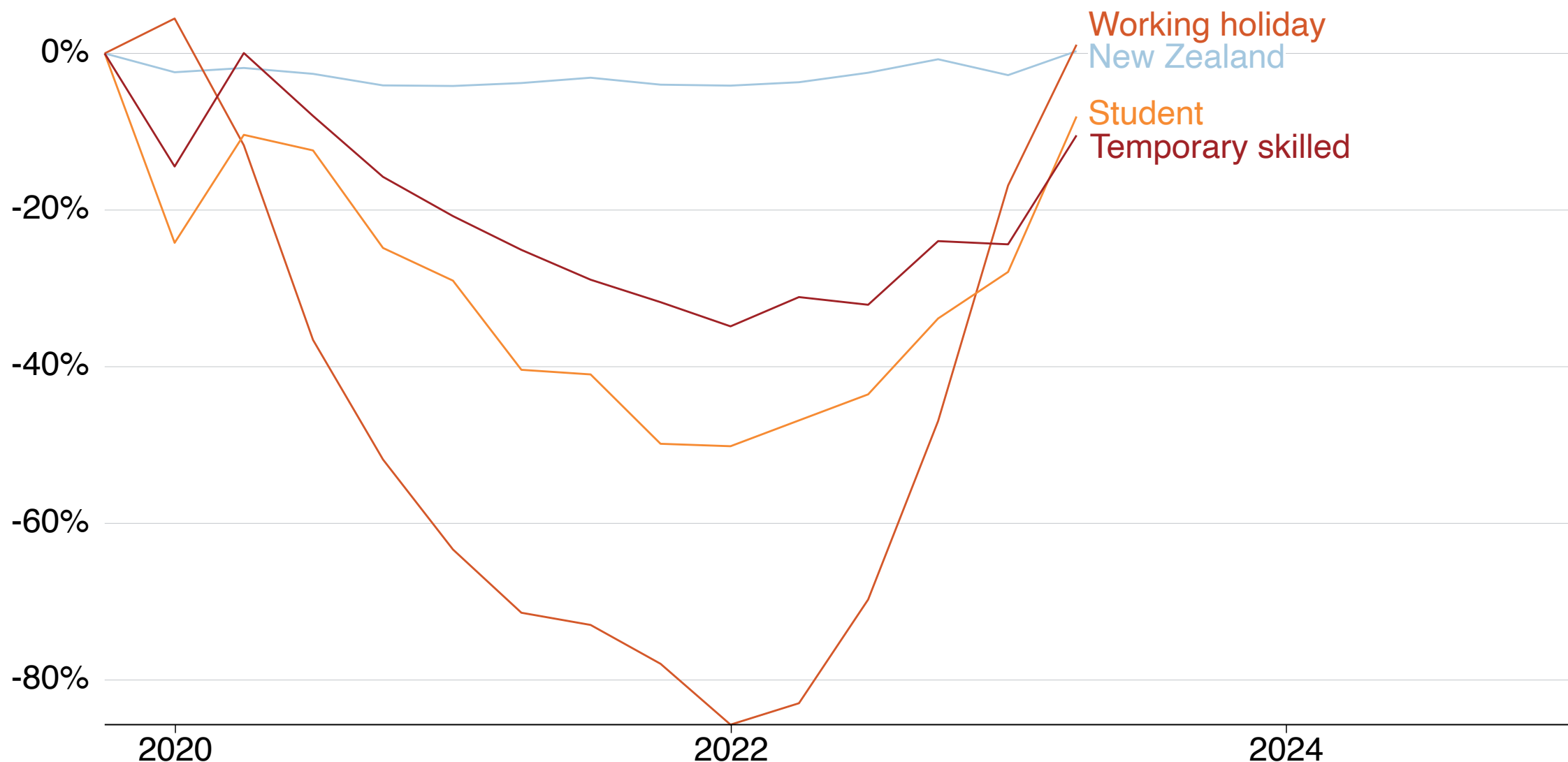
Migrants are more likely to be underpaid even after accounting for demographic and job characteristics

All else equal, how likely are individuals to be paid \$3 below the minimum wage compared to the base category



Temporary visa holder numbers are now back to pre-COVID levels

Change in temporary visa-holders in Australia since 2019Q3



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- **Temp sponsored workers:** lift wage threshold to \$70k; introduce portability; better transition to PR
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- **International students:** evaluate work rights via review international higher education in Australia
- **Strengthen visa protections for exploited migrants** that pursue claims for unpaid wages

Strengthen the enforcement regime to deter bad-faith employers

- **Reform the Fair Work Ombudsman**
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 - **Resources:** boost funding by \$60 million per year
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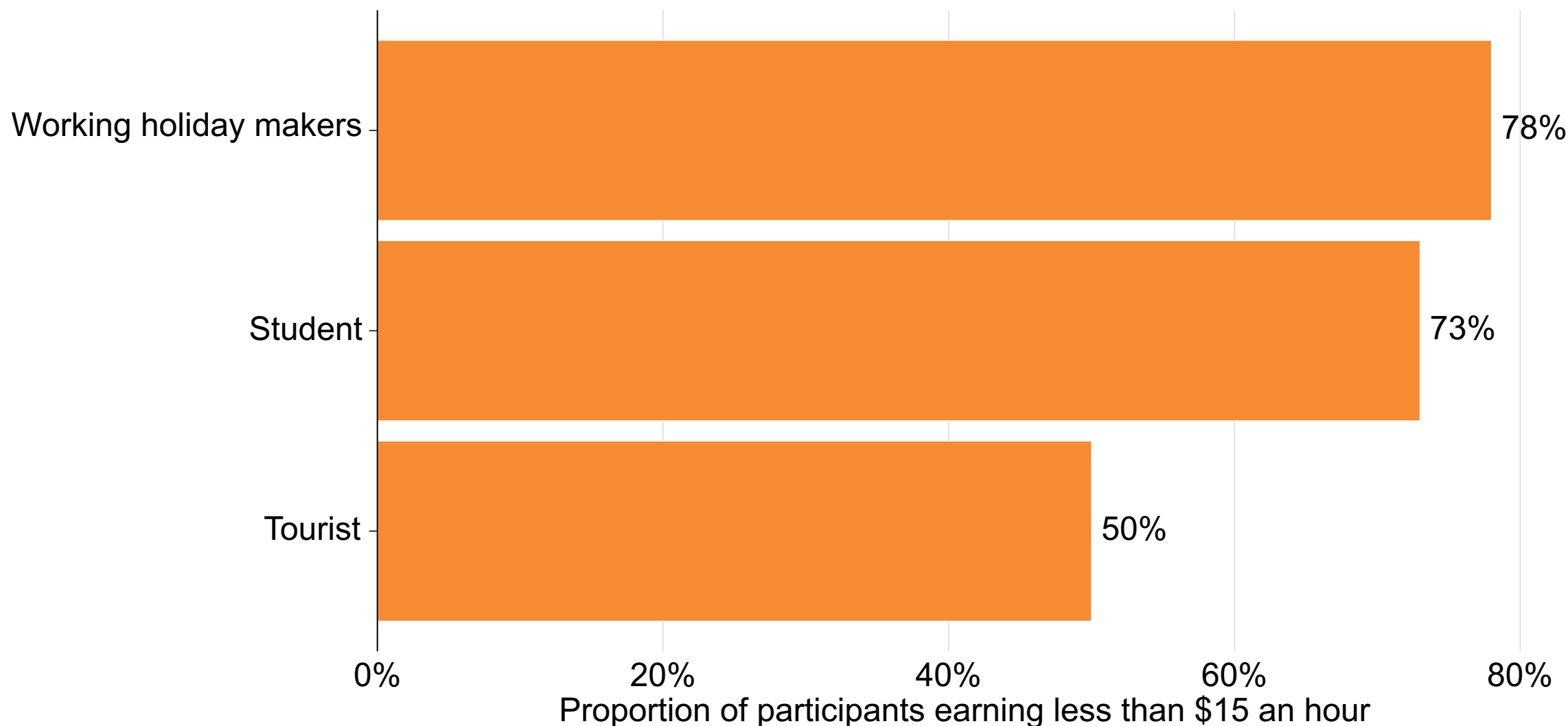
Support migrants to pursue underpayment claims

- Establish a Migrant Workers Centre in each state & boost funding for community legal centres
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Most migrants who are underpaid *know* they are underpaid, but don't act...

Participants earning less than \$15 an hour who knew the minimum wage was \$16 or more

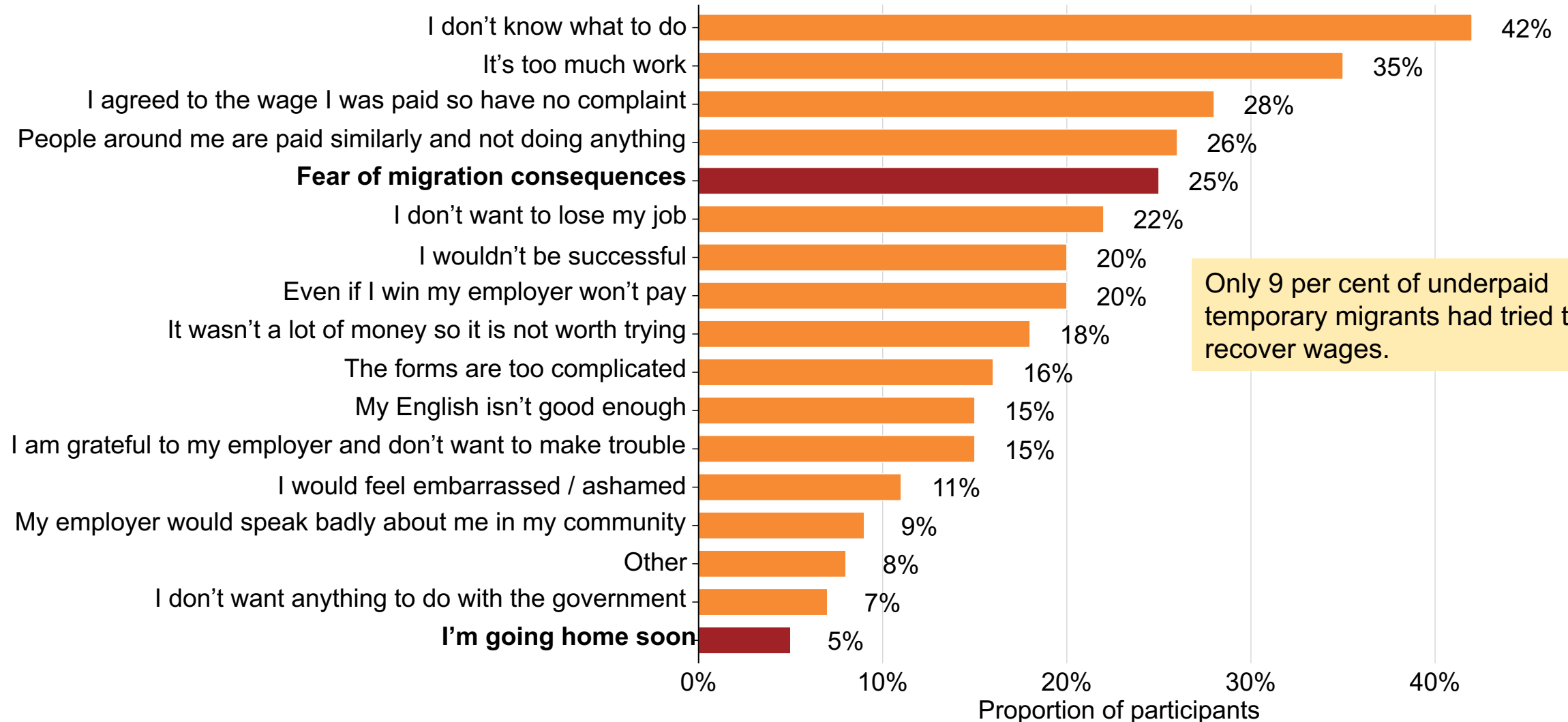


How visa rules should change to make migrants less vulnerable to exploitation

Visa holder	Impact on migrants' bargaining power	Recommendation
Temporary Skills Shortage (subclass 482)	<ul style="list-style-type: none"> • Visa tied to ongoing employment • Sponsorship by employer limits job switching 	<ul style="list-style-type: none"> • Increase TSMIT to \$70,000 • Introduce portability
Working holiday makers (subclass 417/462)	<ul style="list-style-type: none"> • WHMs must prove they did eligible regional 'specified work': 88 days work for 2nd visa, 6 months work for 3rd visa • Extended to healthcare Australia-wide during COVID 	<ul style="list-style-type: none"> • Replace with single 1-year WHM visa (i.e. no 'specified work' requirements for a 2nd and 3rd WHM visas)
Pacific Australia Labour Mobility (PALM)	<ul style="list-style-type: none"> • Visa tied to ongoing employment • Minimal portability 	<ul style="list-style-type: none"> • Introduce worker-initiated portability & other protections
Students (subclass 500)	<ul style="list-style-type: none"> • Limit on work hours during semester: <ul style="list-style-type: none"> • Historically 40 hours a fortnight • Uncapped during COVID • Capped at 48 hours a fortnight from July 	<ul style="list-style-type: none"> • Review work rights as part of broader review of international higher education in Australia • Consider replacing with annual cap on hours worked (i.e. Finland)
Permanent employer sponsorship	<ul style="list-style-type: none"> • TSS visa holders must be with same employer for three years to be eligible for permanent sponsorship 	<ul style="list-style-type: none"> • Change requirement to work 3 years with sponsoring employer to 2 years with any employer • Improved points test to provide an alternative pathway

Fear of migration consequences is one of the main reasons migrants do not try to recover their wages – need to strengthen visa protections for exploited migrants

Percentage of respondents who might or plan to try to recover unpaid wages in future or had not tried and would not try to recover wages



The Assurance Protocol, an agreement between the Department of Home Affairs and the Fair Work Ombudsman, has failed to encourage migrants to report exploitation

The Assurance Protocol

FWO: 'Home Affairs won't cancel your visa if you have breached your work-related visa conditions because of workplace exploitation, as long as:

- you have sought advice or support from us and you're helping us with our inquiries
- there is no other reason to cancel your visa (for example, for national security, character, health or fraud reasons)
- you have committed to following your visa conditions in the future.'

Applies to people on temporary visas with permission to work, e.g: students, TSS, PALM.

FWO will tell Home Affairs not to cancel a person's visa if they are granted the protection.

Good in theory but Assurance Protocol has been ineffective – only used 77 times between 2017 and 2021.

Major weaknesses:

- Not enshrined in law or policy: just a MoU between the agencies that is not available to the public, with the only detail on the FWO and DHA's websites, which is subject to change.
- Not well known / understood within the FWO and among migrant workers. Not trusted by lawyers.
- No clear appeals process: only internal appeal to the Ombudsman
- Only available where FWO has an active investigation: not available where FWO not satisfied it can build a case.

Better legal protections are needed: the Exploited Worker Visa Guarantee should replace the Assurance Protocol; and a Workplace Justice Visa should be offered

Exploited Worker Visa Guarantee

Eligibility: migrant workers whose visa would be cancelled after breaching their visa due to exploitation

Type of exploitation or mistreatment covered: a non-trivial breach of labour law. A Ministerial Direction should specify the list of workplace contraventions that give rise to protection against cancellation. Underpayment exceeds \$2,000.

Action required by the worker: evidence of a meritorious claim that a contravention has occurred and worker is taking action to address it. Demonstrated by: certification by a government enforcement agency; a court; certification by a lawyer. The worker must have reported the contravention to a relevant government authority.

Legal instrument: regulations issued pursuant to s116(2) of the Migration Act

Length: The same duration as the current visa.

Work rights: as per current visa.

Future visas: same visa pathways as the current visa (no prejudice for future visa applications).

Workplace Justice visa

Eligibility: migrant workers whose visa would expire or be cancelled before their claim is resolved, or who are undocumented.

Type of exploitation or mistreatment covered: a non-trivial breach of labour law. A Ministerial Direction should specify the list of workplace contraventions that enable a visa to be issued. Underpayment exceeds \$2,000.

Action required by the worker: evidence of a meritorious claim that a contravention has occurred and worker is taking action to address it. Demonstrated by: certification by a government enforcement agency; a court; certification by a lawyer. The worker must have reported the contravention to a relevant government authority.

Length: ~3-12 months, at DHA's discretion. The worker can get a subsequent Workplace Justice visa. The visa would become invalid if the visa-holder abandons the claim (however they would be permitted to genuinely settle the claim).

Work rights: full work rights, irrespective of their earlier visa.

Conditions: the worker cannot abandon the claim or cease to cooperate with authorities.

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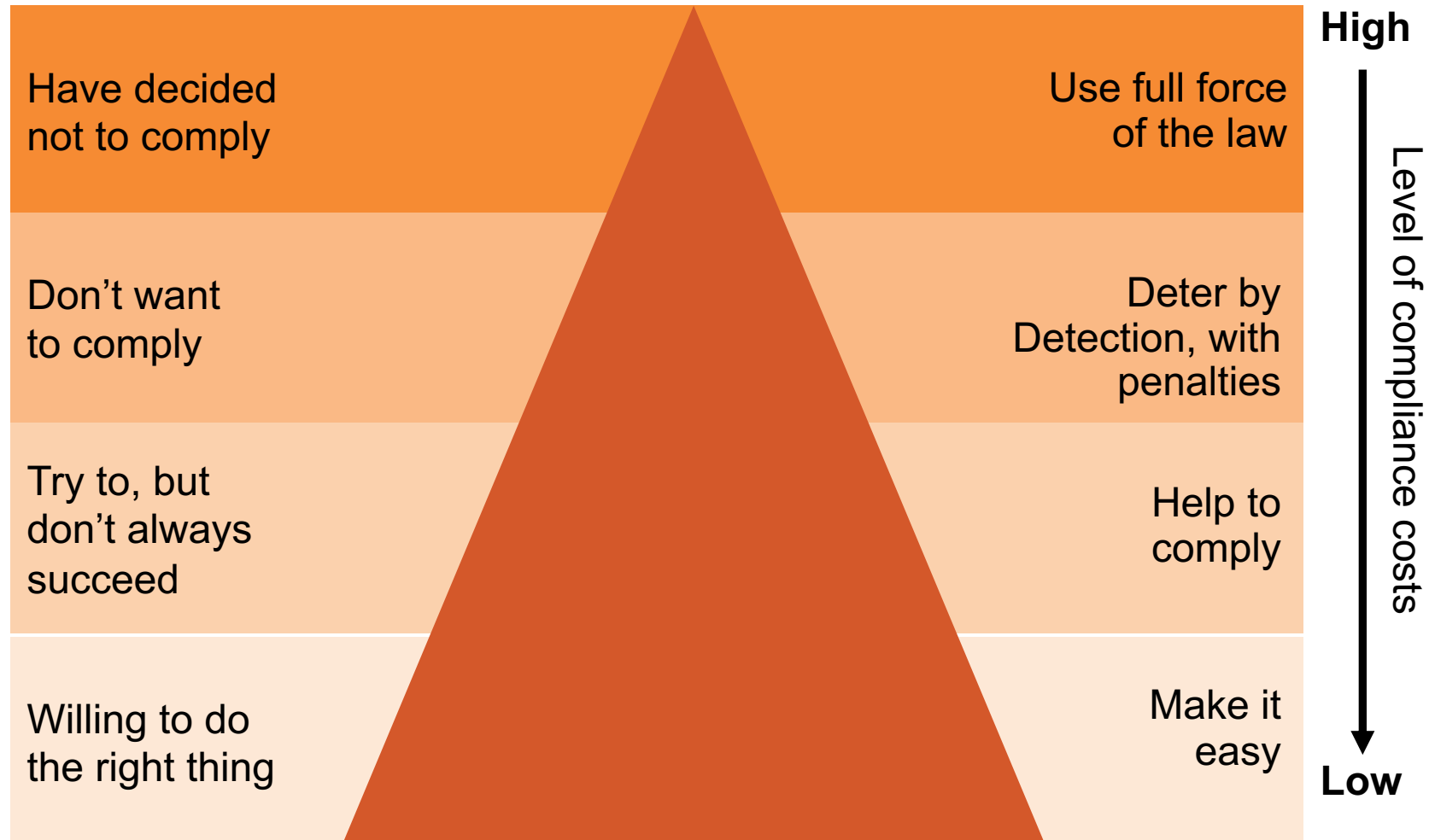
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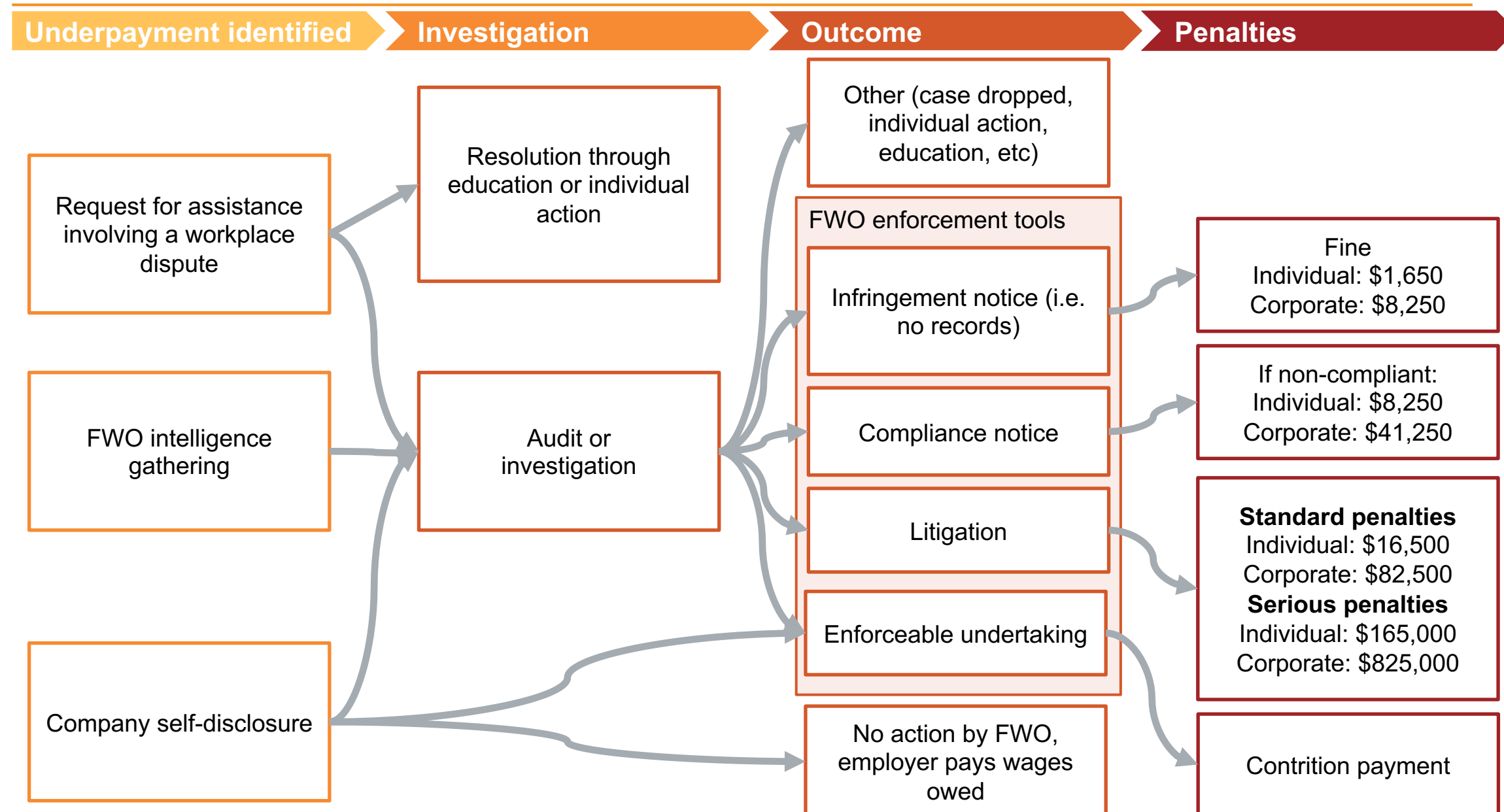
Enforcement of workplace laws should focus on deterring employers that deliberately exploit workers

Attitude to compliance

Compliance strategy

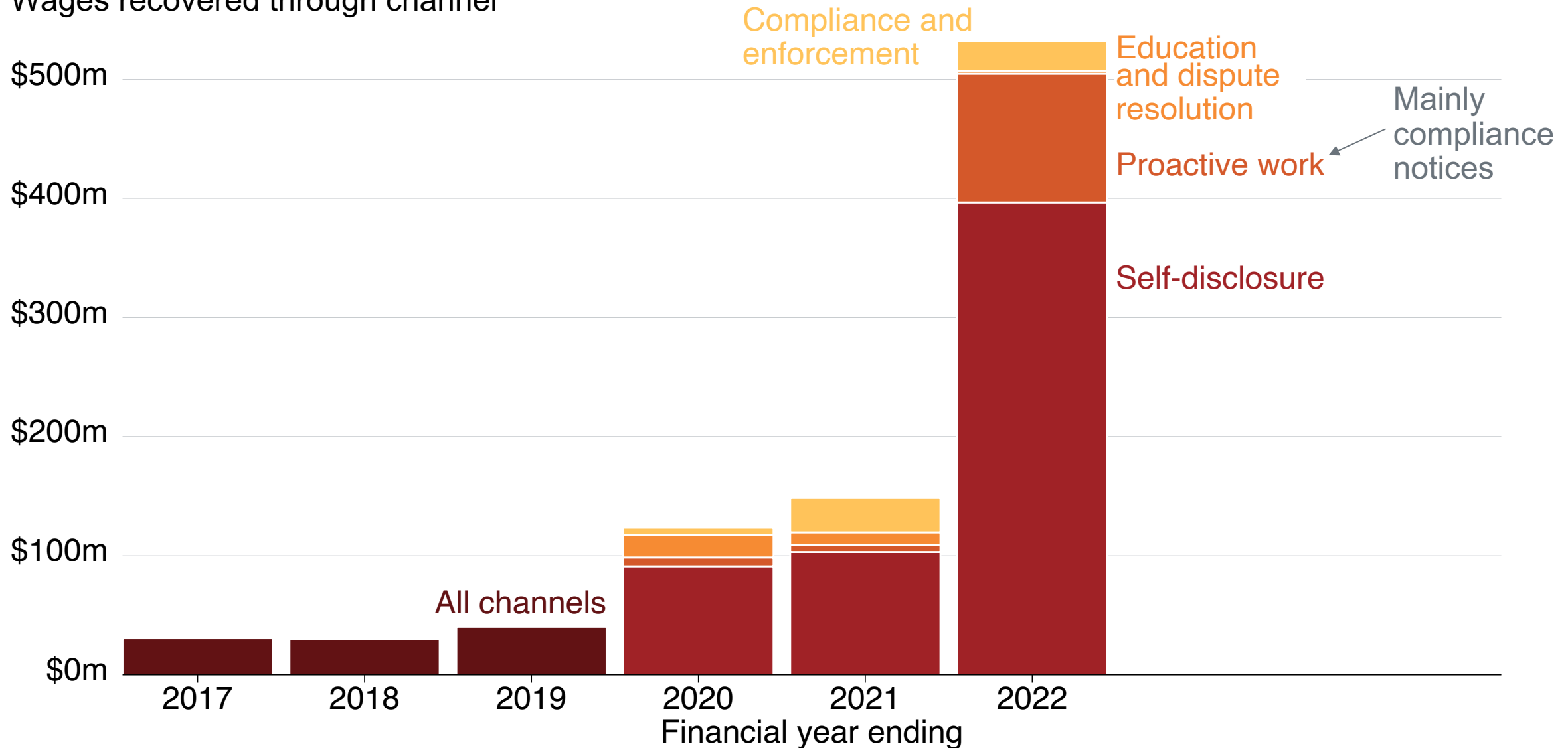


How is underpayment discovered and dealt with by the Ombudsman?



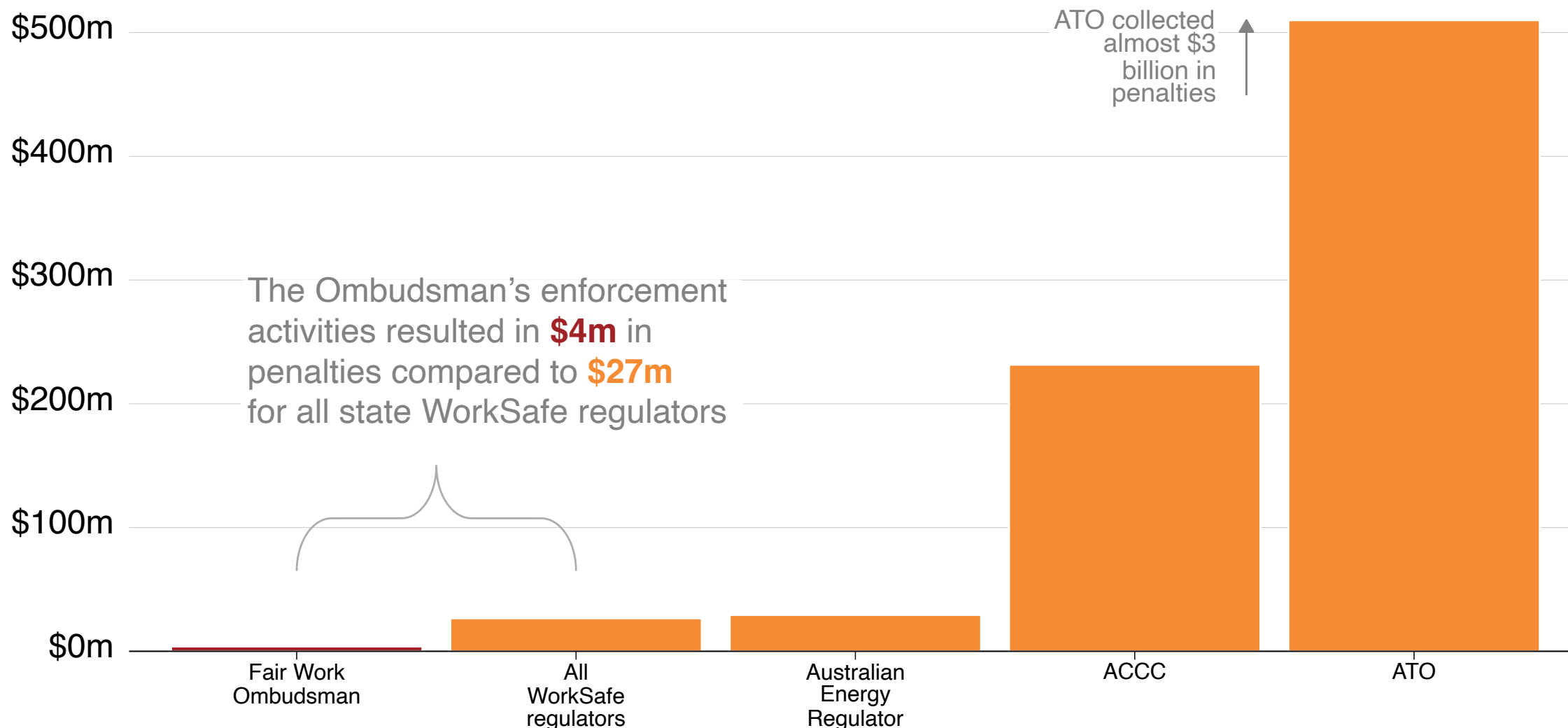
The Ombudsman has increased the amount of wages it recovers, but this is mostly through self-disclosures

Wages recovered through channel



The Ombudsman collects much less in penalties than other regulators

Penalties from fines and court decisions due to regulator enforcement activities, 2021-22

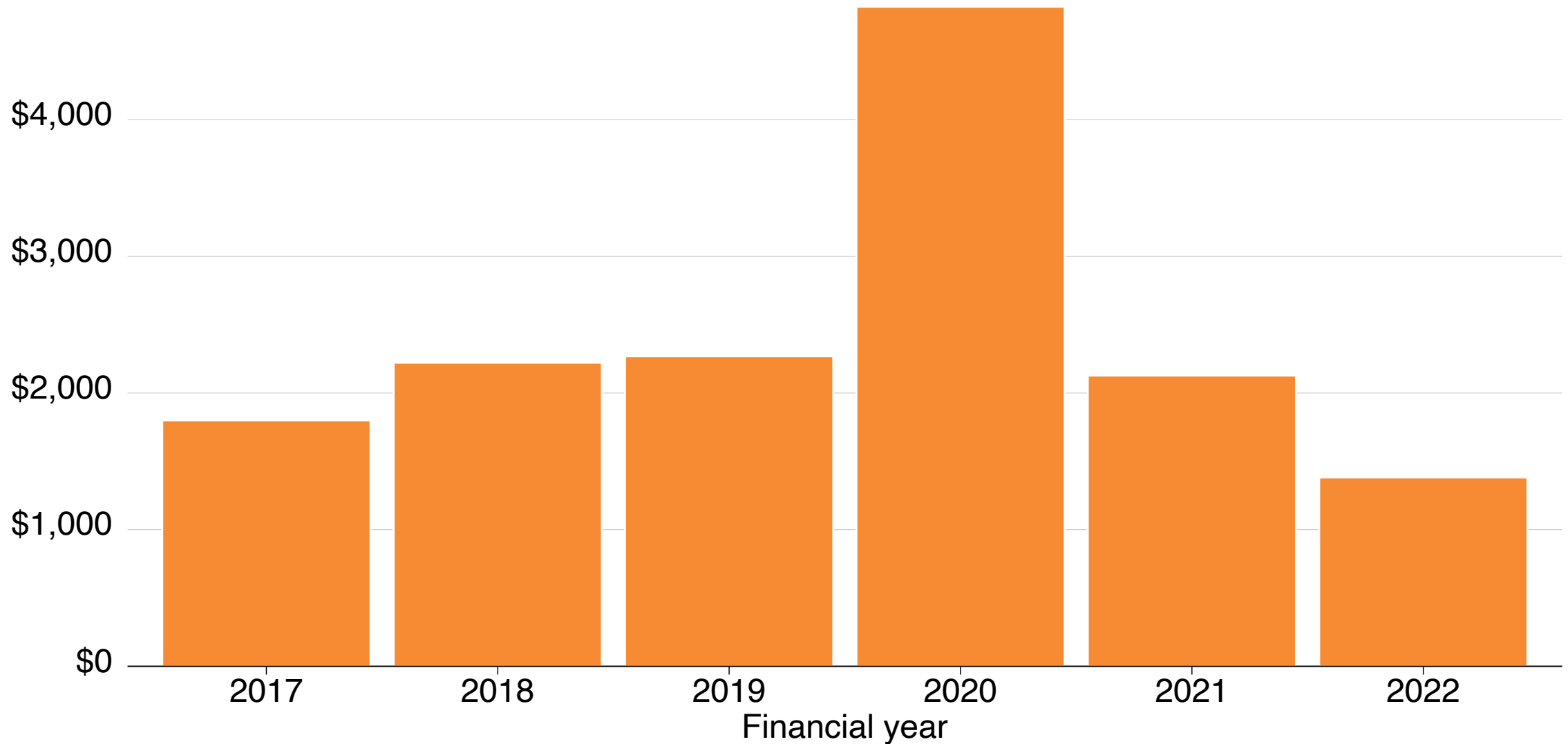


Notes: ACCC, Australian Energy Regulator, WorkSafe Vic, SafeWork NSW only include court-ordered penalties. Contrition payments, court-ordered penalties and infringement notices are included for the Ombudsman. ATO penalties include collected penalties and interest. All WorkSafe regulators includes all states and territories.

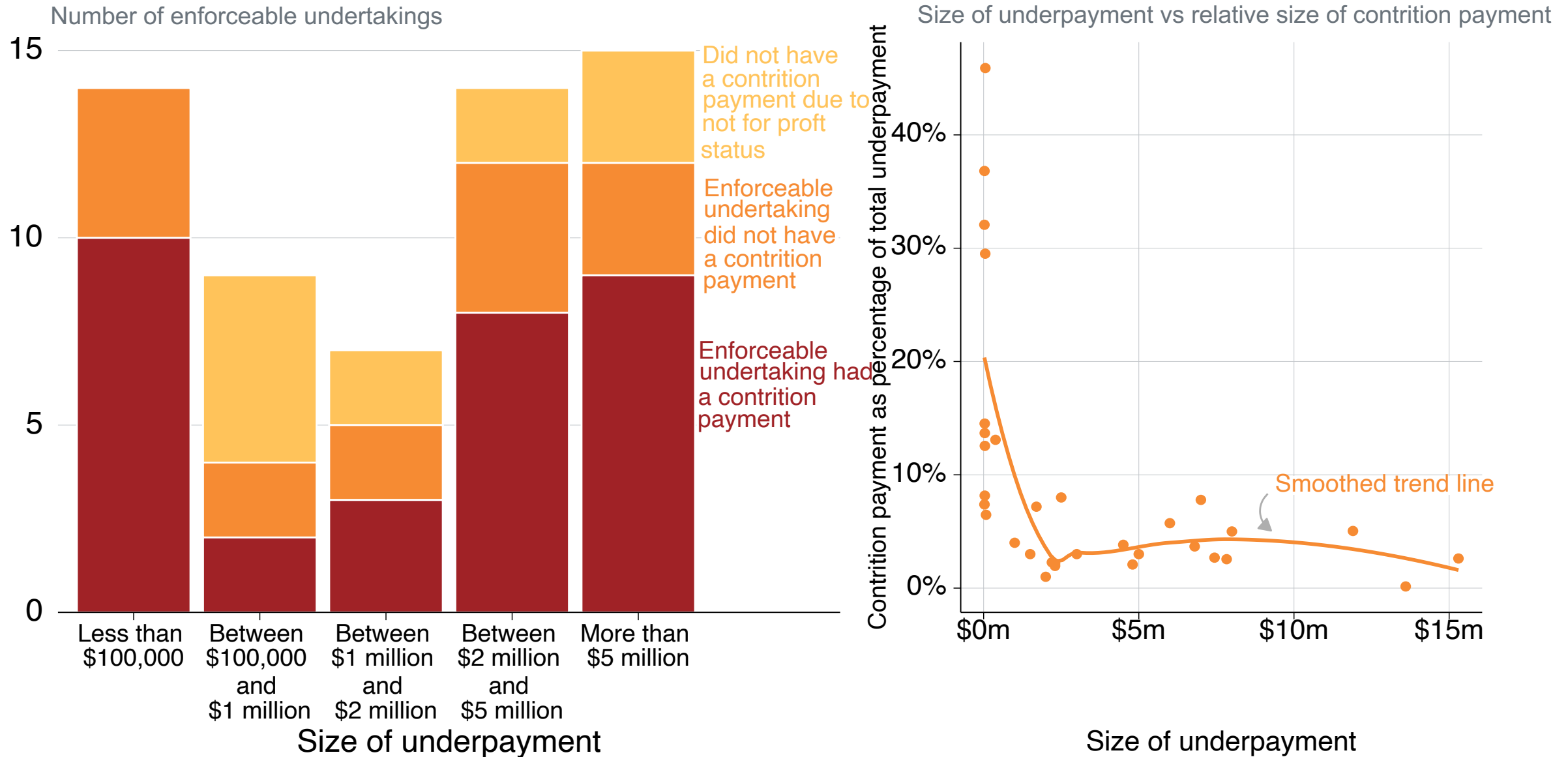
Source: Annual reports.

Ombudsman is focused on small underpayments: wages recovered per worker peaked in 2019-20, but are lower in 2021-22 than they were in 2016-17

Average wages recovered per worker

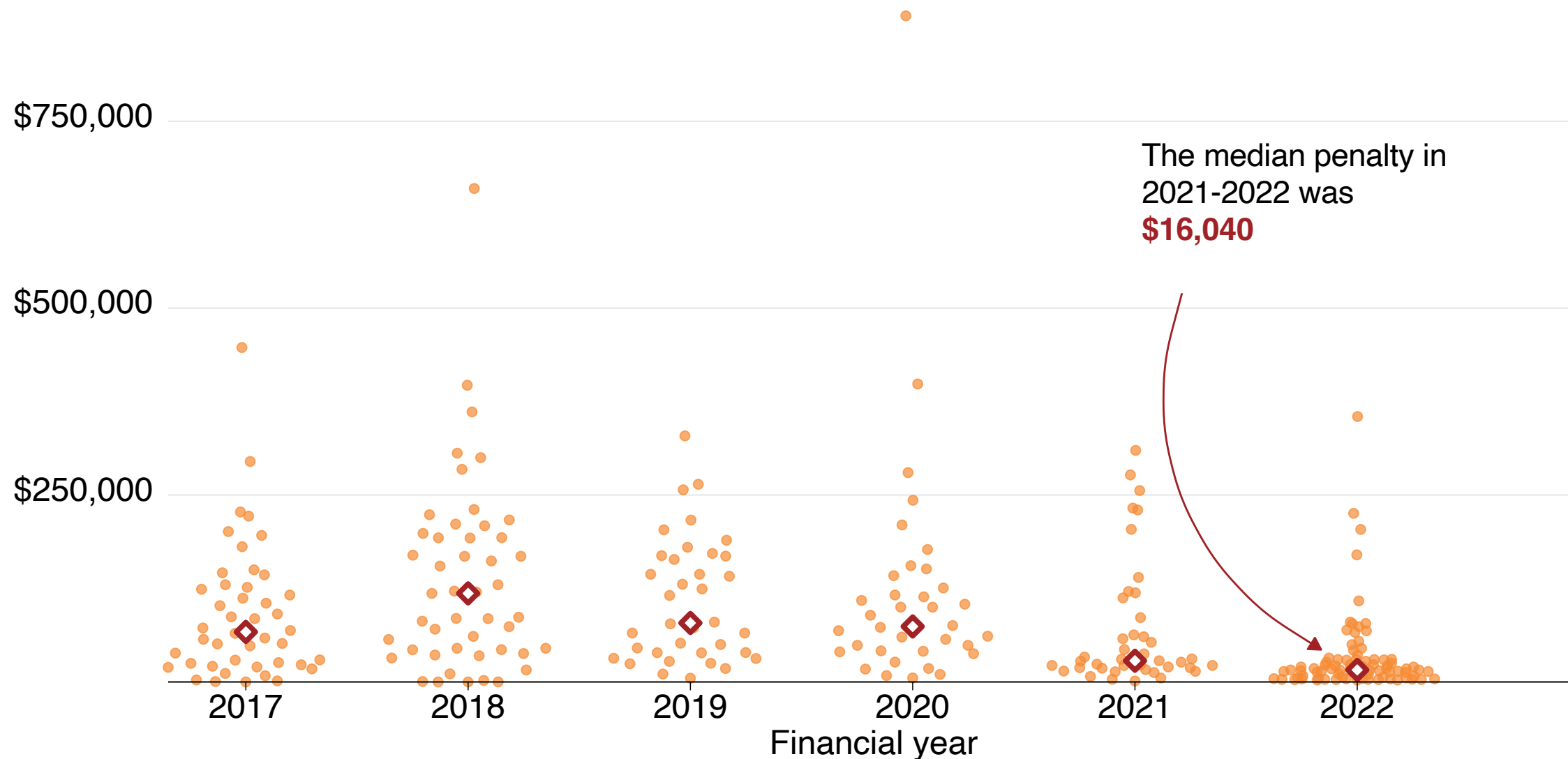


Enforceable undertakings often don't lead to contribution payments, even where underpayments are large



And court-ordered penalties are going down over time

Penalty from FWO's litigation outcomes



The Fair Work Ombudsman has weaker enforcement powers than other regulators

		ACCC	ATO	Fair Work Ombudsman
Information gathering powers		<p>Can demand info by issuing a s155 notice for suspected contraventions of the Competition and Consumer Act</p> <ul style="list-style-type: none"> Penalties: \$27,500 or 2 years in prison for individuals; \$137,500 for corporates 	<p>Can demand information by issuing notices for information, such as verifying information</p> <ul style="list-style-type: none"> Penalties: \$5,500 	<p>Inspectors can request records and documents, as well as request further information on premise (e.g. examine records, interview an individual with their consent)</p> <ul style="list-style-type: none"> Penalties: \$16,500 for individuals; \$82,500 for corporates <p>To coerce an interview, must apply to the AAT for a FWO notice</p> <ul style="list-style-type: none"> Penalties: \$165,000 for individuals; \$825,000 for corporates
Admin penalties:	Record keeping	Failing to provide information ¹ (\$1,650 for individuals; \$8,250 for corporates)	Record-keeping breaches (\$5,500)	Infringement notices issued for record-keeping breaches (\$1,650 for individuals; \$8,250 for corporates)
	Other breaches	<p>Breaches of the Australia Consumer Law (unconscionable conduct, false/misleading conduct)</p> <ul style="list-style-type: none"> \$3,300 for individuals; \$16,500 for corporates, \$165,000 for listed companies) 	<p>Penalties are proportionate to tax shortfall (at ATO discretion)</p> <ul style="list-style-type: none"> Based on behaviour,² range from 25% to 75% of tax shortfall Higher penalties apply for repeat offenders 	<p>No penalties for other breaches of the Fair Work Act (i.e. not for underpayments)</p> <ul style="list-style-type: none"> Instead can require firms to merely redress breach (i.e. underpayment), interest is not paid on back payments <p>Ombudsman can enter into enforceable undertakings, which can include negotiated contrition payments + other remedies. Back payments generally include interest.</p>
Court-ordered penalties:	Civil	<p>Penalties are \$2.5m for individuals and \$50m for corporates or:</p> <ul style="list-style-type: none"> 3x the reasonably attributable benefit 30% of annual turnover 	Orders to pay penalties	<p>More limited penalties</p> <ul style="list-style-type: none"> Contraventions: \$16,500 for individuals and \$82,500 for corporates. Serious contraventions: \$165,000 for individuals and \$825,000 for corporates penalties for serious contraventions. <p>Outstanding wages must be paid back (+ interest)</p>
	Criminal	Criminal penalties apply (10 years in jail and \$550,000 per offence) for cartel conduct.	Up to 10 years imprisonment under the fraud provisions of the criminal code	No criminal penalties

¹ In response to a substantiation notice, which differs from a s155 notice. It is used to support a claim an individual makes. ² Behaviour defined as: failed to take reasonable care (25%); was reckless (50%) and had intentional disregard (75%). Penalties also apply when there is no shortfall (\$5,500 to \$16,500).

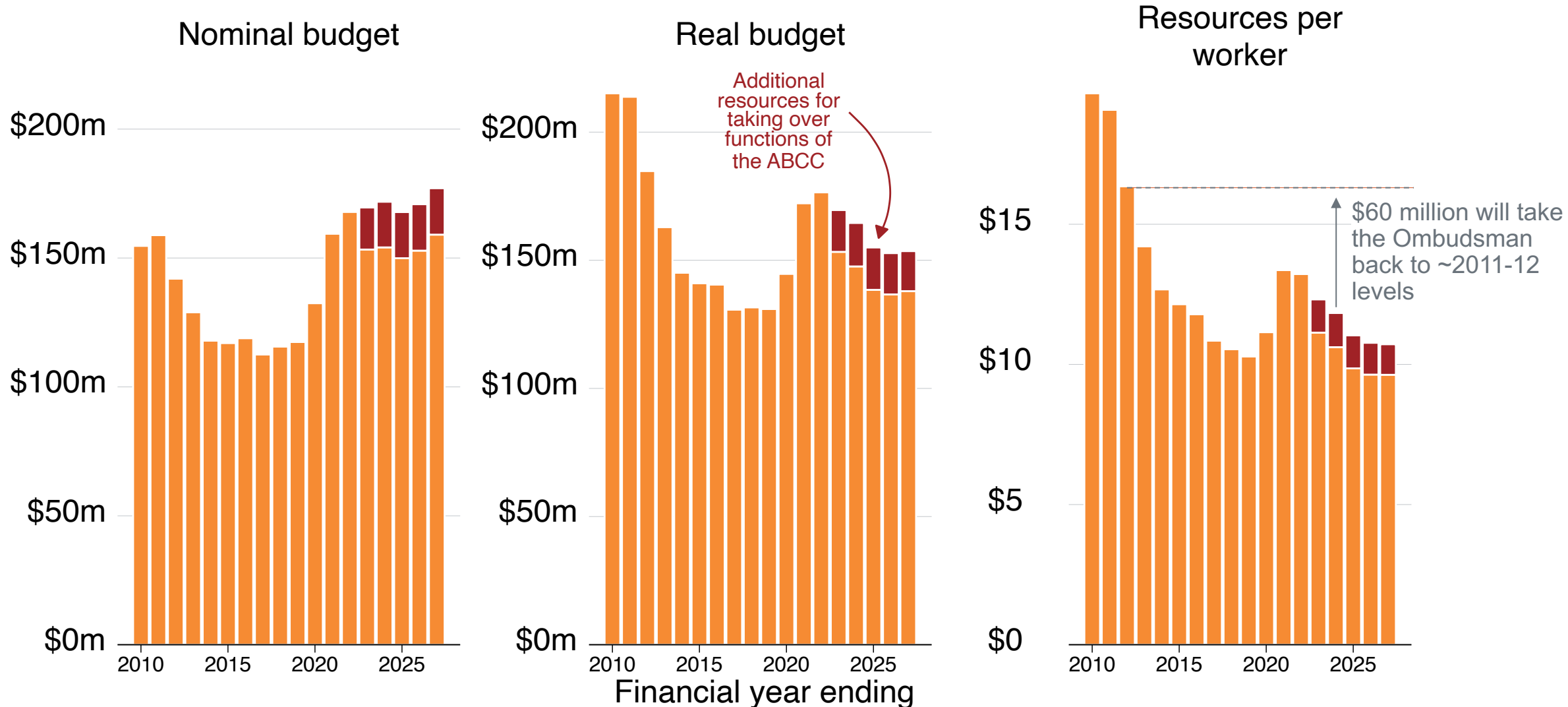
Bring the enforcement powers of the Ombudsman in line with other regulators

Proposed changes		
Information gathering powers		Remove the requirement to apply to the AAT for a FWO notice
Admin penalties:	Record keeping	
	Other breaches	Introduce infringement notices for underpayment and double the size of an infringement notice.
		Require interest to be paid on all compliance notices
Court-ordered penalties:	Civil	Standard breach (no fault element): set the maximum penalty at \$495,000 for individuals and \$2.475m for corporates (three times the current serious contraventions limit) for each breach or 3 times the total underpayment, whichever is higher.
		Reckless and systematic conduct: set the maximum penalty at \$990,000 for individuals and \$4.95m for corporates for each breach or 5 times the total underpayment, whichever is higher.
	Criminal	Set the maximum imprisonment term at 10 years, in line with state laws for cases of deliberate underpayment
		Set the maximum criminal penalty at \$1.98m for individuals and \$9.9m for corporates for each breach or 10 times the total underpayment, whichever is higher.

The government is currently consulting on changes to civil and criminal penalties in the Fair Work Act

The Ombudsman's funding per worker is much lower today than when it was established

Total appropriations budgeted for the Fair Work Ombudsman



Notes: Total appropriations for Fair Work Ombudsman (Outcome 1 following the inclusion of the Registered Organisations Commission in 2017-18). Real calculated using a composite index of WPI and CPI reflecting the Ombudsman's wages and other expenses. Forward projections for the number of employees use a one per cent assumption. RBA projections are used for WPI and CPI. 2027 assumes the 2026 level of funding for the ABCC. Sources: BP4 (2009-2023), ABS (2022), PBS (2021).

A review, similar to the capability review of APRA, should inform the strategy, structure, skills and culture of the new Authority

The importance of the financial regulators to the economy demands that they be fit for purpose. Regular, independent reviews will assist in meeting that goal.

- Hayne Royal Commission

*There are no simple solutions to raising APRA's capabilities. It operates in a **complex, uncertain and dynamic environment**. It requires **highly skilled staff** with good judgment and courage. They need to be supported by **strong leadership and technology**. APRA also needs to use its **independence, powers and authority** to greater effect to shape its future.*

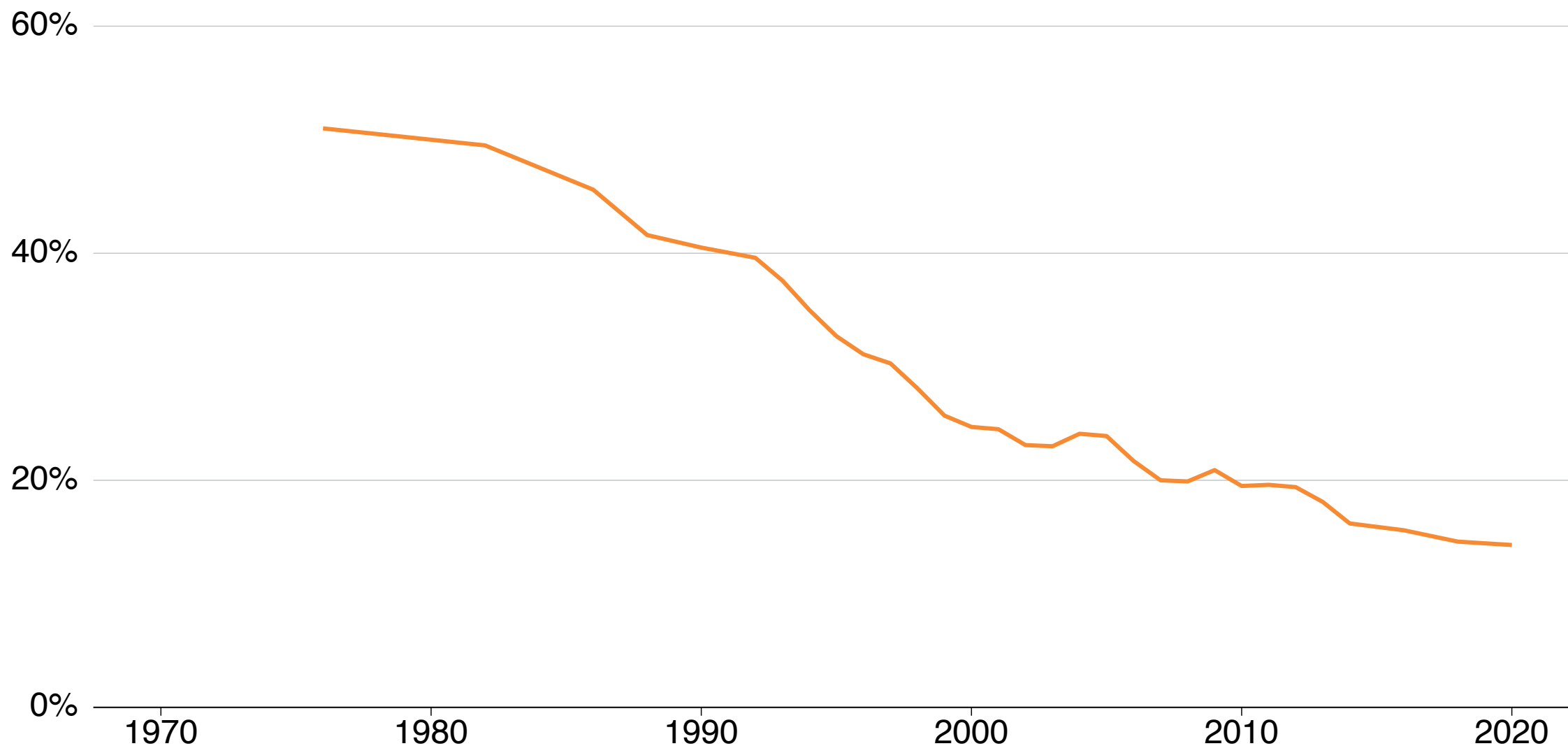
- APRA Capability Review (2019)

Figure A2.1: The capability framework



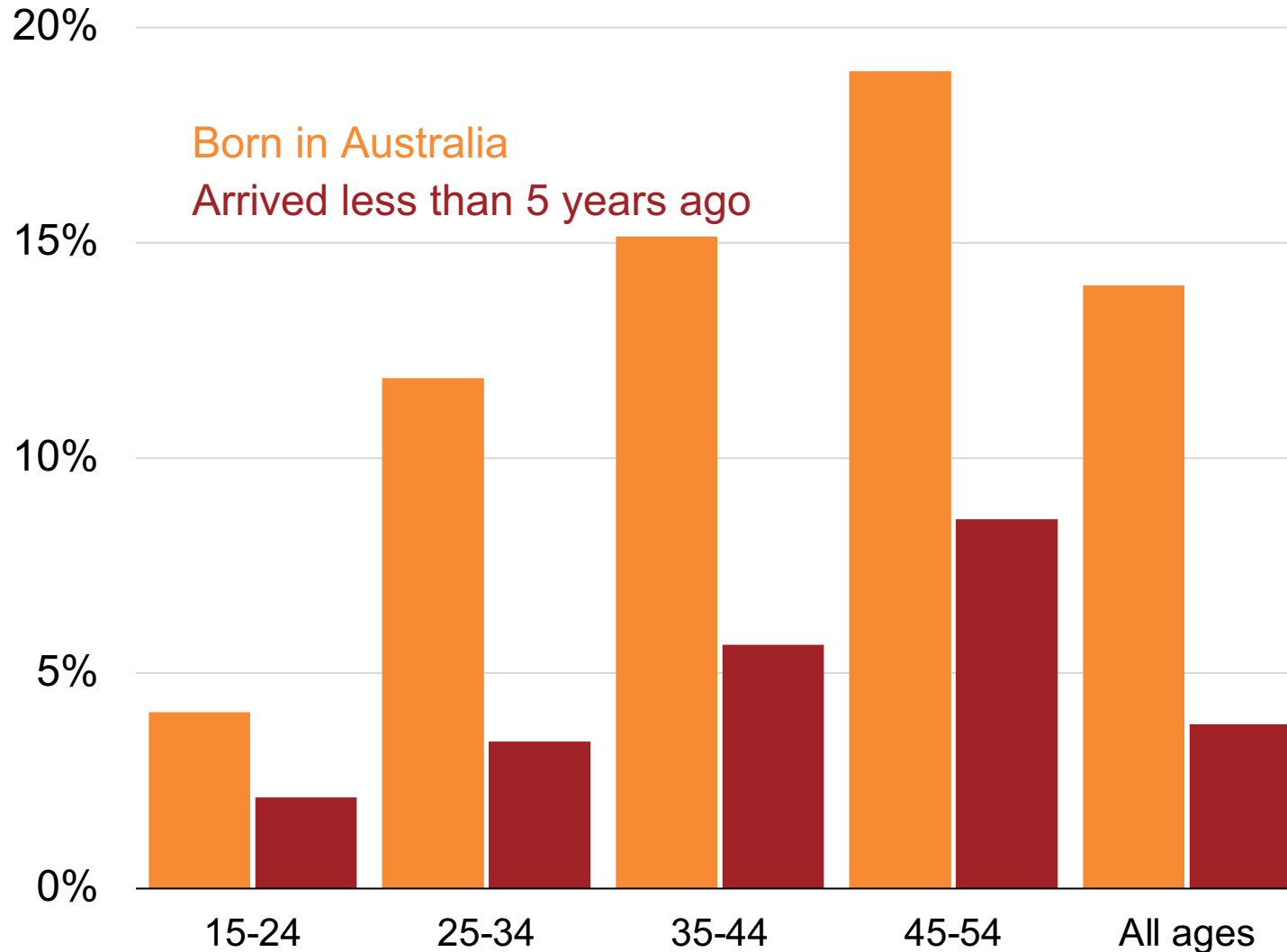
Unions play a smaller role in enforcing workers' rights than they have historically

Union members as a percentage of employees



A greater role for unions would reduce exploitation of migrants and long-term residents alike, but has much broader implications

Trade union membership as share of employees, by age group, August 2022



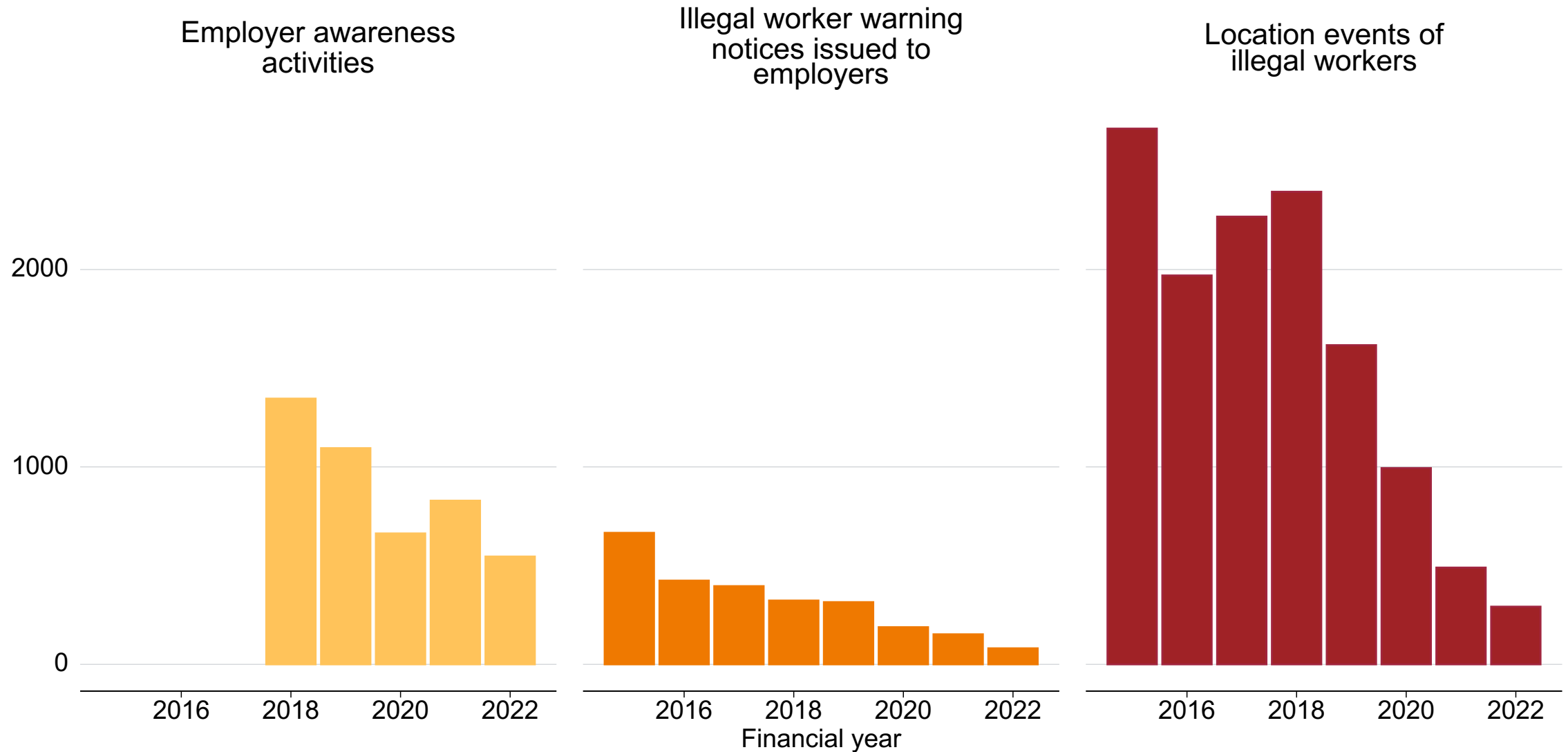
- Being a union member reduces the risk of exploitation:
 - Our analysis shows non-union members are 65% more likely* to be underpaid than union members
 - Union members are more familiar with workplace terms
- Increasing union membership would probably reduce exploitation.
- But raising rates of union membership, or strengthening union powers like right of entry, has much broader implication (for wage setting, dynamism etc.)

Notes: Trade union member in man job. Age group 55-64 not shown due to small sample size. * the effect of union membership on underpayment is likely overstated because union members are likely to have a stronger desire to protect their workplace rights (which is not controlled for), which would still occur had they not had an opportunity to join a union.

Source: ABS Characteristics of Employment 2022

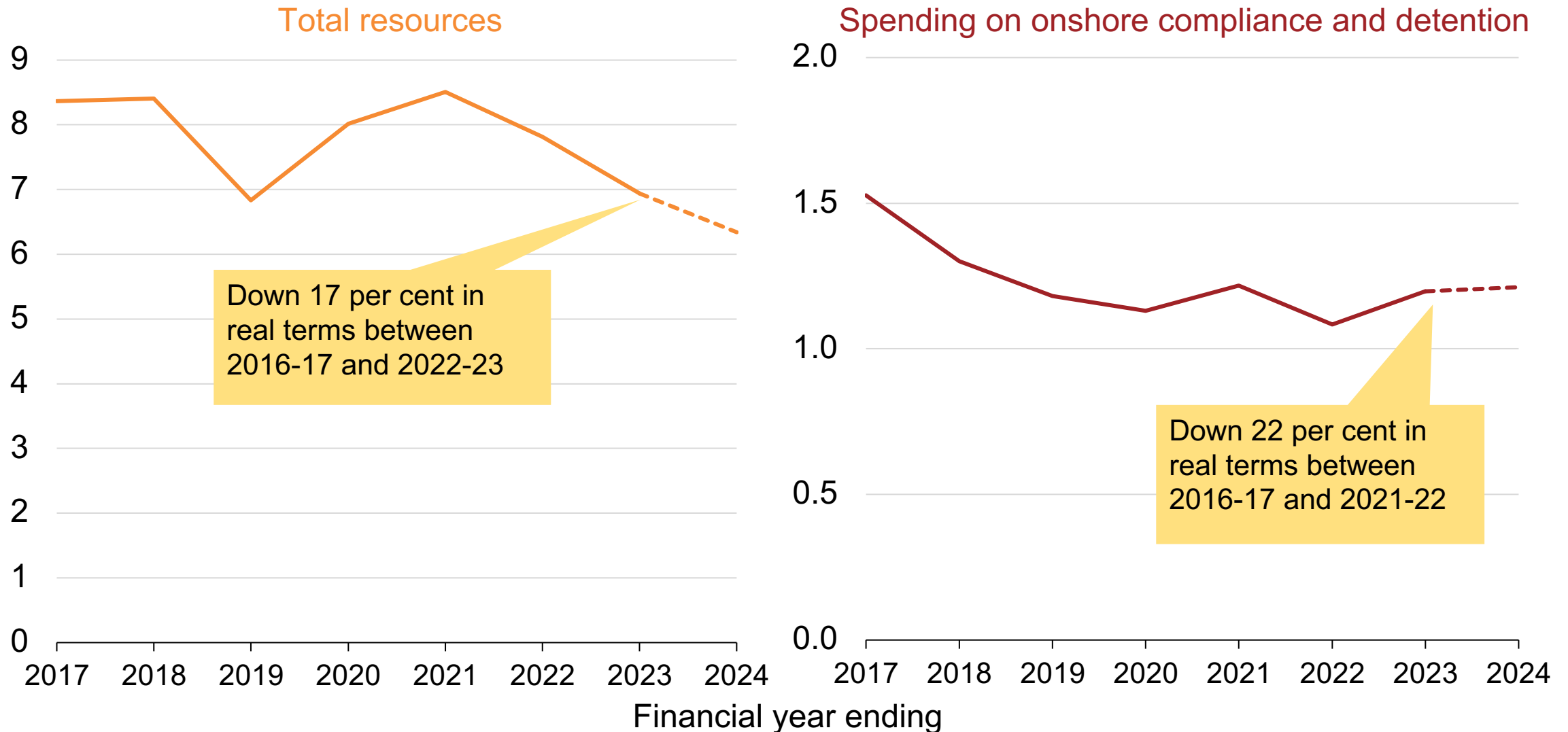
The Australian Border Force ABF now undertakes fewer enforcement activities relating to migrant workers and sponsoring employers

Number of illegal work compliance activities by the ABF



Department of Home Affairs resourcing has fallen, and less is spent on onshore compliance activities

Department of Home Affairs resources and spending, \$billion, real



How the Australian Border Force should step up enforcement of migrant worker exploitation

The ABF needs to **step up enforcement** of existing laws:

- Step up surveillance of businesses that employ sponsored workers (conduct more investigations of suspect employers to ensure sponsoring employers are meeting their obligations)
- Shift its focus from migrants to employers
- Pursue criminal cases against employers who knowingly employ migrants in breach of their visa conditions.
- Enforce the laws covering sponsoring employers more strongly
- Invest more in data analytics and data sharing with other agencies to better track rogue employers and directors
- Temporary visa holders with work rights should be issued aTFN upon arrival in Australia, as recommended in recent the Review of the Migration System

The ABF also needs **more powers and resources**:

- Establish new offences in the Migration Act that make it illegal to coerce, pressure, or influence migrant workers to work in breach of their visa conditions, or to use visa conditions to coerce a worker.
- The ABF should have the power to prohibit sanctioned employers from employing additional migrant workers
- \$10 million more funding for the Department

Aggressive enforcement action may further scare migrants from reporting exploitation if it is not accompanied by **stronger protections for exploited workers**:

- Any visa breach due to the employer's exploitation should not result in the cancellation of the visa on the basis of that breach
- + the Exploited Worker Visa Guarantee

Close loopholes such as illegal phoenix activity and sham contracting and better regulate labour hire providers

Problem	Current situation	Recommendations
Illegal phoenix activity	<ul style="list-style-type: none">• Migrant workers not covered by Fair Entitlements Guarantee program so do not receive entitlements if a business phoenixes	<ul style="list-style-type: none">• Extend the Fair Entitlements Guarantee program• Review the limitations on data sharing among Phoenix Taskforce• Increase funding for ASIC and the ATO to improve data analytics capabilities
Sham contracting	<ul style="list-style-type: none">• Migrant workers are liable to be deliberately misclassified as a contractor as they are more likely to have minimal knowledge of Australia's workplace rights and weak bargaining power	<ul style="list-style-type: none">• Change the 'recklessness' defence to a test of 'reasonableness' in the Fair Work Act to lower the bar for a successful prosecution.• Consider increasing penalties• Don't change independent contractor test
Labour hire	<ul style="list-style-type: none">• Extensive evidence of migrant exploitation occurring in the labour hire industry• Migrants more likely to be employed by a labour hire firm and work in industries where labour hire exploitation is more prevalent: horticulture, meat processing, security and cleaning industries.	<ul style="list-style-type: none">• Create a National Labour Hire Registration Scheme to identify and punish labour hire providers and users that mistreat their workers

Short-changed: how to stop the exploitation of migrant workers

The exploitation of migrant workers appears widespread:

- Up to 16% of recent migrants paid less than the national minimum wage (~22% before COVID)
- Migrants are twice as likely to be underpaid as long-term residents

Reform visa rules to make migrants less vulnerable to exploitation

- **Temp sponsored workers:** lift wage threshold to \$70k; introduce portability; better transition to PR
- **Working holiday makers:** replace regional req's for 2nd & 3rd visa with a single 1-year WHM visa
- **International students:** evaluate work rights via review international higher education in Australia
- **Strengthen visa protections for exploited migrants** that pursue claims for unpaid wages

Strengthen the enforcement regime to deter bad-faith employers

- **Reform the Fair Work Ombudsman**
 - **Powers:** issue infringement notices for underpayment; boost maximum court penalties
 - **Resources:** boost funding by \$60 million per year
 - **Rename:** rename the Ombudsman the Workplace Rights Authority
 - **Culture:** conduct independent capability review of Ombudsman to inform new Authority
- **Better enforce migration laws to punish employers of migrants working in breach of visa rules**
- **Close loopholes such as illegal phoenix activity; sham contracting & better regulate labour hire**

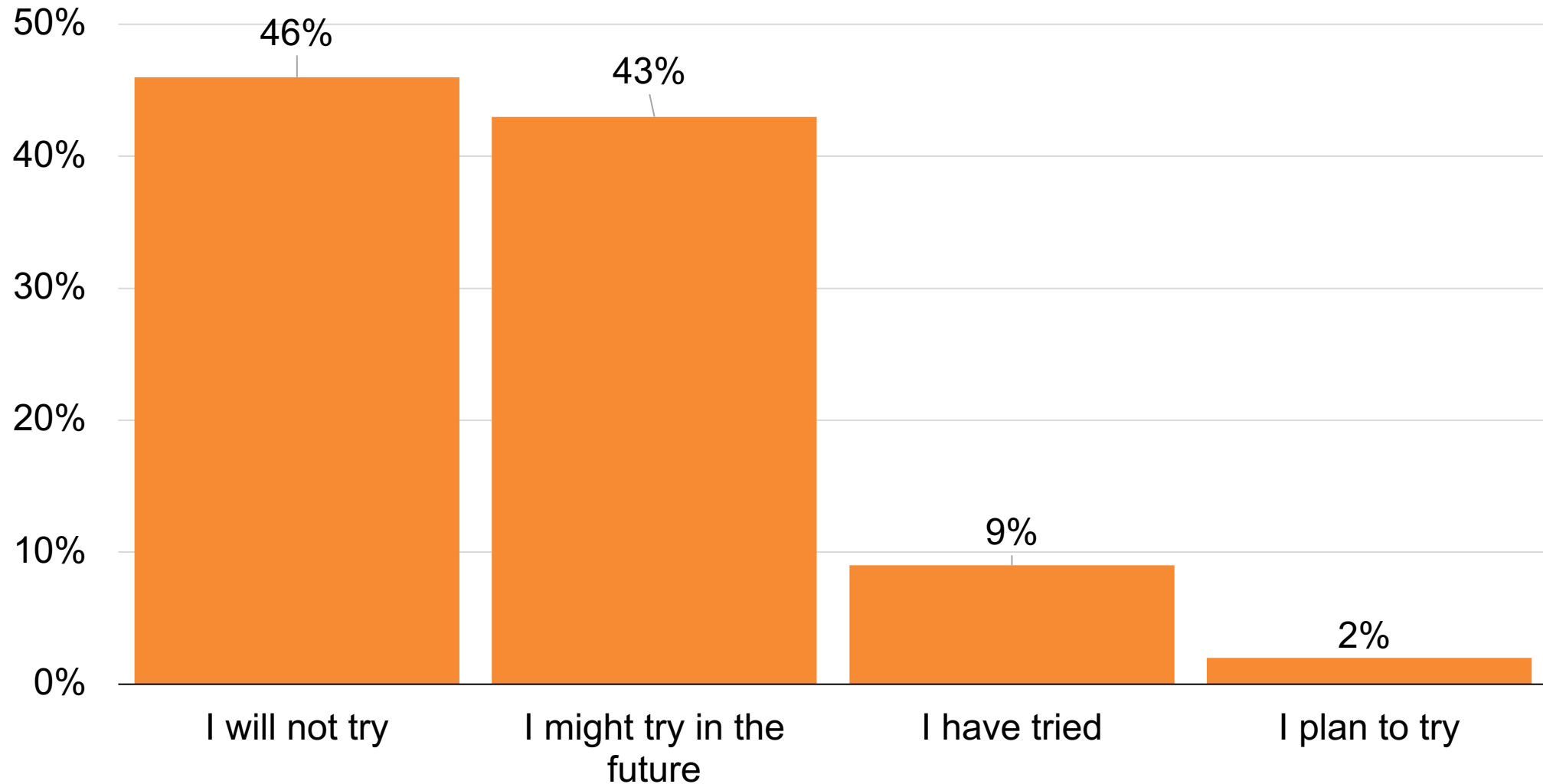
Support migrants to pursue underpayment claims

- Establish a Migrant Workers Centre in each state & boost funding for community legal centres
- Reform the small claims court process & extend the Fair Entitlement Guarantee to include migrants

Our recommendations are fully funded via levy on temporary visas & larger fines on employers

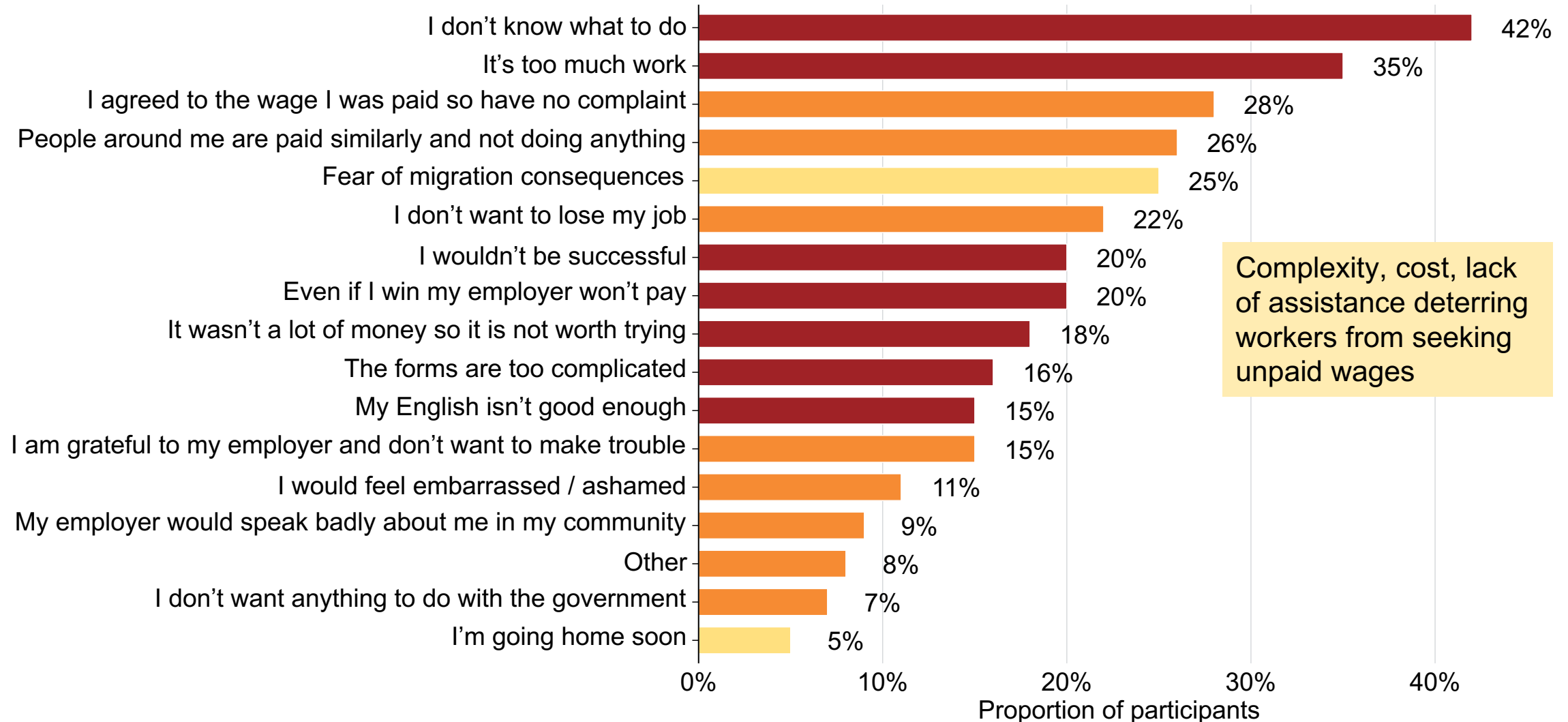
Very few underpaid migrant workers have tried or plan to try and recover their unpaid wages

Share of migrant workers in survey who stated they had been underpaid, whether they will try and recoup wages



Migrants cite a range of reasons for not seeking to recover their wages – more assistance will help migrants overcome these barriers

Percentage of respondents who might or plan to try to recover unpaid wages in future or had not tried and would not try to recover wages



How to better support migrants to pursue underpayment claims

- **Boost supports to help exploited migrants recover unpaid wages**
 - Establish a Migrant Workers Centre in each state
 - Increase funding for community legal centres
 - Devote some extra funding for the new Workplace Rights Authority to migrant worker support
- **Improve migrants' understanding of workplace rights:**
 - Increase the number of points the Department of Home Affairs sends migrants with work rights information about workplace laws
 - A 'Real Fair Work Information Statement' that outlines working conditions
- **Explore creating a new specialised workplace court or tribunal** as part of the review of the small claims procedure that is being undertaken in 2023
- **Make further changes to the small claims process**, such as by:
 - Allowing virtual hearings for all cases; and
 - Allowing workers that have been underpaid by the same employer to file group complaints.
- **Expand the Fair Entitlement Guarantee to include migrant workers**

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**Our recommendations are fully funded by a \$30 a year levy on temporary visas
higher revenue from larger penalties on employers that underpay workers**

New spending	Amount per year (\$millions)
Funding for the new Workplace Rights Authority	60
Funding for the Department of Home Affairs to better enforce migration laws	10
More funding for community legal centres	7
Migrant workers centre in each state	10
Expand Fair Entitlements Guarantee	13
Workplace Justice visa	10
More funding for Phoenix Taskforce	5
Total	115

New revenue source	Amount per year (\$millions)
Higher contrition payments, court penalties and fines	70+
A \$30 a year levy on temporary visas with work rights	45
Total	115

Notes: 2023-24 dollars. Funding for the Workplace Rights Authority returns funding to what the Fair Work Ombudsman had in 2012-13 per work in real terms in 2023-24 (calculated by inflating Fair Work Ombudsman appropriations by a weighted average of the CPI and WPI) (\$55 million) plus an extra \$5 million to provide more assistance to migrant workers claiming unpaid wages. The Fair Entitlements Guarantee spending estimate is a net figure (i.e. accounting for receivables from liquidated companies). For the 'preventing exploitation levy' costing, PALM visa grants estimated to be 20,000 per year.

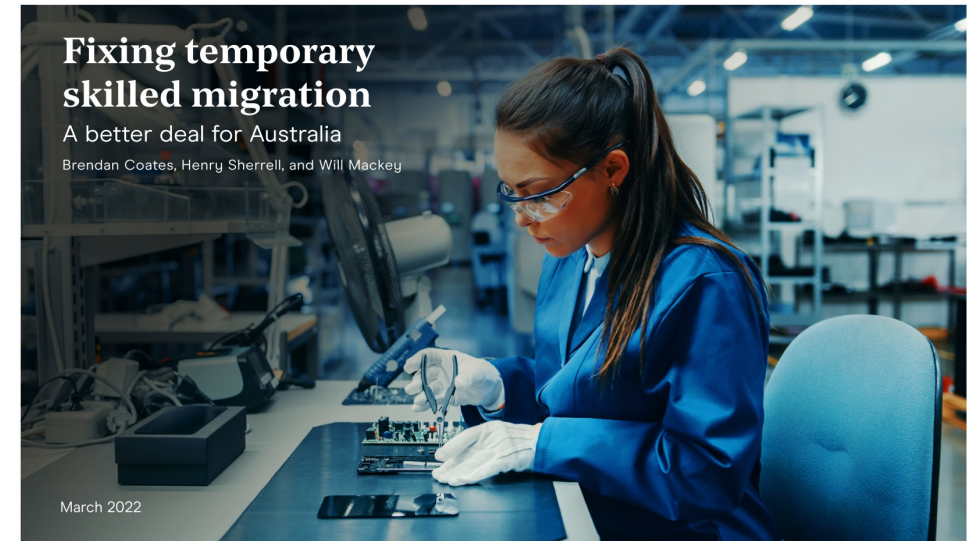
Source: Grattan analysis

A \$30 a year levy on temporary visas with work rights would raise visa fees by between 1% and 11%

Visa	Number of visas granted in 2018-19	Visa fee	Visa fee plus levy	Change in visa fee
Pacific Australia Labour Mobility (PALM) visa	n/a	\$325	\$360	11%
Working Holiday visa and Work and Holiday visa	209,036	\$635	\$665	5%
International student visa	394,918	\$710	\$785	11%
Temporary Graduate visa	63,994	\$1,890	\$1,950	3%
Temporary Skill Shortage visa – short-term	33,333	\$1,455	\$1,515	4%
Temporary Skill Shortage visa – medium-term	45,647	\$3,025	\$3,115	3%
Temporary Skill Shortage visa – labour agreement	2,995	\$3,025	\$3,115	3%

Notes: Visa fees include the increases to fees that start on 1 July 2023. Visa grants numbers include primary and secondary visas (excludes visas granted to school students). For the PALM visa, employers pay \$325 plus other costs for health checks and police certificates and a contribution towards flights, but recoup most of the costs from workers. The average levy paid for each visa class is calculated by assuming an average visa length within each visa class. For example, the average student visa length is assumed to be 2.5 years. For Temporary Skill Shortage visas, the visa fee is what is paid by the applicant (excludes employer nomination and application fees and the Skilling Australians Fund levy). The short-term stream includes standard business sponsorship visas. Source: Department of Home Affairs; Grattan analysis

For more...



Migrants in the Australian workforce

A guidebook for policy makers

Will Mackey, Brendan Coates, and Henry Sherrell

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Submission to the review of Australia's migration system

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