

Opening Statement – Inquiry into the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

12 April 2017

Today, Fair Work Ombudsman, Natalie James, gave evidence before the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017. Read Natalie's opening statement below.

Today I am here to speak about the plight of vulnerable workers and the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017. It is an issue we have spent some time covering at Senate Estimates, and before the Education and Employment References Committee.

The 2015 Inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders shone a light on the exploitation of vulnerable visa workers.

- The inquiry heard many stories of shocking worker exploitation, the sort of stories with which, sadly, the Fair Work Ombudsman was very familiar.
- The Fair Work Ombudsman appeared four times before that Inquiry.
- I spoke about the Fair Work Ombudsman's work in focussing on migrant workers, who represent a small but very vulnerable cohort of workers in our labour market.
- I also spoke about the need to consider the broader settings in which this conduct was occurring; the current workplace framework, its penalties and our regulatory powers, as well as other regulatory frameworks – Corporations, Immigration and Tax.

This Bill contains a number of measures that would adjust the settings in the Fair Work Act. The measures draw on the References Committee's report on Australia's temporary work visa programs, as well as the Fair Work Ombudsman's work in this area, especially our inquiry into worker exploitation throughout the 7-Eleven network.

The Fair Work Ombudsman supports the measures. I consider they would significantly enhance our capacity to take effective action in the most serious and deliberate cases of worker exploitation.

These measures would help us to achieve better outcomes for the vulnerable employees who feature in the stories we have all heard over the last two years:

- stories of migrant workers being paid \$14; \$12 and sometimes even less than \$10 an hour, well below the \$17.70 federal minimum wage;
- stories, frankly, that still shock me on occasion because of the calculated and malevolent motivations behind the appalling treatment that some migrant workers face in our country;
- stories about vulnerable workers being forced to withdraw cash from ATMs and hand it to their boss under threat of having their visa cancelled; and
- stories of young people being forced to accept payment in pizza and soft drink rather than the money they are entitled to.

These cases reflect badly on our country and on the majority of employers who are trying to do the right thing. Employers who do the right thing despite the pressure of undercutting that comes from operators paying black-market wages, with little thought for the damage they cause to their victims or our national reputation.

The Fair Work Ombudsman has had many successes in taking action to address this conduct; pursuing unscrupulous operators to the full extent of the law; pushing the boundaries of the law; and often securing close to the maximum penalties available under the current framework.

However, the stories continue to emerge. For every one we take to court there are others we cannot take action against and still others we do not even know about because people are too scared to report them to us.

My Inspectors doggedly pursue operators that engage in a range of tactics calculated to evade our action:

- they liquidate their company and set up a new business;

- they don't bother keeping records, or worse, they falsify them to make it difficult to verify what hours have been worked and what workers have been paid;
- they engage in insidious 'cash back' schemes;
- they target vulnerable workers who are less aware of their rights and less likely to report problems; and
- they threaten workers with their visa or their job.

Despite our enforcement outcomes, we have been limited in our capacity to disrupt the most deliberate and systemic conduct, or to reverse the apparent culture of non-compliance in high risk industries and sectors.

While the system is fit-for-purpose to address accidental or negligent non-compliance, it has proven not to be fit-for-purpose when it comes to addressing the deliberate and systemic unlawfulness that some unscrupulous operators adopt as a business model.

These operators set up their business model on the basis that a successful investigation or a court imposed penalty is simply a calculated risk or the cost of doing business. They consider the likelihood of being caught or the quantum of the penalties to be so low, that it is worth exploiting their workforce. Our submission contains examples where the Court-imposed penalty has clearly been far less than the likely value of underpayments to workers.

This is not all or even most employers. But it is a pernicious and persistent minority. A minority that is distorting our labour markets and tarnishing our reputation as a fair and decent place to work.

To put it simply, exploitation cannot be stamped out if the settings remain the same. If something doesn't change, the script will not change and we will continue to see these stories on the front page of our newspapers.

No one single measure will fix this issue overnight, but the package of measures contained in this Bill will go some way to giving the Fair Work Ombudsman the tools to combat the most serious worker exploitation.

It will ensure my Inspectors are taken seriously. That they are not ignored. And if they are, there will be consequences that make these operators think twice before continuing to systematically and deliberately underpay vulnerable workers.

Thank you for the opportunity to be here today.

Natalie James, Fair Work Ombudsman

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