

Statement of Findings – Baiada Group

18 June 2015

The Fair Work Ombudsman today released the findings of its Inquiry into allegations levelled at the Baiada Group over employment practices at its three poultry processing sites at Beresfield, Hanwood and Tamworth in NSW.

An Inquiry was launched in November, 2013, following complaints from plant workers that they were being underpaid, forced to work extremely long hours and required to pay high rents for overcrowded and unsafe employee accommodation.

Similar allegations were also levelled at Baiada by the Australian Meat Industry Employees' Union, local community groups and a report on ABC television's Lateline program.

Baiada, the largest Australian-owned poultry processing company with a market share of more than 20 per cent, produces the Lilydale Select and Steggles chicken brands for customers including Coles, Woolworths, IGA, Aldi, McDonald's, KFC, Pizza Hut, Red Rooster, Nando's and Subway.

Aussie Farmers Direct, another of Baiada's customers, announced on May 12 that it was no longer accepting Baiada chickens because the company had failed to satisfactorily respond to further allegations raised by the ABC's 4-Corners program.

Baiada refused permission for Fair Work inspectors working on this Inquiry to access the factory floor at its worksites, denying them an opportunity to observe work practices, as well as talk to employees about conditions, policies and procedures.

Baiada also failed to provide the Inquiry with any "significant or meaningful" documentation on the nature and terms of its labour contract arrangements.

However, the Inquiry found that employees working at Baiada sites are not being paid their lawful entitlements.

The company had verbal agreements with an extensive list of labour-hire operators used to source most of its workers, largely 417 working holiday visa-holders from Taiwan and Hong Kong.

Baiada's labour-hire contractors were unwilling to engage with the Inquiry and produced inadequate, inaccurate and/or fabricated records to Inspectors.

Based on limited material provided, hundreds of thousands of dollars could not be accounted for as money moved through various hands down the company's labour supply chain.

As at October, 2013, information provided by Baiada indicated that it had verbal agreements to source labour with six principal contractors; B & E Poultry Holdings Pty Ltd, Mushland Pty Ltd, JL Poultry Pty Ltd, VNJ Foods Pty Ltd, Evergreenlee Pty Ltd and Pham Poultry (AUS) Pty Ltd.

Baiada paid these principal contractors per kilogram of poultry processed, rather than hours worked – in other words, irrespective of night shifts, weekends or public holidays.

The six principal contractors in turn sub-contracted to at least seven other second-tier entities, some of whom further sub-contracted down a further two or three tiers, involving up to 34 separate entities in total.

There were no written agreements and the model relied on high levels of trust.

During the course of the Inquiry, four of the six principal contractors and 17 other sub-contractors ceased trading.

One day before the director of two companies was due to meet Fair Work inspectors, he sent an email advising that his two entities were being liquidated. The matter is being referred to the Australian Securities and Investment Commission (ASIC).

(The Fair Work Ombudsman is now participating in a whole-of-government approach to combat illegal phoenix activity. The Phoenix Taskforce includes 21 agencies, and the key purposes are to help protect the public finances of Australia by identifying, designing and implementing cross agency strategies to mitigate and deter fraudulent phoenix activity; coordinate the enforcement of state and federal laws against egregious fraudulent phoenix activity; enable the effective sharing of information, knowledge and experience across taskforce agencies; support the reform of administrative practice, policy and where applicable, recommend legislative changes; promote community awareness and education as a means of increasing voluntary compliance and community confidence.)

Over the course of the Baiada Inquiry, Fair Work inspectors made numerous site visits to registered addresses of the various

contractors, as well as attempting to make contact by email, fax and phone using both bilingual staff and interpreters.

The Inquiry found that a large amount of work was performed “off the books”, as amounts paid to contractors did not correspond with the number of workers and wages allegedly paid to them.

The overseas workers were primarily recruited by sub-contractors through Chinese newspapers, Facebook or Taiwanese backpacker websites.

The advertisements frequently asked applicants to respond with details of their nationality, height and weight and were potentially discriminatory.

In summary, the Inquiry found:

- Non-compliance with a range of Commonwealth workplace laws,
- Very poor, or no governance arrangements, by all parties in the various labour supply chains,
- Exploitation of a labour pool comprised predominantly of overseas workers in Australia on the 417 working holiday visa.

Exploitation included significant underpayments, extremely long hours of work, high rents for overcrowded and unsafe worker accommodation, discrimination and misclassification of employees as contractors.

During the course of its Inquiry, Fair Work inspectors consulted with stakeholders including the AMIEU, Local Government, the NSW Police, the Australian Tax Office (ATO), the Department of Immigration and Border Protection (DIBP), labour-hire providers and hostel owners.

First-hand accounts from some of the workers at the plants were obtained by bilingual Fair Work inspectors who travelled to Beresfield and Hanwood, and community opinions and experiences were obtained through a series of co-ordinated “listening posts”.

Workers at Beresfield reported that they would not get any work unless they rented accommodation from the labour hire contractor, and rent was allegedly unlawfully deducted from their pay.

One property, found to be sleeping 21 people, was purchased in March, 2012, for \$370,000 as a rental accommodation. Based on 20 people paying \$100 a week each, it has a potential rental income of over \$100,000 a year.

Most of the workers at the Hanwood site were managed by Choy Pty Ltd, which de-registered during the course of the Inquiry.

Choy’s director, Sokhan Sin, is now engaged by other contractors to manage workers at the plant, including overseas workers.

Investigations continue into allegations that Mr Sin directs employees to work very long hours, such as 5.30am to 11pm.

Potential breaches of federal, state and local government laws outside the Fair Work Ombudsman’s jurisdiction have been referred to appropriate agencies.

Below is a summary of the Inquiry’s findings on each of Baiada’s six principal labour-hire contractors:

B&E Poultry Holdings Pty Ltd

In February this year, two Taiwanese 417 working holiday visa-holders contacted the Fair Work Ombudsman alleging they had worked up to 17 hours a day for three days at Baiada’s Beresfield plant for no wages.

At the time, the minimum wage in Taiwan was equivalent to \$A4.95 an hour compared to the Australian national minimum wage of \$16.87, plus penalties where applicable.

When Fair Work inspectors contacted B&E Poultry - the principal contractor named on their factory ID card – they were told the workers were engaged by a supervisor contracting to one of its sub-contractors in a personal capacity, and were unable to provide any details about the employer.

However, B&E agreed to resolve the matter by paying the workers at the Award rate.

B&E Poultry did not directly engage any employees at the three Baiada sites – but does employ staff at its own processing factories at Ormeau, in Queensland and Blacktown, in NSW.

Last year, after the Fair Work Ombudsman had received requests for assistance from B&E employees resulting in back-payments of more than \$100,000, the Agency required the company to [enter into an Enforceable Undertaking to ensure its ongoing compliance with federal workplace laws \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/october-2014/20141009-be-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/october-2014/20141009-be-eu-presser) .

Mushland Pty Ltd

The company failed to disclose information specifically requested by the Inquiry and subsequently the phones of both the company director and its accountant were disconnected.

Baiada was unable to provide any further contact details for Fair Work inspectors.

However, analysis of the limited information which was provided, including invoices and pay records, shows that Baiada paid Mushland \$255,415.07 for the month of October, 2013.

Mushland in turn paid \$52,460.85 in wages to 18 employees for the same period, leaving a total of \$202,954.22 unaccounted for – even though 11 of the workers had been underpaid more than \$3300.

Mushland de-registered in July, 2014, and workers were reluctant to act as witnesses for the Fair Work Ombudsman.

JL Poultry Pty Ltd

JL Poultry refused to provide the Inquiry with an accurate contact address.

Fair Work inspectors made two site visits to the registered address, only to be told the director was not known and was not located there.

Written correspondence could only be directed to JL Poultry after a Notice to Produce was served on its financial institution, which provided further contact details.

It took the company seven months to provide Fair Work inspectors with records.

The records revealed that in over one two-week period, Baiada had paid JL Poultry \$139,080.37.

However, JL Poultry had only paid wages to nine employees totalling \$8746.80, leaving a margin of \$130,333.57 unaccounted for.

The Fair Work Ombudsman issued JL Poultry with an on-the-spot fine and Letter of Caution in relation to record-keeping breaches, but the company was de-registered in December last year.

JL Poultry advised that its contract with Baiada had been cancelled.

VNJ Foods Pty Ltd

The Inquiry identified that VNJ Foods Pty Ltd directly engaged only one employee.

Records obtained by Fair Work inspectors show that VNJ made cash payments of up to \$150,000 a week to a sub-contractor, Clearview LG Pty Ltd.

Despite repeated site visits, telephone calls and email contact, Clearview failed to provide any records or engage with the Inquiry.

VNJ Foods entered into voluntary liquidation during the Inquiry.

Evergreenlee Pty Ltd

Evergreenlee did not engage any employees directly.

Rather, it sub-contracted to two other companies with one common director - CCKY Pty Ltd and WL Jian Pty Ltd, which engaged 19 and 33 employees respectively.

CCKY ceased operating in June last year.

The Inquiry found WL Jian Pty Ltd failed to keep time and wage records as required by federal workplace laws and issued the company with two on-the-spot fines and a Letter of Caution.

Pham Poultry (AUS) Pty Ltd

The Fair Work Ombudsman ran a separate, parallel inquiry into Pham Poultry after receiving requests for help from more than a dozen employees at Beresfield.

Pham Poultry sub-contracted to four other companies, including FoxInt Pty Ltd, whose director Quoc Hung Pham, was also a director of the principal contractor.

Despite Baiada paying Pham Poultry \$1.078 million for the month of October, 2013, FoxInt was paying its workers as little as \$11.50 an hour for shifts up to 19 hours a day.

Up to 30 workers were housed in a six-bedroom house with only two bathrooms for which they were required to pay \$100 a week.

The Fair Work Ombudsman could not locate Quoc Hung Pham, but the second director of Pham Poultry, Binh Hai Nguyen, [agreed to repay 10 workers a total of \\$20,250 to partially rectify the underpayments \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140819-poultry-workers-back-paid\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140819-poultry-workers-back-paid) .

In response to the ABC's Lateline report in October, 2013, Baiada advised the Fair Work Ombudsman that it had asked Pham Poultry if workers in the supply chain were being paid correctly, and had received the following information:

- A letter from Pham Poultry's accountant stating that the company was "compliant with the Poultry Processing Award", and
- An unsigned letter from Pham Poultry on company letterhead, also stating that it was compliant with the Modern Award.

Pay-slips provided by Pham Poultry show that for one week, it paid 12 employees (including the company director) wages totalling \$6828.83.

However, the \$6828.83 payment contrasts with a total of \$196,307.01 paid to Pham Poultry that week by Bartter Enterprises Pty Ltd.

Baiada advised the Fair Work Ombudsman that based on the information above, it was "satisfied" that Pham Poultry was compliant with Commonwealth workplace laws.

The Inquiry does not agree and believes Baiada has failed to implement adequate governance arrangements to monitor its sub-contractors.

NTD Poultry Pty Ltd was named as a principal contractor for Baiada in December, 2013, replacing Pham Poultry.

However, a three-tier supply model remained in place, and the final labour provider continued to be FoxInt Pty Ltd, whose director Quoc Hung Pham was also a director of Pham Poultry and who could not be located by Fair Work inspectors.

The Inquiry received advice that FoxInt employees continued to be underpaid at rates as low as \$11.50 an hour, but a reluctance by employees to act as witnesses prevented the Agency from pursuing any enforcement action.

Below is further example of the difficulty Fair Work inspectors encountered with sub-contractors during the course of their Inquiry:

DMY Trading Pty Ltd

DMY Trading and Yu Lin Trading Pty Ltd, operated by husband-and-wife directors, had six sub-contractors supplying workers to Baiada's Hanwood site.

Based on records provided by DMY Trading, Fair Work inspectors attempted to serve a Notice to Produce documents on one sub-contractor.

When they arrived at the address provided, they found an automotive workshop. The business had been there for 25 years and the owner had never heard of the labour-hire contractor.

Similarly, when Fair Work inspectors sought to contact two other sub-contractors, the addresses provided led them to clothing manufacturers who had never been involved in the poultry processing industry.

Recommendations:

As a result of its Inquiry, the Fair Work Ombudsman recommends Baiada:

- Ensures its sub-contractors identify the true employer and display the employer's name on factory ID cards,
- Introduce an electronic time-keeping system to properly record the start and finishing times of all employees,
- Set up a formal complaint and dispute resolution process, including the appointment of a Mandarin-speaking human resources representative,
- Commission an independent, external specialist to review its labour-recruitment practices,
- Implement protocols and policies to improve governance arrangements to ensure workers at its sites are being paid correctly for all hours worked, and
- Prepare industry and language specific induction materials for all workers.

For its part, the Fair Work Ombudsman will continue to work closely and collaboratively with other regulatory agencies and groups to:

- Use Section 550 of the Fair Work Act and its accessorial liability provisions to ensure parties do not turn a "blind eye" to minimum employee entitlements, and hold to account those we find who are involved in contraventions of Commonwealth workplace laws,
- Investigate labour supply chain practices, such as sham contracting, which deprive vulnerable employees of basic rights and protections, like penalties, overtime, allowances or leave; and pursue those responsible,
- Initiate enforcement action against parties, including any accounting and legal professionals found to be assisting businesses to provide false and/or misleading records to Fair Work inspectors,
- Engage with major buyers of processed chicken products, such as Coles, Woolworths, KFC, Aldi and others, to raise awareness of the importance of compliant and ethical supply chains and, where appropriate, seek partnership agreements to promote compliance,
- Assist Baiada to implement the recommendations of this Inquiry,
- Develop a database, accessible by industry, to record all details and compliance history for contractors in the poultry processing industry. If the pilot is successful, the database could be expanded to include contractor information for other industries, such as the meat, horticulture and cleaning industries,
- Provide ongoing reports about the findings of investigations into non-compliance with workplace laws in other supply chains to

assist other federal and state agencies, lead businesses and customers to understand the industries and to help promote ethical, moral and socially responsible practices,

- Release this Report. There has been significant public discussion around the labour supply chain in this industry and there is public interest in the findings of this Inquiry. Baiada customers should have this information to make informed choices. It is also hoped the public release of this Report will give confidence to employees previously too frightened to speak to the Fair Work Ombudsman to now come forward with concerns about potential breaches of workplace law.
- Inform the activity of Taskforce Cadena and the Phoenix Taskforce.

The Fair Work Ombudsman considers that the information it has obtained to date warrants further investigation into the Baiada Group and its contractors.

Ongoing inquiries will focus on accessories to contraventions, sham contracting, and provision of false and/or misleading records to Fair Work inspectors.

The Inquiry noted that when labour hire contractors were asked to demonstrate to Baiada that they were compliant with federal workplace laws, only “minimal evidence” was supplied, which the company appeared to accept at face value.

“Employees working at the Baiada Group’s sites are not being paid their lawful entitlements,” the Inquiry found.

“There is also a range of other conduct which may contravene the Fair Work Act under way at Baiada sites.

“The Fair Work Ombudsman encountered significant barriers to pursuing further inquiries or taking enforcement action in relation to a number of contractors who directly engaged workers, because they did not co-operate, entered into voluntary liquidation or were de-registered.

“In a large number of instances where Fair Work inspectors attempted (and persisted in attempting) to engage with contractors, they ceased operations and were quickly replaced with new ‘price takers’ – resulting in suppliers of labour forced into accepting market prices with no powers to negotiate a higher price.

“It is important to note the actual work and subsequent non-compliance with workplace laws is taking place on premises owned and operated by Baiada. It is therefore the chief beneficiary of work carried out by this labour force.

“Baiada has the ability to take steps to ensure that workplace laws are complied with on its sites.

“There has been extensive media coverage and public debate regarding underpayment practices occurring at Baiada.

“The Fair Work Ombudsman has a history of investigations at worksites where these issues have been raised with Baiada representatives.

“The findings of this Inquiry place Baiada and the head contractors on notice and therefore aware workplace laws are not being complied with and that correct minimum entitlements may not have been and may not be being met.”

The Fair Work Ombudsman’s ongoing inquiries and use of a range of specialised regulatory powers will continue to target practices that are found to be unlawful in supply chain arrangements in the poultry processing industry.

We aim to build a culture of compliance among those entities responsible for the procurement of workers at the Baiada Group’s poultry processing sites.

In particular, we ask Baiada to publicly declare that it has an ethical, moral and social responsibility to join with the Fair Work Ombudsman to stamp out exploitation of vulnerable workers at its work sites, and we extend an invitation to Baiada to join with us in a compliance partnership.

I am deeply concerned by the findings of this Inquiry, particularly the behaviour of Baiada and its contractors who failed to engage with us about serious concerns about compliance with workplace laws on the company’s sites.

In my view, Baiada and others in this supply chain now need to consider the legal, moral and ethical implications of continuing to operate in a manner that fails to deliver workers their minimum entitlements.

The Fair Work Ombudsman stands ready to assist any business in this regard. Contracting out labour can be a convenient and legitimate approach to doing business. However, businesses should consider whether their procurement processes and subsequent governance of those arrangements create an environment ripe for worker exploitation.

In highly competitive labour intensive industries, dodgy operators may be basing their business models, and their prices, on exploiting vulnerable workers.

Such operators are gaining unlawful and unfair competitive advantage – profiting at the expense of the workers and the legitimate operators who are doing the right thing.

We have put some 47 matters into Court this financial year and 33 of those involve accessories (70 per cent). We will go all the way

to the top of the supply chain to hold the price-maker accountable for underpayments.

Failure to take heed of this message will result in companies and individuals at the top of the supply chain incurring financial penalties and reputational damage.

The Fair Work Ombudsman is working hard to develop our understanding of how major sectors of the economy employing large numbers of vulnerable employees operate, and using the insight to guide our compliance and enforcement strategy.

We are committed to building a culture of compliance across Australian workplaces by setting priorities which can best influence or change behaviour and reduce harm.

While we are conscious that this will take time, we have been proactive and we are giving priority to a multi-faceted program of activities to attempt to address the significant underlying problems.

As re-iterated in our statement of May 7 in response to the recent 4-Corners report (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/may-2015/20150507-fwo-statement-in-response-to-4-corners) , the Fair Work Ombudsman gives vulnerable, overseas workers priority through its specialist Overseas Workers' Team.

The community is entitled to be shocked by stories like the ones we saw in the 4-Corners story, and should know that the Fair Work Ombudsman already had active inquiries into the entities identified by the ABC before the report was aired.

4-Corners illustrated some of the challenges that exist in bringing to account individuals who operate through a range of corporate structures and through many layers of a complex supply chain, but the Fair Work Ombudsman is very focussed on looking at long-term, sustainable ways of changing behaviour by those who seek to deliberately exploit this cohort.

In particular, working with companies and individuals who are the final beneficiaries of the labour, such as the supermarkets, and with industry organisations, is a critical part of achieving real change.

In August last year, we announced a national Inquiry into the wages and conditions of overseas workers in Australia (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review) on the 417 working holiday visa and that work is ongoing.

In mid-2013, in response to ongoing requests for assistance from employees in the horticulture sector and our own observations that there is confusion among growers and labour-hire contractors about their workplace obligations, we also launched a three-year program we have named The Harvest Trail, and that work is ongoing.

Natalie James

Fair Work Ombudsman

Download

The Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales (DOCX 3.9MB) (www.fairwork.gov.au/ArticleDocuments/763/baiada-report.docx.aspx) (PDF 612.9KB) (www.fairwork.gov.au/ArticleDocuments/763/baiada-report.pdf.aspx)

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