

## Statement on 417 visa-holders

15 October 2016

The Fair Work Ombudsman has today released its report into the experiences of 417 working holiday visa-holders in Australia.

After an extensive two-year national Inquiry consulting a diverse range of stakeholders and regional visits, the Fair Work Ombudsman's report contains new insights into the experiences of backpackers when they work in Australia.

The 417 visa is a temporary visa issued by the Department of Immigration & Border Protection (DIBP) to young people who want to holiday and work in Australia.

To be eligible to stay in Australia for a second year on a 417 visa, a visa-holder is required to undertake 88 days specified paid work in their first year in a designated regional area and in certain industries, such as agriculture, fishing, and meat-and-poultry production.

The Inquiry was established in August 2014 in response to escalating complaints from working holiday makers to the Fair Work Ombudsman and concerns that the 88 day requirement, which at the time need not have been paid work, was being exploited by some employers.

Serious conduct was identified with respect to 417 visa-holders in the Fair Work Ombudsman's earlier Inquiry into Labour Procurement Arrangements of the Baiada Group.

The Inquiry sits alongside the Fair Work Ombudsman's Harvest Trail Inquiry focused on the horticulture sector, which commenced in August 2013 and is due to report in 2017.

The Inquiry into the experiences of 417 visa-holders emphasises the importance of backpacker labour to regional Australia. But it also identifies opportunities to strengthen education and compliance frameworks and efforts to ensure that this vital labour source is not exploited.

A key part of the Inquiry was a survey of more than 4000 overseas workers who had been granted a second-year 417 visa after working in regional Australia.

Pleasingly, 38 per cent of respondents were positive about their regional work experiences and a majority said they would recommend the 417 visa to others, though fewer would recommend the second year.

However, the survey and other Inquiry work also indicated serious concerns about the working conditions for backpackers, particularly while undertaking their 88 days of specified paid work.

The survey findings indicated that a significant majority of recipients (66 per cent) felt that employers take advantage of people on working holiday visas by underpaying them. Most (59 per cent) also agreed that backpackers are unlikely to complain about their working conditions in case their work is not signed off by the employer.

These fears are reinforced by the experiences of some 417 visa-holders, with 35 per cent of survey respondents stating they were paid less than the minimum wage, 14 per cent revealing they had to pay in advance to get regional work and 6 per cent had to pay an employer to 'sign off' on their regional work requirement.

Deductions from pay were also common and often not agreed in writing as required by the law (only 21 per cent of respondents say written agreement was provided).

Most survey respondents were unaware of their workplace rights in Australia, with lack of awareness highest among Asian workers. The Fair Work Ombudsman is concerned that some unscrupulous employers are targeting this cohort, especially via social media and websites, establishing a business model around the placement of vulnerable visa holders in work and associated accommodation, imposing unlawful deductions on pay and charging fees to place visa-holders into employment.

Fair Work Ombudsman Natalie James says the survey confirmed that overseas workers seeking regional work to satisfy the 88 day requirement and obtain a second-year 417 visa are particularly vulnerable to exploitation.

Ms James says the Working Holiday Maker program, designed to facilitate cultural exchange, is in some cases being treated by both visa holders and employers as a 'ticket' to work in Australia.

These dynamics may be impacted by the relatively low minimum wages in countries of origin of some backpackers. For example, the minimum wages in Taiwan and South Korea over the course of the Inquiry were less than half Australia's current minimum wage of \$17.70 per hour.

"In particular, the desire for a second-year 417 visa can drive vulnerable workers to agree to work for below minimum entitlements and in some circumstances, enter into potentially unsafe situations," Ms James said.

"The Inquiry findings show that while many 417 visa-holders who work in Australia have a positive experience, many are being subjected to underpayment or non-payment, unlawful deductions, sexual harassment, unsafe working conditions and other forms of exploitation.

"The backpacker labour-force is vital to some industries associated with food production in regional areas but we are at risk of it being a black-market, exploited labour-force if the settings remain the same."

Noting recent changes in the landscape to tax arrangements and the establishment of the Government's Migrant Worker Taskforce, the report recommends changes to visa rules and laws, better use of existing laws and an enhanced and more joined-up effort across government to ensure 417 visa holders are better protected and more aware of their work rights.

The report also recommends that academics and migration experts be enlisted to help research and solve labour-force issues associated with the need to balance cultural exchange, Australia's international reputation, regional labour-supply needs and the vulnerability of 417 visa-holders.

## **BACKGROUND**

The Government's Working Holiday Maker program commenced in 1975 and has expanded over more than 40 years to the point where it is heavily relied upon in addressing the labour shortage associated with food production in regional areas of Australia.

Since December 2015, 417 visa-holders have been obliged to undertake paid work for the 88 days specified regional work they do, and when lodging a request for a second-year visa with DIBP, are required to provide pay slips and an Employment Verification Form signed by their employer confirming the work was undertaken.

Between July 1 and December 31 last year, 417 visas were granted to 86,847 people, and 19,320 of these visa holders elected to undertake 88 days of specified regional work in order to secure a second-year visa.

Most second-year visa sign-offs are for visa-holders who have worked in agriculture, forestry and fishing. Most work is performed in Queensland.

At the end of 2014, Taiwanese 417 visa-holders were the highest users of the second-year 417 visa, followed by the United Kingdom and South Korea.

The Fair Work Ombudsman's Inquiry into the experiences of 417 visa-holders in Australia was launched in 2014 in response to an escalating number of requests for assistance from temporary visa holders, including allegations that some operators were using the 88-day requirement to exploit vulnerable overseas workers.

The trend has continued and the Fair Work Ombudsman is now receiving a higher proportion of requests for assistance from visa-holders than ever before.

Reflecting Australia's position as operating within the global economy, approximately 7 per cent of our nation's total working population is comprised of temporary visa holders with work rights.

In 2011-12, just 5 per cent of dispute forms lodged with the Fair Work Ombudsman related to visa holders. In 2015-16, that figure had increased to 13 per cent.

In 2011-12, only 23 per cent of visa holders who came to us for assistance were 417 visa holders. By 2015-16, that figure had doubled to 44 per cent.

## **INQUIRY ACTIVITY**

The Inquiry had a specific focus on the nature and operation of the 88 day requirement, including the impact it has on the work experiences of 417 visa holders and whether it is a driver of non-compliance with the Fair Work Act.

In so doing, the Inquiry sought to identify opportunities to address any non-compliance.

The Inquiry team used the Fair Work Ombudsman's data and intelligence and information from other sources to establish the employer, industry and geographical areas of most interest and then engaged with a diverse range of stakeholders, gathering specific and comprehensive information alongside testing areas of most concern.

Stakeholders consulted included regional employers who are high users of 417 visa-holders seeking to satisfy the 88 day requirement, unions and employer groups, community groups, local councils, government bodies and businesses active in providing

services to backpackers.

Meetings were also held with the Canadian, Korean, Irish, French and British consulates, as well as the Taipei Economic and Cultural Office.

The Fair Work Ombudsman also surveyed more than 4000 overseas workers who had been granted a second-year 417 visa after working in regional areas of Australia.

While the focus was on understanding the broad drivers of non-compliance, numerous requests for assistance from workers were examined and Inquiry work has contributed to the Fair Work Ombudsman commencing more than 25 dedicated investigations and pursuing a number of enforcement actions.

## FINDINGS

The Inquiry found that the 417 visa is often regarded less as an opportunity for cultural exchange and rather, primarily, as a 'ticket' to work in Australia and the 88 day requirement is having the unintended consequence of driving some vulnerable workers to enter into potentially unsafe situations and to agree to work for below minimum entitlements.

The need for the visa-holders to produce evidence from their employer that they have completed 88 days requisite paid work, is placing some overseas workers seeking a second-year 417 visa in a precarious situation.

Safety concerns are raised particularly where young workers - especially females with limited English travelling alone - are encouraged through the 417 second year visa requirements to travel to remote areas to undertake specified work.

The power imbalance is creating an environment where some unscrupulous operators are exploiting vulnerable visa-holders who are reluctant to report unsafe working conditions, sexual harassment and other forms of exploitation for fear that employers will refuse to provide the required evidence.

The Inquiry found many instances of 417 visa-holders finding themselves in situations where they had no option but to agree to the conditions imposed on them by their employers.

The Inquiry noted that there is no legal or statutory requirement for an employer to sign the Employment Verification Form and there are no penalties for employers who refuse to sign the form even when the work has been completed.

The Inquiry encountered concerning patterns of behaviour with respect to the treatment of 417 visa-holders, including:

- underpayment and non-payment of wages,
- sexual harassment and workplace health and safety issues,
- exploitative workforce cultures and behaviours in isolated and remote workplaces,
- employers and hostels withholding passports without authority,
- employers engaging in sophisticated labour supply chains involving sham contracting, with visa-holders being engaged as contractors and not employees,
- employers making unlawful deductions from wages and unlawfully requiring visa-holders to spend part or all of their wages in an unreasonable manner,
- employers requiring visa-holders to do unpaid work in exchange for providing evidence that they had completed 88 days requisite paid work,
- visa-holders offering, or being induced to offer, payment to employers and third parties for assistance to gain a second-year 417 visa,
- employers recruiting workers by offering to assist them with second-year visa requirements if they agree to perform unpaid work,
- employers advertising jobs to overseas workers seeking a second-year 417 visa, but then imposing unlawful demands and conditions, such as requesting they pay for the job and for accommodation,
- visa-holders working for free in exchange for non-certified accommodation programs, and
- employers requiring visa-holders to pay money up-front for tools and equipment that the business was legally required to provide.

The Inquiry found a widespread lack of understanding among 417 visa-holders of their workplace rights in Australia was making them particularly vulnerable to exploitation, with those less informed being more likely to be exploited.

Consular officials reported that 417 visa-holders were most vulnerable to exploitation in Australia when they were not aware of their lawful entitlements, without sufficient funds and undertaking the specified work toward the end of the first year.

The officials also indicated that some 417 visa-holders were reluctant to complain because they regarded the visa program as a "pathway to Australian permanent residency".

Case studies identified some familiar concerns – multiple tiers of contracting, entities with a history with the Fair Work Ombudsman involved in supplying labour, registered places of businesses not being accurate and a failure on the part of some contractors to

engage with Fair Work Inspectors.

However, more positively, a number of meat processing operations took action to address a number of these issues during the course of the Inquiry.

For example, Thomas Foods introduced induction material in multiple languages and auditing of its supply chain. It has already enhanced its governance following the release by the Fair Work Ombudsman of its report into the Baiada companies.

Other companies chose to employ workers directly as opposed to through labour-hire arrangements and ceased using 'contracting' arrangements.

As part of the Inquiry, the Fair Work Ombudsman commissioned a survey of the 43,219 overseas workers who had been granted a second-year 417 visa in the 2013-14 financial year – and responses were received from 4056 individual workers.

While a majority of respondents reported a satisfactory experience, the survey information, combined with other Inquiry intelligence, showed that some especially vulnerable nationalities within this cohort, in particular those from Asian countries whose language and home cultures are significantly different from Australia, are being deliberately exploited.

The survey results confirm the Fair Work Ombudsman's intelligence that some unscrupulous employers and agents are setting out to exploit and make money from visa holders in an organised manner that is demonstrative of a structured business model.

This includes deliberately targeting vulnerable workers through websites and forums directed at particular nationalities, attracting them to regional areas of Australia and then profiting off them through combining the placement of 417 visa holders in work and associated accommodation, imposing unlawful deductions on pay and charging fees to place visa holders into employment.

Overall, the survey responses from second-year 417 visa holders indicated that:

- 50 per cent reported they did not know their workplace rights well, with lack of awareness of workplace rights highest among Asian workers,
- 35 per cent stated they were paid less than the minimum wage,
- 28 per cent were not paid for some or all of the work they did,
- 14 per cent revealed they had to pay in advance to get regional work,
- 6 per cent had to pay an employer to 'sign off' on their regional work requirement,
- 27 per cent reported they were paid in cash,
- Almost two in five (38 per cent) described their regional work experiences as excellent or very good,
- Just over a third (35 per cent) described their regional work experience as only fair or poor,
- 86 per cent said they would be very likely or quite likely to recommend the first year visa and 68 per cent said they would recommend the second year visa,
- 66 per cent felt employers take advantage of people on working holiday visas by underpaying them,
- 59 per cent agreed that backpackers are unlikely to complain about their working conditions in case their work is not signed off by the employer,
- 57 per cent were provided with accommodation as part of at least some of the specified work they undertook and of these workers, 25 per cent labelled their accommodation as poor, and
- Of respondents provided with accommodation, deductions from pay were for accommodation were common - but only 30 per cent said they provided prior agreement for this and only 21 per cent said they provided written agreement.

The Inquiry analysed websites commonly used by 417 visa-holders to find work in Australia, including Gumtree, Korean website Hojunara and Taiwanese website backpacker.com.tw.

Gumtree representatives informed the Inquiry that visitors had strongly engaged with Fair Work Ombudsman advertisements on the website promoting minimum pay rates in the horticulture industry and that they had a 'report and take-down' policy for job ads that raised compliance concerns, responding promptly when contacted by government agencies.

The representatives said they would welcome the opportunity to work more closely with the Fair Work Ombudsman in future.

## **RECOMMENDATIONS**

In the Inquiry Report, the Fair Work Ombudsman makes a series of recommendations focused on enhancing the regulatory framework and Enhancing information, education, compliance and support.

Enhancing the framework:

- Collaboration between the Fair Work Ombudsman and DIBP in establishing a federal–state, inter-agency working group that examines current and future regulations to develop a holistic compliance and enforcement model that considers placing increased onus on employers with 417 visa holder employees to comply with state and federal legislation; strengthening sanction frameworks for employers who contravene relevant legislation; and more diverse items of evidence to validate specified work to minimise the power imbalance between the visa holder and employer.

- Reviewing and enhancing information sharing between the Fair Work Ombudsman and other regulators to assist in the gathering of evidence against unscrupulous employers necessary to prove breaches of workplace and other laws.

#### **Enhancing information, education, compliance and support:**

- Ensuring all existing laws and sanctions are being fully utilised to take action against unscrupulous employers in their recruitment and exploitation of vulnerable 417 visa holders, including immigration, tax, corporations and consumer protection laws.
- Collaboration between the Fair Work Ombudsman and the Australian Tax Office (ATO) to support the establishment of a publicly available Employer Register for employers of 417 visa holders.
- Exploring opportunities to work with a broader range of stakeholders to extend the channels through which information and support is delivered, including: promoting the Employer Register to key stakeholders (including organisations that host websites dedicated to 417 visa holders such as DIBP, the Department of Employment, Tourism Australia, Austrade and consulates) in order to advise workers they should only work with registered and compliant employers.
- Ensuring appropriate information sharing between Fair Work Ombudsman, the ATO and DIBP to enable records to be cross-referenced and verified.
- Designing and implementing other education and compliance initiatives to address workplace exploitation, including reviewing the conditions required by 417 visa holders to obtain Australian Business Numbers as well as exploring technology that would support the simple recording of working hours.

The Fair Work Ombudsman also recommends continuing to partner with academics and migration experts and investing in research to solve the need to balance cultural exchange, Australia's international reputation, recognised regional labour supply needs and the vulnerable nature of the 417 visa holder cohort.

The Fair Work Ombudsman will submit the recommendations to the Government's recently announced Migrant Worker Taskforce for consideration.

"Addressing these systemic problems requires a sustained and co-ordinated effort on the part of Government and stakeholders, including considering whether the settings are right," Ms James said.

"If we want sustainable outcomes, if we want to change behaviour over time, it requires a genuine investment across a number of regulators and interest groups working together with a clear mission to close the loopholes being used by those deliberately exploiting visa holders for profit.

"There are opportunities for businesses, communities and industries that care about their reputation to work with us to achieve a culture of compliance with Australian workplace laws. Those who turn a blind eye to exploitation face very real risks – legal risks and risks to reputation and impact on their bottom line."

Ms James says the Inquiry report is a timely opportunity for the Fair Work Ombudsman to remind employers that we have minimum pay rates in Australia, they apply to everyone, and they are not negotiable.

Employers cannot undercut minimum wages, even if employees offer to accept lower rates – and they must keep accurate time-and-wages records at all times.

It is not acceptable for an employer to take advantage of any worker, especially those that are vulnerable, including overseas workers who speak limited English and have limited understanding of their workplace rights.

The exploitation of visa-holders working in Australia has long been a priority for the Fair Work Ombudsman and we will continue to actively encourage overseas workers who have concerns that their workplace rights are being compromised to contact us.

The conduct being complained of by visa holders is at the serious end of the spectrum, best illustrated by the increase in visa holders that feature in our litigations. In 2012-13, we filed 16 litigations that involved contraventions of a visa holder's workplace rights – 32% of our total litigations for that year. Four of those matters involved 417 visa holders.

In 2015-16, 38 of our 50 litigations involved a visa holder, being 76% of all litigations filed. Sixteen of those litigations involved a 417 visa holder.

More than one third of all of the Fair Work Ombudsman's enforcement outcomes in 2015-16 involved a visa-holder and significantly, half of these enforcement outcomes - that is, the issuing of compliance notices, the execution of enforceable undertakings and the filing of legal proceedings - involved 417 visa-holders.

The Fair Work Ombudsman's recoveries for underpaid visa-holders have also increased significantly.

In 2011-12, the Fair Work Ombudsman recovered \$718,000 for all visa-holders, with \$67,000 of this for 417 visa-holders.

In 2015-16, the Fair Work Ombudsman recovered just over \$3 million for all visa-holders, with \$1.37 million of this for 417 visa-holders.

Intelligence gained throughout the Inquiry has already contributed to a number of enforcement actions against employers found to

have exploited workers seeking a second-year 417 visa. Examples include:

The Fair Work Ombudsman commenced legal action against a Northern Territory operator earlier this year alleging he underpaid 12 workers - including 11 overseas workers seeking to obtain a second-year 417 visa - a total of \$35,630. Some were allegedly paid nothing for work performed. Read the media release: [Overseas backpackers allegedly short-changed thousands while working on NT mango farms \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160923-mango-shop-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160923-mango-shop-litigation) .

The Fair Work Ombudsman recently secured Court-ordered penalties of almost \$70,000 against the operators of a Queensland farm with a history of flouting workplace laws for exploiting six overseas workers seeking to obtain a second-year 417 visa. Read the media release: [Farmers penalised almost \\$70,000 for short-changing 417 visa-holders \\$2600 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160926-i-luv-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160926-i-luv-penalty) .

The Fair Work Ombudsman entered into an Enforceable Undertaking earlier this year with a labour-hire company supplying workers to an abattoir in Western Australia after the labour-hire company underpaid 27 of its employees – most of them overseas workers seeking to obtain a second-year 417 visa - more than \$35,000. Read the media release: [Backpackers working at abattoir short-changed more than \\$35,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160531-comprehensive-cleaning-eu-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160531-comprehensive-cleaning-eu-mr) .

The Fair Work Ombudsman's Harvest Trail Inquiry - which is aimed at improving compliance in the horticulture industry, with a particular focus on labour-hire arrangements and supply chains – is ongoing and an Inquiry Report is expected to be published in 2017.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on 13 13 94.

An interpreter service on 13 14 50 and the website contains materials translated into 27 different languages.

The Fair Work Ombudsman's Anonymous Report function enables members of the community to alert the Fair Work Ombudsman to potential workplace issues. Intelligence can be provided at [www.fairwork.gov.au/tipoff](http://www.fairwork.gov.au/tipoff).

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Download the full report on the [Inquiry reports page \(www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#417-visa\)](http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#417-visa) .

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