

## Labour-hire contractor signs workplace pact after underpaying Korean workers thousands of dollars

21 September 2016

More than 90 Korean backpackers have been underpaid thousands of dollars while working on a farm in South-East Queensland.

The 417 working holiday visa-holders were employed by labour contractor Boonah Packing Pty Ltd.

Boonah supplied labour to Scott Moffatt & Co, trading as Moffatt Fresh Produce, to sort and pack carrots on a farm at Tarome.

Moffatt Fresh Produce supplies carrots to markets in Brisbane, Sydney and Melbourne and packages and provides produce to major supermarket chains including Woolworths and Aldi.

An investigation by the Fair Work Ombudsman found that the price paid by Moffatt to Boonah Packing was sufficient for the labour-hire contractor to meet its obligations to pay minimum wages under the Horticulture Award 2010.

However, following a complaint from one employee that he was underpaid, the Fair Work Ombudsman found Boonah Packing had short-changed almost 100 casual workers more than \$16,000 between July last year and January this year.

The original complainant was underpaid \$512 and the other 95 a total of \$16,198.

Ninety-three of the underpaid workers were Korean visa-holders – 92 of them 417 working holiday makers and one an international student.

The workers were sometimes paid a flat rate of \$21.08 and piece rates at other times.

However, Boonah Packing did not have written piecework agreements in place, and therefore employees should have been paid minimum hourly rates.

As casual employees, they were entitled to receive \$21.61 for ordinary hours and \$38.90 an hour on public holidays at the time of the contraventions.

Boonah Packing also contravened workplace laws by failing to keep proper records, which prevented Fair Work inspectors from assessing whether some employees had received their full lawful entitlements.

However, the company co-operated with the Fair Work Ombudsman's investigation, promptly commencing back-payments to underpaid employees, and entering into an Enforceable Undertaking (EU) with the Fair Work Ombudsman.

Fair Work Ombudsman Natalie James says the EU is aimed at encouraging behavioural change and future compliance with federal workplace laws.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws, without the need for civil court proceedings.

"We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this, accepted responsibility and agreed to co-operate and fix the problem," says Ms James.

In 2015-16, a total of \$3.85 million in underpaid wages and entitlements was returned to 2132 employees as a result of their employers entering into Enforceable Undertakings with the Fair Work Ombudsman, up slightly on the \$3.75 million recovered for 2507 workers the previous year.

Ms James says fruit and vegetable growers rely heavily on seasonal labour – and these workers are often visa-holders from non-English speaking backgrounds who may be unaware of their workplace rights.

"Outsourcing is a legitimate business arrangement – but in my experience, in highly competitive markets for low-skilled work, it also increases the risk that workers will be underpaid, sometimes quite deliberately," Ms James said.

Ms James reminded employers using piece rates that they must have written agreements in place signed by the employee.

"In the absence of a piece-rate agreement, workers are required to be paid hourly rates of pay according to the Horticulture Award 2010," she says.

Boonah Packing has agreed to implement a range of measures to ensure future compliance with their workplace obligations.

As part of the agreement, the company will continue to try to locate the only five workers it is yet to back-pay. The workers are owed a total of \$310.

The company will also introduce systems and processes to meet workplace requirements and send a letter of apology to affected employees.

Other EU requirements include displaying workplace notices about the contraventions, training staff in senior human resources, payroll and recruitment roles, and engaging an external professional to audit the company's compliance with workplace laws.

The company will register with the Fair Work Ombudsman's 'My Account' portal and provide employees with workplace access to the National Employment Standards and the Horticulture Award 2010.

The company will also distribute to new employees a Fair Work Information Statement and information about the Fair Work Ombudsman, employer records and pay-slip obligations.

Last month, the Fair Work Ombudsman announced it was joining forces with the Recruitment and Consulting Services Association to help improve compliance.

Read the media release: [New workplace pact aims to improve compliance \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160826-rcsa-mou-media-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160826-rcsa-mou-media-release) .

In 2013, the Fair Work Ombudsman launched a national Harvest Trail Inquiry in response to ongoing requests for assistance from employees in the horticulture sector, persistent underpayments and confusion among growers and contractors about their workplace obligations.

The Inquiry also resulted in the Fair Work Ombudsman recently entering into an Enforceable Undertaking with another labour contractor, Team Search Harvesting, after it underpaid dozens of overseas workers for work performed on farms in the Darling Downs and Lockyer Valley in South-East Queensland. Read the media release: [Lettuce farm contractor signs workplace pact after short-changing almost 100 overseas workers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160628-tsh-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160628-tsh-eu-presser) .

And a random audit conducted as part of the Inquiry led to the Fair Work Ombudsman commencing legal action against a strawberry farm near Stanthorpe earlier this year for underpaying some of its workers. Read the media release: [Queensland strawberry farm faces Court for allegedly short-changing workers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160609-i-luv-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160609-i-luv-litigation) .

On Monday, following persistent underpayment matters involving Korean visa-holders, the Fair Work Ombudsman announced it was reaching out to the Korean business community to enlist its support to raise awareness of Australian workplace laws. Read the media release: [FWO reaches out to Korean community to help raise awareness of workplace rights, obligations \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160919-group-k-eu-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160919-group-k-eu-release) .

"While I understand there are cultural challenges and vastly different laws in other parts of the world, it is important for business people operating here to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages," Ms James says.

According to 2011 Census data, there were almost 75,000 Korean-born people living in Australia, more than half of them in NSW, and less than 10 per cent spoke English at home.

At the end of June, 2015, there were also more than 50,000 Korean nationals in Australia, many of them international students, 417 working holiday back-packers and 457 visa-holders.

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

Overseas workers can call 13 14 50 if they need interpreter services.

The Fair Work Ombudsman has fact sheets tailored to overseas workers and international students on its website.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages.

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## Download

- [Boonah Packing Pty Ltd Enforceable Undertaking \(DOCX 168.5KB\) \(www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-boonah-packing-pty-ltd-redacted.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-boonah-packing-pty-ltd-redacted.docx.aspx) (PDF 1.9MB) ([www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-boonah-packing-pty-ltd-redacted.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-boonah-packing-pty-ltd-redacted.pdf.aspx))

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

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Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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