

Fair Work Ombudsman

Submission to the Senate Select Committee on
Temporary Migration

24 March 2020



Australian Government

Fair Work
OMBUDSMAN

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Introduction

1. The Fair Work Ombudsman (**FWO**) welcomes the opportunity to make a submission to the Senate Select Committee on Temporary Migration.
2. This submission:
 - outlines the challenges faced by temporary migrants in the workplace; and
 - comments on initiatives the FWO has undertaken to assist them.

Operational activities and budget

3. A comprehensive overview of the FWO's most recent activities during 2018-19 is available in the agency's annual report at www.fairwork.gov.au.
4. The FWO's 2019-20 appropriation incorporates new funding for measures that include the expansion of the Seasonal Workers Programme, the introduction of a dedicated sham contracting unit and measures following recommendations from the Migrant Workers' Taskforce Report.

Responding to migrant worker challenges

Assisting migrant workers

5. Migrant workers have been a priority cohort for the FWO for many years and are included in FWO's 2019-20 Compliance and Enforcement Priorities. This is the first time the FWO has publically announced its compliance and enforcement priorities, specifying the industries, cohorts and issues that the FWO will proactively focus on where significant and persistent non-compliance exists.
6. A range of factors contribute to the vulnerability of migrant workers, including language barriers and that migrant workers are often not aware of their rights and do not feel able to question their entitlements.
7. Migrant workers make up approximately 7% of the total Australian workforce, and yet:
 - 22% of the FWO's completed disputes came from visa holders in the 2018-19 financial year, and 19% in the 2019-20 financial year to 31 December;
 - over 75% of litigations commenced by the FWO in 2018-19 relate to visa holders.
8. Further, the main allegations made by visa holders to the FWO in 2018-19 relate to the underpayment of wages.

9. The FWO has highlighted through media releases and public statements that the higher representation of migrant workers in its litigations indicates non-compliance involving this cohort is at the more serious end of the spectrum, and warrants more serious enforcement outcomes.
10. The FWO has undertaken a range of inquiries involving migrant workers to understand what is driving non-compliance, including the 417 Working Holiday Visa, 7-Eleven and the Harvest Trail Inquiries¹.
11. In response to the Migrant Workers' Taskforce report, the FWO commenced the 'understand and design' phase of a behaviourally-informed education initiative to encourage migrant workers to take action in response to wage underpayments.
12. The FWO works to remedy the systematic exploitation of migrant workers by using a multi-faceted and joined-up approach, which involves:
 - Enforcing compliance with workplace laws through a significant increase in the use of statutory enforcement tools, including compliance notices to address underpayments, breaches of awards and the National Employment Standards.
 - Working with government, stakeholders and the community to share intelligence, carry out joint compliance activities and address the broader settings that impact on the treatment of migrant workers in the labour market.
 - The provision of education and accessible tools and resources that enable migrant workers to understand and act on their rights.
13. The FWO has been working to promote compliance for migrant workers and has achieved a range of significant outcomes, including helping visa holders to recover over \$3.1 million for nearly 1650 employees in 2018-19 and over \$1.2 million for over 680 employees up to 31 December in 2019-20.

Working across government

14. The FWO regularly works across Government to achieve better outcomes for migrant workers, for example:
 - through the implementation of recommendations relevant to the FWO in the Migrant Workers' Taskforce report as a member of the Migrant Workers' Interagency Group;

¹ Inquiry reports are available at <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

- through the Interdepartmental Committee on Human Trafficking and Slavery and the National Human Trafficking Roundtable, noting that while human trafficking and modern slavery offences do not fall within the FWO's remit, the FWO is committed to supporting a whole-of-government approach to combat these practices;
- through our involvement in the Black Economy and Phoenixing Taskforces;
- through the Working Holiday Maker Cross Agency Committee; and
- through ongoing sharing of information and intelligence as well as joint activities with the Department of Education, Skills and Employment (e.g. Seasonal Worker Programme), the Australian Border Force, the Australian Taxation Office and the Australian Federal Police.

Working with the community to support migrant workers

15. The FWO actively works with the community to provide education and support to migrant communities, including:

- through community engagement strategies (e.g. International Students, Korean-Australians and Chinese-Australians, and the Tasmanian Multicultural Engagement Strategy);
- by providing relevant intermediaries (migrant resource centres, job active providers, university coordinators and ambassadors) with information about our resources and services;
- by using intermediary networks to access opportunities to present or meet with migrant workers and employers directly (for example international students and embassies) to provide education about Australian workplace laws;
- by working with Adult Migrant English Program (AMEP) and international education providers, and contributing to new resources for international students, education providers and education agents, through engaging with the Department of Education;
- through engaging with Community Legal Centre Employment Law Services to explore opportunities for better information sharing and opportunities to support migrant workers; and
- administering the Community Engagement Grants Program to support not-for-profit community organisations and assist them with providing advice and help to vulnerable people, including migrant workers, about workplace issues.

Resources for migrant workers

16. The FWO's website hosts a dedicated webpage for visa holders and migrant workers with information about pay and conditions and help with workplace issues, including information about visa protections².
17. The FWO has also developed a suite of in-language resources to help migrant workers understand their workplace rights and obligations in over 30 languages, including:
- the In-Language Anonymous Report Tool in 16 priority languages (in addition to English), which has greatly increased the proportion of tip-offs from migrant workers;
 - publishing translated metadata for our in-language online resources in 30 languages (November 2019), to enhance search engine optimisation (SEO) and allow them to be more easily found through search engines;
 - the Horticulture Showcase, which contains information for growers and workers in the horticulture and viticulture industries and includes both an automatic translator functionality and a visual piece work agreement for low literacy workers;
 - new resources translated into languages for migrant workers, including the translation of the FWO's suite of low literacy storyboards and animatics into languages for Pacific Islanders working in Australia through Australia's Pacific Labour Mobility initiatives; and
 - an automated website translator which offers machine translation with customised dictionaries (for specific industrial relations terms), currently available in 36 languages.
18. Additionally, in December 2019, the FWO released an updated Fair Work Information Statement (FWIS) with visual elements and simplified language to make it easier for employees, including migrant workers, to understand their workplace rights and obligations.
19. The new FWIS was developed in response to feedback about the previous version, including from the Migrant Workers' Taskforce. This revised FWIS has been translated into over 30 languages and published on the FWO website.

² Under the Assurance Protocol agreed to by the FWO and Department of Home Affairs, a worker who has breached the work-related conditions of their visa will generally not have their visa cancelled if they request the FWO's assistance with workplace issues and meet other criteria, including following their visa conditions in the future.

Continuing to deliver

20. As noted in the final report of the Migrant Workers' Taskforce, the issue of migrant worker exploitation in Australia is one that is systemic and complex, and will not be solved overnight. It is an issue where employment, migration, corporations, taxation and other laws intersect. However, within this context, the FWO continues to achieve significant outcomes to enhance compliance for this cohort.
21. The FWO is committed to continuing to refine its operational model and priorities to ensure that migrant workers continue to receive reliable and timely advice, education and compliance outcomes.