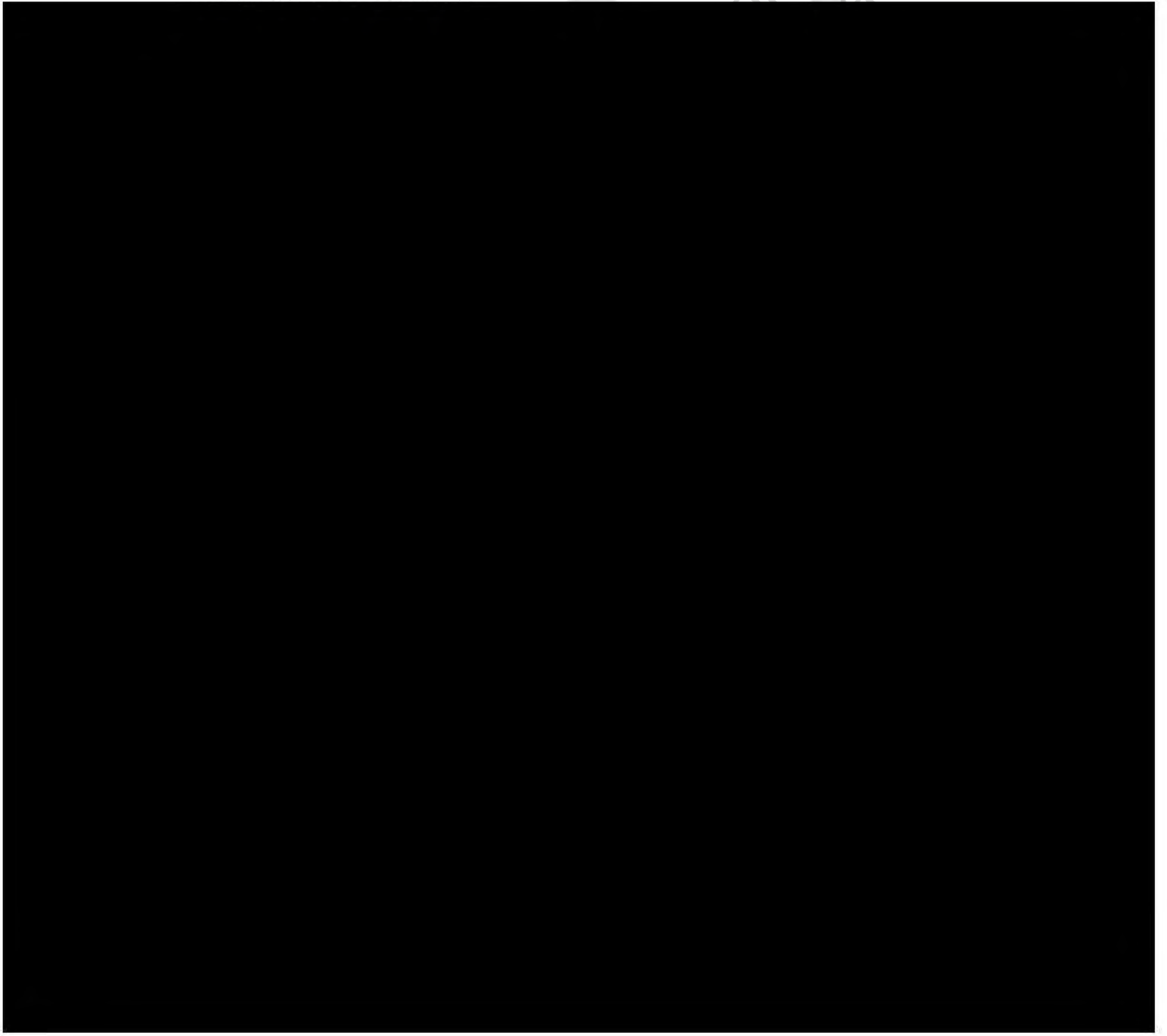


New FWO / DIBP referral protocols

1. From February 2017, the Department of Immigration and Border Protection (DIBP) and the Fair Work Ombudsman (FWO) have agreed that where temporary visa holders, with a work entitlement attached to their visa, may have been exploited in the workplace, and they have reported their circumstances to the FWO, the DIBP will generally not cancel their visa, detain or remove those individuals from Australia, providing:
 - a. the visa holder commits to abiding by visa conditions in the future; and
 - b. there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).
 2. For any temporary visa holder who has no work entitlement attached to their visa, the DIBP will make no commitment other than to consider each case on its merits.
 3. This protocol will break down barriers to reporting exploitation and encourage temporary visa holders to approach the FWO for assistance by ensuring that individuals who are assisting FWO in its compliance activities are not deported.
 4. To assist FWO officers in determining whether or not a referral to the DIBP should be made, the following ready reckoner has been created:
- 

Referral process

FWO officers who wish to refer a matter to the DIBP should contact:

FWO referral liaison officer



A referral will then be made to:

DIBP Liaison Officer



DRAFT
Documents released by the Fair Work Ombudsman
Under the Freedom of Information

FWO REFERRAL TO DIBP

Assurance Protocols and/or Payment for Visa Sponsorship

This form is for referrals from FWO to DIBP for matters pertaining to the Assurance Protocols or allegations relating to Payment for Visa Sponsorship

Please email completed form to: [REDACTED]

FWO details

FWO Reference – VSM and/or Matter Number	
Date of Referral to DIBP	
FWO Contact / FWI	
Position	
Telephone	
Email	
Power under which information is referred	
Is there an ongoing investigation and is the visa holder assisting the FWO	
Is the FWO requesting the visa remain in place until the investigation is finalised	

Visa Holder and Organisation Details

Family/Surname	
Given Names	
Date of Birth	
Contact details (if known)	
Visa held	
Organisation Name	
ABN	
Address	
Date employment commenced/terminated	

Reason for DIBP referral

Assurance Protocol	Yes / No
Payment for visa sponsorship (refer Paying for Visa Sponsorship activity factsheet for information and case studies)f	Yes / No
Payment for Visa Sponsorship	
Is there evidence/indicators that the sponsor (or another person/entity) received a benefit?	Yes / No / Potential
Is there evidence/indicators that the sponsor (or another person/entity) asked for a benefit	Yes / No / Potential

Is there evidence/indicators that the benefit came from a visa holder, prospective visa holder (or associated person)?	Yes / No / Potential
Is there a witness willing to testify for DIBP? (ie. a visa holder or third party)	
<i>FWO assessment (include details of any records or documents held)</i>	

Assurance Protocols – refer to the Protocol Matrix	
What assistance is the visa holder providing to the FWO investigation?	
Is the FWO investigation tracking towards an enforcement outcome?	Yes / No Type
Is there evidence that the visa holder has been threatened or coerced or fearing genuine threat?	Yes / No / Potential
Does the visa holder understand a referral is being made to DIBP and have their expectations been managed as per the referral protocols?	Yes / No
<i>Any additional information</i>	

Is the person a 457 visa holder

Nominated Salary		Identified Salary	
Nominated Position		Identified Position	





Visa holders & migrants

Migrant workers and visa holders, including international students, have the same workplace rights as all other workers in Australia. We provide free advice and assistance to all workers to help them understand these rights.

Find out what you need to know about working in Australia.

- [Your visa](#)
- [Pay and conditions](#)
- [Help with workplace issues](#)

If you're having an issue at work, you can contact us anonymously to help us keep workplaces fair (<http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-us-keep-workplaces-fair>). You can make an anonymous report to us in your language using our translated [Anonymous report form](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language) (<http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language>) in multiple languages.

Translated information is available in multiple languages in our [Language help](http://www.fairwork.gov.au/language-help) section (<http://www.fairwork.gov.au/language-help>). If you or someone you know needs an interpreter when contacting us or the Department of Immigration and Border Protection (DIBP) call the Translating and Interpreting Service on 131 450.

Your visa

If you're here on a visa, make sure it allows you to work in Australia and check for any conditions like the number of hours you can work. For example, if you're an international student, you may get a part-time or casual job while studying in Australia. The number of hours you can work each week may be limited by your visa conditions.

The Department of Immigration and Border Protection can give you information about:

- which visa to apply for
- your rights and responsibilities under a visa
- how to change and cancel your visa
- how to apply for permanent residency.

Visa holders can use [Visa Entitlement Verification Online \(VEVO\)](https://www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-(vevo)) ([https://www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-\(vevo\)](https://www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-(vevo))) to check current visa details and conditions or contact the Department of Immigration and Border Protection (<http://www.immi.gov.au/>) for more help.

Visa protections

Your employer can't cancel your visa, even if it's been breached. Only the DIBP can grant, refuse or cancel visas. We've set up an arrangement with DIBP to support and encourage migrant workers to come forward to request our assistance and provide us with any evidence or information about exploitation. This will help us to better understand the issues faced by visa holders and migrant workers so that we can educate employers and employees about entitlements and obligations.

We've come to an agreement with DIBP that a person's temporary visa will not be cancelled if they:

- had an entitlement to work as part of their visa
- believe they have been exploited at work
- have reported their circumstances to us
- are actively assisting us in an investigation.

This applies as long as:

- they commit to abiding by visa conditions in the future
- there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).

For temporary visa holders who don't have work entitlements attached to their visa, DIBP will consider the case on its merits.

Read more about [Workplace rights for all visa holders working in Australia on the DIBP website](http://www.border.gov.au/Trav/Work/Work/workplace-rights) (<http://www.border.gov.au/Trav/Work/Work/workplace-rights>).

Paying for visa sponsorship

It is illegal for someone to ask for, receive, offer or provide a benefit in return for visa sponsorship or employment that requires visa sponsorship. This is called 'paying for visa sponsorship.' Examples of this include:

- an employer makes someone pay them money in exchange for sponsoring them on a 457 visa
- an employer makes someone pay back some of their pay each week in exchange for a visa.

If you think your employer is engaging in 'paying for visa sponsorship' activity you can contact the [Department of Immigration and Border Protection](http://www.immi.gov.au/) (<http://www.immi.gov.au/>).

It could also be a 'cashback' scheme or an unreasonable requirement to pay money. Read more about this on our [Deducting page](http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments) and [overpayments page](http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments) (<http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments>). You can [Contact us](http://www.fairwork.gov.au/contact-us/default) (<http://www.fairwork.gov.au/contact-us/default>) about deductions, cashback schemes or if an employer is asking for payment of any kind as a condition of a job offer.

Seasonal workers

Programme page (<http://www.fairwork.gov.au/how-we-will-help/helping-the-community/seasonal-worker-programme>).

Pay and conditions

There are minimum pay rates that employees have to be paid, based on the work they do. Use our [Pay Calculator \(https://calculate.fairwork.gov.au/\)](https://calculate.fairwork.gov.au/) to find out the minimum pay rates for your job.

Employees also have other minimum conditions at work. These are set out either in an Award or agreement (<http://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/>), or come from the National Employment Standards (<http://www.fairwork.gov.au/employee-entitlements/national-employment-standards>).

If you're here on a 457 visa, your employer can't pay you in cash. Your minimum pay rates need to be paid by electronic funds transfer or cheque. For more information read our fact sheet on [457-workplace rights and entitlements \(http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/457-visa-holders-workplace-rights-and-entitlements\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/457-visa-holders-workplace-rights-and-entitlements).

A payslip needs to be provided each time an employee gets paid. Visit our [Pay slips \(http://www.fairwork.gov.au/Pay/pay-slips-and-record-keeping/pay-slips\)](http://www.fairwork.gov.au/Pay/pay-slips-and-record-keeping/pay-slips) page to find out what should be on a pay slip.

Watch our short video for information about Working in Australia.

Working in Australia (English)



Case study: Jessica's story

International students can come to us for help if they're having workplace issues, without fear of their visa being cancelled.

Read Jessica's story (129.1KB) (<http://www.fairwork.gov.au/ArticleDocuments/725/jessicas-story-international-students.docx.aspx>) (439.1KB) (<http://www.fairwork.gov.au/ArticleDocuments/725/jessicas-story-international-students.pdf.aspx>) to see how we can help you sort out workplace issues to do with your pay and conditions.

Visit our [Language help \(http://www.fairwork.gov.au/language-help/default\)](http://www.fairwork.gov.au/language-help/default) page for information in multiple different languages to help you understand what your rights are when working in Australia.

Tax and superannuation

The minimum pay rate is the gross pay (the amount of pay before tax is taken out). The Australian Taxation Office (ATO) gives advice about tax and superannuation. You need to give your employer your Tax File Number (TFN) so that they do not have to take the highest rate of tax from your pay. For more information about tax, visit the ATO website [☞ \(http://www.ato.gov.au/Individuals\)](http://www.ato.gov.au/Individuals).

If you're a temporary resident working in Australia, your employer may also have to pay super for you. Find out more about [Super for temporary residents leaving Australia on the ATO website \(https://www.ato.gov.au/individuals/super/accessing-your-super/temporary-residents-leaving-australia/\)](https://www.ato.gov.au/individuals/super/accessing-your-super/temporary-residents-leaving-australia/) [☞ \(http://www.ato.gov.au/Individuals\)](http://www.ato.gov.au/Individuals).

You can keep track of the number of hours you've worked easily with our [Record my hours app \(http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app). This app is available in multiple languages.

Help with workplace issues

We are here to help you. An employee can't get into trouble or have their visa cancelled for contacting us to ask for information about their pay or other entitlements.

Tell us about your workplace issue by making an online enquiry in My account. If you already have an account with us, [go to the enquiries form now \(http://www.fairwork.gov.au/my-account/fwsignin.aspx?RedirectURL=%2fmy-account%2fsubmit-a-new-enquiry\)](http://www.fairwork.gov.au/my-account/fwsignin.aspx?RedirectURL=%2fmy-account%2fsubmit-a-new-enquiry).

If you think your employer has made a mistake with your pay or entitlements, visit [Help resolving workplace issues \(http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default) for practical steps on how to fix the problem.

You can also contact us anonymously to help us keep workplaces fair (<http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-us-keep-workplaces-fair>). You can make a report in your language using our translated [Anonymous report form \(http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language), which is available in multiple languages.

What to do next

- Read our [letter to International Students \(http://www.fairwork.gov.au/about-us/our-role/corporate/open-letter-to-international-students\)](http://www.fairwork.gov.au/about-us/our-role/corporate/open-letter-to-international-students) from Fair Work Ombudsman, Natalie James.
- If you're injured at work, find out who to contact on our [Workers' compensation page \(http://www.fairwork.gov.au/leave/workers-compensation\)](http://www.fairwork.gov.au/leave/workers-compensation) or check out the [Working safely in Australia information sheet# \(https://www.safeworkaustralia.gov.au/collection/working-safely-australia-information-sheets\)](https://www.safeworkaustralia.gov.au/collection/working-safely-australia-information-sheets).
- To find your local workplace health and safety body, visit our [Related sites page \(http://www.fairwork.gov.au/website-information/related-sites\)](http://www.fairwork.gov.au/website-information/related-sites).
- Read about [paying for visa sponsorship# \(https://www.border.gov.au/FAQs/Pages/what-is-payment-for-visas.aspx\)](https://www.border.gov.au/FAQs/Pages/what-is-payment-for-visas.aspx).

You might also be interested in

- [Unpaid trials \(http://www.fairwork.gov.au/Pay/Unpaid-work/unpaid-trials\)](http://www.fairwork.gov.au/Pay/Unpaid-work/unpaid-trials)
- [Student placements \(http://www.fairwork.gov.au/pay/unpaid-work/student-placements\)](http://www.fairwork.gov.au/pay/unpaid-work/student-placements)
- [Work experience and internships \(http://www.fairwork.gov.au/pay/unpaid-work/work-experience-and-internships\)](http://www.fairwork.gov.au/pay/unpaid-work/work-experience-and-internships)
- [Top tips for backpackers \(http://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign#top-tips-for-backpackers\)](http://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign#top-tips-for-backpackers)

Page reference No: 2798

The Fair Work Ombudsman is committed to providing advice that you can rely on.

The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional.

Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.

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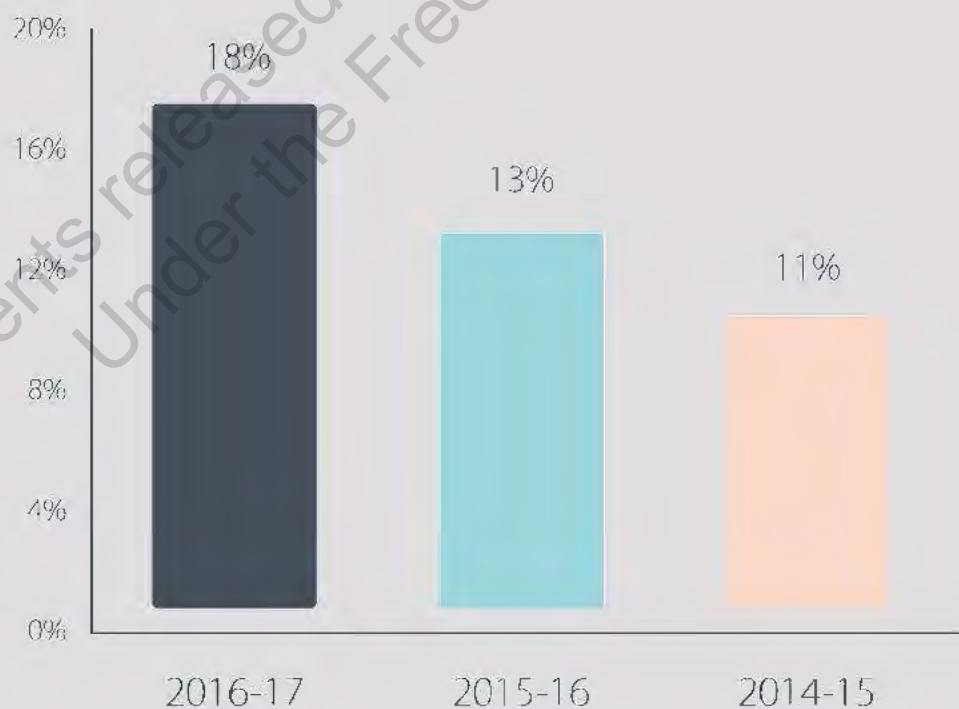
Migrant workers

Menu

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We continue to see an overrepresentation of visa holders in matters at the enforcement end of our activities. Migrant workers make up 6%¹ of the Australian workforce, however 18% of the workplace disputes we assisted with involved a visa holder. This cohort featured in 49% of the court cases commenced during the year.

Figure 2: Proportion of disputes the FWO helped to resolve by visa holders, 2014-17



Government and community concern about the exploitation of migrant workers remains

high. This is evident in senate inquiry witness statements, media reporting and the 12% of anonymous reports we received during the year which allege workplace exploitation of visa holders.

Migrant workers can be inhibited from exercising their workplace rights or seeking help from government bodies because of a lack of awareness about their options, language and cultural barriers, and concerns about visa status.

As part of our commitment to tackle worker exploitation, we developed the FWO Multicultural Access and Equity Plan 2016–19. The plan outlines how we are working to ensure multicultural employers and employees are aware of and educated about workplace rights and responsibilities. It also sets out how we are working to remove barriers of access to FWO advice and services for multicultural communities. Activities completed in 2016–17 include:

- Setting up and promoting an arrangement with the DIBP to support migrant workers to come forward about exploitation. Under the assurance protocol, a breached temporary visa with work rights will not be cancelled where workers request the FWO's assistance². Facebook posts publicising the assurance protocol to working holiday visa holders and international students were seen over 1.1 million times.
- Introducing a dedicated 'visa' option for callers to the Fair Work Infoline that directs callers to translated website resources and prompts advisers to ensure the caller understands advice given. We also maintained a referral process for community legal centres which enables intermediaries to contact the FWO on behalf of migrant workers.
- Expanding the in-language content on the FWO website to 30 languages and improving content on popular topics (such as pay, leave and ending employment) for the top 16 language groups. New resources include animated in-language storyboards and videos designed to aid understanding of basic workplace rights and obligations. The storyboards and videos were developed in consultation with migrant workers, community organisations and cultural advisers.
- Engaging with the Korean community, including Korean business leaders, media and the Consular General, to develop a tailored strategy to educate this community about workplace rights and responsibilities. This follows a significant number of enforcement outcomes involving employers and employees of Korean background. In 2017, targeted Facebook posts and ads on Korean websites and apps were seen over one million times, and contributed to more than 11 200 visits to Korean language content on the [FWO website](#).
- Continuing to build our relationship with the Chinese business community. We worked together to deliver information on workplace laws as part of our Chinese Engagement Strategy. In 2016, we met with local councils in areas with high Chinese populations across Victoria and NSW. During these meetings we distributed resources for Chinese business operators, demonstrated the FWO website, including our Simplified and Traditional Chinese content, and explored opportunities to increase awareness of workplace laws in their community. We also promoted our Chinese resources via Facebook, Weibo and WeChat (Chinese social media channels) and display advertising on Chinese language websites. Content was seen over 1.7 million times and generated over 12 000 visits to our Chinese language page. Media coverage was also generated through various Chinese language media outlets.

- Administering the Community Engagement Grants Program, which funds community organisations to deliver services, projects and programs of work that supplement our functions under the Fair Work Act, and which are targeted at assisting vulnerable workers. Services facilitated by the program include:
 - JobWatch—general advice and assistance to the most vulnerable workers in Victoria (Vic.), Tasmania (Tas.) and Queensland (Qld), and legal casework services and community legal education for Victorian workers.
 - Growcom—education on compliance with workplace laws, including training, for Queensland horticultural employers to improve the employment experiences of vulnerable workers in the sector.
 - Redfern Legal Centre—free and independent employment law advice and assistance to international students through the NSW International Student Employment Law Service, and development of the employment section of an education app.
 - Employment Law Centre Western Australia (WA)—specialist employment law legal advice service for vulnerable and disadvantaged workers.
 - Northern Territory (NT) Working Women's Centre and Working Women's Centre South Australia (SA)—workplace information, advice and advocacy services for vulnerable female workers as well as outreach and community engagement activities targeted at other vulnerable groups
- Participating in forums and networks that bring together government bodies and key stakeholders to collaborate on best practice solutions including the:
 - Interdepartmental Committee on Human Trafficking and Slavery
 - National Roundtable on Human Trafficking and Slavery
 - Labour Exploitation Working Group
 - Melbourne Law School's Migrant Worker Campaign Steering Group
 - Council of International Students Australia National Conference.
- Assessing whether 457 temporary skilled work visa holders were receiving their nominated salary and/or not performing work in the nominated position in their visa. Five hundred and nineteen entities that employed 741 temporary skilled work visa holders were assessed. One hundred and thirty entities were referred to the DIBP over concerns regarding 160 workers.
- Completing an inquiry into wages and conditions of those working under the 417 Working Holiday Visa Program, which found an environment of unreasonable and unlawful requirements imposed on visa holders by unscrupulous businesses. As a result of the inquiry we recommended a number of measures, including:
 - establishing a federal–state inter-agency working group that examines current and future regulations to develop a holistic compliance and enforcement model
 - exploring opportunities to work with a broader range of stakeholders and extend the channels through which information and support is delivered
 - supporting the establishment of an employer register for employers of 417 visa holders partnering with academics and migration experts.

- Working with the Department of Employment to administer compliance with the Seasonal Worker Programme. In 2016–17, we delivered 53 on-arrival briefings, providing new workers and their employers with information about workplace rights and obligations in Australia. We also finalised a litigation involving one programme employer, and entered into an enforceable undertaking with another to address serious non-compliance.

1. *This percentage has been derived by dividing the number of selected visa types with working entitlements by total persons employed. DIBP, Temporary entrants and New Zealand citizens in Australia, as at 30 June 2016, Temporary entrants in Australia (stock data) statistics [table 1](#), p. 3, accessed 27 September 2017. Australian Bureau of Statistics (ABS), Labour Force Australia, June 2016, cat. no. 6202.0 [table 1](#), Table 1. Labour force status by Sex, Australia - Trend, Seasonally adjusted and Original, accessed 27 September 2017.*
2. *We have an agreement with DIBP that a person's temporary visa will not be cancelled if they:*
 - *had an entitlement to work as part of their visa*
 - *believe they have been exploited at work*
 - *have reported their circumstances to us*
 - *are actively assisting us in an investigation*

This applies as long as:

 - *they commit to abiding by visa conditions in the future*
 - *there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).*

Previous

Compliance priorities

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Young workers



Copyright Site map References Previous Annual Reports

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2016 - 2017

Agency - Fair Work Ombudsman

Department of Employment Question No. EMSQ17-001520

Senator Marshall, Gavin provided in writing.

Question

FWO - Migrant Worker Taskforce - Visa holders

"While a general amnesty from migration law is not appropriate, the Department of Immigration and Border Protection and the Fair Work Ombudsman have agreed that where temporary visa holders with a work entitlement attached to their visa may have been exploited and they have reported their circumstances to the FWO, the Department will generally not cancel a visa, detain or remove those individuals from Australia, providing:

- the visa holder commits to abiding by visa conditions in the future; and
- there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).

For any temporary visa holder who has no work entitlement attached to their visa, the Department will make no commitment other than to consider the case on its merits. "

Is this arrangement reduced to writing? Is there an MOU?

What guarantee exists for each person who come forward to the FWO that DIBP will follow these guidelines?

What form does the commitment to abiding by visa conditions have to take? A written undertaking?

What recourse does the FWO have, or an individual visa holder have, if the DIBP detains or removes an exploited person contrary to this agreement?

Answer

The Fair Work Ombudsman (FWO) will publish information about the reporting protocols on its website www.fairwork.gov.au. The FWO and the Department of Immigration and Border Protection (DIBP) have an existing Memorandum of Understanding that clarifies and facilitates the FWO's responsibilities under the *Migration Act* to undertake monitoring of obligations relating to the subclass 457 visa program.

In accordance with the reporting protocols, DIBP has agreed that it will *generally not* cancel a visa, detain or remove those individuals from Australia. This is dependent on the visa holder committing to abide by their visa conditions in the future and there being no other basis for visa cancellation.

As at 24 March 2017, the FWO had made 13 referrals to DIBP on behalf of employees in breach of their visa work conditions who were assisting the FWO with an investigation, including 11 individuals in matters related to 7-Eleven franchises.

As was previously the case, DIBP has discretion as to how it deals with breaches of visa conditions. Through these protocols, FWO works with DIBP to inform the way DIBP exercises its discretion; however it is ultimately a decision for DIBP.

Questions about how DIBP implements the protocols, exercises its discretion and satisfies itself of a visa holder's commitment to abide by their visa conditions in the future should be directed to DIBP.