



**Australian Government**  
**Department of Home Affairs**



# **Department of Home Affairs submission to the Inquiry into the impact temporary migration has on the Australian economy, wages and jobs, social cohesion and workplace rights and conditions**

**Senate Select Committee on Temporary Migration**

28 August 2020

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## Summary of Australian Border Force Activities

The Department of Home Affairs (the Department) and the Australian Border Force (ABF) work collaboratively with other agencies, including the Attorney-General's Department, the Fair Work Ombudsman (FWO), the Australian Taxation Office, the Department of Education, Skills and Employment and the Australian Federal Police to support the whole-of-government response to migrant worker exploitation through initiatives such as, Operation BATTENRUN, Taskforce CADENA and the Migrant Workers Interagency Group.

The ABF has no tolerance for exploitation in Australian workplaces and is committed to addressing the exploitation of vulnerable workers, regardless of their citizenship or visa status.

The Migration Act 1958 (Cth) creates offences of allowing a person to work, or referring a person for work, if the person is an unlawful non-citizen (UNC) or a lawful non-citizen working in breach of a visa condition. The offences are escalated to aggravated offences if the worker is being exploited and the person knows of, or is reckless to, that circumstance. Illegal work includes lawful non-citizens working in breach of visa conditions, and UNCs working.

The ABF combats foreign worker exploitation and its links to visa fraud by applying the full spectrum of enforcement measures including education, compliance activities, international engagement, and criminal prosecution. It does this by working collaboratively with Commonwealth partners, and the states and territories, to harden the border against serious organised crime networks seeking to exploit vulnerable foreign workers and Australia's migration system for financial gain.

The Department and the FWO have established an Assurance Protocol, to encourage migrant workers to report exploitation in the workplace. If temporary visa holders with work rights have breached their work related visa conditions, but have reported the exploitation, the Department will generally not cancel their visa, providing they commit to abide by visa conditions in the future and there are no other grounds for visa cancellation such as national security, character, health or fraud.

Key noteworthy ABF activities assisting with this effort includes:

### Operation BATTENRUN

On 3 December 2018, Operation BATTENRUN was established to detect, deter and disrupt labour hire intermediaries responsible for the exploitation of foreign nationals in Australia. Individuals are identified based on threat and geographical locations, with priority being placed on those individuals who pose a threat to the Australian community.

The following law enforcement efforts have been completed for Operation BATTERNRUN:

Activity/Outcome	2018/2019	2019/2020	Total
<b>Field Activities</b>	95	842	1001
<b>Cancellations</b>	0	25	26
<b>Detentions</b>	<5	153	156
<b>NOICCs</b>	0	7	7
<b>Removals</b>	0	164	170
<b>S251 Warrants executed</b>	7	72	80
<b>Awareness activities</b>	<5	102	134
<b>Non-warrant visits</b>	0	89	91
<b>Field Observations</b>	87	626	759
<b>Infringements Issued</b>	0	<5	<5

An example of a disruption effort aimed at reducing the exploitation of foreign nationals by LHIs is as follows;

- An ABF led operation involving AFP and WA Police, targeting the sex industry involved visits to numerous massage parlours in Western Australia.
- The operation was multi-faceted, targeting entities of interest and LHIs, with a focus on employer compliance, the exploitation of foreign workers, and the exploitation of Australia's visa programs.
- 57 workers were located and interviewed during non warrant activity, with over ten of these working in contravention of their visa conditions. One UNC was located and detained. A number of these persons have since been removed from Australia, and two businesses were issued with infringements as a result of non-compliance.
- In addition, a case of human trafficking was identified and the individual was placed on the Support for Trafficked Person Program.
- Multiple LHIs and facilitator syndicates were identified, and as a result, the ABF and AFP obtained useful intelligence to inform future investigations, and developed valuable community and human sources.

## Taskforce CADENA

In June 2015, the Government established Taskforce CADENA (CADENA) as a joint agency initiative between the ABF and FWO to enhance national coordination efforts in operations involving allegations of serious criminal migration fraud targeting the exploitation of foreign workers.

CADENA findings have enabled the ABF to develop targeted operations against facilitators to disrupt the exploitation of foreign workers. CADENA operations and intelligence exchange has greatly enhanced all agencies understanding of the criminal environment as it relates to foreign worker exploitation and its links to more serious criminality than was previously known. This includes links to:

- Illegal sex work, human trafficking, slavery, money laundering, and illicit drugs;
- Unscrupulous LHIs facilitating the movement and placement of foreign workers in exploitative conditions for financial gain;
- The use of lawful and unlawful immigration service providers charging foreign workers exorbitant fees to exploit visa pathways and prolong their working stay in Australia;
- The use of professional facilitators who establish complex financial structures to hide illegal activity, and avoid payment of taxes, creditors and employee entitlements; and
- The use of offshore networks to recruit foreign workers, provide transport logistics to Australia and in some cases, false identification documents.

The following law enforcement efforts have been completed for Taskforce CADENA over the past three years:

Activity/Outcome	2018/2019	2019/2020	Total
Employer sanction awareness visits	53	<5	54
S482C Migration Act warrants	8	9	17
3E Crimes Act warrants	6	0	6
Other non-warrant visits	5	0	5
Illegal worker warning notices (IWWNs)	27	19	46
Identification of organised networks involved in exploitation of foreign workers	<5	<5	6
Operational activity that disrupts ongoing ability of targets	20	8	28
Initiation of proactive field intelligence activity	6	7	13
Australian Criminal Intelligence Commission (ACIC) Coercive Hearings	<5	<5	<5
Joint agency enforcement activity	16	<5	18
Referrals to partner agencies	16	14	30
Human Trafficking referrals	<5	0	<5
Criminal Assets Confiscation Taskforce (CACT) Referral	<5	<5	5
ABF Infringement notices	22	<5	26
Intelligence Products	53	<5	54

An example of a joint ABF and FWO disruption effort is as follows:

- The FWO received allegations relating to an individual who had utilised a LHI to recruit the workforce for his citrus packing facility. It was alleged the individual was employing Malaysian nationals who had travelled to Australia on a visa with no work rights. The allegations centered around wages and entitlements.
- Enforcement activity conducted by the ABF and FWO on the premises resulted in the location of three UNC's and the identification of other UNC's who had worked for the company. Further enforcement activity on the residential premise of the LHI led to the detention and subsequent removal of three further UNC's.
- The individual involved was charged with 12 counts of employment related offences under the Migration Act 1958 and was convicted on all charges and fined, on an aggregate basis, \$100,000.

## Sponsor Monitoring

The ABF undertakes proactive, targeted sponsor compliance activities to ensure certain sponsors are complying with their sponsorship obligations. Sponsors monitored are;

- Standard business sponsors or labour agreement sponsors (subclass 457 and Temporary Skill Shortage (TSS) visas); and
- Temporary activity ((subclass 408) visas).

The ABF approach encourages voluntary sponsor compliance, while dealing effectively with those who do not comply.

The ABF educates sponsors as part of every operational activity in order to build awareness of their sponsorship obligations and the consequences of non-compliance. Enforcement action available for non-compliant sponsors include:

- Cancelling a sponsors access to the program;
- Barring a sponsor from sponsoring more visa holders;
- Serving infringement notices up to \$12,600 per obligation breach; and
- Civil penalties of up to \$63,000 per obligation breach.

	Sponsors monitored	Sponsors sanctioned <sup>^</sup>	Sponsors warned	Infringements issued	Total fines (AUD)
2018/19	1,507	669	119	28	\$292,320
2019/20*	846	428	56	38	\$356,580

\*Up to 31 June 2020

<sup>^</sup>Sponsors sanctioned include adverse action against a sponsor involving either a temporary sponsorship bar (3 months to 5 years), a sponsorship cancellation or a combination of both. This outcome is separate to a warning or infringement being issued.



The total number of Sponsors monitored in 2019/20 is expected to be significantly lower compared to 2018/19. This is due to a shift in focus, which has adopted a more investigative approach and is targeting complex cases in higher risk industries.

While this may lead to a smaller number of businesses monitored, this investigative approach is identifying more non-compliance, and resulting in higher value enforcement outcomes (as seen by the increase in sponsors sanctioned and warned, and infringement notices issued).

## Other mechanisms

To further assist compliance with visa obligations, the Department also;

- Encourages individuals to make enquiries and advise of non compliance through the Border Watch Program;
- Offers free online visa checking tools such as the Visa Entitlement Verification Online (VEVO), to help visitors know and understand the conditions of their Australian visa; and
- Educates individuals on entities and individuals involved in foreign worker exploitation through a sanctions register and the Departments website.

The ABF also refers all suspected cases of slavery, human trafficking and other serious forms of exploitation to the Australian Federal Police for investigation via an established referral protocol.

## Removal Activities

The ABF continues to progress the removal of non-citizens who do not hold a visa as soon as practicable, subject to completion of any custodial sentence or other outstanding matters. This includes those who have had their visas cancelled as a result their involvement in foreign worker exploitation.

Under the Migration Act 1958, non citizens without a valid visa who have exhausted all avenues to remain in Australia lawfully are expected to depart. If a UNC does not depart voluntarily, he/she is subject to immigration detention and removal from Australia. Central to Australia's return strategy is the knowledge that UNCs can be removed if they fail to depart Australia voluntarily.

Removal from onshore detention between 1 March 2020 to 31 July 2020 by month*	
Mar-20	180
Apr-20	18
May-20	18
Jun-20	33
Jul-20	55
<b>TOTAL</b>	<b>304</b>

\* Non-citizen was removed to their country of origin or a third country and includes both IMAs and Non-IMAs.

\* Countries with highest number removals and inclusive of all removals, not only those associated with foreign worker exploitation. - Citizenship is based on the individual's citizenship at time of removal.

- As figures are drawn from a dynamic source, any historical figures provided may differ slightly in previous or future reporting.

The length of time a non-citizen remains in immigration detention is contingent on multiple factors such as; outstanding legal or criminal matters, ongoing appeal processes in relation to visa decisions, obtaining legitimate travel documentation, being deemed fit to travel due to pre-existing medical conditions, and most recently, COVID-19 travel restrictions. Key removal statistics include:

Removal from onshore detention between 1 March 2020 to 31 July 2020 by citizenship*	
Malaysia	57
New Zealand	51
Vietnam	17
India	17
China	16
Unknown	16
United Kingdom	15
Taiwan	9
Hong Kong	9
Brazil	9
United States of America	8
South Korea	6
Cape Verde	5
Ireland	5
Germany	5
Indonesia	5

\* Non-citizen was removed to their country of origin or a third country and includes both IMAs and Non-IMAs.

\* Countries with highest number removals and inclusive of all removals, not only those associated with foreign worker exploitation. - Citizenship is based on the individual's citizenship at time of removal.

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