

**The impact of Australian's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

**Written questions on notice from Senator McKenzie**

1. How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?
2. Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

Witness	Answered
National Union of Workers	
Queensland Council of Unions	Yes
AMIEU Queensland Branch	Yes
AMIEU South and Western Australian Branch	Yes
Australian Nursing and Midwifery Federation	Yes
Electrical Trades Union	Yes
Australian Council of Trades Union	Yes
Construction, Forestry, Mining and Energy Union	Yes
UnionsWA	Yes
Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch	Yes

### **Answers from Queensland Council of Unions**

Reference is made to your email of 27 July 2015 concerning Australian's temporary work visa programs in which you forwarded the following questions:

- How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?
- Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

The Queensland Council of Unions (QCU) is a peak council that exists to provide services and support to affiliated unions. As such the QCU does not generally provide advice or services to members of the public.

Calls from members of the public are either directed towards the relevant union or the Fair Work Ombudsman. We do not keep statistics concerning the reason as to why members of the public make enquiries to the QCU.

We are unable to assist with the specific enquiries made by Senator McKenzie.

- How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?
- Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

*The AMIEU Queensland branch does not keep records of numbers of complaints specifically from temporary migrant workers. However, such complaints are encountered regularly and routinely by union officials and delegates. However, the Queensland branch would deal with complaints relating to hundreds of temporary migrant workers each year.*

***For example, in early 2013, The Queensland branch of the AMIEU dealt with complaints regarding underpayment and exploitation of Korean workers employed by a labour hire agency that supplied labour to the smallgoods establishment operated by Hans Continental Smallgoods Pty Ltd at Wacol. The underpayment affected approximately 300 or more Korean workers. The AMIEU successfully obtained the payment of proper wages and backpay for the 140 Korean workers who were members of the AMIEU. The AMIEU also referred this matter to the Fair Work Ombudsman. Details of the communication between the AMIEU Queensland branch and the Fair Work Ombudsman were provided to the Senate committee. The AMIEU did not receive any meaningful information about whether the Ombudsman pursued this matter at all.***

*As a result, the AMIEU Queensland branch did not subsequently refer any further complaints to the Fair Work Ombudsman, considering that to do so was pointless.*

The AMIEU Newcastle and Northern Branch has notified the FWO on most occasions (around 70%) relating to visa worker exploitation across the meat and poultry processing industries since early 2011. The form of notification ranged from telephone calls to emails. We have pursued all other cases directly through the courts.

227 Henley Beach Rd  
Torrensville  
SA 5031



**AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION**

South and Western Australian  
Branch

(Registered under the Fair Work Act 2009)

ABN: 44 210 953 242

Telephone: (08) 8274 4100  
Facsimile: (08) 8274 4101  
Toll Free: 1800 882 645  
(Country and WA members)  
Email: [admin@sawa.amieu.asn.au](mailto:admin@sawa.amieu.asn.au)  
Website: <http://sa.amieu.asn.au>

**The impact of Australian's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

On behalf of the committee, I would like to thank you for your assistance with the above inquiry. Senator McKenzie has submitted two questions on notice for each of the unions that have attended public hearings for this inquiry for answer by **COB 10 August 2015**. Please see these questions below:

- How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?
- Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

**AMIEU SA & WA BRANCH RESPONSE**

Our union deals with disputes and non-compliance issues on a daily basis. We do not record the numbers on an individual basis because some may be resolved reasonably quickly, some may be group complaints, and others may be discontinued because the visa holder has left the area or country. To put a number on it would be just a guess however it is fair to say that the complaints are numerous and substantial.

Most issues are dealt with on site or with the employer as per the dispute procedure. Where we have unsatisfactory results or simply cannot get agreement we then lodge our disputes ourselves in Fair Work Commission and represent the member.

Where an issue arises that is quite broad like the example I gave in my evidence where local workers being displaced by the Visa workers after they have been trained by them, we have taken some to the Fair Work Ombudsman to investigate. We do not do that as a matter of course as we have also found in the past that this avenue is generally unsatisfactory.

My experience to date is that any matters referred to the Ombudsman are not investigated thoroughly and leaves our members feeling deflated. We heard from our member Greg Mitchel on the day who voiced exactly this type of outcome.



10 August 2015

Ms Louise Kelly  
Administrative Officer  
Standing Committee on Education and Employment  
Department of the Senate

Email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Ms Kelly,

**The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

Thank you for the opportunity to provide further feedback to the Inquiry into *The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders*, in particular to the two questions on notice submitted by Senator McKenzie.

The ANMF submits responses to those questions as follows:

1. *How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?*

ANMF Branches across the country receive a significant number of reports of non-compliance and abuse of employees holding temporary work visas. These reports include instances such as:

- Temporary visa workers performing different roles from those for which they were recruited, e.g. working as assistants in nursing rather than registered nurses (RNs);
- Employers unlawfully deducting fees and other costs, such as accommodation, from temporary visa workers' wages;
- S.457 visa holding RNs working 20 hours per week paid and 20 hours per week unpaid;
- Temporary visa workers being required to perform duties that are not part of the role, e.g. RNs required to clean facilities, and threatened with termination if they refuse to comply;
- Employers refusing to recognise prior service in other countries for the purposes of pay point commencement; and,
- Under-payment or non-payment of loadings, allowances and other penalties and unfair dismissals.

**Canberra Office**

Unit 3, or PO Box 4239  
28 Eyre Street  
Kingston ACT 2604  
Australia

T +612 6232 6533  
F +612 6232 6610  
E [anmfcanberra@anmf.org.au](mailto:anmfcanberra@anmf.org.au)  
W [www.anmf.org.au](http://www.anmf.org.au)

**Melbourne Office**

Level 1, 365 Queen Street  
Melbourne VIC 3000  
Australia

T +613 9602 8500  
F +613 9602 8567  
E [anmfmelbourne@anmf.org.au](mailto:anmfmelbourne@anmf.org.au)  
W [www.anmf.org.au](http://www.anmf.org.au)

**ANMF Journals**

**Australian Nursing and  
Midwifery Journal**

E [anmj@anmf.org.au](mailto:anmj@anmf.org.au)

**Australian Journal of  
Advanced Nursing**

E [ajan@anmf.org.au](mailto:ajan@anmf.org.au)

ABN 41 816 898 298



On many occasions the temporary visa workers are members of the union and the matters are dealt with by the union both on behalf of an individual or representing a number of employees when the issue is employer wide.

However, the ANMF receives many reports of instances where the affected individuals are ultimately too afraid to permit the union to take action to rectify the matter.

2. *Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?*

The ANMF has not referred these complaints to the Fair Work Ombudsman for investigation for several reasons:

- The Fair Work Ombudsman does not have the resources to deal with the current volume of complaints; the ANMF understands that only between 5-10% of complaints received per year can be investigated;
- In other cases, i.e. issues not involving temporary visa workers, where complaints have been referred to the Fair Work Ombudsman members have consistently reported their dissatisfaction with the outcome. This is because most often the employer is required to only pay the employee of portion of what is actually owed. Members therefore consider that the union achieves better outcomes;
- Finally, and perhaps most significantly, temporary visa workers are frequently too afraid to make a complaint to an authority such as the Fair Work Ombudsman and, as stated earlier, are often too afraid to allow the union to pursue a matter for them. In these instances it is inappropriate for the ANMF to refer matters to the Fair Work Ombudsman.

Thank you for your consideration of these issues. Please do not hesitate to contact this office if you have any further questions.

Regards,

Annie Butler  
Assistant Federal Secretary

## **The impact of Australian's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

In relation to the first question, the specific number of instances of non-compliance with visa work rights is incalculable. According to ETU Victorian Delegates, who resolve the majority of disputes in a workplace, they have intervened to prevent or address non compliance by employers with temporary overseas workers on "hundreds, if not thousands of occasions".

A union is a collective of people that have established a structure to defend and promote their occupational interests, it is not an Ombudsman. A union does not record every complaint received at every level of its structure. A union's primary function is to resolve disputes for their members, not keep a tally of them.

We endeavoured to explain to Senator McKenzie that in most circumstances, referring a complaint to the Fair Work Ombudsman would be akin to a union abdicating their responsibility to their members. Unions have more direct ways to resolve issues related to the employer breaching their employment obligations to their employees.

The procedures for resolving disputes are contained in our Enterprise Bargaining Agreements as well as Fair Work Act 2009 and related legislation. These procedures are much more efficient than the regulatory procedures of the Fair Work Ombudsman.

The ETU for example, agrees with many employers, that employees are entitled to cease work, if they cease being paid. The procedures to do this are contained in the Agreement. The ETU's ability to rely on this clause to negotiate an immediate resolution of an underpayment of an employee or group of employees (which again from our Delegates experience is more likely to occur, on a more routine basis, for temporary overseas workers) is far more efficient than the regulatory alternatives.

(Senator Sinodinos appeared to understand that it was not the union's role to report issues to the Ombudsman, where more efficient and productive alternatives are available. He provided constructive advice to assist the affected members, demonstrating he understood the union's role.)

It is hard to imagine circumstances where a union would report an issue to the Fair Work Ombudsman. If an issue can be resolved, and the employer learns they cannot routinely mistreat their workforce, then seeking a regulatory investigation or prosecution of an employer for a former wrongdoing, would not be in the interest of the union's members. It would also not be conducive to returning to a fully productive relationship between the workforce and their employer, which is what usually all parties ultimately seek.

The ETU Victorian Branch, like most other unions, have democratic structures from the entity level, where a Delegate elected by their workmates, is responsible for assisting members with issues at work. Typically, an ETU delegate has been trained in negotiation skills, industrial relations law and regulations and occupational health and safety regulations. The Delegate is the person who is most likely to receive complaints in the workplace, and to resolve them.

ETU Delegates tend to be sufficiently trained, that they will only seek the assistance of an Organiser, or employed officer of the union, where particularly grave or systemic issues arise impacting on the membership.

ETU Organisers have extensive knowledge and experience, and they will assist the Delegate as required. If the issue cannot be resolved through these means, it is only then that the Union would typically turn to regulatory or legal options to resolve the issue.

The ETU Officials have heard of many examples where Delegates have acted to ensure that employers do not exploit or discriminate against 457 visa workers. According to Delegates, it is not unusual for employers to 'request' that their overseas temporary workers do the unreasonable overtime, when it is a breach of the Agreement and unsafe to do so: Hence the employers' preference to make the request to workers who are 'bonded' under visa arrangements.

While the ETU does not have 'a record' of complaints, the Delegates who deal with complaints on a routine basis, say breaches are much more routine with temporary labour, but complaints are not. Even if a record of complaints was available, they would estimate the actual breaches to be far greater and more frequent than the complaints.

Whenever a Delegate is made aware of unreasonable requests of temporary workers, by virtue of its unreasonableness, it is usually a breach of the Agreement or OHS regulations. The Delegate, where they are made aware, can make these representations to the employer and stop, or reduce, the employers' unreasonable requests of their temporary workers.

It is the frequency with which these unreasonable requests occur as reported by Delegates, that raises the ETU's concern about the conduct of employers with temporary visa workers who do not have the protection of the union.

- Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

The ETU Victorian Branch has only made one complaint to the Fair Work Ombudsman for investigation.

It was the complaint about Thiess' contract containing threats to workers to not pursue their legal rights at work – such as participating in union activity, or resolving workplace disputes without the participation of the Philippine Embassy.

To date there has been no outcome.

Please refer to the response to the first question provided above, as well as the Hansard transcript where we outlined the inaction, then actions of the Fair Work Ombudsman.

Please also find attached the correspondence that provides a detailed overview of:

- The ETU's efforts to have the Fair Work Ombudsman undertake an investigation with a scope that could genuinely identify all the affected workers, ie the duration and breadth of Thiess conduct constituting breaches of the Act.
- The current status of the investigation..

25 May 2015

Fair Work Ombudsman  
GPO Box 9887  
Melbourne 3000

Dear Ombudsman

## THIESS SERVICES PTY LTD - ENGAGEMENT OF 457 VISA WORKERS

1. The purpose of this correspondence is to outline serious concerns which the Electrical Trades Union (Victorian Branch) ("ETU") holds in relation to the engagement by Thiess Services Pty Ltd ("Thiess") of a number of 457 Visa workers, and to formally request that the Fair Work Ombudsman (FWO) undertake an urgent investigation in the matter.

### Overview

2. Until recently Thiess employed a number of Phillipino workers in their Victorian operations under 457 Visa arrangements. The terms and conditions of employment for these workers, who were engaged as Electrical Distribution Line Workers, were covered by the *Thiess Services Pty Ltd Western Region (Electrical Division) Enterprise Agreement 2012* ("the EBA").
3. The ETU is entitled to represent the industrial interests of these workers pursuant to its rules, and in its capacity as a registered association under the *Fair Work (Registered Organisations) Act 2009*.
4. The ETU has recently become aware that a number of the 457 Visa workers were required to enter into written "Master Employment Contract" containing a clause that purports to allow Thiess to terminate their employment upon a number of "just causes", including for "engaging in trade union activities" (at clause 11(a)). The clause goes on to provide that, in the event of such termination, the employees "shall shoulder the expenses for his/her own repatriation back to the Philippines". A copy of a sample "Master Employment Contract" is **attached**.
5. The Master Employment Contracts are signed by Michael Wright, the then-Executive General Manager of Thiess, and stamped by both the Phillipino Embassy in Canberra and the Pre-Employment Services Office of the Phillipino "Landbased Center", as well as being executed by the migration agent responsible for recruitment of the workers, Prime Manpower Resources Development Inc ("Prime").
6. The ETU considers that the circumstances, as relayed to us by a number of the 457 visa employees (broadly summarized below), raises serious concerns that Thiess have breached several civil penalty provisions of the *Fair Work Act 2009* ("FW Act").
7. Specifically, the inclusion of clause 11(a) in the Master Employment Contracts raises serious concerns:



### Electrical Trade Union of Australia Victorian Branch

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

---

#### President

Gary Carruthers

#### Secretary

Troy Gray

#### Assistant Secretaries

Wes Hayes, Ivan Balta

---

#### Melbourne

Level 1  
200 Arden Street  
North Melbourne VIC 3051

Tel 03 8329 0000

Fax 03 8329 0066

Post PO Box 432

North Melbourne VIC 3051

---

#### Geelong

67 Gheringhap Street  
Geelong VIC 3220

Tel 03 5229 3344

Fax 03 5229 3515

Post PO Box 1793

Geelong VIC 3221

---

#### Morwell

42 Buckley Street  
Morwell VIC 3840

Tel 03 5134 3847

Fax 03 5133 9238

---

#### Bendigo

38 View Street  
Bendigo VIC 3550

Tel 0407 925 696



- a) that Thiess have at best recklessly, or at worst knowingly made a false or misleading representation in relation to the workers' entitlement to engage in industrial activity, in prima facie breach of s349 of the *Fair Work Act 2009* ("FW Act"); and/or
  - b) that, by making it an effective condition of employment that the employees not be members of a union and not engage in union activity, Thiess have induced or coerced employees in prima facie breach of either s348 or s350 of the FW Act.
8. The prohibition on union membership, as expressed in the Master Employment Contract, also had the practical effect of fostering an atmosphere in which the employees were – either by act or omission - encouraged not to raise complaints or enquiries in relation to their employment, and encouraged not to initiate or participate in processes or proceedings under the EBA or other workplace law. Such a workplace environment raises serious concerns that associated breaches of ss340, 343, 344, 345 and 346 of the FW Act have occurred.
  9. It is the responsibility of the Fair Work Ombudsman ("FWO") to investigate possible breaches of workplace laws. In this case, FWO's obligation is heightened by the serious nature of the ETU's concerns, and the clear vulnerability of the 457 Visa workers.
  10. The urgency of FWO's investigation is also heightened by the fact that the ETU (Victorian Branch) became aware of the "Master Employment Contract" following the redundancy of approximately 31 employees, including approximately 12 457 Visa workers, in April of this year. Many of the 457 Visa Workers are now required to find suitable work within a 90-day period or risk deportation back to the Philippines. If FWO's investigation exceeds this 90 day period (for example by allowing Thiess to exhaust its own internal investigation prior to any substantive action being taken by FWO), there is a real risk that some of the employees concerned will lose their practical ability to seek remedy to redress violations of their rights under the FW Act.

#### The Experiences of the 457 Workers

11. In holding discussions with the 457 Visa employees affected, the ETU has been told that the circumstances under which the employees received the Master Employment Contract included:
  - a. a requirement that they sign the Master Employment Contract, prior to departing the Philippines, as a pre-condition of their employment;
  - b. insufficient opportunity to read or consider the contracts, or take advice in relation to them. In some cases, the contracts were provided to the employees after they had resigned their previous employment, or even whilst they were on the way to the airport; and
  - c. a common assumption on the part of the employees that the contracts (and the prohibition on union activity) is lawful under Australian law.
12. Many of the workers have also indicated to the ETU their belief that their acceptance of work based in Australia has resulted in their effective "black banning" from similar work based in the Philippines.
13. Workers have further indicated to the ETU that, after commencing employment with Thiess:

- a. many did not join a union because they believed it would result in the termination of their employment. This belief was enforced by existing migrant workers at Thiess who confirmed their own belief that workers under 457 visas were not allowed to join a union;
  - b. many would have joined a union if they were not subject to the contractual prohibition on union activity. Part of the reason they would have joined would have been to protect themselves from deportation back to the Philippines;
  - c. some workers who did join a union remained hesitant to raise workplace issues with the union because of the contractual provision;
  - d. the workers were reluctant to raise, or did not raise, genuine workplace issues (including some safety concerns and possible wage underpayments) for fear that it would result in the termination of their employment, or a reduction in overtime work available to them; and
  - e. many felt that the Philippino workers were treated less favourably than other (Australian) employees during the course of their employment. For example, in some cases workers report that a day wages would be withheld where time sheets were not completed properly. When the workers approached management about this, they were told that it was "too bad" and "couldn't be fixed". Workers also report that threats were made to remove overtime for workers were reluctant to perform excessive work (by reference to industry standards)
14. At a meeting of employees conducted shortly before the redundancies were made (in about January or February 2015), 457 workers were called into a meeting and informed by Thiess Manager Dean Mills that:
- a. Thiess would take all steps possible to assist the 457 Visa employees to access a path to permanent residency; and
  - b. as a result of an internal restructure such actions may be delayed (but would still occur).
15. At the time of this meeting the workers were not aware that their positions were vulnerable to redundancy.
16. A further meeting was conducted in approximately early April where the workers were informed that they would be required to take accrued, untaken annual leave. On the first day back at work following the forced annual leave, the workers were informed that they would be made redundant effective immediately. The workers were escorted off site and were not given any opportunity to say goodbye to their fellow workers.
17. The ETU has been told that all of the Philippino 457 Visa workers engaged were made redundant as part of the cohort of April redundancies, with the exception of one 457 Visa worker of European descent.
18. Thiess also appear not to have complied with the requirements of s531(2) of the FW Act regarding its obligation to notify and consult the ETU in relation to the dismissals.
19. In any event, when the ETU became aware of the Master Employment Contract following the April redundancies, many of the 457 Visa employees reported their understanding that the Master Contract of Employment continued to regulate the terms and conditions of their employment.

## Other apparent breaches contained in the Master Employment Contract

20. In addition to clause 11(a), the Master Employment Contract also purports to require:

- a. in certain circumstances, reimbursement of all of the company's costs of relocating and engaging the employee, the full expenses involved in engaging a replacement to the position, and full indemnity of the company for future costs it may incur arising from sponsorship of the workers. The circumstances cited include where an employee chooses to terminate their contract of employment before the expiration of two years employment, or where the employee fails to gain accreditation to Australian standards in their designated occupation (clause 11(b)). The clause goes on to provide that the employee will pay any such amounts on demand, and that Thiess may (in addition to its other rights), set off such amounts against any monies payable by it to the employee. The clause amounts to a potential breach of s324 of the FW Act, which relates to permitted deductions, as well as being inconsistent with laws relating to the costs legally able to be borne by 457 Visa workers; and
- b. the application of a dispute settlement procedure (in clause 12) which appears to circumvent the jurisdiction of the relevant Australian authorities, including FWO and the Fair Work Commission, by imposing the mandatory involvement of the Labor Attache or a representative of the Philippine Embassy / Consulate nearest the site of employment prior to the employee being able to access the relevant Australian authorities.

## ETU (Victorian Branch) engagement with Thiess

21. Following the discovery of the Master Employment Contracts, the ETU made contact with Thiess. It was not until after FWO made separate contact with Thiess that the company agreed to meet with the Union.
22. A preliminary meeting between the ETU and Thiess occurred on Friday 22 May 2015. During this meeting the company indicated its position that the contracts were incorrectly issued, and were fraudulently executed by Prime applying a photocopied signature of Mr Wright.
23. Through its own enquiries, and as a result of comments made at the meeting on Friday 22 May 2015, ETU has become aware that the unlawful term in the Master Employment Contract was raised with Thiess in late 2013, following the foreshadowed redundancy of several 457 Visa employees at Thiess' Western Australian operations (some of whom were subsequently relocated to Victoria).
24. Following the issue being raised in 2013, Thiess sent written correspondences to some 457 Visa workers dated 10 October 2013 which indicated that the Master Employment Contracts were "incorrectly issued", and confirming that clause 11(a) is unlawful. A sample of such correspondence is **attached**. However:
  - a. the correspondence came many months after the commencement of employment for the 457 Visa workers concerned;
  - b. many of the workers concerned do not recall having received the correspondence;
  - c. no attempt was made by Thiess to communicate the issue to employees, other than by the one-off written correspondence; and

- d. given that English is not the first language of the employees concerned, the effect of the letter was commonly misunderstood by those that received it, with the result that many still believed it to be a requirement of their employment that they not join a union or engage in union activities.

#### Matters requiring investigation

25. A rigorous, independent investigation into the circumstances of the issuing of the Master Employment Contracts is required. The investigation must encompass all 457 Visa workers employed by Thiess, not merely those made redundant in April 2015 or those initially engaged by Thiess' Western Australian operations.
26. To the extent that Thiess may claim that the Master Employment Contracts were incorrectly issued, the onus is on Thiess to prove that they did not either expressly or impliedly, by act or omission, endorse the content of the Master Employment Contracts both during the period between the commencement of the workers' employment until 10 October 2013 and afterwards.
27. FWO's investigation must also consider what steps Thiess took following its alleged discovery of the contracts in October 2013, and whether those steps were sufficient in view of the vulnerability of the workers involved. The clear understanding of the ETU, after speaking to the workers concerned, is that many continued to labour under the misapprehension that either the Master Employment Contracts continued to apply, or that the prohibition on Union activities continued to remain in effect in a practical sense.
28. FWO's investigation must also include what steps Thiess took, if any, to redress any allegation that the Master Employment Contracts fraudulently included the signature of the then-Thiess Executive General Manager, Mr Wright. These allegations are, by their nature, very serious allegations. The ETU would expect that, if the signature was fraudulently added to the contracts, stringent steps would have been required including possible legal action by Thiess against the migration agency involved.
29. In any event, the circumstances raise serious concerns about the effectiveness of the compliance arrangements which apply to employer sponsors of 457 Visa workers.
30. The ETU is aware, through a Freedom of Information Request (FA13/02.01048, File Number ADF2013/6270) that Thiess obtained "Accredited Status" from DIAC and DEEWR following a ministerial direction made under s499 of the *Migration Act* (Cth). Such status enabled Thiess to fast-track approval processes, and – in the ETU's view – this is likely to have fostered an environment in which the issuing of the Master Employment Contracts was made possible. Even if Thiess were genuinely taken by surprise by the existence of the Master Employment Contracts, there is a serious issue as to whether its conduct (by act or omission) resulted in the reckless misrepresentation of workplace rights and industrial activity.
31. In view of the circumstances as described, any investigation should include rigorous inter-departmental scrutiny of the continued application of the "Accredited Status" arrangements, and the revocation of Thiess' Accredited Status.

#### Steps moving forward

32. The ETU would be grateful if FWO could, by close of business **Wednesday 3 June 2015**, respond to the ETU to indicate:

- a. that an investigation is occurring, the terms and parameters of the investigation, and the officer assigned to oversee the investigation;
- b. an overview of the steps which FWO have taken to investigate the above circumstances;
- c. An overview of the steps which FWO intend to take to investigate the above circumstances.

Regards,

.....  
**Troy Gray**  
State Secretary

1. How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?

The union does not count the instances.

2. Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

Yes the Union sometimes refers these issues to the FWO – but that is a decision that the worker/s has to make and many are scared of involving government authorities for fear of retribution. In many cases, the FWO is not well-equipped to understand the wages and conditions in CFMEU EBA's which means the Unions must closely supervise the process. For many workers, given the short term nature of their visas, it is more expeditious to engage the Union to access re-dress through direct discussions with employers.

11 June 2015

Ann Sanders  
Fair Work Inspector  
Fair Work Ombudsman  
Level 6, 414 Latrobe Street  
MELBOURNE 3000

Dear Ms Sanders

### **THIESS SERVICES PTY LTD – ENGAGEMENT OF 457 VISA WORKERS**

We refer to the previous correspondence of Troy Gray dated 25 May 2015, as well as FWO's meeting with ETU officers and members at the Union's office on 25 May 2014.

The correspondence and meeting brought to FWO's attention various issues relating to Thiess Services' engagement of subclass 457 Visa workers. One of those issues relates to the issuing by Thiess of "Master Employment Contracts" which purport to allow for the summary dismissal of employees who engage in "trade union activities". The Union also raised concerns in relation to the working conditions of the employees, including health and safety concerns.

We were pleased to hear the Fair Work Ombudsman, Ms James, commit in a recent Senate Estimates Hearing that FWO are now prepared to "thoroughly, impartially and independently" investigate and accept evidence from the workers about the nature of the work they were required to do and the conditions they were required to work under, to reach a conclusion about alleged breaches of the Fair Work Act by Thiess.

However, we note that FWO has not formally responded to the ETU's correspondence dated 25 May 2015 despite indications that it would do so by 29 May 2015, a date which was subsequently revised to 5 June 2015. The ETU is disappointed that no response has been forthcoming, particularly given the likelihood that a number of employees concerned are likely to have their 457 visas cancelled in the coming months.

#### **The scope of FWO's investigation**

During the meeting on 25 May 2015 you indicated that FWO would inform the union, in writing, of the scope of its investigation. The ETU's position was, and is, that the investigation must include interrogation of the contractual arrangements pertaining to all 457 Visa employees engaged by Thiess, and that FWO should also consider evidence in relation to the workers' experiences (including in relation to the nature of the work they were required to do and conditions they were required to work under). At the time of this correspondence, the ETU has not received any advice from FWO in relation to this issue.



#### **Electrical Trade Union of Australia Victorian Branch**

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

---

#### **President**

Gary Carruthers

#### **Secretary**

Troy Gray

#### **Assistant Secretary**

Wes Hayes

---

#### **Melbourne**

Level 1  
200 Arden Street  
North Melbourne VIC 3051

**Tel** 03 8329 0000

**Fax** 03 8329 0066

**Post** PO Box 432  
North Melbourne VIC 3051

---

#### **Geelong**

67 Gheringhap Street  
Geelong VIC 3220

**Tel** 03 5229 3344

**Fax** 03 5229 3515

**Post** PO Box 1793  
Geelong VIC 3221

---

#### **Morwell**

42 Buckley Street  
Morwell VIC 3640

**Tel** 03 5134 3847

**Fax** 03 5133 9238

---

#### **Bendigo**

38 View Street  
Bendigo VIC 3550

**Tel** 0407 925 696



We also note that Thiess' position appears to be that the Master Employment Contracts were issued in error, and only to a limited cohort of employees who were initially based in Western Australia. This claim is demonstrably false.

During the interviews conducted with ETU members on 25 May 2015 it became apparent that there are a cohort of former Thiess employees who were required to sign a "Master Employment Contract", but who were never told that the Master Employment Contracts were erroneously issued (and never received the correspondence from Thiess dated 10 October 2013). As such, these employees would reasonably have believed that the terms of the Master Employment Contract continued to bind their employment until the time of their redundancy. Based on the ETU's investigations, this group of workers were based in Victoria for the entire duration of their employment with Thiess. The ETU has identified at least 7 current or former 457 Visa workers (some of whom are now permanent residents) in this category.

Any reasonable investigation undertaken by Thiess in 2013 (after the issue was first brought to their attention by the Western Australian branch of the ETU) would have included an enquiry into how many employees were issued the Master Employment Contracts, and whether it extended beyond the Western Australian cohort. It follows that either Thiess' investigation was either woefully inadequate, or that Thiess deliberately allowed a number of Master Employment Contracts to remain on foot without informing the relevant employees that the Contracts contained unlawful terms and/or were erroneously issued.

In these circumstances it is clearly appropriate that FWO's investigation examines the contractual arrangements of every 457 Visa worker engaged by Thiess, not merely those who are identified as having been in the Western Australian cohort who received the correspondence dated 10 October 2013. Further, Thiess must provide exact details of its own 2013 investigation in order to satisfy FWO that it did not deliberately allow a number of employees to continue to believe that the Master Employment Contract applied to their employment after it became aware of the existence of the Master Employment Contract documents in 2013.

We further note that the ETU's concerns in relation to the work requirements imposed on the employees (in relation to the cross-arm quotas in particular), which were raised with you on 25 March, seem consistent with an environment where Thiess may have seen a benefit in allowing the 457 Visa employees to continue to labour under the misapprehension that the Master Employment Contracts applied. That is, the workers would naturally have felt disinclined to make safety complaints or raise the matter with the ETU as a result of the Master Employment Contract clause.

#### **Further interviews to be conducted by FWO**

You have requested that the ETU members who were interviewed by yourself and Ms Shacklock on 25 May 2015 make themselves available for



#### **Electrical Trade Union of Australia Victorian Branch**

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

---

#### **President**

Gary Carrothers

#### **Secretary**

Troy Gray

#### **Assistant Secretary**

Wes Hayes

---

#### **Melbourne**

Level 1  
200 Arden Street  
North Melbourne VIC 3051

**Tel** 03 8329 0000

**Fax** 03 8329 0066

**Post** PO Box 432  
North Melbourne VIC 3051

---

#### **Geelong**

67 Gheringhap Street  
Geelong VIC 3220

**Tel** 03 5229 3344

**Fax** 03 5229 3515

**Post** PO Box 1793  
Geelong VIC 3221

---

#### **Morwell**

42 Buckley Street  
Morwell VIC 3840

**Tel** 03 5134 3847

**Fax** 03 5133 9238

---

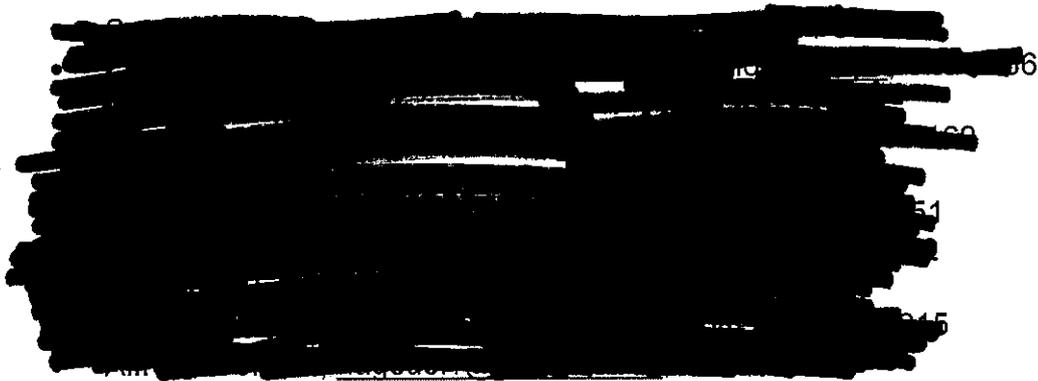
#### **Bendigo**

38 View Street  
Bendigo VIC 3550

**Tel** 0407 925 696



a further meeting, to be conducted at FWO's offices and recorded. For the purpose of facilitating these further meetings, the name and contact details of the participants in the initial interviews are set out below. They have each agreed to make themselves available for a further interview:



**Electrical Trade Union of Australia  
Victorian Branch**

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

**President**

Gary Carruthers

**Secretary**

Troy Gray

**Assistant Secretary**

Wes Hayes

**Melbourne**

Level 1  
200 Arden Street  
North Melbourne VIC 3051

**Tel** 03 8329 0000

**Fax** 03 8329 0066

**Post** PO Box 432  
North Melbourne VIC 3051

**Geelong**

67 Gheringhap Street  
Geelong VIC 3220

**Tel** 03 5229 3344

**Fax** 03 5229 3515

**Post** PO Box 1793  
Geelong VIC 3221

**Morwell**

42 Buckley Street  
Morwell VIC 3840

**Tel** 03 5134 3847

**Fax** 03 5133 9238

**Bendigo**

38 View Street  
Bendigo VIC 3550

**Tel** 0407 925 696

We understand that the employees are entitled to a support person during these interviews, and request that you keep the ETU informed as to when these meetings occur in order to us to make a support person available to the members.

We also understand that FWO does not have specialist knowledge of electrical distribution asset maintenance parameters and conditions in the industry, and that some such knowledge is required to understand how the written instructions provided to the workers (shown to you on 25 May) are in breach of the either the *Fair Work Act* or workplace health and safety laws. We are happy to assist you, or refer you to, the appropriate expertise within the electrical safety regulatory compliance sector in Victoria.

You have also advised the ETU that the Fairfax media report referred to a greater number of 457 Visa workers than those who were available for interview on 25 May 2015, and have asked that we identify the remaining workers. The names and contact details provided above are for those ETU members who have consented to provide their details. However, in the ETU's view it is both appropriate and necessary that Thies make available a full list of employees who were engaged as 457 Visa workers in its Victorian operations (which may very well extend beyond the employees who the ETU is able to identify) for the purposes of ensuring that FWO's investigation is satisfactorily thorough.

### Steps moving forward

We would appreciate a written response to this correspondence, and to our previous correspondence dated 25 May 2015, at your earliest opportunity.

Given that it is clear that a thorough investigation into these matters must involve inter-agency cooperation between FWO, the Department of Immigration, the Fair Work Building and Construction Inspectorate and safety regulators (and given that the Department of Immigration have declined to respond to the ETU's correspondences), we would also



appreciate if you could outline in return correspondence what steps FWO has taken to inform or co-operate with these departments / agencies in the course of its own investigation.

Regards,

**Troy Gray**  
State Secretary



**Electrical Trade Union of Australia  
Victorian Branch**

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

---

**President**

Gary Carnothers

**Secretary**

Troy Gray

**Assistant Secretary**

Wes Hayes

---

**Melbourne**

Level 1  
200 Arden Street  
North Melbourne VIC 3051

**Tel** 03 8329 0000

**Fax** 03 8329 0066

**Post** PO Box 433  
North Melbourne VIC 3051

---

**Geelong**

67 Gheringhap Street  
Geelong VIC 3220

**Tel** 03 5229 3344

**Fax** 03 5229 3515

**Post** PO Box 1793  
Geelong VIC 3221

---

**Morwell**

42 Buckley Street  
Morwell VIC 3840

**Tel** 03 5134 3847

**Fax** 03 5133 9238

---

**Bendigo**

38 View Street  
Bendigo VIC 3550

**Tel** 0407 925 696

---





Australian Government

# Fair Work OMBUDSMAN

GPO Box 9887  
ADELAIDE SA 5001

Mr Troy Gray  
State Secretary  
Electrical Trade Union of Australia Victoria Branch  
PO Box 432  
North Melbourne VIC 3051

CC: Lucy Weber -

Reference: MAT-0014-8900

## **Thiess Services Pty Ltd – Engagement of 457 Visa Workers**

Dear Mr Gray,

I refer to your correspondence which the Fair Work Ombudsman (**FWO**) received on 25 May 2015 wherein you allege Thiess Services Pty Ltd (**Thiess**) engaged in unlawful conduct concerning the employment of 457 visa workers (**the affected employees**) from the Philippines.

The FWO is the Commonwealth statutory agency responsible for ensuring compliance with the Fair Work Act (**FW Act**) and other relevant Commonwealth workplace laws.

I can confirm the FWO has commenced a full and thorough investigation in relation to this matter, which is independent and impartial of any internal review being undertaken by Thiess. To date, this investigation has included:

- records of conversation conducted at your office on 25 May between Fair Work Inspectors (**FWI**) with affected employees and Lucy Weber, ETU lawyer;
- information obtained from Thiess Services;
- information obtained from Electrical Trade Union.

The scope of the investigation focuses on Part 3 -1 General protection provisions of Division 3 – *Workplace rights* FW Act and includes the following:-

- s340 Protection - Adverse Action
- s343 Coercion
- s344 Undue influence or pressure
- s345 Misrepresentations - workplace rights
- s346 Protection – industrial activities
- s348 Coercion

In establishing whether evidence exists that substantiates Thiess has contravened any provisions of the FW Act, FWO will exercise the full functions and compliance powers of the FW Act in gathering and assessing all of the available information. FWO will seek information in relation to the following:

- application of the Master Employment Contract;
- parties involved in the employment of the affected employees, including Prime Manpower Resources Development Inc;
- clause 11(a) allegedly prohibiting among other things union activity
- the sequence of events and the actions of Thiess after the ETU raised concerns with Thiess in early October 2014 about the Master Employment Contract and Clause 11(a), and
- the termination of the affected Philippine employees and Thiess's requirements under Part 3 – 6 Other rights and responsibilities Division 2 Notifications and consultation relating to certain dismissals s 531 (2) *Notifying relevant registered employee associations.*

In addition to this investigation, the FWO will be undertaking enquiries with the Department of Immigration and Border Protection (DIBP) to identify all 457 visa holders sponsored by Thiess since June 2011 to current. Following receipt of this information from DIBP, FWO will investigate and monitor Thiess's 457 sponsorship arrangements under the *Migration Act 1958* and indeed compliance with the FW Act.

The FWO acknowledges that affected employees terminated by Thiess in April 2015 are required to be employed within ninety days in order to remain in Australia and has consequently prioritised its investigation. The FWO is currently seeking additional information about the affected employees from your Branch in order to discuss their status with DIBP.

The FWO has informed Thiess that it has commenced an investigation independent to any internal review being undertaken by Thiess.

Should you wish to discuss this letter or clarify any of the issues it raises please contact me on \_\_\_\_\_ or at \_\_\_\_\_

Yours sincerely,

Steven Ronson  
**Executive Director – Dispute Resolution and Compliance**  
**Fair Work Ombudsman**

12 June 2015



Australian Government

# Fair Work OMBUDSMAN

GPO Box 9887  
ADELAIDE SA 5001

Mr Troy Gray  
State Secretary  
Electrical Trade Union of Australian Victoria Branch  
PO Box 432  
North Melbourne Vic 3051

CC: Lucy Weber –

Reference: MAT-0014-8900

## **Thiess Services Pty Ltd – Engagement of 457 Visa Workers**

Dear Mr Gray,

I refer to your correspondence to Ann Sanders, Fair Work Inspector with the Fair Work Ombudsman (**FWO**), received on 12 June 2015.

In this latest communication, you refer to previous correspondence regarding allegations that Thiess Services Pty Ltd (**Thiess**) engaged in unlawful conduct concerning the employment of 457 visa workers (**the affected employees**) from the Philippines.

As stated in my correspondence to you dated 12 June 2015 I can confirm the FWO has commenced an investigation in relation to this matter.

The FWO is an independent and impartial statutory agency dedicated to ensuring compliance with the *Fair Work Act 2009* (**FW Act**). As part of its investigation, the FWO will naturally have regard to the findings of any internal review being undertaken by Thiess, but you can be assured the FWO will form its own view of all and any evidence it gathers as part of its investigation.

Please also be assured the FWO is undertaking enquiries with the Department of Immigration and Border Protection (**DIBP**) to identify all 457 visa holders sponsored by Thiess since 2011 to April 2015 in addition to the Philippine workers engaged in Victoria in 2013.

It is the intention of the FWO to conduct two distinct but related compliance activities in relation to this matter, i) an investigation into allegations of unlawful conduct

concerning the employment of a certain cohort of 457 visa workers from the Philippines, and ii) a comprehensive review of the employment arrangements associated with Thiess sponsorship of 457 visa class workers since 2011.

This second activity will involve and be lead by the FWO's Overseas Workers team reviewing Thiess's sponsorship arrangements against both the *Migration Act 1958* (as it applies to nominated salary levels and occupation class) and the FW Act for a significant number of workers.

In relation to the first activity, Fair Work Inspectors Kerryn Shacklock and Ann Sanders will continue to communicate with Lucy Weber of your office to coordinate the arrangements regarding further interviews with the affected employees, noting the importance of the presence of a support person.

Naturally, the interviews will seek to obtain evidence in relation to Thiess's application of the Master Employment Contract and the alleged consequences of whether or not employees were free to raise safety concerns in the workplace.

You also raised in your letter of 11 June 2015 concerns relating to the conditions in the workplace at Thiess and potential health and safety issues involving the electrical safety regulatory compliance sector in Victoria. As these issues raise potential Commonwealth and State occupation health and safety legislation matters outside the jurisdiction and provisions of the FW Act, the FWO will ensure that any related information it receives in the course of the investigation will be referred to the relevant State and Commonwealth agencies best placed to address potential breaches of the various regulations

The FWO acknowledges that affected employees terminated by Thiess in April 2015 are required to be employed within ninety days in order to remain in Australia and has consequently prioritised its investigation as well as obtain additional information from your Branch viz the affected employees so as to be able to enter into discussions with DIBP regarding their status

As the FWO has primary responsibility for this investigation, it will continue to secure information from DIBP as well as liaise with the Fair Work Building and Construction Inspectorate as appropriate.

In thanking you for your ongoing interest in and cooperation with the investigation, should you wish to discuss this letter or clarify any of the issues it raises please contact me directly or or at

Yours sincerely,

Steven Ronson  
**Executive Director - Dispute Resolution and Compliance**  
Office of the Fair Work Ombudsman

17 June 2015

23 June 2015



Steven Ronson  
Executive Director – Dispute Resolution and Compliance  
Fair Work Ombudsman  
Level 6, 414 Latrobe Street  
MELBOURNE 3000

**Electrical Trade Union of Australia  
Victorian Branch**

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

Dear Mr Ronson

**President**

Gary Carrothers

**Secretary**

Troy Gray

**Assistant Secretary**

Wes Hayes

### **THIESS SERVICES PTY LTD – ENGAGEMENT OF 457 VISA WORKERS**

We refer to the above matter, and to our previous correspondences in relation to the matter.

**Melbourne**

Level 1

200 Arden Street

North Melbourne VIC 3051

**Tel** 03 8329 0000

**Fax** 03 8329 0066

**Post** PO Box 432

North Melbourne VIC 3051

In your correspondence dated 12 June 2015 it was indicated that FWO will be undertaking enquiries with the Department of Immigration and Border Protection (DIBP) to identify all 457 visa holders sponsored by Thiess since June 2011 and, further, that FWO would investigate and monitor Thiess' sponsorship arrangements under the *Migration Act 1958* as well as compliance with the *Fair Work Act 2009*.

**Geelong**

67 Gherningap Street

Geelong VIC 3220

**Tel** 03 5229 5344

**Fax** 03 5229 3515

**Post** PO Box 1793

Geelong VIC 3221

We are writing to ensure that FWO are not under the misapprehension that Thiess participated in the normal approval and monitoring regime conducted by DIBP in relation to 457 visa workers. According to information provided to the ETU pursuant to a Freedom of Information request (please see **attached**), Thiess was given 'Accreditation' for priority processing and reduced oversight of 457 Visa Agreements for 6 years commencing 17 September 2012. As a consequence, it is our understanding that DIBP would not necessarily have access to all of the details relating to the 457 visa workers sponsored by Thiess as it would otherwise have had access to.

**Morwell**

42 Buckley Street

Morwell VIC 3840

**Tel** 03 5134 2947

**Fax** 03 5133 9238

**Bendigo**

36 View Street

Bendigo VIC 3550

**Tel** 0407 925 896

It is also evident that the DIBP may have a conflict of interest in any investigation into the Master Employment Contracts. That is, it may be seen that it is not in DIBP's interests to provide information that would expose flaws in their own approval and monitoring processes, where those flaws have allowed a significant number migrant workers to enter into employment contracts containing unlawful clauses.

The ETU is specifically concerned that there may be a practice of employers (or migration or recruitment agents acting on their behalf) providing two contracts to migrant employees at the point of their engagement: one which complies with legal requirements and which is provided to the regulators, and another (such as the Master Employment Contract) which contains unlawful terms and is given directly to the employee. Anecdotally, the ETU understands that the provision of such 'dual contracts' occurs not infrequently, and in collusion with recruitment agencies in the Philippines. At this stage, however, we are unsure of the extent of any involvement of DIBP with the relevant Thiess employment contracts (e.g. whether DIBP approved neither, one or both of the two contracts provided to the Thiess employees).



Given the seriousness of the unlawful clauses in the Thiess Master Employment Contract, and the mounting number of migrant workers who we have identified as having received that Contract, we would have expected DIBP to have at least commenced an investigation to consider or revoke Thiess' Accredited Status for priority processing and reduced oversight. We are disappointed that neither the DIBP nor the 457 Monitoring Unit have been in contact with the workers or the ETU (as the workers' representative) in this, or in any other regard.

All of the above considered, we are not confident that relying on DIBP information will give you sufficient information about Thiess' conduct and the true number of workers who were given the Master Employment Contract containing the unlawful terms. The only certain source of information must come from Thiess itself, and there should be no reluctance on FWO's part to utilise its legislative powers to ensure that Thiess provide you with all of the required information.

We trust you will take these factors into consideration in your approach to FWO's investigation.

Regards,

**Troy Gray**  
State Secretary

cc: Ann Sanders (Fair Work Inspector)



**Electrical Trade Union of Australia  
Victorian Branch**

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

---

**President**

Gary Carruthers

**Secretary**

Troy Gray

**Assistant Secretary**

Wes Hayes

---

**Melbourne**

Level 1  
200 Arden Street  
North Melbourne VIC 3051

**Tel** 03 8329 0900

**Fax** 03 8329 0966

**Post** PO Box 432

North Melbourne VIC 3051

---

**Geelong**

67 Gherrighap Street  
Geelong VIC 3220

**Tel** 03 5229 3344

**Fax** 03 5229 3515

**Post** PO Box 1793

Geelong VIC 3221

---

**Morwell**

42 Buckley Street  
Morwell VIC 3840

**Tel** 03 5134 8847

**Fax** 03 5132 9238

---

**Bendigo**

38 View Street  
Bendigo VIC 3550

**Tel** 0407 925 696





Australian Government

# Fair Work OMBUDSMAN

GPO Box 9887  
MELBOURNE VIC 3001

15 July 2015

Mr Troy Gray  
State Secretary  
Electrical Trades Union of Australia Victoria Branch  
PO Box 432  
NORTH MELBOURNE VIC 3051

CC: Lucy Weber -

Reference number: MAT-0014 -8900

## **Thiess Services Pty Ltd – Engagement of 457 Visa Workers**

Dear Mr Gray,

I refer to the investigation by the Fair Work Ombudsman (FWO) into the employment of sub-class 457 visa workers from the Philippines (affected employees) by Thiess Services Pty Ltd (Thiess) and previous correspondence between the Electrical Trades Union (ETU) and the FWO. The affected employees are:



### **FWO investigation**

As you are aware, the scope of the FWO's investigation focuses on Part 3-1, Division 3 of the *Fair Work Act 2009 (FW Act)* - General Protections and includes the following:

- s340 – Adverse action;
- s343 – Coercion;
- s344 – Undue influence or pressure;
- s345 – Misrepresentations (workplace rights);

- s346 – Protection – Industrial activities;
- s348 – Coercion; and
- s349 – Misrepresentations – Industrial activities.

The FWO is currently in the process of gathering and assessing all of the available information, which includes but is not limited to requesting records and documents from, and interviewing relevant parties in order to establish whether evidence exists that substantiates Thiess has contravened provisions of the FW Act.

#### **Request for records/documents**

The FWO is seeking the assistance of your office in the provision of all records or documents containing or recording any communication or dealing by or between any official, employee, agent, representative or member of the Electrical Trades Union Victoria Branch (ETU Vic) and the following parties, in relation to the employment of affected employees by Thiess in Victoria between 2012 and 2013:

- (a) Filipino Migrant;
- (b) Affected employees;
- (c) Any other official, employee, agent, representative or member of the ETU Vic;
- (d) Officials, employees, agents, representatives or members of any other branch of the ETU, including but not limited to the ETU WA; and

The names of affected employees working out of the Thiess Doveton and Dandenong South depots that became members of the ETU and the dates on which they became members. I have included a list of employees (marked "Attachment A") which may assist you with this request.

It would be appreciated if you could provide the requested records or documents by 23 July 2015.

#### **Contact details**

Should you wish to discuss this letter or clarify any of the issues it raises, please contact me on , or by email at

Prudence Beasley  
Director (A/g)  
General Protections & Misclassification Team  
Fair Work Ombudsman

## Senate Education and Employment Committee

### Inquiry into the impact of Australia's temporary work visa program on the Australian labour market and on the temporary work visa holders

#### Questions taken on notice –ACTU

##### ACTU response to Questions on Notice from Senator McKenzie

- How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?
- Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

The ACTU has received reports of hundreds of individual cases of non-compliance under the temporary work visa program. \*

These reports come from a variety of sources including through the ACTU's call centre, and dedicated 457 visa hotline, from affiliated unions of the ACTU, and through our relationships with other community organisations such as Migrant Australia. A number of these cases were described in further detail in the ACTU submission to the Inquiry.

Subject to the wishes of the visa holders themselves, as appropriate the ACTU puts callers in contact with relevant unions and/or government bodies, such as DIBP, the Fair Work Ombudsman and WorkCover, who can help them find out further about their rights and what further action they might be able to take to rectify the situation they find themselves in.

The usual practice is for the ACTU to refer complaints to the relevant union to follow up or to refer the visa holder to DIBP or FWO depending on the nature of the alleged non-compliance. It is up to individual unions how they handle matters from that point, and whether they wish to pursue the matter themselves and/or refer to the FWO or DIBP.

Some callers to our confidential hotline have independently reported their cases to DIBP or the FWO, while also contacting the ACTU.

Individuals who contact the ACTU are often very reluctant to go to government authorities, or even to have the ACTU contact the DIBP or FWO on their behalf, for fear of losing their visa and being deported.

\*Note: This includes cases where multiple workers were the subject of a single report or complaint. Callers are not asked their visa status as a matter of course, so our response is only in relation to those cases where individuals identified themselves and others as temporary visa holders; a final number of cases of non-compliance reported in relation to visa holders with work rights is not known.

12 August 2015

ACTU

D No. 109/2015

10 August 2015

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

UnionsWA Incorporated • ABN 64 950 883 305  
Level 4, 445 Hay Street, PERTH WA 6000  
PO Box Z5380, St Georges Tce, PERTH WA 6831  
Tel: +61 8 9328 7877 • Fax: +61 8 9328 8132  
unionsyes@unionswa.com.au • www.unionswa.com.au

By email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Madam/Sir

**RE: Questions on Notice for the inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

On 27 July 2015 UnionsWA was contacted by the Committee inquiring into the above matter regarding two questions on notice for each of the unions that have attended public hearings.

Below please find UnionsWA's response to those questions.

**1. How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?**

UnionsWA does not operate a call centre, nor does it operate as a union. We are therefore not in a position to provide industrial or legal advice.

Over the last several years UnionsWA has received intermittent inquiries concerning work visa issues.

UnionsWA's practice when people call up to make inquiries about workplace issues is to determine the coverage area in which they work, and refer them to the appropriate affiliated union, or to the ACTU's call centre or 457 visa hotline.

**2. Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?**

As described above, UnionsWA's practice to refer people to either the relevant affiliate, or to the ACTU. We refer the Committee to the ACTU's responses to these questions for further information about whether the FWO was involved.

Please contact me on \_\_\_\_\_ or \_\_\_\_\_ if you would like to discuss matters further.

Yours sincerely

**Owen Whittle**  
**Assistant Secretary**  
**UnionsWA**

1. How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?

The union does not count the instances.

2. Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?

Yes the Union sometimes refers these issues to the FWO – but that is a decision that the worker/s has to make and many are scared of involving government authorities for fear of retribution. In many cases, the FWO is not well-equipped to understand the wages and conditions in CFMEU EBA's which means the Unions must closely supervise the process. For many workers, given the short term nature of their visas, it is more expeditious to engage the Union to access re-dress through direct discussions with employers.

- How many instances of non-compliance have been reported to your union in relation to people on visas with work rights?
  1. There were at least five instances of non-compliance regarding the evidence that I gave to the enquiry (five 457 visa workers).
  2. At the time the Union had knowledge that the Public Transport Authority (PTA) had engaged at least five overhead catenary line workers from the United Kingdom with specialised skills.
  3. The industry requirement for allowing people with these skills to operate in Australia is that they must undergo recognised prior learning assessment and receive an Offshore Technical Skills Record (OTSR) in the UK before being granted permission to come to Australia to commence work.
  4. They must also undergo approximately 12 months “supervised” training before receiving Australian Quality Training Framework certification.
  5. All five, 457 visa workers brought here by the Public Transport Authority at the time were not recognised for prior learning and did not undertake any supervised training.
  6. The PTA had 5 trainees on 2 year fixed term contracts at the time the five, 457 visa workers were brought to the PTA. It takes approximately 3 years to reach full AQTF qualification which made the 2 year fixed term contracts farcical that clearly indicated that the 5 trainees were never going to complete their training and therefore be retained as full time employees because of lack of qualifications.
  
- Has your union referred these complaints to the Fair Work Ombudsman for investigation, and if so, what was the outcome?
  1. No, the Union did not refer this to the Fairwork Ombudsman as the PTA operates in the Western Australian Industrial Relations system.
  2. The Union did refer the complaint to the Western Australian Industrial Relations Commission by lodging an application to the Commission C69 of 2012 (please find a copy of the application attached)
  3. The 5 trainees on 2 year fixed term contracts were all made full time employees and received that same training to AFTF standards. They are still employed by the PTA.
  4. The outcome was settled outside the WAIRC as the Public Transport Authority agreed to have all employees receiving recognised prior learning and trained to meet AQTF standards. The Union formally withdrew the application once agreement was reached.