

Senate Standing Committee on Legal and Constitutional Affairs
Inquiry into the Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]
Fair Work Ombudsman responses to Supplementary Questions on Notice

Hearing date: 23 February 2022

Question:

A number of submitters raised the need for a firewall to be implemented between the Department of Home Affairs and the Fair Work Ombudsman in dealing with migrant worker issues (see for example Australian Council of Trade Unions, *Submission 9*, p.4).

Does the Fair Work Ombudsman support or oppose such a firewall? For what reasons?

Answer:

There is already an Assurance Protocol in place between the Fair Work Ombudsman (FWO) and the Department of Home Affairs (Home Affairs), which is intended to encourage visa holders to report exploitation by supporting visa holders in circumstances where they have worked in breach of their visa's work conditions and an employer or a third party threatens to have their visa cancelled.

The Assurance Protocol offers visa holders an avenue to seek FWO's assistance with a level of assurance about the status of their visa so any firewall may have the unintended consequence of removing that level of assurance offered by the Protocol.

The FWO and Home Affairs work collaboratively together and share information to try and detect and disrupt those who exploit visa holders and migrant workers and the Protocol reflects a whole-of-government approach to addressing this serious issue which crosses Australia's regulatory frameworks.

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Why isn't the Assurance Protocol publicly available?

Answer:

The Assurance Protocol between FWO and Home Affairs is set out on the FWO's website at www.fairwork.gov.au/find-help-for/visa-holders-migrants.

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Question:

A number of submitters have raised concerns of under-investigation by the Ombudsman of instances of workplace exploitation. IARC & Unions NSW, for example, commented 'we understand the Ombudsman has approximately 177 inspectors conducting workplace investigations under the current system of auditing. This equates to approximately one inspector for every 72,000 employed people in Australia and is obviously not enough to protect and enforce the rights of workers effectively' (*Submission 11*, p. 9). How do you respond? Do you consider current investigation efforts satisfactory to protect migrant workers?

Answer:

The FWO's approach to compliance and enforcement is based on intelligence, with inspectors targeting areas of non-compliance. Protecting vulnerable workers, including migrant workers and visa holders, is an enduring priority for the FWO. In the first six months of 2021-22 (to 31 December), despite making up less than 4 per cent of the workforce, visa holders accounted for a quarter of all litigations commenced by the FWO and 65 per cent of all court-ordered penalties achieved.

In the past five full financial years, the FWO has filed 116 litigations involving visa holders and secured more than \$16 million in court ordered penalties.

Since the tougher provisions enacted in the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (PVW Act) came into effect in September 2017, as at 31 December 2021, the FWO has commenced 29 litigations using the PVW provisions, including seven litigations using the 'serious contraventions' provisions contained in s.557A. During this time, we have secured penalties in each of the 12 decisions handed down, totalling \$1,859,811.