

Senate Select Committee on Temporary Migration
Fair Work Ombudsman responses to Questions on Notice

Hearing date: 17 September 2020

Question No: 01

Subject: EFT and budget for FWO Enforcement Team

Asked by: Senator Raff Ciccone (Page 6 of Hansard)

CHAIR: How big is the team that investigates such matters? Are you able to provide the committee with a breakdown—

Mr Ronson: We don't have a dedicated team for sexual harassment, because as I say it's not in our jurisdiction.

CHAIR: Just a broader enforcement and investigative—

Mr Ronson: As a general rule, we have 195 Fair Work inspectors. Those inspectors are divided, if you like, into various national teams that look at different areas and do different functions—

CHAIR: Can anyone else hear Steven? Mr Ronson, are you there? Mr Ronson, can you hear me? We lost you.

Mr Ronson: Okay.

CHAIR: Just repeat that answer.

Mr Ronson: I said that we had 195—

CHAIR: Yes, and then I lost you. If you can repeat from there?

Mr Ronson: They're divided into national teams that have a different emphasis and focus. What I was trying to establish was that for visa holders, as a vulnerable cohort, it would probably be fair to say that every inspector would have some involvement in a visa holder investigation or inquiry in the course of a year.

CHAIR: If you could take on notice and provide a breakdown of EFT and the budget for that team?

Answer:

As at 30 June 2020, the FWO had 195 Fair Work Inspectors appointed under section 700 of the Fair Work Act. The majority of the agency's inspectors are engaged in national investigation teams in the Enforcement Branch, which had 132 (full time equivalent) staff at 30 June 2020. In 2020-21, the budget for the FWO's Enforcement Branch is \$18.603 million.

The Enforcement Branch works collaboratively with the FWO's Legal Group to achieve enforcement outcomes. The Legal Group, which comprises 60 lawyers, has a budget of \$21.399 million in 2020-21.

Senate Select Committee on Temporary Migration

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Question No: 02

Subject: Enforcement activity undertaken by FWO

Asked by: Senator Raff Ciccone (Page 6 of Hansard)

CHAIR: Can you also take on notice the enforcement activity that you undertake normally and how much you've undertaken in the past six and 12 months?

Answer:

The table below outlines the enforcement activity the FWO has undertaken over the last two financial years.

Compliance and Enforcement Tools		
	2019-20	2018-19
Compliance Notices	952	274
Infringement Notices	603	563
Enforceable Undertakings executed	12	17
Litigations Filed	54	23

Senate Select Committee on Temporary Migration
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Question No: 03

Subject: FWO Key Performance Indicators (KPIs)

Asked by: Senator Raff Ciccone (Pages 6-7 of Hansard)

CHAIR: I understand currently there's a KPI of around 50 cases each year. Have you sought additional resources to increase that?

Ms Hannah: We're involved in budget conversations with AGD on a reasonably regular basis. We are a contributor to another agency's process. It's not our process so I'm not sure that we can go into too many details about that.

CHAIR: Surely you do ask government for more resources?

Ms Hannah: Like I said, we contribute to discussions about our resources through AGD's processes, but I don't think that I can give you too many details of those if they're not our processes. Also, I believe it's a cabinet-in-confidence process that the department goes through as well.

CHAIR: But it is the case that you have around 50 cases you're funded to take up?

Ms Hannah: I wouldn't say that we're funded to take a certain number of cases. We're funded to deliver our statutory role and responsibilities. We set priorities in order to do that in the most effective way rather than being funded per activity.

CHAIR: So, you actually are saying that you don't have KPIs or—

Ms Hannah: Yes, we certainly have KPIs. I can talk you through those.

CHAIR: No, that's all right. But if you could just take on notice—

Ms Hannah: I'll take it on notice.

Answer:

Please see the below table for the FWO's current enforcement tool targets for 2020-21:

Enforcement Tool	2020-21 target
Compliance Notices issued	850
Infringement Notices issued	400
Enforceable Undertakings entered into	20
Litigations filed	40-50

The FWO's KPIs are available in the Fair Work Ombudsman and Registered Organisations Commission Entity Corporate plan which is publicly available on the FWO's website at <https://www.fairwork.gov.au/ArticleDocuments/1146/FWOROCE-Corporate-Plan-2020-21.pdf.aspx>.

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Question No: 04

Subject: Additional funding provided to FWO through July Economic Update

Asked by: Senator Claire Chandler (Page 7 of Hansard)

Senator CHANDLER: Were you provided with any additional funding through the July Economic Update?

Ms Hannah: I will have to take that on notice.

Answer:

As part of the July 2020 Economic and Fiscal Update, the FWO was allocated an additional \$46.3 million in funding over 3 years from 2019-20 to enhance advice and education services for businesses and employees about workplace laws, with a focus on supporting employers, employees and the community during COVID-19.

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Question No: 05

Subject: Visa holder data

Asked by: Senator Jess Walsh (Page 9 of Hansard)

Senator WALSH: In relation to the statistics that you cited today in your submission and also in your annual report in relation to the overrepresentation of visa workers in different compliance categories, such as completed disputes and litigation that you've been speaking to, I think it would be useful for this inquiry if we could have those figures broken down by visa type. For example, what proportion of the visa workers that you've been referring to are international students, working holidaymakers, participants in the Seasonal Worker Program and so on? Is that something you could take on notice?

Mr Ronson: What I have in front of me is for the monies recovered by visa type I have it broken into student visas, 462 visas, 417s, and then combined 457s and 482s. We can provide also breakdowns of formal disputes. We can break those down similarly. What we can try to do is provide as much granularity in the written responses around anonymous reports, and in terms of the enforcement tools hopefully we'll be able to provide some granularity around those as well. I'll preface our formal response by saying what Ms Hannah said at the commencement of this morning's hearing. In terms of how we record our data, a visa holder will refer to the visa subclass they believe they're on. We have discovered at times they may have mistaken that visa subclass. They might have moved through a few subclasses during their time in Australia. Or they might just not be sufficiently aware. I'm putting that qualifier around there and that disclaimer. If we're in doubt, sometimes we err on the side of being conservative.

Senator WALSH: You mentioned you have the breakdown for the value of the underpayment. Do you also have it just for the numbers of workers involved?

Mr Ronson: Yes. For example, I have a breakdown which would say in the state of Victoria, between 2019-20, there were 34 international students and we were able to recover \$111,000. I have that kind of granularity about international students and I have that granularity around the total number of visa holders. We'll come back with as much information for the committee as we can furnish.

Answer:

As outlined in the FWO's opening statement to the Committee on 17 September 2020, the FWO does not require workers to identify themselves as visa holders when they contact the FWO for assistance. This means the data held by the FWO doesn't capture the full amount of work undertaken by the FWO in relation to visa holders.

The table below provides the FWO's formal dispute form lodgements completed and recoveries by visa type, where the visa class has been identified, for the two-year period 2018-19 – 2019-20.

	417 VISA HOLDERS	462 VISA HOLDERS	457 VISA HOLDERS	STUDENT VISA HOLDERS
Formal Dispute Lodgements completed	856 (estimate)	58 (estimate)	201 (estimate)	584 (estimate)
<i>% of ALL VISA holder formal Dispute Lodgements completed by FWO</i>	32%	2%	7%	21%
<i>% of formal Dispute Lodgements completed by FWO</i>	7%	0%	2%	4%
Monies recovered	\$629,391.30	\$41,217.53	\$617,522.28	\$468,671.76

The FWO filed 24 litigations involving visa holders in 2019-20, representing 44% of all litigations filed. 21 penalty decisions handed down by the courts in relation to FWO matters in 2019-20 involved at least one visa holder, making up 53% of all penalty decisions relating to FWO matters. In total, over \$2.9 million in penalties were awarded in those matters.

The FWO is unable to provide a breakdown of the specific visa types of workers involved in FWO litigations, as matters routinely involve multiple visa types and visa information may not have been provided for all workers.

Senate Select Committee on Temporary Migration
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Question No: 06

Subject: Employers of international students re-engaging in contraventions

Asked by: Senator Jess Walsh (Page 12 of Hansard)

Senator WALSH: We know that it's the same situation for international students as it is for a working holidaymaker; that employers are not required to register for the scheme to employ these vulnerable workers. Do you have any insights or do you have any figures that you could provide on notice about instances of employers re-engaging in breaches? For example, having been found to be breaching the Fair Work Act in relation to a group of international students, perhaps being dealt with and then re-engaging in breaches at a later date?

Ms Peters: I'd need to take that on notice.

Answer:

The FWO assesses each matter that it receives on a case-by-case basis, in line with our publicly available Compliance and Enforcement Policy. One of the factors taken into account as part of this assessment process is whether the matter demonstrates a blatant disregard of laws or repeat offending. Where such conduct is demonstrated, the FWO will take strong action to achieve an appropriate enforcement outcome and effectively deter further conduct.

In two FWO litigations involving repeat offending, the Court noted the 'deliberate and exploitative'¹ nature of such conduct in one, awarding more than \$150,000 in penalties against a Victorian plumber and his company Pulis Plumbing Pty Ltd. In the other, the need for general deterrence was cited² with the court awarding over \$250,000 penalties against Ital One Holdings Pty Ltd and its director.

¹ <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/november-2019/20191119-pulis-plumbing-penalty>

² <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/february-2019/20190204-ital-one-penalty-media-release>

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Question No: 07

Subject: Dispute lodgements relating to international students in 2020-21

Asked by: Senator Jess Walsh (Page 12 of Hansard)

Senator WALSH: In relation to the current COVID situation for international students, do you have any advice for this inquiry on whether you're seeing any increased exploitation of international students, which could be linked to the fairly desperate situation we know they're in at the moment? Do you have any information about that?

Ms Peters: At the peak of the coronavirus crisis—the March, May, June period—calls to our info line and social media inquiries and the like for this agency increased by around 80 per cent. We did see a peak in inquiries and concerns coming from all sectors of the community. I don't have a breakdown of those calls by visa class, for instance. We did set up a coronavirus hotline. I'm not aware of what data we might have that breaks that down. Again, this goes to what Ms Hannah mentioned in the opening statement. We don't ask callers when they contact us for advice whether they are a visa holder, because we know that can be a barrier. That might not give the full picture. In terms of what we're seeing with complaints and disputes coming through, again I'm afraid I'd have to take that on notice in terms of the breakdown of recent matters. The most current data we have at the moment is probably up to the end of the financial year, which probably doesn't give the full picture of what's happened during COVID.

Answer:

In the first two months of the 2020-21 financial year, disputes involving international student visa holders represented 4% of all formal disputes completed by the FWO.

During the same period in the previous 2019-20 year, disputes involving international student visa holders represented 6% of all formal disputes completed by the FWO.

Senate Select Committee on Temporary Migration

Fair Work Ombudsman response to written Question on Notice from Senator Ciccone

Hearing date: 17 September 2020

Question:

To the Fair Work Ombudsman—

During its appearance to the Committee, the Fair Work Ombudsman was asked the following:

“Is it also common for the Ombudsman to contact the ABC in this case or other agencies and actually put the offer out there that, should the individuals want to come forward with a level of anonymity, they can contact and speak to an officer?”

In response to this question, witnesses for the Fair Work Ombudsman stated:

“Yes, indeed. I would say probably on every interaction”, and

“Absolutely. When we see media reports we contact journalists and say, “Can you give us some details about who's involved?” When journalists contact us and ask for information and put a case to us like that we also request details. Also when unions contact us or put information through the media, we're very keen to track that down.”

In relation to the article entitled “There a no human rights here: Inside the Government’s exploitative backpacker visa scheme” published by the ABC on 15 September 2020:

1. Did the Fair Work Ombudsman contact the journalist behind the article?
2. When was this contact made?
3. What action has the Fair Work Ombudsman undertaken following this contact?

Answer:

1. Yes.
2. The FWO responded to the journalist’s two enquiries on 5 August and 17 September 2020.
3. The FWO has urged any workers who are concerned about their pay and entitlements to contact us directly for assistance and requested the journalist encourage the workers they had spoken with to do this.

The journalist provided the name of a business. As outlined to the Committee during the hearing, while the key employee interviewed in the article used a pseudonym, the details provided have informed an ongoing investigation.