

Senate Education and Employment References 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 ON NOTICE

14 July 2015

Agency: Fair Work Ombudsman

Senator Lines, Sue provided in writing

Question

FWO – Penalties

1. In its report on the labour procurement arrangements of the Baiada Group in NSW, the FWO states that it will focus on accessorial liability by supply chain participants. However, when the FWO investigated various entities that were involved in contraventions of the law at Baiada's Beresfield site (including the underpayment of wages and sham contracting), the FWO reports states that 'the majority of entities ceased operating either through strike off action, voluntary liquidation or deregistration'.

- a) What is the maximum penalty for accessory liability that can be imposed on an entity?
- b) Is an entity able to shed a penalty for accessory liability by going into liquidation or deregistering?
- c) Is a penalty for accessory liability able to be imposed on the director of a liquidated or deregistered entity if that entity liquidates or deregisters prior to any finding?
- d) What is the maximum penalty for accessory liability that can be imposed on a director of a liquidated or deregistered entity?
- e) Certain entities appear to have factored a penalty on a director into their business models. Is the FWO of the view that the current penalties on directors are sufficient to deter the kinds of unlawful practices uncovered by the FWO in its investigation of the Baiada supply chain?

ANSWER

- a) There are no specific penalties for accessorial liability. The maximum penalty depends on the penalty applicable to the underlying contravention. Section 550 of the Fair Work Act 2009 provides that a person who is found to be involved in a contravention of a civil remedy provision is taken to have contravened that provision.

For example, the maximum penalties that can be imposed by a court for a breach of a term of a modern award under the Fair Work Act 2009 are 60 penalty units per contravention for an individual (60 x the current value of a penalty unit (\$180) = \$10,800) and 300 penalty units per contravention for a body corporate (300 x the current value of a penalty unit (\$180) = \$54,000).

- b) The Fair Work Ombudsman cannot commence or continue court proceedings against a body corporate that has entered liquidation without the leave of a superior court. If a company goes into liquidation during the course of a litigation the Fair Work Ombudsman can recover its debts, if they remain unpaid, as penalties through a liquidation process as an unsecured creditor pursuant to Corporations Law, because we are a party to an outstanding court case. When a company is deregistered, the Fair Work Ombudsman as a creditor is able to apply to the Court to have it reregistered. The Fair Work Ombudsman has in some cases requested that the Australian Securities and Investments Commission defer a deregistration process.
- c) Yes.
- d) See answer provided to a)
- e) The Fair Work Ombudsman does not have a position on this question.

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FWO – B&E Poultry

2. The FWO entered into a three year enforceable undertaking with B&E Poultry Holdings Pty Ltd (a principal contractor at the three Baiada Group processing sites in NSW) on 1 August 2014.

- a) What has been B&E's record of compliance over the first year of the enforceable undertaking?
- b) Given that B&E poultry was the only principal contractor operating at the Baiada Beresfield site at the completion of the FWO investigation, is the FWO confident that all employees at the Beresfield site are now being paid correctly?
- c) To what extent will correct employee identification cards and the installation of electronic time keeping systems at all Baiada plants assist in ensuring that all workers are employed and paid according to the law?

ANSWER

- a) At this stage the Fair Work Ombudsman is satisfied that B&E Poultry has complied with the Enforceable Undertaking (EU) to the extent required by law.
- b) The Fair Work Ombudsman is currently in discussions with Baiada and a range of other stakeholders with regard to how business practices can be changed in order to ensure better compliance with Commonwealth workplace laws.
- c) The Fair Work Ombudsman considers that identification cards and electronic time keeping systems would assist in enhancing compliance with workplace laws at Baiada's sites. This is why the Fair Work Ombudsman recommended this, along with a number of other steps Baiada should take. The Fair Work Ombudsman is currently in discussions with Baiada and a range of other stakeholders with regard to how business practices can be changed in order to ensure compliance with Commonwealth workplace laws.