

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 23 February 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE15/126) - Fair Work Ombudsman - 457's - Programme 1.2 Visa and Citizenship (Administered)

Senator Carr, Kim (L&CA) written:

- a. In relation to concerns over "pay" and or "occupation" what evidence does the Fair Work Ombudsman utilise to establish that further action is required? For example would a pay slip be utilised to establish whether the visa holder is being paid the correct salary?
- b. Would a salary below the TSMIT (\$53,900) be evidence the employer was paying below the minimum threshold?
- c. When FWO reports back to DIBP Operational Integrity what does the Department do with the information?
- d. Does the Department contact all the employers that FWO has indicated it has concerns over?
- If not, why not?
- e. Does that conversation take place over the phone, via email, letter or face-to-face?
- f. If so, what does it require the employer to do? For example, if the concern is over the pay, what does DIBP require the employer to do to clarify the issue?
- g. Where there might be a potential breach, the Department undertakes an audit. What is involved in the audit process?

Answer:

- a. This is a matter for the Fair Work Ombudsman (FWO).
- b. The FWO refers cases to the Department of Immigration and Border Protection where they have identified that a visa holder's salary may be below the Temporary Skilled Migration Income Threshold (TSMIT). The department conducts further investigation to identify whether the sponsor is in breach of their obligation to ensure equivalent terms and conditions of employment, specifically the obligation contained at regulation 2.79(3)(a), which requires sponsors to ensure the Subclass 457 visa holder is receiving at least the same salary as that which was approved at nomination. A salary below the TSMIT (\$53,900) would not necessarily result in an unsatisfactory finding by the department. Factors such as hours worked can reduce earnings on face value (e.g. if the visa holder is working part time, has taken 'leave without pay' or maternity leave). Regulation 2.57A(1) also allows for salary packaging, if the value of non-monetary benefits excludes contingent payments, such as overtime, bonuses and commissions, and evidence is sighted of the agreement prior to visa grant. If the employer is utilising a Labour Agreement, the terms or conditions of the employment offered will be assessed in accordance with the relevant labour agreement.
- c. When FWO refers a sponsor to the department with an indication that the employer may be in breach of their 457 sponsorship obligations, either by underpaying a 457 visa holder, or by employing a 457 visa holder who is not

working in their nominated occupation, the department conducts a thorough audit to establish whether a breach in sponsorship obligations under the 457 programme has, in fact, occurred. If the FWO refers a case to the department with no 'prima facie concerns,' the department finalises the referral as 'satisfactory' unless further adverse information is available to the department (such as an allegation), in which case further scrutiny will be applied to the referral.

- d. Yes.
- e. All, or any, of the above.
- f. The department is unable to detail its audit processes, as this may compromise current and future investigations. However in general, where the department has evidence of a potential breach of the sponsor obligations, including the obligation to provide overseas workers with equivalent terms and conditions as Australian workers, it provides the sponsor with an opportunity to comment or provide evidence to the contrary, and will consider that evidence before a decision is made.
- g. As responded to in f. above.