

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 24 March 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE17/289) - Reporting concerns about exploitation - Programme 2.3: Visas

Senator Pratt, Louise (L&CA) written:

What are the main ways people report concerns about exploitation? How do people report concerns they have about an employer?

What are the penalties for a worker – currently being exploited – on an invalid visa?

What are the penalties for a business – exploiting a worker – on an invalid visa?

Answer:

- The Department encourages all visa holders who feel they may have been exploited to report this to the Fair Work Ombudsman (FWO). The Employment portfolio has policy responsibility for breaches of employment law.
- The Department supports the FWO's efforts to ensure visa holders know their workplace rights by providing information from the FWO and links to the FWO website through forms, visa grant notifications and the Department's website. The FWO's online content, including videos, downloadable fact sheets and tools, has been translated into 27 community languages.
- If there is a possibility that an individual or business may be involved in illegal work, people can contact Border Watch Allegations and Referrals on 1800 009 623 or report them to the Department, visit www.border.gov.au/report
- The exploitation of foreign workers by an individual, business or employer can be reported to the Fair Work Ombudsman through the *Fair Work Infoline* on **13 13 94** or through their anonymous reporting service, visit: www.fairwork.gov.au/tipoff
- Australian Border Force (ABF) officers who locate persons working illegally are trained to assess the person's circumstances on a case by case basis. Officers can apply discretion, using a risk based approach, to determine the most appropriate course of action to take.
- ABF officers are required to detain an unlawful non-citizen under section 189 of *Migration Act 1958*. However, where possible, the grant of a Bridging Visa E is considered to allow the person to remain in the community while their ongoing immigration matters are resolved, or until it is appropriate to detain them in order to effect their removal from Australia under section 198 of the *Migration Act 1958*.
- Officers are also trained to identify persons in circumstances of human trafficking slavery and slavery-related exploitation during operational activity. Suspected

victims, regardless of their immigration status, are given an opportunity to safely disclose their circumstances to officers.

- While a person is assisting authorities in continuing investigations, including workplace exploitation, appropriate immigration provisions are made for them.
- If workplace exploitation claims are raised the person will be referred to the FWO.
- Employers found to have employed, referred or contracted a foreign national without work rights or is breaching their visa conditions could face the following penalties:

Sanction category	Maximum penalty (per illegal worker)
Illegal worker warning notice	Administrative warning
Infringement	\$3,240 fine for individual \$16,200 fine for body corporate
Civil penalty	\$16,200 fine for individuals \$81,000 fine for body corporate
Criminal offence ¹	\$21,600 fine and/or two years imprisonment for individuals \$108,000 fine for body corporate
Aggravated criminal offence ¹	\$54,000 fine and/or five years imprisonment for individuals \$270,000 fine for body corporate

¹Aggravated offences per section 245AD and section 245AEB are where illegal workers are exploited. For the purposes of these offences, a person is exploited if the person is subjected to **exploitation** within the meaning of the *Criminal Code* (see section 271.1A of the *Criminal Code*).