

‘There are no human rights here’

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After two months of working on a farm, Elin had just \$70 to show for her time.

Each year, tens of thousands of young backpackers like her are channelled onto Australian farms, where many become cheap labour and some are sexually harassed.

It is happening under a Federal Government scheme, and under its watch.

For years, the Government has assured the public it is taking action against the systematic exploitation of young travellers.

But the disturbing stories from backpackers – and data obtained under Freedom of Information laws – show otherwise.

You might wonder how it is possible to work for two months and save just \$70 like Elin did.

She’s telling her story on the condition of anonymity, under an assumed name, fearing reprisals from the people she worked for.

While most Australians get paid hourly, many backpackers employed in the agriculture sector receive a piece rate – meaning their wage depends on how much they pick or plant.

During her time on a strawberry plantation in regional Queensland, Elin said she wasn’t always told what that rate was.

Her own calculations showed it was sometimes as little as \$2.50 an hour.

She put up with it so she could complete 88 days of farm work – a prerequisite put in place by the Federal Government for backpackers wanting to make a second-year Working Holiday visa application.

There’s a catch – the work must be undertaken in rural or regional Australia, and in primary industries.

“We stayed, knowing that we were in a bad situation and knowing that we were getting underpaid,” Elin said.

She said her farm work was organised by a subcontractor employed by a recruitment company.

He was also the one who made Elin stay in a share house for \$125 weekly rent, but only found her 16 days of work – some days for just three hours.

At various stages, she was thrown a lifeline to earn more money.

“At a certain point, we were asked to find on the internet only Asian people. And when we find an Asian [worker], we get \$100,” she said of the request to recruit other backpackers via Facebook groups.

Elin said she refused on the grounds that it was “racist” and “ridiculous” to open someone else up to exploitation, but some backpackers relented and posted the ad, seen by the ABC, on social media.

Elin said throughout the ordeal the subcontractor made sexual advances to her.

It culminated in a proposition that would have made her “dependent” on him.

If she agreed to live on his property, and keep it a secret, he would pay her \$500 a week.

“The deal that he made in the end, if I said yes to that, he could do whatever he wanted with me,” she said.

The ABC was unable to contact the subcontractor, but spoke to the owner of the recruitment company, who rejected Elin’s allegations and said the business was regularly audited.

He said his fastest workers planted more than 1,000 strawberries an hour – so Elin’s tiny wage could have meant “she only planted 60 strawberries per hour”.

He also said his company did not provide accommodation, and that he never made “any personal relationship with employees”.

But Elin is standing by her story, and has made two anonymous reports to the Fair Work Ombudsman (FWO) – the regulator overseeing workplace compliance.

“I hope they can stop the people who are exploiting people like this,” she said.

The FWO said it did not comment on individual cases.

The FWO’s own numbers provide a damning assessment of its ability to stop exploitation.

Documents obtained by the ABC under FOI laws show that last financial year the FWO completed 1,647 formal complaints related to the migrant workforce.

About one-third of them involved 417 subclass visa holders, or backpackers.

There were two outcomes – education and dispute resolution, or compliance and enforcement.

Documents show 1,412 formal disputes – or around 86 per cent – were dealt with via education and dispute resolution.

Just 14 per cent were handled via compliance and enforcement activities.

The FWO said enforcement outcomes were applied in 3 per cent of the matters, and the remaining 11 per cent were resolved through other measures that “ensured compliance”.

When asked why it overwhelmingly opted for the education approach, a spokesperson said the FWO wanted to resolve problems before they became formal disputes.

“This approach helps maintain productive and cooperative employment relationships and enables the faster recovery of unpaid wages,” the spokesperson said.

Allan Fels chaired the Migrant Workers' Taskforce, set up by the Federal Government. *ABC News: Patrick Rocca*
But former Australian Competition and Consumer Commission chair Allan Fels said the documents “confirmed” what he had known for years – the watchdog was “a bit too much on the side of education and not sufficiently on enforcement”.

“The Fair Work Ombudsman, for whatever reason, has not done enough to deliver adequate law enforcement in that area,” he said.

“The very name, Fair Work Ombudsman, sounds very cuddly. It doesn’t sound like tough police.”

Mr Fels chaired the Migrant Workers’ Taskforce – established by the Federal Government to “protect vulnerable workers” – between 2016 and 2018.

Back then, he found the FWO came off “a low base of achievement”.

“They have been stepping up their efforts quite considerably in recent times. I still feel it is inadequate, given the scale of the problem,” he said.

“Our broad view is that there would be several hundreds of thousands of people underpaid.

“It’s embarrassing that in a well-off country like Australia, that this happens.”

Internal emails between FWO employees handling the FOI request show the regulator was reluctant to release the documents to the ABC.

“Our current ‘narrative’ around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn’t convey this,” one internal email said.

“I understand your concerns and think we clearly need to do more work to ensure the information released is more consistent with the current narrative around migrant workers,” another email read.

“I have committed to getting some info to the ABC journalist by Friday, so even if we strip the document right back and just provide her limited data and only non-controversial explanations, that would be better than nothing,” an email notes.

The FWO spokesperson told the ABC that recent visits to farms that were found to be non-compliant in its 2018 Harvest Trail Inquiry Report – which looked at the horticulture industry throughout Australia – had shown things were improving.

“While investigations are continuing in some regions, inspectors have recorded an improvement in the numbers of piece-rate agreements being signed by workers, as well as improvements in record-keeping, especially among larger firms,” the spokesperson said.

The Working Holiday visa scheme is run by the Department of Home Affairs.

It assesses whether the farm work backpackers have done meets the eligibility criteria, and grants their visas.

As a response to the growing controversy around the visa program, in 2015 the Abbott government decided that backpackers applying for a second-year visa had to provide evidence of remuneration, usually in the form of – but not limited to – payslips.

The ABC’s attempts over seven months to obtain information about what the department’s examinations had detected were knocked back.

The department said it did not have any document that summarised the data on the scale of underpayment; rather, it said, it looked at each application as an individual case.

The ABC can reveal, however, that the department can refuse to grant visas to backpackers who do their 88 days of farm work but are underpaid by their boss.

“This requirement was introduced in 2015 to discourage working holiday-makers from accepting exploitative conditions for the purpose of becoming eligible for a subsequent visa,” a spokesperson said.

Alison Rahill is concerned about sexual harassment on farms. ABC News: Bryan Milliss

Alison Rahill, the executive officer of the Anti-Slavery Taskforce of the Catholic Archdiocese of Sydney, said the department was putting the onus on the victim.

“It’s particularly unfair if workers are paid less than the minimum wage, they’re being paid less than the award they’re entitled to be paid, and then they’re missing out on their visa extension as well because they’ve received a low payment,” she said.

But Ms Rahill said she was more concerned about the types of wrongdoing not reflected in payslips – like sexual harassment.

Raena was en route to a sheep farm in rural South Australia, when the farmer – who had offered to pick her up – started sliding his hand on her inner thigh, telling her she was his “type of backpacker”.

“Sexual harassment with the farmer started from the first day I arrived there,” she said.

Raena said he singled her out, proposing they spent her first day on the beach, not working.

“I told him ‘no’, but then he got upset and told me that since he is paying me, I’m paid to do whatever he wants – whether it’s going to the beach with him, going for a drive with him, or scooping dog poo,” she said.

At the beach, Raena said the farmer was visibly “upset” she had decided to wear a one-piece swimsuit instead of a bikini.

Throughout the farm work, she said she was confronted by inappropriate behaviour.

“The farmer would compliment me in front of his wife, saying how sexy my legs were, or how he wants to see me drive the tractor to see my boobs jiggle,” she said.

“He would constantly take photos of me, when I was bent over or doing something. I’d ask him why he took a photo of me and he said it’s simply for me to show the Government I worked.”

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Raena describes her experiences on the farm ABC News

When a new backpacker from Germany arrived, the sexual comments turned into spiteful remarks.

“The farmer was complimenting the German girl, and looks at me and says, ‘Your face reminds me of a literal piece of shit,’ and laughs,” she said.

“He would [call] me a piece of shit, useless, an idiot, stupid Canadian, and a slave.”

During one of the farmer’s anger fits, triggered by the breakdown of his Bobcat, Raena says he asked her to dig a hole that was five feet deep, wide and long – with her hands.

“It took me five days to dig this hole, and it was deep enough,” she said.

“He just said, ‘Fill it.’

“I asked, ‘What was the point of me digging this, why did I have to dig this with my hands?’

“He just laughed and said, ‘I broke my Bobcat, I was mad.’”

Another backpacker, Jenna, who worked on the same farm, said the farmer made her feel uncomfortable.

“He would always just randomly come up to you and touch you,” she said.

“That’s hard to speak out about when you’re almost stranded at a place.”

The farmer did not want to be interviewed by the ABC, but said he denied the claims made by the two women and did not condone any form of exploitation of backpackers.

On a farm in regional Victoria, another backpacker, Tracey, had her own on-the-job swimwear incident.

She said she immediately noticed female workers in the packing shed were wearing “very skimpy clothing”.

“The girls were in their bikinis, even though we were actually in a refrigerator,” she said.

Tracey worked on farms in regional Victoria. Supplied

Tracey believes it was because she refused to work under “dehumanising” conditions and wear revealing clothing that she was never invited back after her first day.

“I thought, that’s weird because I worked very hard. I was curious and I asked the hostel coordinator, ‘Why am I not going back to the farm?’

“And he said, ‘Just between you and I, but you didn’t flirt with him and you didn’t wear sexy clothing.’”

When she left the working hostel, the coordinator said something that struck a chord with Tracey, so she wrote it down.

“You’ve got to leave any sense of dignity behind when you come [here]. All morals, all pride, all standards. Everything. Leave it all. There’s no such thing as human rights here. No workers’ compensation or safety or minimum wage. Nothing,” the memo in her phone reads.

The hostel owner could not be reached by the ABC.

For years, experts and workers’ unions have called for the visa program to be shut down due to its exploitative nature.

Stephen Howes, who researches migrant workforce issues, said the Government lacked control over its own visa program: over who hired backpackers, and the conditions they worked in.

“The only real solution is to get rid of this incentive for backpackers to work on farms, because that is a totally unregulated visa,” the Australian National University professor said.

“In fact, [the Government] is going to the opposite direction. They’ve now introduced a third-year backpacker visa.”

Professor Howes said the scheme, which has been around since 1975, had diverged from its original intention – work in exchange for travel – and had become about “channelling” backpackers onto farms.

“If you look at the official documents, it’s meant to be about cultural exchange – a holiday and some money along the way. That’s been completely lost. It’s become a low-skill working visa,” he said.

“The Government is providing farmers the easy option.”

If the Government got rid of the incentive for backpackers to work on farms, it could cost the Australian economy \$13 billion and the horticulture industry \$6.3 billion, a report by the Australian Fresh Produce Alliance shows.

With COVID-19 travel restrictions in place, the value of those backpackers currently in Australia has grown, and the Government is offering them visa extensions for working in the food production and agriculture industries.

Tasmanian blueberry and raspberry farmer Greg McCulloch said the industry was highly dependent on the foreign workforce.

In his 15 years in business, he said not one local had asked him for work, despite the region having a high unemployment rate.

But his crop needs harvesting.

“You’ve got to get the crop off and you get who you can,” he said.

The former president of the Australian Blueberry Growers’ Association said his own experience with the backpacker workforce had been “fantastic”, but he was aware of the issues plaguing industry.

“I get fairly disappointed with some of my fellow farmers and their attitude to employing staff,” he said.

“The law is the law, whether you agree with it or not.

“Those who don’t abide by it, they’re making their money off someone else’s work.

“They’re taking advantage of other farmers who are doing the right thing.

“You get some bad ones – and they are the minority – but we all get tarred with the same brush.”

The National Farmers’ Federation (NFF) is “frustrated” that “these cases keep popping up”.

“We don’t have a place for these people in our industry who mistreat workers, and we want to stamp it out,” president Fiona Simson said.

The NFF has been involved in a University of Adelaide study investigating the extent of the problem, and the industry-led Fair Farms initiative that accredits farmers for honest workplace practices.

The Department of Home Affairs said the Federal Government had “no tolerance for those taking advantage of vulnerable foreign workers”.

“The Department of Home Affairs and Australian Border Force are committed to protecting migrant workers from illegal work practices and continue to work collaboratively with whole-of-government partners to combat exploitation,” it said.

But Elin believes the full extent of what’s going on in some Australian farms can only ever be understood by those working there.

“When you leave the farm, and when you enter the normal world again, you realise how bad your situation actually was,” she said.