



Submission No 55

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Fair Work Ombudsman

Fair Work Ombudsman – Questions on Notice – Public Hearing 20 November 2012

1. Mr RUDDOCK: What is the minimum wage?

Mr Loizides: \$15.92?

Ms White: We will have to take that on notice.

Mr Loizides: I think it is \$15.92—but I will stand corrected on that. (p. 31)

Response:

- **The current National Minimum wage is \$15.96 per hour, or \$606.40 per week.**

Additional questions on notice

2. Do you have any views on why it is hard to identify slave or forced labour?

- What steps could be taken to help identify victims?

Response:

- **The Fair Work Ombudsman's (FWO's) role is to enforce the provisions of the *Fair Work Act 2009*, which does not contain specific provisions on slavery and trafficking offences; these offences are contained in the Commonwealth *Criminal Code Act 1995* and the *Migration Amendment (Employer Sanction) Act 2007*. As such, it may be more appropriate to refer this question to other agencies/organisations.**
- **Where the FWO identifies any matters relating to people trafficking and slavery in its work, these are referred to the Australian Federal Police and/or Department of Immigration and Citizenship for assistance.**

3. One submitter has recommended a framework to link industrial law to the criminal law by developing formalised liaison and referral between the Fair Work Ombudsman and the Australian Federal Police.

- Do you have a view on this recommendation?

Response:

- **The FWO and Australian Federal Police (AFP) have a good working relationship which enables ongoing two-way communication and the assistance or referral of matters relating to people trafficking and slavery where it is deemed appropriate to do so. As the proposal of linking legislation is a policy-related matter, the FWO is unable to respond to this question.**

4. One submitter has also recommended that the Fair Work Ombudsman administer federal victims' compensation legislation.
- Do you have a view on this recommendation?
 - Should Australia have a federal victims' compensation scheme?

Response:

- **As this is a policy-related matter, the FWO is unable to respond to this question.**

5. Do you agree with the view that migrant workers need equitable access to Australian justice mechanisms, arbitration processes and industrial rights protections, akin to Australian citizens, without fear of arrest or deportation?

Response:

- **In accordance with the *Fair Work Act 2009*, the FWO's jurisdiction extends to enforcing workplace rights for all persons engaged in work in Australia, including persons in Australia on a temporary basis, whether employed legally or illegally.**

6. The Australian Lawyers for Human Rights commented that the Fair Work Act remains a vital avenue for people exploited in Australia to seek redress because of the high threshold applied to slavery offences under the Criminal Code. Do you agree?

Response:

- **As this is a policy-related matter, the FWO is unable to respond to this question.**

7. What steps does the Fair Work Ombudsman take to monitor labour conditions and identify incidents of forced labour?

Response:

- **The FWO monitors labour conditions through all areas of its advisory and enforcement activities, including via Targeted Campaigns.**
- **In investigating matters that may involve people trafficking, the FWO will examine the adherence to workplace laws and enforce entitlements where contraventions are found. This may include investigating matters in relation to wages and entitlements, or general protections matters such as adverse action, discrimination and sham contracting.**
- **The FWO works closely with other government agencies such as the Department of Immigration & Citizenship (DIAC) and the AFP in order to provide assistance in investigating people trafficking and slavery matters which may fall within the FWO's jurisdiction.**
- **Matters of people trafficking and slavery that are brought to the attention of FWO by other government agencies are treated with priority and are referred to the appropriate compliance area.**

- The FWO ensures that its staff are aware of how to identify issues related to people trafficking and slavery, and are able to adequately handle allegations of, or enquiries from, workers who may have been subjected to these conditions competently and with sensitivity. For example, guidance on these matters for Inspector's is contained in the Operations Manual, and for Fair Work Infoline Advisor's is contained in a Knowledge Article.
- Where any issues relating to trafficking and slavery are identified, FWO will liaise with DIAC and/or the AFP and refer matters where appropriate to do so.

8. Are you aware of any instances where migrants have made claims for unpaid wages and penalties through the Fair Work Ombudsman?

- If so, how many?
- What was the outcome of those claims?

Response:

- Yes, during the 2011-12 financial year, the FWO:
 - conducted 990 complaints relating to visa workers, recovering more than \$718,000 in unpaid entitlements
 - initiated ten legal proceedings that involved visa holders. A decision was handed down in respect of two matters involving visa holders, with penalties of \$100,820.00 awarded.

9. What collaborative activities on forced labour do you undertake with the Department of Families, Housing, Community Services and Indigenous Affairs?

Response:

- Australia's anti-people trafficking strategy is overseen by an Interdepartmental Committee (IDC). FWO and the Department of Families, Housing, Community Services and Indigenous Affairs are members of the IDC and the National Roundtable on People Trafficking, and as such, have ongoing interactions via these meetings.

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- **Senator FURNER:** *Out of the 26,000 complaints you receive, are you able to identify how many of those may have been circumstances of underpayment or breach of entitlements that apply to 457 or other migration visas?*
- **Mr Lozides:** *Yes, we can document that information for you. If I could take it on notice I will supply you with that exact number.*
- **Senator FURNER:** *Sure. Would you have any idea off the top of your head at this point in time whether it is substantial?*
- **Ms White:** *It is a large number but not as a percentage of the total number of complaints. But I suppose the total number of people working on visas is smaller than the regular working community. We do have the numbers that we can get for you.*
- **Mr Lozides:** *Yes, we do. I am trying to recall, Senator, but I cannot. We will provide you with that information on notice.*

- **Senator FURNER:** *In doing that, could you identify the type of industry, if that is at all possible?*
- **Ms White:** *I believe we can. We will look into that for you as well.*
- **Senator FURNER:** *And the regions as well?*
- **Mr Loizides:** *We will take all those questions on notice and try to provide that information for you.*
- **Senator FURNER:** *Because I imagine that, if there has only been 50 successful prosecutions, and also only two that relate to visa holders—*
- **Ms White:** *Those two were provided as examples; they are not the only two litigations that have related to visa holders. We could get that number for you.*

Response to the above questions on notice:

- **During 2011-12, the FWO conducted 990 investigations into matters relating to visa holders.**
- **Of the 990 complaints, the majority of complaints received related to the Accommodation and Food Services industry, and were located in NSW.**
- **During 2011-12 the FWO initiated ten legal proceedings that involved visa holders. A decision was handed down in respect of two matters involving visa holders, with penalties of \$100,820.00 awarded.**